

Ministry of Finance explains how to apply new e-commerce regulations

I. Tax explanations published on the VAT e-commerce package

Several changes have been made as of 1 July 2021 to the Value Added Tax Act with respect to e-commerce, including import of so-called small shipments to the European Union. The changes were introduced via the Act of 20 May 2021 amending the Value Added Tax Act and certain other acts, and constitute an implementation of the EU's VAT e-commerce package. Now, the minister of finance has published tax explanations on the so-called VAT e-commerce package. The explanations address the most significant solutions adopted in the VAT e-commerce package, along with examples of their practical application.

II. Ministry of Finance has extensively explained all of the newly introduced procedures

The new explanations include such matters as: intra-Community distance sales of goods (definition, place of supply, tax point, documentation confirming delivery of goods to buyer, invoicing, documentation requirements); distance sales of imported goods (definition, place of supply, tax point, documentation confirming delivery of goods to buyer, invoicing, documentation requirements), the role of electronic interface operators (platforms); special so-called One Stop Shop – OSS procedure (EU and non-EU); special so-called Import One Stop Shop – IOSS procedure (import procedure); simplified procedure for the reporting and deferral of VAT payments on goods imported in shipments valued at no more than 150 euro.

III. There are some exceptions to the rule that the place of supply is an EU member state

In the explanations the Ministry stressed that in the case of intra-Community distance sales of goods, the place of supply is the member state in which the dispatch or transport of goods to the buyer ends. There are, however, exceptions to this rule. Firstly, the rule does not apply to art, collectibles, antiques and used goods – when the tax base is determined in accordance with special procedures. Secondly, the rule does not apply when all of the following conditions are met: the supplier has his place of business establishment or permanent residence or ordinary residence only in the territory of one member state; the goods are dispatched or transported to a member state other than the member state of the place of establishment (or permanent or ordinary residence) of the supplier; the total value of the supplies made by the taxable person as part of intra-Community distance sales, as well as telecommunications, broadcasting and electronic services (so-called TBE services) provided cross-border to consumers did not exceed the amount of 10 000 euro or its equivalent (PLN 42 000 in Poland) in the course of the tax year or in the previous tax year. General rules used to determine the place of supply will apply when determining the place of supply of goods taxed according to the so-called margin scheme.

At the beginning of September the minister of finance issued tax explanations on the practical application of new e-commerce regulations, including import of so-called small shipments to the European Union. New regulations on the place of supply are one of the issues discussed most extensively.

IV. The threshold for determining the place of taxation reduced to PLN 42 thousand

The minister explained that the basic rule on the place of taxation of distance sales replaced with intra-Community distance sales of goods, has not changed as of 1 July 2021. Nonetheless, the threshold that determines the place of taxation of intra-Community distance sales of goods has been reduced to EUR 10 000 (PLN 42 000). The threshold in effect as of 1 July 2021 is a consistent threshold introduced throughout the EU, where until it is exceeded – the place of taxation of intra-Community distance sales of goods is the place where the dispatch or transport originates, and for TBE services provided to consumers – the seller's place of establishment. The EUR 10 000 (PLN 42 000) threshold applies to the total of intra-Community distance sales of goods and TBE services to consumers made by the taxable person to all EU member states. It is, therefore, a threshold calculated in the aggregate for all member states, rather than separately as was the case prior to 1 July 2021. Below the threshold, transactions will be taxed in the member state in which the taxable person that provides TBE services has his place of establishment, or in which the goods are located at the start of their dispatch or transport. Importantly, when determining the place of taxation of intra-Community distance sales of goods made starting from 1 July 2021, the threshold analysis should also include TBE services and distance sales made in the year 2020 and in the first half of 2021.

V. Taxable person can choose the place of supply for sales below the statutory threshold

Under the new regulations, according to the ministry's explanations, taxable persons will, however, have the option to choose to be taxed in the state of consumption (optional place of taxation). Whereas when the threshold is exceeded, the transactions will always be taxed in the state of consumption. A taxable person who has not exceeded the threshold of PLN 42 000 may choose (option) for intra-Community distance sales of goods and TBE services to be taxed in the state of consumption. This is done by notifying the head of the tax office (electronically using form VAT-29) by the 10th day of the month following the month in which the choice was made. Within 30 days of the first transaction after choosing the discussed option, the taxable person (except for taxable persons applying the so-called EU procedure) is required to submit to the head of the tax office a document confirming that the relevant tax authority in another member state has been notified of the taxable person's intention to report in that member state the VAT on intra-Community distance sales of goods. Under the new regulations, in the case of intra-Community distance sales of goods, the selection of the place of supply applies to all supplies.



VI. Opting out of the chosen place of supply only possible after two years

A supplier's decision on the place of supply (taxation in the member state where the goods are located when their dispatch or transport to the buyer ends) will bind the supplier for the next two years, counting from the date of the first supply made thereunder. Going back to reporting the VAT on those supplies in Poland (after meeting the threshold criterion) will therefore be possible no sooner than after two years, after notifying the head of the tax office of opting out of the earlier choice (electronically using form VAT-29), before the beginning of the month in which the opt out is to take place. Similarly, opting out from the selection of the place of supply will apply to all supplies.

VII. Documents confirming the performance of supplies needed for reporting

A supply of goods made as part of intra-Community distance sales of goods will be recognized as a supply made in the territory of the member state where the dispatch or transport of the goods to the buyer ends when the goods are dispatched or transported from Poland on the condition that documents confirming the supply of those goods outside the territory of Poland are received by the relevant tax declaration filing deadline. If this condition is not met, the taxable person does not report this supply in the declaration for the given reporting period, but rather in the next reporting period. Where the relevant documentation is received prior to the tax declaration filing deadline for that next reporting period, intra-Community distance sales of goods constitute supplies of goods outside the territory of Poland and as such need to be declared, unless they are reported as part of the special OSS procedure (EU procedure). If the documents that confirm that the goods have been delivered to the buyer are not received prior to the deadline for the filing of the tax declaration for that next reporting period, the transaction should be treated as a sale of goods in the territory of Poland with all of the consequences this entails.

If you are interested in other issues described in the newest tax explanations, please contact our experts.



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