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VAT'S UP

VAT NEWSLETTER

Annual Tax Act 2020 (Part 5): Mini-One-Stop-Shop becomes a One-Stop-Shop

36 I 2020

1 Background and entry into force

The Mini-One-Stop-Shop procedure (MOSS) introduced in 2015 will be replaced by the One-Stop-Shop (OSS), which allows more types of supplies to be reported than before. This change in the law is to come into force on 01.01.2021. However, it is part of the so-called e-commerce package, the postponement of which has already been decided at EU level due to the coronavirus pandemic. The standards will come into force (at the earliest) on 01.07.2021.

2 Declaration through the (Mini-)One-Stop-Shop

MOSS is a special taxation procedure that enables a taxable person to centrally pay VAT amounts owed in other EU countries. In this way, the necessity to VAT register in several Member States can be avoided. EU taxable persons can carry out their reporting obligations for other Member States in their own country of residence. Third country taxable persons are, in principle, free to choose a Member State for their reporting and declaration obligations. Participation in MOSS is voluntary. Up to now, both EU taxable persons and third country taxable persons have only been able to use MOSS to report services provided by electronic means, telecommunications services as well as radio and television broadcasting (electronically supplied services) to recipients in accordance with sec. 3a para. 5 German VAT Act (hereinafter referred to as non-taxable persons).

3 The new One-Stop-Shops

In the future, the OSS will be composed of a "non-Union scheme", an ”EU scheme” and an "import scheme". It should be noted that participation in the OSS will only be possible if the OSS is used uniformly for the entire EU.

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- "**Non-Union scheme" (sec. 18i German VAT Act (draft))**: In future, third country taxable persons will be able to declare all services to non-taxable persons that are taxable in the Community territory rather than only electronic services in the OSS.
- **"Union scheme" (sec. 18j German VAT Act (draft))**
  - EU taxable persons will be able to declare in their state of residence all services to non-taxable persons that are taxable in another Member State.
  - Both third country taxable persons and EU taxable persons will, in future, be able to report their intra-Community distance sales (Newsletter 35/2020) via the OSS. However, intra-Community transfer of goods cannot be declared via OSS. If one wishes to use a fulfilment service structure in which goods are transferred within the EU, registration in countries with warehouses still cannot be avoided.
  - Transactions subject to the newly introduced fictitious chain transaction of sec. 3 para. 3a p. 1 German VAT Act (draft) (Newsletter 33/2020) can also be reported using the OSS in future.
- **Import scheme (sec. 18k German VAT Act (draft)):** In the future, both third country taxable persons and EU taxable persons will be able to report distance sales of goods imported from third countries with a value in kind of EUR 150 or less in the OSS (so-called "Import-One-Stop-Shop" – in short "IOSS"). In this case, the import of the goods is VAT exempt in accordance with sec. 5 para. 1 no. 7 German VAT Act (draft). A further prerequisite for VAT exempt imports is that the validity of the individual identification number, of the taxable person or his representative, is checked by the customs office when the goods are declared. This additional identification number is issued by the competent customs office.

4 Marginal change in reporting modalities

Declarations must continue to be submitted on a quarterly basis. However, the reporting deadlines for submitting OSS declarations and the due date of the tax debt have been extended by 10 days, compared to MOSS. The new deadline therefore expires at the end of the month following the quarter. In addition, the taxable person will be able to make corrections in the respective current tax return. It will not be necessary to amend the declaration already submitted.

5 Consequences for the practice

The use of the OSS will make life easier for some taxable persons. On the one hand, the quarterly submission cycle will eliminate the different reporting frequency in the individual Member States. On the other hand, in most cases the VAT incurred will also have to be paid later. However, if one wishes to use a fulfilment service structure, in which goods are transferred within the EU, registration in warehouse countries still cannot be avoided.

The IOSS is also unlikely to be used in practice. Online marketplaces will probably not be prepared to report such transactions in the OSS due to the fictitious chain transaction and the associated risk (liability for VAT and no deduction in case of retrospectively assessed import VAT due to lack of power of disposal on the goods). As a result, goods from third countries will, very probably, not be able to be imported VAT exempt, if they are supplied via an online marketplace.

Also, if one wants to use the OSS, one should expect queries from national authorities. In particular, tax authorities to which larger sales of a company are reported for the first time with the introduction of the OSS will probably ask questions about the past. Taxable persons wishing to use the OSS in future should therefore take advantage of the postponement of the deadline to check, in detail, whether their past supplies have been taxed correctly.

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