VAT Rules Applicable to non-Union and Union One Stop Shop Schemes and to Platforms

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The new value-added tax (VAT) rules applicable to e-commerce came into force on 1 July 2021. The key rules to be applied from 1 April 2021 and from 1 July 2021 are presented hereinafter.

Contents

For the sake of simplicity, we will refer to value added tax according to the Union regulations, i.e. as VAT.

I. Statutory environment

The provisions of the so-called digital VAT package were incorporated into Council Directive 2006/112/EC on the common system of value added tax (hereinafter: VAT Directive), Council Implementing Regulation (EU) No 282/2011 on laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (hereinafter: VAT Implementing Regulation), and Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax[1]. The provisions - in line with the VAT Directive - are included in the VAT Act[2] and in the VAT Implementing Regulation. The latter is directly valid and applicable in all Member States of the European Community (hereinafter: Community). Union rules were transposed into Hungarian legislation by Act CXVIII of 2020 on the amendment of certain tax laws (hereinafter: Amendment Act). In addition, regarding the rules in effect since 1 July 2021, Act LXIX of 2021 on the amendment of certain tax laws contains some clarifications.

II. Objective of the new regulations, summary of modifications

The objective of the e-commerce or digital VAT package is to

- ensure equal conditions of competition among Union and non-Union enterprises,
- strengthen the principle of taxation according to the place of consumption - in other words, the country of destination,
- support the combating of VAT fraud, and
- simplify the payment and the collection of taxes, thus facilitating cross-border trade.

In order to achieve the above objectives, the regulations will be modified on the following points as of 1 July 2021:

- place of supply of intra-Community distance sale,
- introduction of the VAT liability of electronic interfaces (platforms),
- extension of the application of One Stop Shop schemes,
- elimination of the VAT exemption on import consignments of low value, introduction of alternative solutions for the payment of import VAT.

[1] The modifications were incorporated by the following community legislation:
1. Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods;
2. Council Implementing Regulation (EU) 2017/2459 of 5 December 2017 on amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax;
3. Council Regulation (EU) 2017/2454 of 5 December 2017 on amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax;
4. Council Directive (EU) 2019/1995 of 21 November 2019 amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods;
5. Council Implementing Regulation (EU) 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods;
6. Council Decision (EU) 2020/1109 of 20 July 2020 amending Directives (EU) 2017/2455 and (EU) 2019/1995 as regards the dates of transposition and application in response to the COVID-19 pandemic.

[2] Act CXXVII of 2007 on Value Added Tax.

The changes related to imports of goods are described in Information Leaflet no. 97. titled 'The Import One Stop Shop Scheme and the Settlement of Import VAT'.

III. Rules of intra-Community distance sale

Intra-Community distance sale is basically identical with distance sale as specified by the VAT Act in force before 1 July 2021.

Pursuant to the VAT Act[3], intra-Community distance sale takes place when the goods are dispatched or transported as a consignment by the seller itself or by another person for the seller - including dispatch or transport with the indirect participation of the seller - from a Member State of the Community other than the one in which the dispatched or transported product - addressed to the name of the customer - is located at the time of its arrival as a consignment or when transport ends, provided that the following conditions are met:

a) the goods are sold to

aa) a taxable person or a non-taxable legal person, whose intra-Community acquisition of goods is not subject to VAT pursuant to Section 20 (1) a) and d); or

ab) any other non-taxable person or organisation; and

b) the goods sold:

ba) are not new means of transport[4]; and

bb) not for assembly or installation, with or without a trial run.

Based on the above points, the rules of intra-Community distance sale can be applied only if the goods are sold to the following person(s)[5]:

a) non-taxable persons,
b) taxable persons carrying out only supplies of goods or services in respect of which VAT is not deductible (including taxable persons with individual exemption), whose intra-Community acquisitions are not subject to VAT,
c) farmers of special legal status, who are not liable to pay VAT on their intra-Community acquisitions,
d) non-taxable legal persons, whose intra-Community acquisitions are not subject to VAT,
e) any person if the intra-Community acquisition of goods is not subject to VAT because if the transaction was a domestic sale of goods, it would be exempt from VAT according to Sections 103, 104 and 107 of the VAT Act (for example, products serving the operation of certain means of water or air transport, and sales to diplomatic corps or international organisations).

[3] VAT Act Section 12/B (1).
[4] VAT Act Section 259, point 25.
[5] VAT Act Section 12/B (1) a).

As of 1 July 2021, **the following transactions qualify as intra-Community distance sale**: when the seller sells a product with a destination in a Member State other than the Member State of dispatch to a non-taxable buyer, or to a taxable buyer who is not liable to pay VAT on intra-Community acquisitions (e.g. to a taxable person with individual exemption, to a taxable person involved only in VAT exempt activity), i.e. to the final buyer, and the product is dispatched and transported by the seller or by a third party hired by the seller from one Member State to another. The amended regulation confirms the fact that the concept of intra-Community distance sale includes the case when the dispatch and the transport are carried out with the indirect involvement of the seller.

The VAT Implementing Regulation[6] contains a list of examples for cases **when it should be deemed that the product was dispatched or transported by the seller or on the order of the seller**, including the case when this happened with the indirect involvement of the seller. The cases are as follows:

- if the seller has the goods dispatched or transported by a third person as a subcontractor, who will deliver the goods to the buyer;
- if the goods are dispatched or transported by a third person, but the delivery of the goods to the buyer is partly or fully the seller's responsibility;
- if the seller bills the transport costs and collects them from the buyer and transfers them to a third party, who will organise the dispatch or the transport of the goods;
- if the seller facilitates the delivery service extended by the third person to the buyer in any way, establishes the connection between the buyer and the third person, or provides the third person in any other way with the information required for the delivery of the goods to the buyer.

The VAT implementing Regulation also says that 'it cannot be deemed that the goods were dispatched or transported by or for the seller if the goods are transported by the buyer itself, or the buyer organises the transport by third persons, and the seller is not involved, either directly, or indirectly, in the dispatch and transport of the goods, and does not provide any assistance to these activities.'

The modification actually brought a change in the rules related to the place of supply. The relevant provision[7] says that 'in the case of intra-Community distance sale of goods, the place of supply is the place where the goods are located at the time when dispatch or transport of the consignment of goods addressed to the name of the customer ends', i.e. intra-Community distance sale - according to the principle of taxation according to consumption - is performed at the destination of the goods, and the tax revenue is due to the Member State of destination. In addition to the addition of this new provision, the regulation cancels the thresholds of EUR 35,000 and 100,000 for distance sales.

In parallel with the modification of the place of taxation **it is now possible for the taxable person to meet its liability to pay and declare VAT regarding intra-Community distance sales by using the One Stop Shop scheme** (OSS - One Stop Shop) (see points IV-V). It is important to emphasize that the use of **the One Stop Shop scheme (OSS scheme) is not an obligation, but an option, which allows the taxable person**

[6] VAT Implementing Regulation Article 5a.
[7] VAT Act Section 29, point a).

to skip registration as taxable person in the Member States of destination because of its VAT payment and declaration obligations from certain transactions realised in other Member State(s) of the Community, and to meet this obligation in one Member State, by using the One Stop Shop scheme.

In order to **ease the administrative burdens of small enterprises,** the modification extends the already known facilitation specified in Section 45/A (3)-(6) of the VAT Act in force until 1 July 2021 to taxable persons involved in intra-Community distance sale (too).[8]

If the taxable person selling the goods

- is established with economic purpose only in one Member State of the Community, or in the lack of establishment with economic purpose it has its permanent address or the place where it usually resides only in one Member State of the Community, and
- in a given calendar year and – provided that it supplied such goods or services – in the previous calendar year extended cross-border services to non-taxable persons in a Member State other than that of its establishment in a value not exceeding EUR 10,000 (price without VAT) [9] (telecommunication, radio and audiovisual media service, electronically extended service), or carried out intra-Community distance sale,

then **in the case of these transactions, the place of supply remains the Member State where the taxable person is established or where the goods are dispatched, so the rules of that state apply to taxation.** However, the rule in Section 49/A of the VAT Act does not apply to the case when a taxable person established only within the country performs an intra-Community distance sale in a way that the goods are dispatched or transported from a Member State other than its own. This means that the place of supply of this latter intra-Community distance sale will be the Member State of destination in each case, regardless of the fact that the rules of Section 49/A apply to the seller within its country. However, the price of this intra-Community distance sale dispatched from another Member State shall not be included in the threshold of EUR 10,000.

If the taxable person exceeds the threshold of EUR 10,000 with any transaction, the above facilitation – i.e. taxation according to the place of establishment or the place of dispatch of the goods (i.e. Hungary) – cannot be applied[10]; the place of supply has to be determined according to Section 29 a) and Section 45/A (1) of the VAT Act, and the VAT in the rate specified by the Member State of the place of supply has to be charged also on the price of the transaction that makes the taxable person exceed the threshold. Pursuant to the relevant rule in the Government Decree on Tax Administration[11], the exceeding of the threshold has to be reported to the tax authority within 15 days.

[8] VAT Act Section 49/A.
[9] VAT Act Section 45/A (1).
[10] VAT Act Section 49/A (2).
[11] Government Decree 465/2017 of 28 December on the detailed rules of tax administration procedures, Section 16 (3).

For the conversion of the threshold of EUR 10,000, the exchange rate of the European Central Bank (ECB) valid on 5 December 2017 has to be used.[12] In the case of Hungary, this means an exchange rate of 313.96 HUF/EUR, i.e., with the rules of rounding, the threshold applicable to domestic taxable persons is HUF 3,100,000. The threshold of EUR 10,000 is valid for all – and not separately for individual – intra-Community distance sales carried out by the taxable person and for cross-border supply of services to non-taxable persons in Member States other than the state of the taxable person's establishment, if the taxable person performs all these transactions. In addition, it is important to note that the threshold of EUR 10,000 is not to be monitored separately for each Member State, but the net value of all sales to buyers in Member States other than the state where the seller is established has to be considered.

At the same time, even if the taxable person does not reach the threshold of EUR 10,000, it may decide to meet its tax liabilities in the Member State of consumption according to the main rule[13] defined for intra-Community distance sales and cross-border services (and for this purpose, it may register for the One Stop Shop scheme), but in this case, it may not divert from this option until the end of the second year following this decision.[14]

Summarising the above points: **a domestic taxable person involved in intra-Community distance sale has to charge the VAT rate specified in the VAT Act on goods and cross-border services supplied until the threshold is not exceeded.** If the threshold of EUR 10,000 is exceeded, or under this limit, according to its choice, the taxable person has to charge VAT with the rate specified in the VAT rules of the Member State of the destination of the goods or the Member State of the establishment (in the lack of that, the permanent address or the place where it usually resides) of the non-taxable person using the service, related to the service).

In cases where the EUR 10 000 threshold has not yet been reached by the taxpayer and it registers in the EU one-stop shop, but does not make a declaration under Section 49/A (3) of the VAT Act that it does not apply the administrative simplification for small businesses described above, this is to be considered, within the meaning of the new provision of the VAT Act[15], effective from 24 November 2022, that by opting to use the EU one-stop shop[16] the taxpayer is also opting for taxation according to the main rule[17], i.e. the place of consumption, rather than the simplified rules. That is, if the taxable person is registered in the OSS, he/she will have to declare all his/her Intra-community supplies covered by the EU special scheme in this system, irrespective of the value threshold. Thus, these supplies cannot be included in the Hungarian VAT return (no. 65) even if the taxable person has not yet reached the EUR 10 000 threshold.

If the taxpayer opts for taxation according to the main rules instead of the administrative simplification (such as registering for the EU one-stop shop[18]), he or she cannot deviate from this choice for two years. A new rule has been added to the VAT Act[19], effective from

[12] VAT Act Section 256 (3).
[13] VAT Act Section 29 point a), 45/A.
[14] VAT Act Section 49/A (3)-(4).
[15] VAT Act Section 49/A (5).
[16] VAT Act Section 253/I (1)-(2).
[17] VAT Act Section 29 point a), Section 45/A.
[18] VAT Act Section 49/A (5).
[19] VAT Act Section 253/J (8).

28 August 2023, to ensure that being bound by the two-year choice requirement for taxable persons registered in the EU one-stop shop system is verifiable. The new rule provides that where a taxable person no longer applies the EU one-stop scheme (ceases to apply the special scheme or is excluded from applying the special scheme by the state tax and customs authorities) and two years have not yet elapsed from the year following the year of registration under the EU scheme, he/she must make a declaration as to whether he/she is a taxable person who was otherwise eligible for the exceptional rules on administrative simplification when registering under the EU one-stop scheme.

In the case when the taxable person selected individual exemption, then, until it exceeds the threshold of EUR 10,000, if it does not take advantage of the above choice, the Hungarian VAT rules will apply to its intra-Community distance sales, therefore, these sales will be exempt from VAT. Pursuant to the relevant rules of the VAT Act[20], the price of the intra-Community distance sale completed within the country also has to be considered in the calculation of the upper limit of HUF 12,000,000 that allows for the selection of individual exemption.

The individual exemption may be applied by a taxable person established in the country only to transactions carried out in the country. Thus, among other things, the value of transactions carried out abroad by a taxable person exempt from VAT does not have to be included in the threshold that qualifies for the individual exemption. However, under the new rules on e-commerce, intra-Community distance supplies made by an individual exempt taxable person may be taxable in the country. Such a case may arise - not including intra-Community distance sales made within the Community pursuant to Section 49/A (1) of the VAT Act - if a taxable person registered in Hungary makes a supply to Hungary from stock situated in another Member State of the Community other than Hungary. In these cases, given the special treatment of these transactions under the special rules, the taxable person may not act in individual tax exempted capacity[21] and these receipts are not included in the HUF 12 000 000 threshold[22].

If the taxable person with individual exemption decides to apply the main rule for intra-Community distance sales[23] (i.e. taxation according to the Member State of consumption) or if he/she exceeds the EUR 10 000 threshold, then, considering the fact that the transaction is performed in the Member State of destination, and that the individual exemption does not cover transactions performed in other Member States, the sale of the goods is subject to VAT defined in the Member State of the place of supply.

A taxable person may not act as an individual tax exempt person in respect of intra-Community distance supplies of goods effected within the Community other than in the domestic territory[24], and the free of tax consideration for such supplies shall not be taken into account in calculating the HUF 12 000 000 threshold.[25]

The Act establishes the possibility for the taxable person to deduct input tax relating to taxable intra-Community distance supplies made by the taxable person who is under

[20] VAT Act Section 188 (1).
[21] VAT Act Section 193 (1) point a).
[22] VAT Act Section 188 (3) point h).
[23] VAT Act Section 29 a).
[24] VAT Act Section 193 (1) point d).
[25] VAT Act Section 188 (3) point h).

individual tax exemption from VAT, provided that the other conditions for the deduction are met.[26]

The new rules for taxpayers under the individual tax exemption scheme entered into force on 24 November 2022, but will apply from 1 January 2022[27], taking into account that the individual tax exemption scheme is an optional tax regime for the calendar year.

IV. Background, the extension of the One Stop Shop scheme

Since 1 January 2015, the MOSS (Mini One Stop Shop) scheme has been available to declare and pay VAT in relation to the so-called cross-border supply of services[28] - telecommunication, radio and audio-visual media services and electronically supplied services - to non-taxable persons established in the Community. The point here is that the taxable person - through the tax authority of the Member State of its registration for the One Stop Shop scheme - may meet its obligation to declare and pay VAT in a Member State other than the one in which it is established. The taxable person established in the Community may register for the One Stop Shop scheme in the Member State where it is established, and the taxable person not established in the Community may register in the Member State of its choice.[29]

The new regulation extends the scope of the use of the One Stop Shop scheme

- all VAT declaration and payment liabilities regarding services extended to non-taxable persons in Community Member States or
- regarding intra-Community distance sales.

Within that - in line with the Union VAT rules - a separate One Stop Shop scheme is provided for paying and declaring VAT

- regarding services supplied by taxable persons established within the Community to non-taxable persons in the Community (**non-Union One Stop Shop scheme or non-Union special regulation[30]**), and
- regarding intra-Community distance sales, certain domestic product sales facilitated by electronic interfaces and services extended by taxable persons established within the country to non-taxable persons in other Member States (**Union One Stop Shop scheme or Union special regulation[31]**)

Name of the One Stop Shop scheme according to the new rules is OSS (One Stop Shop).

As the three schemes of the OSS system (non-EU scheme, EU scheme, import scheme) cover different types of supplies, it is possible for the same taxable person to register for more than one scheme. Taxable persons established in the Community can use the EU scheme and the import scheme. Taxable persons established outside the Community may

[26] VAT Act Section 195 (2) points d)-e).
[27] VAT Act Section 356.
[28] VAT Act Section 45/A (1).
[29] VAT Act Chapter XIX, repealed by Section 69 (4) of the Amendment Act on 1 July 2021.
[30] VAT Act Section 253/D-G.
[31] VAT Act Section 253/H-L

use all three schemes.

V. The non-Union One Stop Shop scheme

The non-Union One Stop Shop scheme or non-Union special regulation[32] offers a simplified procedure **only to taxable persons not established in the area of the Community** for meeting their VAT payment and VAT declaration obligations, and **it can be applied only for services extended to non-taxable persons**.

A taxable person not established in the area of the Community[33] - i.e. 'a taxable person who (which) is not established in the area of the Community with economic purpose, and in the lack of establishment with economic purpose, it has no permanent address or a place where it usually resides in the area of the Community' - may select the option of meeting its VAT payment and declaration obligations regarding services extended to non-taxable persons established with economic purpose in the area of the Community, or in the lack of establishment with economic purpose, having a permanent address or a place where they usually reside, through the National Tax and Customs Administration (hereafter NTCA)[34]. The taxable person may act without a financial representative, too, i.e. it may directly register for the non-Union One Stop Shop scheme. (Rules related to establishment with economic purpose is discussed by Section 254 of the VAT Act, and the term of fixed establishment mentioned here is in Section 259, point 2 of the VAT Act, and Article 11 (2) a) of the VAT Implementing Regulation also contains rules about the fixed establishment.)

If the taxable person selects the use of the special regulation and **the tax authority recorded the taxable person** in this capacity, **the taxable person**, **shall apply** that to all services subject to this regulation .[35]

For the registration, the taxable person shall report the data specified in the VAT Act in electronic way[36] to the tax authority, based on which the tax authority records the person among taxable persons using the non-Union special regulation, and assigns a so-called non-Union identification number required for the application of the special regulation, and sends an electronic notification about it to the taxable person.[37] **Registration has been possible since 1 April 2021[38]**, but the OSS scheme - with the exception of the cross-border supply of services - has only been available since the tax period that started on 1 July 2021.

The starting date for the application of the OSS non-EU scheme is, as a rule, the first day of the quarter following the notification. This date can only be changed by the taxpayer at the time of registration, depending on the date of notification, using the following technical settings in the registration interface of the OSS portal.

a) If the registration takes place up to the 10th of any month, the date value can be

[32] VAT Act Chapter XIX/A, sub-chapter 1.
[33] VAT Act Section 253/C, point 3.
[34] VAT Act Section 253/D (1).
[35] VAT Act Section 253/D (5).
[36] VAT Act Section 253/E (1).
[37] VAT Act Section 253/E (1) and (3).
[38] VAT Act Section 345; Amendment Act Section 188 (6).

reset to the first day of the month preceding the registration, so the possible date range is from the entire month preceding the registration up to the date of registration, but not beyond the 10th of that month. (*For example, for a registration on 10 January, the possible date range is from 1 December to 10 January*).

b) If the registration takes place after the first 10 days of any month, the possible range is the period between the first day of the month of notification and the date of notification (e.g. *for a registration on 11 January, the possible date could be from 1 January to 11 January.*)[39]

The **registration required for the application of the special regulation can be carried out** under the „Non-Union scheme" menu item **of the OSS portal operated by the NTCA. The OSS portal** can be accessed here:

- https://oss.nav.gov.hu/, or
- on the internet site of the NTCA, on https://nav.gov.hu, under One-Stop-Shop (OSS) submenu point in menu point NTCA Online.

The "User description" under the Help menu point of the OSS portal gives detailed information for the completion of the registration and the use of the OSS portal and the "Useful information, FAQs" menu contains useful information for taxpayers on how the OSS works.

Taxable persons applying non-Union special regulations have to submit a **VAT return** quarterly, **until the end of the month following the quarter**. The VAT return has to be submitted also for quarters in which the taxable person did not extend services subject to the non-Union special regulation. (The above mentioned **„User description" contains information that is useful for the filing of the VAT return, too**.) The VAT return has to be produced in HUF, with the exchange rate valid on the last day of the tax period and published by the ECB for the given day. If no exchange rate was published on the affected day, the exchange rate issued on the following publication date shall be used.

The VAT – equal to the amount declared in the tax return (not rounded to thousands of HUF!) **–** shall be paid at the time of filing the VAT return, **at the latest until the deadline of filing the VAT return**, to the "NTCA OSS VAT revenue account" no. 10032000-01077027, in HUF, with bank transfer, referring to the VAT return that is the basis of the payment (please indicate the reference number of the tax return in the information field of the payment order, thus allowing the payment to be allocated to a specific period).[40]

In addition to the above rules, the VAT Act defines the detailed rules regarding the reporting of changes, the deletion from the records, the management of the records and the contents and the modification of the VAT return.[41]

New rules were put in force about the correction of the VAT payment obligation for transactions completed with the application of the non-Union special system. Before 1

[39] VAT Implementing Regulation Article 57d (1).
[40] VAT Act Section 253/F (1), (3) and (4).
[41] VAT Act Chapter XIX/A, sub-chapter 1.

July 2021, when correction was necessary (e.g. price discount), the VAT return that contained the transaction affected by the change had to be modified. **Pursuant to the new rules, the correction has to be indicated in the currently filed VAT return.** Unlike the part of the tax return relating to the base period, the adjustment allows for the entry of a **differential VAT amount**, i.e. the values entered here do not overwrite the values for the previous period, but are adjusted with a positive or negative sign. 'Under the scope of the non-Union special regulation, the VAT return may be modified - according to this special regulation - for three years after the expiry of the deadline of submitting the VAT return that contains the VAT liability to be modified. The modification of the VAT return has to be included in a subsequent VAT return. In this subsequent VAT return, it is necessary to specify the Member State of the affected place of supply, the taxation period and the tax amount originating from the modification (difference). Following the submission of the VAT return that closes the activity[42], the modification of the VAT returns - including the one closing the activity - is possible in a VAT return submitted directly to the competent authority of the Member State of the place of supply, in the way determined by the Member State.'[43]

The VAT Act provides that [44] 'the taxable person shall meet its **record-keeping obligation** pursuant to the Act on Tax Administration[45] in a way that allows for an audit by the tax authority of the Member State of the place of supply, too. When requested, the taxable person makes the records available in electronic way. The records shall be kept for ten years starting on the last day of the calendar year including the time of the supply of the service that is subject to the special regulation.'

By the referenced records, the satisfaction of the record-keeping obligation specified in Section 9 f) of the Act on Tax Administration is meant, for which the detailed rules are included in Section 77 of the Act. Based on paragraph (1) of this section, **the records specified in the Act 'have to be kept ...** in a way that is suitable for determining and verifying the taxable amount, the amount of tax, the exemption, the benefits, the base and the amount of budgetary support, and their payment and use'.

In addition, **the VAT Implementing Regulation determines[46] the contents of records** to be kept by taxable persons applying the non-Union special regulation. Considering the fact that Article 63 (1) of the VAT Implementing Regulation specifies the same content requirements regarding records kept by taxable persons applying the Union and the non-Union special regulations, the rules of record-keeping are explained under point VI.

VI. The Union One Stop Shop scheme

The Union special regulation as of 1 July 2021 **may be applied for the following transactions**[47]:

- intra-Community distance sales of goods,

[42] VAT Act Section 253/C, point 2.
[43] VAT Act Section 253/F (5).
[44] VAT Act Section 253/G (1)-(2).
[45] Act CL of 2017 on Tax Administration (hereinafter: Act on Tax Administration).
[46] VAT Implementing Regulation Article 63c (1).
[47] VAT Directive Article 369b.; VAT Act Section 253/H-I.

- certain domestic supplies of goods by taxable persons operating electronic interfaces, and
- services supplied to non-taxable persons in other Member States.

If the taxable person selects the use of the special regulation and **the tax authority recorded the taxable person** in this capacity, **the taxable person**, **shall apply** that regulation to all transactions subject to this regulation.[48]

Based on the rules of the VAT Act[49], a taxable person not established in the area of the Community may select to meet its VAT payment and declaration liability related to intra-Community distance sales through the NTCA, provided that it dispatches or transports the goods as a consignment from its own country. A taxable person not established in the area of the Community may select the Union special regulation for intra-Community distance sales only, and for services it may apply the non-Union special regulation (see point V). A taxable person not established in the area of the Community has to appoint a financial representative for the application of the Union special regulation.[50]

A taxable person - including a platform acting as deemed supplier - who (which)

- has the seat of its economic activities within the country, or
- has the seat of its economic activities outside the area of the Community, but has a permanent site within the country,

may select to meet its VAT payment and declaration obligations through the NTCA regarding intra-Community distance sales and services extended to non-taxable persons in a Member State of the Community where it is not established with economic purpose.[51] It is important to note that in the case of services, VAT can only be declared and paid in the Union One Stop Shop scheme if the services were performed in a Member State where the service provider is not established, while in the case of intra-Community distance sales, there is no such restriction, i.e. the VAT on intra-Community distance sales can be declared and paid in the case of each Member State, regardless of the fact whether the supplier is established in the given Member State or not. However, the requirement applies to the latter case as well that the Member State of dispatch and the Member State of destination of the product cannot, as a general rule, be the same (only in the case of engagement of platforms can the Member State of dispatch and the Member State of destination be the same).

The starting date for the application of the OSS EU scheme is, as a rule, the first day of the quarter following the notification. This date can only be changed by the taxpayer at the time of registration, depending on the date of notification, using the following technical settings in the registration interface of the OSS portal.

a) If the registration takes place up to the 10th of any month, the date value can be reset to the first day of the month preceding the registration, so the possible date

[48] VAT Act Section 253/H (7), Section 253/ I (7).
[49] VAT Act Section 253/H (1).
[50] VAT Act Section 148 (2)-(3), Section 253/H (2).
[51] VAT Act Section 253/I (1).

range is from the entire month preceding the registration up to the date of registration, but not beyond the 10th of that month. (*For example, for a registration on 10 January, the possible date range is from 1 December to 10 January*).

b) If the registration takes place after the first 10 days of any month, the possible range is the period between the first day of the month of notification and the date of notification (e.g. *for a registration on 11 January, the possible date could be from 1 January to 11 January.*)[52]

The registration required for the application of the Union special regulation can be carried out **under the „EU scheme" menu point of the OSS portal operated by the NTCA**. Access to the OSS portal:

- https://oss.nav.gov.hu/, or
- on the internet site of the NTCA, on https://nav.gov.hu, under One-Stop-Shop (OSS) submenu point in menu point NTCA Online.

The "User description" under the Help menu point of the OSS portal gives detailed information for the completion of the registration and the use of the OSS portal and the "Useful information, FAQs" menu contains useful information for taxpayers on how the OSS works.

Taxable persons have been able to declare their choices to the NTCA since 1 April 2021[53], but the OSS scheme - with the exception of cross-border supply of services - has only been available since the tax period that started on 1 July 2021.

Taxable persons applying Union special regulations have to submit a **VAT return** quarterly, **until the end of the month following the quarter**. The VAT return has to be submitted also for quarters in which the taxable person did not carry out transactions subject to the non-Union special regulation. (The above mentioned **„User description" contains information that is useful for the filing of the VAT return, too**.) The VAT return has to be produced in HUF, with the exchange rate valid on the last day of the tax period and published by the ECB for the given day. If no exchange rate was published on the affected day, the exchange rate issued on the following publication date shall be used.

The VAT – equal to the amount declared in the tax return (not rounded to thousands of HUF!) **–** shall be paid at the time of filing the VAT return, **at the latest until the deadline of filing the VAT return**, to the "NTCA OSS VAT revenue account" no. 10032000-01077027, in HUF, with bank transfer, referring to the VAT return that is the basis of the payment (please indicate the reference number of the tax return in the information field of the payment order, thus allowing the payment to be allocated to a specific period).[54]

In addition to the above rules, the VAT Act defines the detailed rules regarding the reporting of changes, the deletion from the records and the management of the records, and the contents and the modification of the VAT return[55].

[52] VAT Implementing Regulation Article 57d (1).
[53] VAT Act Section 345, Amendment Act Section 188 (6).
[54] VAT Act Section 253/K (1), (6) and (7).
[55] VAT Act Section XIX / A. Chapter 2.

New rules were put in force about the correction of the VAT payment obligation regarding transactions completed with the application of the Union special system. Before 1 July 2021, when correction was necessary (e.g. price discount), the VAT return that contained the transaction affected by the change had to be modified. **Pursuant to the new rules, the correction has to be indicated in the currently submitted VAT return.** Unlike the part of the tax return relating to the base period, the adjustment allows for the entry of a differential VAT amount, i.e. the values entered here do not overwrite the values for the previous period, but are adjusted with a positive or negative sign. Under the scope of the Union "special regulation, the VAT return may be modified - under the special regulation - for three years after the expiry of the deadline of submitting the VAT return that contains the tax obligation to be modified. The modification of the VAT return has to be included in a subsequent VAT return. In this subsequent VAT return, it is necessary to specify the Member State of the affected place of supply, the tax period and the tax amount originating from the modification (difference). Following the submission of the VAT return that closes the activity[56], the modification of the VAT returns - including the one closing the activity - is possible in a VAT return submitted directly to the competent authority of the Member State of the place of supply, in the way determined by the Member State."[57]

The VAT Act provides that "the taxable person shall meet its **record-keeping obligation** specified in the Act on Tax Administration in a way that allows the audit by the tax authority of the Member State of the place of supply. When requested, the taxable person makes the records available in electronic way." The records shall be kept for ten years starting on the last day of the calendar year including the time of supply of the goods and the services that is subject to the special regulations.[58]

In addition, **the VAT Implementing Regulation determines[59] the contents of records** to be kept by taxable persons applying the Union and the non-Union special regulation. Based on that, the records kept by the taxable person shall include the following information:

a) the Member State of consumption to which the goods or services are supplied;
b) the type of services or the quantity and description of the goods sold;
c) the date of the supply of the goods or services;
d) the taxable amount indicating the currency used;
e) any subsequent increase or reduction of the taxable amount;
f) the VAT rate applied;
g) the amount of VAT payable indicating the currency used;
h) the amount and date of payments received;
i) any payments on account received before the supply of the goods or services;
j) where an invoice is issued, the information contained on the invoice;

[56] VAT Act Section 253/C, point 2.
[57] VAT Act Section 253/K (8).
[58] VAT Act Section 253/L (1)-(2).
[59] VAT Implementing Regulation Article 63c (1).

k) in respect of services, the information used to determine the place where the customer is established or has his permanent address or usually resides and, in respect of goods, the information used to determine the place where the dispatch or the transport of the goods to the customer begins and ends;

l) any proof of possible returns of goods, including the taxable amount and the VAT rate applied.

The VAT Implementing Regulation also specifies that the taxable person has to record the information in a way that it could be made available without any delay and in electronic way for each product or service supplied. If the taxable person is requested to submit the records in electronic way, and does not submit them within 20 days of the request, the Member State that issued the identifier will warn the taxable person about the obligation to submit the records. Failure to provide data is grounds for exclusion from the OSS system.[60] The Member State that issued the identifier will inform the Member States of consumption about the sending of the warning.[61]

It is worth considering **which taxable persons and on what transactions can meet their obligation to pay and declare VAT through the One Stop Shop scheme under the Union special regulation.** Based on the Union special regulation,

- taxable persons not established in the area of the Community[62] - including platforms not established in the area of the Community[63] - may select to meet their obligations to pay and declare VAT regarding the intra-Community distance sales of goods dispatched or transported from Hungary through the NTCA, in the One Stop Shop scheme[64];
- the platform acting as deemed supplier and not established in the area of the Community [the platform that is not established in the area of the Community and that facilitates the sale of the goods by taxable persons not established in the Community to non-taxable persons qualifies as the supplier of the goods according to Section 12/C (2) (or according to the Member State regulation that is in line in its contents with Article 14a (2) of the VAT Directive)], for sales of goods where the place of dispatch and the place of destination of the goods are the same Member State (the sale is from the stocks within the given Member State) may select to meet its obligation to pay and declare VAT through the NTCA, in the One Stop Shop scheme [65].
- a taxable person with a domestic seat or with a seat outside the area of the Community, but with a permanent domestic site - including platforms - may select to meet its obligation to pay and declare VAT regarding its intra-Community distance sales through the NTCA, in the One Stop Shop scheme[66];.
- a taxable person with a domestic seat or with a seat outside the area of the Community, but with a permanent site within the country may select to meet its

[60] VAT implementing Regulation Article 58b (2) point c).
[61] VAT implementing Regulation Article 63c (3).
[62] VAT Act Section 253/C, point 3.
[63] See point VIII for information on the platforms.
[64] VAT Act Section 253/H (1).
[65] VAT Act Section 253/H (8).
[66] VAT Act Section 253/I (1).

obligation to pay and declare VAT regarding its services extended to non-taxable persons in a Member State of the Community where it is not established with economic purpose through the NTCA, in the One Stop Shop scheme[67];

- the platform acting as deemed supplier and having a seat or a permanent site within the country [the platform facilitating the sales of goods by taxable persons not established in the Community to non-taxable persons qualifies as the supplier of the goods according to Section 12/C (2) (or according to the Member State regulation that is in line in its contents with Article 14a (2) of the VAT Directive)], for product sales in which the place of dispatch and the place of destination of the product are the same Member State (the sale is from the stocks within that Member State) may select to meet its obligation to pay and declare VAT through the NTCA, in the One Stop Shop scheme [68].

As it is clear from the above points, the electronic platform - in its capacity as the deemed supplier - may use the Union One Stop Shop scheme not only for meeting its VAT payment and declaration obligations regarding intra-Community distance sales, but also for transactions where the place of dispatch and the place of destination of the goods are the same Member State.

In connection with services, it can be established that a "normal" domestic taxable person established in the country with economic purpose[69], when extending domestic services to domestic taxable persons or non-taxable persons, will meet its VAT liabilities not according to Chapter XIX/A, Sub-chapter 2 (Union special rule) of the VAT Act, but according to the general rules of the VAT Act, i.e. these transactions will not be included in the VAT return to be submitted through the One Stop Shop scheme, but in VAT return No '65. In addition, in relation to services extended to non-taxable persons, it is necessary to emphasize that if the above mentioned transactions completed by a taxable person with a domestic seat or permanent site are performed in a Community Member State where the taxable person has a permanent site, the Union special rules are not applicable to these transactions, as the VAT liabilities regarding these transactions have to be met in the given Member State - 'outside' the One Stop Shop scheme.

It is important to point out that **the rules regarding the place of the supply of services have not changed**. Also, VAT obligations can still be satisfied through the One Stop Shop scheme in a Member State where the taxable service provider is not established. Based on this, it has to be made clear that since 1 July 2021, the One Stop Shop scheme has been covering all services, not only the cross-border supply of services.

Platforms (taxable persons operating electronic interfaces) are liable to pay VAT in cases when they facilitate the sale of goods by a taxable person not settled in the Community to a non-taxable person, in the area of the Community[70] (the relevant information is included in point VIII). **This** covers not only intra-Community distance sale, but **cases when the place of the dispatch and the place of the destination are the same Member State[71]**. This way the Union special regulation covers the case, too,

[67] VAT Act Section 253/I (1).
[68] VAT Act Section 253/I (8).
[69] VAT Act Section 254.
[70] VAT Act Section 12/C (2).
[71] VAT Act Section 253/H (8), 253/ I. (8); VAT Directive Article 369b, b).

when the platform is liable to pay VAT on a product sale in which the place of dispatch and the place of destination are both domestic (e.g. sale from domestic stocks not only to other Member States of the Community, but within the country, too). Consequently, if the platform selected the application of the Union special regulation, it has to meet its VAT payment obligation not in VAT return No '65, but under the Union special regulation.

VII. VAT refund rights of taxable persons applying the non-Union or the Union One Stop Shop scheme

The One Stop Shop scheme can only be used for paying the VAT due, it is not possible to deduct previously charged VAT in this system.

Thus, **if the taxable person not established within the country with economic purpose**

- is recorded only in the One Stop Shop scheme within the country, or
- it registered for the One Stop Shop scheme in another Member State for the satisfaction of its domestic VAT payment obligations, and
- wishes to enforce previously charged and deductable VAT,

then **it can do so according to the special rules regarding the VAT refund of taxable persons not established within the country**[72].[73] In relation to taxable persons established outside the territory of the Community, it is not a condition of refund that the person should be established in a country with which Hungary has a reciprocity agreement for the refund of the value added tax.[74]

However, if – because of its other activities – the taxable person not established within the country is recorded or should be recorded as a taxable person within the country, then the preliminarily charged and deductible VAT can be enforced in the VAT return to be filed within the country.

Domestic taxable persons applying Union special regulations - with seats or permanent sites in Hungary according to the VAT Act - **may have the preliminarily charged VAT deducted in VAT return No '65.**

VIII. Rules related to platforms

A significant ratio of the distance sale of goods - be it distance sale from one Member State to another, or distance sale from a third country to the Community, or within the same Member State - is carried out by using electronic interfaces, for instance on-line marketplaces, platforms or portals. For the successful and efficient collection of the VAT, taxable persons who or which facilitate the distance sale of goods through the above mentioned electronic interfaces are involved by the new regulation in the collection of

[72] VAT Act Chapter XVIII.
[73] VAT Act Section 253/ M-N.
[74] A taxpayer established in a third country can submit a claim for a refund using the IAFAK form regularised by the NTCA, while a taxpayer established in another Member State of the Community can submit a claim for a refund using the 'ELEKAFA form.

VAT on sales in a way that in certain cases they are liable to pay VAT on the products sold through them. Accordingly, in the case of certain sales to non-taxable persons, taxable persons operating platforms play special roles.

In line with the relevant rules of the VAT Implementing Regulation[75], **the VAT Act is extended with a new provision[76] that contains completely new requirements for platforms and electronic marketplaces.** The regulation considers the platforms to be taxable persons in two cases.

As the first case[77] refers to situations when the platform facilitates the distance sale of goods imported as a consignment with an intrinsic value not exceeding the amount of EUR 150, the relevant information is described in the Information Leaflet no. 97 titled 'The import One Stop Shop scheme and the settlement of import VAT in a special procedure'.

The second case is discussed by Section 12/C (2) of the VAT Act, which says that 'if a taxable person facilitates the sale of goods in the area of the Community through the use of an electronic interface, in particular a marketplace, platform, portal or other similar means - by a taxable person not established in the Community to a non-taxable person - that person has to be deemed as both the supplier and the seller of the goods' **(deemed supplier)** The deemed supplier status of the platform is independent of the fact whether it is a domestic taxable person or a taxable person established in another Member State of the Community or in a third country. It is important that in this case, the deemed supplier status of the platform exists if it facilitates the sale of goods already in free circulation in the area of the Community to a non-taxable person in the area of the Community, when the taxable person actually selling the goods is not established in the area of the Community.

If a platform, independently of value, **facilitates the sale of goods** by a taxable person not established in the Community to a non-taxable person in the area of the Community (including the case when the place of dispatch and the place of destination of the product are the same Member State), then based on the new regulation - **by using a fiction - the platform shall be deemed as both the supplier and the seller of the product**.[78]

From the aspect of the VAT, these cases should be managed **as if two product sales were completed**: the first transaction is between the original seller and the platform, and the second transaction is between the platform and the buyer. Accordingly, since 1 July 2021, the platforms have been liable to pay VAT on the transactions facilitated by them[79], and this can be satisfied through the above described One Stop Shop scheme, too.

As to **when the platform should be deemed as an entity facilitating the sale of goods**, it is not determined by the VAT Act, but by the rules of the VAT Implementing Regulation that is directly in effect and mandatory to use in all Member States of the Community. The VAT Implementing Regulation to be applied from 1 July 2021[80] says

[75] VAT Implementing Regulation, Article 14a.
[76] VAT Act Section 12/C.
[77] VAT Act Section 12/C (1).
[78] VAT Act Section 12/C (2).
[79] VAT Act Section 345.
[80] VAT Implementing Regulation Article 5b.

that for the purposes of Article 14a of the VAT Implementing Regulation (which forms the basis of the above referred Section 12/C), the term 'facilitates' means the use of an electronic interface that allows for the establishment of a contact between the seller who offers products through the electronic interface and the buyer, as a result of which the product is sold through the electronic interface.'

The VAT Implementing Regulation also determines the conditions[81] under which the platform is not considered to be facilitating the sale of the goods. This requires to meet all of the following conditions.

a) "the affected taxable person does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made;
b) the affected taxable person is not, either directly or indirectly, involved in authorising the charge to the customer in respect of the payment made;
c) the affected taxable person is not either directly or indirectly, involved in the ordering or delivery of the goods."

The VAT Implementing Regulation also specifies that "Article 14a of the VAT Directive does not apply to taxable persons involved only in any of the following activities:

a) the processing of payments in relation to the supply of goods;
b) the listing or advertising of goods;
c) the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply".

Considering the fact that platforms may rely on the accuracy of information provided through the electronic interface, pursuant to the VAT Implementing Regulation[82], **the platform shall not be held liable for the payment of VAT in excess of the VAT declared and paid on the relevant supplies, where all of the following conditions are met**:

a) the taxable person is dependent on information provided by suppliers selling goods through the electronic interface or by other third parties, in order to correctly declare and pay the VAT on the given supplies;
b) the information mentioned in point a) is erroneous;
c) the taxable person can demonstrate that he did not and could not reasonably know that the information received was incorrect.

In order to ease the administrative burdens of platforms, the VAT Implementing Regulation[83] sets up **rebuttable presumptions**, so **the platforms are released from the responsibility of proving the legal status of the seller and the buyer**. According to this rule, unless the platform is informed otherwise, (i) it shall consider the person selling goods through the electronic interface to be a taxable person; (ii) the person buying the product shall be considered to be a non-taxable person.

[81] VAT Implementing Regulation Article 5b.
[82] VAT Implementing Regulation Article 5c.
[83] VAT Implementing Regulation Article 5d.

As detailed above, **based on the fiction, two sales take place one after the other, but the product is transported only once from the actual supplier to the customer, so a chain sale is realised**. In the case of chain sale, the transport can be assigned to one of the sales only, and the place of supply of the sale preceding the sale coupled with transport is the place where the product is dispatched for transport, while the place of supply of the sale following the sale completed with transport is the destination of the transport.[84] (Information leaflet No 29 titled 'Community transactions of taxable persons paying tax according to the general rules' contains the detailed explanation of chain transactions.) In order to make sure that it is the platform (and not the actual supplier) who (which) performs the intra-Community distance sale, the regulation also specifies that the sale coupled with transport is always performed by the platform.[85] Consequently, the sale by the actual supplier to the platform is completed at the place where the goods are dispatched for transport. If this place is outside the area of the Community, the Union VAT rules are not applicable. **If the place of supply by the actual supplier to the platform is within the area of the Community, the sale of the product is exempt from VAT[86]**, however, the actual supplier is entitled to deduct the previously charged related VAT (e.g. import VAT)[87].

A special form of sales is the so-called **drop-shipping** sales model, whereby the customer orders the goods via the internet from a taxable person operating a webshop, who (or which) purchases the goods from another taxable person (manufacturer, distributor) who actually has the goods in stock, based on the customer's order, and sells them on to the customer. The VAT treatment of the transaction is described in Tax Issues leaflet no. 2022/6. titled "**One-Stop-Shop in the drop-shipping sales model**". The Tax Issue is available on the NTCA website under menu item Tax / Tax Issue.

Among rules related to platforms, it is necessary to mention the **special rule regarding the occurrence of the VAT payment obligation** and **the definition of the VAT to be paid**, which says that in cases when it should be considered as if the seller had sold the goods to the platform, and the platform had sold sold the goods to the customer, **the times of the supply of the goods by the platform and to the platform are the same**, the time of supply is the time of accepting the payment, that is when the VAT to be paid should be determined, i.e. **the VAT payment obligation is generated at the time of accepting the payment[88]**. Based on the relevant rule of the VAT Implementing Regulation[89], "the time of accepting the payment is the time when the person selling the goods through an electronic interface or its agent acting on its behalf receives the payment confirmation, the payment authorisation message or the customer's commitment to pay, regardless of the time when the amount is actually paid, taking the earliest point of time into consideration".

The new regulation prescribes a **record-keeping obligation**, too, for the platforms. The obligation covers the cases when the platform facilitates the supply of goods or services to non-taxable persons in the area of the Community. These records have to be made available on request to the competent tax authority, and within the country, to the NTCA.

[84] VAT Act Section 27 (3).
[85] VAT Act Section 27 (4).
[86] VAT Act Section 87/A.
[87] VAT Act Section 121 b).
[88] VAT Act Section 61/A.
[89] VAT Implementing Regulation Article 41a.

The electronic platform has to keep the records for 10 years after the end of the year that includes the performance date of the transaction.[90]

The record-keeping obligation prescribed for electronic platforms does not cover the same scope as the VAT payment liability prescribed for electronic platforms, so the VAT Implementing Regulation specifies[91] when the platform qualifies as a platform that facilitates the supply of goods or services.

The VAT implementing Regulation determines that for the purposes of this provision, how detailed records the electronic platform should keep. In the case when the electronic platform is a party liable to pay VAT, too, because of facilitating the transaction, the record-keeping obligation depends on the fact whether any of the One Stop Shop schemes has been selected. The details of the records depend on the fact whether the Union and non-Union One Stop Shop scheme or the import One Stop Shop scheme is applied.[92]

If the platform is obliged to keep records only, but not liable to pay VAT, the records have to contain the following data[93]:

a) the name, postal address and electronic address or website of the supplier of goods or services whose supplies are facilitated through the use of the electronic interface, and if available:
    i. the VAT identification number or national tax number of the supplier of goods or services;
    ii. the bank account number or number of virtual account of the supplier of goods or services;
b) the description of the goods, their value, the place where the dispatch of transport of the goods ends together with the time of supply and, if available, the order number or unique transaction number;
c) the description of the services, their value, information in order to establish the place of supply and the time of supply and, if available, the order number or unique transaction number.

As explained above, a taxpayer that sells its products through its own website is not a platform.

IX. Rules related to the invoicing obligation, on-line invoice data supply

Taxable persons using the OSS scheme shall use the invoicing rules of the Member State in which they registered for the One Stop Shop scheme[94]. Accordingly, **if a taxable person** (for instance, a Hungarian taxable person or a Hungarian or foreign taxable person that operates an electronic interface) **registers for the OSS scheme in Hungary, it has to apply the Hungarian rules to invoicing**. However, it is not always mandatory

[90] VAT Act Section 183/A.
[91] VAT Implementing Regulation Article 54b.
[92] VAT Implementing Regulation Article 54c.
[93] VAT Implementing Regulation Article 54c (2).
[94] VAT Act Section 158/A (4).

to issue an invoice.

As a main rule, the taxable person performing intra-Community distance sale has to issue an invoice about the transaction[95]. However, in a case when the taxable person meets its VAT payment and declaration obligation regarding the intra-Community distance sale with the application of the One Stop Shop scheme, and the buyer pays the full amount of the price including the VAT until performance, it is necessary to issue an invoice for the buyer only if the buyer requests that, otherwise it is enough to issue a receipt.[96]

However, it is mandatory to issue an invoice in the above case, too, if the goods are sold

a) to another taxable person or to a non-taxable legal person who (which) is not liable to pay VAT on its acquisitions within the Community;
b) to a taxable person not covered by point a), and the price - including the VAT - reaches or exceeds an amount equivalent to HUF 900,000[97].

If the taxable person electronic interface, based on Section 12/C (2) of the VAT Act, has to be considered as the party who acquired and sold the product, then the actual supplier shall issue an invoice to the platform (this transaction is exempt from VAT[98]), and the platform shall issue an invoice to the final customer. The actual supplier, in addition to issuing the invoice[99], is obliged to carry out on-line invoice data supply[100] if it performs a transaction with a domestic place of supply. However, in a case when the platform registers for the Union One Stop Shop scheme in Hungary, and the customer pays the full amount of the price, including VAT, until performance, it is necessary to issue an invoice for the customer only if the non-taxable customer requests that, otherwise it is enough to issue a receipt.[101] However, it is mandatory to issue an invoice if the transaction

a) is for a non-taxable legal person;
b) is for a non-taxable person or organisation who is not covered by point a), and the price, including the VAT, reaches or exceeds an amount equivalent to HUF 900,000t[102].

If a platform registers for the Union One Stop Shop scheme in Hungary, in the case of a sale facilitated by it and performed in another Member State of the Community, it has no obligation to supply on-line invoice data (the same is valid for any other taxable person who/which registered for the OSS in Hungary, and meets its VAT payment and declaration obligation through that)[103]. However, if the product sold through the platform is delivered within Hungary (e.g. from a warehouse located in Hungary), or it is transported to Hungary from another Member State of the Community, the platform is obliged to meet its on-line invoice data supply obligation regarding the transaction completed in Hungary, regardless of the fact whether or not it uses the One Stop Shop

[95] VAT Implementing Regulation, Article 220 (1), point 2.
[96] VAT Act Section 165 (1) b), Section 165 (6), Section 166 (1).
[97] VAT Act Section 165 (3).
[98] VAT Act Section 87/A .
[99] VAT Act Section 159 (1) and (2) b).
[100] VAT Act Annex 10, point 1.
[101] VAT Act Section 165 (1) b), VAT Act Section 166 (1).
[102] VAT Act Section 165 (3).
[103] VAT Act Annex 10, point 1.

scheme (exemption is given only if the place of supply of the transaction is another Member State of the Community).[104]

If the place of the supply[105] of the service is another Member State of the Community, both the taxable persons not established in the area of the Community and registered for the non-Union One Stop Shop scheme in Hungary, and the taxable persons with domestic seats or permanent sites - who/which perform their VAT payment and declaration obligations related to their services through the Union OSS scheme - are exempt from the obligation to issue an invoice if the user of the service pays the full price, including the VAT, until the time of supply, and does not require an invoice[106]. In this case, it is enough to issue a receipt.[107] However, it is mandatory to issue an invoice, if the transaction

a) is for a non-taxable legal person;
b) is for a non-taxable person or organisation that is not covered by point a), and the price, including the VAT, reaches or exceeds an amount equivalent to HUF 900,000t[108].

Taxable persons registering for the non-Union One Stop Shop scheme in Hungary, as well as domestic taxable persons registering for the Union One Stop Shop scheme in Hungary are exempt from the on-line invoice data supply obligation regarding their transactions with foreign places of supply, on the basis of the relevant rule of the VAT Act.[109]

In relation to the services, if their place of supply is Hungary, both the taxable persons not established in the area of the Community (when using the non-Union One Stop Shop scheme, if they registered for the OSS scheme in Hungary), and the taxable persons with seats or permanent sites in Hungary - who/which meet their VAT payment and declaration obligations related to their domestic services "mandatorily" outside the OSS (as domestic taxable persons cannot use the OSS for their domestic services) - are exempt from the obligation to issue invoices (in the case of the latter, excluding the services extended to taxable persons), if the user of the service pays the full price, including the VAT, until the performance, and does not request an invoice .[110] In this case, it is enough to issue a receipt.[111] However, it is mandatory to issue an invoice, if the service

a) is supplied to a non-taxable legal person;
b) is supplied to a non-taxable person or organisation that is not covered by point a), and the price, including the VAT, reaches or exceeds an amount equivalent to HUF 900,000.

In case the conditions specified in Section 165 (1) b) of the VAT Act are not satisfied, (e.g. if the customer asks for an invoice), and if the service provider is not released from issuing an invoice, then, beside the invoicing obligation, the service provider shall meet

[104] VAT Act Annex 10, point 1.
[105] VAT Act Section 36- 49/A.
[106] VAT Act Section 165 (1) b).
[107] VAT Act Section 166 (1).
[108] VAT Act Section 165 (3).
[109] VAT Act Annex 10, point 1.
[110] VAT Act Section 165 (1) b).
[111] VAT Act Section 166 (1).

the on-line invoice data supply obligation, too, according to Annex 10 of the VAT Act, if the service is completed within the country.

If, based on Section 165 (1) of the VAT Act, the supplier is exempt from the invoicing obligation, as described above, it is obliged to issue a receipt[112]. However, in this case, the seller may decide to issue an invoice instead of the receipt.[113]

X. Basic characteristics of VAT returns in the Union and the non-Union schemes

In the Union and non-Union schemes the tax period is the calendar quarter, and the declaration and the related payment period is the month following the quarter[114].

In the Union scheme, the VAT return can be made up of

- supplies of goods and services made from Hungary in the current period,
- supplies of goods and services made from another Member State in the current period and
- any prior period adjustments.

In the non-Union scheme, the VAT return may be compiled of

- services supplied in the relevant period and
- modifications of the previous period.

Modifications are possible in VAT returns submitted at the most 3 years before. **The already submitted VAT return cannot be modified**, the modification can be indicated in a subsequent VAT return. In the event of the exit or exclusion of the taxpayer from the system, following the submission of the VAT return that closes the activity which technically closes the application of the special regime, it is not possible to modify the OSS return, the modification has to be submitted directly to the Member State of consumption, according to the relevant rules of the given Member State.[115]

At the time of filling in the VAT return, the OSS portal's (https://oss.nav.gov.hu/) VAT return interface displays the reference number of the VAT return, which has to be entered into the comment box of the bank transfer.[116]

The nil VAT return can be submitted with one click, ticking the relevant check box. It is possible to submit a nil VAT return only if no goods or services were supplied under the scope of the OSS in the current period, and there are no modification requests for previous periods.

The data of an already submitted VAT return can be modified only at the time of

[112] VAT Act Section 166 (1).
[113] VAT Act Section 166 (2).
[114] VAT Act Section 253/F (1), Section 253/K (1).
[115] VAT Act Section 253/F (5), Section 253/K (8).
[116] VAT Act Section 253/F (4), Section 253/K (7).

submitting the next return. For example, the VAT return submitted in October for Q3 can be modified in the return for Q4 of 2022, i.e. in January 2023. Unlike the part of the tax return relating to the base period, the adjustment allows for the entry of a differential VAT amount, i.e. the values entered here do not overwrite the values for the previous period, but are adjusted with a positive or negative sign. This is why it is worth saving and printing the VAT return after filling it in, and it should be submitted only after a thorough review of the data.

The figures in the OSS return should be given in HUF. The VAT return interface of the OSS portal refers to this in the header of each taxable amount and tax amount field. Transactions accounted in EUR have to be converted to HUF at the exchange rate of the ECB valid on the last day of the tax period:[117]

https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/ html/index.en.html.

Payments by bank transfer also have to be made in HUF, in the amount specified in the declaration (not rounded to thousand HUF) to the NTCA OSS VAT collection account no. 10032000-01077027. (OSS payments cannot be made to the NTCA Value Added Tax revenue account with tax code 104!)

If the taxpayer fails to file the tax return or fails to file it by the deadline, the Member State of identification (i.e. NTCA in the case of Hungarian taxpayers) will send a tax return reminder electronically on the 10th day after the tax return deadline.[118]

If the taxpayer fails to pay the amount of tax or fails to pay it by the deadline, the Member State of identification (i.e. NTCA in the case of Hungarian taxpayers) will send a payment reminder electronically on the 10th day after the payment deadline. The Member State of consumption indicated in the tax return will be entitled to send further reminders. In this case, the VAT is payable directly to that Member State.[119]

If an amendment to a tax return filed for a previous period results in an overpayment for one or more Member States, the Member States of consumption concerned will reimburse the amount directly. Member States have differing practices as to whether they refund overpayments ex officio or on request, so it is advisable to file an individual application for a tax refund with the tax authority concerned. To apply for a tax refund directly to the Member State of consumption, you can find the contact details of the Member State by clicking on the following link:
https://vat-one-stop-shop.ec.europa.eu/contact-country_en

XI. Rules on exit and exclusion

If the taxable person no longer carries out an economic activity covered by the special scheme for imports[120], he/she will be deemed to have left the scheme on the day following the decision to do so.,

[117] VAT Act Section 253/F (3)-(4), Section 253/K (6)-(7).
[118] VAT Implementing Regulation Article 60a.
[119] VAT Implementing Regulation Article 63a.
[120] Point a) of Section 253/T (10), point a) of Section 253/T (12) of the VAT Act.

A taxable person applying the special scheme for EU or non-EU may cease to apply the special scheme irrespective of whether he/she continues to make supplies, which may be covered by the rules of that scheme. The taxpayer shall submit his/her exit request to the NTCA at least 15 days before the end of the month preceding the month in which he/she ceases to use IOSS. In this case, the exit will take effect on the first day of the following calendar month.[121]

If the taxpayer applying the Union scheme intends to make a change that will change the Member State issuing the identification number, he/she shall notify the NTCA and the authority of the other Member State no later than the 10th day of the month following the change, e.g. the transfer of the registered office.[122] The exit will take effect from the date of the change.

If the taxpayer continues to be registered with NTCA, but continues to operate under a different scheme, he/she must submit his/her exit request by the 10th day of the month following the month in which the change occurs (e.g. the non-EU taxpayer providing the service establishes a place of business in Hungary).[123] The exit will take effect from the date of the change.

If a taxpayer submits zero amount tax returns for two years, i.e. it can be assumed that the taxpayer has ceased its economic activity, the NTCA will exclude the taxpayer from the IOSS system.[124] The exclusion shall take effect on the first day following the quarter in which the decision is made to exclude.

The NTCA will exclude a taxpayer from the OSS system if it does not meet the conditions for using the Union/non-Union scheme.[125] The exclusion shall take effect on the first day following the quarter in which the decision is made to exclude.

If a taxpayer fails to fulfil its obligation to file a tax return or make a payment despite three consecutive periodic warnings, or fails to provide the taxpayer's records pursuant to Section 253/G or 253/L of the VAT Act within the given deadline during a NTCA tax audit, the NTCA will exclude the taxpayer from the OSS system.[126] The exclusion shall take effect on the first day following the quarter in which the decision is made to exclude.[127]

XII. Temporary provisions

In the OSS systems, the changes made on 1 July 2021 include the deadline of submitting the VAT return and paying the VAT after the relevant period, and the currency in which the payment has to be made. Although the changes come into force on 1 July 2021, VAT

[121] Article 57g (2) of the VAT Implementing Regulation.
[122] Article 57f (2), Article 57h (2) of the VAT Implementing Regulation.
[123] Article 57h (1) b) of the VAT Implementing Regulation.
[124] Article 58a of the VAT Implementing Regulation.
[125] VAT Act Section 253/T (10) point c).
[126] Article 58b of the VAT Implementing Regulation.
[127]Article 58 (2) of the VAT Implementing Regulation.

returns submitted through the MOSS scheme about transactions (cross-border supply of services) completed before 1 July 2021 will be subject to the old rules.

This means, for instance, that the VAT return for Q2 of 2021 had to be submitted until 20 July 2021, and the payment had to be made until the same date, in EUR. If there is a correction after 30 June 2021 about a transaction that was completed by the taxable person before 1 July 2021, the relevant modification has to be made with the self-revision of the VAT return that contains that transaction, it cannot be indicated in the next return[128].

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[128] VAT Implementing Regulation Article 61.