

## VAT rules for non-EU and EU one-stop shops and platforms

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On 1 July 2021, new VAT (value added tax) rules for e-commerce came into force. The following are the main rules applicable from 1 April 2021 and 1 July 2021.

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For the sake of simplicity, we will refer to VAT under EU rules as VAT.

## **I. Regulatory environment**

The provisions of the so-called Digital VAT Package have been incorporated into Council Directive 2006/112/EC on the common system of value added tax (hereafter: VAT Directive), Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (hereafter: VAT Implementing Regulation) and Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax<sup>1</sup>. In line with the VAT Directive, the provisions are contained in the VAT Act<sup>2</sup> on the one hand and in the VAT Regulation on the other. The latter is directly in force and applicable in all Member States of the European Community (hereinafter referred to as the Community). The EU rules have been transposed into Hungarian law by Act CXVIII of 2020 amending certain tax laws (hereinafter: the "VAT Act"), which also amended the VAT Act. In addition, Act No. LXIX of 2021 amending certain tax laws contains clarifications with regard to the rules effective from 1 July 2021.

## **II. Purpose of the new legislation, summary of the changes**

The e-commerce or digital VAT package aims to.

- ensure a level playing field between EU and non-EU businesses,
- strengthen the principle of taxation according to the place of consumption, also known as the country of destination,
- support the fight against VAT fraud, and
- facilitate cross-border trade by simplifying the payment and collection of taxes.

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<sup>1</sup> The amendments have been incorporated into 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 on the supply of services and on the distance marketing of goods;

2. Council Implementing Regulation (EU) 2017/2459 of 5 December 2017 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 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 the provisions on distance and certain domestic supplies of goods;

5. Council Implementing Regulation (EU) No 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards the specific rules applicable to supplies of goods and services facilitated by the use of an electronic platform and to taxable persons supplying services to non-taxable persons, to distance sellers of goods and to 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 transposition date and the date of application, which became necessary due to the Covid19 pandemic.

<sup>2</sup> Act CXXVII of 2007 on Value Added Tax.

To achieve the above objectives, the regulation will be amended from 1 July 2021 on the following points:

- Place of supply for distance sales within the Community,
- making electronic platforms tax-compliant,
- expanding the use of one-stop shop systems,
- abolition of VAT exemption for low-value imports, introduction of alternative solutions for the payment of import VAT.

The changes relating to the import of goods are described in information booklet No 97 "The one-stop shop for imports and the special procedure for the settlement of import duties".

### **III. Rules on distance selling in the Community**

Intra-Community distance selling is essentially the same as distance selling under the rule of the VAT Act in force before 1 July 2021.

According to the VAT Act<sup>3</sup>, an intra-Community supply at a distance is a supply of goods where the goods are dispatched or transported by the supplier himself or on his behalf, including dispatch or transport with the indirect involvement of the supplier, from a Member State of the Community other than the Member State in which the goods dispatched or transported are located, with destination in the name of the purchaser, when the dispatch or transport is completed, provided that the following conditions are met:

a) selling the product

(aa) to a taxable person or non-taxable legal person whose intra-Community acquisition of goods is exempt from tax pursuant to Article 20(1)(a) and (d); or

ab) to any other non-taxable person or entity; and

b) the product sold:

ba) not a new means of transport<sup>4</sup>; or

bb) is not intended for assembly or erection, whether or not accompanied by a trial run.

As stated above, the rules on distance selling within the Community only apply if the product is sold to the following person(s)<sup>5</sup>:

a) not taxable,

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<sup>3</sup> Section 12/B (1) of the VAT Act.

<sup>4</sup> VAT Act, § 259, point 25.

<sup>5</sup> Section 12/B (1) (a) of the VAT Act.

- b) to a taxable person (including a taxable person exempt from VAT) who makes an exempt supply of goods or services which is not subject to VAT only and which does not give rise to a deduction, and who is not liable to pay tax on his intra-Community acquisition,
- c) a farmer with a special status who is not liable to pay tax on his Community purchases,
- d) a non-taxable legal person that is not liable to pay tax on its acquisitions in the Community,
- e) to any person if the intra-Community acquisition of goods does not give rise to a tax liability because, if the transaction were a domestic supply of goods, it would be exempt from tax under sections 103, 104 and 107 of the VAT Act (for example, goods for the operation of certain means of water or air transport, supplies to diplomatic missions, supplies to international organisations).

As from 1 July 2021, **intra-Community distance supplies are therefore transactions** where a supplier sells goods for a purpose in a Member State other than the Member State of dispatch of the goods to a non-taxable customer or to a taxable customer not liable to pay tax on intra-Community acquisitions of goods (for example, a taxable person exempt from VAT, a taxable person carrying out an activity exempt only in respect of goods), i.e. the final customer, which are dispatched or transported from one Member State to another by the supplier or by a third party on his behalf. The amended legislation confirms that intra-Community distance supplies should also be considered to be intra-Community supplies where the dispatch or transport is carried out with the indirect involvement of the supplier.

The H<sub>éa</sub>-vhr.<sup>6</sup> provides an illustrative list of **when the goods are deemed to have been dispatched or transported by or on behalf of the seller**, including when this is done with the indirect involvement of the seller. These are the following cases

- where the seller subcontracts the dispatch or transport of the goods to a third party who delivers the goods to the buyer;
- if the goods are dispatched or transported by a third party, but the seller is responsible for the delivery of the goods to the buyer, in whole or in part;
- where the seller invoices and collects the carriage charges from the buyer and passes them on to a third party who arranges the dispatch or carriage of the goods;
- if the seller in any way facilitates the third party's delivery services to the buyer, establishes a relationship between the buyer and the third party or otherwise provides the third party with information necessary to deliver the product to the buyer.

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<sup>6</sup> Article 5a of the H<sub>éa</sub>-vhr.

The VAT Act further states that "the goods shall not, however, be deemed to have been dispatched or transported by the seller or on the seller's behalf if the goods are transported by the buyer himself or if the buyer arranges for the transport of the goods by a third party and the seller does not participate directly or indirectly in the dispatch or transport of the goods or assist in arranging for the dispatch or transport of the goods."

**The amendment essentially made changes to the place of performance rules.** The relevant provision<sup>7</sup> states that "in the case of an intra-Community distance supply of goods, the place of supply shall be deemed to be the place where the goods are located, with a destination in the name of the customer, on arrival of the consignment or on completion of the transport", i.e. the intra-Community distance supply is made at the place of destination of the goods in accordance with the principle of taxation at consumption, with the Member State of destination being the place of taxable consumption. With the introduction of this new provision, the legislation abolishes the thresholds of EUR 35 000 and EUR 100 000 for distance sales.

In parallel with the change of the place of taxation, the possibility for **taxable persons to fulfil the obligation to pay and declare tax on intra-Community distance supplies by using the One Stop Shop (OSS)** is also **opened** (see points IV to V). It is important to emphasise that **the use of the One Stop Shop (OSS) is not an obligation but an option which ensures that a taxable person does not have to register as a taxable person in the Member State(s) of supply in respect of a specific transaction or transactions carried out in another Member State(s) of the Community, but can fulfil these obligations in one Member State by using the One Stop Shop.**

In order to **reduce the administrative burden on small businesses, the** amendment extends the relief already provided for in paragraphs (3) to (6) of Article 45/A of the VAT Act, which will be in force until 1 July 2021, to taxable persons (also) making intra-Community distance supplies.<sup>8</sup>

If the supplier taxable person

- is established for economic purposes in only one Member State of the Community, or, in the absence of economic establishment, has his/her residence or usual place of abode in only one Member State of the Community, and
- in the calendar year in question and, provided that he has made such a supply of goods or services, in the preceding calendar year, provided a supply of services<sup>9</sup> (telecommunications, radio and audiovisual media services, electronically supplied services) or an intra-Community distance supply, not exceeding an amount of EUR 10,000 (net of tax), to a non-taxable person in a Member State other than the one in which he is established,

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<sup>7</sup> Section 29 a) of the VAT Act.

<sup>8</sup> Section 49/A of the VAT Act.

<sup>9</sup> Section 45/A (1) of the VAT Act.

then **the place of supply of those transactions remains the Member State where the taxable person is established or the Member State where the goods are dispatched, and you will be taxed according to the rules of that Member State.** However, the rule under Section 49/A of the VAT Act does not apply where a taxable person established exclusively in the territory of the country makes an intra-Community distance supply by dispatching or transporting the goods from a Member State other than the territory of the country. This means that the place of supply of the latter intra-Community distance supply will always be the Member State of destination, irrespective of whether the supplier is subject to the rules of Article 49/A in the territory of the country. However, the consideration for this intra-Community distance supply dispatched from another Member State does not have to be included in the EUR 10 000 threshold.

If the taxable person exceeds the EUR 10 000 threshold in any of the transactions, the above relief - taxation according to the place of establishment or the place of dispatch of the goods (Hungary) - is not applicable<sup>10</sup>; for determining the place of supply, the provisions of Section 29(a) and Section 45/A of the VAT Act are applicable.

§ (1) shall apply, and VAT at the rate set by the Member State of supply shall be charged on the consideration for the transaction by which the taxable person exceeds the threshold. Under the relevant rule in the Tax Code<sup>11</sup>, the threshold must be notified to the tax authorities within 15 days of the threshold being reached.

The conversion rate for the EUR 10,000 threshold is the ECB (European Central Bank) exchange rate on 5 December 2017.<sup>12</sup> For Hungary, this means an exchange rate of 313.96 HUF/EUR, i.e. the applicable threshold for domestic taxpayers is HUF 3 100 000, taking into account the rounding rules. The threshold of EUR 10 000 applies to intra-Community supplies of goods and services supplied at a distance to non-taxable persons in a Member State other than that in which the taxable person is established, provided that the taxable person carries out all of these transactions. It is also important to note that the EUR 10 000 threshold is not to be observed separately for each Member State, but that the tax-free consideration for all supplies to customers in Member States other than the one in which the supplier is established should be taken into account together.

However, even if the EUR 10 000 threshold is not reached, a taxable person may opt to pay tax in the Member State of consumption (for which he can log in to the one-stop shop) under the main rule<sup>13</sup> for intra-Community distance and distance supplies, but in this case he cannot derogate from his choice until the end of the second year following the year in which he makes the choice.<sup>14</sup>

**To summarise the above: a domestic taxable person making an intra-Community distance supply must charge the VAT rate under the VAT Act on the goods supplied or the services provided at a distance until the threshold is exceeded. A**

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<sup>10</sup> Section 49/A (2) of the VAT Act.

<sup>11</sup> Section 16 (3) of Government Decree No. 465/2017 (XII. 28.) on the detailed rules of tax administration procedure.

<sup>12</sup> Section 256 (3) of the VAT Act.

<sup>13</sup> § 29 a), § 45/A of the VAT Act.

<sup>14</sup> Section 49/A (3)-(4) of the VAT Act.

If the threshold of EUR 10 000 is exceeded, or if the value of the goods exceeds this threshold, you will be liable, at your option, to the VAT due in the Member State where the goods are intended for consumption or where the non-taxable person is established (or, if not established, resident or usually resident) in the Member State where the customer is established for consumption.

If the taxable person has not yet reached the threshold of EUR 10 000 and registers in the EU one-stop shop system, but does not make a notification pursuant to Section 49/A (3) of the VAT Act that he/she will not apply the administrative simplification for small businesses described above, the VAT Act will be repealed. According to the new provision of the VAT Code<sup>15</sup> in force from 24 November 2022, by opting for the EU one-stop shop<sup>16</sup> instead of the simplification rules, the taxable person is also deemed to opt for taxation according to the main rule<sup>17</sup>, i.e. the place of consumption. Therefore, if the taxable person is registered in the OSS, all his supplies within the Community subject to the EU special scheme must be declared in the OSS, irrespective of the threshold, and these supplies cannot be declared in the Hungarian VAT return ('65) even if the taxable person has not yet reached the threshold of EUR 10 000.

If the taxpayer opts for taxation according to the main rules instead of administrative simplification (such as registering for the EU one-stop shop<sup>18</sup>), they cannot deviate from this choice for two years. In order to ensure traceability of the two-year election requirement for taxable persons registered under the EU one-stop scheme, the VAT Act 2023. The rule<sup>19</sup> in force from 28 August 2023 provides that if the taxable person no longer uses the EU one-stop scheme (ceases to use the special scheme or is excluded from 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 must declare whether he is a taxable person who was otherwise entitled to the exceptional rules on administrative simplification at the time of registration under the EU one-stop scheme.

**If the taxable person has opted for an exemption**, the Hungarian VAT rules apply to his intra-Community distance supply until the threshold of EUR 10,000 is exceeded, if he does not make use of the above-mentioned option, and the supply is therefore exempt. Pursuant to the relevant rule of the VAT Act<sup>20</sup>, the consideration for the intra-Community distance supply made within the territory of the country must also be taken into account when calculating the upper threshold of HUF 12,000,000 for the exemption from VAT.

A taxable person established in the country may only apply the exemption to transactions carried out in the country. The thresholds for the application of the exemption include

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<sup>15</sup> Section 49/A (5) of the VAT Act.

<sup>16</sup> Section 253/I (1)-(2) of the VAT Act.

<sup>17</sup> VAT Act, § 29 a), § 45/A.

<sup>18</sup> Section 49/A (5) of the VAT Act.

<sup>19</sup> Section 253/J (8) of the VAT Act.

<sup>20</sup> Section 188 (1) of the VAT Act.



Thus, the consideration for transactions carried out abroad by a taxable person exempt from tax is not to be included. However, under the new rules on e-commerce, intra-Community distance supplies made by an exempt taxable person may be taxable at home. Such a case may arise - not including the cases covered by Article 49/A.

§ (1) - where the taxable person registered in Hungary makes an intra-Community distance supply to Hungary from a supply of goods from a supply of goods to Hungary from a supply of goods from a supply of goods to Hungary from a Member State of the Community other than Hungary. In these cases, with regard to the treatment of these transactions under special rules, the taxable person may not act in the capacity of a taxable person exempt from tax<sup>21</sup>, and these receipts are not included in the HUF 12 000 000 threshold<sup>22</sup>.

If the exempt taxable person chooses to apply the main rule<sup>23</sup> to intra-Community distance supplies (i.e. taxation in the Member State of consumption) or if he has exceeded the EUR 10 000 threshold, given that the transaction is carried out in the Member State of destination and that the exemption does not cover the transaction(s) carried out in another Member State, the supply of goods is subject to VAT in the Member State of supply. A taxable person may not act in his capacity as taxable person exempt from VAT in the case of intra-Community distance supplies made in a territory of the Community other than the territory of the country<sup>24</sup>, and the tax-free consideration for such supplies shall not be taken into account in calculating the HUF 12 000 000 threshold<sup>25</sup>.

The Act creates the possibility for a taxable person who is exempt from tax to deduct input tax on taxable intra-Community supplies made at a distance, provided that the other conditions for deduction are met<sup>26</sup>.

The new rules on the taxable person exempt from the taxable person subject to the taxable person exemption entered into force on 24 November 2022, but will apply from 1 January 2022<sup>27</sup>, taking into account that the taxable person exemption is an optional tax treatment for the calendar year.

#### **IV. Background, extension of the one-stop shop**

As of 1 January 2015, the MOSS (Mini One Stop Shop) system will apply to the obligation to declare and pay VAT on so-called "distance services"<sup>28</sup> - telecommunications, radio and audiovisual media services and electronically supplied services - supplied to non-taxable persons established in the Community. This means that a taxable person can use the tax administration of the Member State where he is registered in the one-stop shop to make a payment to the tax authorities of the Member State in which he is not established

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<sup>21</sup> Section 193 (1) (a) of the VAT Act.

<sup>22</sup> Section 188 (3) (h) of the VAT Act.

<sup>23</sup> Section 29 a) of the VAT Act.

<sup>24</sup> Section 193 (1) (d) of the VAT Act.

<sup>25</sup> Section 188 (3) (h) of the VAT Act.

<sup>26</sup> Section 195 (2) (d)-e) of the VAT Act.

<sup>27</sup> VAT Act, § 356.

<sup>28</sup> Section 45/A (1) of the VAT Act.

VAT declaration and payment obligations due. A taxable person established in the Community could register for the one-stop scheme in the Member State of establishment and a taxable person not established in the Community could register in the Member State of his choice.<sup>29</sup>

### **New legislation extends the scope of the one-stop shop**

- any supply of services to a non-taxable person in a Member State of the Community, or
- the obligation to declare and pay VAT

on intra-Community distance sales.

Within this, it provides a separate one-stop shop in line with EU VAT rules

- on services supplied by taxable persons established outside the Community to non-taxable persons in the Community (**non-EU one-stop scheme or special scheme**<sup>30</sup>), and
- for intra-Community distance supplies, certain domestic supplies of goods facilitated by an electronic platform and services supplied by a taxable person established in the territory of the country to non-taxable persons in another Member State (**EU one-stop shop or EU special scheme**)<sup>31</sup>

pay and declare VAT.

The One Stop Shop under the new rules is called 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 use all three schemes.

## **V. The non-EU one-stop shop**

The non-EU one-stop shop or non-EU special scheme<sup>32</sup> provides relief for **taxable persons not established in the Community for tax payment and tax return obligations and is only applicable to services supplied to non-taxable persons.**

Taxable person not established in the Community<sup>33</sup> - i.e. "taxable person not established for business purposes in the Community and, in the absence of such establishment, not established for business purposes in the Community".

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<sup>29</sup> The VAT Act. Chapter XIX of the VAT Act, which was repealed by Section 69(4) of the VAT Act with effect from 1 July 2021.

<sup>30</sup> § 253/D-G of the VAT Act.

<sup>31</sup> § 253/H-L of the VAT Act.

<sup>32</sup> VAT tv. Chapter XIX/A, sub-chapter 1.

<sup>33</sup> Section 253/C(3) of the VAT Act.

is not established or normally resident in the Community" - may choose to fulfil its tax payment and tax return obligations in respect of supplies of services to a non-taxable person established for economic purposes in the Community, or to a non-taxable person who is not established or normally resident in the Community for economic purposes, by the National Tax and Customs Administration (hereinafter referred to as "NAV")<sup>34</sup>. The taxable person may also act without a tax representative, i.e. register directly in the non-EU one-stop shop system. (The rules on establishment for economic purposes are dealt with in Section 254 of the VAT Act, the concept of permanent establishment referred to here is found in Section 259(2) of the VAT Act, and Article 11(2)(a) of the VAT Act also contains a rule on permanent establishment.)

**If the taxable person opts to apply the special scheme and the tax authority has registered the taxable person as such, it must apply it to all services covered by that scheme.**<sup>35</sup>

**To register**, the taxpayer must electronically submit the data specified in the VAT Act<sup>36</sup> to the tax authority, on the basis of which the tax authority will register the taxpayer as a taxpayer applying the special non-EU scheme and assign him a so-called non-EU identification number necessary for the application of this special scheme, which will be notified to the taxpayer electronically.<sup>37</sup> The possibility to register was opened on 1 April 2021<sup>38</sup>, but the OSS system, except for services that can be provided at a distance, can only be used from the tax assessment period starting 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 in the registration interface of the [OSS portal](#), depending on the date of filing, according to the following technical settings.

- a) If the registration takes place before 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 range is from the entire month preceding the registration to the day of registration, up to the 10th of the month. *(For example, for a registration on January 10th, the possible date can be from December 1st to January 10th.)*
- 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 the filing and the filing date (*e.g. for a registration on 11 January, the possible date could be from 1 January to 11 January.*)<sup>39</sup>

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<sup>34</sup> Section 253/D (1) of the VAT Act.

<sup>35</sup> Section 253/D (5) of the VAT Act.

<sup>36</sup> Section 253/E (1) of the VAT Act.

<sup>37</sup> Section 253/E (1) and (3) of the VAT Act.

<sup>38</sup> Section 345 of the VAT Act; Section 188 (6) of the VAT Act.

<sup>39</sup> Article 57d(1) Héa-vhr.

**The registration** for the application of the non-EU special scheme **can be done** under the "Non-EU scheme" section of the **OSS portal operated by the NAV**:

- <https://oss.nav.gov.hu/>, or
- on the NAV website at <https://nav.gov.hu/>, under the NAV Online menu on the main page, under the One-Stop Shop System (OSS) menu.

The "User Guide" under the Help menu of the OSS portal provides detailed information on how to register and use the OSS portal, while the "Useful information, FAQs" menu contains useful information for taxpayers on the functioning of the OSS system.

Taxable persons not applying the EU special scheme must submit a quarterly **return by the end of the month following the quarter. The** return must also be submitted for quarters in which the taxable person did not supply a service covered by the non-EU special scheme. (The 'User's Guide' mentioned above **also contains useful information for submitting the return.**) The return must be made in HUF at the exchange rate on the last day of the tax period, as published by the ECB for that day. If no exchange rate has been published on the day concerned, the exchange rate published on the next publication date should be used.

**The tax** - equal to the amount shown in the return (not rounded to thousands of HUF) - must be **paid** at the same time as the return is submitted, by **the deadline for submission of the return at the latest**, by transfer to the NAV OSS VAT collection account 10032000-01077027, in HUF, referring to the tax return on which the payment is based (indicating the reference number of the return in the communication box, thus allowing the payment to be assigned to a given period).<sup>40</sup>

In addition to the above rules, the VAT Act also lays down detailed rules on the notification of changes, deletion from the register and record-keeping, as well as the content and amendment of the return.<sup>41</sup>

New rules have also been introduced for the adjustment of tax liability for transactions carried out under the special scheme for non-EU taxable persons. Before 1 July 2021, if an adjustment is necessary (for example, a rebate), the return that includes the transaction affected by the adjustment must be amended. **Under the new rules, the adjustment must be included in the current return.** Unlike the part of the 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 modified by a positive or negative sign. 'Under the special scheme for non-EU

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<sup>40</sup> Paragraphs 253/F (1), (3) and (4) of the VAT Act.

<sup>41</sup> VAT tv. Chapter XIX/A, sub-chapter 1.

may amend a tax return under this special scheme until three years after the expiry of the deadline for filing the return covering the tax liability to be amended. The amendment to the tax return must be included in a subsequent tax return. This subsequent return shall indicate the Member State of supply concerned, the tax period and the amount of tax (difference) resulting from the amendment. After the submission of the closing return<sup>42</sup>, tax returns, including the closing return, may be amended directly in the return submitted to the competent authority of the Member State of supply in the manner determined by that Member State."<sup>43</sup>

The VAT Act states<sup>44</sup> that "the taxable person shall fulfil his **obligation to keep records** under Art.<sup>45</sup> in such a way as to allow control by the tax authority of the Member State of supply. The taxable person shall make the records available electronically on request. The register shall be kept for a period of ten years from the last day of the calendar year in which the supply of services covered by this special scheme took place."

The said registration shall be understood to mean the fulfilment of the obligation to register pursuant to Art. 9(f), the detailed rules for which are set out in Art. 77. Pursuant to paragraph 1 of this provision, **the records required by law 'shall be kept in such a way as to enable the taxable amount, the amount of tax, exemptions, reliefs, the basis and amount of budgetary aid and the payment or use thereof to be determined and checked'**.

In addition, **the Héa-vhr. specifies<sup>46</sup> the content of the records** to be kept by a taxable person applying a special scheme outside the EU. Given that Article 63a(1) of the VAT Code provides for the same content requirements for the records to be kept by taxable persons applying both the non-EU and the EU special scheme, the rules on the records are explained in point VI.

## **VI. The EU one-stop shop**

**The EU special scheme will apply from 1 July 2021 to the following transactions<sup>47</sup> :**

- distance selling of a product within the Community,
- certain domestic supplies of goods by taxable persons operating an electronic platform, and

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<sup>42</sup> Section 253/C(2) of the VAT Act.

<sup>43</sup> Section 253/F (5) of the VAT Act.

<sup>44</sup> Section 253/G (1)-(2) of the VAT Act.

<sup>45</sup> Act CL of 2017 on the Rules of Taxation (hereinafter: Art.)

<sup>46</sup> Article 63c(1) Héa-vhr.

<sup>47</sup> Article 369b of the VAT Directive; § 253/H-I of the VAT Act.

- services supplied to a non-taxable person in another Member State.

**If** the taxpayer chooses to apply the special scheme and **the tax authority has registered the taxpayer** as such, it **must apply** it to all transactions covered by that scheme.<sup>48</sup>

Under the rules of the VAT Act<sup>49</sup>, a taxable person not established in the Community may choose to pay tax and submit a tax return via the NAV on the intra-Community distance supply of goods, provided that the goods are dispatched or transported from within the country. A taxable person not established in the Community may opt for the EU special scheme only for intra-Community distance supplies of goods and for services the non-EU special scheme (see point V). A taxable person not established in the Community must appoint a tax representative to apply the EU special scheme.<sup>50</sup>

A taxable person, including a platform acting as a deemed vendor, who (or which)

- has its place of business in the country, or
- has its place of business outside the Community but has a permanent establishment in the country,

may choose to pay tax and submit tax returns through the NAV on his intra-Community distance sales and supplies made to non-taxable persons in a Member State of the Community where he is not established for business purposes.<sup>51</sup> It is important to note that VAT on services can only be declared and paid in the EU one-stop scheme for services supplied in the Member State where the supplier is not established, whereas there is no such restriction for intra-Community distance supplies, i.e. VAT on intra-Community distance supplies can be declared and paid for all Member States, regardless of whether the supplier is established in that Member State or not. However, the latter is also subject to the requirement that the Member State of dispatch and the Member State of destination of the goods cannot, in principle, be the same (only where platforms are involved 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 filing, using the following technical settings in the registration interface of the [OSS portal](#).

- If the registration takes place before 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 range is from the whole of the previous month to the day of registration, up to a maximum of

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<sup>48</sup> Section 253/H (7), Section 253/I (7) of the VAT Act.

<sup>49</sup> Section 253/H (1) of the VAT Act.

<sup>50</sup> Section 148 (2)-(3), Section 253/H (2) of the VAT Act.

<sup>51</sup> Section 253/I (1) of the VAT Act.



up to the 10th day of the month (*e.g. for a registration on 10 January, the date can be from 1 December to 10 January*).

- 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 the filing and the filing date (*e.g. for a registration on 11 January, the possible date could be from 1 January to 11 January*).<sup>52</sup>

**The registration** for the application of the EU special scheme **can be done** under the "EU scheme" section of the **OSS portal operated by the NAV:**

- <https://oss.nav.gov.hu/>, or
- on the NAV website at <https://nav.gov.hu/>, under the NAV Online menu on the main page, under the One-Stop Shop System (OSS) menu.

The "User Guide" under the Help menu of the OSS portal provides detailed information on how to register and use the OSS portal, while the "Useful information, FAQs" menu contains useful information for taxpayers on the functioning of the OSS system.

Taxpayers could notify their election to the NAV<sup>53</sup> from 1 April 2021, but the OSS system could only be used from the tax assessment period starting 1 July 2021, except for services that could be provided remotely.

Taxable persons applying the EU special scheme must submit a quarterly **return by the end of the month following the quarter. The** return must also be filed for quarters in which the taxpayer has not carried out a transaction covered by the EU special scheme. (The '**User's Guide**' mentioned above **also contains useful information for filing the return.**) The return must be made in HUF at the exchange rate on the last day of the tax period, as published by the ECB for that day. If no exchange rate has been published on the day concerned, the exchange rate published on the next publication date should be used.

**The tax** - equal to the amount shown in the return (not rounded to thousands of HUF) - must be **paid** at the same time as the return is submitted, by **the deadline for submission of the return at the latest**, by transfer to the NAV OSS VAT collection account 10032000-01077027, in HUF, referring to the tax return on which the payment is based (indicating the reference number of the return in the communication box, thus allowing the payment to be assigned to a given period).<sup>54</sup>

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<sup>52</sup> Article 57d(1) HÉA-vhr.

<sup>53</sup> Section 345 of the VAT Act; Section 188 (6) of the VAT Act.

<sup>54</sup> Section 253/K (1), (6) and (7) of the VAT Act.

In addition to the above rules, the VAT Act sets out detailed rules on the notification of changes, deletion from the register and record-keeping, as well as the content and amendment of the return.<sup>55</sup>

New rules have also entered into force for the adjustment of tax liability for transactions carried out under the EU special scheme. Before 1 July 2021, if an adjustment is necessary (e.g. a rebate), the return that includes the transaction affected by the adjustment must be amended. **Under the new rules, the adjustment must be included in the current return.** Unlike the part of the 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 modified by a positive or negative sign. Under the EU 'special scheme', the possibility to amend a tax return under the special scheme is available for three years after the deadline for submitting the return containing the tax liability to be amended. The amendment to the tax return must be included in a subsequent tax return. This subsequent return shall indicate the Member State of supply concerned, the tax period and the amount of tax (difference) resulting from the amendment. After the submission of the tax return<sup>56</sup>, tax returns, including the tax return at the end of the period, may be amended in a return submitted directly to the competent authority of the Member State of supply in the manner determined by that Member State."<sup>57</sup>

The VAT Act states that "the taxable person shall fulfil the **record-keeping obligations** laid down in Art. The taxable person shall make the records available electronically on request." The register shall be kept for a period of ten years from the last day of the calendar year in which the supply of goods and services covered by the EU special scheme takes place.<sup>58</sup>

In addition, **the Héa-vhr. specifies**<sup>59</sup> the **content of the records** to be kept by EU and non-EU special scheme taxpayers. Accordingly, the records kept by the taxable person must contain the following information:

- a) the Member State of consumption in which the product is sold or the service is provided;
- b) the type of services or the quantity and definition of the products sold;
- c) the date of supply of the goods or services;
- d) by specifying the tax base, the currency;

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<sup>55</sup> VAT tv. Chapter XIX/A. sub-chapter 2.

<sup>56</sup> Section 253/C(2) of the VAT Act.

<sup>57</sup> Section 253/K (8) of the VAT Act.

<sup>58</sup> Section 253/L (1)-(2) of the VAT Act.

<sup>59</sup> Article 63c(1) Héa-vhr.

- e) any subsequent increase or decrease in the tax base;
- f) is the applied VAT rate;
- g) the amount of VAT payable, specifying the currency;
- h) the amount and date of payments received;
- i) advances received before the supply of goods or services;
- j) if an invoice is issued, the information on the invoice;
- k) in the case of services, information to determine the place of establishment or the permanent address or habitual residence of the recipient, and in the case of goods, information to determine the place of departure and arrival of the goods dispatched or transported to the recipient;
- l) evidence of the possible return of the product, including the taxable amount and the VAT rate applied.

The VAT Act also states that the information must be recorded by the taxable person in such a way that it can be made available electronically without delay and for each good or service supplied. If the taxable person is required to submit the register by electronic means on request and does not submit it within 20 days of the request, the Member State of identification shall warn the taxable person of the obligation to submit the register. Failure to provide the information is a reason for exclusion from the OSS.<sup>60</sup> The Member State of identification shall inform the Member States of consumption electronically of the sending of the warning.<sup>61</sup>

It is worth taking a look at **which taxable persons can pay tax and file tax returns for which transactions through the one-stop shop under the EU special scheme**. Under the EU special scheme

- a taxable person not established in the Community<sup>62</sup>, including a platform not established in the Community<sup>63</sup>, may choose to pay tax and submit tax returns on intra-Community supplies of goods dispatched or transported from Hungary via the NAV through the one-stop shop<sup>64</sup>;
- a platform not established in the Community acting as a deemed vendor [a platform facilitating the supply of goods by a taxable person not established in the Community to non-taxable persons not established in the Community, as defined in § 12/C (2) (or under national legislation which corresponds in substance to Article 14a(2) of the VAT Directive) in respect of the sale of goods where the place of dispatch and destination of the goods are the same Member State (from stock within that Member State)]

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<sup>60</sup> Article 58b(2)(c) of the Hague Convention.

<sup>61</sup> Article 63c(3) Héa-vhr.

<sup>62</sup> Section 253/C(3) of the VAT Act.

<sup>63</sup> For information on platforms, see point VIII.

<sup>64</sup> Section 253/H (1) of the VAT Act.

sales), you can choose to fulfil your tax payment and tax return obligations through the NAV via the one-stop shop system<sup>65</sup> ;

- a taxable person established in the territory of the Community or established outside the Community but with a fixed establishment in the territory of the Community, including a platform, may choose to pay and declare tax on intra-Community distance sales of goods via the NAV through the one-stop shop<sup>66</sup> ;
- a taxable person established in the territory of the country or established outside the Community but with a fixed establishment in the territory of the country may choose to pay tax and submit tax returns on supplies of services to non-taxable persons in the Member State of the Community where he is not established for business purposes via the one-stop shop<sup>67</sup> ;
- a platform acting as a deemed vendor and having its registered office or permanent establishment in the territory of the country [a platform facilitating the supply of goods to non-taxable persons by a taxable person not established in the Community pursuant to Article 12/C (2) (or a Member State's legislation which complies with the content of Article 14a. Article 14.2(2))], for supplies of goods where the place of dispatch and the destination of the goods are the same Member State (supplies from stock within that Member State), may choose to fulfil its tax payment and return obligations via the NAV through the one-stop shop<sup>68</sup> .

As shown above, the electronic platform, in its capacity as a deemed vendor, can fulfil its obligation to declare and pay tax not only on intra-Community distance supplies through the EU one-stop shop, but also on transactions where the place of dispatch and destination of the goods are the same Member State.

In the case of services, it can be noted that the number of persons established in the country for economic purposes<sup>69</sup>

the tax liability of a "normal" domestic taxable person for services supplied to a domestic taxable person or a non-taxable person and performed in Hungary is not subject to the VAT Act. Chapter XIX/A, subchapter 2 (EU special rule), but according to the general rules of the VAT Act, so these transactions should be included in the VAT return '65' instead of the return to be submitted through the one-stop-shop system. In addition, in relation to the supply of services to non-taxable persons, it should be stressed that if the aforementioned transactions carried out by a taxable person established or having a fixed establishment in the territory of the country are carried out in a Member State of the Community where the taxable person has a fixed establishment, the special EU rules do not apply to these transactions, which must be taxed in that Member State, 'outside' the one-stop scheme.

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<sup>65</sup> Section 253/H (8) of the VAT Act.

<sup>66</sup> Section 253/I (1) of the VAT Act.

<sup>67</sup> Section 253/I (1) of the VAT Act.

<sup>68</sup> Section 253/I (8) of the VAT Act.

<sup>69</sup> VAT Act, § 254.

It is important to stress that the **rules on the place of supply of services have not changed**. What also remains unchanged is that VAT obligations can be met through the one-stop shop in the Member State in which the taxable person supplying the service is not established. It should therefore be understood that, from 1 July 2021, the one-stop scheme will cover all services, not just those that can be supplied at a distance.

**Platforms (taxable persons operating an electronic platform) are liable to pay tax when they facilitate the supply of goods to a non-taxable person by a taxable person not established in the Community<sup>70</sup> (see point VIII for details). This applies not only to intra-Community distance supplies but also to supplies where the place of dispatch and destination of the goods are the same Member State<sup>71</sup>.** Thus, the EU special scheme also applies where the platform is liable to pay tax on a supply of goods where both the place of dispatch and the destination of the goods are domestic (for example, a domestic supply from domestic stock is made not only to another Member State of the Community but also to a domestic destination). Consequently, if the platform has opted to apply the EU special scheme, it will have to fulfil its obligation to declare and pay tax on this transaction under the EU special scheme rather than under the '65 VAT return.

## **VII. The right to a refund for taxable persons using the EU and non-EU one-stop shops**

**The one-stop shop system only allows you to settle the tax payable, but not to deduct input tax.**

**Thus, if a taxpayer not established for business purposes in the country**

- is registered only in the one-stop shop in the country, or
- registered for the one-stop scheme in another Member State to pay domestic tax, and
- **you want to claim input tax deductible,**

**you can do so under the special rules<sup>72</sup> for tax refunds for non-established taxpayers.<sup>73</sup>** For taxable persons established outside the Community, the refund is not conditional in this case on their being established in a country with which Hungary has a reciprocal agreement for the refund of value added tax.<sup>74</sup>

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<sup>70</sup> VAT Act, § 12./C. paragraph (2).

<sup>71</sup> Section 253/H(8), Section 253/I(8) of the VAT Act; Article 369b(b) of the VAT Directive.

<sup>72</sup> VAT tv. Chapter XVIII.

<sup>73</sup> Section 253/M-N of the VAT Act.

<sup>74</sup> A taxable person established in a third country can submit a refund application on the IAFAK form provided by the NAV, while a taxable person established in another Member State of the Community can submit a refund application on the 'ELEKAFKA form.

However, if the non-established taxable person is registered or would be obliged to register as a taxable person in the country because of his other activities, he can claim the input tax deductible in his VAT return filed in the country.

**Domestic taxable persons applying the EU special scheme** and having their registered office or permanent establishment in Hungary under the VAT Act **can deduct input VAT in VAT return No.**

## **VIII. Rules for platforms**

A significant proportion of distance sales of products, whether from one Member State to another, from third countries to the Community or within the same Member State, are made via an electronic platform, such as an online marketplace, platform or portal. In order to ensure the effective and efficient collection of VAT, the new rules will involve taxable persons who facilitate the distance supply of goods through the above-mentioned electronic platforms in the collection of VAT on their supplies by making them liable for VAT on the goods supplied through them in certain cases. Accordingly, taxable persons operating platforms will have a special role to play in the case of certain supplies to non-taxable persons.

In line with the relevant provision of the VAT Directive<sup>75</sup>, **a new provision<sup>76</sup> is added to the VAT Act, which contains a completely new provision on platforms, electronic marketplaces.** The provision considers platforms liable to tax in two cases.

Given that the first case<sup>77</sup> concerns the distance selling of goods imported as an intrinsic value consignment of less than €150, the relevant information is provided in the information booklet 97 "One-stop shop for imports and VAT on imports in special procedures".

The second case is dealt with in Section 12/C(2) of the VAT Act, which states that "where a taxable person facilitates the supply of goods within the Community by a taxable person not established in the Community to a non-taxable person by using an electronic platform, in particular a marketplace, platform, portal or similar means, he (she) shall be deemed to be both the person who acquires and the person who supplies those goods" (**deemed supplier**). The deemed vendor status of the platform is independent of whether it is a domestic taxable person, a taxable person established in another Member State of the Community or a taxable person in a third country. It is essential that the deemed vendor status of the platform in this case exists when it facilitates the supply of goods already in free circulation in the Community to a non-taxable person in the Community

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<sup>75</sup> Article 14a of the VAT Directive.

<sup>76</sup> Section 12/C of the VAT Act.

<sup>77</sup> Section 12/C (1) of the VAT Act.

where the taxable person who actually supplies the goods is not established within the Community.

**Where a platform facilitates the supply of goods**, irrespective of value, by a non-established taxable person in the Community to a non-taxable person in the Community (including where the place of dispatch and destination of the goods are in the same Member State), the new rules will **require the platform to be considered, by means of a fiction, as both the purchaser and the supplier of the goods.**<sup>78</sup>

Therefore, **for VAT purposes**, these cases should be treated as **if there were two supplies of goods**: the first transaction is between the original seller and the platform and the second transaction is between the platform and the buyer. Accordingly, platforms will be liable to pay VAT on the transactions they facilitate from 1 July 2021<sup>79</sup>, which they can also do through the one-stop shop described above.

**When a platform is considered to facilitate the sale of a product** is not determined by the VAT Act, but by the VAT rules directly applicable and compulsory in all Member States of the Community. The VAT Directive rule<sup>80</sup> applicable from 1 July 2021 states that for the purposes of Article 14a of the VAT Directive (which forms the basis of the above-mentioned Article 12/C), "the term 'facilitates' means the use of an electronic platform which enables the contact between the supplier offering goods for sale via an electronic platform and the buyer, as a result of which the goods are sold via that electronic platform".

The H<sub>éa</sub>-vhr. also specifies<sup>81</sup> the conditions under which the platform may be considered not to facilitate the sale of the product. This requires the following conditions to be met:

- a) "the taxable person concerned does not directly or indirectly determine the conditions of supply of the goods;
- b) the taxable person concerned is not directly or indirectly involved in authorising the charging of the amount paid to the customer;
- c) the taxable person concerned is not directly or indirectly involved in the ordering or supply of the goods."

The VAT Directive also states that "Article 14a of the VAT Directive shall not apply to a taxable person carrying out only any of the following activities:

- a) processing payments for the sale of goods;
- b) listing or advertising products;

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<sup>78</sup> Section 12/C (2) of the VAT Act.

<sup>79</sup> § 345 of the VAT Act.

<sup>80</sup> Article 5b H<sub>éa</sub>-vhr.

<sup>81</sup> Article 5b H<sub>éa</sub>-vhr.

- c) redirecting or transferring the buyer to another electronic platform offering products for sale without further involvement in the sale".

Taking into account that platforms may rely on the accuracy of the information provided by those selling goods via the electronic platform, under the VAT Act<sup>82</sup> **the platform is not liable for the payment of VAT in excess of the VAT it has declared and paid in respect of those supplies, provided that the following conditions are met:**

- a) the taxable person relies on information provided by suppliers of goods or other third parties through the electronic interface for the correct declaration and payment of VAT on the supply;
- b) the information referred to in point (a) is incorrect;
- c) the taxpayer can prove that it did not know and could not reasonably have been expected to know that the information was incorrect.

In order to reduce the administrative burden on platforms, the H ea-vhr.<sup>83</sup> establishes **rebuttable presumptions**, so that **platforms are exempted from proving the status of seller and buyer**. According to this rule, unless the platform is aware of the contrary, (i) the person selling goods through the electronic platform must be considered a taxable person; (ii) the person buying the goods must be considered a non-taxable person.

As explained above, the **fiction is that there are two successive sales, but the product is only transported once from the actual seller to the buyer, so there is a chain sale**. In the case of a chain sale, transport can only be attributed to one of the sales, the place of supply of the product prior to the sale of the product with transport being the place where the product is dispatched for transport, while the place of supply of the product after the sale of the product with transport is the place of destination of the transport.<sup>84</sup> (For a detailed explanation of chain transactions, see information booklet No 29 'Community transactions of taxable persons subject to VAT under the general rules'.) In order to ensure that it is the platform (and not the actual supplier) that makes the intra-Community distance supply, the legislation also stipulates that the supply involving transport is always made by the platform.<sup>85</sup> Consequently, the actual vendor's sale to the platform is completed at the point of dispatch of the product for carriage. If this place is outside the Community, it is not subject to EU VAT rules. **If the place of supply of the goods by the actual vendor to the platform is within the Community, the supply of goods**

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<sup>82</sup> Article 5c of the H ea-vhr.

<sup>83</sup> Article 5d of the H ea-vhr.

<sup>84</sup> Section 27 (3) of the VAT Act.

<sup>85</sup> Section 27 (4) of the VAT Act.



**tax-free**<sup>86</sup>, but the actual seller is entitled to a tax deduction for the input tax (e.g. import tax) incurred in connection with it<sup>87</sup>.

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 order placed by the customer, and sells them on to the customer. The VAT treatment of the transaction is described in [the "One-stop shop in the drop-shipping sales model"](#), Tax issue 2022/6. The Tax Question is available on the NAV website under [Tax / Tax Question](#).

Among the rules applicable to platforms, mention should be made of **the special rule on the chargeability of the tax and the assessment of the tax due**, which states that in cases where the vendor is deemed to have made a supply to the platform and the platform to the customer, **the time of supply by the platform and the time of supply to the customer are the same**, the time of supply being the time of acceptance of payment, and the tax due is assessed at that time, so that **the tax liability arises at the time of acceptance of payment**<sup>88</sup>. The relevant rule of the VAT Act<sup>89</sup> states that "the date of acceptance of payment is the date on which the person supplying the goods through an electronic platform or acting on his behalf receives the confirmation of payment, the payment approval message or the customer's commitment to pay, irrespective of when the money is actually paid, taking into account the earliest date".

The new regulation also imposes **registration** obligations on platforms. The obligation covers cases where the platform facilitates the supply of goods or services to non-taxable persons within the Community. This record must be made available at the request of the competent tax authority, or, in the case of domestic tax, the NAV. The register must be kept by the electronic platform for 10 years from the end of the year in which the transaction takes place.<sup>90</sup>

The registration obligation imposed on electronic platforms does not cover the same scope as the tax obligation imposed on electronic platforms, so the H ea-vhr. also specifies<sup>91</sup> in this respect when a platform is considered to facilitate the supply of goods or services.

The H ea-vhr. specifies the level of detail to be kept by the electronic platform for the purposes of this provision. In the event that the electronic

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<sup>86</sup> Section 87/A. of the VAT Act.

<sup>87</sup> Section 121 (b) of the VAT Act.

<sup>88</sup> VAT Act, § 61/A.

<sup>89</sup> Article 41a of the H ea-vhr.

<sup>90</sup> Section 183/A of the VAT Act.

<sup>91</sup> Article 54b H ea-vhr.

platform is also a taxable person because it facilitates the transaction, its registration obligation depends on whether it has opted to use one of the one-stop shops. The details of the registration will depend on whether you use the EU and non-EU one-stop shop or the import one-stop shop.<sup>92</sup>

If the platform is only required to keep records but not to pay tax, the records must include<sup>93</sup> :

- a) the name, postal address and electronic address or website of the seller of the goods or services whose goods or services have been facilitated through the use of the electronic platform, if available:
  - i. the VAT identification number or national tax number of the supplier of goods or services;
  - ii. the bank account or virtual account number of the seller of the goods or service;
- b) the description of the goods, their value, the place of arrival of the goods dispatched or transported, the date of sale and, if available, the order number or unique transaction identification number;
- c) the description of the service, its value, information identifying the place where the service is provided, the date of provision of the service and, where available, the order number or unique transaction identification number.

As explained above, a taxable person who sells its products through its own website is not a platform.

## **IX. Issuing an account Obligation concerning rules, online invoice data service**

Taxable persons using the OSS must apply the invoicing rules of the Member State in which they are logged on to the one-stop shop.<sup>94</sup> Accordingly, **if a taxable person** (e.g. a Hungarian taxable person or a Hungarian or foreign taxable person operating an electronic platform) logs into **the OSS in Hungary, it must apply the Hungarian rules for invoicing**. However, it is not always mandatory to issue an invoice.

As a general rule, a taxable person making an intra-Community distance supply must issue an invoice<sup>95</sup> for the transaction. However, where a taxable person fulfils his obligation to pay and declare tax on an intra-Community distance supply by using the one-stop scheme and the customer has paid the tax inclusive of VAT on the consideration up to the time of supply

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<sup>92</sup> Article 54c of the Héa-Vhr.

<sup>93</sup> Article 54c(2) Héa-vhr.

<sup>94</sup> Section 158/A (4) of the VAT Act.

<sup>95</sup> Article 220(1)(2) of the VAT Directive.

in full, you will only have to issue an invoice to the buyer if the buyer so requests, otherwise a receipt will suffice.<sup>96</sup>

However, an invoice must still be issued if the goods are

- a) are supplied to another taxable person or a non-taxable legal person who is not liable to pay tax on intra-Community acquisitions of goods;
- b) are sold to a non-taxable person not covered by point (a) and the consideration, including tax, is equal to or exceeds HUF 900 000<sup>97</sup>.

If the taxable person's electronic platform is deemed to have acquired and sold the goods pursuant to Section 12/C (2) of the VAT Act, the actual seller must issue an invoice to the platform (this transaction is exempt from tax<sup>98</sup>) and the platform must issue an invoice to the final customer. In addition to issuing an invoice<sup>99</sup>, the actual seller is also obliged to issue an online invoice<sup>100</sup>, if it carries out a transaction with a domestic place of supply. If a platform registers in the EU one-stop shop in Hungary and the customer reimburses the full amount of the consideration, including tax, by the time of delivery, the invoice is only required to be issued to the customer if the non-taxable customer so requests, otherwise a receipt<sup>101</sup> is sufficient. However, an invoice must be issued if the transaction is

- a) are made to a non-taxable legal person;
- b) to a non-taxable person or entity not covered by point (a), and the amount of the consideration, including tax, equals or exceeds HUF 900 000.<sup>102</sup>

If a platform registers for the EU one-stop shop in Hungary, it is not obliged to provide online invoice data for sales it facilitates in another EU Member State (the same applies to all other taxable persons who are registered for the one-stop shop in Hungary and who fulfil their tax payment and return obligations through it)<sup>103</sup>. However, if the goods supplied through the platform are dispatched within Hungary (for example from a warehouse in Hungary) or are transported to Hungary from another Member State of the Community, the platform is obliged to fulfil the online invoice reporting obligation for the transaction taking place in Hungary, regardless of whether it uses the one-stop shop (exemption is only granted if the place of the transaction is another Member State of the Community).<sup>104</sup>

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<sup>96</sup> VAT Act, § 165 (1) (b), § 165 (6), § 166 (1).

<sup>97</sup> Section 165 (3) of the VAT Act.

<sup>98</sup> Section 87/A. of the VAT Act.

<sup>99</sup> Section 159 (1) and (2) (b) of the VAT Act.

<sup>100</sup> VAT Act, Annex 10, point 1.

<sup>101</sup> Section 165 (1) (b) of the VAT Act, Section 166 (1) of the VAT Act.

<sup>102</sup> Section 165 (3) of the VAT Act.

<sup>103</sup> VAT Act, Annex 10, point 1.

<sup>104</sup> VAT Act, Annex 10, point 1.

If the place of supply of services is<sup>105</sup> another Member State of the Community, both taxable persons not established in the Community but registered in Hungary for the non-EU one-stop scheme and taxable persons established or permanently established in the territory of the Community who fulfil their tax and tax return obligations in relation to their services through the EU one-stop scheme, - are exempted from the obligation to issue an invoice if the customer reimburses the full amount of the consideration, including tax, up to the time of supply and does not request the issue of an invoice.<sup>106</sup> In this case, it is sufficient to issue a receipt.<sup>107</sup> However, an invoice must be issued if the service is

- a) are made to a non-taxable legal person;
- b) to a non-taxable person or entity not covered by point (a), and the amount of the consideration, including tax, equals or exceeds HUF 900 000.<sup>108</sup>

Taxable persons who register in Hungary for the non-EU one-stop shop system and domestic taxable persons who register in Hungary for the EU one-stop shop system are exempt from the obligation to provide online invoice data based on the relevant rule of the VAT Act with regard to their transactions with a foreign place of supply.<sup>109</sup>

In relation to services supplied in Hungary, both taxable persons not established in the Community (in the case of the non-EU one-stop scheme, if they are registered in Hungary) and taxable persons established or permanently established in Hungary who are "obliged" to pay tax and submit tax returns for services supplied in Hungary outside the one-stop scheme (cf, domestic taxable persons are not allowed to use the one-stop scheme for their supplies of services performed within the country) - are exempt from the obligation to issue an invoice (excluding services supplied to taxable persons) if the customer reimburses the taxable amount of the consideration in full by the time of performance and does not request the issue of an invoice.<sup>110</sup> In this case, it is sufficient to issue a receipt.<sup>111</sup> However, an invoice must be issued if the service is

- a) are made to a non-taxable legal person;
- b) to a non-taxable person or entity not covered by point (a), and the amount of the consideration, including tax, equals or exceeds HUF 900 000.

If the conditions set out in Section 165 (1) (b) of the VAT Act are not fulfilled (for example, if the customer requests an invoice), and if the supplier is not exempt from issuing an invoice,

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<sup>105</sup> § 36-49/A of the VAT Act.

<sup>106</sup> Section 165 (1) (b) of the VAT Act.

<sup>107</sup> Section 166 (1) of the VAT Act.

<sup>108</sup> Section 165 (3) of the VAT Act.

<sup>109</sup> VAT Act, Annex 10, point 1.

<sup>110</sup> Section 165 (1) (b) of the VAT Act.

<sup>111</sup> Section 166 (1) of the VAT Act.

in addition to the obligation to issue invoices, the service provider must also fulfil the obligation to provide online invoice data in accordance with Annex 10 of the VAT Act, if the service is provided in Hungary.

If the seller is exempted from the obligation to issue invoices under Section 165 (1) of the VAT Act, as described above, the seller must issue a receipt<sup>112</sup>. However, the seller may still decide to issue an invoice instead of a receipt.<sup>113</sup>

## X. Basic features of EU and non-EU scheme declarations

In the EU and non-EU schemes, the **tax assessment period is the calendar quarter and the return and related payment period is the month following the quarter**<sup>114</sup>.

The declaration in the EU scheme

- a About Hungary completed for the period from sales of products during the period and services,
- a other from other Member States completed current period from sales of products and services, and
- can be compiled from previous periodic amendments.

The declaration in the non-EU scheme

- the provision of services during the period and
- can be compiled from previous periodic changes.

Amendments can be made to returns submitted up to 3 years earlier. A **return that has already been filed cannot be amended**; the amendment can be included in a subsequent return. In the event of a taxable person leaving or being excluded from the system, once the so-called 'activity-closing' return has been submitted, which technically closes the special scheme, no amendment to the OSS return is possible and the amendment must be submitted directly to the Member State of consumption in accordance with the rules of that Member State.<sup>115</sup>

When completing the return, the OSS portal (<https://oss.nav.gov.hu/>) will display the reference number of the return, which must be entered in the payment message box when making the payment for the return.<sup>116</sup>

A zero return can be filed by ticking the appropriate box, with a single click. A nil return can only be submitted if no OSS-

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<sup>112</sup> Section 166 (1) of the VAT Act.

<sup>113</sup> Section 166 (2) of the VAT Act.

<sup>114</sup> Section 253/F (1), Section 253/K (1) of the VAT Act.

<sup>115</sup> Section 253/F (5), Section 253/K (8) of the VAT Act.

<sup>116</sup> Paragraph 253/F (4) and paragraph 253/K (7) of the VAT Act.

the supply of goods or services covered by the scheme, and no adjustment is required for previous periods.

Data on a return already filed can only be amended when the next return is filed. For example, a return filed in October for the third quarter of 2022 can be amended in the fourth quarter of 2022 return in the next return period, i.e. January 2023. Unlike the part of the return relating to the base period, the amendment 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 modified by a positive or negative sign. It is therefore advisable to save and print the return after completion and only submit it after a thorough review of the data.

The OSS declaration figures must be given in HUF. The OSS portal's declaration interface refers to this separately in the header of each tax base and amount field. Transactions settled in euro must be converted into forint at the ECB exchange rate on the last day of the tax assessment period:<sup>117</sup>

[https://www.ecb.europa.eu/stats/policy\\_and\\_exchange\\_rates/euro\\_reference\\_exchange\\_rates/html/index.en.html](https://www.ecb.europa.eu/stats/policy_and_exchange_rates/euro_reference_exchange_rates/html/index.en.html)

The payment must also be made in HUF, in the same amount as the tax return (not rounded to thousands of HUF) by transfer to the NAV OSS VAT collection account 10032000-01077027 (OSS payments cannot be made to the NAV General Sales Tax revenue account with tax code 104!)

In the event of failure to submit the return or failure to submit it on time, the Member State that issued the identification number (NAV in the case of Hungarian taxpayers) will send a return reminder electronically on the 10th day after the return deadline.<sup>118</sup>

In the event of non-payment or late payment, the Member State that issued the identification number (NAV in the case of Hungarian taxpayers) will send a payment reminder electronically on the 10th day after the due date. The Member State of consumption in which the return is made is entitled to send a further warning. In this case, the VAT is payable directly to that Member State.<sup>119</sup>

If a taxpayer has an overpayment in one or more Member States as a result of an amendment to a return submitted for a previous period, the Member States of consumption concerned will refund it directly. The practice of Member States differs as to whether they refund the overpayment ex officio or on request, so it is advisable to submit an individual refund request to the tax authority of the Member State concerned. Directly to the Member State of consumption

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<sup>117</sup> Section 253/F (3)-(4), Section 253/K (6)-(7) of the VAT Act.

<sup>118</sup> Article 60a of the HÉA-vhr.

<sup>119</sup> Article 63a HÉA-vhr.

to submit a refund application, the contact details of the Member State can be found at the following link: [https://vat-one-stop-shop.ec.europa.eu/contact-country\\_en](https://vat-one-stop-shop.ec.europa.eu/contact-country_en).

## **XI. Rules on withdrawal, exclusion**

If the taxpayer no longer carries out economic activities covered by the non-EU and/or EU special scheme<sup>120</sup>, it will be excluded from the first day of the quarter following the submission of the request for exclusion.

A taxable person who applies a special scheme in a non-EU country or in the EU may cease to apply the special scheme regardless of whether he continues to supply goods or services that may be covered by that scheme. The exit request must be submitted to the NAV at least 15 days before the end of the quarter preceding the end of the quarter in which the OSS ceases to apply. In this case, the exit will take effect on the first day of the following calendar quarter.<sup>121</sup>

If a taxpayer using the EU scheme intends to make a change that will change the Member State of identification, it must notify the NAV 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 its registered office.<sup>122</sup> The withdrawal takes effect from the date of the change.

If the taxpayer continues to be registered with the NAV but operates under a different scheme, it must submit its exit application 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 its place of business in Hungary).<sup>123</sup> The withdrawal takes effect from the date of the change.

If the taxpayer submits zero returns for two years, i.e. it is assumed that the taxpayer has ceased its economic activity, the NAV will exclude the taxpayer from the OSS system.<sup>124</sup> The exclusion takes effect on the first day of the quarter following the decision to exclude.

The NAV will exclude a taxpayer from the OSS system if he does not fulfil the conditions for applying the OSS EU/non-EU scheme.<sup>125</sup> The exclusion takes effect on the first day of the quarter following the decision to exclude.

If the taxpayer fails to fulfil its obligation to file a return or make a payment despite three consecutive periodic warnings, or fails to provide the taxpayer's records pursuant to Section 253/G or Section 253/L of the VAT Act within the given deadline during a NAV inspection, the

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<sup>120</sup> VAT Act § 253/E (5) a), § 253/J (6) a).

<sup>121</sup> Article 57g(1) HÉA-vhr.

<sup>122</sup> Articles 57f(1) and 57h(2) of the Hague Convention.

<sup>123</sup> Article 57h(1)(b) of the Hague Statute.

<sup>124</sup> Article 58a of the HÉA-vhr.

<sup>125</sup> Section 253/E (5) c), 253/J (6) c) of the VAT Act.

NAV excludes the taxpayer from the OSS system.<sup>126</sup> The exclusion takes effect on the first day of the quarter following the decision to exclude.<sup>127</sup>

## **XII. Transitional provisions**

In the one-stop-shop systems, from 1 July 2021, the deadline for submitting tax returns, making tax payments and the currency in which tax payments must be made after the return period has changed. Although the changes came into force from 1 July 2021, the old rules still apply to returns submitted through the MOSS system for transactions (remotely supplied services) carried out before 1 July 2021. This means that, for example, a return for the second quarter of 2021 had to be filed and paid by 20 July 2021, and this had to be done in euros. And if an adjustment arises after 30 June 2021 in respect of a transaction that the taxpayer carried out before 1 July 2021, the adjustment must be made by self-control of the return containing the transaction and cannot be included in the next return.<sup>128</sup>

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<sup>126</sup> Article 58b Héa-vhr.

<sup>127</sup> Article 58(2) Héa-vhr.

<sup>128</sup> Article 61 Héa-vhr.