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VAT in the Digital Age – comments as part of public consultation

In response to the call to participate in the public consultation "VAT in the Digital Age" conducted by the European Commission, as an economic self-government organisation working towards the development of the Polish e-commerce industry, we provide comments on the current and proposed changes to VAT with respect to the taxation of the digital economy, as well as uniform registration for VAT purposes in the European Union. The comments take into account the observations and difficulties reported by e-commerce sellers operating within the Polish Chamber of Digital Economy.

VAT treatment of digital platform-based business entities

The solutions presented under the E-commerce Package showed some inconsistencies and problems, in particular with regard to the application of One Stop Shop (OSS) and Import One Stop Shop (IOSS) procedures. Below we provide our views on the problems faced by e-commerce-based businesses that should be addressed in the new digital economy sales package.

a) Double taxation under the IOSS procedure

- One of the problems that taxpayers face when selling goods under the IOSS procedure is the risk of consumers paying VAT twice. This occurs, among other causes, due to errors in the communication of the IOSS number e.g. by the postal intermediary, as a result of which VAT may be charged twice. This leads to negative consequences, in particular for consumers who, in the case of the IOSS procedure, do not expect an additional obligation of making payment upon delivery.
- It will therefore be crucial from the perspective of e-commerce sellers to introduce simple rules for quick VAT refunds in situations where VAT has been paid twice, e.g. on the basis of documents obtained from the courier attesting to the payment of VAT by the consumer. Ultimately, however, it is crucial to curb situations where, due to systemic problems, double taxation actually occurs.
- In addition, we call for the publication of a list of entities registered on IOSS accessible to consumers.

b) Problems determining the buyer's tax status in connection with e-commerce sales

- The OSS procedure does not allow accounting for sales of goods to buyers who are businesses making purchases as part of their business activity.
- On the other hand, in the case of the sale of goods to businesses, the seller, wishing to account for the transaction as an intra-community supply of goods at the VAT exemption, must have the buyer's VAT number valid at the time



of the transaction. Otherwise, it should account for the sale at the national VAT rate.

- If an error is made and a sale of goods to a business is classified as a sale to a consumer, double taxation of the transaction may occur.
- For a transaction to be accounted for under the OSS procedure, it is therefore necessary in each case to establish the tax status of the buyer as a consumer.
- Consequently, if the seller has not received a valid VAT number from the buyer, it must ascertain whether it is dealing with a non-taxable customer (and therefore a consumer, i.e. VAT should be charged according to the consumer's country) or a taxable business, despite the absence of a valid VAT number (VAT is then charged as for domestic sales in the supplier's country).
- So far, the European Commission has not issued guidance relating to this situation. We therefore call for the European Commission to introduce an additional regulation or publish guidelines for e-commerce sellers so as to facilitate the process of determining the buyer's tax status.

c) Extension of the OSS procedure to include purchases

- The OSS procedure does not allow input VAT to be accounted for on purchased goods.
- As a consequence, businesses sending goods to consumers as an intra-Community distance sale of goods who, for the purpose of sale, make purchases in EU countries other than their country of identification, can only account for input VAT on purchases of goods either by claiming VAT refunds under Directive 2008/9/EC or by registering for VAT in the EU country where they make their purchases and including the input VAT in their current local VAT statements.
- Consequently, we wish to highlight the need to extend the OSS also to include purchases of goods so as to limit the VAT obligations for taxable persons applying the OSS.

d) Extension of the OSS procedure to include non-transactional intra-Community transport of goods

- The OSS procedure does not eliminate the need for registration in multiple Member States in situations where businesses have warehouses in several Member States from where they make intra-Community distance sales of goods (ICDS).
- Businesses must take into account the obligation to report non-transactional transport of their own goods to warehouses in other EU countries (non-transactional ICA and ICS), which may involve the obligation of registering for VAT in the EU country where the business's warehouse is located.
- Consequently, for such businesses, there has in fact been no facilitation and reduction of administrative obligations accompanying the cross border movements of goods.
- With this in mind, we propose to extend the scope of the OSS to cover the transport of businesses' own goods between warehouses in different EU countries (non-transactional ICA and ICS).



e) Extension of the OSS procedure to local sales from warehouses in other EU countries

- The OSS procedure also does not eliminate the need for registration in multiple Member States in situations where a business has a warehouse in a Member State other than that of its identification for the purposes of the OSS, selling goods from that warehouse to consumers located in the EU country where the warehouse is located. In such a situation, the business should, in principle, account for domestic sales in the local VAT statement.
- With this in mind, we propose to extend the scope of the OSS to include sales to consumers from warehouses located in a Member State other than the State of VAT identification.

This concludes the opinion.

Yours sincerely,

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