The drop on e-commerce

April - July 15 2024

Welcome to the April - July 15 2024 edition of the drop on ecommerce, where we highlight notable updates that are happening around the world for Indirect Tax.

In this issue:

We hope that you find this newsletter valuable and look forward to your feedback.

www.pwc.be

EU

Centralised Customs Clearance & Italy - general overview

The Commission implementing Decision (EU) n. 2023/2879, dated December 15, 2023, provides the implementation of the first phase of the centralised clearance procedure regime for import, according to the Article 179 of the Union Customs Code (hereinafter also "UCC"), starting from July 1, 2024. Italy proceeds with implementing the decision.

According to EU Law provisions, this procedure provides the possibility, for the operator, to lodge a customs declaration at a customs office of a Member State for goods presented at another customs office located in another Member State. In order to be able to access the procedure, it is necessary to apply for an authorization from the Customs Authorities (through the "Customs Decisions" system) and to hold AEOC authorization (i.e., "Authorised Economic Operator for Customs Simplifications"). The project aims to allow economic operators to centralise their business from a customs perspective.

Decision (EU) no. 2879/2023 provides that the implementation will take place in two phases with phase 1 having already started and phase 2 scheduled for June 2, 2025. As the EU decision stipulates, phase 1 concerns "centralised clearance with standard customs declarations and may cover centralised clearance with simplified customs declarations and the respective general or periodic supplementary declarations (regularising one simplified customs declaration). In addition, it will cover the placing of goods under the following customs procedures: release for free circulation, customs warehousing, inward processing and end-use. For the type of goods this phase will cover all types of goods with the exception of excise goods, EU goods in the context of trade with special fiscal territories and goods subject to common agricultural policy measures".

The Working Paper no. 924 Rev. 10 dated March 12, 2024, released by the European Commission addresses the VAT aspects of the centralised clearance project. In particular, this document specifies that, under this regime, the customs office where the customs declaration is submitted and the customs office where the goods are presented must exchange the necessary information for the verification of the customs declaration and the release of the goods. Among the information exchanged, VAT data necessary for the declaration and payment of import VAT in the Member State where the goods are presented should also be included.

The authorization requested by the operator should also include the specification of the method of payment of import VAT in each Member State where the goods are presented, which is recommended to be:

- deferred payment: means that the payment of the import VAT to customs is deferred for a nationally determined period. (Article 211, first paragraph, of the VAT Directive no. 112/2006);
- postponed accounting: means that import VAT is accounted for and paid with other VAT obligations in the periodic VAT return, so-called " import reverse charge" (Article 211, second paragraph, of the VAT Directive no. 112/2006).

At this stage, in Italy, under certain conditions and for certain types of goods, it is possible to use the above methods for the payment of import VAT, however they are not specifically applicable for the payment of import VAT in the centralized customs clearance regime.

Regarding the obligation of the authorisation holder to obtain a VAT number or to appoint a tax representative in the Member State of the presentation of the goods, these aspects should be clarified during the consultation procedure between the supervising Member State and the presentation Member State, prior to granting the authorisation so that the applicant can comply with his obligation before the granting of the authorisation.

LINK

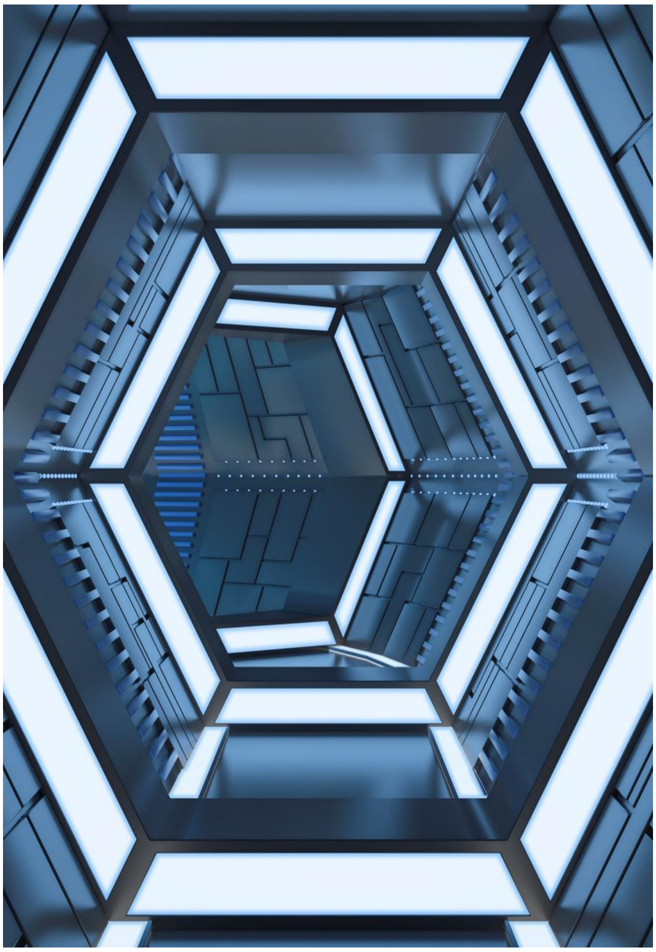
Switzerland

Digital platforms will become liable to collect VAT

The Federal Tax Administration of Switzerland published a draft amendment of the VAT Act to regulate the VAT treatment of goods sold through online platforms. The plan is for digital platforms to become liable for the VAT collection on these sales as of 1 January 2025.

The draft was published on 9 July 2024 and stipulates that persons who facilitate sales of goods through digital platforms will be required to collect and pay VAT. Switzerland is moving in the direction of the European Union who implemented deemed seller provisions in 2021. In a format like the EU explanatory notes of 2021, the Swiss document includes definitions of terms and discusses exceptions under which platforms may not be liable to collect VAT. Additionally, it includes case studies, explanations about special scenarios, invoicing rules, and useful diagrams.

LINK



Austria

Tax amendment draft includes SEs exemption

On 3 May 2024, the Austrian Ministry of Finance (BMF) published a draft of the AbgÄG 2024 (Austrian Tax Amendment Act 2024). This draft includes the following significant amendments on Value Added Tax, particularly linked to the European Directive for Small Enterprises (SEs), food donations and art dealers:

- As part of the implementation of the changes according to EU-Directive (EU) 2020/285, an “EU small enterprise” will be implemented so that Austrian taxable persons can also make use of the exemption for small enterprises in other Member States and – vice versa – foreign taxable persons can make use of the exemption for small enterprises in Austria. The relevant turnover of the small enterprise in the EU may not exceed EUR 100,000 in the previous and current year, whereby a tolerance limit for a one-off excess can be implemented by the Member States.
- For the exemption for SEs to apply to foreign taxable persons in Austria, the EU-wide turnover must not exceed EUR 100,000. If the EU-wide turnover is not exceeded by 10%, the tax exemption can continue to be applied until the end of the calendar year. In addition, the national turnover-limit for the application of the exemption for small enterprises needs also to be considered, which means that the taxable transactions in Austria are only allowed to reach a maximum of EUR 42,000.
- Regardless of the invoice amount, SEs can make use of the option to issue invoices for small amounts in accordance with section 11 para. 6 UStG (Austrian Value Added Tax Act). The existing EUR 400 amount for invoices for small amounts remains unchanged.
- In the future, food donations will be subject to a VAT exemption with the full right to deduct input VAT (i.e. no self-supply has to be considered).
- The special scheme for taxing the profit margin made by a taxable dealer, does not apply to the supply of works of art if the reduced tax rate was applied for the supply to the taxable dealer or for the import by the taxable dealer.

LINK

Romania

e-Invoicing

Starting 1st July 2024, the generalized RO e-invoicing system entered into force as a unique means of transmitting electronic invoices between taxable persons established in Romania.

Non-resident entities will continue to have e-Reporting obligations through RO e-Factura for transactions for which the place of supply is in Romania.

Both for e-Invoicing and e-Reporting certain exceptions are applicable.

Starting 1 January 2025, the mandatory e-invoicing system will extend to B2C invoices.

Romania

e-Transport

Romania has extended the RO e-Transport system to monitor international road transport of any goods on/ from the Romanian territory as of 15 December 2023 (previously it was applicable only for goods deemed with high fiscal risk). Sanctions may be applicable as of 1 July 2024 and such could be up to the value of the cargo, if the transport was not reported (by means of obtaining an UIT code issued by the tax authority). For authorized economic operators (AEO) in accordance with art. 38 of Regulation (EU) no. 952/2013 the sanctions are postponed up to 1 January 2025.

Romania

e-VAT

Starting 1 January 2025, Romania introduces the pre-filled in VAT returns in order to tackle VAT fraud and diminish the VAT gap.

The pre-filled RO e-VAT statement must be sent by the tax authorities to taxpayers by 5th of the month following the one when the VAT return is submitted.

The RO e-VAT statement contains data related to the transactions declared by the taxable persons which was sent to the relevant tax authorities through systems such as: RO e-Invoice, RO e-Transport, RO e-Sigiliu, SAF-T, RO e-Cash Registers, Customs systems - import and export operations, including informative statements.

The e-VAT differences greater than 20% and RON 5,000 will be notified to the taxable person by means of a Notification sent together with the prefilled VAT return and they should be justified by the taxable persons in 20 days after receiving the notification for e-VAT differences, if any. Due to complexity of the system, fines for non-compliance will be enforced starting with 1 January 2025 (although originally the planned GoLive date was August 2024).

Failure to provide or partial provision of explanations for the RO e-VAT differences represents a risk indicator as regards the VAT determination level.

CJEU

VAT on e-gambling not state aid

The AG has suggested that Belgium's decision to subject online gambling to VAT does not represent a breach of fiscal neutrality, that the EU gambling exemption itself does not have direct effect, and that the maintenance of the VAT exemption for "physical" gambling does not constitute prohibited State aid.

Therefore, in an opinion that is available on the CURIA website, the AG proposed the following answers to the questions referred:

"(1) Article 135(1)(i) of the VAT Directive has no direct effect. It is neither unconditional nor sufficiently precise.

(2) The principle of neutrality of VAT does not preclude a differentiation between gambling which is provided electronically and gambling which is not provided electronically. Instead, there are objective reasons for this and for the differentiation between gambling which is provided electronically and lotteries which are organised electronically.

(3) In proceedings relating solely to a business' own tax liability the question of State aid to a third party is inadmissible. In principle, those liable to pay a tax cannot rely on the argument that the exemption enjoyed by other businesses constitutes State aid in order to avoid payment of that tax."

Clarifications on Vouchers

The CJEU has reiterated its analysis of SPVs and MPVs under the new vouchers regime but, in the absence of sufficient evidence, it has delegated the final decision on the classification of the Taxpayer's activities - notwithstanding the possibility of the Taxpayer providing a service consisting of promotion or distribution - to Germany's domestic courts.

Therefore, in the judgment C-68/23 which is available on the CURIA website, the Court gave the following answer to the question referred:

"1. Article 30a and Article 30b(1) [PVD] must be interpreted as meaning that the classification of a voucher as a 'single-purpose voucher' within the meaning of Article 30a(2) [PVD] depends solely on the conditions laid down in that provision, which include the requirement that the place of supply of services to end consumers, to which that voucher relates, must be known at the time of the issue of that voucher, irrespective of the fact that the voucher is the subject of transfers between taxable persons acting in their own name and established in the territory of Member States other than that in which those end consumers are located.

2, Article 30b(2) [PVD], must be interpreted as meaning that the resale by a taxable person of 'multi-purpose vouchers', within the meaning of Article 30a(3) [PVD] may be subject to value added tax, provided that it is classified as a supply of services to the taxable person who, in consideration for those vouchers, carries out the actual handing over of the goods or the actual provision of the services to the end consumer."

EU

Infringement procedure against DE, HU, PL & RO for DAC7

Under DAC7, Online Platform Operators are obliged to collect and report information about hosted online sellers. Such information may include VAT identification numbers or even addresses of rental properties that are marketed through the platforms. Member States must share the information provided by Online Platform Operators with other Member States, for assessing and enforcing the collection of taxes, including VAT.

The European Commission has announced its decision to open an infringement procedure by sending a letter of formal notice to Germany, Hungary, Poland and Romania for failing to exchange timely information on income earned by individuals and companies through the use of online platforms under DAC7.

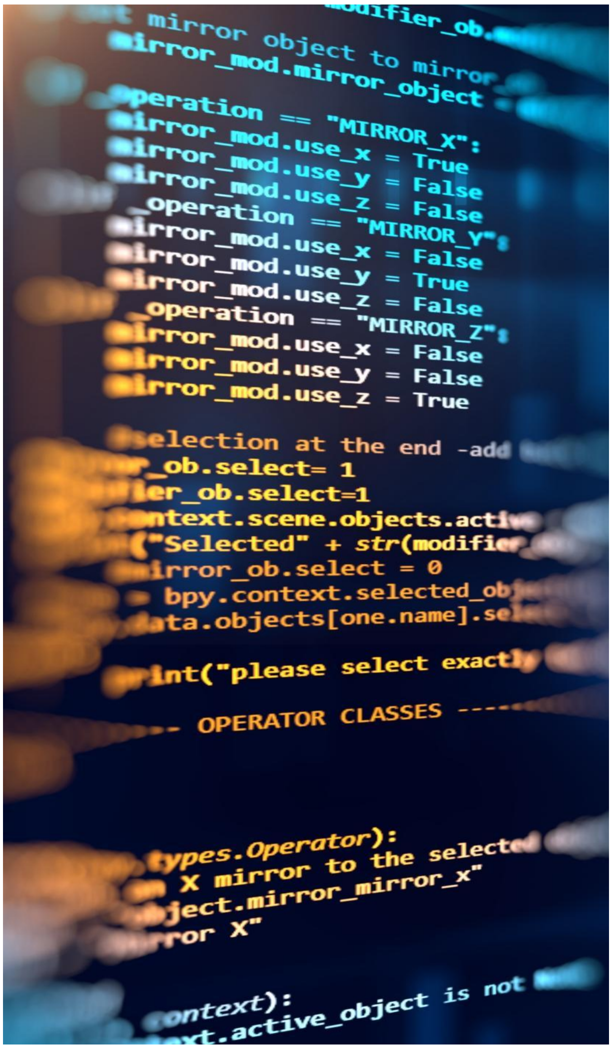
Reporting should have happened at two stages:

- online platforms were obliged to collect the information about the income earned by individuals and companies throughout 2023 and report it to the Member State of the platform
- that Member State had to exchange that information by 29 February 2024

Germany, Hungary, Poland and Romania have, the Commission stated, failed to fulfil their obligation in exchanging the necessary information with tax authorities of other Member States which hinders them to enforce local tax laws. The Commission is therefore sending a letter of formal notice to Germany, Hungary, Poland and Romania, who now have two months to respond and address the shortcomings raised by the Commission. In the absence of a satisfactory response by the Member States, the Commission may decide to issue a reasonable opinion.

The announcement of the Commission is made available here.

LINK



Thailand

VAT exemption for LVG imports to be abolished

Thailand plans to impose a 7% VAT rate on imported low-value goods (LVG). Currently, LVG valued at less than THB 1,500 are exempted from VAT. The new rule aims to promote a level playing field for online local and overseas sellers through e-commerce platforms, boost government tax revenue, and reduce the trade deficit between Thailand and other territories, such as China.

In doing so, the Thai Revenue Department (RD) will issue a regulation requiring all e-commerce platforms to register for VAT with the RD and collect 7% VAT from all sales of goods from abroad to customers in Thailand, regardless of the origin of the goods. LVG sales via e-commerce platforms will be treated as local sales and be subject to 7% VAT, and platform owners will need to register and report VAT in Thailand. The draft regulation will have immediate effect, if approved. Further updates will follow in due course.

Implications

Currently, there are no details about the procedure of collecting VAT on LVG imports. Further guidance is expected to be issued by the RD. Thai Customs has not made any public comments on whether import duty would also apply on LVG imports. Companies that import LVG (e.g, B2C import transactions, e-commerce platforms, etc.) should monitor for any updates, and may consider proactively asking the tax authorities for clarifications. A key consideration for overseas companies supplying LVG is whether their transaction model will lead to irrecoverable VAT. With the regulation still in draft, it is a good time to plan and confirm the impact of this new regulation.

LINK

Japan

Update on digital platforms' liability to pay consumption tax

As initially proposed in December 2023 and was reported here, the liability to pay Japanese consumption tax (JCT) for B2C supplies of electronic services (ESS) has been shifted to specified digital platform operators. As of 1 April 2025, electronic services providers like streaming channels, online gaming providers and others may have to report JTC.

The initial proposal has been updated while further details are expected to be announced in due course by the Japanese tax administration.

Takeaway

Platform operators and foreign enterprises supplying ESS alike should continue to monitor developments in this area and should now begin preparations to determine the potential impact of the rules and how to best comply with any obligations going forward. Particularly for digital platform operators, consideration should be given not only to potential tax impacts, but also required IT implementations and communication with stakeholders.

LINK

Contacts

Nicole Stumm
Partner, EMEA Ecommerce
Global Digital ITX Lead
Berlin, Germany

T: +491702290696
E: nicole.stumm@pwc.com

Claire De Lepeleire
Senior Director, EMEA Ecommerce
Global Digital ITX Lead
Brussels, Belgium

T: +32 475 910868
E: claire.de.lepeleire@pwc.com

Annelies Van de Velde
Senior Manager, EMEA Ecommerce
Brussels, Belgium

T: +32 494 22 33 00
E: annelies.van.de.velde@pwc.com

Although PwC continuously monitors the evolving regulatory landscape it cannot be excluded that all relevant information is reflected in this bi-monthly newsletter. Hence, you should not act upon the information contained in the weekly e-commerce updates without obtaining specific professional advice from your PwC contact.