

NEW E-COMMERCE RULES (NO. VIII)

Selected administrative and processing obligations of traders

Registration in the Member State of the identification

A taxable person who opts to use one of the OSS schemes is only required to register in one single Member State, the Member State of identification.

For the Union scheme, the Member State of identification is the Member State in which the taxable person has established his business. If a taxable person has not established his business in the EU, but has a fixed establishment in the EU, the Member State of identification is the Member State in which he has that fixed establishment. If the taxable person has fixed establishments in different EU Member States, he is entitled to choose one of those Member States to be the Member State of identification.

If a taxable person is not established in the EU, the Member State of identification is the Member State in which the dispatch or the transport of the goods begins. Where there is more than one Member State from which goods are dispatched or transported, the taxable person can choose any of those Member States as Member State of identification.

For the non-Union scheme, a taxable person can choose any Member State to be the Member State of identification.

For the import scheme, the Member State of identification is the Member State in which the taxable person has established his business. If the taxable person has not established his business in the EU, the Member State of identification is a Member State in which the taxable person has a fixed establishment. Where the taxable person has more than one fixed establishment, that taxable person can choose any Member State in which he has a fixed establishment to be his Member State of identification. I

If the taxable person is established outside the EU, he needs to appoint an intermediary to be able to use the import scheme.

VAT returns

The precise details of OSS VAT returns are laid out in Annex III of the Commission Implementing Regulation (EU) 2020/194. For each Member State of consumption (destination), the taxable person is required to include the taxable amount for supplies at standard and reduced rate, and the amount of VAT at standard and reduced rate.

The regular OSS VAT return contains also corrections to previous VAT returns (separate additional tax returns are not filed). The corrections have to include (specify) the tax period they refer to, the Member State of consumption concerned as well as the total VAT amount resulting from the corrections. No distinction between standard and reduced VAT rate or goods and services is made.

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Should (due to corrections to figures declared in previous VAT returns) the balance of one Member State of consumption in the VAT return be negative, it will not be taken into account for the total amount of VAT due in any of the other Member States of consumption and does therefore not reduce the overall amount of VAT to be paid, i.e. overpayments and underpayments to different Member States of consumption cannot be within the tax return set off against each other.

If the taxable person/intermediary has not submitted a return in time, the Member State of identification shall issue a reminder to submit a return to the taxable person/the intermediary. This reminder will be sent by electronic means on the tenth day following the date on which the return should have been submitted. Any further reminders will be issued by the Member State(s) of consumption. However, the return shall always be submitted electronically to the Member State of identification.

Corrections

If a VAT return has already been submitted, corrections to VAT returns relating to tax periods starting on 1 July 2021 must be made in a subsequent VAT return. The Member State of identification will allow the taxable person/the intermediary to make corrections to OSS VAT returns electronically within three years of the date on which the initial return had to be submitted.

The credit note issued after the end of the tax period in which the supply was declared should be dealt with also by making a correction to the subsequent regular OSS VAT return for a later tax period. The period in which the supply was originally declared has to be specified in this return.

If the taxable person realises that a mistake has been made in a VAT return and makes a correction in a subsequent VAT return which leads to an overpayment for a Member State of consumption, then the Member State of consumption shall return the overpaid amount directly to the taxable person according to its national legislation and procedures.

Input VAT recovery

VAT on business expenses incurred in the Member State of consumption cannot be offset against supplies declared in the One Stop Shop VAT return. Those expenses must be claimed via the Electronic VAT Refund Mechanism (under Council Directive 2008/9/EC) or under the procedure governed by the 13th VAT Directive (Council Directive 86/560/EEC) or via the domestic VAT return should the taxable person be registered (but not established) in the Member State of consumption.

The expenses incurred in the Member State of identification can be also claimed through the domestic VAT return if the taxable person is registered here.

*Next time we will focus on **intra-Community distance sales of goods that cannot be covered by OSS**. If you have any questions, please contact us at tomiczek@stanek-tomiczek.com*

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Staněk, Tomíček & Partners, s.r.o., zapsaná v obchodním rejstříku vedeném Městským soudem v Praze v části C, vložka č. 104681, IČ: 27210081, DIČ: CZ 27210081, se sídlem U Prašné brány 1078/1, 110 00 Praha 1