

Implementation of the e-commerce package in Germany - first step

Germany: Promoting cross-border e-commerce B2C - Facilitating business through the new rules as of 1 January 2019.

Background

EU e-commerce package – Implementation in two steps

The e-commerce package adopted by the EU Council at the end of 2017 consists of a Directive and two Regulations. In addition to extending the EU-wide MOSS portal to VAT registration of distance sales, a new portal for distance sales of goods imported from third countries up to a value of €150 will be set up. In addition, for the first time, operators of online platforms (marketplaces, portals, etc.) can be liable for the collection of VAT on distance sales made through them. It is envisaged that the implementation of the e-commerce package will happen in two steps. The extension of the one-stop shop to distance sales of goods within the EU and from third countries, as well as the abolition of the VAT derogation for small consignments will be completed by 31 December 2021.

With a view to introducing measures to simplify trade in electronic services within the EU, Member States had until 31 December 2018 to transpose the relevant provisions of the Directive into national laws, regulations and administrative provisions. Germany has met this deadline by implementing new provisions for the prevention of VAT losses in connection with the supply of goods via online trading platforms in its Tax Act (Annual Tax Act 2018).

Previous regulations in Germany

In case of telecommunications, radio and television services and other services provided electronically to non-entrepreneurs (B2C), the place of supply was always the place where the recipient of the service is located (country of destination principle). The obligation to register on the part of the entrepreneur providing the service in the respective country of destination did not apply if the entrepreneur provided the services via the MOSS procedure. Previously, the service provider also had to prove the location of the customer by means of two non-contradictory proofs (e.g. the billing address of the customer, IBAN, location of the fixed network connection, etc.).

New regulations and administrative instructions as of 1 January 2019

Until now, the determination of the place of supply according to the country of destination principle applied independently of the value of the transactions. With the new regulations, this will change from 1 January 2019. Under the new rules, telecommunications, radio, television and other electronic services to non-entrepreneurs will only be taxed at the place where the customer is domiciled, if they exceed the €10,000 net threshold in the previous or current calendar year, or if the provider waives the application of this simplification rule - otherwise the place of supply will be determined according to the principle of domicile, i.e. according to where the provider operates his business.

In determining the €10,000 turnover limit, all sales to non-entrepreneurs in other Member States must be taken into account. With regard to a possible waiver of the application of the simplification regulation, this can be declared to the tax office until the tax assessment is incontestable or as long as there is a reservation of the right of review. However, the waiver binds the entrepreneur for at least two years. The entrepreneur can only revoke the declaration after expiry of the two-year period, at the latest until the tax assessment of the calendar year for which he is to apply is incontestable, or as long as there is a reservation of the right of review. In addition, the supplier must only keep one (instead of, as in the past, two mutually non-contradictory) piece of evidence to identify the residence to the customer, where the aforementioned services do not exceed the annual turnover threshold of € 100 000, provided that the evidence does not only originate from the recipient of the service.

When determining the turnover limit of € 100,000, the supplier must take into account all turnover to non-entrepreneurs, i.e. including those from third country. If the € 100,000 threshold is exceeded, the service provider must, as before, submit two documents proving the origin of the customer. With regard to the issuing of invoices, the new provisions stipulate that the service provider who has registered for the taxation of telecommunications, radio, television and other electronic services for the MOSS procedure, shall be subject to the invoicing obligations under German law.

Taxation procedure for entrepreneurs not resident in Community territory

Entrepreneurs not established in EU Member States but registered for VAT purposes in a Member State have not yet been able to benefit from the special taxation procedure for suppliers not established in the EU Member States ("VAT on eServices", VOES procedure or "eCommerce", ECOM procedure), or from the special taxation procedure for suppliers established in EU Member States (MOSS procedure). The amendments allow non-EU entrepreneurs to use the special taxation procedures from 1 January 2019, and to electronically submit their VAT returns, including foreign sales to the Federal Central Tax Office (Bundeszentralamt für Steuern). If an entrepreneur not domiciled in the EU registers for the VOES procedure and reports his sales accordingly, the regulations of the Member State in which the entrepreneur registered for the VOES procedure apply.

Please note

The implementation of the first part of the EU e-commerce package through the Tax Act for the prevention of VAT losses in connection with the supply of goods via online trading platforms and to amend other tax provisions (Annual Tax Act 2018) as well as the associated rapid enactment of the FMOF letter will lead to a reduction in costs from 1 January 2019, particularly for small and medium-sized enterprises. A further advantage is the standardization of invoicing for telecommunications, radio, television and other electronic services provided to non-entrepreneurs. For entrepreneurs who use the MOSS procedure, invoices shall be issued exclusively in accordance with the law of the Member State of registration. This removes the obligation for the suppliers of these services to issue invoices in accordance with the law of the Member State of destination.

Another milestone is the extension of the use of special taxation procedures to non-resident suppliers. Non-EU suppliers should take advantage of this and register for the VOES procedure. In applying the different €10,000 and €100,000 thresholds, on the other hand, businesses providing services will have to take account of the different way in which the turnover thresholds are determined. While for the €10,000 threshold the entrepreneur only has to take into account transactions with non-entrepreneurs in EU Member States, for the threshold concerning the origin of the customer (€100,000) the entrepreneur has to take into account all transactions with non-entrepreneurs.

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