

AS PricewaterhouseCoopers in Estonia helps clients in finding tax efficient business solutions and managing tax risks.

We work together with our colleagues in other PricewaterhouseCoopers' offices world-wide and use our access to international know-how and long-term experience to quickly and efficiently solve tax issues that arise both locally and in foreign jurisdictions. For more information, please see our contact details below.

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The next step in the evolution of the VAT system in the EU is done!

On May 25, 2018 the European Commission published a detailed proposal for council directive amending Directive 2006/112/EC in relation to applying the definitive VAT system.

Briefly about the proposal

The proposal will replace the transitional system in force from 1993 on business-to-business (B2B) transactions with a definitive system, according to which the domestic and cross-border transactions in the EU will be treated in the same way.

It is a proposal for a directive, which sets out the detailed technical elements of the operation of the definitive VAT system and complements the Commission's proposal of October 4, 2017 (discussed in our February 2018 newsletter).

What is going to change?

The current approach, according to which the intra-Community B2B supply was tax-technically divided into two: intra-Community supply (non-taxable) and intra-Community acquisitions (subject to VAT). Subsequently, such B2B supply of goods is treated as a single transaction – intra-Community supply of goods, which according to the definition would be: “a supply of goods carried out by a taxable person for a taxable person or for a non-taxable legal person whereby the goods are dispatched or transported, by or on behalf of the supplier or the person acquiring the goods within the Union, from one Member State to another Member State”. Therefore, the provisions on intra-Community acquisitions are deleted from the VAT Directive.

The proposal provides that such B2B supplies of goods are taxed in the Member State of destination, i.e. the place of supply is always located in the Member State of destination (where the consumption of the goods is expected). Thus, the principle of the country of origin (where goods is produced) is abandoned, which according to the current wording of Article 402 of the Directive is the basis of the definitive VAT system, since this principle was not politically acceptable to the Member States.

Who is responsible for paying VAT?

Similarly, to the decision of European Commission in October 2017, if the seller (supplier) is in principle liable for the payment of the VAT in the Member State of arrival of the goods. An exception to the general rule is where the supplier is not established in the Member State of taxation and the customer is a certified taxable person- in that case, the customer will pay the VAT due by way of reverse charge in the Member State of arrival of the goods.

Therefore, if an Estonian company, without an establishment in Finland, will sell goods to a Finnish company, who does not have the status of certified taxable person and the goods are transported to Finland (the state of taxation), then the Estonian company as a seller must add Finnish VAT to the invoice, which is calculated on the basis of the Finnish VAT rate applicable to the goods (either 24%, 14% or 10%). Generally, VAT liability arises when issuing an invoice in the case of intra-Community B2B sales (if the invoice was not issued on time, the special scheme will apply) and the Member States are not allowed to make exceptions.

If the Finnish company as a buyer has the status of certified taxable person, then the buyer must calculate VAT on the basis of Finnish tax rates (i.e. reverse charge is applied) and the invoice is submitted by the seller without VAT (i.e. in net amount). Therefore, for the certified taxable person the

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current system will remain valid, where the seller does not pay VAT (0% VAT rate) and the buyer calculates VAT in the country of location by way of reverse charge.

Declaring and paying VAT in the future

According to the example in the previous section, the declaration and payment of Finnish VAT to the Finnish tax authorities will take place either directly (the seller registers himself as a taxable person in Finland) or through the special arrangement.

To this end, the VAT Directive extends the scope of the special scheme, allowing it to be used for business-to-business transactions. Currently the special schemes (i.e. MOSS special scheme or “*Mini One Stop Shop*”) are used to sell digital services to end-users located in other EU Member States. Thus, the MOSS specific scheme becomes OSS special scheme (“*One Stop Shop*”).

To sum up, with the expanded scope of the special scheme, the Estonian company can submit VAT returns and pay the VAT arisen from all Member States of the EU in the country of registration, i.e. in Estonia and therefore avoid the need to register in each Member State.

Taxable persons using the special scheme will start submitting quarterly VAT returns with same form, whereby the obligation to submit is not affected by whether the transactions have taken place or not. If the annual turnover of a taxable person using the special scheme in the EU exceeds EUR 2 500 000, then the VAT return must be submitted on a monthly basis.

The right to deduct input VAT in VAT return using the special scheme

The main change compared to the present special scheme is that the deductible input VAT can be declared in the VAT

return, i.e. the VAT paid on purchases in the respective Member State, as well as the import VAT, if the respective Member State has made it possible to simplify the payment of import VAT in VAT return (Estonia has been using the simplification, please see VAT Act § 38 2¹) and 2²). Thus, Estonian company using the special scheme may have a claim for refund in another Member State, if the deductible input VAT exceeds the output VAT.

The status of certified taxable person

Taxable persons are identified through a VAT identification number issued by a Member State, but currently no distinction is made between a reliable and a less reliable taxable person. A certified taxable person (CTP) can in principle be deemed to be a reliable taxpayer and simplification rules could be applied on transactions where such certified taxable persons are involved. For example, with the CPT permit the Estonian taxable person can proceed to buy goods from another Member State, without paying Estonian VAT and instead declare the purchase in the VAT return under the reverse charge mechanism. In the same reflected way the sales to a taxable person of another Member state with the CPT permit can take place.

Consequently, having a CPT permit becomes a valuable right in commercial sense.

Pursuant to Article 13a of the directive, obtaining a status of a certified taxable person will be based on unified criteria which will be valid throughout the European Union. The criteria for being considered a certified taxable person will automatically be fulfilled in case of persons who have been granted the status of an authorized economic operator for customs simplifications. The local tax authority, in Estonia the Tax and Customs Board, is to manage the certification of taxable persons.

The status of a certified taxable person in one Member State shall be recognized by the tax authorities of all the Member States.

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Combined returns

Even though with the Commission's proposal it is provided, that the supplier is responsible for paying VAT on intra-Community B2B supply, according to the proposal the submission of the combined returns (current Form VD i.e. Intra-Community supply) for the supply of goods is no longer necessary. The same applies when the receiver of the goods is a certified taxable person.

The obligation to submit combined returns is maintained only for services.

The deadline for adopting the Directive

After the Directive has entered into force, the Member States (incl. Estonia) shall adopt and publish, by June 30, 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with the Directive and shall apply those provisions from July 1, 2022.

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