

ONLINE TRADE: VULNERABILITY FOR FRAUD AND TAX EVASION

Ph.D. Student, Leliana DIANA (BOLCU)

Doctoral School IOSUD–SDSEU, "Valahia" University of Targoviste, Romania

E-mail: leliana_d@yahoo.com

Abstract: *The Covid-19 pandemic at the macroeconomic level severely disrupted the classic world trade and the most obvious consequence of these events was the massive expansion of e-commerce. The aim of the paper is to highlight the need to apply at national level new solutions and procedures to combat tax evasion and fraud that may occur in the field of online commerce, having as a point of reference the advantages of the three declarations (VIU-DO, VIN-DO and VII-DO), used by Poland in combating e-commerce tax evasion. Currently, the One Stop Shop computer system has been introduced at European level, starting with July 1, 2021, to combat tax evasion in the area of electronic commerce. E-commerce is supported by the European Union so that economic operators can sell and buy on the internet as if they were buying from a local market, with Member States taking responsibility for collecting VAT and customs duties following e-commerce. In order to combat evasion in the area of online commerce, Romania could apply similar solutions to Poland, which has implemented declarations for each type of registration (EU OSS, non-EU OSS and Import OSS). We will present these solutions and follow the conditions under which they could be adopted, the advantages and consequences of their application.*

Key words: e-commerce, VIU-DO, VIN-DO, VII-DO, One Stop Shop.

JEL Classification: M40, M42, M48.

1. Introduction

The Covid-19 health crisis has accelerated the expansion of e-commerce and given customers access to a significant variety of home comfort products and services, giving companies the opportunity to continue operating during restrictions and containment measures. The Covid-19 pandemic has led to a fundamental change in the structure of global demand for online shopping, as well as an increase in the use of digital communication tools and distance consumption, such as: social networking, internet telephony and teleconferencing.

With more and more evidence of significant growth in both B2C and B2B e-commerce, we can say that it is necessary to adopt new methods to identify the taxation of revenues from online sales of goods and services to combat untaxed trade.

At this moment, in the situation where Romania is a member of the European Union, starting with June 2021 according to the "Government Emergency Ordinance 59/2021" the VAT treatment of distance sales of goods and deliveries of intra-community domestic goods made through platforms facilitating these deliveries, has undergone changes to combat tax evasion at EU level.

ANAF published on 28.07.2021 according to art. 314, 315 and 3152 of the Fiscal Code, Special VAT Return (VAT Return) D398 for intra-community sales of distance goods that are operated after exceeding the ceiling of 10,000 euros if you opted for registration in the OSS system.

Through the objectives of this paper we aim to:

- ✓ Highlighting the need to apply in Romania new solutions and procedures to combat tax evasion that may occur in the field of online commerce
- ✓ Presenting, as a benchmark, the advantages of the three declarations used by Poland in combating e-commerce tax evasion:
 - VIU-DO for the special procedure EU One Stop Shop (OSS)
 - VIN-DO (for the special one-stop shop procedure (OSS) non-EU)
 - VII-DO (for the special procedure of Import One Stop Shop (IOSS))
- ✓ Identifying implementation solutions for Romania

2. Literature review

E-commerce is a reorganized form of traditional commerce, being closely related to the development of the Internet and its degree of spread in society. The development of e-commerce has an important role to play in improving and securing the future of companies in critical crisis situations.

The coronavirus crisis has been a threat to the European economy and to the lives of its citizens, but the virus has stimulated online commerce and changed the reality.

Even though certain areas such as the tourism and entertainment industry have proven to be totally compromised, there have been areas that have worked at full capacity. One of these areas is e-commerce. As for the operation of the online store, it must have:

- Well-developed IT infrastructure,
- A perfectly functional website with a user-friendly interface
- Well organized and efficient logistics.

The definitions of e-commerce are grouped in Figure 1 below:

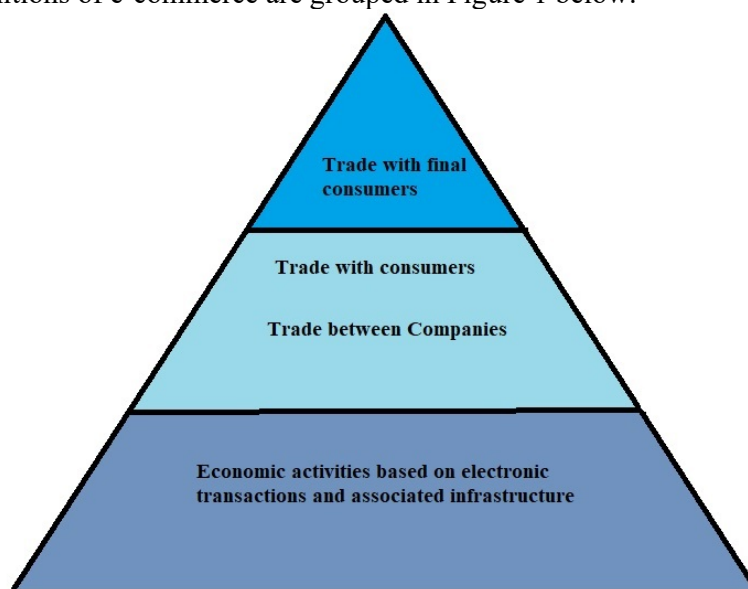


Figure 1. Grouping e-commerce definitions

Source: <http://informatica.ase.ro/site/a140301/cap2.htm>

As we can see in Figure 1, e-commerce in the broadest sense includes all economic activities based on electronic transactions and associated infrastructure. In a narrower sense, e-commerce only includes trade between companies and consumers. The narrowest definition is that which limits e-commerce to end-consumer transactions.

"The National Agency for Fiscal Administration will extend the controls to combat tax evasion in online commerce, according to the Convergence Program 2021-2021, adopted by the Government."(<https://nocash.ro/anaf-va-extinde-in-ritm-accelerat-operatiunea-mercure-de-control-in-ecommerce-institutiile-a-creat-directia-comert-electronic-pentru-a-combate-evaziunea-fiscala-in-domeniu/>).

In order to combat evasion in the area of online commerce, Romania could apply similar solutions to Poland, which has implemented declarations for each type of registration (EU OSS, non-EU OSS and Import OSS).

The Union's **one-stop shop** (OSS) is the electronic portal that companies can use to meet their VAT obligations for e-commerce sales in the EU, **starting on 1 July 2021**.

The One-Stop Shop (IOSS) is a simplified reporting model in which an entity registers in a single location for sales to EU consumers in the 27 EU Member States and for which the value freight is less than EUR 150. This creates a more efficient "Green Channel" with quick and easy customs clearance.

2.1. Union OSS electronic portal

Union OSS is an electronic portal that simplifies up to 95% of VAT obligations for online retailers and EU-wide electronic interfaces, as it allows:

- Register electronically for VAT in one Member State for all distance sales of goods within the EU and for the provision of services to consumers;
- The VAT due for all deliveries of goods and services is declared and paid in a single quarterly electronic return;
- They work with the tax administration in their own Member State and in their own language, even if the sales are cross-border.

2.2. VAT on e-commerce - what is its revolution in e-commerce?

With regard to cross-border e-commerce activities, the rules for B2C transactions have been amended as of 1 July 2021. The main reason for these changes is to combat online tax fraud for distance selling. *"The Brussels authorities have proposed a revision of VAT in the EU, which could take effect in the coming years. With a view to the global eradication of online tax fraud."* (<https://taxrep.ro/ro/e-commerce-and-vat-in-romania/>).

Certainly, each of us orders something over the Internet. From the consumer's point of view, it's not difficult - we add the product to the cart, we pay for it and after a while the courier delivers the order to the indicated place. However, the case is quite different from the point of view of an e-commerce entrepreneur. Especially from a fiscal point of view, accounting for this type of sale can be quite problematic.

In addition, by the end of June 2021, EU online retailers may have found themselves in a slightly more difficult position than their US or Chinese competitors, who did not always pay attention to VAT. For these reasons, tax regulations have entered into force throughout the European Union since 1 July 2021, introducing a number of changes to e-commerce and e-imports, the so-called small parcels to the European Union.

The changes introduced and the new regulations are undoubtedly a major challenge for both e-commerce entrepreneurs and the accounting services responsible for the proper settlement of such transactions.

The new statutory definitions, additional registration and registration obligations, and the possibility of using simplification procedures are a revolution in e-commerce.

Taxable persons who opt to use one of the OSS schemes are required to register in a single Member State, namely the Member State of identification.

From the outset, it should be noted that the above-mentioned amendments were introduced into the Polish legal system by the Law of 20 May 2021 amending the Law on Taxes on Goods and Services and Certain Other Acts (*Journal of Laws 2021, paragraph 1163*). The indicated act is the implementation of the EU VAT package for e-commerce, which consists of several regulations and directives.

Among the changes introduced are the following:

- Replacing the definition of "distance selling" with a new definition of intra-Community distance selling of goods (ESPO);
- Introduction of a definition of distance selling of imported goods (SOTI) in the VAT Law;
- New definition - special procedures and simplifications for the settlement of e-commerce transactions (OSS, IOSS, USZ);
- Capping the VAT exemption on imports of goods in transport with a value not exceeding EUR 22 throughout Europe;

- Impose new obligations on online platforms and stores;

3. Studies and examples of good practices

3.1. Intra-Community distance sales of goods, ie ESPO instead of distance selling

By the end of June, the sale of goods through the e-shop to consumers in EU countries was hampered by many formalities. Among other things, an e-commerce trader had to register for VAT in each Member State in which he exceeded the relevant sales threshold (and each country could set its own separate threshold). Consequently, such a taxpayer had to file a VAT return and at the same time keep VAT records in different EU countries.

As of July 1, 2021, the VAT Law includes several new definitions. One of them is *Intra-Community distance selling of goods* (ESPO). ESPO is, to put it simply, the delivery of B2C goods that are shipped or transported from one Member State to another. The ESPO definition practically corresponds to the repealed definitions of distance selling to and from the country. The rule in this type of transaction is the taxation in the country of consumption.

There are a few exceptions to this rule.

Once certain conditions have been met, the place of delivery of the ESPO will be the place where the goods are at the beginning of the shipment or transport to the buyer. This will be if:

- ✓ The provider is established in the territory of a single Member State (permanent residence / habitual residence);
- ✓ The goods are dispatched or transported to a Member State other than the home Member State (domicile of the supplier / usual place of residence);
- ✓ The total amount of ESPO and cross-border telecommunications, broadcasting and consumer electronics services (TBE services) did not exceed the taxpayer during the fiscal year or the previous fiscal year in the amount of EUR 10,000 or its equivalent (PLN). 42,000 in Poland.

The amount indicated above is a uniform threshold introduced across the EU. A taxpayer who has not exceeded the above threshold may choose to tax ESPO and TBE services in the country of consumption. The selection is made by submitting a notification to the head of the tax office by the 10th of the month following the month in which the selection was made (electronically on the VAT-29 form).

Under the new regulations, the choice of place of delivery in the case of ESPO applies to all deliveries. Until the end of June, it was possible to choose the place of taxation of mail order sales outside the country in relation to one or more Member States of consumption.

If the ESPO is taxed in the country of consumption, the taxpayer, in order to settle the VAT in that country, may:

- choose to register in that country and file VAT and VAT returns directly there
- decides to simplify the registration for the OSS procedure and the settlement and payment of tax due to other countries in a so-called window.

3.2. OSS Procedure

Under the previous legislation, some contractors (providing telecommunications, broadcasting or electronic services) could use the MOSS (so-called one-stop shop) procedure.

The procedure indicated was that the taxpayer who sold the above services to consumers in various EU countries and not only did not have to register for VAT in each EU country, but could only pay VAT in the country of tax residence.

As of July 1, the above procedure has been extended - now, as part of OSS (the so-called one-stop shop), e-merchants can use it (if they meet the conditions mentioned below). The new OSS procedure (like the previous MOSS) is divided into two special procedures: EU and non-EU. The scheme outside the Union can only be used by entities that are not established or have a fixed seat in the EU and sell to EU consumers. OSS registered taxpayer:

- ✓ submit a quarterly VAT return in electronic format to the Member State of identification;
- ✓ will pay the VAT due to other Member States through OSS;
- ✓ does not have to register as a VAT payer in other countries unless they settle transactions other than those covered by OSS;
- ✓ will reimburse VAT on all transactions subject to special procedures, only through the OSS system
- ✓ is required to keep electronic records of transactions settled in OSS, the records should be kept for a period of 10 years.

3.3. Distance selling of imported goods (SOTI)

Until the end of June 2021, a special VAT exemption was in force in the European Union for the import of goods up to EUR 22 (exemption does not apply in Poland and France). This exemption has been removed. Thus, VAT is now paid in connection with the importation into the EU of goods purchased by EU consumers.

The e-commerce package has introduced in the legal system a new definition of distance selling of imported goods (SOTI) and the related new regulations on the establishment of the place of taxation of such transactions.

SOTI is a supply of goods dispatched or transported by or on behalf of the supplier, including where the supplier is indirectly involved in the transport or shipment of goods - from the territory of a third country, provided that the following conditions are cumulatively met:

- ✓ the delivery is made to a taxpayer or a non-taxable legal person who does not have the obligation to settle the intra-taxable goods, or to another non-taxable person (B2C provision);
- ✓ the goods delivered are not new means of transport or goods that are installed or assembled, with or without proof.

A special (voluntary) import procedure (Import One Stop Shop, IOSS) has been introduced for goods placed in a shipment with a low real value (up to EUR 150), and new special regulations for VAT declaration and payment have been added (VAT), if the special import procedure (IOSS) has not been applied.

3.4. Import ONE STOP SHOP

In the IOSS procedure, it will be possible to reimburse VAT due to the Member State of consumption (different Member States, including PL) for the distance sales of imported goods (in a shipment not exceeding EUR 150) through the Member State of identification (eg PL).

At the same time, when using the IOSS procedure, there is a VAT exemption for the import of a package with a value of up to EUR 150. If you do not use the IOSS procedure, all low value goods (up to EUR 150) will be subject to VAT.

3.5. Procedure for declaring and deferring VAT payments on imports of goods (CVT)

If IOSS has not been used to settle VAT on the import of goods, it is possible to settle VAT in two ways:

- Using a standard customs declaration
- By a special regulation (CVT).

Under the new CVT procedure, the operator will be able to declare and pay VAT on the import of goods in a collective customs declaration once a month. The procedure concerns the importation of goods which meet all of the following conditions:

- ✓ the goods are delivered to consumers in Poland
- ✓ their actual value does not exceed EUR 150 per transport
- ✓ are not subject to excise duty
- ✓ are released for free circulation in the Member State of dispatch or transport.

According to the draft explanations of the Ministry of Finance, the changes in the field of electronic commerce are due to the CVT, the operators submit monthly electronic declarations, which are in fact monthly customs declarations and pay the VAT due from the recipient. for the import of the above goods.

3.6. OSS / IOSS special procedure

- ✓ VAT-29 - Notification of choice of place of taxation or waiver of choice of place of taxation in respect of intra-Community distance sales of goods or provision of telecommunications, broadcasting and electronic services
- ✓ VIU-R (OSS) - Notification providing information on the specific EU VAT settlement procedure
- ✓ VII-R (IOSS) - Taxpayer's request for information on the special procedure for refunding import VAT
- ✓ VIN-R (OSS) - Request for information on the special procedure for the settlement of non-Community VAT
- ✓ VII-RP (IOSS) - Application of an intermediary informing about the special procedure for importing VAT refunds
- ✓ VII-DO (IOSS) - Declaration for VAT settlement within the scope of the import procedure
- ✓ Instructions for completing the VAT refund declaration within the scope of the import procedure (VII-DO)
- ✓ VIN-DO (OSS) - Declaration for VAT settlement in the sphere of extra-community procedure
- ✓ VIU-DO (OSS) - Declaration for VAT settlement within the scope of the EU procedure

New obligations for digital platforms

The new e-commerce simplification regulations provide for two actions on platforms and websites (eg Ebay, AliExpress, etc.), which assume that entrepreneurs have used the platform to:

- Buy goods from the merchant;
- Sell the goods to the consumer.

Consequently, this means that online platforms will be required to pay VAT.

The method of VAT settlement by the platform may vary depending on the supply chain and the value of the shipment. "*The responsibility for collecting VAT and customs duties due in connection with cross-border e-commerce transactions lies with the Member States. Any shortfall in the collection of VAT and customs duties affects the budgets of the Member States and the EU budget.*" (<https://op.europa.eu/webpub/eca/special-reports/e-commerce-12-2019/ro/index.html>).

To simplify, it can be said that the platform will be obliged to pay VAT, for example when a Polish consumer buys goods through this platform from a seller based in the USA.

4. Research methodology and results

Research is the study of specific processes, techniques, tools and procedures used to accomplish a set of purposes, it is a theory of the general research process and methods of online commerce, to expose their trends and development directions and the interrelationship between various methods. in the process of researching online commerce.

The research methodology approached is of qualitative-quantitative-deductive type, the methodological approach applied throughout the paper will be of qualitative-deductive type, the methods used being: analysis of specialized papers and comparison. The applied techniques will be: analysis of works containing qualitative and quantitative research, as well as comparative analysis.

The article provides an overview of the study of the essential laws of research from the perspective of several systems, coordination, integration, order, simplicity and cycle.

The methodology focuses on e-commerce research, and based on it, systematically introduces the determination of research topics, selection of research methods and technologies, program design, and writing and publishing the final research results of the entire e-commerce research process.

We pay equal attention to both theory and practice and emphasize the maturity and systematicity of relevant concepts and theories, as well as the advanced nature of the results, trying to reflect the inherent characteristics and development trends of the online commerce research methodology.

5. Conclusions

In this section we have identified in the selected articles the main key issues to answer the question of combating tax evasion in the field of e-commerce.

Even if locally the National Agency for Fiscal Administration has submitted several operations, the most important operation "Mercury" being the most developed verification of non-taxed online trade.

The recent evolution of e-commerce and the decisions taken at European level regarding online commerce require in Romania to consider the fight against tax evasion in this area by connecting e-commerce sites with the ANAF server by direct billing in the program e-invoicing or by entering new statements.

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