

## VAT simplifications on remote sales of goods

Directive 2017/2455/EU on VAT, providing for a series of **simplifications** concerning **provision of telecommunications, broadcasting and electronic services** and **distance sales of goods**, with a deferred date, respectively, from **1 January 2019** and **1 January 2021**.

With specific reference to the news regarding **distance sales**, the subject of this intervention, with effect from **1 January 2021**, the **Directive 2017/2455/UE** modifies the regulation, introducing the following changes:

- **elimination of the annual thresholds** forecasted for the purposes of taxability in the member country of destination of assets;
- forecast of an **annual threshold of 10,000.00 euros**, referred to the distance sales volume within the EU, below which the seller is subject to VAT in the member country in which it is established;
- **extension of the MOSS (Mini One Stop Shop)**, already applied for the provision of telecommunications, broadcasting and electronic services, to **distance sales within the EU**, where the annual threshold of 10,000.00 euros is exceeded;
- for the purposes of the application of the distance **selling regulation**, the condition of **transport or shipment by or on behalf of the transferor** also operates in cases where the latter takes care of the transport or shipment of the goods, even if indirectly;
- **elimination of the obligation to issue invoices** for distance sales in the field intra-Community.

Considering that the parties making such sales will have the possibility to use the **MOSS**, declaring and **paying VAT** on all distance sales in a **single member country**, where established, the **Directive 2017/2455/UE** eliminates the thresholds below which the tax remains payable in the member country where the shipment or transport begins, replacing them with a **single threshold of 10,000.00 euros**, referring to distance sales in the area intra-Community, until the place of the supplies subject to the special regime remains the country that is the member of the transferor. A further significant change that will come into force with the new regulation of distance sales in the intra-Community area is that concerning the conditions of transport of goods by or on behalf of the supplier.

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The United Kingdom and Belgium have asked the European Commission to clarify a specific aspect of the regulation, concerning the interpretation of the phrase "goods shipped or transported by the supplier or on its behalf" contained in article 33, par. 1, VAT Directive.

In fact, some companies intentionally separate the sale of goods from their shipment or transport in order to apply VAT in the country of origin in place of that of the destination country, even if the transferor takes care of sending the goods to the customer, even indirectly through the intervention of the third person in charge of shipping or transport.

The VAT Committee, in WP n. 855 of 5 May 2015, highlighted the need to favor a broader interpretation of the aforementioned phrase, which takes into account the "economic reality" rather than the contractual clauses, consistent with the objectives of the regulation to ensure the imposition in the country of consumption and to avoid distortion of competition: "Goods can be seen as having been transported 'on behalf of the supplier' not only in situations where the supplier directly intervenes in the transport or dispatch but also in situations where he is indirectly associated with the transport of the goods to the customer".

This approach, confirmed by the European Commission in the meeting n. 104 of the 4 and 5 June 2015, implies that: "For the application of the distance selling arrangements, regard must be the economic arrangements and not only the contractual arrangements between the supplier, the transporter and the customer. It would allow their application both where the supplier is directly involved in the transport or dispatch of the goods and where he is indirectly involved. Indirect involvement in the transport or dispatch of the goods where the supplier is involved with the company providing the transport service (e.g. by actively promoting, suggesting or recommending the transport to the customer), even though the supplier does not as such conclude a contract with the transport company for the transport bears the cost of transportation or assumes any responsibility for transporting the goods to the client. According to this broader interpretation, under those specific circumstances, the goods falling in the scope of 33 and 34 of the VAT Directive".

This approach has been implemented by the 2017/2455/EU Directive, which, starting from the 1<sup>st</sup> January 2021, modifies the aforementioned article 33, par. 1, Directive 2006/112/EC, providing that "it is considered to be the place of a supply of goods shipped or transported by the supplier, directly or indirectly on its behalf, starting from a Member State other than the Member State of arrival shipment or transport, the place where the goods are at the time of arrival of the shipment or transport to the purchaser (...)".

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Finally, by applying the special scheme, eliminated the obligation to issue an invoice for sales to distance within the Community, provided for by article 220, par. 1, point 2), Directive 2006/112 / EC, as the aforementioned obligation is linked to the current sales regulations a distance that requires monitoring of national thresholds. Also with effect from 1 January 2021, for goods of non-EU origin:

- the current deductible, ranging from 10.00 to 22.00 euros depending on the member countries, which excludes the application of customs duties and VAT on importation, will be eliminated, by introducing in its substitution a single exemption throughout the EU of an amount equal to 150.00 euros;
- for the aforementioned goods, of non-EU origin, for an amount not exceeding 150.00 euro, the application of the MOSS will be extended, allowing EU and non-EU suppliers to make use of an intermediary established within the EU to comply with the relevant obligations in the name and on behalf of the suppliers.

Our Firm remain at your disposal for any further information on this news.

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