

NEW E-COMMERCE RULES (NO. V)

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Involvement of electronic platforms in the trading of small value consignments

In many cases, suppliers offer their goods not only through their own websites, but also through various electronic platforms operated by other entities that mediate (enable) contact between the supplier and a final consumer and also ensure, to varying degrees, payments from the consumers etc.

Operators of electronic interfaces that facilitate distance sales of goods will be involved in the collection of VAT on those sales. In this respect, a new legal provision has been introduced in the VAT Directive providing that these taxable persons are deemed in certain circumstances to make the supplies themselves and will be liable to account for VAT on these sales (hereinafter “the deemed supplier”).

The taxable person facilitating the supply of goods using an electronic interface such as a marketplace, platform, portal or similar means becomes a deemed supplier for supplies of the following goods made via its electronic interface:

- Goods in consignments of an intrinsic value not exceeding EUR 150 supplied to final consumers in the EU and imported in the EU, irrespective of whether the underlying supplier/seller is established in the EU or outside the EU
- Goods which were already released into free circulation in the EU and goods which are located in the EU and these goods are supplied to final consumers in the EU, irrespective of their value, when the underlying supplier/seller is not established in the EU.

On the other hand, the taxable person facilitating the supply through the use of an electronic interface will not become a deemed supplier, for transactions involving the following:

- Goods in consignments where the intrinsic value is exceeding EUR 150 imported in the EU, irrespective of where the underlying supplier/seller is established
- Goods which were already released into free circulation in the EU and goods which are located in the EU and supplied to customers in the EU, irrespective of their value, where the underlying supplier/seller is established in the EU.

If the operator of the electronic interface becomes the deemed supplier, this means for VAT purposes that every single supply from the supplier (the so-called underlying supplier) selling goods via an electronic interface to the final consumer (B2C supply) is split into two supplies:

- 1) a supply from the underlying supplier to the electronic interface (deemed B2B supply), which is treated as a supply without transport

In the case of the goods imported from countries outside the EU, the B2B supply takes place outside the EU and the EU VAT rules do not apply to this deemed B2B supply. In the case of

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the goods delivered inside the EU, the B2B supply is exempt from VAT with the right of deduction for the underlying supplier.

- 2) a supply from the electronic interface to the customer (deemed B2C supply), which is the supply to which the transport is allocated

For VAT purposes, the operator of the electronic interface is considered the supplier of the goods to the final consumer and the obligations to account for VAT are transferred to him. In the case of goods imported from the countries outside the EU into the EU, the IOSS import regime may be used to account for VAT of the Member State of consumption, or special arrangements for declaration and payment of import VAT can be used. In the case of the goods delivered within the EU, the operator can also use the special OSS regime or will be obliged to register for VAT in all Member States of consumption (see our previous parts).

Thus, it will be the deemed supplier (and not the underlying supplier) who will be liable for the payment of VAT due on the supply of the goods to the final consumers. However, Member States may introduce the necessary national measures providing for joint and several liability of the underlying supplier.

The deemed supplier will often not have at his disposal the information required to establish the place of supply and to fulfil his VAT obligations, such as the place where goods are located at the time of the transaction or the nature of the goods supplied. The deemed supplier will often depend on the accuracy of the information provided to him by the suppliers to be able to ensure the correct VAT treatment of the supply. In order not to impose a disproportionate burden on marketplaces, more legal certainty is provided and their liability for the payment of VAT is limited in pre-defined cases.

The assessment of whether the electronic interface facilitates a supply of goods and is thus a deemed supplier should be made taking the criteria outlined in the new EU VAT legislation into account. The term “facilitates” generally means the use of an electronic interface to allow a customer and a supplier, offering goods for sale through the electronic interface, to establish contact, which results in a supply of goods being made through that electronic interface to that customer. The concept encompasses primarily situations where customers initiate the purchase process or make an offer for purchasing goods and underlying suppliers accept the offer via the electronic interface.

The operator of electronic interface is not considered as facilitating the supply, if:

- a) he does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made
- b) he is not, either directly or indirectly, involved in authorizing the charge to the customer in respect of the payment made and
- c) he is not, either directly or indirectly, involved in the ordering or delivery of the goods

*Next time we will focus on **the provision of "electronic services" through electronic platforms** and the related VAT implications. **The specialized online seminar will take place on 16th March 2021.** If you have any questions, please contact us at tomicek@stanek-tomicek.com.*

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