

Alert | Tax/Retail



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Internet Marketplaces: Effects of the New German Law regarding VAT and Online Trading

On 14 December 2018, a [new German law on VAT with regard to trading goods on the Internet](#) (link in German) was officially published and will become effective as of 1 January 2019. The law contains considerable additional VAT obligations for operators of Internet marketplaces and merchants selling goods online. In the future, operators will be liable for their merchants if they do not pay VAT properly.

Operators of Internet Marketplaces

- The law defines an Internet marketplace as a website or similar which offers third parties the opportunity to sell goods.
- The operator is "anyone who maintains an electronic marketplace and enables third parties to carry out sales on that marketplace". Accordingly, the new regulations do not only affect the operators of large online platforms, but also instant messaging platforms through which members can offer each other goods.

Data to be Collected by Operators

From 1 January 2019, operators of Internet marketplaces must record the following information from their merchants and transmit it electronically to the tax office on request:

- Name and address

- For entrepreneurs: tax number and, if available, German VAT identification number; for private individuals: date of birth
- Place and date of departure and final destination of the goods
- Time and amount of sales

In addition, for entrepreneurs the operator must hold a corresponding certificate from the tax office responsible for the merchant.

Affected Deliveries

- The new regulations only apply to deliveries, i.e., to the sale of physical goods. They do not apply to electronic services such as streaming services.
- The new regulations apply to all deliveries where the transport or dispatch of the goods begins or ends in Germany, irrespective of whether the delivery is subject to VAT in Germany.
- However, the new regulations only apply to sales that are made on the marketplace. This means that the sales contract must have been concluded directly on the platform. The rules do not apply to sales where goods are offered via a platform but where the seller and buyer agree on the details of the sale (in particular the purchase price) outside the Internet marketplace, as is, for example, the case with some used car platforms.

Implications for Merchants

To enable marketplace operators to fulfil their recording obligations, merchants must apply for the required certificates at their competent tax office – one for each operator. Many marketplace operators may block merchants if they do not provide the required certificates. Tax offices may notify operators, if merchants do not comply with their obligations with regard to VAT.

Liability of Marketplace Operators

Operators of Internet marketplaces will be liable for VAT that merchants do not pay properly. The operator may avoid this if it has recorded the necessary information. Nevertheless, the operator may still be held liable if it knew or should have known – particularly by notification from the tax office – that the merchant does not comply or does not fully comply with its tax obligations.

For merchants outside the EU and the European Economic Area, the liability of the marketplace operator will apply from 1 March 2019, for other merchants from 1 October 2019.

Conclusion

To minimize the risk of being liable for VAT owed by their merchants, marketplace operators may wish to consider excluding traders from their platforms who do not provide the required information or are considered unreliable by their tax office. Because of this, merchants may wish to obtain the necessary certificates in a timely manner and pass them on to the operators of Internet marketplaces.

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