

White Paper Marketplace Liability

E-Commerce Marketplace Liability in Germany and the EU

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Since January 1, 2019, an electronic marketplace (online marketplace) based in Germany, the EU, or a third country has **jointly and severally been liable in Germany** for non-payment of value-added tax (VAT) on sales transacted by traders on their marketplace.

As of July 1, 2021, **the marketplace (or electronic interface) will become the tax debtor** in certain constellations throughout the EU for sales to final customers via the marketplace (or electronic interface).

Entrepreneurs (taxable persons)

- who facilitate the **supply of goods** within the EU by a trader not established in the Community to a non-taxable person,
- who support **distance sales of goods imported from third territories or third countries** in consignments with a real value not exceeding EUR 150 by means of an electronic interface, such as a marketplace, platform, portal etc., are treated as if they had received and supplied these goods themselves.

An electronic marketplace or electronic interface

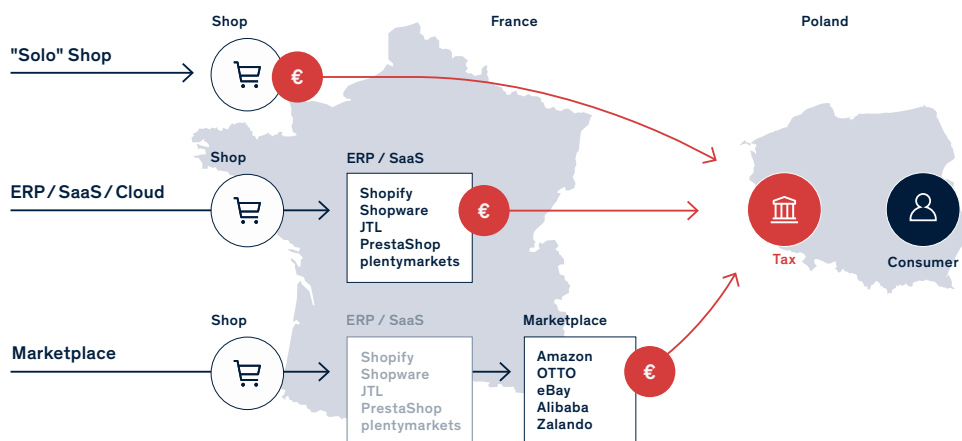
is a website or any similar means by which a third party can carry out transactions on the Internet – typically a sales platform, but also an exchange market, comparison portals or search engines, provided that sales contracts are concluded via these means.

A marketplace operator

is anyone who maintains an electronic marketplace. Extensive record keeping requirements for the marketplace have been in place in Germany **since 2019** for goods sold via a marketplace **by traders**. Marketplace operators who do not comply with these conditions are liable for the trader's VAT.

This white paper was prepared in cooperation with AWB Steuerberatungsgesellschaft mbH. Cooperation with our partners plays a key role in the development of eClear solutions. AWB Steuerberatungsgesellschaft advises us in the areas of VAT, customs and foreign trade law. Our white paper is compiled to the best of our knowledge. However, we cannot assume any liability for the content.

From marketplace to tax debtor



German Legislation Liability for VAT

EU legislation as of July 1, 2021 [valid in all EU Member States] Tax liability for marketplace

Marketplace domiciled in <ul style="list-style-type: none"> Germany EU Third country 	Electronic interface domiciled in <ul style="list-style-type: none"> Germany EU Third country 	Electronic interface domiciled in <ul style="list-style-type: none"> Germany EU Third country
Justification of a sales contract between seller and customer via the marketplace	Support for the conclusion of a sales contract between seller and customer	Support for the conclusion of a sales contract between seller and customer
Sales B2B and B2C	Sales B2C	Sales B2C and B2B (atypical entrepreneur)
Seller / trader domiciled in Germany, elsewhere in the EU, or in a third country	Seller / trader domiciled in a third country	Seller / trader domiciled in Germany, elsewhere in the EU, or in a third country
Sale of goods in Germany <ul style="list-style-type: none"> Goods are already in Germany Mail order sales B2C to Germany 	Transport of goods begins and ends within the EU <ul style="list-style-type: none"> Cross-border sales within the EU Sales and transport within an EU Member State 	Distance sales from a third country (≤ €150.–)
Seller does not pay VAT to the German tax office		
Reporting obligations for marketplace not fulfilled <ul style="list-style-type: none"> Certificate of VAT registration until Dec. 31, 2020 Valid VAT ID after Jan. 1, 2021 		
Marketplace liable for VAT	Marketplace becomes a tax debtor and is required to pay VAT	

Record keeping requirements in Germany since January 1, 2019

Extensive record keeping requirements have existed in Germany since 2019 for goods subject to German VAT sold via a marketplace by traders. If the marketplace is unable to fulfil these obligations, it is liable for the trader's VAT.

Record keeping until December 31, 2020	Record keeping after January 1, 2021
<ul style="list-style-type: none"> · Full name and address of the seller · German tax number assigned to the seller or, if known, his German VAT ID · Start and end date of registration certificate validity · Place from which goods are transported or shipped and destination · Date and amount of sale 	<ul style="list-style-type: none"> · Full name and address of the seller · Electronic address or website of the seller · Seller's (valid) German VAT ID number · Seller's German tax number, if known · Seller's bank details or virtual account number, if known · Place from which goods are transported or shipped and destination · Date and amount of sales · Description of the goods · Order number or transaction number, if known
↓	↓
Marketplace must request certificate from seller verifying tax registration in Germany	Marketplace must be able to prove validity of the seller's VAT ID

If the operator of an **electronic marketplace** or **electronic interface is aware, or could be aware** that the seller is not fulfilling his tax obligations – e.g. by submitting a VAT statement to the tax office – the operator is **liable** for the VAT, even if he is meeting the record keeping requirements. If the seller on the marketplace is **not an entrepreneur**, the operator must report the following:

- Full name and address of the private seller
- Place from which goods are transported or shipped and destination
- Date and amount of sale
- Date of birth of the private seller

The marketplace operator must use the known transaction data to determine whether the seller is possibly an entrepreneur (i.e., whether he exceeds the limits of small business status <EUR 22,000/EUR 50,000 total annual revenues).

Record keeping requirements in the EU as of July 1, 2021 (marketplace debt)

The electronic interface operator is required to keep records of sales (deliveries). These records must be sufficiently detailed to enable the tax authorities of the Member State where these deliveries are subject to VAT to determine whether the tax has been correctly taken into account.

The content of the required reporting depends on whether or not the electronic interface operator declares the deliveries via the **OSS** (One Stop Shop) or the **IOSS** (Import One Stop Shop).

Using the OSS, entrepreneurs will have the option to fulfil their reporting and declaration requirements for sales in the EU falling under a special regulation via a central reporting office as of July 1, 2021. In Germany, the tax statement would then be submitted to the Bundeszentralamt für Steuern (Federal Central Tax Office). The IOSS is the central reporting option for the supply of imported goods with a value of up to EUR 150.

Reporting via OSS/IOSS – Records	Reporting not via OSS/IOSS – Records
<ul style="list-style-type: none"> · Member State of consumption in which the goods were supplied · Description and quantity of the goods supplied · Date of delivery · Tax base · VAT rate applicable to the goods supplied · Amount of VAT payable + statement of the currency used · Date and amount of payment received · All advance payments received prior to delivery, if applicable · Information contained on the invoice, if one has been issued · Proof of possible returns of goods, including the tax base and applicable VAT rate 	<ul style="list-style-type: none"> · All taxable persons are required to keep records that are sufficiently detailed to enable tax authorities to determine and verify the application of VAT.

The electronic interface also keeps records of fictitious deliveries from the traders to themselves:

Reporting via traders

- Name, postal and electronic address or website of the supplier / trader whose deliveries are supported by the interface
- VAT ID number / national tax number of the supplier / trader, if available
- Bank details or virtual account number of the supplier / trader, if available
- Description of the goods along with their value and final destination of the shipment, together with the time of delivery and, if available, the order number or unique transaction number