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Dropshipping, Amazon FBA and platform taxation - VAT pitfalls in e-commerce in the EU

The world of e-commerce has seen unprecedented expansion in recent years, with digital platforms and online commerce revolutionising the global market. However, with this growth comes complex challenges, particularly with regard to value added tax (VAT) and its application to cross-border transactions. The dynamic nature of e-commerce, combined with international business practices, has led to a complex legal landscape that poses new challenges for participants in e-commerce. The following article deals primarily with VAT issues in b2c trade (i.e. sales to consumers, as opposed to businesses). This is a rough initial overview. The relevant regulations are complex and should therefore be examined on a case-by-case basis based on the specific business model.

e-Commerce in the EU

<u>No thresholds for third countries!</u>

Anyone who provides b2b deliveries (and certain services) in the EU without having a fixed place of business in the EU may be liable to pay tax immediately (i.e. from the first euro of turnover). Special schemes for small businesses usually only apply to companies based in an EU member state.

> Example: A Swiss retailer sells Pokémon trading cards via its webshop from a fulfilment centre in Germany. Customers are private individuals in Germany, Austria and the Netherlands. Turnover amounts to EUR 3,700 p.a. in the first year.
>
> Solution: The retailer must register in Germany for VAT purposes.

<u>Settling VAT in 27 member states: the One Stop Shop</u>

In the case of b2c deliveries to different member states (so-called distance sales) from an EU warehouse (duty paid goods), the VAT rate of the country in which the warehouse is located initially applies.

> Example: as above.
>
> Solution: The retailer must pay VAT on his deliveries in Germany. He owes VAT at the rate applicable in Germany for all deliveries, including deliveries to customers in Austria and the Netherlands.

If the turnover from such distance sales exceeds EUR 10,000 per year across the EU, the VAT rate of the country in which the customer is based applies. Until recently, e-commerce traders may have had to register for VAT separately in all member states in order to fulfil their reporting and accounting obligations. Since 2021, it has been possible for them to fulfil their reporting and accounting obligations via a central registration, the so-called One Stop Shop ("OSS").

> Example: as above, but the retailer now has a turnover of EUR 17,000 p.a., of which EUR 6,000 is generated in Austria and EUR 5,000 in the Netherlands.
>
> Solution: The retailer must pay VAT in Germany on its deliveries to customers in Germany. Here he owes VAT at the VAT rate applicable in Germany. For deliveries to customers in Austria and the Netherlands, he owes VAT at the rate applicable in Austria and the Netherlands respectively. The retailer has the option of registering for VAT in Austria and the Netherlands. Alternatively,

> they can register for the OSS in Germany in order to fulfil their reporting and accounting obligations in Austria and the Netherlands. Customers in other member states can later also be registered and invoiced via the OSS.

Delivering goods from a third country to the EU: the Import One Stop Shop

Like distance sales within the EU, distance sales from a third country are also subject to VAT at the VAT rate applicable in the customer's country. Up to a goods value of EUR 150, retailers have the option of processing the corresponding distance sales via the so-called Import One Stop Shop (IOSS).

If the application of the IOSS is waived, a special regulation may apply, according to which the import tax is collected by the freight forwarder directly from the respective customer. Freight forwarders regularly charge their customers additionally for their customs clearance services - so that this procedure appears expensive and less transparent from the customer's point of view.

Finally, it is possible for distance sellers to register in the respective member states of their customers and invoice their deliveries to the national tax authorities themselves.

> Example: A Swiss retailer sells Pokémon trading cards from stock in Switzerland to consumers in Austria, Germany and the Netherlands via its webshop. The value of the individual consignments is between EUR 45 and EUR 85.
>
> Solution: The retailer can register for the IOSS (for this purpose, he must appoint a representative based in the EU). Deliveries of goods are exempt from import tax, and national VAT in Austria, Germany and the Netherlands is reported and settled via the IOSS.
>
> Alternatively, the retailer has the option of applying the "special regulations for the import of consignments with a material value of no more than 150 euros" (as described in the corresponding Section 21a of the German VAT Act). In this case, the freight forwarder collects the tax (and any handling surcharges) directly from the customer.
>
> Thirdly, Swiss traders still have the option of registering for VAT in Austria, Germany and the Netherlands and settling VAT locally.

Platform taxation

Special rules have applied in the EU for several years to distance sales that are initiated or processed via so-called "electronic interfaces", provided that the goods are dispatched within the EU and the seller itself is based in a third country. An electronic interface is, for example, an electronic marketplace or an electronic platform that enables the buyer and seller to come into contact, resulting in the delivery of goods to the recipient of the service (e.g. Amazon Marketplace, ebay or Alibaba).

> Example: A Swiss retailer sells Pokémon trading cards from a warehouse in Germany via an online marketplace operated by a third party. The customers are private individuals in Germany, Austria and the Netherlands.

In cases where an electronic interface is included in the supply chain in this sense, a so-called "supply chain fiction" occurs: While there is actually only a single sales transaction, two supplies are fictitious for VAT purposes by assuming a (first) supply from the trader to the operator of the electronic interface and a (second) supply from the operator of the electronic interface to the final purchaser. The fictitious supply from the online trader not established in the Community to the operator of the electronic interface is exempt from VAT. The supply of the electronic interface to the end customer follows the general principles for distance sales.

> Example: as before.

Solution: This results in a fictitious supply chain, in which a supply from the Swiss retailer to the operator of the online marketplace and from the operator of the online marketplace to the end customer is fictitious. The supply from the Swiss retailer to the operator of the online marketplace is exempt from VAT. The supply from the operator of the online marketplace to the end customer is subject to VAT at the VAT rate applicable in the country in which the end customer is based.

CONCLUSION

Dropshipping and other modern sales channels offer tantalising opportunities to tap into new sources of income. It is essential to consider the (value-added) tax consequences right from the start. If you wait until your business has reached a critical size, you will be chasing your own past failures. With a clever setup, the business can be scaled without major risks and the administrative effort can be kept within reasonable limits.