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COMMENTARY

Modernizing the European VAT System for Cross-Border B2C E-Commerce

In a world where e-commerce is on the rise, it has long been recognized that the current European Union Value Added Tax ("VAT") rules and formalities are woefully outdated. Thus, in early December 2016, the European Commission ("Commission") released a proposal ("Proposal") to modernize the VAT regime applicable to B2C e-commerce activities taking place within the EU.[1] At the same time, the Commission has also proposed to tackle the exemption from VAT on goods purchased online from non-EU businesses.

According to the Commission, modernization is required as the current VAT regime: (i) is complex and costly; (ii) leads to revenue losses for Member States; and (iii) blocks the establishment of a level playing field, as non-EU companies seek to benefit from the VAT exemption on imported goods purchased online for less than €22. In addition, the Commission wants to deal with the unequal treatment of paper publications versus e-publications for VAT purposes.

The Commission states that the Proposal will allow consumers and companies, in particular small and medium-sized enterprises ("SMEs") and start-ups, to buy and sell goods and services online more easily and with less cost and burdens within the EU, and will thereby improve the competitiveness of EU businesses. All this will encourage and expand cross-border trade.

To that end, the Commission has come up with the following four new measures to support the digital economy:

New VAT rules for sales of goods and services online	Simplifying VAT rules for micro-businesses and start-ups	Action against VAT fraud from outside the EU	Equal rules for taxing e-books, e-newspapers, and their printed equivalents
Modernized VAT rules will allow many online businesses to deal more easily with their VAT obligations in one place ("One Stop Shop")	VAT on cross-border sales < €10,000 will be handled as wholly domestic transactions. New, less complicated procedures for cross-border sales < €100,000	Action is required in order to avoid unfair competition	Enable Member States to reduce VAT rates for e-publications

1. For more information, please see the press release of the Commission and the Q&A on VAT for e-commerce.

The Proposal will now be submitted to the European Parliament for consultation and to the Council of the European Union for adoption, which is planned for sometime in the course of 2017. Thereafter, the Proposal will need to be implemented by each Member State.

The Proposal

New VAT Rules for Sales of Goods and Services Online. Currently, online businesses must register for VAT in all Member States in which they are active. The Commission proposes to simplify this process by expanding the so-called "One Stop Shop" application, currently only available for e-services, to the online sale of goods and services. The "One Stop Shop" is an online system allowing businesses to: (i) register for VAT electronically in a single Member State for all cross-border activity; (ii) declare and pay the VAT due in a single electronic quarterly return; and (iii) otherwise generally work with the tax administration of their own Member State.

The local tax administration takes care of transferring the VAT revenues to the relevant Member States to which the company has sold its goods/services. The Commission expects the administrative burden and cost on cross-border e-commerce companies will decrease if they can more easily deal with their VAT obligations in one place, and, in turn, it is hoped that VAT revenues for Member States will actually increase.

Simplifying VAT Rules for Micro-Businesses and Start-Ups. In order to further reduce the VAT compliance burden, in particular for online start-ups and micro-businesses, an annual threshold of €10,000 is proposed under which cross-border sales will be treated as domestic sales for VAT purposes, with VAT paid to the relevant local tax administration. As a result, small businesses will be able to follow the record-keeping and invoicing requirements of their home country. In addition, a second yearly threshold of €100,000 will make VAT obligations easier for SMEs that do not qualify for domestic treatment but may nevertheless benefit from simplified procedures for identifying where their customers are located.

Action Against VAT Fraud from Outside the EU. Goods purchased online from non-EU businesses that cost less than €22 are currently exempt from VAT. Although individually small, approximately 150 million such parcels are imported into the EU free from VAT per annum, which then adds up. Consequently, EU businesses are placed at a competitive disadvantage as they cannot claim such an exemption. In addition, high-value imported goods are often undervalued or inaccurately described in the importation paperwork in order to benefit from this VAT exemption. As a result, the Commission has concerns that this exemption is being abused, leading to unfair competition between EU and non-EU B2C e-commerce businesses. The Commission has therefore decided to remove this exemption.

Equal Rules for Taxing E-Books, E-Newspapers, and Their Printed Equivalents. Current VAT rules allow Member States to tax "hard copy" printed publications, such as books and newspapers, at reduced or zero rates. Those rules exclude e-publications, meaning that these electronic products must be taxed at the standard VAT rate. Under the Proposal, Member States will have the possibility to align the rates on e-publications to those that are applied to their printed equivalents.

Jones Day's First Impressions from an EU and U.S. Perspective

Initiatives to reduce the administrative burdens and cost to companies can only be encouraged, especially as they should render the EU an attractive place for doing online business. However, the Commission's Proposal to no longer exempt from VAT certain imported goods—those costing less than €22 and purchased online from non-EU businesses—will, of course, add a greater burden and costs to foreign-based e-commerce suppliers. Although creating a level playing field is a laudable goal, will this proposed measure, in practice, negatively impact the B2C e-commerce between third-country online businesses and consumers in EU Member States?

For example, we assume there will be a slight increase in the prices of certain imported goods. In addition, if a product is available in both markets, EU consumers may be inclined to turn to EU businesses for their online purchases, especially as the delivery time and cost of certain products from outside the EU might prove significant, and those products may be subject to customs and excise duties.

Thus, what is good news for EU vendors and customers may mean not so good news for online businesses in third countries such as the United States. According to the Commission, this effect should be counterbalanced by consumer certainty that the price paid online will not be topped up by extra charges on delivery due to VAT being assessed without notice upon import.

Lawyer Contacts

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com/contactus/.

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