UPDATE

VAT on returned goods

If you sell goods to consumers via an online store, you likely have experienced situations where the customer returns or rejects the goods because they were defective or damaged, the wrong goods were delivered, etc. When goods are returned for a full or partial credit or refund, the supplier must adjust the VAT on the transaction by replacing the invoice or issuing a credit, as appropriate. In addition to the time and expense of dealing with the return, the supplier should be aware of any potential VAT obligations arising on the return of the goods and it may be possible to reclaim VAT.

This publication looks at three scenarios in which a private consumer returns goods that were purchased online – domestic sales within the Netherlands, sales from the Netherlands to other EU member states and sales of goods to a Dutch consumer from outside the EU – and the opportunities for the supplier to obtain a refund of VAT.

Domestic sales within the Netherlands

A business selling and delivering goods to private consumers in the Netherlands from a Dutch warehouse must charge and account for Dutch VAT. If the consumer returns the goods, the supplier can reclaim the VAT due. The returned goods can be processed in the VAT return in the period the goods are returned by including the negative amount in section 1a or 1b (depending on the applicable rate) of the return.

If the liability and the right to a VAT refund fall within the same period, it is not necessary to process the sale and return in the Dutch VAT return.

If goods are returned, but the sale is not cancelled (e.g., because the product is defective or the incorrect goods were delivered and the seller still has to deliver a functioning or correct product), the seller is not entitled to a VAT refund.

Sales from the Netherlands to private consumers in another EU member state

In the case of an "EU distance sale," i.e., when an EU business sells goods to a private consumer in another EU member state and transports or dispatches the goods or is otherwise involved in the transport (e.g., the entrepreneur puts the transporter and the private consumer in contact), VAT is due at the applicable rate in the country where the consumer is resident (please note that the distance selling thresholds were eliminated as part of the EU VAT package that became effective on 1 July 2021). However, this place of supply rule does not apply to an entrepreneur with a single establishment in the EU (and no establishment outside the EU) and turnover not exceeding EUR 10,000 in EU distance

sales and/or the provision of telecommunications, broadcasting and electronic services to private consumers in member states other than the supplier's member state. In this case, VAT is due in the country of departure of the goods. Notably, if the EUR 10,000 threshold is exceeded, VAT is also due in the consumer's country in the following calendar year. It is therefore important to determine whether the threshold was exceeded in the previous year.

An entrepreneur has two options when declaring EU distance sales: use the One Stop Shop (OSS) scheme or local VAT registration. The VAT consequences differ depending on the option chosen.

Declaration in the OSS

Using the OSS avoids having to register for VAT in each EU member state in which the entrepreneur is making supplies because businesses making EU distance sales can declare the VAT due in a single VAT return filed in their home country.

A return of goods is considered an adjustment in the OSS so the supplier must include the goods as an adjustment in the next VAT return. If the VAT due on the delivery and the returned goods falls in the same tax period, it should not be necessary to process both in the OSS declaration. If a product is returned, but the supplier still must deliver the goods, a correction should not be necessary because the sale was not canceled.

Local VAT registration

If an entrepreneur uses local VAT registration to declare VAT on EU distance sales, the VAT law of the relevant EU member state applies. Because each EU member state is required to refund VAT, the supplier should be entitled to a refund on returned goods provided all substantive and procedural requirements are met.

Transfer of own goods

Businesses that bring their own goods from one EU member state to another member state must declare the movement in both the country of departure and the country of arrival. If the distance selling scheme applies, the transfer does not have to be declared.

If the consumer returns the goods, are they shipped back to the supplier's country, do they remain in the consumer's country or are they shipped to a storage facility in another country? In our opinion, it is not necessary to declare a transfer of own goods if they are returned to the country from which they were sent; otherwise, a declaration is required. An exception to the declaration requirement may be available, such as where the supplier sells the goods directly to another private consumer in the same country as the original consumer.

Shipping and handling costs

One question that often arises in the context of returned goods is whether the supplier charges shipping and/or handling costs on the return. This constitutes a separate supply of a service for VAT purposes, for which the supplier will have to determine the place of supply, which depends on the nature of the service and, in the case of shipping costs, where the transport takes place. If the supplier has to pay VAT on these services in an EU member state other than where it is established, it can make the declaration via the OSS - local VAT registration is not necessary.

Selling goods from outside the EU

When goods are sold from outside the EU to a private consumer in the EU, the goods must be imported, so the supplier will need to be aware of both the VAT and the customs rules. The VAT treatment of such sales and any return of the goods depends on whether the supplier uses the Import One Stop Shop (or IOSS).

IOSS

If the IOSS is used, the consumer pays the seller the VAT due on the supply of the goods at the VAT rate applicable in the consumer's country. In this case, an exemption from import VAT applies so neither the seller nor the consumer has to pay import VAT.

Under the IOSS scheme, a business only has to file one VAT return. Returns of goods are considered corrections, which are processed in the next VAT return. If the VAT liability on the original supply and the VAT refund based on the return of the goods fall in the same period, it is our opinion that the supplier does not have to declare either transaction. Likewise, if goods are returned, but the sale is not cancelled (i.e., because the seller still has an obligation to deliver a functioning or correct product), an adjustment is not necessary.

In our opinion, a return of goods does not invalidate the import exemption – the exemption is applicable regardless of whether the goods remain in the EU.

If the IOSS is not used, the goods may be imported in the name of the private consumer or the supplier, with the former being more common.

Import in the name of the private consumer

If the goods are imported in the name of the consumer, the consumer pays import VAT in the country where the goods are released for free circulation. This is always the country of destination for goods with a value of up to EUR 150 because these goods may not be released into free circulation in an

EU member state other than that of destination if the IOSS is not applied. The entrepreneur's supply is not subject to VAT in the EU.

In this case, it may be possible for the consumer to recover import VAT if the goods are exported to a country outside the EU. If the goods remain in the EU, import VAT cannot be recovered. The supplier may have to reimburse the consumer for non-recoverable import VAT, so this issue is relevant to both the supplier and the consumer.

Import in the name of the supplier

If the goods are imported in the supplier's name, the supplier will pay import VAT, which will be deductible since the import is made in connection with the supply to the consumer. For VAT purposes, the supply is taxed in the country of the consumer. If the consumer returns the goods, VAT on the supply is recoverable, with the process depending on the VAT rules in the EU member state where the VAT was due.

Transfer of own goods and VAT on shipping and handling costs

Where goods from outside the EU are returned, the supplier should be aware that it may have to declare a transfer of own goods (if the IOSS is used or if the goods have a value of more than EUR 150 and have been released for free circulation in an EU member state other than that of the consumer) and VAT is charged on shipping and/or handling costs.

Services relating to goods that have not yet been imported or the export of goods are zero-rated. But even if a zero rate applies, an EU member state may still have an obligation to declare the service. It is therefore important to ascertain whether the supplier has any declaration obligations.

Sales via platforms

When the supplier is selling goods through a platform, the platform – rather than the supplier – is liable for VAT on the sales in the following situations:

- Distance sales of imported goods with an intrinsic value of up to EUR 150; and
- Supply of goods within the EU (both domestic supplies and EU distance sales) if the supplier is established outside the EU.

If the platform is liable for the VAT on those supplies it will also need to adjust the VAT in case of returned goods. In this respect the rules explained above apply. However, the supplier is accountable for declaring any transfers of own goods or VAT on shipping and/or handling costs.

The VAT position of a supplier with respect to returned goods depends in large part on the specific situation, which may differ from one EU member state to another. It is important that suppliers do not miss opportunities to reclaim VAT.

More information

We would be happy to assist you in identifying your options. Please contact one of our **VAT advisors**.

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