



# **VAT on e-commerce with EU private individuals**

Obligations of a supplier  
established outside the EU

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- Value Added Tax is
  - borne by the final consumer (by the mechanism of the deduction of the VAT on the costs borne by every supplier in the chain of production)
  - paid to the tax authorities by the supplier or by the customer (only when the latter is a business)
    - Deduction of input VAT on the costs is an incentive to declare the supplies and therefore VAT is an efficient system in order to collect revenues
  - applicable on supplies within a country and neutral on international trade (VAT deduction on exports by a business)
    - VAT does not interfere with the right to collect taxes by other countries
- What if ?
  - the final consumer is a private individual ie not a « business » and therefore is not known or not registered by tax authorities ?
  - this private individual is established abroad ?

# Business established outside the EU supplies goods to private individuals established in the EU

- Order and payment via Internet by a private individual established in the EU
- Supply of goods
  - Physical movement from outside the EU to an EU Member State
  - General rules : customs duties (if any) and VAT due on import by the acquirer in the country where this importer is established at the VAT rate applicable in this country
  - Exception: VAT exemption on import if the *cost (global value ?)* of the good is below 22 Eur
    - Not applicable to alcohol, tobacco, perfume

# Current issues

- Suppliers established outside the EU supply expensive goods such as mobile phones and tablets as costing less than 22 Eur
- EU business requires the abolition of the VAT exemption on small parcels

# Proposal of new rules on e-supplies of goods submitted by the European Commission

(1 December 2016)

- Appoint a VAT representative (customs agent, postal operators, market place)
  - Costs ?
- For supplies of less than 150 EUR: special arrangement - payment of the VAT by the person presenting the goods to customs on behalf of the acquirer
  - Is this workable ? Is it the only solution ?
- Warehousekeeper is deemed to acquire and to supply the goods...but also liable of the payment of the VAT

# Supply of services

by a non EU supplier to private individuals established in the EU

## Four categories of different services:

- 1° Orders are placed electronically, but the delivery is physical
  - Online booking services (car rentals, concerts, football matches...)
    - Taxable where the service takes place
- 2° Services of consultants, engineers, accountants, lawyers, patents, etc. (operations listed in art. 59 of the Directive 2006/112/EC)
  - May be supplied by electronic way
    - Taxable where the customer is established, but no specific procedure allowing the collection of the tax
- 3° Telecommunication, radio and broadcasting services
  - Taxable where the customer private individual is established
- 4° Orders and the service carried out electronically: e-services
  - Taxable where the customer private individual is established

# e-services

supplied to private individuals established in the EU

Operations listed in Annex II of the Directive 2006/112/EC and in Art. 7(1) of the regulation 282/11

- Digitised products
- Services automatically generated from a computer
- E-Newspapers and journals
- Downloading of films, games, books, electronic publications
- On line lectures
- ....
  - Supplier is liable of the payment of the tax to the authorities even in case of possible payment by final customer to telecom operator and invoicing of the final customer by the telecom operator in the name and for the account of the supplier (article 9a of the Regulation 1042/2013/EU).

# e- services to private individuals

supplied by a business established outside the EU

- Since July 1, 2004: Mini One Stop Shop (MOSS)
  - VAT registration by non EU supplier in one EU Member State
  - Specific web portal in each EU Member State
  - VAT due by the non EU-supplier to the tax authorities of the EU Member State of registration, but at the rate applicable in each Member State where the final consumer is established (standard rate from 27 % to 17 %)
  - VAT return and payment to tax authorities of the EU Member State of registration filed on quarterly base
    - In practice, many non EU business created branches in Luxemburg, Ireland, Malta, ...for corporate tax and VAT planning purposes!



# Telecommunication and e-Services

supplied by a business established within the EU to private individuals established in the EU

- Since January 1, 2015: Mini One Stop Shop (MOSS) also applicable to suppliers established within the EU
  - Optional
  - but the only alternative is to register for VAT in each EU Member State where a customer private individual is established
- Also applicable to non EU suppliers

# MOSS Formalities

- Electronic VAT registration in one EU Member State
- Submission of one quarterly electronic VAT return for all the supplies to private individual customers in the 28 EU Member States
- VAT rate applicable in the Member State of each customer private individual
- Books allowing to verify the collection of the tax by the Member State of consumption (electronic communication)
- Keep the books during 10 years
- No right of deduction of input VAT on goods and services supplied electronically
  - But still right of refund of local VAT according the 8th and 13th VAT Directive

# Supply of e-services

## A new method of drafting EU legislation

- Limited use of EU directives
  - Art. 358 to 369k of the Directive 2006/112/EC concerns mainly procedure of collection of the VAT
  - To be implemented in the national legal order of each EU Member State
- Importance of EU regulations
  - Directly applicable by everybody in the EU
  - Include a possibility of evolution of the interpretations, in line with the technology
  - Very detailed explanatory notes

# A new method of drafting EU legislation

- Services
  - Regulation (EU) n° 282/2011 of 15 March 2011
  - Regulation (EU) n° 1042/2013 of 7 October 2013
  - Explanatory notes of 3 April 2014
- Mini One Stop Shop
  - Art.358 to 369k of the Directive 2006/112/EC
  - Regulation (EU) n° 904/2010 of 7 October 2010 concerning administrative cooperation
  - Regulation (EU) n° 967/2012 of 9 October 2012
  - Regulation (EU) n° 815/2012 of 13 September 2012
  - Explanatory notes of 28 October 2013

# How to determine the country of the consumer and the VAT rate applicable ? (1)

(Council regulation (UE) n° 282/11, art 24b)

- General rules
  - Where the individual usually resides, unless there is evidence that the services is used at his permanent address
  - Where the service is requested from an hotel an internet café it used, the customer is deemed to be established there
  - Services supplied through a fixed line: place of the fixed line
  - Services supplied though a decoder: place of viewing

# How determine the country of the consumer and the VAT rate applicable ? (2)

(Council regulation (EU) n° 282/11)

- Supplier may rebut the assumption of the location of the customer by providing :
  - the billing adress of the customer
  - the internet protocol adress or any method of geolocation
  - bank details
  - mobile country Code
  - fixed Land Line
  - other commercially relevant information

# VAT is not the only aspect

- Businesses who intend to carry out online sales must comply with the legal provisions on:
  - electronic signatures
  - the information to be provided on an e-commerce website
  - the presentation of products and services offered to clients
  - the placing of purchase orders
  - the handling of orders



# Thank you!

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