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By PwC Deutschland | 01 February 2019

Tax authorities' circular on VAT liability of operators of an electronic market place

The tax authorities have published a circular setting out the official view of the application of the new rules on the VAT liability of operators of electronic market places introduced by the Finance Act 2018.

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The full name of the statute often referred to as the Finance Act 2018 is the “Act on the Avoidance of VAT Shortfalls in the Electronic Market Place and on Other Tax Provisions”. As its name suggests the Act has introduced into the VAT Act a provision imposing specific obligations on operators of electronic market places and a provision allocating a liability for the VAT shortfall to them.+ The new rules came into force on 1 January 2019.

According to the new provisions, operators of an electronic market place are obliged to keep information on potentially VATable supplies in Germany made by the users of their platform. The information - provided in the form of a certificate issued by the supplier’s local tax office - includes the name and address of the supplier using the platform, his tax number/VAT ID; in addition, details must be collected about the relevant supplies. Failure to meet these obligation can under certain conditions lead to the operator himself becoming liable for unreported VAT due on supplies provided using his/its platform.

The obligation to keep records arises even where no VAT registration has taken place. In such cases, details of the tax number and the VAT ID are not required. The records must be stored for ten years.

The certificates issued by the supplier’s local tax office will initially be issued in paper form until an electronic system has been set up. A standard form issued by the tax authorities is available (on the Finance Ministry’s website) to make the application for such a certificate but the application may also be made form-free, provided the required information is included. The period of validity of certificates will currently not extend beyond 31 December 2021. The certificate will serve the platform operator as proof that the supplier is subject to VAT but is not proof that he meets all his VAT obligations. Small traders also receive a certificate upon application.

Suppliers who do not make any domestic supplies and who are not subject to VAT are not required to provide a certificate.

Where the platform operator has doubts as to the authenticity of the certificate, he should approach the issuing tax office. Failure to do so could lead to the platform operator being held liable for any unpaid VAT.

The circular sets out the circumstances in which the platform operator may become liable for the VAT shortfall and considers the definition of an electronic market place (making the distinction between electronic market places and bulletin boards/agency forums).

Where the platform operator has a valid certificate he should not generally become liable for any VAT shortfall unless it is evident that he was aware of the failure of the supplier to meet his VAT obligations in full or he did not exercise reasonable care in ascertaining whether this was the case.

The platform operator is considered to have the relevant knowledge or not exercised reasonable care, where he ignores obvious or known facts, which would lead to the conclusion that the supplier was not meeting his VAT obligations.

A liability for the VAT shortfall may also arise where the platform operator fails to produce a certificate. In

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such cases, knowledge of the supplier's failure to meet his VAT obligations will not be relevant.

A liability for the VAT shortfall should not arise where the platform operator can show that the supplier did not register on his platform as an entrepreneur (so no certificate was provided) but the platform operator had other met with his obligations to record and retain information.

Whilst according to the statute, the new rules came into effect on 1 January 2019, the circular provides a period of grace allowing for the platform operators until 1 October 2019 to collect information on resident and EU/EEA- resident entrepreneurs and one until 1 March 2019 to collect information on other non-resident entrepreneurs.

Source: Federal Ministry of Finance circular of 28 January 2019 (III C 5 - S 7420/19/10002 :002)

Keywords

Finance Act 2018, VAT, electronic market place, secondary VAT liability