



*EDITOR’S NOTE: The following article is written by Schomerus Tax Consultant Dr. Mario Wagner. Wong Fleming maintains an alliance with the German law firm of Schomerus, which is headquartered in Hamburg, Germany. The combined law expertise between Schomerus and Wong Fleming allows for better consulting in cross-border matters such as tariffs, export control, and enterprise establishment in the US and Germany.*

**Wong Fleming/Schomerus Legal Update:**

**Combating VAT Fraud in E-Commerce in Germany-**

**Why Foreign Online Retailers Should Make Sure to Be Ready to Register**

Dr. Mario Wagner, Tax Consultant, Schomerus & Partner mbB

 *In August 2018, the Federal Government of Germany passed the bill to combat VAT fraud in trade in goods on the Internet. From January 2019 onwards, operators of electronic marketplaces should collect certain data from their retailers. Otherwise, operators are liable for unpaid sales tax from trading via their platform. Unregistered online retailers are threatened to be excluded from the platform.*

 In particular, companies based in third countries that are not tax registered in Germany often violate their existing tax obligations on electronic marketplaces. In particular, they do not pay sales tax on their sales generated from B2C sales in Germany. The annual tax loss for the German tax authorities is estimated in the hundreds of millions.

 In order to combat tax evasion via online marketplaces, a reform of e-commerce from 2021 onwards was decided already in 2017 by the European Commission. Due to the high tax losses, Germany's government anticipates the EU-wide project with the draft law on a national level.

The draft law includes two core elements:

* All operators of electronic marketplaces should be required to collect certain data from sellers and to transfer them on demand to the competent tax office. This data includes among others name, full address, tax number, shipping and delivery address, time and amount of sales.
* The operators are liable for unpaid taxes from deliveries beginning and ending in Germany that have been legally justified on their own electronic marketplace. They can get rid of this if they fulfill certain recording obligations or exclude tax-relevant traders from their marketplace.

As a positive proof of the proper tax registration of a trader in Germany, the so-called "registration certificate" issued by the competent tax office on demand of the online retailer (!) will be valid in the future. If online retailers from states that do not belong to the EU or the EEA apply for this certificate, the application must be associated with the designation of a recipient's authorized representative in Germany. It is intended that the Federal Central Tax Office will provide the operator of an electronic marketplace by means of an electronic query with information about the certificate stored there. However, pending the introduction of this inquiry procedure, the certificate will be temporarily issued to the online retailer on paper.

After the announcement of the law (expected) in December, all online retailers should apply for the registration certificate and once granted, proactively provide the marketplace operators with them. Otherwise, they are threatened with an exclusion from the trade via the notification to the marketplace operator.

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