

Person with no permanent business establishment in Estonia

If a foreign person engaged in business with no permanent business establishment in Estonia creates taxable supply in Estonia but such supply is not taxed in Estonia upon the acquisition of goods or receipt of services by a taxable person or taxable person with limited liability, the registration obligation will arise for the person as of the date on which the taxable supply is created.

This means, for example, that if a foreign person provides a service in Estonia (on which VAT needs to be calculated and paid in Estonia) to a person who is not subject to VAT in Estonia, the foreign person must immediately register as a taxable person in Estonia (and tax the service in Estonia). However, if he provides the service to an Estonian taxable person, he does not have to register as a taxable person in Estonia, because the Estonian taxable person will reverse charge the service received on his own VAT return (form KMD).

The registration obligation will not arise if all the taxable supply of the person is supply taxable at the 0 per cent VAT rate, unless it is intra-Community supply of goods and the supply which is created upon the transfer of goods to a person holding online marketplace in the case the person is considered the acquirer of the goods pursuant to subsection 1³ of § 4 of the VAT Act.

Therefore, a foreign person is required to immediately register as a taxable person in Estonia if he generates taxable supply in Estonia which is not subject to reverse VAT. At the same time, a foreign person can be required to register in Estonia only if the other party to the transaction is a person not registered as a taxable person or taxable person with limited liability in Estonia, because a taxable purchaser always becomes subject to a reverse charge obligation upon the acquisition of goods or the receipt of services from a foreign person who is not registered as a taxable person in Estonia (general reverse charge obligation — clause 5 of subsection 4 of § 3, and subsection 5 of § 3 of the VAT Act).

Similarly, a taxable person of another Member State and a non-Community person engaged in business do not have the obligation to register upon the supply of services, intra-Community distance sales and the transfer of goods via an online marketplace if the person is registered in another Member State as implementing the special scheme for charging VAT (§ 43 of the VAT Act) for the supply of services, intra-Community distance sales and online marketplaces and such supply is subject to taxation under this special scheme (subsection 3 of § 19 of the VAT Act).

If, in the case specified in subsection 1³ of § 4 of the VAT Act, a third country person holding online marketplace, whose company has a seat outside the Community and who does not have a permanent business establishment in the Community, has a taxable supply in Estonia, but the person has not registered as a taxable person or as the implementer of special arrangements for imposing VAT on the transfer of goods through a service, intra-Community distance selling and online marketplace (§ 43 of VAT Act), the person from whom he acquired the goods is jointly and severally with the person liable for

payment of the VAT with regard to the supply which has been incurred until the third country person is registered as a taxable person.

If the supply of goods (intra-Community distance sales) and services (electronic communications services and electronically supplied services), specified in subsection 3 of § 10¹ of the VAT Act, of a taxable person of another Member State engaged in business exceeds 10,000 euros in total in the calendar year, the registration obligation will arise for the person as of the date on which the supply reaches the specified amount. This limit also includes intra-Community distance sales of excise goods (subsection 4 of § 19 of the VAT Act).

Distance sales are the transfer and delivery of goods (other than a new means of transport or goods to be installed or assembled) by or on behalf of the transferor to another Member State to a person not registered there as a taxable person or taxable person with limited liability. Intra-Community distance selling will also take place where the transferor of the goods indirectly intervenes in the transport of goods specified in subsection 9 of § 2 of the VAT Act to another Member State to a person who is not registered there as a taxable person or a taxable person with limited liability (subsection 9 of § 2 of the VAT Act).

Foreign persons are registered as taxable persons by the Tallinn service bureau (Lõõtsa 8a, 15176 Tallinn). Applications of foreign persons are also accepted by other regional service bureaus and forwarded to the Tallinn bureau for registration.

A person of another Member State engaged in business with no permanent business establishment in Estonia has the right, upon registration as a taxable person, to appoint a tax representative, specified in the Taxation Act, who has been approved by the tax authority. A third-country person engaged in business who does not have a permanent business establishment in Estonia must, upon registration as a taxable person, appoint a tax representative specified in the Taxation Act who has been approved by the tax authority. The provision does not apply in the case specified in subsection 22 of § 43 of the VAT Act, according to which a third-country person engaged in business who uses special arrangement for the provision of services to a non-taxable person established in the Community cannot appoint a tax representative.

However, if a third country person whose business is located outside the Community and does not have a fixed establishment in the Community makes intra-Community distance sales from Estonia or allows a third-country person engaged in business through an online marketplace to transfer goods located in Estonia to a person not registered as a taxable person or taxable person with limited liability in Estonia, such person must register as a taxable person in Estonia and appoint a tax representative (subsection 6 of § 20 of the VAT Act).

As of 1 January 2022 **there is no obligation to appoint a tax representative for VAT purposes in Estonia by a non-Community economic operator who does not have a permanent establishment in Estonia and whose country of residence the European Union has concluded an agreement on mutual assistance in**

the field of administrative cooperation in the field of value added tax, combating fraud and recovery of claims. At present, such non-EU countries are Norway and Great Britain.

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