TAX MEETING IN COPENHAGEN ON JANUARY 23, 2019

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INTRODUCTION

• Distance sales of goods, supplied from one member state to another or from third countries to the European Community, have grown rapidly. A major part of them are facilitated through the use of electronic market places, platforms or portals. Since in such cases the present rules have proved insufficient to ensure effective and efficient collection of VAT, the European Council has issued the Council Directive (EU) 2017/2455 of Dec. 5, 2017. One aim of this Directive is to insure effective and efficient collection of VAT, to reduce the administrative burden for vendors, tax administrations and consumers and to involve taxable persons who facilitate distance sales of goods through the use of electronic market places, platforms and portals in the collection of VAT.
INTRODUCTION

• For distance sales of goods imported from third countries to the community, this will be restricted to sales of goods which are dispatched or transported with an intrinsic value **not exceeding € 150**, because in case of a higher value a full customs declaration upon importation is required for customs purposes.

• To verify that VAT has been accounted for correctly and their supplies, it is necessary to keep records of suppliers by taxable persons facilitated by an electronic marketplace, platform or portal for period of at least 10 years.

• In order to avoid distortion of competition between suppliers inside and outside the Community and to avoid losses of tax revenue the exemption for imports of goods in small consignments of a value of up to 22 € has been removed. These rules shall apply as from Januar 1, 2021.
• The new article 14a of the VAT Directive provides that the operator of an electronic market place shall be deemed to have received and supplied the delivered goods himself.
• Based on Article 205 of the VAT Directive, the German parliament has passed a new law that holds the operator of the market place liable for unpaid VAT arising from supplies which originate from his marketplace as from March 2019. Since these rules include severe changes and apply for transactions after February 28, 2019, I would like to inform you about some important elements of this law.
THE OPERATOR OF AN ELECTRONIC MARKETPLACE

must
1. capture and record details on the supplying trader and
2. on all supplies carried out and
3. present the certificate of the supplying trader’s registration for VAT purposes

Upon request the marketplace operator must transmit the data he holds to his competent tax authority.

Note: This is valid for supplies after 28 February 2019 which:
• originate on the marketplace provided by the operator (e.g. Amazon) and
• for which the transport or dispatch begins or ends in Germany
• if the supplying trader is resident in Germany, the EU or the EEA this applies for transactions after 30 September 2019
1. Can be applied by the supplying trader

   Traders not resident in the EU or the EEA also have to nominate an authorized receiving agent in Germany [Empfangsbevollmächtigter]. The supplying trader must pass a copy of the Certificate to the Operator of an electronic marketplace

   or

2. The operator himself can electronically request a confirmation from the supplying trader’s competent local tax authorities (e.g. for traders resident in Denmark the tax office in Flensburg is competent)

Note:

Supplying traders should register immediately, otherwise they risk no longer to be able to use electronic marketplaces in the future. This law enforces operators of electronic marketplaces to exclude supplying traders from their electronic marketplaces who don’t fully cooperate.
LIABILITY OF THE OPERATOR

1. The Operator of the marketplace is liable for unpaid VAT arising from supplies, which originate on his marketplace (absolute liability) except

2. If he can provide a certificate from the supplying trader relating to his VAT registration or a confirmation from the competent tax authorities unless the operator had knowledge of or would be expected to have had knowledge of the supplying trader not fulfilling his tax-related obligations or

3. If the operator has received information from the tax authorities that the supplying trader does not fulfil his tax obligations in full or to a significant extent and the operator cannot prove that the supplying trader is no longer able to offer any goods on his electronic marketplace.

4. If the supplying trader has no residence or habitual abode, registered office or management in Germany, or another EU or EEA member state e.g. in Asia, the tax office is not obliged to first enforce the VAT claim against the supplying trader.

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DATA TO BE RECORDED BY THE OPERATOR

1. Full name and address of the supplier
2. Tax number issued to the supplying trader by the competent tax office
   and if available: the VAT identification number issued to the supplying trader by the Federal Central Tax Office
3. The start and end dates of the validity of the certificate (of VAT registration)
4. The place of departure of the transport or dispatch and the place of destination
   and
5. The time and amount of the transaction

Note: Nos. 1 to 3 are part of the required certificate of VAT registration
1. The operator shall be liable for unpaid VAT but is not able to verify whether the supplier is a private individual or a taxable trader. In any case he must record the required information and he must decide whether to request the registration certificate or to exclude the supplier from his marketplace.

2. How can the operator get the information about the delivery route in view of the high transaction figures?

3. Transactions have to be recorded if the transport begins or ends in Germany. This covers also supplies from Germany to e.g. Denmark which may be taxable in Denmark if the supply threshold of the trader has been exceeded in any one calendar year.
4. The obligations of the operator are applicable for all operations of marketplaces even if they don’t supply goods to German customers.

5. If a foreign trader dispatches or transports goods from another EU member state to a German customer, the transaction would not be taxable in Germany if he had not exceeded the threshold of € 100,000.00 and had not opted for the place of supply to be where the dispatch or transport ends (Art. 33-34 VAT- Directive). In this case the transaction would not be taxable in Germany but according to this law the operator would still be obliged to capture and record the transaction data. The foreign trader however would only be registered in Germany, if he performs taxable transactions in Germany. Thus, in order to get a registration certificate he would have to opt for the place of supply to be where the dispatch or transport needs (in Germany).
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