NEW E-COMMERCE RULES (NO. VI)

Supply of services to final consumers established in the EU

The new rules in force since 1 July 2021 also bring changes to traders who provide services to non-taxable persons established in the EU (B2C services; most often so-called "electronically supplied services" defined by the relevant EU VAT rules, i.e. mainly (i) website supply, web-hosting, (ii) distance maintenance of programmes and equipment; (iii) supply of software and updating thereof; (iv) supply of images, text and information and making available of databases; (v) supply of music, films and games, including games of chance and gambling games, etc.).

The new rules extend first of all the scope of the special OSS regime for taxable persons both established and not established in the EU supplying telecommunications services, radio and television broadcasting services or electronically supplied services to all services supplied to non-taxable persons (final consumers) which take place in a Member State in accordance with the place-of-supply rules.

Within the One Stop Shop system, there will continue to be a "non-Union scheme" and a "Union scheme". Both schemes will allow a service provider to register in only one Member State (State of identification), through which he will declare VAT of relevant Member States according to the place of supply of the service (otherwise these providers are obliged to register in all Member States where the place of supply in respect of provided B2C services is located).

The non-Union scheme can be used exclusively by taxable persons (suppliers) not established in the EU. This means a taxable person who has not established his business and who has no fixed establishment in the EU. As mentioned above, as from 1 July 2021, the non-Union scheme will cover all supplies of services (not only telecommunications services, radio and television broadcasting services or electronically supplied services) with the place of supply in the EU carried out by these taxable persons to the final consumers.

In the case of telecommunications, broadcasting or electronically supplied services supplied to final consumers by a provider not established in the EU, the place of supply is always a place where the recipient of the service is established or has his permanent address or usually resides (place of the recipient). This place is determined in a relatively complicated way through the legal presumptions about the place of the recipient defined in the EU Implementing Regulation.

The Union scheme can be used by a taxable person established in the EU to declare and pay VAT for supplies of B2C services taking place in a Member State in which he is not established. The services that are supplied to customers in a Member State in which the supplier is established have to be declared in the national VAT return of the respective Member State irrespective of whether his fixed establishment is involved in the supply of services or not.

If a supplier decides to register for the Union scheme, he has to declare and pay VAT for all supplies that fall under the Union scheme. He cannot choose to declare them in the national VAT return ((except for services with a place of supply in the Member State where the provider is established, as mentioned above).

The place of supply in respect of the telecommunications, broadcasting or electronically supplied services supplied by a provider established in the EU to final consumer is the Member state where the place of the recipient is located (see above).

To support micro-businesses, an annual EUR 10 000 turnover threshold has been introduced, up to which the place of supply of telecommunications, broadcasting or electronically supplied services to final consumers in another Member State remains in the Member State where the supplier is established (and where the service is taxed). As of 1 July 2021, this threshold covers also intra-Community distance sales of goods (but not supplies of other types of services carried out to final consumers in the EU; for them, the place of performance is governed by their own rules). Another condition for applying this exception is that the provider is established in only one Member State.

In any case, as soon as the annual threshold of EUR 10 000 is exceeded, the general rule applies and VAT for telecommunications, broadcasting or electronically supplied services will be due in the Member State of the final consumer (and in the Member State to which the goods are dispatched or transported in the case of intra-Community distance sales of goods).

It should also be borne in mind that this threshold does not apply to other types of services covered by the Union regime and the rules for their place of supply (taxation) have not changed.

Supply chains are often long and can stretch across borders (e.g. when creators of apps contract with app stores or platforms and where customers purchase those downloaded apps by paying to the store or the platform via which the app was bought). Where that is the case, it can be difficult to know when the services are finally supplied to a final consumer, and who is responsible for the VAT on that supply. To provide legal certainty for all parties involved and to ensure collection of the tax, it was necessary to define who in the chain must be seen as the supplier of the service to the final consumer (supplier of B2C services).

Therefore, the rebuttable presumption that a taxable person who takes part in the supply of electronic or internet telephone services is acting in his own name but on behalf of the provider of these services has been introduced into the EU Implementing regulation. This presumption means that for each transaction in the supply chain between an electronic service provider and the end consumer, each intermediary (such as a content aggregator or a telecom operator, etc.) is deemed (seen) to have received and supplied further the electronic (or internet telephone) service himself.

For example, if a business makes apps available via a web site this web site would be deemed to be the one selling those apps to the final customer and therefore responsible for the VAT and not the business that owns the app (content owner). The content owner makes in this case B2B transaction. The Implementing regulation provides for some exceptions to this presumption.

Next time we will focus on ***administrative obligations of individual suppliers / deemed suppliers of goods and service providers. The specialized online seminar will take place on 16th March 2021.*** *If you have any questions, please contact us at tomicek@stanek-tomicek.com.*