



## Annual Tax Act 2020 (Part 4): Regulations on distance sales to be revised

### 1 Background and entry into force

The regulations on distance sales are being revised. The change in the law is to come into force on 01.01.2021. However, it is part of the so-called e-commerce package, the postponement of which has already been decided at Community level due to the coronavirus pandemic. The standards will come into force (at the earliest) from 01.07.2021.

### 2 Definition of distance sales

A distance sale is deemed to exist if

- an item is supplied to a non-taxable person,
- the goods cross borders within the EU (intra-community distance sales) or
- the goods are transported from a third country to a Member State (distance sales of imported goods), and
- the transport is arranged by the supplier.

The transport of the goods is the decisive factor. The place of establishment of the parties involved is irrelevant.

### 3 Threshold for intra-Community distance sales

The provisions of sec. 3c paragraphs 1 - 3 German VAT Act (draft) determine the place of supply of a distance sale. Intra-Community distance sales are deemed to be performed where the goods are located at the end of the transport if the supplier has exceeded the threshold of EUR 10,000 per year or if he waives its application. The previous country-specific thresholds will be deleted and replaced by a uniform EU threshold. The new threshold applies to all supplies to other Member States and is not limited to supplies to a specific Member State.



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#### 4 Transport arrangement

The application of the distance sales scheme is still subject to the condition that the distance seller arranges the transport. The law now clarifies that indirect participation of the distance seller in the transport of goods is sufficient. The transport initiation must therefore be interpreted very broadly. According to the official justification for the law, the scope of application includes not only those cases in which the distance seller arranges the transport, but also those in which the distance seller

- assumes full or partial responsibility for the transport,
- collects the transport costs from the customer and passes them on to the forwarding agent, or
- advertises the delivery services of a forwarding agent or provides him with the necessary information.

#### 5 MOSS becomes OSS

In the future, the Mini-One-Stop-Shop procedure (MOSS) is to be used for distance sales and will become a One-Stop-Shop (OSS) thereby removing the necessity for suppliers to register in all Member States. A detailed presentation of the new OSS will appear in a separate newsletter.

#### 6 Distance sales of goods imported from third countries

The import VAT exemption for small consignments of up to EUR 22 from third countries will be abolished. This is to be replaced by a new import regulation. The import of consignments not exceeding EUR 150 will be tax-exempt in accordance with sec. 5 para. 1 no. 7 German VAT Act (draft) if the initial supply is reported in OSS. If the turnover is not reported in OSS, a distinction must be made in the VAT assessment of distance sales:

- Consignments with a material value not exceeding EUR 150 and supply not via online marketplace:
  - Supplier clears the goods for customs → local supply to the customer and registration of supplier
  - Courier clears the goods for customs on behalf of the customer according to sec. 21a German VAT Act (draft) or customer clears the goods himself → no registration of supplier
- Consignments with a material value not exceeding EUR 150 and supply via online marketplace:
  - Supplier clears the goods for customs → local supply to the online marketplace and registration of supplier
  - Courier clears the goods for customs on behalf of the customer according to sec. 21a German VAT Act (draft) or customer clears the goods himself → no registration of supplier
- Consignments with a material value exceeding EUR 150 are not exempt from customs duties and import VAT. If the supplier clears the goods for customs → distance sale either is a local supply or an intra-Community distance sale.

#### 7 Consequences for the practice

The new regulation will not make life easier for distance sellers established in the EU. On the plus side, the constant monitoring of thresholds abroad will no longer be necessary and because of the OSS, distance sellers may no longer be obliged to register in other countries. However, countering that, mainly taxable persons who provide distance sales from a central warehouse in their own country will benefit from OSS. If one wishes to use a fulfilment service structure of an online marketplace, in which goods are transferred within the EU, registration in warehouse countries still cannot be avoided due to the intra-Community transfer of the goods.