



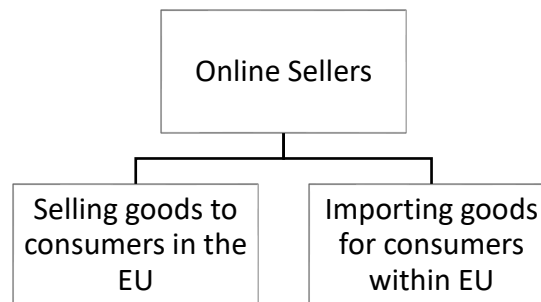
E-COMMERCE VAT PACKAGE
Are you selling online to consumers across EU?

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A. INTRODUCTION

From 1 July 2021, a number of amendments to Directive 2006/112/EC (the VAT Directive) will start to apply affecting the VAT rules applicable to cross-border business-to-consumer (B2C) e-commerce activities known as E-Commerce Package.

If you are a retailer selling goods online to individuals residing in the European Union (EU), you need to take into consideration the new significant changes affecting your business as from 1 July 2021.



In particular:

1. **To avoid multiple VAT registrations throughout the EU** - As EU businesses selling goods online to final consumers located in other Member States (MS) need to register and account for VAT in the MS of the consumer when the sales exceed the distance sales threshold, i.e., EUR 35.000/100.000.

This imposes a significant administrative burden on sellers and impedes the development of intra-EU online trade.

2. **To avoid abusive practices** - Since a VAT exemption is granted for the **import** of low value goods and this exemption leads to abusive practices, hence MS lose part of their tax revenues.
3. **To place EU businesses on equal footing with non-EU businesses** - Since non-EU businesses selling goods from 3rd countries to consumers in the EU can make VAT-free supplies into the EU and are not required to register for VAT, they profit from a clear commercial advantage compared to their EU established competitors.

The rationale for these changes is:

1. To overcome the barriers to cross-border online sales by addressing challenges arising from:
 - a. the VAT regimes for distance sales of goods and
 - b. the importation of low value consignments, as well as,

2. to place EU businesses on equal footing with non-EU businesses that according to the rules currently in force, do not have to charge VAT.

B. CURRENT RULES

Currently, we have the so called Mini One Stop Shop (MOSS) (The Union for the EU established providers and the non-Union scheme for the Non-EU established providers) which is an electronic system allowing service providers supplying telecommunications, broadcasting and electronic (TBE) services to consumers in the EU to declare and pay the VAT due in all EU MS in one single MS, avoiding thus several registrations throughout the EU.

B.1 MOSS only covers TBE Services

The MOSS though can only be used for TBE services provided to EU consumers. If a service provider supplies any other kind of service having as place of supply the place where the recipient of the service is situated, he has no other option than to register for VAT purposes in that MS and be VAT compliant with the rules of that MS.

Examples of such services could be:

1. Accommodation services carried out by non-established taxable persons,
2. Admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events, such as fairs and exhibitions,
3. Transport services,
4. Services of valuation and work on movable tangible property,
5. Ancillary transport activities such as loading, unloading, handling or similar activities,
6. Services connected to immovable property,
7. Hiring of means of transport,
8. Supply of restaurant and catering services for consumption on board ships, aircraft or trains etc.

B.2. Intra-community Distance sales might result to several VAT registrations for the seller

Distance sales are sales of products to consumers in which these products are shipped from one EU-country to another EU-country and whereby the supplier is involved in the transport of the products.

Intra-community Distance sales of goods are subject to the VAT rate applicable in the place of the origin of the goods up until the distance selling threshold applicable in the country of the destination of the goods (i.e., EUR35.000/100.000). Upon exceeding the threshold, the seller has to register in the MS of destination and charge the VAT rate applicable in that MS. The seller could result in several VAT Registrations throughout the EU, which is a significant administrative burden on sellers and impedes the development of intra-EU online trade.

B.3. VAT exemption for imports of low value goods

Since non-EU businesses selling goods from 3rd countries to consumers in the EU can make VAT-free supplies into the EU and are not required to register for VAT, they profit from a clear commercial advantage compared to their EU established competitors.

VAT is not due when the total value of all goods in a consignment (value not inclusive of customs duties or transport costs) is less than a threshold which vary from EUR10 to EUR22, depending on the EU country. This exemption leads to abusive practices which result to MS lose part of their tax revenues.

Furthermore, there is no similar provision for goods moving from one MS to another, therefore, a product of low value will be cheaper if bought from a seller outside EU than from an EU seller leading to distortion of competition.

C. WHAT IS CHANGING AS FROM 1ST OF JULY 2021

C.1. Current distance selling thresholds will be abolished and a new EU Wide threshold for small EU businesses will be introduced

Instead of the different thresholds per destination country (EUR 35.000/100.000) as mentioned above, there will be a single turnover threshold for all distance sales to another EU country. If you sell for no more than 10.000 EUR to all other EU countries together, you may continue to charge and pay the VAT in the country of dispatch. If you exceed this threshold, you will now have to pay VAT in the destination countries.

The threshold of EUR 10 000 (exclusive of VAT) refers to the current and in the preceding calendar year for:

1. both cross-border supplies of TBE services and

2. intra-Community distance sales of goods.

EU businesses established in only one EU MS may opt for the taxation in the EU MS of departure if all their B2C sales of goods and digital (TBE) services in EU do not exceed EUR 10,000 per year.

It should be noted that no threshold applies to non-EU businesses.

C.2. Mini One Stop Shop to be extended to One-Stop-Shop

To prevent companies from having to register for VAT and pay VAT over distance sales in all EU-countries, the One-Stop-Shop scheme will be extended.

This scheme (Mini-One-Stop-Shop), already exists for Telecommunication, Broadcasting and Electronically Supplied Services (TBE Services). The scheme is extended to include distance sales and most B2C services.

One-Stop-Shop **is not mandatory**, but offers many benefits:

1. You only need to register with the tax authorities in your country of establishment and not in all countries to which you sell.
2. You only have to submit four VAT returns per year for all your European sales instead of multiple VAT returns.
3. You can transfer the total VAT amount due in all EU-countries with one payment (bank transfer) instead of several payments to tax authorities in various countries as currently applies.
4. Using One-Stop-Shop, it is no longer mandatory to issue an invoice to consumers and meet the different invoice requirements in all EU-countries.
5. An incomplete declaration in One-Stop-Shop may be corrected in the next declaration, instead of correcting already filed returns.
6. If your company is already registered for VAT purposes in several countries, these registrations can be cancelled by participating in One-Stop-Shop, hence OSS may bring considerable savings in the VAT compliance costs for businesses selling online across EU.

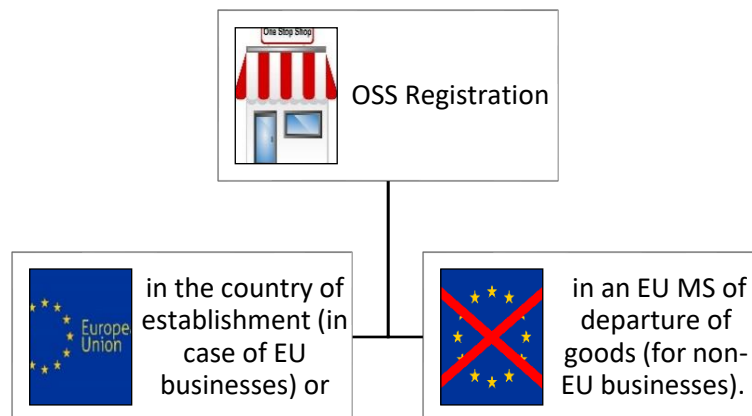
It should be noted though that any occasional input VAT cannot be deducted via OSS and should be claimed via an EU online refund system (Directive 2008/09/EC, former "8th Directive refund") by businesses established in the EU or via "13th Directive refund" by non-EU businesses.

You may not make use of the OSS, and instead to register for VAT in all EU MS where you have customers.

However, if you choose to register for OSS then you will be bound by your decision for two calendar years and all supplies which fall under OSS should be declared in your OSS return. This also applies to cross-border B2C services falling under OSS. You cannot, therefore, opt to use the OSS scheme just for supplies in selected MS and not for supplies in other MS.

C.2.1. OSS for distance sales of goods

You can register for One-Stop-Shop the tax authorities of your companies' country of establishment (in case of EU businesses) or in an EU MS of departure of goods (for non-EU businesses).



VAT registration and regular VAT returns are still necessary in EU MS where an online seller keeps a stock and performs the B2B intra-EU supplies and local sales from this stock.

C.2.2. OSS applicable to all B2C services

In addition to the distance sales, the One-Stop-Shop will be extended to include more services as of 1 July 2021.

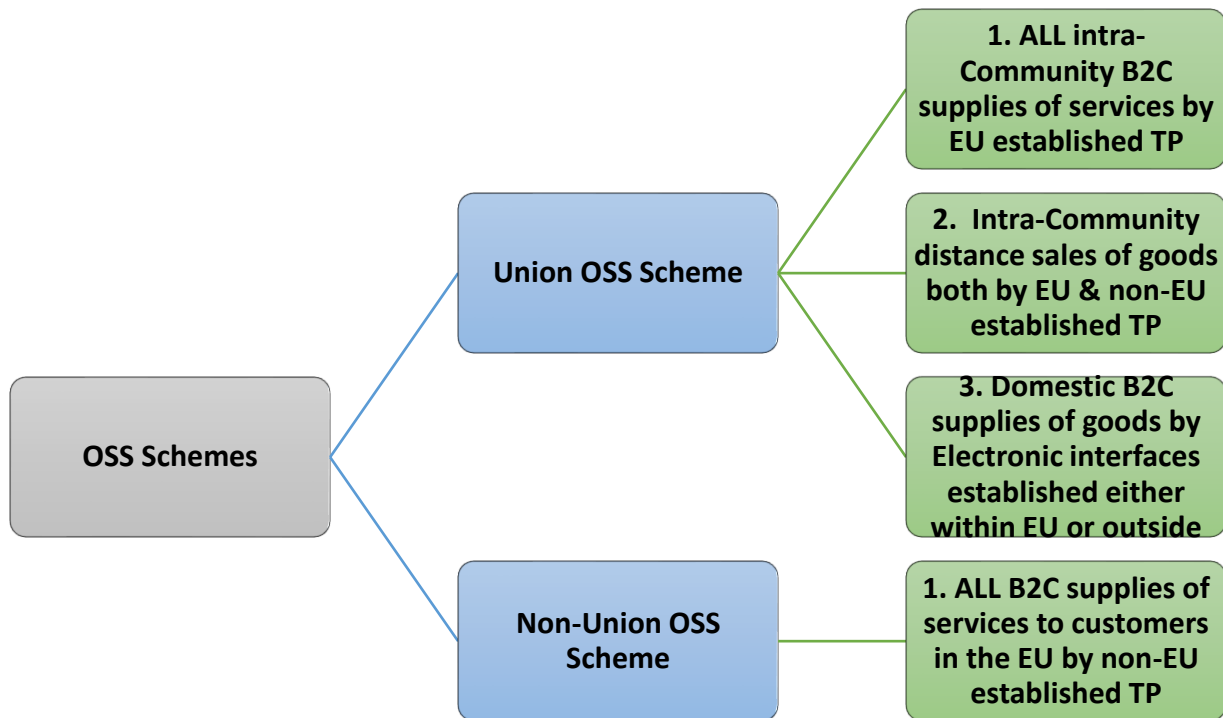
There are certain consumer services (such as providing admission to events or services related to immovable property) that could also be reported in the OSS VAT return.

This means that as from 1 July 2021, such sellers will not be obliged to register for VAT in each MS in which their supplies of services take place. Instead, the VAT due on these supplies can be declared and paid in one single MS (the so-called MS of identification) via the One Stop Shop.

It is also important to clarify that B2B supplies cannot be reported via OSS.

Further it should be noted, that the new rules do not change the place of supply of those services but only offer a simplified procedure to declare and pay the applicable VAT rate in the MS where the supply takes place.

It should also be noted that the new rules extend the scope of the special scheme for taxable persons **not established in the EU** supplying TBE services (the non-Union scheme) to all services supplied to non-taxable persons which take place in a MS in accordance with the place of supply rules.



C.3. Import One Stop Shop (IOSS)

Due to the technological advances and the Covid-19 pandemic, it is apparent that we are experiencing an explosive growth in the EU and worldwide E-commerce trade. The existing VAT rules though, for the importation of commercial goods by final consumers pre-date these technological advances and provide a VAT exemption for these transactions.

The currently applicable VAT exemption of commercial goods of a value up to EUR 10/22 imported into the EU previously mentioned, leads to a serious distortion of competition to the detriment of EU suppliers. In order to restore a level playing field for EU sellers and to protect the tax revenues of the EU MS, the VAT exemption upon importation is abolished and the VAT rules for distance sales of imported goods are amended in line with the taxation at destination principle.

This exemption is abolished as of 1 July 2021. Thus, from 1 July 2021, all commercial goods imported into the EU from a third country or third territory will be subject to VAT irrespective of their value.

The customs duty relief for goods with an intrinsic value not exceeding EUR 150 imported into the EU remains in place. That means that no customs duty has to be paid for goods in a consignment imported into the EU whose intrinsic value does not exceed EUR 150 (except for alcoholic products, perfumes, toilet waters, tobacco and tobacco products).

As such, a special scheme for distance sales of goods imported from third countries or third territories into the EU was created to facilitate the declaration and payment of VAT due on the sale of low value goods.

The Import One Stop Shop (IOSS), allows suppliers selling goods dispatched or transported **from a third country or third territory** to customers in the EU,

1. to collect VAT on distance sales of imported low value goods from the customer and
2. to declare and pay this VAT via the IOSS.

If the IOSS is used, the importation (release for free circulation) of low value goods into the EU is exempt from VAT. VAT is paid as part of the purchase price by the customer.

It should be noted though, that suppliers and Electronic Interfaces **not established in the EU**, neither in a third country with which the EU has concluded **a VAT mutual assistance agreement** (insofar as they carry out sales of goods from this specific third country), in order to be able to use the scheme, **they will need to appoint an intermediary established in the EU.**

The intermediary needs to be a taxable person established in the EU who will have to fulfil all the obligations laid down in the import scheme for the supplier or electronic interface that appointed him, including the submission of IOSS VAT returns and payment of VAT on the distance sales of imported low value goods.

It is also important to note that the supplier or the deemed supplier who appointed an intermediary remains liable for the VAT obligations, including the payment of VAT together with the intermediary.

C.4. The special arrangements for declaration and payment of import VAT

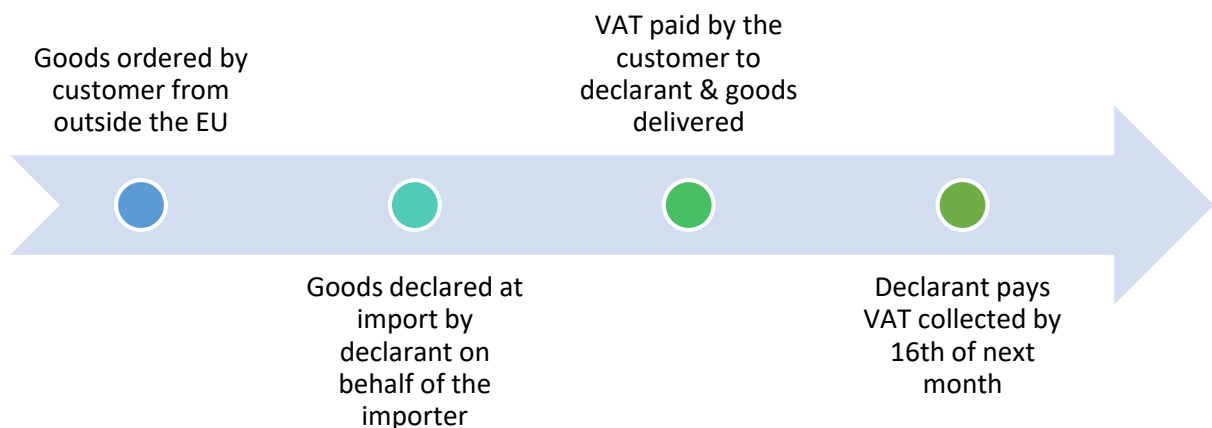
The special arrangements have been introduced as an alternative simplification for the collection of import VAT in cases where neither the import scheme (IOSS) nor the standard VAT collection mechanism on importation are being used.

Under the special arrangements, the customer pays the VAT to the person presenting the goods to customs. In the majority of cases, this person will be a **postal operator, express carrier or customs agent**, and these special arrangements can only be used if the release for free circulation is made in the MS in which the low value goods will be delivered to the customer/importer.

Similarly, to the IOSS scheme, the use of the special arrangements **is not mandatory**.

This simplification measure is designed in particular 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 customs representatives.

The VAT Directive does not provide for conditions to authorise economic operators to use the special arrangements. MS may however apply the conditions for the authorisation of the deferment of payment of customs duty under the customs law also for the special arrangements.



Concluding, it is evident that the new rules simplify the imposition and payment of import VAT on Low Value Consignments, expediting this way the whole process by giving additional options to the standard VAT collection mechanism on importation being:

1. The import scheme (IOSS) or
2. the special arrangements.

C.5. Deemed Supplier provision

The provision of Deemed Supplier refers to Taxable persons who **facilitate** distance sales of goods through the use of an electronic interface (EI) i.e., a website, a marketplace, a portal etc.

From 1 July 2021, a new legal provision has been introduced in the principal VAT Directive providing that if an electronic interface facilitates distance sales of goods by a non-EU established seller to a buyer in the EU, the electronic interface is considered to be the seller and is liable for the payment of VAT. To declare and pay this VAT, the electronic interface will be able to easily register in a special electronic system called the One-Stop Shop (OSS).

This provision of the deemed supplier has been introduced to:

1. To ensure effective and efficient collection of VAT and
2. To reduce the administrative burden for suppliers, tax administrations and consumers.

The taxable person facilitating the supply through the use of an electronic interface becomes a deemed supplier for:

1. Goods in consignments of an intrinsic value not exceeding EUR 150 supplied to a customer in the EU and **imported in the EU**, irrespective of whether the underlying supplier/seller is established in the EU or outside the EU;
2. Goods which were already released into free circulation in the EU and goods which are located in the EU and these goods are supplied to customers in the EU, irrespective of their value, when the underlying supplier **is not established in the EU**.

This means that the single supply from the supplier (the so-called underlying supplier) selling goods via an electronic interface to the final consumer (B2C supply) is split into two supplies:

1. a supply from the underlying supplier to the electronic interface (deemed B2B supply), which is treated as **a supply without transport**, and
2. a supply from the electronic interface to the customer (deemed B2C supply), **which is the supply to which the transport is allocated**.



D. CONCLUSION

The application of the E-Commerce package as mentioned above aims to grow E-commerce in a simplified, fairer environment and overcome the barriers to cross-border online sales by addressing the problem of multiple registrations of sellers in the E-commerce, to address abusive practices arisen from the importation of low value consignments, as well as, to place EU businesses on equal footing with non-EU businesses.

Consumers will appreciate knowing that when buying goods online from outside or inside the EU, the VAT rate applied is the same as for goods acquired in their home country as the new rules make sure that VAT is paid where consumption of goods takes place and we hope to see public revenues increasing, thanks to increased VAT payments and less VAT fraud.

It should be noted though that, compliance with the new rules might entail changes in your internal business processes, and additional IT systems may be needed to accommodate the changes.

Having said the above, it is of an immense importance to engage with your VAT advisors to better understand the VAT rules applicable to the supply chain of your goods and decide whether anyone of the schemes could be applied and how this could be implemented in practice.

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April 2021

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