The VAT E-Commerce Package and The Changes Taking Place as from 1st July 2021

From 1 July 2021, a number of amendments to Directive 2006/112/EC (the VAT Directive) will start to apply affecting the VAT rules applicable to cross-border business-to-consumer (B2C) e-commerce activities. The rationale for these changes is to overcome the barriers to cross-border online sales. In particular, the changes will address challenges arising from the VAT regimes for distance sales of goods and from the importation of low value consignments.

What are the main changes?

The €22 VAT exemption on small parcels being imported into the EU for delivery to consumers will be withdrawn. This exemption has been heavily abused by many sellers mistakenly or deliberately under-declaring the import values of goods to avoid VAT. Instead, VAT must be charged at the point-of-sale for consignments not exceeding €150. This VAT is may be declared and paid via a new submission, the 'Import One Stop Shop' (IOSS) or the Special arrangement scheme.

In this regard, the Commission has amended the UCC Delegated Regulation to provide for a lower, more manageable but still adequate level of data (a "super-reduced data set") in customs declarations on imports of low-value consignments (those below the threshold for application of customs duties of 150€). This legislation should mitigate, for both customs and traders, the impact of the sharp increase in the number of customs declarations.

The Import One Stop Shop (IOSS) scheme

Non-EU sellers will have the option to register under the Import One-Stop-Shop (IOSS) scheme. They may appoint a so-called intermediary to register under the IOSS on their behalf. If the IOSS scheme can be availed of and is opted for, VAT will be charged by the seller (or the intermediary appointed by the seller) at the point of sale to EU customer. No VAT will be charged by Customs at the point of importation; however, the submission of a customs import declaration is still mandatory, quoting the IOSS number. The non-EU seller or his intermediary will then be required to remit the VAT collected to the Member State of importation together with the IOSS Return.

The Special arrangement scheme

Where the IOSS is not or cannot be availed of, import VAT on distance sales of goods imported from outside the EU, may be collected by the customs representative, typically postal or courier operators.

First, the special arrangement scheme is optional, same as the IOSS scheme. The scheme is introduced as an alternative simplification for the collection of import VAT in cases where neither the IOSS scheme nor the standard VAT collection mechanism on importation are being used. Meaning goods are supplied to consumers were no import VAT and duties have been charged at moment of sale.

The special arrangement scheme can only be used if the EU country of destination of the goods and the EU country of importation are the same. This is necessary as the VAT becomes due in the EU country of importation and that EU country cannot collect the VAT applicable in another EU country.

How does it work?

Under the special arrangement, VAT is not paid at check-out. The customer pays the VAT to the company presenting the goods to customs, the declarant. Declarants must ensure that they do not deliver the goods until they receive payment of the VAT from the customer. That way, the declarant will only declare the VAT actually collected from the customers during a calendar month. This measure avoids that for goods not delivered or not accepted by a customer, the declarant would be liable to pay the VAT.

The goods are customs cleared under the deferred payment facility with the use of the Super Reduced Data Sets (SRDS - H7) declaration. The declarant must keep proof of non-delivery or non-acceptance from the customer to justify the waiver of the VAT due on those consignments. In such cases, the customs declaration will be invalidated, and the goods sent back to the original consignor. The VAT can be collected from the customer before delivery or at the moment of delivery.

Which economic operators can apply this scheme?

The scheme is designed in particular for postal operators and express carriers who typically declare LVC for importation. EU countries may require that the person making use of the special arrangement should comply with the conditions applicable for the granting of a deferred payment authorisation.

The deferred payment authorisation

Postal and courier operators using the 'Special arrangements' (F49) must apply for the deferred payment. It is emphasized that, if the postal or courier operator decides not to apply the 'Special arrangements' scheme, then individual payments will have to be made at time of release of the consignment, thus creating problems where the customer decides not to pay the VAT on delivery.

How to apply?

An official request sent to Director General Customs is mandatory including:

- The company details (name, address and EORI number)
- The reason why you are applying for the deferred payment facility
- Name of contact persons/ telephone numbers and email addresses, where mid-monthly and monthly statements are to be sent
- An indication of an amount for the deferred guarantee, which should be estimated and worked out upon realistic duties and taxes due to the Customs Department in a period of 45 days and should reflect such amounts
- Decide whether to make a deposit with Customs or issue a Bank guarantee (Please contact the Customs Debt Unit for requested wording of guarantee)
-

P.S. *As soon as the above process is completed, you will be contacted to initiate the procedure. It is best practice that deferred payment is granted to start at the beginning of the month. Please find below the terms and conditions.*

Terms and Conditions Applicable for Deferred Payment Facility

An applicant who wishes to benefit from the deferred payment facility has to produce a deposit or a bank guarantee, which is to be issued in favour of the Director General Customs. Such guarantee should cover Customs/Excise duties and any other taxes which may become due to the Customs Department upon the importation of goods. Amount of said guarantee should be estimated and worked out upon realistic duties and taxes due to the Customs Department in a period of 45 days and should reflect such amounts. As per Article 110 of the Union Customs Code such application is to be approved and authorized by the Customs administration.

As per Article 110 (b) of Union Customs Code, that is a calendar month is to be considered as 'the deferred payment period', which will include duties incurred during that particular month.

On the third working day of the following month an electronic statement, covering all dues if any to the Customs Department is issued by the Customs Debt Unit (CDU) and sent to the applicant benefiting from this facility. All dues are to be settled within 15 days after the statement is received. Failure to comply with this provision may result in the charging of interest, and possibly, revocation of the authorization.

It is to be noted that deferred payment authorization is subject to the following terms and conditions:

1. A declaration marked green (not selected for Customs control) will move automatically to status 'Goods released' after timeout.
2. An entry marked red (status 'Selected for control') will move directly to status 'Goods released' after Customs officer examines the merchandise and finalizes the inspection report.
3. Final status of all entries covered by deferred payment must be always 'Goods released'.
4. In circumstances where the amount of the Bank Guarantee is exceeded, if a further declaration is accepted, this last declaration will remain at status 'Awaiting payment', and hence will have to be paid at a cash point prior to release of goods.

5. Payment receipts will be issued by any cash point, on settlement of the monthly statement forwarded to the recipient by C.D.U.
6. When the consignee is different from the declarant, it is important that the representation (BOX 14) is declared as indirect representation (ticked) in order for the declaration to move to status 'Goods released'.
7. Deferred payment facility does not apply when:
   a) A declaration is at status 'Awaiting Payment' but not showing in the Accounts module.
   b) Any manual receipt which is not a Customs declaration.