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Definitive VAT system for intra-Union trade of goods COM(2018)329 of 25 May 2018

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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

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Policy context

- 2011 Communication on the Future of VAT: change from taxation at origin to taxation at destination
- Taxation in the MS of origin politically unachievable (Ecofin conclusions, May 2012)
- 2016 VAT Action Plan "Time to decide": the best option is charging VAT on cross-border supplies of goods and services
- The Council and the EP endorsed a definitive system based on taxation at destination (Ecofin conclusions May 2016; Resolution of the EP of November 2016)
- 2017 Communication "Time to act" sets out the legislative approach

Introducing the Definitive VAT system Communication "Time to act" sets out a staged approach

1° legislative step:

- **<u>October 2017 proposal</u>**: notion of CTP + cornerstones of the definitive system for intra-Union B2B trade of goods
- **<u>May 2018 proposal:</u>** detailed technical provisions for the operation of the definitive system (envisaged entry into force 1 July 2022).

  This proposal puts the cornerstones into operation for intra-EU supplies of goods

2° legislative step :

- Definitive system extended to services (after implementation and monitoring of 1° step)

Cornerstones of the definitive VAT system

Defined in the Proposal of October 2017

- principle of taxation in the Member State of destination;

- the liability of the supplier **or** acquirer if he is a certified taxable person (a CTP);

- a One Stop Shop (OSS) for declaration, payment and deduction

Taxation at destination

Current system: B2B sale of goods transported from one MS to another MS is a single commercial transaction which is split, solely for VAT purposes, in 2 separate transactions:

- a supply in the MS of departure exempt from VAT;
- an Intra-Community acquisition in MS of arrival.

Proposal: only one transaction for VAT purposes

- a supply of goods taxed in MS of arrival;
- abolition of the Intra-Community acquisition.

Converting the principle of taxation at destination into the VAT Directive

Concept of "Intra-Union supplies of goods" [Art.14(4)(3)].

- supplies by a taxable person to a taxable person or non-taxable legal person;
- transport or dispatch of goods from one MS to another

Attention: No threshold for supplies to exempt taxable persons, taxable persons under farmer's scheme or non-taxable legal persons.

Consequence: such a supply is always an intra-Union supply of goods located in the MS where transport ends.

Difference with current system: supplier is liable for the VAT (currently it is the acquirer) + simplification + taxation at destination

Converting the principle of taxation at destination into the VAT Directive

Exclusions from the concept [Art.14(5)]:

- the supply of goods with assembly or installation;
- the supply of goods exempt pursuant to Article 148 or 151 (fuelling and provisioning of vessels and aircraft, diplomatic arrangements, international organisations, etc.)
- the supply of goods by a farmer covered by the common flat-rate scheme

A transfer by a taxable person of goods forming part of his business assets to another MS shall be treated as **an intra-Union supply of goods** [Article 17]

Concept of distance sales is amended [Articles 14(4)(1) and (2)]

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Converting the principle of taxation at destination into the VAT Directive

Place of supply of goods with transport

- **General rule:** place where transport begins (= current rule of Art. 32 which is not amended).

- **NEW place of supply rule for Intra-Union supplies:**
  = place where transport ends [new Art. 35a].

EXCEPTION: Article 35a shall **not** apply to supplies made under **the margin scheme [Art. 35c]** so general rule will apply (= status quo with current system);

Converting the principle of taxation at destination into the VAT Directive

Intra-Union supplies of new means of transport: status quo ensured as regards the MS of taxation.

- Art.9(2) is not amended;
- Definition of new means of transport moved to new Art.9(3);
- When customer is taxable person or non-taxable legal person, this is an **intra-Union supply** taking place where transport ends [Art.35a];
- When customer is non-taxable person other than non-taxable legal person, the supply also takes place where the transport ends [new Art. 35b];

Taxation at destination: related aspects

<u>Chargeability</u> of VAT: single rule for Intra-Union supplies and for supplies of new means of transport (Article 67 reviewed): VAT shall become chargeable on issue of the invoice, or on expiry of the time limit referred to in the first paragraph of Article 222 if no invoice has been issued by that time.

Exemptions: Suppression of the exemption for IC supplies of goods (138, 139) and of the exemptions for Intra-Community acquisitions of goods (140 to 142).

Liability of supplier or acquirer - CTP

General rule: ***VAT is payable by any taxable person carrying out a taxable supply of goods (including intra-Union supply of goods) and services, except in the cases referred to in Articles…[Article 193]***

Exceptions supplies of goods:

a) Article 194a: liability of Certified Taxable Person if the goods are supplied by a taxable person not established within the territory of the Member State in which the VAT is due (this covers Intra-Union supplies of goods and also domestic supplies).

b) Gold (Art. 198) NMT (Art. 200)

Exceptions supplies of services:

a) Optional RC Art 194

b) Compulsory RC Art 196

CTP status does not play a role here.

Liability of supplier or acquirer - CTP

A provision on Certified Taxable Person is included in the proposal (Article 13a).

- **reason;**
- **the criteria for obtaining the CTP status;**
- **the taxable persons that cannot obtain CTP status;**
- **the procedural aspects;**
- **reciprocity.**

Liability of supplier or acquirer - CTP

Issue: What to do with provisions allowing MS to apply Reverse Charge (RC) for certain transactions?

- Permanent RC of Article 199;
- Temporary RC of Article 199a;
- Quick Reaction Mechanism of Article 199b

Approach followed: Main driver for taxing Intra-Union supplies of goods = suppressing MTIC (carrousel) fraud in goods.

Consequence: RC obsolete as a tool for tackling MTIC fraud in goods but maintained when used for other purposes.

Liability of supplier or acquirer - CTP

This means in practice:

Permanent RC of Art. 199 covers:

- services (like construction services);
- goods supplied in situations whereby VAT is difficult to collect from the supplier, such as
  - suppliers already in financial difficulties,
  - waste collectors without residence.

MTIC fraud is not the driver for any RC covered here

Therefore: no need to change Article 199

Liability of supplier or acquirer - CTP

MTIC fraud is sole driver for the temporary RC and QRM

Temporary RC of Art. 199a

- Separate proposal for extension until 1 July 2022;
- In current proposal (for period after 1 July 2022) RC only for services

Quick Reaction Mechanism of Art. 199b

- idem for QRM, this proposal limits the scope to services

Liability of supplier or acquirer - CTP

Other aspects:

- Invoicing rules of the MS of establishment of the supplier apply for intra-Union supplies or of the MS of identification when making use of the OSS [Amended Art 219a].

- Intra-Union supplies **not** to be included in recapitulative statements. The statements will only cover services [Amended Art. 262].

One Stop Shop (OSS) scheme

Currently in place and/or to become operational on 1 January 2021:

- **MOSS for services supplied by non-EU established suppliers (Articles 358a to 369);**
- **MOSS for IC distance sales of goods and for services by EU taxable persons not established in MS of consumption (Articles 369a to 369k);**
- **MOSS for distance sales imported from 3rd countries (Articles 369l to 369zc).**

One Stop Shop (OSS)scheme

Present proposal: No substantive changes to:

- MOSS for services supplied by non-EU established suppliers [Articles 358a to 369];

- MOSS for distance sales imported from 3rd countries [Articles 369l to 369zc].

Proposal substantially amends the MOSS for IC distance sales of goods and for services by EU taxable persons not established in MS of consumption [Articles 369a to 369k]

One Stop Shop (OSS) scheme

Proposed OSS compared to EU MOSS:

What remains:

- Optional character;
- only 1 MS of identification for OSS;
- single payment

What are the main changes:

- broad scope including B2B supplies of goods
- deduction of input tax within the OSS scheme
- more data on OSS return for offsetting deductible VAT with VAT due
- Application to non-EU established operators who appoint an intermediary.

One Stop Shop (OSS) scheme

Scope of OSS (Art. 369b)

A) Scope: MS shall permit the use of the OSS for supplies of goods and services for which the person liable to pay VAT is either:

- a taxable person established in the EU but not in MS of taxation;

- a taxable person not established within the Union who has appointed and mandated an intermediary.

Only transactions excluded: distance sales of goods imported from third territories or third countries covered by the special scheme.

This includes any supplies, B2B or B2C, of goods or of services, domestic or intra-Union, provided that the person liable for VAT is not established in the Member State where VAT is due.

B) Incompatibilities: Taxable persons not established within the Union cannot apply simultaneously this special scheme and the special scheme for B2C services.

Taxable persons not established within the Union **only** supplying B2C services for which they can use the MOSS for services are excluded from the OSS.

One Stop Shop (OSS) scheme

OSS VAT return: periodicity (Article 369f)

- Principle is a quarterly OSS VAT return;

- Monthly OSS VAT return if the Union annual turnover of the taxable person is above EUR 2,5 million

- Union annual turnover = total annual value of supplies of goods and services, exclusive of VAT, made by a taxable person within the EU

One Stop Shop (OSS) scheme

Content of the OSS VAT return (Article 369g)

The OSS VAT return shall contain for each MS of taxation:

- *total value of the goods and services supplied, exclusive of VAT;*
- *applicable rates of VAT;*
- *total amount per rate of the VAT that has become chargeable;*
- *the total amount of VAT that has become chargeable;*

These are data already to be provided currently

One Stop Shop (OSS) scheme

Content of the OSS VAT return (Article 369g)

The OSS VAT return shall contain for each MS of taxation:

NEW DATA to be provided

- total amount of VAT that has become chargeable on supplies of goods and services for which the taxable person as recipient is liable to pay and on the importation of goods where the Member State exercises the option under the second paragraph of Article 211 [Reverse Charge];

- the VAT for which deduction is made;

- amendments relating to previous tax periods;

- the net amount of the VAT to be paid or credited

One Stop Shop (OSS) scheme

Specific provisions concerning deduction (I):

1) In case the taxable person using the OSS is a so-called "mixed" taxable person, the deductible proportion shall be determined by the MS of identification for all the transactions carried out by the taxable person.

2) When the taxable person using the OSS has several establishments: the deductible proportion shall be determined by each MS of establishment for all the transactions carried out from that establishment.

[Article 369ga]

One Stop Shop (OSS) scheme

Specific provisions concerning deduction (II):

On credit positions in a MS of taxation **[Art. 369ia]:**

- the excess shall be carried forward to the following period;

- the taxable person or his intermediary may request for a refund of excess VAT where he has a credit in the MS of taxation:

  - during two consecutive tax periods in case of quarterly OSS VAT returns;

  - during three consecutive tax periods in case of monthly OSS VAT returns.

On credit positions in MS of identification **[Art. 369ib]:**

- credit position in the VAT return submitted in accordance with Article 250;

- on request from the taxable person;

- Member States shall consider the amount of VAT to be refunded as a payment.

One Stop Shop (OSS) scheme

Specific provisions concerning deduction (III):

On interaction between deduction in OSS and refund Directive **[Art. 369j]:**

A taxable person not making any supplies of goods and services covered by OSS in a MS of taxation in a given tax period, nor in the three preceding tax periods in case of quarterly OSS returns, nor in the 11 preceding tax periods in case of monthly OSS returns, can no longer deduct input VAT in that MS of taxation via OSS return. He must use the relevant refund Directive.

What does not change?

No fundamental changes as regards notably the following topics:

- almost everything related to supply of services;
- almost everything related to importation of goods;
- customs procedures No 42 and 63 with adaptations (e.g. the importation of goods followed by an intra-Union supply of goods will remain exempt);
- certain rules on the place of supply of goods (e.g. general rules for supply with and without transport; supply with assembly or installation; gas and electricity);
- exemptions in the public interest [Art.132 to art.134] and exemptions for other activities like banking and insurance services [Art. 135 to 138];
- exemptions on exportation [Art.146-147], exemptions for certain transactions treated as exports [Art.151-152]; exemptions for transactions relating to international trade [Art. 154 – 163]

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Thank you for your attention