

## E-commerce package in Poland

By the end of June the Polish Parliament finished work on amendments to the VAT Act introducing the EU e-commerce package to the Polish legal system. The adopted law awaits the President's signature. Despite the late adoption of amendments to the VAT Act, the planned changes will come into force in Poland as early as July 1, 2021.

The VAT e-commerce package is a set of new regulations for e-tail applicable throughout the European Union, the main objective of which is to unify the rules and tighten tax revenues at the level of the entire EU community.

### MAIN ELEMENTS OF THE E-COMMERCE PACKAGE

The e-commerce package is extensive and includes elements such as:

- Introduction of the concept of intra-Community distance sales of goods (WSTO) and of distance sales of imported goods (SOTI)
- Repeal of the existing method of taxing consignment sales from the territory of the country and consignment sales within the territory of the country.
- Unification of the threshold amount for taxpayers supplying goods within the scope of WSTO and providing telecommunications, broadcasting & electronic services (TBE services) across the territory of the whole EU to the level of EUR 10,000.
- Changing the VAT-MOSS to the VAT-OSS.
- Introduction of a VAT exemption for importing consignment goods not exceeding €150.

### INTRA-COMMUNITY DISTANCE SALES OF GOODS (WSTO)

The amendment to the VAT Act repeals the concepts of consignment sales from the territory of the country and consignment sales within the territory of the country, as well as the regulations relating to these sales. Instead, it introduces a definition of intra-Community distance sales of goods (WSTO) and corresponding changes to the regulations related to this type of sale.

**Intra-Community distance sales of goods (WSTO)** is the supply of goods dispatched or transported by or on behalf of the supplier, including where the supplier participates indirectly in the dispatch or transport of the goods, from one Member State to another, provided that all the following cumulative conditions are met:

- the supply is made to a taxable person or a non-taxable legal person who is not required to account for intra-Community acquisitions of goods, or to another non-taxable person (i.e. it has to be a B2C supply)
- the goods supplied are not new means of transport or goods which are being installed or assembled, with or without trial start-up.

The definition of WSTO generally corresponds to the repealed definitions of distance selling within the territory of the country and from the territory of the country. The catalog of entities that can be buyers in WSTO transactions has not changed compared to distance selling.

It should be noted that the definition specifies that WSTO will also include supply of goods where the supplier **indirectly** participates in the shipment or transport of those goods.

The rule regarding the place of the WSTO taxation will not be changed. However, the threshold determining the place of taxation of WSTO will be lowered to EUR 10,000 (PLN 42,000). The aforementioned PLN 42,000 threshold (effective as of July 1, 2021) applies to the aggregate of both the total value of goods delivered under the WSTO and TBE services provided to consumers. Below this threshold, transactions will be taxed in the Member State where the taxable person supplying these telecommunications, broadcasting and electronically supplied services is established or where the goods are located when dispatch or transport begins.

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|  | <p>The taxpayer will, however, have a possibility (option) to choose to be taxed in the state of consumption. If the threshold is exceeded, transactions will always be taxed in the country of consumption.</p> <p>When determining the place of taxation for WSTO as of July 1, 2021, TBE services and out-of-state consignment sales that took place in calendar year 2020 and the first half of 2021 should also be taken into account when analyzing the above threshold.</p>   |
| <b>WSTO   POSSIBILITY TO CHOOSE TO BE TAXED IN THE DESTINATION COUNTRY</b> | <p>A taxpayer who has not exceeded the sales threshold of PLN 42,000 may choose (optionally) to tax the WSTO and TBE services in the state of consumption.</p> <p>The choice is made by submitting a notice of such a choice (electronically on the VAT-29 form) to the head of the tax office by the 10th day of the month following the month in which the choice was made. Until June 30, 2021, the choice of the place of taxation is made by filing a notice of the choice of the place of taxation with the head of the tax office 30 days before making the supply starting from which the taxpayer wants to use the option.</p> <p>Within 30 days from the first transaction after using this option, the taxpayer (except for the taxpayer using the so-called EU procedure) shall be obliged to present to the head of the tax office a document confirming the notification of the competent tax authority in another Member State on the intention to settle the value added tax on WSTO in that Member State. Under the new regulations, <b>the selected supply location of WSTO applies to all deliveries</b>. Currently, the choice of the place of taxation of mail order sales from the domestic territory can be made with respect to one or more Member States of consumption.</p> <p>The return to accounting for VAT on these supplies in Poland (provided that the threshold criterion is met) will be possible after two years at the earliest, upon notification to the head of the tax office that the taxpayer resigns from the choice made, before the beginning of the month in which the resignation takes place.</p>   |
| <b>DISTANCE SALES OF IMPORTED GOODS (SOTI)</b>                             | <p>The VAT Act introduces the concept of distance sales of imported goods (SOTI) and the regulations relating to such sales.</p> <p>Distance sales of imported goods is the supply of goods which are dispatched or transported by or on behalf of the supplier, including when the supplier participates indirectly in the dispatch or transport of the goods, <b>from the territory of a third country to the purchaser within the territory of a Member State</b>, provided that all the following conditions are met:</p> <ul style="list-style-type: none"> <li>■ The supply is made to a taxable person or a non-taxable legal person whose intra-Community acquisition of goods is not subject to VAT, or to another non-taxable person (tB2C)</li> <li>■ The goods supplied are not new means of transport or goods which are being installed or assembled, with or without trial start-up.</li> </ul> <p>The supply of goods will also include cases where the supplier indirectly participates in the shipment or transportation of those goods (similar to WSTO).</p> <p>In the case of SOTI, the place of supply of goods generally depends on the place where the goods are admitted to trading in the European Union (importing country) and the destination of the goods.</p> <p><b>The place of supply in the case of SOTI</b> is the place where the shipment or transport of the goods ends (the country of destination). This rule applies in the following two cases:</p> <ul style="list-style-type: none"> <li>■ The goods are imported into the territory of an EU member state other than the one where the shipment or transport of the goods ends. The country of importation is not the country of destination of the goods</li> <li>■ The goods are imported into the territory of the Member State where the dispatch or transport of the goods ends, provided that the VAT due on SOTI is to be declared under the IOSS procedure. The country of importation is the country of destination of the goods.</li> </ul> |



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|   | <p>Where the above special rules do not apply to SOTI, the place of supply will generally be a third country. This is because under the general rules, the place of supply is the place where the goods are located when dispatch or transportation begins. Therefore, SOTI will not be subject to VAT within the EU. The import of such goods will be then taxed under the general rules.</p> <p>As of July 1, 2021, under the customs rules, in the case of goods with an actual value of up to EUR 150 that have not been declared for IOSS, the declaration for customs release will only be possible in the EU Member State of destination of the goods. In the case of goods of commercial nature, the <b>actual value</b> means the price of the goods alone when sold for export to the customs territory of the Union, excluding transport and insurance costs, unless they are included in the price and not separately invoiced, and excluding any other taxes or charges which may be established by the customs authorities on the basis of relevant documents.</p>  |
| <b>ELECTRONIC INTERFACES (E.G. SELLING PLATFORMS)</b> | <p>The e-commerce package introduces a definition of electronic interfaces (platforms) and imposes specific tax and accounting obligations on them.</p> <p>An electronic interface is defined as any device or software that allows for contact between a user who is a vendor and a user who is making a purchase. This is a broad term and includes websites, electronic portals, trading platforms, application programming interfaces (APIs), among others.</p> <p>The main objective of the new rules is to tax transactions made through interfaces (platforms) where the supply is made from the territory or by a taxpayer from a third country. The new rules applicable to such supply of goods assume the legal fiction that the platform:</p> <ul style="list-style-type: none"> <li>■ <b>Acquired goods</b> (B2B supply of goods between the platform and the seller who actually sells those goods to the consumer)</li> <li>■ <b>and made a supply of those goods</b> (a B2C supply of goods between the platform and the consumer who actually purchases the goods).</li> </ul> <p>As a result, the platform, like any other VAT taxpayer, will be <b>obliged to settle the VAT and fulfill other obligations</b> (e.g. with regard to invoicing, declaring or recording) related to its “fictitious” B2C supply.</p> <p>The said legal fiction applies only when the platform <b>facilitates</b> certain types of B2C goods delivery, i.e.:</p> <ul style="list-style-type: none"> <li>■ SOTI in consignments with an actual value not exceeding EUR 150, or</li> <li>■ Supply of goods within the EU (i.e. WSTO or domestic supply) by a trader not established in the EU to consumers.</li> </ul> <p>The new rules apply regardless of where the electronic interface operator is located.</p> |
| <b>SPECIAL PROCEDURES   OSS</b>                       | <p>Effective July 1, 2021, the small one stop shop (MOSS) will be extended to become a One Stop Shop - <b>OSS</b>, covering a range of other B2C transactions.</p> <p>The <b>EU procedure</b> allows the output VAT on certain operations to be accounted for to the Member State of consumption through the Member State of identification.</p> <p>The EU procedure is aimed at entrepreneurs:</p> <ul style="list-style-type: none"> <li>■ who have their seat of economic activity or a permanent place of business within the territory of the European Union, in order to declare and pay output VAT for: <ul style="list-style-type: none"> <li>■ WSTO</li> <li>■ Services provided to consumers (B2C) where the place of supply is in a Member State in which the entrepreneur does not have a place of business or fixed establishment.</li> </ul> </li> <li>■ who do not have a place of business or a fixed establishment within the EU to declare and pay output VAT resulting from WSTO</li> <li>■ Facilitated through the use of an electronic interface (whether established in the EU or in a third country) to perform:</li> </ul>  |



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|                                      | <ul style="list-style-type: none"> <li>■ WSTO</li> <li>■ Domestic supply of goods to a consumer, where the dispatch or transport begins and ends in the same Member State.</li> </ul> <p>It is important to note that under the EU OSS procedure, VAT can be declared and accounted not only for the supply of TBE services, but e.g. for valuation of and on tangible movable property, services related to real estate, services for rental of means of transport to consumers.</p> <p>An entrepreneur who decides to register under the EU procedure will be required to account for output VAT on all activities covered by this procedure, exclusively under this procedure.</p>   |
| <b>NON-EU PROCEDURE</b>              | <p>The <b>non-EU procedure</b> allows the output VAT on the supply of services to be accounted for to the Member State of consumption through the Member State of identification.</p> <p>The non-EU procedure is only for entrepreneurs who are not established or do not have a fixed place of business in the EU and who supply services to consumers (B2C) that are subject to VAT within the EU. Services that can be declared under the non-EU procedure include e.g. valuation of and on tangible movable property, real estate services, and transportation rental services.</p> <p>An entrepreneur who decides to register under the non-EU procedure will be required to account for VAT on all services covered by this procedure, exclusively under this procedure.</p>  |
| <b>SPECIAL PROCEDURES &amp; IOSS</b> | <p>The Import One Stop Shop (<b>IOSS</b>), introduced from July 1, 2021, is an electronic system that allows taxable persons making supplies of goods from third countries to consumers (B2C) located in Member States where they are not established, to declare and pay the output VAT in those Member States on the aforementioned supplies, in a “one stop shop” via a dedicated web portal, in the Member State where they are identified. Thanks to IOSS taxpayers avoid having to register and report in each Member State where the supply of goods takes place (the so-called Member States of Consumption). In practice, a taxable person who is registered in the IOSS in a Member State, submits monthly VAT returns electronically and pays the output VAT on the supplies of goods to the relevant Member State.</p> <p>The IOSS is available to taxpayers established in the EU and to taxpayers not established in the EU who carry out the supply of goods, i.e. distance sales of imported goods (SOTI), with their actual value of up to €150.</p> <p>It should be noted that the <b>IOSS is optional</b> for taxpayers.</p> <p>The import procedure includes the supply of goods if <b>all</b> the following conditions are met:</p> <ul style="list-style-type: none"> <li>■ The goods are dispatched from a third country on delivery</li> <li>■ The goods are sent as a single consignment with a maximum actual value of EUR 150</li> <li>■ The goods are dispatched or transported by or on behalf of the supplier to a buyer in an EU Member State (this also applies when the supplier is indirectly involved in the dispatch or transport of the goods from a third country).</li> </ul> <p>The import procedure cannot be used if:</p> <ul style="list-style-type: none"> <li>■ The goods are subject to excise duty irrespective of whether the actual value of the consignment exceeds EUR 150 or not</li> <li>■ This is a business to business (“B2B”) delivery.</li> </ul> <p>The import procedure is directed to entrepreneurs who:</p> <ul style="list-style-type: none"> <li>■ Sell at a distance goods imported from a third country in consignment of an actual value of not more than EUR 150 Euro to private persons in the European Union (EU).</li> </ul> |



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- Provide an electronic interface by which they support (facilitate) the supply of goods imported from a third country in consignments with an actual value not exceeding EUR 150, and are therefore treated as if they had supplied the goods themselves.

Under the import procedure, it is possible to declare and account for the output VAT due for SOTI. A taxpayer who chooses to use the import procedure must register it only in one member state, the so-called Member State of Identification.

In order to register for the import procedure, a taxpayer who is neither established nor has a fixed establishment in the EU **must appoint an intermediary** who is an active VAT taxable person in the Member State of identification. The use of the import procedure is in this case possible only through an intermediary who acts in the name and on behalf of the taxpayer who established him.

The territory of Northern Ireland is treated as an EU territory and not a third country. Entrepreneurs with a place of business in Norway and involved in SOTI operations from Norway do not need to appoint an intermediary.

## CONTACT

**This document was prepared for informational purposes only and is of a general nature. Every time before taking actions on the basis of the presented information, we recommend obtaining a binding opinion of TPA Poland experts.**



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