

## NEW E-COMMERCE RULES (NO. II)

### *New VAT rules for intra-Community distance sales of goods*

The new VAT rules applicable from 1 July 2021 to the intra-Community distance sales of goods (now referred to as "distance selling") are based on the abolition of the threshold for the distance selling of goods within the EU per Member States and its replacement by a new EU threshold of EUR 10 000, and the extension of the special one-stop shop (Mini One Stop Shop or "MOSS") to the intra-Community distance sales of goods (One Stop Shop or "OSS").

#### • **Definition of intra-Community distance sale of goods**

The intra-Community sale of goods to which the new rules will apply means the supply of goods dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a Member State other than that in which dispatch or transport of the goods to the customer ends, where the following conditions are met:

- 1) The goods are delivered to the following customers:
  - supplies of goods to non-taxable persons (consumers);
  - supplies of goods to taxable persons or non-taxable legal persons in the framework of diplomatic arrangements, international bodies, NATO, etc.); or
  - supplies of goods (except excise products) to:
    - i) taxable persons carrying out only supplies of goods or services in respect of which VAT is not deductible,
    - ii) taxable persons subject to the common flat-rate scheme for farmers,
    - iii) taxable persons subject to the second-hand margin scheme and
    - iv) non-taxable legal persons
- 2) The goods supplied are neither new means of transport nor goods supplied after assembly or installation.

In particular, the following cases shall be considered as a situation where the supplier intervenes indirectly in the dispatch or transport of the goods:

- i. where the dispatch or transport of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer
- ii. where the dispatch or transport of the goods is provided by a third party but the supplier bears either the total or partial responsibility for the delivery of the goods to the customer
- iii. where the supplier invoices and collects the transport fees from the customer and further remits them to a third party who will arrange the dispatch or transport of the goods
- iv. where the supplier promotes by any means the delivery services of a third party to the customer, puts the customer and a third party in contact or otherwise provides to a third party the information needed for the delivery of the goods to the consumer

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At the same time, the definition of the intra-Community distance sale of goods within the Community is practically extended.

- **Place of supply for intra-Community distance sales of goods**

The basic rule for determining the place of supply (the Member State whose tax must be paid) remains the same. The place of supply for intra-Community distance sales is the place where transport of the goods ends unless the threshold for intra-Community distance sales has not been exceeded.

These thresholds are calculated separately for each Member State of destination and are relatively high (EUR 35 000 or EUR 100 000 per Member State), so that in many cases traders can account for VAT of the Member State from which the goods are dispatched.

However, these thresholds will be abolished on 1 July 2021 and replaced by a new Union annual threshold of EUR 10 000, which, however, includes distance sales of goods to all Member States together. Due to the very low value, the change in its calculation and other restrictions resulting from the new legislation, the vast majority of traders (e-shops) will no longer be able to take advantage of the possibility of taxation in the Member State of dispatch.

On the contrary, they will have to account for VAT in the Member States to which the goods will be dispatched. As a result, they will be required to register for VAT in all Member States to which they dispatch the goods. The second option is to use the special VAT regime of OSS.

- **Use of the special VAT regime of One Stop Shop**

The special One Stop Shop regime will allow traders selling the goods in the form of the intra-Community distance sales of goods to register for VAT in only one Member State and to account for VAT due in other Member States in that Member State of registration.

Thus, for example, if a trader established in the Czech Republic sells the goods in the form of the intra-Community distance sales of goods to customers in different Member States, he may register for the special OSS regime in the Czech Republic. In such a case, this trader will submit only one VAT return, but he will report in this VAT return submitted electronically to the Czech tax administrator all sales of goods (including calculated VAT due) to all Member States to which he supplies goods, broken down by individual Member States.

The exact rules and obligations are defined on the one hand at the level of EU law, so they will be defined in the Czech VAT Act, which, however, has not yet been approved by the Parliament of the Czech Republic.

However, the above procedure shall not apply to a trader who is not established in the European Union and who sells his own goods within the Community through an electronic platform operated by another entity.

*Next time we will focus on the import of goods in small shipments. We are also preparing a specialized online seminar on this topic. If you have any questions, please contact us at [tomicek@stanek-tomicek.com](mailto:tomicek@stanek-tomicek.com).*

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