

E-COMMERCE AND CHALLENGES TO CONTROL

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Abstract: *The topic of e-commerce has become more and more relevant in the last few years. With the advancement of technology and the ever-increasing power of the internet, many people choose this type of presentation instead of the classic “physical” store or office. Of course, this has its advantages: saving a lot of costs, unlimited market, saving time in endless shopping, and more.*

With the ever-expanding Internet market, online shopping and retailers offering similar types of services have also become more frequent. Tax authorities are increasingly paying attention to this growing industry. In the tax practice, there are already a large number of merchants who have been severely sanctioned for failing to comply with legal requirements for online business.

With regard to the distance selling of goods and services / via e-commerce or otherwise / within the EU there are specific provisions in the European VAT Directive creating obligations to register and charge VAT in the country of consumption. Member States tax administrations are also looking for new and more effective digital business control methods to reduce non-taxation and to increase tax collection. That is why a number of countries are introducing electronic audits / audits / on the basis of enhanced exchange of information and control in real time, such as the new requirements of the H-18 Regulations for cash registers and the introduction of CPRMS / Commercial Property Revenue Management System. The topic presented on the need and application of electronic controls and audits has been particularly relevant in recent years globally. It is linked to the rapid pace of e-commerce development and the increasing profits in the sector at the expense of tax avoidance. This is precisely where the research proves the need to apply and develop control over e-commerce, in conclusion, it can even be assumed that the organization and implementation of electronic control / audit is even delayed.

Keywords: *E-Commerce, E-Control, Audit, Online store, Distance selling.*

In recent years, globalization and technological change have led to an e-commerce boom. Through the use of new means of interaction, transactions are concluded electronically for the sale of goods, at which goods are shipped or transported between two places within the territory of the country and from one EU Member State to another or from third countries / territories to a country or another Member State. Sales of goods made electronically shall mean deliveries in which the supply of goods is affected by the use of an electronic interface such as a market, platform, portal or other similar means. E-commerce is predominantly targeted at end-users of traded goods - taxable persons.

The world's single digital market is estimated at € 415 billion annually and covers 500 million consumers. Between 2008 and 2016, the revenue of the top five online marketers increased by an average of 32% annually. For comparison, the overall growth of the retail segment is only 1%. This rapid development also requires new regulations, the European Commission is convinced. With regard to the distance selling of goods (via e-commerce or otherwise) within the EU, there are specific provisions in the European VAT Directive that create obligations for VAT registration and charging in the country of consumption. Of course, these definitions are not intended to be comprehensive and to cover all aspects of the digital business. In this regard,

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the EC has a number of initiatives that we can expect in one form or another to be implanted / transposed into law, such as a „web tax” or „countervailing tax” for digital companies that generate advertising revenue in a Member State, but they do not have a registered company or a place of business, administrative facilities regarding the reporting of mini one stop shop (MOSS) VAT for online shops and more.

In certain cases, the described deliveries of goods may be defined as remote sales to which specific rules apply. Commodity sale is the supply of goods for which the following conditions are fulfilled simultaneously:

- the goods are dispatched or transported by or on behalf of the supplier from the territory of a Member State other than the one in which the transport ends;
- the supplier of the goods is registered for VAT purposes in a Member State other than that in which the transport ends;
- the recipient of the supply is a person who is not obliged to levy VAT on the intra-Community acquisition of the goods in the Member State where the transport ends;
- goods are not new vehicles; or not installed and / or installed by or at the expense of the supplier; or not subject to a special order for taxing the price margin on second-hand goods, works of art, collectibles and antique items.

In the case of distance selling, there is a specificity with regard to determining the place of delivery, to which the provision of the VAT Act applies. For a distance seller, a VAT registration obligation in another / other Member States may arise upon reaching a certain turnover of such sales as defined in the relevant legislation.

Although it is virtually located on-line, **the online store carries on a normal commercial activity, concludes commercial transactions, and for this reason its activity should be fully compliant with the applicable legislation** regarding invoicing and accounting.

Many confuse e-commerce with sales platforms (like OLX.bg for example). The platforms are not e-shops and therefore they do not issue invoices on sale. However, their shops need to carry out all the activities inherent in „ordinary” shops - business registration, VAT registration, etc.

This means that in order to have an online store and offer goods and services over the internet, you must have a registered company, issue invoices and pay taxes.

E-commerce has been the focus of the NRA’s attention since 2013, when the first control team was formed at the NRA Headquarters. In 2015, a Pilot Project on the Program for Reducing Risk Levels for Identified Issues and Gaps in E-Commerce was developed and implemented. **In April 2016, a specialized Electronic Audit Department was established and is operating within the Control Directorate at the Headquarters of the National Revenue Agency.** In addition, specialized control and monitoring software has been created and used by e-audit and e-commerce teams at the NRA TD, which work in close cooperation with a number of other control bodies - the Ministry of Interior, Agency „ Customs or similar units in tax administrations of EU countries.

This is necessary because of the clear outline of the main problems in the sector, such as anonymity of the trader, non-reporting of sales turnover, significant number of signals from citizens, non-compliance with tax and social security legislation, disregard for consumer rights of citizens, etc.

Taxation of value added tax (VAT) on supplies of goods made electronically is no different from the taxation of supplies made through traditional means of sale in terms of determining the place of performance and the nature of the supply, the taxable amount and the taxpayer. There is a difference regarding the determination of the date of the tax event, which is not determined by the general rule but by the special rule of the VAT.

Tax audits in this area are still relatively low because there are not enough inspectors competent in internet investigations and data analysis, but steps are being taken to increase them. Last year, according to NRA data, more than 350 inspections and audits of electronic merchants were carried out, and over 2.5 million leva of tax and social security liabilities, mainly from undeclared turnovers, were collected from completed audits.

Legal turnover has already reached \$ 340 million, according to a recent Nielsen data, and according to other sources, online sales in Bulgaria are over \$ 580 million in 2018.

According to the National Statistical Institute, the vast majority of consumers who have shopped on the Internet (87.5%) have used Bulgarian e-shops and 35% of them have used online stores within the European Union. Therefore, the Revenue Agency has focused its efforts to introduce additional transparency in this type of trading.

The internet offers anonymity that is used by marketers to stay in the grey business and hide taxes and social security from their business. A small number of Bulgarian sites provide merchant information so that the user knows who is coming, according to the NRA. Usually, consumers know who exactly they bought the product from when they received it - on the consignment note. But even this is not certain, because often the document refers to an individual, not a trader.

The Law on E-Commerce obliges every e-merchant to publish on his site identification data - name, BULSTAT, address, landlines, i.e. information that should provide seamless customer service. Both the NRA and the Consumer Protection Commission warn that shopping from anonymous sites carries great risks. And typically, unfair commercial practices go hand in hand with breach of tax laws.

One of the measures the NRA is already taking to bring online merchants to light and make them recognizable by consumers is the introduction of a registration regime for them. It is a difficult task, considering that according to the industry data, online stores in our country already exceed 30 thousand.

The procedure is by filling in an electronic form on the NRA website with information - who is the trader, the e-shop and the goods with which he trades. The register is made public to be useful to consumers who will be able to consult who they are actually shopping for. Requirements have also been introduced and are already being applied to courier companies to identify the online merchants they work with. The use of a courier is the main way of delivery of goods purchased from the Internet in Bulgaria. There is no requirement in the legislation governing courier companies to identify the consignor of the goods and to store such data.

The new regulation is proposed through a number of changes to the Regulation on sales reporting at retail outlets / REGULATION -№ 18 /, regardless of the series of deferrals for its entry

into force together with CPRMS / Commercial Property Revenue Management System/ - the last since January 2020.

The National Revenue Agency insists on one more thing - it is obligatory to pay the overpayment over a certain threshold from the courier to the merchant by bank transfer. It is a common practice for a courier to collect cash from end customers when delivering the goods and to transfer the money to the merchant every day or for a period of two or three days, depending on the turnover. It is seldom used to transfer this money by bank transfer. So, the risk of running backs and saving tax is very high. Therefore, it is considered that if the amount of cash on hand exceeds BGN 10,000 (the cash payment threshold) within a year, the courier is obliged to transfer the amounts paid by the end customers by bank transfer.

NRA have already detected tax fraud schemes on the Internet, which are possible because of the seller's anonymity.

A major challenge for the NRA authorities is the wide internationalization of internet shopping. Online trading platforms are practically operating across Europe. Therefore, every tax administration's efforts are to register every major foreign e-commerce store that sells on its territory in VAT registration. This ensures that sales are charged with VAT, which goes into the national treasury. In this endeavor, however, revenue agencies in Europe face great difficulties, despite the specific Euro-directive on the digital economy.

The NRA admits that it is not easy to track whether foreign online merchants have exceeded the VAT registration threshold in Bulgaria. On the one hand, the current provisions of the Euro Directive make it easy for e-marketers to circumvent them. On the other hand, EU tax offices are not working well and are not yet prepared for the new business models. Especially for the Bulgarian e-commerce sites, the NRA has resorted to other ways to catch the hidden turnover - collecting information from third parties, increasing the number of teams that will carry out these checks.

Establishing an online business, identifying a person and analyzing data from an e-commerce site requires the use of special software, and therefore the skills of the examiner must be more specific. So, the efforts of the NRA are also directed towards training of this type of inspectors, and in 2019 much more e-commerce inspections were conducted on the basis of problems identified in previous years.

And if e-commerce already has some practice and guidance on how to exercise tax control, then there are other problematic areas where adequate control is even more difficult, such as:

- popular **shared travel and tourist accommodations** are an unknown but problematic area. One of the first difficulties with the so-called a shared economy is the identification of participants in a „transaction”, and it is difficult to gather evidence that a transaction actually exists. Illegal buses with passengers who have paid to be transported to any country or country are usually understood when an accident occurs - a catastrophe or a fraud. Most often the wording is that friends have gone on a field trip. And no one admits that he actually uses the service he paid for;
- accommodation websites pose the same problems to tax authorities because tourists are increasingly using online platforms to find short-term rental apartments that are far cheaper than hotels. However, who owns these homes and what exactly their address

is, it is only when the service is paid. Therefore, at the end of 2019, Parliament has finally decided that all owners of apartments or rooms rented through platforms such as Airbnb and Booking should pay patent tax by adopting changes to the Local Taxes and Fees Act through the transitional and final provisions of The Tax and Social Insurance Procedure Code.

For accommodation with no more than 20 rooms, categorized with one or two stars, or registered under the Tourism Act, the tax is determined for a room according to the location of the object - from BGN 25 to BGN 250.

As mentioned above, according to industry data, nearly 30,000 are electronic retailers in Bulgaria, but no more than 1,000 have real turnovers. Most are electronic stalls - with one person, a small number of items and sporadic sales, according to the **E-Commerce Association**, and it is these retailers that scorch internet users. They cannot guarantee the availability of the advertised items, delay the delivery, and when dissatisfied customers want to return the purchased goods, they most often refuse because this is their only sale for the month. E-commerce Association stands behind regular / decent / online merchants and disagrees with the NRA's claim that many of the e-shops are anonymous and their owner can hardly be identified.

As part of the measures and e-commerce is also a mandatory requirement since the beginning of 2018. to online merchants to register with the Customs Agency e-Portal to receive an „EORI” number, which will provide opportunities for information exchange through the use of electronic data processing facilities.

The registration for the economic operator is one-off and unified for all electronic services offered by DG TAXUD and the Customs Agency, and at the stage of requesting specific services additional specific data may be required to operate the specific service, such as valid „EORI” number One-time registration will provide opportunities for submission of customs and / or excise documents electronically, as well as access to DG TAXUD's central electronic services and national electronic administrative authorities servants of the Customs Agency.

The registration and requirements for the exchange and storage of information through the use of electronic data processing facilities is regulated by Order No. ZAM-1203 / 13.09.2017 of the Director of the Customs Agency under Art. 66b, para. 2 of the Customs Act, promulgated in the State Gazette no. 77 of 26/09/2017.

Hundreds of reports have been filed in recent years with the Commission for Protection of Competition and the National Revenue Agency against defective e-commerce companies. Complaints range from low-quality goods received to unissued receipts. Conducting commercial activities on the Internet is not related to the requirements to the traders for compliance with the licensing regimes, which exist and are obligatory when conducting activity in physical commercial sites.

Pursuant to the VAT Act and Regulation H-18 / for cash registers-fiscal devices / „e-shop” is an internet site through which goods / services are sold through the conclusion of a distance contract under the Consumer Protection Act and which has a built-in functionality for selecting, including and excluding goods / services in a shopping cart, entering customer information, shipping address and selecting a payment method.

Recent changes to Regulation H-18 require **a person who is obliged to issue cash receipts** and who sells goods or services through **an online store**, before commencing an activity to sell goods / services through an electronic store, **to submit** information electronically **with electronic signature** in accordance with the procedure of DOPC through an electronic service in the NRA e-Services Portal, accessible on the NRA website. This applies regardless of whether the person uses his or her own domain, a rented domain, or the domain of another person providing a platform for online sales.

Exception: E-shops that are not obliged to issue a cash voucher are not obliged to declare themselves in the NRA. This is confirmed by the response of the NRA to KiK Info, as well as the explanations of the NRA by the Question and Answer System.

There is no doubt that the classic e-commerce site is commercial point-of-sale CPRMS, as it can be used to manage sales and it contains a database of requests and sales made. And if payments that require the issuance of a cash voucher are accepted, this CRMS should be approved by the NRA through the manufacturer and duly registered in the NRA by the user.

It has turned out that the introduction of an CPRMS for e-commerce is a whole challenge under the NRA schemes, which allows e-marketers in one single scheme to enter e-sales manually into the CPRMS, and that is when sales are made through platforms (such as eMag, Amazon, eBay, AliExpress, etc.) rather than through their own online store. For this reason, many e-marketers have opted to avoid CPRMS at all costs by refusing to accept payments that require the use of a cash register and have switched to payments via postal money order only for which it is not necessary to use a cash register.

The general rule for avoiding CPRMS is:

- There should be no need for a cash register at a retail outlet that has unregistered CPRMS;
- And vice versa - in a retail outlet that has a cash register, there should be no access to software with features of the CPRMS.

Online merchants must register their activities in the NRA, this is one of the requirements in the new Ordinance H18 for reporting to the National Revenue Agency, even though in the State Gazette no. 8 of 28/01/2020, the amendments to Ordinance H-18 on Online Stores have been published, **which stipulate that for reporting of absent credit and debit cards payments the e-shop may not issue a cash voucher from a fiscal device**, but instead issue another document under the conditions specified by the regulation. It is important to note that the current amendments to the H-18 Ordinance also introduce **new requirements for merchants** who use postal money order as their payment method. E-shops where payments are only **via postal money order and bank transfer are exempt from using a fiscal device**. Therefore, these traders continue to be exempted from using an approved and registered NRA, CPRMS.

What is new about online stores is that when payment is made through postal money order, they must provide their customers with an electronic or paper document containing the necessary information.

Controlling e-commerce in today's dynamic trading relationship is not only imperative, but somewhat delayed. When technology development is at such high levels and implies and pro-

poses similar developments in other sectors, such as commerce and, in this case, electronic, offering minimal effort and cost to the end user, the state control authorities must respond appropriately. This is caused by actions to protect state interests and put all traders on equal terms and obligations. The foregoing alleged turnover of e-commerce companies in our country led to the development of control over e-commerce and the creation of e-audit in the NRA, which implies its further development and improvement.

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