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VAT'S UP

VAT NEWSLETTER

E-Commerce: Federal Ministry of Finance comments on changes regarding distance sales as of July 2021

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1 Background

The regulations on distance sales have been fundamentally revised. As part of the so-called e-commerce package, the regulatory change, originally planned for 01.01.2021, was postponed until 01.07.2021 due to the coronavirus pandemic at EU level. On this date, the previous country-specific thresholds for distance sales will be abolished and replaced by a uniform EU de minimis threshold of EUR 10,000 (see KMLZ Newsletter 35 | 2020). In order to avoid, to the greatest extent possible, the obligation for taxable persons to register in other EU Member States, the new taxation schemes, namely the One-Stop-Shop (OSS) and the Import-One-Stop-Shop (IOSS) will be made available (see KMLZ Newsletter 36 | 2020). In view of the ongoing pandemic, the question arose as to whether the entry into force of the regulatory framework would be, once again, postponed. However, it is now clear that there will be no further postponement. The Federal Central Tax Office punctually activated the application for the use of the new taxation procedures in its online portal on 01.04.2021.

2 The new regulatory framework, from the perspective of the German tax authorities

In addition, the German Federal Ministry of Finance (BMF) has made the following clarifications relevant for distance sellers in its letter dated 01.04.2021:

- **VAT registrations and OSS/IOSS are not mutually exclusive:** Existing VAT registrations are harmless in terms of the use of OSS/IOSS. The only requirement is that all distance sales taxable within the EU are reported uniformly in OSS/IOSS.
- **Relevant threshold of EUR 10,000 applies to 2020 and 2021:** For the definition of the place of taxation in the taxable period 2021, the relevant supplies of services and intra-Community distance sales made in the calendar

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year 2020 and in the first half of 2021 are to be taken into consideration. A pro rata temporis allocation of the de minimis threshold is not to be made in the calendar year 2021.

- **Transport initiated by the distance seller:** The transport is initiated by the distance seller if he is directly or indirectly involved in it. Unfortunately, the BMF letter fails to adequately deal with the term "indirect involvement".
- **Distance sales from another EU Member State to own country of residence:** Supplies to non-taxable persons from other EU Member States to the own country of residence must be reported in OSS/IOSS when using these schemes.
- **Reporting of distance sales in OSS/IOSS:**
    - Taxable persons can report their participation in OSS/IOSS electronically to the Federal Central Tax Office (BZSt) as from 01.04.2021.
    - The amounts in the OSS VAT return in Germany must be stated in euros unless the EU Member State, in whose territory the place of taxation is located, provides for the amounts to be stated in its national currency. If the national currency is not euros, the values shall be calculated and reported uniformly using the exchange rate determined by the ECB on the last day of the taxable period. The application of the average exchange rates, according to para. 16 sec. 6 German VAT Act, is explicitly excluded.
- **Input VAT deduction of import VAT if IOSS is not used:**
    - Supply via own website: Where goods arrive in Germany from a third country and the supplier declares the import in Germany, he makes a taxable supply in Germany according to para. 3 sec. 8 German VAT Act. The distance sales regulation is then not applicable. The supplier can claim the import VAT incurred there as input VAT in his German VAT return.
    - Supply via an online marketplace: If the distance sale takes place via an online marketplace, a chain transaction may be fictitious. If the distance seller declares the import in this case, he is liable for the import VAT. The BMF's letter clarifies that, at the same time, only the online marketplace is entitled to deduct the import VAT as input VAT, as it has the power of disposal over the imported item.
- **Input VAT deduction:**
    - EU taxable persons can claim input VAT incurred in the other EU Member State in the input VAT refund procedure according to the 9th Council Directive, provided they report their sales in the OSS/IOSS and do not make any further harmful outgoing transactions.
    - Third-country taxable persons can claim input VAT amounts in the input VAT refund procedure according to the 13th Council Directive in Germany, even in the absence of reciprocity, insofar as the input transaction is directly related to an outgoing transaction reported in the OSS/IOSS. For input VAT which has arisen from other input transactions, the requirement of reciprocity remains.

3 Conclusions

It is to be welcomed that the BMF's new letter is generally quite instructive. It contains many practical examples that provide a better understanding of the regulations. However, these are always standardised issues that can easily be understood on the basis of the legal text alone, without the aid of examples. At the same time, many problems that arise in practice are not addressed. For example, the BMF letter makes no mention of the question of the transport initiation, there is rather less content about transactions in a VAT group, and no answers to questions of residency, correct invoicing and many other important potential factors, where is so often the case with VAT, the devil is in the detail.

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