



20.12.2023

NOTICE TO MEMBERS

Subject: Petition No 0170/2023 by Alexandru Albu (Romanian) on the alleged unfairness of the EU's e-commerce VAT rules towards EU citizens and businesses

1. Summary of petition

The petitioner explains that the EU VAT rules that apply since 2021 require e-commerce sellers to register for the One Stop Shop (OSS) to pay its VAT due. However, at the same time, they require marketplaces to collect and remit VAT for non-EU sellers selling in the EU. The petitioner considers that, by removing all administrative burden from non-EU sellers and the costs associated with hiring somebody to deal with VAT for them, the rules are discriminatory to EU citizens and businesses. The petitioner proposes a legislative change, whereby marketplaces should collect and remit VAT for EU sellers and have non-EU sellers register for Import One Stop Shop (IOSS) or similar mechanisms. Specifically, he mentions the US system, where ecommerce marketplaces collect and remit sales taxes from everybody.

2. Admissibility

Declared admissible on 12 May 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 20 December 2023

The petitioner explains that the EU *Value Added Tax* (VAT) rules that apply since 2021 require e-commerce sellers to register for the One Stop Shop (OSS) to pay the VAT due. However, at the same time, they require marketplaces to collect and remit VAT for non-EU sellers selling in the EU. The petitioner considers that, by removing all administrative burdens from non-EU sellers and the costs associated with hiring somebody to deal with VAT for them, the rules are

discriminatory to EU citizens and businesses. The petitioner proposes a legislative change, whereby marketplaces should collect and remit VAT for EU sellers and have non-EU sellers register for Import One Stop Shop (IOSS) or similar mechanisms. Specifically, he mentions the US system, where ecommerce marketplaces collect and remit sales taxes from everybody.

The Commission's observations

On 1 July 2021, the VAT e-commerce package¹ came into application and introduced a number of amendments to the VAT rules governing the taxation of business-to-consumer (B2C) cross-border e-commerce activity in Europe. The main aim of the e-commerce package was to create a fairer, simpler and more harmonised system of taxation by removing legislation that created competitive distortions and by introducing new simplifications to simplify and increase compliance.

The most noteworthy amendments contained in the VAT e-commerce package include the extension of the scope of the Mini One-Stop Shop (MOSS) schemes. The VAT e-commerce package also introduced new simplification measures known as the Import One-Stop Shop (IOSS) and 'special arrangements' to support the collection of VAT on distance sales of goods imported into the EU in consignments with a value not exceeding EUR 150. Contrary to the petitioner's contention that the new rules 'require' e-commerce sellers to register for the One-Stop Shop (OSS) to pay VAT due, the Commission would like to point out that these simplification schemes are not mandatory but are, in fact, currently optional for all traders. EU established traders can choose whether they register in all Member States where they have taxable transactions or register in the OSS in their Member State of Identification only, to declare and pay all VAT due on their distance sales. Furthermore, traders and electronic interfaces who are not established in the EU need to appoint an intermediary to be able to use the IOSS, unless they are established in a third country with which the EU has concluded a VAT mutual assistance agreement similar in scope to the Recovery Directive² and the Administrative Cooperation Regulation.

For supplies of goods made via an electronic interface, the VAT e-commerce package also introduced the 'deemed supplier' regime, which applies when an electronic interface, such as a marketplace, facilitates certain supplies of goods. Under its current design, the deemed supplier regime applies to all distance sales of imported goods with an intrinsic value not exceeding EUR 150, where those supplies are facilitated by an electronic interface. The Commission would like to point out that, in this particular instance, the deemed supplier rule applies equally to all such distance sales of imported goods, irrespective of whether the underlying supplier is established in the EU or not. However, for supplies of goods made within the EU, the deemed supplier rule is currently limited to supplies to consumers by taxable persons who are not established in the EU.

¹ Council Directive 2006/112/EC on the common system of value added tax, as amended by Council Directive (EU) 2017/2455 and Council Directive (EU) 2019/1995.

Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, as amended by Council Implementing Regulation (EU) 2017/2459 and Council Implementing Regulation (EU) 2019/2026.

Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax as amended by Council Regulation (EU) 2017/2454 (Administrative Cooperation Regulation).

² Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

Important to note, that the VAT in the Digital Age (ViDA) proposal³, which was published on 8 December 2022, includes a measure to further extend the deemed supplier rule. The Commission would like to point out that under its expanded scope, the deemed supplier rule would include all supplies of goods within the EU that are facilitated by an electronic interface, regardless of where the underlying supplier is established and irrespective of the status of the purchaser.

The ViDA proposal also includes measures to make the use of the IOSS mandatory for electronic interfaces, such as marketplaces and platforms, when they facilitate certain imports of goods to consumers in the Union.

Conclusion

On the basis of the above, the Commission, from its side, will not take any further action as regards the petitioner's call for a legislative amendment to the deemed supplier regime. The ViDA proposal includes a measure to extend the scope of the deemed supplier regime to also cover all supplies of goods within the EU that are facilitated by an electronic interface, irrespective of where the underlying supplier is established and irrespective of the status of the purchaser. The ViDA proposal is currently the subject of ongoing Council negotiations, which may ultimately result in certain amendments to the text of the proposal. However, if implemented, the extension of the deemed supplier rule will result in the legislative changes that the petitioner seeks.

³ Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC as regards VAT rules for the digital age (COM/2022/701 final). Proposal for a COUNCIL REGULATION amending Regulation (EU) No 904/2010 as regards the VAT administrative cooperation arrangements needed for the digital age (COM/2022/703). Proposal for a COUNCIL IMPLEMENTING REGULATION amending Implementing Regulation (EU) No 282/2011 as regards information requirements for certain VAT schemes (COM/2022/704 final).