



The power of being understood

NEW VAT LEGISLATION DISTANCE SALES AS OF 1 JULY 2021

On 22 July 2020 the European Council formally agreed to implement the VAT e-commerce package on 1 July 2021, which package was initially supposed to enter into force as of 1 January 2021 but has been delayed due to Covid-19. On 14 July 2020, the Dutch government published the draft legislation to implement the E-commerce changes adopted by the European Commission.

The request of the Dutch government to further postpone the implementation until 1 January 2022 has not been accepted for now. This means it is time to get familiar with these rules to prepare for changes or to learn on opportunities with respect to the business to consumer (B2C) market.

As the new rules will have a significant impact on businesses involved with international trade, it is key to identify these changes now and to determine when businesses have to take action to alter internal processes in order to be compliant with this new legislation.

The new rules with respect to e-commerce and VAT relate to online sales of goods to consumers (so called "distance sales") and will have an impact on the following businesses:

- Businesses with cross-border sales to consumers in EU member states;
- Businesses with cross-border sales from non-EU countries to consumers in EU member states;
- Online platforms facilitating the aforementioned sales.

Impact

We recommend that the aforementioned businesses understand these new rules as well as the impact of them. This allows businesses to determine whether changes are required with respect to their compliance, IT or supply chain structure. The new rules could lead to possibilities to

simplify the compliance structure with respect to business to consumer sales. On the other hand, the new rules may require changes to websites and ERP systems. Contracts between sellers and online platforms may need to be adapted as well. Please find below an overview of the most important changes regarding e-commerce and VAT.

Scope of distance sales is broadened

New rules will apply regarding the responsibility of the distance sales related transportation. As of the implementation of the changes, supplies of goods where the supplier intervened directly but also indirectly with the transport will be considered as distance sales (with the exception of second hand goods or new means of transport).

Abolishment of thresholds

Currently with respect to cross-border business to consumer sales within the EU, VAT is due in the member state of destination, after the threshold in that member state is exceeded. Various thresholds apply in the EU Member States in the range between € 35,000 and € 100,000. This may lead to multiple VAT compliance obligations in the EU Member states of arrival.

As of the implementation of the changes, these thresholds will be abolished. In order to prevent businesses having to VAT register across all the EU Member States, a One Stop Shop system ('OSS') is introduced to report the EU distance sales via one VAT return.

An exception applies to businesses having a revenue of maximum € 10,000 per annum (excluding VAT per calendar year) in terms of distance sales. These businesses can continue to report the VAT due in the country of establishment.

Imports from non-EU to EU

Currently a VAT exemption applies for importation of small consignments up to a value of € 22. As of the implementation of the changes, this exemption will no longer apply in order to create a level playing field for sellers within as well as outside the EU. Furthermore, for distance sales of goods it will be possible to use the Import One Stop Shop ("I-OSS") system under strict conditions. If the seller imports the goods, the seller could be granted with a VAT exemption upon provision of his I-OSS number to the customs authorities. If this VAT exemption is granted upon importation, VAT is only due to the tax authorities for the sale of the goods to the consumer. This VAT will be due at the point of sale. In addition, the I-OSS system will not apply to excise goods and the value of the goods that will be imported in the EU by the seller may not exceed € 150.

If the seller is not responsible for the importation, the I-OSS does not apply. Instead the mail order companies are liable for payment of the import VAT to the tax authorities, which is subsequently collected from the recipient of the goods.

Platforms

As of the implementation of the changes, online platforms facilitating distance sales will under strict conditions be liable for VAT due by the businesses selling these goods via the online platforms due to a fiction. These platforms will be liable for VAT due in case the seller is not established in the EU or in case the goods imported into the EU have an intrinsic value of no more than € 150 regardless of where the seller is established. If the fiction applies, the platforms are deemed to have purchased and subsequently sold the goods for VAT purposes.

We expect this legislation may have a considerable impact for businesses involved in distance sales. RSM is happy to assist you with any queries or a VAT impact scan in order to determine the next steps.

