



VAT NEWSLETTER

Regulation on marketplace liability in contrast to the purpose of the One-Stop-Shop procedure

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1 Purpose of the OSS procedure

In future, online traders will be able to report their intra-Community distance sales, within the meaning of sec. 3c para. 1 of the German VAT Act (draft), using the so-called One-Stop-Shop (OSS) procedure (see KMLZ VAT Newsletter 36 | 2020). For this purpose, the national legislator is implementing the provision of sec. 18j of the German VAT Act (draft). The OSS procedure is a special taxation procedure that enables a taxpayer to centrally pay VAT amounts owed in other EU countries, thereby dispensing with the need to VAT register in several Member States. Thus, EU taxable persons will have the possibility of fulfilling their reporting obligations for other Member States in their state of residence. In accordance with the European Commission's guidelines on the e-commerce package, the OSS procedure is aimed at simplifying VAT obligations for business engaged in cross-border e-commerce, thereby strengthening the EU single market.

2 Adaption of the existing regulations on marketplace liability in the Annual Tax Act 2020

In addition to the OSS procedure, the regulations on marketplace liability will continue to apply. According to sec. 25e of the German VAT Act, online marketplaces can be held liable for any unpaid VAT arising from an online trader's supply. An exculpation of this liability is possible in accordance with sec. 25e para. 2 sentence 1 of the German VAT Act if the online marketplace operator is able to present the so-called "registration certificate" of the online trader in accordance with sec. 22f of the German VAT Act. This regulation will now be adapted. The online marketplace operator should not be liable if, at the time of the supply, the relevant online trader has a valid VAT-ID issued to him by the German Federal Central Tax Office in accordance with sec. 27a of the German VAT Act. Hence, sec. 22f para. 1 sentence 1 no. 3 of the German VAT Act (draft) requires the online marketplace operator to record the online trader's German VAT-ID.



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3 Contradiction to the purpose of the OSS procedure

Consequently, an online trader from another EU country must first register in Germany for VAT purposes and apply for a German VAT-ID with the German Federal Central Tax Office prior to making intra-Community distance sales to Germany via an online marketplace. Otherwise, the online marketplace operator will not allow the online trader to enter the marketplace due to the marketplace liability provisions. Therefore, the national provisions on marketplace liability are contrary to the purpose of the OSS procedure, which is to avoid registration for VAT purposes in several Member States.

4 Doubts concerning conformity with EU law

On 10 October 2019, the European Commission made the decision to initiate formal infringement proceedings against Germany in relation to its marketplace liability (KMLZ VAT Newsletter 42 | 2019). In the European Commission's view, the obligation of online marketplaces operators, to submit the registration certificates of its online traders, violates EU law. The Commission is of the opinion that the obligation is inefficient, disproportionate and hinders the access of EU online traders to the German market.

According to the European Commission in the guidelines for the e-commerce package, a registration for VAT purposes in other Member States would place a considerable administrative burden on online traders and would hinder the development of online trade within the EU. Therefore, the obligation to submit a German VAT-ID, which requires a VAT registration in Germany, is also likely to hinder the access of EU online traders to the German market. For this reason, Germany "with its eyes open" runs the risk of having to explain itself in another infringement procedure in the near future.

5 Consequences for the practice

A major part of online traders from other EU countries supply goods to end customers in Germany via online marketplaces as part of intra-Community distance sales. Pursuant to the current draft law, these online traders would be required to register for VAT purposes in Germany, although they report their German VAT via the OSS procedure in their state of residence. Consequently, many online traders from other EU countries would not benefit from the intended simplification through the OSS procedure.

The legislator is being urgently called upon to bring the rules on marketplace liability into conformity with the rules of the EU uniform OSS procedure. This alleged "mistake" can still be rectified in the pending legislative procedure. At least, clarification should be provided in a circular issued by the Federal Ministry of Finance.

Based on the implementation of the OSS procedure, proof that the online trader reports German VAT via the OSS procedure in his state of residence should be sufficient. In practice, further questions arise as to how an online trader can prove that he has reported by making use of the OSS procedure and whether this is sufficient from the point of view of the online marketplace.