

Operators of Internet Marketplaces are Liable for the VAT of Their Traders

By **Susann Roll**

International online trade has become a huge business sector, in which it is often easy for traders to avoid VAT payments for sales, which are in fact VAT liable. To make VAT fraud more difficult, new German legislation came into effect on 01 January 2019, which makes electronic marketplaces like Amazon and eBay liable for the VAT liability of the traders using their platform. If they allow traders to use their platform and do not have documentation that the trader is registered for VAT in Germany, they are liable for the VAT that trader would have to pay. Thousands of online traders, who previously avoided VAT registration in Germany simply because the risk of discovery was very low, must now register with the German authorities and pay the VAT due on their online sales to German customers.

What's an electronic marketplace? It is "a website or any other means by which information is made available over the Internet which enables a third party not operating the marketplace to carry out transactions". The concept is therefore very broad. An operator is "anyone who maintains an electronic marketplace and enables third parties to carry out sales on this marketplace".

Obligations of operators

Operators are obliged to provide information on any traders that have registered on the marketplace. For registered professional traders, operators must keep records with

the following information:

- Name and address of the trader;
- The German tax number and VAT identification number (if available);
- The validity period of the certificate of tax registration of the trader that is issued by the responsible German tax office;
- Place of commencement of transport or dispatch and place of destination;
- Date of the sale and sales amount.

If private individuals register as traders, operators must still document the name, address and birth date of the trader, as well as

the above-listed information on the sales and the transport route.

Every professional trader must apply for a certificate that proves that they are a VAT-registered business in Germany. At the moment, this can only be done by filing an application form in hard copy and the certificate will also be issued in hard copy. The trader must send a copy of this certificate to the operator of the marketplace. Furthermore, traders from outside the EU also must name a German resident (e.g. a German tax advisor) who is authorised to receive any mail from the tax authorities.

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Benefitax GmbH is a tax consultancy and public auditing company located in Frankfurt, which is widely recognised as the financial centre of Germany. Benefitax predominantly serves German entities of foreign multinational groups, mid-size German companies with cross-border activities and wealthy private individuals.

The collected data must be transmitted electronically to the tax office by the operators.

Note: There are plans to introduce a fully digitalised process to apply and issue certificates, but it is not known when this will be available.

What happens if the operator does not oblige with this? It becomes liable for any of the traders' VAT liability. If it can show the certificate to the tax office, it is not systematically liable for the VAT, although there may still be circumstances in which it is. If the operator, as a prudent businessperson, did know or should have known that the trader is not fulfilling their tax obligations or not even to the full extent, the operator becomes liable for any VAT liability of the trader.

In case a professional trader is not complying with its tax obligations, the

tax authorities may inform the operator of this wrongdoing, in circumstances where they think that other measures to make the trader compliant will not. After having been informed of any wrongdoing, the operator becomes liable for any VAT on any sales in Germany the trader in question makes. That is regardless of the fact the trader provided the necessary certificate. They can only avoid liability by making it impossible for the trader to perform any sales transactions on their platform within a time period defined by the tax authorities.

Some traders may seek to register as private traders to avoid VAT registration. To avoid actions of that kind, operators become liable for VAT generated by sales transactions of these traders if they could have and should have known, after performing the diligence of a prudent businessperson, that the registered

trader is in fact a professional trader.

Traders from outside the EU must obtain a German tax number and certificate showing this and present the certificate to the marketplace operator that they use for their online business by 01 March 2019. Traders from other EU countries get more time and must present the certificate by 01 October 2019. To avoid any liability risks, marketplace operators may "shut out" businesses until they present the certificate. As it takes at least a few weeks to get a tax number in Germany, any online traders who have not acted yet should immediately do so.

Source: Bill of the Federal Government: Act on the Avoidance of Value Added Tax Losses in Trade with Goods on the Internet and on the Amendment of Further Tax Regulations, Federal Law Gazette, Book 1, Nr 45, 14 December 2018.

No Deal Brexit: Single Market vs Exports of Goods



By Dean Jefferies

The draft legislation recently issued by HMRC, in anticipation of a no-deal Brexit, focuses on measures to reduce friction when clearing goods that enter the UK (or enter another EU member state from the UK).

However, it is also important to understand and plan for the change to the UK VAT-compliance requirements.

If the UK adopts a model based on the current requirements for exporting goods outside of the EU, it will mean fundamental changes in how a business accounts for