



KMLZ VAT NEWSLETTER

EU Commission proposes new rules for cross-border e-commerce

The VAT system currently in place is too complex for cross-border electronic business and results in high costs for the parties involved. Within the scope of its strategy for a Digital Single Market, the EU Commission presented a plan on 01.12.2016 aimed at modernizing and simplifying the rules as regards cross-border e-commerce. The intention is to achieve this by amending the VAT Directive (2006/112/EC) and the Council Implementation Regulation (282/2011) within the next few years. However, presenting the proposals is merely the beginning of the process, it still requires the approval of all 28 Member States.

1. Threshold for electronically supplied services

The proposal provides for two new thresholds for suppliers of electronically supplied services who are established in the EU and render the supplies to non-taxable customers established in other Member States as of 2018.

Planned simplifications to e-commerce

In the EU Commission's view, the existing rules for e-commerce are too complex and are therefore to be simplified. It proposes abolishing the threshold for distance sales and to instead extend the scope of the application of the Mini-One-Stop-Shop. Accompanying amendments applying to distance sales from third countries to the EU are planned, including VAT exemption for imports up to the value of EUR 150. Meanwhile, VAT exemption for the importation of small consignments (EUR 22), is to be abolished. Furthermore, simplifications for both distance sales and electronically rendered supplies of services are to be implemented, particularly a minimis threshold. Last but not least, the reduced VAT rate should be applicable for the supply of e-books.

Minimis threshold: The services are deemed to be supplied at the place where the customer is established. This shall not apply to cross-border supplies of such services up to the amount of EUR 10,000 p.a. Below this threshold, the place of supply will be deemed to be in the Member State where the supplier is established. There will be no need for the supplier to deal with foreign VAT law where its supplies remain below this threshold.

Evidence threshold: Several types of evidence may be required in order to determine where the customer is established. In order to simplify cross-border supplies of such services it is planned to require that only one type of evidence must be made available if the supplies do not exceed the amount of EUR 100,000 p.a.



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2. Threshold for distance sales

The hitherto thresholds applied to distance sales, in terms of Art. 33 of the VAT Directive, is to be abolished as of 2021, by repealing Art. 34 of the VAT Directive. In return, a minimis threshold of EUR 10,000 will be implemented, according to which, up to this threshold, the place of supply for distance sales will not be transferred to the country of destination.

3. Extension MOSS to distance sales

According to the provisions currently in place, distance sellers need to register for VAT purposes and to file VAT returns in other EU Member States when they exceed the country-specific threshold. As of 2021, the MOSS procedure, which is already being applied to electronically supplied services, will be extended to distance sales. Thus, it will no longer be necessary to register for VAT purposes in the respective country. All supplies rendered within the EU can then be declared by filing a quarterly VAT return in one country, albeit the VAT rate applicable in the country of destination must be applied to the supplies.

4. Distance sales from third countries

As of 2021, an optional simplification rule will be provided for use by distance sellers in third countries which, import goods into EU Member States and supply goods to customers in these said Member States. The importation of goods, with a value up to EUR 150, is to be exempt from import VAT. The supply following the import is then taxable in this Member State and the supplier from the third country must pay the VAT which becomes due in this country. In order to be able to apply the import VAT exemption, the supplier

must be a recognized taxable person or must appoint a fiscal representative resident in the EU who becomes liable for the payment of the VAT.

5. VAT exemption for imports of low value

The importation of goods with a value up to the amount of EUR 22 (low value consignments) from taxable persons in third countries is, at the moment, exempt from VAT. In the Commission's view, this leads, on the one hand, to a high potential for fraud, as by far higher-priced products are declared as low value consignments and, on the other hand, there is a severe unequal treatment of businesses established within the community territory which must pay the VAT from the very first cent. For these reasons, the Commission has now proposed the removal of the VAT exemption for the importation of low value consignments as of 2021. Art. 23 and 24 of Council Directive 2009/132/EC will therefore ultimately be repealed.

6. E-Books

Despite the extensive discussion in recent years, Member States are currently not permitted to apply the reduced VAT rate to e-books. The Court of Justice of the European Union confirmed this and proclaimed the existing rules in France and Luxembourg to be contrary to Community law (C-479/13 and C-502/13). The coalition agreement of the German government provides for the reduction of the VAT rate applied to e-books. It is therefore no surprise that the VAT Directive is to be amended in this regard. As of 2017, Member States shall be authorized to adopt a legal provision according to which the reduced VAT rate can be applied to such supplies.