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E- Commerce

In the October edition of CEE News we focus on tax and other legal implications of electronic commerce in the CEE region due to its increasing importance in our business. E-commerce refers to selling and purchasing of products and services over the internet or other electronic networks. In this issue we provide an overview on some regulations in the most important CEE countries regarding e-invoicing, e-services (such as e-books) and the requirements which have to be met in order for a server to be considered as a permanent establishment.

Austria

E-invoicing

According to § 11 (2) VAT Act (UStG) an e-invoice in Austria may, with customer's consent, be issued electronically but it is only valid if the genuineness of its origin and the integrity of its content are given. According to the Ministry of Finance this can be performed either by means of an electronic signature or use of an EDI procedure. If the above requirements are not fulfilled the deduction or credit of input tax might be denied. Moreover, the applicable direction demands for an electronic signature a certificate of a supplier. Additionally, electronic invoices must be kept for a period of seven years in order to preserve the evidence of

the genuineness of their origin and the integrity of their content.

E-books

E-books are an example of electronic services. All foreign suppliers of electronic services must register for VAT in Austria unless already registered in another EU member state.

VAT exemptions in respect to e-books might be applicable in relation to educational services and to non-profit organisations.

Educational services have to be comparable to such services provided by a public school, university or an academic institution and that the courses offered involve not only advanced training but also education in a specific profession. Premises are not necessarily required, however, educational training must be provided in a collective way similar to those at distance universities.

Education is considered as a possible purpose for non-profit organisations. However, it is currently unclear whether the Austrian legislation admits non-EU charities and therefore it is strongly advisable to found an entity which is subject to Austrian Law.

Permanent establishment

In general, a server may represent a permanent establishment if the user has permanent power of disposition over it. Additionally, the company's main performance has to be effected via the server during a certain period of time.

"Web-hosting" does not meet the requirements of a permanent establishment due to lack of corporality as well as power of disposition.

As it is often unclear to the recipients of services whether the supplying enterprise has a permanent establishment in Austria, it is possible for such an enterprise to file for an attestation of it.

Provided by: RSM Exacta Wirtschaftsprüfung AG

Bulgaria

The Bulgarian VAT Legislation in respect of e-commerce is completely synchronized with the VAT Directive (2006/112/EC).

The place of delivery for VAT purposes could be determined under the following three general hypotheses:

1. Supply of goods via internet between two VAT registered entities in two different EU countries i.e. intra-Community acquisitions. The place of delivery is where the receiver of the goods is VAT registered.
2. Supply of e-services depends if the receiver of the services is VAT registered i.e. "reverse charge" rules.
3. A VAT registered entity sales goods to many non-VAT obliged persons in different EU countries. These supplies are VAT taxable in Bulgaria if the threshold of EUR 35,000 is reached for the current or previous year. For the supplier, obligation for VAT registration arises in Bulgaria. Seven days before the tax event with which the threshold is exceeded, the supplier has to submit a request for VAT registration before the Bulgarian Revenue Agency. The supplier for such kind of supplies has the right to register in Bulgaria for VAT purposes before the threshold is reached.

E-invoicing

E-invoicing is allowed in Bulgaria. There are some obligatory requirements in order to be valid: the receiver of the invoice has to confirm the receiving and the originality of the invoice has not to be impaired, using one of the following ways:

- Qualified electronic signature under the Bulgarian Legislation
- Electronic data interchange i.e. "EDI"
- Other ways

It is obligatory for the invoice (not only e-invoice) to contain:

- Name of the document
- Number of invoice
- Date of issuing
- Name and address of the issuer
- VAT number of the issuer
- Name and address of the receiver
- VAT number of the receiver
- Quantity and tape of good or service
- Date of the tax event
- Tax base of the supply
- VAT rate
- Amount of VAT
- The amount payable if it is different from the tax base and VAT

In case of supplies under the third hypothesis (see above) the invoice has to include also:

- VAT number in the other EU country, where the supplier is VAT registered
- The VAT rate which is applicable in the other EU country
- The amount of VAT due

It is important to note that the number of the invoice in Bulgaria has to be a serial ten digit number, and has to contain only Arabic digits. But for intra-Community supplies, this is not obligatory.

Investment incentives

There are no special tax incentives for companies or for individuals in connection with e-commerce.

Permanent establishment

Running a server may constitute a fixed place of permanent establishment, but it depends on many factors and has to be analyzed case by case.

Provided by: RSM BX LTD

Czech Republic

Generally, it is important to determine which law shall govern the transaction. This step is necessary with contracts entered into via the Internet just as much as with contracts signed with ink. It is standard practice that the parties to a contract explicitly determine the applicable law either directly in the contract or in their business terms. Should the Czech law be chosen, rather wide consumer rights have to be born in mind.

Czech tax law includes very little regulations relating specifically to e-commerce. All major accounting and tax issues have to be, therefore, solved based on the general tax law.

VAT aspects

Czech VAT law is fully harmonized with law of European Communities, with little specifics at national level. Moreover, the EU VAT Package was implemented as of 1 January 2010.

A non-EU provider of e-services to VAT non-payers throughout the EU may register in the Czech Republic as in a state of identification. Under such regime, service provider files VAT returns and pays VAT in the Czech Republic, as contrary to general obligation to register in each EU member state where the services are provided.

Shipping of goods to customers in the Czech Republic (international shipping) results in obligation to register VAT (and, consequently to file VAT returns and pay VAT) should the total turnover in the Czech Republic exceed CZK 1.14 mio. (approx. EUR 45 500).

E-invoicing

The invoice may, with customer's consent, be issued electronically provided it (a) bears all information required for paper invoices and (b) bears an electronic certificate (electronic mark) issued and verified by an accredited authority or the authenticity and integrity of the invoice are guaranteed by an electronic data interchange system.

In practice, most taxpayers do not use electronic billing and electronic records. The contractor often issues a tax document, scans it and e-mails to its customer – no original invoice is sent by post.

Permanent establishment

Czech law uses wide definition of permanent establishment. However, this quite wide definition is effectively narrowed by applicable double tax treaties.

In general, facilities used merely to store, display or deliver goods shall, in principle, not form a permanent establishment, even in case these form a fixed place of business. The similar applies to servers and other IT infrastructure.

Investment incentives

No specific investment incentives, tax breaks or preferential regimes are available for e-commerce projects.

Provided by: RSM Tacoma

Germany

In General, e-commerce based activities are treated for tax and legal purposes in the same way as any other business activities. In this context, e-commerce is defined as business activities initiated or carried via the internet or any other electronic medium.

Below are some specific tax and legal rules applicable on e-commerce based business activities carried out in Germany. Note that the following comments only briefly outline the relevant regulations and do not comprise a full scope description of the applicable rules; this is subject to a case law based examination of each single business activity.

Value added tax issue

The German value added tax rules for e-commerce activities have been implemented on the basis of EU law and should therefore in principle correspond with the relevant legislations in the other EU member states. The German value added tax code provides special rules for the question where e-commerce activities are carried out, i.e. whether a business activity is carried out in Germany or abroad for German value added tax purposes.

Special German value added tax rules are, in general, only applicable on so called **online activities**, i.e. business activities whose core business activities are carried out via an electronic medium. In contrast, so called **offline activities** are treated under the general German value added tax rules. Offline activities are especially business activities which have originally been initiated via the internet but are actually carried out via physical business activities (e.g. the delivery of a book that was ordered via the internet).

Online business activities rendered **by a German entrepreneur** to foreign business clients (**B2B activities**) are deemed to be carried out abroad for German value added tax purposes, i.e. are not subject to German value added tax. However, the so called reverse charge procedure has to be kept in mind. In case the activities are rendered to business clients having their place of business in Germany the relevant activities are generally subject to German VAT at 19%.

Online business activities rendered by a **German entrepreneur** to foreign non business clients (**B2C activities**) not living in the EU are deemed to be carried out abroad and thus not subject to German value added tax. In case the business activities are rendered to German clients or clients living in another member state of the EU the business activities are deemed to be carried out in Germany, i.e. are in general subject to German value added tax at 19%.

Online business activities rendered by a **foreign entrepreneur** to a German client (**B2C activities**) are generally subject to value added tax in another member state of the EU, in case the entrepreneur is situated outside Germany but within the borders of the EU. In case the entrepreneur is situated outside the EU the online business services are subject to German value added tax.

Online business activities rendered by a **foreign entrepreneur** to a German entrepreneur (**B2B activities**) are generally subject to value added tax in Germany. However, the reverse charge procedure might have to be applied.

Taxation of permanent establishments

A server through which e-commerce activities are carried out can constitute a permanent establishment (PE) and may allow the income taxation of non-residents' profits. A server is considered to be a PE if the following requirements are fulfilled:

- The server has physical presence and is fixed at a certain place for a sufficient period of time
- The server is at the disposal of the enterprise
- and finally, in DTA-cases the activities carried out through the server go beyond the types of preparatory and auxiliary services. (This can be assumed if the server is used for economical and not only technical functions by running "intelligent software" – e.g. vendor machines.)

Accounting issues

The law also separates the accounting and tax implications for running an e-shop and sales transactions performing.

- **E-shop (E-site)** is booked as intangible asset in principle. After introduction of the new Commercial law (BilMoG) regarding self-generated E-site an entity chooses either recognition as an asset or expenditure to p/l. E-site Purchase (R&D) costs are represented in the bookkeeping and tax accounting and amortised as set up by entity-adopted accounting policy. Hosting and support costs (maintenance, administration, backup, new referencing, safety control, updates, etc.) are recorded in the current expenditures. Accounting policies regarding E-Site are mostly defined in interpretation of law.
- **Sales transactions** are accounted under the local GAAP. Revenue is recognized at the date of sales transaction

Legal issues

German civil law provides some special provisions that have to be observed when concluding contracts via the internet or any other electronic medium. These provisions require the entrepreneur especially to offer the clients the possibility to read and save the general terms and conditions and to correct any input made at the online platform. Additionally, the entrepreneur is required to confirm any electronically concluded contract immediately.

The aforementioned regulations have to be considered at any e-commerce business activities irrespective the fact whether the contracting party is an entrepreneur or not.

The aforementioned regulations are not applicable in case the relevant contract is concluded via an individualist electronic medium, e.g. in case the contract is concluded via a personal e-mail

account. However, in this case other regulations such as special information and withdrawal rights have to be considered. In some cases (especially in case a contract with a non-business client is made) the aforementioned regulations might have to be considered collectively.

Provided by: RSM Germany

Poland

E-commerce activities although specific, are not subject to any special tax regulation in Poland. The Polish tax law solely distinguishes tax implications for the e-commerce activity performed by professional and non-professional entities. This distinction is crucial, because professional entities are obliged to register its commercial activity by Tax Authority and local municipality. However there are no further requirements to be appropriately licensed when performing e-commerce activities.

Income derived from this activity is treated similarly to any other income derived from activities carried out in a more traditional way. Revenues from e-commerce are, depending on the type of taxpayer, subject to provisions of the Corporate Income Tax Act (Journal of Laws of 2011, Nr 74, pos. 397 with amendments) – hereinafter CIT, or the Personal Income Tax Act (Journal of Laws of 2010 No. 51, pos. 307 with amendments) – hereinafter PIT.

The tax liability in income taxes arises on a day in which the supply of goods or the service was performed, but not later than on the day of invoicing or payment (Article 14 paragraph 1c PIT or Article 12 paragraph 3a CIT). The method of taxation and scale depends on the legal form of activity, although generally the scale is not higher than 19% of total income, excluding VAT.

E-commerce entity with turnover exceeding 150 000 PLN (about 33 000 EUR) in the previous fiscal year is subject to VAT tax (23%) and obliged to appropriate registration for VAT purposes by responsible Tax Authority (Article 116 paragraph 1 of Goods and services tax Act – hereinafter VAT Act).

Sales to natural persons with no commercial activity exceeding 40 000 PLN (about 9 000 EUR) in a given fiscal year are subject to recording of the turnover and amounts of output tax using electronic cash registers (Article 111 paragraph 1 VAT Act).

If the amount of a single transaction exceeds 1000 PLN (about 230 EUR), the purchaser needs to be aware, that when the seller is not registered as a VAT taxpayer, the purchaser is obliged to pay 2% of tax on civil law transactions.

In addition, the e-commerce entity should comply with a number of regulatory documents, such as:

- **The Act from July 2, 2004 on Freedom of Conducting Business Activity** (Journal of Laws of 2010, Nr 220, pos. 1447 – with amendments);

- **The Act from September 15, 2000 Corporate Code** (Journal of Laws of 2000, Nr 94, pos. 1037 – with amendments);
- **The Act from February 16, 2007 on Competition and the Protection of Consumers' Interests** (Journal of Laws of 2007, Nr 50, pos. 331 – with amendments);
- **The Act from April 16, 1993 on Unfair competition** (Journal of Laws of 2003, Nr 153 pos. 1503 – with amendments).

Provided by: KZWS

Slovak Republic

Slovak tax legislation contains limited guidance with respect to e-commerce.

VAT aspects

The Slovak VAT Act has implemented the special scheme for the supply of electronic services. The non-established EU person supplying electronic services to a non-taxable person established in the Slovak Republic may register in the Slovak Republic as a state of identification. The provider of electronic services shall file the VAT returns in Slovakia on a quarterly basis.

E-invoicing

The VAT legislation allows issuing electronic invoices, subject to the customer's consent. The electronic invoice must be signed by an "electronic signature". Issuing electronic invoices is not common in Slovakia.

Permanent establishment

A permanent establishment is a fixed place of business through which the tax non-residents carry on their business activities in Slovakia. The Slovak legislation does not contain any specific provisions with respect to e-commerce. It is, however, generally understood that carrying on business through a server located in Slovakia may create a permanent establishment.

Investment incentives

There are no specific investment or tax incentives available for e-commerce projects.

Provided by: RSM TACOMA

Turkey

E-commerce is not specifically regulated in Turkey. For international transactions regular tax rules should be applied. Moreover, a double taxation treaty exists which is in effect bilateral. The withholding tax and VAT are imposed on certain services and intangibles.

E-invoicing

There are only two types of companies, Inc. and Ltd. which are allowed for electronic invoicing and will be subject to tax. In order to invoice electronically authorisation of the Ministry of Finance is required. Furthermore, an adequate IT-structure is mandatory and its implementation should be approved by the government.

E-books

In respect to e-books certain regulations are being prepared by the government. However, these preparations are still in process and only a draft exists which is not in operation yet. A unique IT programme for the whole country creates a considerable obstacle which is, however, expected to be resolved soon.

Provided by: RSM Kapital Karden

Ukraine

Tax and other legal implications of e-commerce

Under the law of Ukraine (cl.4.4 of DSTU 4303:2004), e-commerce (sale of goods and services via Internet) is defined as retail trading. An e-commerce entity is required to be appropriately licensed (obtain Trading Patent, cl. 267.Tax Code of Ukraine – hereinafter -TCU).

The law also separates the accounting and tax implications for **running an e-shop** and **sales transactions** performing.

- **E-shop** (E-site) is booked as intangible asset. E-site Purchase (R&D) costs are represented in the bookkeeping and tax accounting and amortised as set up by entity-adopted accounting policy (cl.144.1.of TCU). Hosting and support costs (maintenance, administration, backup, new referencing, safety control, updates, etc.) are recorded in the current expenditures (cl.138.10.3.of TCU).
- **Sales transactions** are accounted under the local GAAP. Income is booked at the date of sales transaction. Income tax is calculated quarterly at 23% rate of profit margin.

An e-commerce entity with a gross income that exceeds 300 000 UAH (about 30 000 EUR) for the period of last 12 months is subject to VAT tax (20%) with appropriate VAT taxpayer registration in the Tax Authority.

E-invoicing in itself does not create tax liabilities. The earlier event of:

- a) date of cash receipts (on bank account, cash register, encashment in bank); or
- b) date if shipment of goods or date of the document that confirms service delivery is tax liable, under cl.187.1 of TCU.

Cash payments are required from an e-commerce entity to use a cash-register registered with the Tax Authority (cl.1. of Law № 265 and Regulations № 103). They can be placed either in the e-shop office or storehouse, depending on where the cash payment is made.

In case of courier delivery, the courier must use a portable cash-register and issue a receipt of a preset form and content.

Investment incentives

There are certain tax incentives for e-commerce entities – single tax payers that are subject to simplified taxation scheme.

Entities - Single Tax payers with turnover of less than 1 000 000 UAH (100 000 EUR) are subject to 10% single tax of their total revenue. The individuals – single tax payers with turnover of less than 500 000 UAH (50 000 EUR) are subject to Single Tax of approximately 600 UAH (60 EURO) per month.

Additionally, the e-commerce entity should comply with a number of regulatory documents, such as:

- Law “On Protection of Consumers Rights” as of 12.05.91 No1023-XII (as amended);
- Procedures of Trade by Ordering of Goods and Outdoor Trade, approved by the Order of the Ministry of Economics of Ukraine as of 19.04.2007 No 103 (registered with the Ministry of Justice of Ukraine on 16.10.2007 under No 1181/14448);
- Procedures of Retail Trade of Nonfoods, approved by the Order of the Ministry of Economics of Ukraine as of 19.04.2007 No 104 (registered with the Ministry of Justice of Ukraine on 08.11.2007 under No 1257/14524);
- Procedures of Retail Trade of Foodstuff, approved by the Order of the Ministry of Economics of Ukraine as of 11.07.2003 No 185 (registered with the Ministry of Justice of Ukraine on 23.07.2003 under No 628/7949, as amended);
- Resolution of Cabinet of Ministers of Ukraine - On Approval of Trade Procedures and Provision of Trade Services for People - as of 15.06.2006 No 833 (as amended).

Provided by: RSM APiK

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