

2021 e-commerce  
VAT package



# Reshaping the VAT rules for the Digital World - the 2021 e-commerce VAT package

A number of factors are spiking the interest in e-commerce, the Covid-19 pandemic being a crucial one. While this increased interest should be welcomed, it is as important to stress the new rules and regulations surrounding the e-commerce VAT package which will in principle enter into force on July 1st 2021. Together with Comeos, the representative of Belgian trade and services, EY has carried out a survey to assess the impact of the new rules among its members.

In April 2016, the European Commission launched its Digital Single Market Strategy for Europe (DSM Strategy) as part of the VAT action plan. This included an initiative to modernize VAT for e-commerce, which aimed to simplify VAT obligations for businesses involved in e-commerce while at the same time combating VAT fraud and ensuring fair competition for European businesses. On 5 December 2017, the European legislator therefore adopted the VAT e-commerce package, which entails new e-commerce measures introduced on a step by step basis. The measures will fundamentally change the VAT rules for international trade in order to encourage e-commerce and expand the digital economy.

A [number of measures already entered into force on 1 January 2019](#) (simplification of the regime for telecommunications, radio and television broadcasting and electronically supplied services).

A [second package of measures will enter into force in July 2021](#) (until further notice). This includes major changes of the European legislative framework for VAT on B2C e-commerce, covering both distance sales within the EU and distance sales of goods imported into the EU. Despite the intended simplification, these new rules are very comprehensive and detailed. In essence, the changes in question are outlined below.

# What is this about?

In first instance, it concerns [distance sellers](#). These are suppliers of goods who sell their products to private individuals (B2C) and certain types of customers. If they supply goods cross borders and arrange the cross-border transport, the applicable VAT rules will change for them. Additionally and under very specific circumstances, the VAT rules also change for local supplies of goods. The main changes can be described as follows:

1. [The thresholds for intra-Community distance sales will be adapted](#);
2. [A new category will be introduced, namely distance sales of imported goods](#);
3. [Even indirect involvement of the supplier with the transport of the goods is sufficient to be covered by the distance selling rules](#);
4. [There will be an abolition of the exemption of import VAT for shipments of low value consignments](#);
5. [Systems to simplify VAT-reporting will be introduced \(the One-Stop-Shop for both intra-Community transactions and imports\)](#);
6. [The so-called online platforms or electronic interfaces are in certain cases deemed to have purchased and sold the goods for VAT purposes, although they do not legally obtain ownership of the goods](#);
7. [In certain cases, the moment when VAT becomes due, and must therefore be declared and paid, is adjusted to the moment when the payment is accepted by the customer](#);
8. [The invoice obligations will be adjusted](#); and
9. [Special arrangements will be introduced for postal and courier companies to facilitate the payment of import VAT when the goods are supplied from outside the EU](#).

## Who will be affected by those changes?

Of course, the distance sellers themselves. They will have to take into account that they will need to charge foreign VAT to their customers much quicker than today. A distance seller is not necessarily an entrepreneur who is only active in the B2C sphere. There are many “mixed” players, serving both B2B and B2C customers. All kinds of consumer goods are indeed suitable and intended for both professional and private use. Just think of a supplier of office equipment or coffee machines.

Furthermore, the electronic platforms or interfaces are caught in the VAT net in more cases as is today. Unlike today where, in principle, they should in principle not be concerned with VAT due on sales by external suppliers who sell products via their website or platform, this may be the case under the new rules. But not always: only in a few well defined cases the platforms will be deemed to purchase and sell the goods. Even if they do not fall in scope of this fiction, but offer products from third party suppliers via their website, they will be obliged to keep records of these sales.

The effects of the new rules reach further than the distance sellers or the electronic interfaces. Think of the logistics players (the postal and courier companies) which are responsible for customs clearance of goods ordered by European consumers and coming from a non-EU country such as China.

The providers of IT infrastructure and ERP packages will need to anticipate the future changes as well. More than in the past, it will be necessary for the suppliers or retailers to have an adequate process and IT system that can correctly qualify the customers (B2B or B2C) and store their identification data.



Together with Comeos, the representative of Belgian trade and services, EY has carried out a survey to assess the impact of the new rules among its members. Read along for the most important results:

- ▶ 30% of the participants act as an electronic interface and facilitate the sale of goods by external suppliers on their website. [They will therefore have to verify whether -from a VAT point of view- they become a seller and buyer for these products, as well as the documentation requirements they are required to comply with;](#)
- ▶ More than 57% of the participants carry out cross-border supplies of goods and most of them supply to private individuals or the special types of customers. It is remarkable that most of the recipients are located in the EU. Few provide supplies to non-EU recipients as well. Moreover, of the EU destinations, the UK appears to be a minority.

[They will have to verify whether foreign VAT needs to be charged and what will change in 2021.](#) They can examine under the new regulation whether it is easier to [cancel foreign VAT numbers and replace them by the OSS system.](#)

- ▶ 62% of respondents who perform cross-border supplies to private individuals are directly or indirectly responsible for the transport to the customer. This means that the [38% of suppliers are not involved in the transport and therefore should not be subject to the VAT rules on distance sales.](#)
- ▶ Nearly 65% of respondents purchase goods in non-EU countries, most of which (89%) are sold to private individuals or special categories of customers. In most cases (75%), the country of import is not the same as the country of final destination. The majority of goods may have any value (more or less than €150). These suppliers will have to verify whether they will be able to use the [IOSS system or other VAT simplifications upon custom clearance of the goods.](#)
- ▶ Only 43% is certain that the business has put a customer acceptance process in place, albeit that these companies systematically request the customer's VAT identification number if the customer is a VAT payer. They also check whether the VAT number is valid. In order to be able to apply the VAT rules correctly, it is important to always verify the identity (name, address, VAT status) and put correct/proportional business processes in place in this respect. After all, B2B sales do not fall under the VAT rules for distance selling.
- ▶ 43% is registered for VAT in several EU Member States. This can be the result of multiple reasons. If the foreign VAT registration is due to the thresholds for distance sales being exceeded, it is recommended

to examine whether the [compliance burden \(the maintenance of multiple VAT numbers\) can be reduced by the use of the one-stop shop under the new rules.](#) Only 9% of respondents consider the e-commerce VAT package to result in a reduction in VAT compliance for the business.

## Conclusion

Although the survey has been restricted to Comeos members (mainly retailers), the survey already gives an idea about the impact the new e-commerce rules for VAT will have for businesses.

As the survey reflects, many businesses which operate a webshop will be affected by the new e-commerce rules for their cross-border B2C supplies of goods within the EU (irrespective of whether the goods are of EU or non-EU origin). Also, we share the feeling with the majority of the respondents to this survey that the new rules do not necessarily result in a simplification of the VAT implications or in a reduction of the VAT compliance burden. Given the complexity of the new rules and the myriad of different possible scenarios, it will be crucial for each involved business to get familiar with the new rules, to analyze them, to search for possible simplifications and to get prepared in time.



# 2019 Changes

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- ▶ Threshold micro-businesses: TBE services to individuals are subject to VAT in the Member State (MS) of establishment of the supplier (not in the customer MS) in case the total annual turnover of these services in other MS  $\leq$  10,000 EUR.<sup>1</sup>
- ▶ Billing rules: entrepreneurs using MOSS only have to respect the invoicing rules of the MS of identification for MOSS (In BE: no invoicing obligation).
- ▶ Determination of location consumer: only 1, instead of 2 non-contradictory pieces of evidence, is needed to prove the location of the consumer (only for annual turnover of these services to individuals  $\leq$  100K EUR)
- ▶ Scope non-Union MOSS: use of non-Union MOSS also allowed for non-EU taxpayers with VAT n° in  $\geq$  1 MS

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<sup>1</sup> Note that this threshold only is applicable by supplier that are established in just 1 EU Member State.



# 2021 changes

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## B2C services

- ▶ Not only telecommunication, broadcasting and electronic services (TBE), but all B2C services taking place in MS where the supplier is not established
- ▶ Ability to apply OSS (no separate MOSS)

## Intra-Community distance sales

- ▶ Taxation at destination (abolition of national thresholds)
- ▶ Clarification of transport requirement
- ▶ Threshold for micro-businesses (10,000 EUR)
- ▶ Ability to apply OSS

## Import distance sales

- ▶ Abolition of VAT exemption for shipments with low value
- ▶ Always VAT due in the MS of destination
- ▶ Clarification of transport requirement
- ▶ Change of time of indebtedness for distance sales
- ▶ Ability to apply IOSS
- ▶ Exemption for import VAT when submitting IOSS number

## Electronic interfaces (EI) fiction

- ▶ In specific situations, VAT due by the EI on distance sales or local delivery it facilitates.
- ▶ VAT reporting and record keeping obligations.
- ▶ Ability to apply OSS or IOSS by the platform
- ▶ Change of time of indebtedness for distance sales

## OSS

- ▶ One Stop Scheme (optional), extension of the former Mini One Stop Scheme (MOSS)
- ▶ For intra-Community distance sales of goods, B2C services and certain domestic supplies (facilitated by an EI)
- ▶ Declaration and payment in one single MS of the VAT due in all MS (only one OSS registration required)
- ▶ Quarterly return and quarterly VAT payment
- ▶ Record keeping obligation for 10 years

## IOSS

- ▶ New Import One Stop Scheme (optional)
- ▶ For low value consignments ( $\leq$  150 EUR) imported in the EU
- ▶ Declaration and payment in one single MS of the VAT due in all MS of destination (only one IOSS registration required)
- ▶ Exemption for import VAT when submitting IOSS number
- ▶ Monthly return and monthly VAT payment
- ▶ Record keeping obligation for 10 years

## Payment & Reporting system for imports

- ▶ Alternative simplification regime (optional)
- ▶ Designed for postal operators, express carriers or other customs agents declaring goods on behalf of the customer
- ▶ For low value consignments ( $\leq$  150 EUR) imported in the EU
- ▶ Declarant collects, reports and pays import VAT monthly

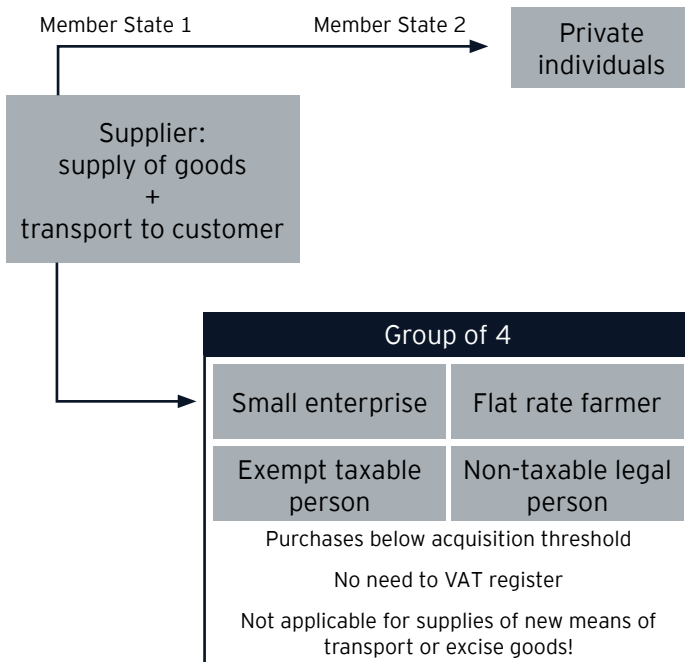


# Intra-Community distance sales

Intra-Community distance sales within the EU should be defined as: the sale of goods which are dispatched or transported by or on behalf of the supplier from one Member State to a customer in another Member State. Such sales have the following characteristics:

- ▶ The supplier arranges the transport from one Member State to another Member State. This can be done directly or indirectly.
- ▶ The customer is a non-taxable person (consumers), or a member of the so called “group of four”. The “group of four” consists of:
  - ▶ Small enterprises which annual turnover below a certain threshold is exempt from VAT (for example, in Belgium this is EUR 25.000);
  - ▶ Taxable persons subject to the common flat-rate scheme for farmers;
  - ▶ Taxable persons carrying out only supplies of goods or services in respect of which VAT is not deductible. These are the so-called “VAT exempt taxable persons” (e.g. certain undertakings in the medical or financial, insurance or real estate sphere, but only if their turnover is entirely exempt from VAT);
- ▶ non-taxable legal persons (e.g. governmental bodies or passive holding companies).

The members of the so-called “group of four” do not have to pay VAT on their intra-Community acquisitions of goods (purchase of goods supplied from another Member State) below a certain threshold. In Belgium this threshold is set at 11.200 EUR. If such a member purchases, for example goods for a total amount of 15.000 EUR, it should request a VAT identification number, with the result that the transaction will qualify as a ‘normal’ intra-Community supply which is outside scope of the distance sale regime.



<sup>2</sup> For supplies of new means of transport or excise goods to the group of 4, there is no acquisition threshold and consequently there is a taxable intra-Community acquisition. These supplies are not to be considered as intra-Community distance sales.



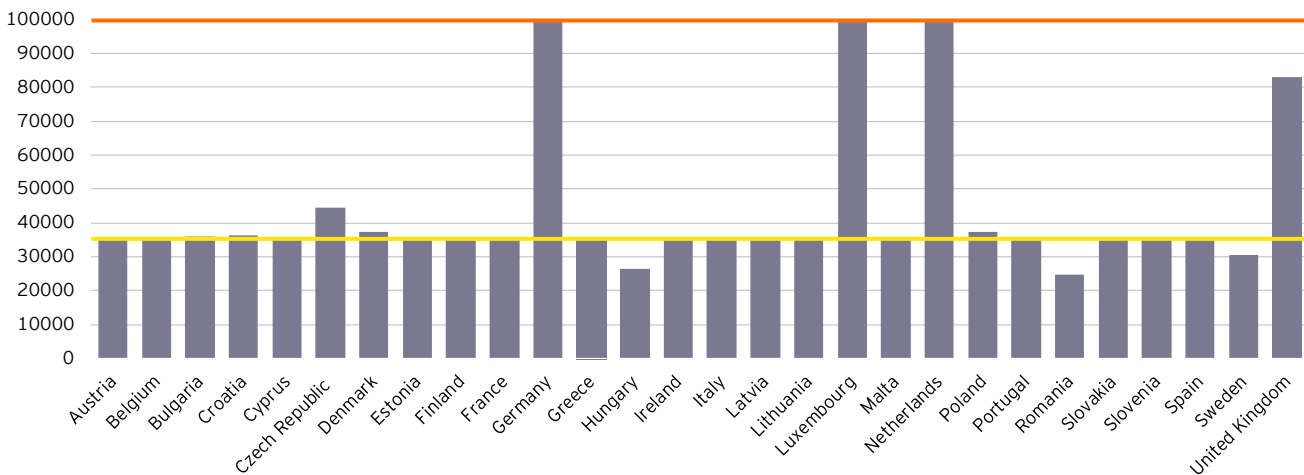
# 1. Change of the distance selling intra-Community thresholds for intra-EU supplies of goods

Currently a distance seller is only required to charge foreign VAT if a turnover threshold is exceeded in the Member State of arrival of the goods, or if he immediately opts to charge foreign VAT. In the EU these thresholds are generally 35.000 EUR or 100.000 EUR (see table below). These thresholds are not applicable for excise goods: from the first euro onwards, the supplier is obliged to pay the VAT of the Member State of the customer.

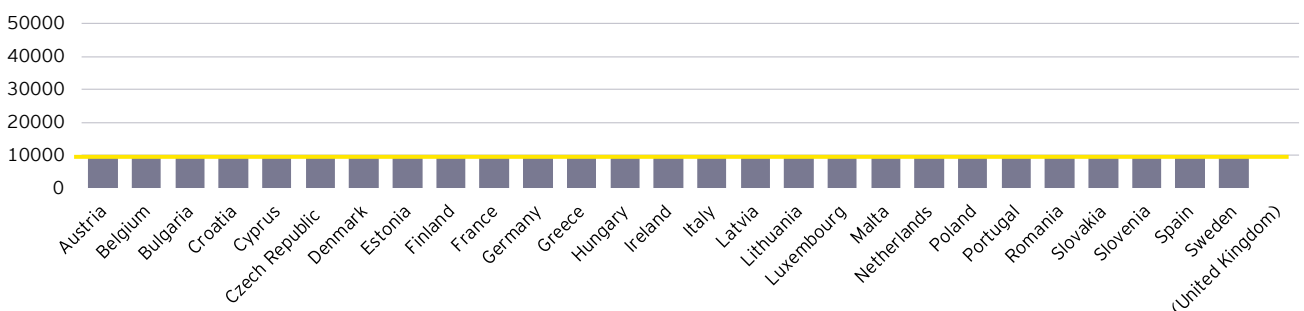
Those thresholds will disappear as of 1 July 2021. They will be replaced by a uniform threshold of 10.000 EUR. If the turnover of intra-Community distance sales and certain types of services rendered to private individuals (telecommunication, radio-, television broadcasting

services and electronically supplied services) does not exceed 10.000 EUR and the seller is established in just one Member State, the seller should only have to charge VAT in the Member State where he is established, unless he opts for VAT in the Member State of destination of the goods. The new system still allows to pay VAT in the Member State to which the goods are dispatched or transported (or where the non-taxable person to whom the service is supplied, is established), even if the new threshold of 10.000 EUR is not exceeded.

Distance Sales Thresholds in the EU (on 1 January 2020)



Distance Sales threshold in the EU (on 1 July 2021, including B2C TBE services)







## 2. Distance sales of imported goods from third countries or third territories

At present, we are only familiar with the concept of intra-Community distance sales of goods. In addition to the familiar concept of “intra-Community distance sales”, the new e-commerce rules also provide for a new definition of distance sales of goods imported from third territories or a third country.

The concept of distance sales of imported goods covers the supplies of goods dispatched or transported from a third territory or a third country to a customer. Such sales, like intra-Community distance sales, have the following characteristics:

- ▶ The supplier is responsible for the transport of the goods from a third territory or a third country to a customer in a EU Member State. This includes cases where the supplier indirectly intervenes in the transport or dispatch of the goods.
- ▶ The customer is either a private individual or a member of the so called “group of four”;
- ▶ The goods supplied are not new means of transport and are not installed or assembled by or on behalf of the supplier.

The rules differentiate between situations where the Member State of arrival of the goods is or is not the same as the Member State of importation:



- ▶ If the Member State of importation is the same as the Member State of arrival of the goods (e.g. the goods come from Switzerland and are shipped to Belgium which is the final country of destination), the place of supply of the goods is the Member State of destination, but only if the Import One Stop (“IOSS”) scheme is used, which is only possible for low value goods not exceeding EUR 150. This means that:
  - ▶ If the IOSS scheme is not used or if the goods have an intrinsic value of more than EUR 150, the place of supply should be determined according to the regular (non-distance sales) rules;
  - ▶ If the IOSS scheme is used, the sale will be subject to VAT in the country of importation. The importation itself will be exempt from VAT.
- ▶ If the Member State of importation is different from the Member State of arrival of the goods (e.g. the goods come from China, are imported in Luxembourg and subsequently shipped to Belgium),

the place of supply of the goods is the Member State of destination, irrespective of the use of the IOSS scheme and irrespective of the intrinsic value of the goods.

If the IOSS scheme is used, the VAT will become due when the payment for the supply is accepted (payment confirmation or approval received by the supplier using the IOSS, irrespective of the moment when the actual payment takes place).

As regards the compliance for the distances sales of imported goods, a distinction should be made between small consignment shipments or low value goods and other shipments.

### Low value goods

Under the current rules, the importation of commercial goods of a value up to EUR 10 or EUR 22 is exempt from VAT in the EU. The threshold for Customs duties is, and will remain, at an intrinsic value of EUR 150: no customs duty should be paid for goods imported in the EU with an intrinsic value not exceeding EUR 150 (except for alcoholic products, perfumes, toilet waters, tobacco and tobacco products).

As from 1 July 2021, the VAT threshold of EUR 10 or EUR 22 will be abolished. There will be a threshold of EUR 150: for goods not exceeding this threshold, the importation may continue to be exempt from VAT, subject to the use of the IOSS scheme. However, unlike under the current rules, the sale will be subject to VAT in the country of arrival of the goods.

So while under the current rules, there is a definitive exemption for small consignment shipments (below EUR 10 or 22) coming from non-EU countries, such exemption will be removed and the sale should be subject to VAT, either upon importation (no use of the IOSS scheme), or via the IOSS scheme (VAT due in the Member State of destination).

There is a commercial benefit for the supplier (or electronic interface) to use the IOSS scheme, i.e. the customer should then understand the full price upon purchase of the product and should no longer be surprised by additional charges, such as import VAT, when the product has to be customs cleared by the customer. Furthermore, the use of the IOSS aims for a quick release of the goods by the customs authorities and a speedy delivery to the customer.



## Other goods

These goods are also covered by the distance sales rules of imported goods. However, the place of supply rules are different, the import exemption for goods not exceeding EUR 150 is not applicable and the IOSS scheme cannot be used for these goods.

The VAT treatment depends on whether the Member State of importation is the same as the Member State of destination:

- ▶ If these are the same (e.g. the goods are imported in France and are destined for a customer in France), the customer or the supplier can normally act as importer of record:
  - ▶ If the customer acts as the importer of record, he will pay the import VAT and customs duties. The distance sale as such is not taxable in the EU (France);
  - ▶ If the supplier acts as the importer of record, he will pay the import VAT and customs duties. The distance sale is taxable in the EU (France). The supplier should normally VAT register in the Member State of import/sale and should be entitled to deduct the import VAT in that country:
- ▶ If these are not the same (e.g. the goods are imported in France, but destined for a customer in Belgium), the VAT consequences are as follows:
  - ▶ The VAT on the sale will be due in the Member State of destination (Belgium). The supplier should obtain a Belgian VAT number and file Belgian VAT returns in which these distance sales are declared;
  - ▶ The importation in France should be taxed according to the normal rules. This depends on which party can VAT technically act as the importer of record in France. If this can be the supplier or the customer, there are different scenarios:
    - ▶ If the supplier acts as the importer of record, he should either VAT register in France and deduct the French import VAT via the French VAT returns, or claim a refund of the French VAT under the international refund procedures;
    - ▶ If the customer (consumer without a right to deduct input VAT) is the importer of record, the French import VAT is normally not recoverable, which may lead to a double taxation as both French (import) VAT and Belgian (distance sales) VAT are due on the single sale<sup>3</sup>.

## Special arrangements for the declaration and payment of import VAT for low value goods

There are special arrangements for the declaration and payment of import VAT for imported goods where neither the IOSS nor the standard VAT collection mechanism on importation are being used. This is an optional mechanism available for goods not exceeding EUR 150 where the Member State of import is the same as the Member State of destination of the goods and which is not applicable to products subject EU harmonized excise duties.

This simplification measure is designed for postal operators, express carriers or other customs agents in the EU who typically declare low value goods for importation, either as direct or as indirect representatives. One of the main benefits of these special arrangements is that the declarant will remit only the VAT he actually collected from the customer during a calendar month. This measure thus avoids that for goods not delivered or not accepted by the customer, the declarant would be liable to pay the related VAT. It also means that the declarant will have to keep records of all transactions covered by the special arrangements, which should allow them to justify the non-payment of VAT on parcels refused by the customer.

Under the special arrangements, the customer pays the VAT to the declarant (the person presenting the goods to customs, i.e. the postal operators etc) and the declarant pays the collected VAT by the 16th of the following month to the authorities.

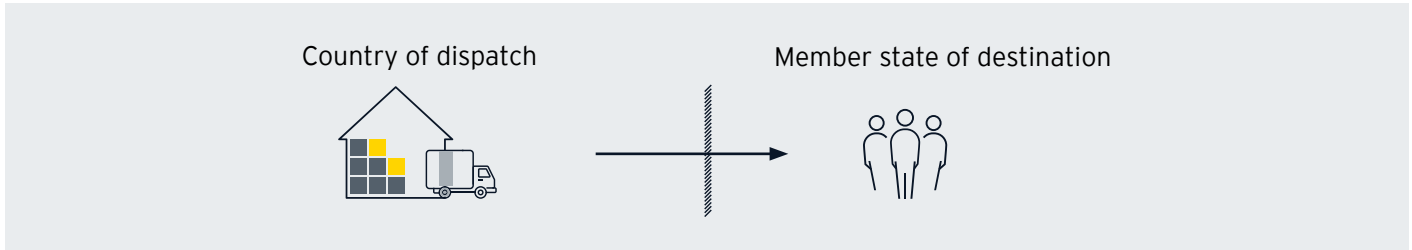
Member States have the option to require that only the standard VAT rate can be used for goods imported under the special arrangements, which may be disadvantageous for goods subject to a reduced rate.

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<sup>3</sup> For low value goods, specific customs arrangements are foreseen so that the goods are placed under the transit procedure and will be declared for free circulation in the EU Member State where the goods are dispatched or transported to. Therefore, a situation of double taxation should not arise for low value goods.



### 3. Indirect involvement in the transport of goods



An important feature of distance sales is that the supplier of the goods is responsible for shipping the goods to the customer. Several schemes were put in place to circumvent this transport condition, so that the supply would not be covered by the distance selling rules. The main benefit for the supplier being that he would be able to charge VAT in his country of establishment without facing VAT registration and compliance challenges in other Member States. In order to achieve this, the supplier would not directly arrange the transport, but would only indirectly be involved in the transport.

The European Commission, via the VAT Committee, had examined this question and had indicated that **even when the seller indirectly intervenes in the transport of the goods to the customer**, the distance sales regime should be applicable.

The VAT Committee takes a very broad view in this respect. Even the promotion, proposal or recommendation of a transport company to a customer, where the customer itself contracts with the transport company, and the seller does not bear the cost of the transport, does not impact the fact that the seller is deemed to have dispatched the goods to the customer (and hence the special regime for distance sales applies).

Also the European Court of Justice took a position in this matter:

- ▶ in the KrakVet case (C-276/18 of 18 June 2020).

The Polish company KrakVet is selling sales of products for animals for which it has several customers in Hungary. On a dedicated website, it offers the possibility for purchasers to conclude a contract with a transport company established in Poland for the purposes of delivering the goods, without KrakVet itself being a part to the transport contract. Purchasers could however also pick up the goods themselves directly from KrakVet's warehouse, or freely choose a carrier other than the recommended one.

One of the questions the Court had to answer was if the goods are delivered to purchasers in another Member State by a company recommended by the supplier, but with which the purchasers are free to enter into a contract for the purpose of that delivery, those goods must be regarded as dispatched or transported 'by or on behalf of the supplier' (and thus falling under the distance sales rules).

The Court decided that the goods must be regarded as dispatched or transported by or on behalf of the supplier where the role of the supplier is predominant in terms of initiating and organizing the essential stages of the dispatch or transport of those goods.

- ▶ in the Healthspan Limited case (C-703/18, reference for a preliminary ruling from the First-tier Tribunal (Tax Chamber) (United Kingdom) made on 12 November 2018):

Healthspan is a Guernsey registered company that sells non-prescription health products to retail customers who place their orders using the internet, phone and mail order. The products were dispatched from a warehouse in the Netherlands and delivered to customers in the UK by post or courier. The customers had concluded a contract with a courier PostDirect, which did not act as an agent of Healthspan. According to the UK VAT authorities, the sales should be subject to UK VAT according to the distance sales rules, but according to Healthspan, these rules should not apply as PostDirect did not act on behalf of Healthspan and therefore, Healthspan was not involved in the transport of the goods to the UK. The main question to be addressed by the European Court of Justice will be if Healthspan is predominantly involved in transporting the goods, which means that the distance sales rules should apply.



In order to curtail such discussions, the new rules foresee that also an “indirect” involvement of the supplier in the transport of the goods is sufficient for the distance sales rules to apply.

Under the new rules, the supplier will be deemed to intervene (either direct or indirect) in the transport in the following cases:

- ▶ The supplier subcontracts the transport to a third party who delivers the goods to the customer;
- ▶ The transport is carried out by a third party, but the supplier is fully or partially responsible for the delivery of the goods to the client;
- ▶ The supplier invoices and collects the transport costs from the customer and refers the latter to a third party who will carry out the transport of the goods;
- ▶ Whenever the supplier promotes the transport services of a third party, or brings the customer and the third party in contact with each other, or provides the third party (logistic service provider) the information which is necessary for the supply of goods to the customer.

In many cases the supplier will be deemed to intervene in the transport to the customer. However, the goods shall not be considered as being transported or dispatched by or on behalf of the supplier, if the customer transports the goods himself or if the customer arranges the supply of the goods with a third party and the supplier does not intervene, directly or indirectly, in order to carry out or help organize the dispatch or transport of the goods. The above examples, and in particular the last one, make it clear that it has become much easier for a supplier to be falling within the scope of the distance sales rules.



## 4. Exemption for low value goods

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Current situation	2021
<ul style="list-style-type: none"><li>▶ Exemption (VAT/customs) of imports of low value goods not exceeding:<ul style="list-style-type: none"><li>▶ VAT: EUR 10 to 22</li><li>▶ Customs: EUR 150</li></ul></li></ul>	<ul style="list-style-type: none"><li>▶ VAT exemption abolished</li><li>▶ Customs exemption intact</li><li>▶ New VAT reporting system (IOSS)</li></ul>
<ul style="list-style-type: none"><li>▶ Possibility to declare the goods not exceeding EUR 22 at customs (no customs declaration)</li></ul>	<ul style="list-style-type: none"><li>▶ Electronic customs declaration, irrespective the amount</li><li>▶ New customs declaration with limited data set</li></ul>

Under the current European legislation, imports of low value goods from outside the EU for consumers in the EU are exempt from VAT. These are consignments with a value not exceeding EUR 10 to EUR 22 (most EU Member States opted for the EUR 22 threshold).

However, this threshold was introduced in a completely different era (1983), when there was no internal market yet, nor digitalization and e-commerce (with the exception of mail order catalogues).

With the rising of e-commerce, this VAT exemption proved to disrupt normal competition. Traders carrying out small consignments from the EU cannot benefit from a similar VAT exemption. Moreover, there was also a practice of abuse whereby the value of goods is under declared upon importation in order to benefit unjustifiably from the VAT exemption.

In order to counter this distortion of competition and loss of VAT revenue, this VAT exemption will be abolished as from 1 July 2021. All e-commerce imports will, in principle, be subject to VAT, irrespective of their value. This corresponds to the intention to subject all distance sales to VAT according to destination.

In order to comply with the additional VAT obligations that will be triggered, this abolition will be accompanied by the [introduction of the import one stop scheme](#) for low value consignments not higher than 150 EUR. This will allow traders to avoid having to apply for a VAT number (and file VAT returns) in every EU Member State of destination.

For imports whereby the IOSS system is not used and where the goods are imported in the name of the consumer by postal and courier companies, a [special payment and declaration system is introduced](#).



## 5. OSS/IOSS

	MOSS (current situation)	2021
Regime 1	<ul style="list-style-type: none"><li>▶ Telecom, broadcasting, radio and electronic services B2C supplied by EU providers (Union scheme)</li></ul>	<ul style="list-style-type: none"><li>▶ All types of services provided to non-taxable customers (B2C) by a provider established in the EU</li><li>▶ Intra-Community distance sales of goods (supplier established or not in the EU)</li></ul>
Regime 2	<ul style="list-style-type: none"><li>▶ Telecom, broadcasting, radio and electronic services B2C supplied by non-EU providers (non-Union scheme)</li></ul>	<ul style="list-style-type: none"><li>▶ All types of services provided to non-taxable customers (B2C) by a provider not established in the EU</li></ul>
IOSS	<ul style="list-style-type: none"><li>▶ N/A</li></ul>	<ul style="list-style-type: none"><li>▶ New regime for distance sales of imported goods - IOSS (≤ 150 EUR)</li></ul>

### OSS

The existing MOSS regime for reporting electronic services B2C will be extended in July 2021 with the introduction of the One Stop Shop (OSS) for all services supplied to private individuals (subject to VAT in the Member State of consumption and/or (if the supplier is not established there) where the customer is established), as well as for all intra-Community distance sales of goods. The OSS will also be made available for local sales of goods by non-EU established sellers where an electronic interface facilitates its portal, website or similar for the sale of the goods.

Businesses selling goods and services online can thus easily fulfil all their VAT obligations in the European Union in a centralized manner via the online business portal OSS by submitting an OSS declaration. In this global declaration, VAT on sales must be declared at the rate applicable in the Member State of arrival of the transport to the customer or where consumption takes place (for B2C services). This declaration should be made on a **quarterly** basis. The payment of VAT is also made on a quarterly basis.

Taxpayers who today have registrations in many Member States due to the thresholds for distance sales being exceeded may, as from 1 July 2021, declare VAT via a single OSS which can be submitted in the country where the company is established. This way multiple VAT registrations in other Member States for distance sales can be avoided.

Electronic interfaces which, under the new regime, are treated as a supplier and are responsible for the payment of VAT, will also be able to use the OSS to report VAT on B2C sales.

### IOSS

The new scheme also provides for a new portal for the declaration of VAT on distance sales from third countries or goods imported from third countries, the import one-stop shop (IOSS). The IOSS means that a supplier can, via a single VAT registration, pay the VAT due on the aforementioned transactions in one Member State

Furthermore, if the IOSS is used, imports are exempt from VAT and VAT is only payable on the sales to the consumers. This is done by means of a **monthly** declaration and payment of VAT via the IOSS at the rate applicable in the Member State of arrival of the transport to the customer. This way, goods can be offered to final consumers at a price including the correct VAT amount, without the consumer being faced with additional amounts on top of the price after placing the order, such as VAT on import and the costs of import formalities.

However, a non-EU seller or a non-EU electronic interface must appoint an intermediary established in the EU if he wants to use the IOSS (this does not apply if the seller is established in third countries with which the Union has concluded an agreement on mutual assistance). Moreover, the IOSS can only be applied if the intrinsic value of the consignment does not exceed EUR 150 and can not be applied for excise goods (irrespective of the value of the consignment).

When opting for IOSS, an IOSS identification number will be assigned to the supplier or the electronic platform. The IOSS identification number must be communicated to the customs authorities and included in the customs declaration. In practice, the seller or the party presenting the goods to the competent customs office will have to communicate the IOSS identification number to the competent customs office so that the importation is exempt from VAT.



The competent customs office then checks the validity of the IOSS identification number (this information is not publicly available as is the case for VAT numbers). They will not charge VAT on the import if the IOSS identification number is valid and the value of the consignment is less than or equal to EUR 150.

For online market platforms who do not organize the transport themselves, these new rules mean that they will have to communicate their IOSS number to the party in the chain who organizes the transport and rely on this party to make proper use of the IOSS identification

number. In this situation, it is best to develop contractual arrangements to regulate the use of the IOSS number. It is clear that the IOSS number cannot be shared with everyone.

The special system of the IOSS is an optional system. The VAT payer is not obliged to apply the system. If it is not applied (or cannot be applied, e.g. because the goods have an intrinsic value of more than EUR 150), import VAT will have to be paid. In such case, it may be possible to use [the simplification mechanism for declaration and payment of import VAT can be used](#).



## 6. Electronic interfaces

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A large part of distance sales of goods, both from one Member State to another, and from third territories or third countries to the Community, is facilitated by the use of an “electronic interface”<sup>4</sup>, such as a marketplace, platform, portal or similar means.

With a view to more effectively and efficiently collect VAT, it has been decided to involve these electronic interfaces, which ‘facilitate’<sup>5</sup> distance sales of goods in the collection process of VAT due on these sales.

Under certain conditions, the interfaces will, for the purposes of applying VAT, be subject to a deeming provision according to which they are deemed to purchase and sell the goods that are being sold by third parties on their platform, even if they do not take legal title to the goods.

This implies that from a VAT perspective, a distance sale carried out by the supplier to the customer is split into two taxable transactions:

- ▶ on the one hand, a supply of goods by the underlying supplier (the actual seller) to the electronic interface (B2B);
- ▶ on the other hand, a supply of goods by the electronic interface to the end customer (B2C).

In order for the deeming provision to apply, the following conditions must be met simultaneously:

- ▶ the taxable person should “facilitate” the sale of goods through the use of an “electronic interface”, such as a marketplace, platform, portal or similar means;
- ▶ The sales concern distance sales from a third country or goods imported from a third country with an intrinsic value of not more than EUR 150, irrespective whether the underlying seller is established within the territory of the Community or in a third country (distance sales of imported goods facilitated by an electronic interface);

OR

- ▶ The sales concern intra-Community distance sales or local supplies of goods, irrespective of their value, provided that the supplier is not established within the territory of the Community (intra-Community distance sales by a non-EU supplier facilitated by an electronic interface).

The supply of the goods by the supplier to the electronic interface (the first leg; B2B) should be considered as a supply without transport, while the supply by the electronic interface to the customer (second leg; B2C) is deemed to be the supply with transport. For the two situations covered by the deeming provision, it means the following:

1. The distance sales of imported goods facilitated by an electronic interface:
  - a. The supply by the underlying supplier to the electronic interface (first leg; B2B) is deemed to take place where the goods are located at the time of delivery. This will be in a third country, so there should be no EU VAT due on this supply;
  - b. For the supply by the electronic interface to the customer (second leg; B2C), the VAT will be due in the Member State of destination. The electronic interface can make use of the IOSS scheme for goods (with the exception of those that are subject to excise duties) with an intrinsic value not exceeding EUR 150, meaning that the importation should be exempt from VAT while the VAT due on the supply or sale in the Member State of destination is reported via the IOSS return. If the IOSS system is not used or not available to the electronic interface (for goods with an intrinsic value not exceeding EUR 150), the place of supply of the second transaction (B2C) is where the transport of the goods begins (outside the EU) and therefore not subject to EU VAT. The customer is normally liable for the import VAT in the country of destination. Member States may decide freely the person liable to pay import VAT. The general practice in the Member States is to consider the customer or consignee to be the person liable for VAT, but it may be possible that a Member State decides to designate the electronic interface as the person liable to pay the VAT.

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<sup>4</sup> The concept electronic interface should be defined as a device or programme which enables two independent systems or a system and end user to communicate with each other.

<sup>5</sup> The concept “facilitate” is defined as the use of an electronic interface to bring a customer and a supplier who offers goods for sale into contact with each other via the electronic interface, resulting in a delivery of goods via that electronic interface.



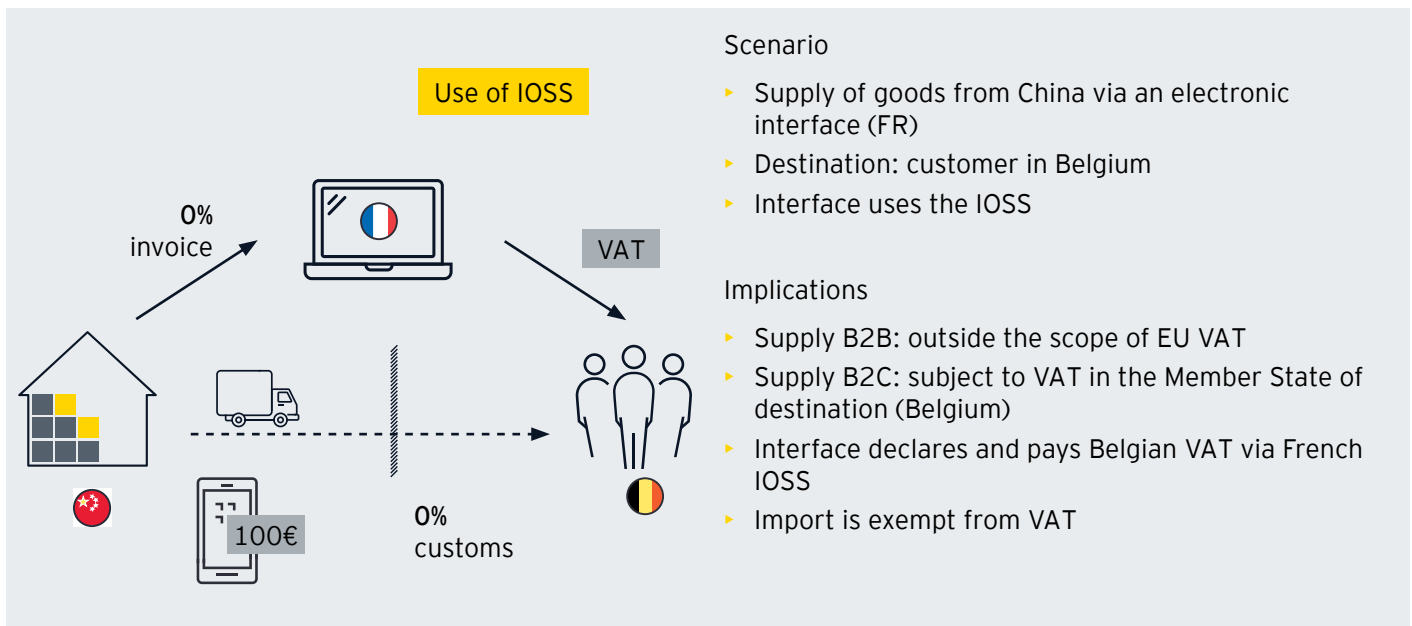


2. The intra-Community distance sales by a non-EU supplier to a non-taxable person facilitated by an electronic interface:

a. The supply by the underlying supplier to the electronic interface (first leg; B2B) is again deemed to take place where the goods are located at the time of delivery. This will be in the Member State of dispatch of the goods. However, in order to avoid that the electronic interface has to ask for a refund of VAT via the international refund procedure or via a domestic VAT return, this supply is exempt from VAT. This is an exemption 'with credit', i.e. it does

not affect the supplier's level of input VAT deduction. Notwithstanding this exemption, the underlying supplier should register for VAT in the Member State of dispatch;

b. For the supply by the electronic interface to the non-taxable person<sup>6</sup> (second leg; B2C), the VAT will become due in the Member State of destination. The electronic interface can make use of the OSS scheme, irrespective of the value of the goods.



<sup>6</sup> Only private persons and non-taxable legal persons. For the other members of the group of 4, the deemed supplier fiction does not apply.



## 7. Timing

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The new e-commerce rules also entail changes as regards the time when the distance sale takes place and when the VAT is therefore due.

According to the basic principle of the VAT Directive (article 63), in case of supplies, VAT becomes chargeable when the supply is made.

European Member States may derogate from this principle based on article 66 of the same VAT Directive and stipulate in local VAT legislation that VAT becomes chargeable at the time of invoicing or payment.

However, as from 1 July 2021, the VAT Directive will provide for a mandatory derogation for below distance sales:

- ▶ [supplies for which the electronic interface is liable for VAT;](#)
- ▶ [supplies of imported goods declared via the IOSS system.](#)

For these supplies of goods, the chargeable event will take place at the time when the payment is accepted (in case of the electronic interfaces: acceptance by the underlying supplier). This is the time when the customer's payment confirmation, approval or commitment is received, regardless when the actual payment is made.



## 8. Invoicing obligations

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For B2C distance sales within the EU, the current rules require that the supplier issues a VAT valid invoice to the customers, subject to the rules of the Member State in which the supply takes place. If a company exceeds the thresholds for B2C distance sales in several EU Member States, the invoicing requirements of these Member States should be followed.

On 1 July 2021, the invoicing obligation will be abolished for B2C distance sales within the EU, provided that the seller uses the OSS scheme. The seller can still opt to issue an invoice, which under these new rules, only needs to meet the invoicing requirements imposed by the Member State of the OSS registration. If the seller does not use the OSS, issuing an invoice remains mandatory and subject to the rules in the Member State of destination. For distance sales of imported goods, the supplier will also have to issue a VAT valid invoice.

For sales facilitated via an electronic interface, the invoicing regulation becomes complex and can best be summarized as follows:

- ▶ The electronic interface facilitates the supply of goods within the EU (supplier is not established in the European Union and platform is deemed to have purchased/sold goods):  
The underlying seller must issue a VAT valid invoice to the platform. Whether the electronic interface must issue an invoice and which rules apply differs:
  - ▶ If the electronic interface facilitates a local supply (goods are shipped from a local warehouse in a Member State to a customer in the same Member State), there is no obligation to issue an invoice, but the Member State where the supply occurs may require the electronic interface to issue an invoice.
  - ▶ If the electronic interface facilitates an intra-Community distance sale, it is not required to issue an invoice when using the OSS. The rules already discussed above also apply to the electronic interface.
  - ▶ If the electronic interface facilitates a distance sale of goods imported from a third country, it is not clear whether an invoice should be issued. It seems that the electronic interface would not be required to issue an invoice, but Member States may derogate from this. However, such position does not seem to be in line with the new obligation to issue invoices in the case of distance sales where goods are imported into the EU.



## 9. Simplification mechanism for reporting and payment of import VAT

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The European legislator has also introduced a simplification mechanism for the collection and payment of VAT if the IOSS (for the declaration and reporting of VAT on distance sales of goods shipped from third countries) is not used.

The simplification mechanism entails that logistics service providers (such as postal operators and express carriers) collect and remit import VAT in the name and on behalf of the customer. They must collect VAT from the customer, declare it and pay it on a monthly basis. This simplification mechanism can only be used for goods other than excise goods when the value of the consignment does not exceed EUR 150.

The postal operators and express carriers using the system will therefore have to ensure that VAT is paid correctly (at the correct rate). They will also have to keep records of the transactions carried out under this simplification mechanism.

The explanatory notes recently published by the European legislator clarify, in this case, the possibility for Member States to impose the use of the standard rate for goods declared under this procedure. For example, the import of a book could be subject to the standard rate instead of the reduced VAT rate. The customer needs to provide his approval: if he does not, the traditional import procedure should still be applied.

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