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DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value added tax

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**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)
WORKING PAPER NO 1069**

NEW LEGISLATION

**MATTERS CONCERNING THE IMPLEMENTATION
OF RECENTLY ADOPTED EU VAT PROVISIONS**

ORIGIN: Slovakia

REFERENCES: Title XII, Chapters 1 and 6

SUBJECT: The special scheme for small enterprises: interaction with the One-Stop-Shop Union scheme and the Import One-Stop-Shop non-Union scheme

1. INTRODUCTION

As Member States are preparing the implementation of Council Directive (EU) 2020/285¹ which will update the special scheme for small enterprises ('SME scheme'), questions may arise. This is the situation faced by Slovakia which has therefore brought a question to the VAT Committee on the possible interaction of the SME scheme with the One-Stop-Shop ('OSS') Union scheme, and with the import scheme (Import One-Stop-Shop ('IOSS')), and on the VAT consequences of such interaction.

The questions and analysis submitted by Slovakia can be found in Annex I.

2. SUBJECT MATTER

The SME scheme, the OSS Union scheme and the import scheme (IOSS) are autonomous. Rules governing the SME scheme can be found in Title XII, Chapter 1 of the VAT Directive² while the rules governing the OSS and IOSS special schemes can be found in Title XII, Chapter 6 of the VAT Directive.

The purpose of these special schemes is different. While the SME scheme grants a VAT exemption on the supplies of goods and services carried out by small businesses, the OSS/IOSS special schemes provide a simplification to taxable persons to declare and pay VAT on certain transactions carried out in different Member States.

Whereas the application of these special schemes is optional for the taxable person, their scope of application is different. While the SME scheme applies to all supplies of goods and services made to both taxable persons (B2B) and to final consumers (B2C), the OSS Union scheme only applies to B2C (i) intra-Community distance sales of goods, (ii) cross-border supplies of services, and (iii) domestic supplies of goods facilitated by electronic interfaces as deemed suppliers and the IOSS scheme applies to B2C distance sales of imported goods not exceeding EUR 150.

However, in some cases, it could result that a small business carrying out sales covered by the OSS Union scheme to final consumers falls into the scope of application of both the SME scheme and the OSS Union scheme.

Under this scenario, it is relevant to analyse the interaction of these special schemes and the related VAT consequences for the supplier.

An analysis of the interaction between the SME, OSS and IOSS special schemes can be found in Annex II.

¹ Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards special scheme for small enterprises and Regulation (EU) No 904/2010 as regards administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13)

² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

3. THE COMMISSION SERVICES' OPINION

3.1. Scope of the work of the VAT Committee

The role of the VAT Committee is to provide general guidance at EU level for a harmonised interpretation and application of adopted VAT legislation. Therefore, the VAT Committee will not deal with cases that relate to adjudicate a dispute, nor will it discuss issues related to the interaction between the special schemes based on the proposal of a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age (ViDA proposal)³ since these fall outside the scope of its mandate.

3.2. Interaction between the SME and OSS special schemes

The cohabitation between the existing SME scheme and the OSS Union scheme is currently possible. A taxable person who meets the requirements can apply the SME scheme in the Member State(s) in which it is established and at the same time be registered for the OSS Union scheme and declare the distance sales made in the other Member States.

As from 1 January 2025, the cohabitation between the SME and OSS Union schemes will remain possible. A taxable person who meets the requirements could apply the SME scheme in its Member State of establishment – the Member State in which the seat of its economic activity is located – with access being opened for exemption in other Member States and at the same time be registered for the OSS Union scheme and declare the distance sales in the other Member States. The reporting of the transactions under the OSS and SME schemes would remain the same as detailed above.

3.3. Interaction between the SME and IOSS special schemes

The SME scheme and IOSS are mutually exclusive and will remain mutually exclusive also as from 1 January 2025. Only taxable persons with a seat of economic activity located in a Member State can be eligible to apply the SME scheme. This means that taxable persons with a seat of economic activity located outside the territory of the Community cannot apply the SME scheme.

The OSS guide⁴ explains that a taxable person using the SME scheme has to opt out of the SME scheme to be able to use the IOSS and will need a VAT identification number of the Member State in which he is established to register in the import scheme. The reason for this condition is to avoid the risk of non-taxation⁵.

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³ [Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules in the Digital Age](#)

⁴ [OSS guidelines en.pdf \(europa.eu\)](#)

⁵ See p. 21 of the OSS guide.

Question from Slovakia

A. EU OSS and SME scheme

According to Article 369b of VAT Directive Member States shall permit the following taxable persons to use this special scheme:

- (a) a taxable person carrying out intra-Community distance sales of goods;
- (b) a taxable person facilitating the supply of goods in accordance with Article 14a(2) where the dispatch or transport of the goods supplied begins and ends in the same Member State;
- (c) a taxable person not established in the Member State of consumption supplying services to a non-taxable person.

Based on the paragraph (2) of Article 369b of VAT Directive this special scheme applies to all those goods or services supplied in the Community by the taxable person concerned.

The taxable person identified for EU OSS shall declare all supplies of goods and provision of services in Member States of consumption in the EU OSS tax return, which is filled in the Member State of Identification. The taxable person also pays the VAT based on this tax return to its Member State of identification.

As regards application of EU OSS and SME scheme, in the Guide to OSS, there is written:

“Any taxable person established in the EU can make use of the Union scheme to declare supplies of goods and services covered by the scheme. A taxable person who is using the special scheme for SMEs is not excluded and can therefore register for the Union scheme. He needs a national VAT identification number from the Member State in which he is established (Member State of identification) to register for the Union scheme, but does not have to opt out of the special scheme for SMEs to use the Union scheme“ (page 21)

Current state

Currently, on the basis above mentioned, it is possible to use EU OSS and at the same time the SME scheme only in the Member State of establishment. However, there is an opinion, that if the taxable person uses the SME scheme in the Member State in which he is established and at the same time he notifies his decision to use the EU OSS, then according to the Art. 369b (2) of VAT Directive he is obliged to charge VAT also for distance sales of goods supplied to his customers in his Member State of establishment/identification, in which he uses the SME exemption.

SME scheme widening to non-established taxable persons from 2025

Having regards to further widening of SME exemption scheme for non-established SME taxable persons from 2025, as well as further widening scope of OSS¹, the issue will

¹ Council Proposal Directive, amending Council Directive 2006/112/EC as regards VAT rules for digital age (COM)2022 701

become more and more complexed and therefore it is necessary to have a clear legal background.

Within this context we have analysed two alternative how to consider the situation when there are two schemes (SME and OSS) applicable concurrently.

Alternative I

The Alternative I is based on the presumption that the taxable person identified in EU OSS is obliged according to Art. 369b (2) of VAT Directive charges VAT on supplies of goods and services covered by the EU OSS also in the Member State of consumption where he applies for SME exemption.

Other supplies of goods and services, not covered by the EU OSS, are exempt from VAT until the taxable person reach the threshold set by the Member State of exemption or the Union threshold².

Regarding the provision of services, the EU OSS covers only the services, which are supplied in the Member State in which the taxable person is not established³, i.e. in which he does not have his seat or a fixed establishment.

If this alternative was applicable, in the area of services covered by EU OSS there would be unequal treatment of services provided in the Member State of exemption, depending on the fact whether the taxable person is established via his seat or fixed establishment in the Member State of exemption.

The taxable person applying SME exemption and at the same time EU OSS, which does neither have its seat nor a fixed establishment in the Member State where is place of supply of services, would have to charge VAT for supply of the services and pay VAT via EU OSS filled in the Member State of identification. On the contrary, the taxable person having his fixed establishment in the Member State, in which is place of supply of services, would charge no VAT since in this case the provision of services is not covered by EU OSS.

We apply this alternative on the practical examples:

The Example 1:

The taxable person A, established (seat) in the Member State 1 and identified for EU OSS, supplies the IC distance sales of goods into 3 Member States – MS2, MS3 and MS4. The taxable person has notified in MS1 that he would apply the SME exemption in the MS2. The taxable person does not have any fixed establishment in Member States of consumption. While supplying the distance sales of goods and providing services for non-taxable persons, the taxable person is obliged to charge VAT of the all relevant Member States, MS2 including even if the taxable person is using the SME exemption (MS2) there. VAT charged is declared and paid via EU OSS returned in his MS of identification.

² Based on this alternative it is questionable whether the threshold for SME should include also supplies of goods and services which were subject to VAT covered by the EU OSS.

³ Art. 369b, letter c) of VAT Directive

The Example 2:

The taxable person A, seated in MS1 identified in EU OSS, supplies IC distance sales of goods and services into 3 Member States – MS2, MS3 and MS4. The taxable person has notified to MS1 that he would use the SME exemption in MS2, in which he has a fixed establishment. As for distance sales of goods, the taxable person shall be obliged to charge VAT for all Member States of consumption, MS2 including regardless he applies the SME exemption there. As regards the provision of services to non-taxable persons, the taxable person shall be obliged to charge VAT only for those services supplied in MS3 and MS4, which are Member States of consumption and in which the taxable person is not established⁴. VAT is declared and paid via EU OSS VAT return to his Member State of identification.

As regards services provided to non-taxable persons in MS2, there will be no VAT, because the taxable person uses SME exemption in this Member State and EU OSS is not applicable for those services due to the fact that the taxable person is established there via his fixed establishment.

Mentioned examples illustrate the unequal treatment of IC distance sales of goods and services when the taxable person follows this alternative.

Alternative II

The Alternative II is based on the presumption that a taxable person is registered in EU OSS, as well as is using SME exemption in some of Member States and therefore is not obliged to charge VAT on supplied goods and services in those Member States, in which he uses the SME exemption.

It means that the taxable person using EU OSS does not charge VAT on IC distance sales of goods and providing services with place of supply in the Member State in which he uses the SME exemption. The taxable person declares in his EU OSS VAT return only supplies of goods and services supplied in those Member States, in which he does not apply the SME exemption.

The Example 3:

The taxable person A, established via his seat in MS1 and registered in EU OSS, supplies IC distance sales of goods and services into 3 Member States – MS2, MS3 and MS4. The taxable person notifies his MS1 that he will use the SME Exemption in MS2. The taxable person does not have any fixed establishment in any of those Member States.

The taxable person is obliged to charge VAT on IC distance sales of goods and services only supplied in MS3 and MS4, in which he does not apply the SME exemption. He does not charge VAT on supplies of distance sales of goods and services in MS2 due to the SME exemption used in this Member State.

⁴ The taxable person cannot apply EU OSS for services provided in MS2 because the taxable person is established in this MS via his fixed establishment.

The Example 4:

The taxable person A, established via his seat in MS1 and registered in EU OSS, supplies IC distance sales of goods and services into 3 Member States – MS2, MS3 and MS4. The taxable person notifies his MS1 that he will use the SME Exemption in MS2, in which he does have his fixed establishment.

The taxable person is obliged to charge VAT on IC distance sales of goods and services only supplied in MS3 and MS4, in which he does not apply the SME exemption. He declares and pays VAT due via EU OSS VAT return. He does not charge VAT on supplies of distance sales of goods and services in MS2 due to the SME exemption used in this Member State.

The VAT consequences are the same for both examples in Alternative II.

Opinion of the Slovak Republic

We are of the opinion that concurrent application of SME exemption scheme and EU OSS should not be ruled out. When a taxable person wishes to apply SME exemption only in some Member States and in other Member States he does not want to or is not allowed to apply this exemption, in sake of decreasing of administrative burden and tax administration, the taxable person should be allowed concurrently using also EU OSS.

In order to maintain the same tax burden of a taxable person, who decided to use the simplification of OSS and a taxable person, who at the same time decided also the SME exemption, there should be the treatment expressed in Alternative II.

Pursuant to this approach, if a taxable person used SME exemption in some Member State, the IC distance sales of goods and services would be exempt from VAT in that Member State (where the SME exemption is applicable) even the IC sales of goods and services supplied in that Member State (SME exemption) are covered by EU OSS.

The fact, that a taxable person uses SME exemption in some Member States, should not affect the VAT treatment using the simplification via EU OSS. The tax burden of the taxable person should be the same regardless he decides to use EU OSS or not.

We would like to point out the fact that taxable persons exempted from VAT do not have the right to deduct VAT and cannot indicate VAT on their invoices⁵.

B. Special scheme for Importation (IOSS) and SME exemption

Pursuant to Article 369m of VAT Directive Member States shall permit the following taxable persons carrying out distance sales of goods imported from third territories or third countries to use this special scheme:

- (a) any taxable person established in the Community carrying out distance sales of goods imported from third territories or third countries;

⁵ Art. 289 of VAT Directive

- (b) any taxable person whether or not established in the Community carrying out distance sales of goods imported from third territories or third countries and who is represented by an intermediary established in the Community;
- (c) any taxable person established in a third country with which the Union has concluded an agreement on mutual assistance similar in scope to Council Directive 2010/24/EU (1) and Regulation (EU) No 904/2010 and who is carrying out distance sales of goods from that third country.

Abovementioned taxable persons apply IOSS for all his distance sales of goods imported from the third countries or third territories⁶.

As regards application of EU OSS and SME scheme, in the Guide to OSS, there is written:

“Any taxable person carrying out sales of goods imported from a third territory or a third country to a customer in the EU can use the import scheme to declare and pay VAT for these sales. A taxable person using the special scheme for SMEs however, has to opt out of the SME scheme to be able to use the import scheme and will need a VAT identification number of the Member State in which he is established to register in the import scheme. The reason for this condition is to avoid the risk of non-taxation.” (Page 21)

Based on the abovementioned Guide, the IOSS can be used only by a taxable person who does not apply the SME exemption. We fully agree with this, however we would like to note that there (in the VAT Directive) lacks this condition (if a taxable person decides to apply IOSS he cannot apply the SME exemption scheme). Against this background, there is no sufficient legal background for refusal of IOSS registration for taxable person using the SME exemption.

Opinion of the Slovak Republic

We would like propose to amend the Council VAT Directive in such a way that there should be a condition that IOSS could be used only by the taxable person not using the SME exemption scheme. This legal background would lead to that the goods with intrinsic value not exceeding EUR 150 imported from the third countries and third territories would be charged by VAT. Otherwise it would happen that a taxable person using SME exemption would use IOSS number upon importation and import would be exempted and at the same time the IC distance sales of goods would be exempted in the Member State where is place of supply of these goods and in which the taxable person uses the SME exemption.

The Council VAT Directive amendment would be carried out within the currently open Council Directive Proposal on VAT in the Digital Age.

⁶ Art. 369m par. 1 second subparagraph of VAT Directive