



Platforms in the spotlight

Platforms operating cross-border often become responsible for charging and paying VAT in the countries where the final customers are located.

Alternatively, platform sellers become liable for paying VAT in countries where the final customers are residing.

Online sales become much more transparent after 1 January 2023 when platforms are required to provide information about their sellers under EU DAC7 legislation.

Background

More and more goods and services are sold via online platforms. The majority of VAT rules have been drafted before platforms gained their importance in the economy. The rules are consequently not made having the new business models in mind and the applicability of the VAT rules to the platforms as well as to platform sellers is not always clear and simple.

In addition, many platforms operate globally and have clients all over the world. This can make their compliance complicated because the platform may become responsible for charging and paying VAT in (all) countries where final customers and/or underlying suppliers are located.

This article looks at the main aspects what determine the applicability of the EU VAT to the sales of goods and provision of services taking place via platforms.

In addition, EU DAC7 platform reporting obligations on seller's activities come into effect on 1 January 2023. This will mean that the tax authorities will get much better view of sales via platforms. Not only platforms but also underlying sellers should be aware of increasing transparency of their activities and make steps to become compliant where necessary.

Consequently, if you are an online seller or a platform facilitating the sales, you should understand your EU VAT obligations.

Who is responsible for paying the VAT applicable on sales via the platforms?

In order to understand who becomes responsible for the VAT on sales via a platform, it is fundamental to understand:

- A. a business model applicable; and
- B. the place of taxation for sales.

Applicable business model

Identifying a business model of a platform is the first step in understanding his VAT liability.

Generally speaking, the VAT treatment depends on a form of intermediation used by the platform: whether it acts on its own name (i.e. as an undisclosed agent) or on the name of an underlying supplier (i.e. as a disclosed agent).

Even if the platform only receives a commission for its activities, it can still be considered a provider of the services or a seller of the goods for VAT purposes if it operates under an undisclosed agency structure. The platform can become liable for VAT on the underlying sale even if it does not become an owner of the goods.

Acting as an undisclosed agent for VAT purposes

For VAT purposes, a fiction applies to supplies by an undisclosed agent / commissionaire. It means that if the

commissionaire acts in his own name but on behalf of another person, then he shall be deemed to have received and supplied the services provided by the actual (underlying) supplier to the final customer.

This means that if the platform acts as an undisclosed agent, then he becomes liable for VAT on sales taking place via his platform. The underlying supplier, however, should in this case take care of his VAT obligations (if any) on his supplies to the platform.

Nature of supplies and the place of taxation

The platform and the sellers needs to map all their (purchases and) supplies and understand their VAT treatment. After the nature of purchases and supplies is identified, it is important to understand the VAT treatment of all transactions.

Digital services

The place of supply of the cross-border digital services is always in the EU country where the customer is residing. Businesses need to charge and remit the VAT of the customer country unless the customer is a business which usually can be proved by providing a valid VAT number.

Sales of goods

Sales of goods via an online platform (also called as 'digital goods') are always taxable in the country where the customer is residing.

Thresholds

No threshold exists for cross-border sales of digital goods and/or services unless the seller is established in the EU in which case the threshold is €10,000 for all sales across the EU. This means that when an EU business (who has pan-European sales above the threshold of €10,000) or a non-EU businesses (no threshold applies) sells goods or digitals services to the non-VAT registered customers located in the EU, then the supplier (i.e. either a platform or an underlying supplier depending from the applicable business model) becomes liable to register for VAT in all EU countries where it has customers.

OSS registration

The seller or platform who becomes liable for the VAT in various EU countries could opt for the online One Stop Shop (OSS) to avoid registering in each of the EU country of his customers. However, the OSS cannot be used to report local sales, B2B sales or intra-Community stock transfers for which a local VAT registration is still required.

Exchange of information regarding the platforms

From **1 January 2023**, the platforms will be obliged to share information on sellers who use their platform. Reporting applies not only to EU residents, but also to non-EU businesses having no permanent/fixed establishment in the EU who are facilitating e.g. the following activities in the EU:

- the sale of goods;
- any personal services;
- the rental of immovable property; and
- the rental of any mode of transport.

Conclusion

If you are operating a platform or selling goods or services via a platform, then you need to be aware that from **2023**, your activities become much more transparent for tax authorities. Therefore, you need to be aware of your VAT obligations and register (retroactively) in all EU countries where you have VATable sales or make use of simplified reporting via the OSS.

Grant Thornton's international indirect tax team and digital advisory team can assist you in your VAT refund claims as well as in any other VAT / customs matters, compliance and update of your systems and processes. Please contact us if you would like to discuss your options and possibilities.





Contact

Do you have questions or do you need more detailed information? Please do not hesitate to contact us.

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