

E-commerce: new VAT rules coming up...

Are you selling goods and/or services online? If yes, we can only advise you to read this article very carefully as new VAT rules are coming up. These new rules can save your company money, if the rules are applied correctly. If not, it can cost your company (a lot of) money.

And if your company is an electronic interface (such as market places, platforms, portals, etc.) or a postal operator, then it is even more important that you read this article as these companies will, in the near future, carry much more responsibilities for making sure that EU VAT is declared properly.

Background

Since online sales of goods and services are becoming more and more important in our daily life, the VAT rules, which were drafted long before the boom of the internet, had to be rewritten. In this respect, the EU published on 29 December 2017 new EU VAT rules which contain simplifications for entities active in the e-commerce sector, but also responsibilities for the electronic interfaces and postal operators. The first wave of new rules, which are mainly introduced for small and medium sized companies, will enter into force as from 1 January 2019. The major set of new rules (and simplifications) will enter into force as from 2021. Below, we will explain the new rules in more detail.

The first wave of new rules applicable as of 2019: it is a start...

Currently telecommunication, broadcasting and electronic services, both B2B and B2C, are deemed to take place where the customer is established implying that VAT is due in the EU Member State of the customer. If the customer



is a private individual or a non-legal taxable person without a VAT identification number (or in other words in a B2C-relation), the service provider will need to charge local VAT in the EU-country of the customer. Even if the provided electronic service is only worth a few euros, the service provider in principle needs a local VAT identification number enabling him to charge local VAT.

To avoid a VAT identification number in each Member State a customer is established, the EU introduced in 2015 the use of the so-called Mini One Stop Shop (MOSS) scheme. The current MOSS system ensures that a service provider of telecommunication, broadcasting and electronic services in a B2C relationship can fulfill its VAT obligations in its Member State of establishment. The MOSS scheme enables the service provider to report the turnover achieved and the VAT due per Member State concerned via a single electronic quarterly declaration (to be submitted in the Member State of establishment). The introduction of the MOSS scheme is of course a real cost saving solution for companies, but still too narrow in use for the current booming internet sales.

As from 2019, the EU will introduce a threshold of €10,000 allowing EU service suppliers to charge VAT in the Member State where the supplier is established. Note that the use of the threshold is not obliged, implying that the service supplier can also opt to charge VAT in the Member State where the customer is established (this would be interesting in case for example a lower VAT rate is applicable for the services supplied). An important note to take into account is that the threshold of €10,000 includes the telecommunication, broadcasting and electronic services supplied EU-wide in a B2C relationship (the threshold should thus not be seen per Member State).

To summarize: If a service supplier of telecommunication, broadcasting and electronic services does not exceed the EU-wide annual turnover of €10,000 in B2C cross-border sales, the supplier has the following three options:

1. he charges VAT in the Member State where he is established
2. he charges VAT in the Member State where the customer is established, but makes use of the MOSS scheme (and therefore he does not require a local VAT identification number), or
3. he charges VAT in the Member State where the customer is established, via a local VAT identification number in the Member State of the customer.

If the threshold of €10,000 is exceeded, the supplier can only apply the last two options. If the supplier does not exceed the threshold of €10,000 but opts to apply option

2 or 3, the supplier is obliged to apply the option for at least two years.

As of 2019, another threshold will be introduced for the number of pieces of evidence a service supplier of telecommunication, broadcasting and electronic services must keep to prove where his customer is located. Currently the service supplier must keep two pieces of evidence (examples: the invoice address, the bank details used, the IP address used, etc.). As of 2019, the service supplier only needs to keep one piece of evidence if his annual turnover of cross-border B2C sales of telecommunication, broadcasting and electronic services does not exceed the EU wide threshold of €100,000.

Another simplification relates to the invoicing rules. Under the new rules, the invoicing rules of the Member State of establishment will be applicable if the service provider makes use of the MOSS scheme. A last simplification which will be applicable as from 2019 is that companies established outside the EU, not having a permanent establishment in the EU, will be allowed to use the MOSS scheme as well.

The second wave of new rules applicable as of 2021: real simplifications

Extension of the MOSS scheme: the “OSS scheme”

From 1 January 2021, the MOSS scheme will be extended to the distance sales of goods and to all other B2C cross-border services of which the services are deemed to take place in the Member State of the customer.

The deadline to submit a VAT return via the OSS scheme will be extended from 20 days to the last day of the following month in which the VAT becomes due. And companies will be allowed to correct previous VAT returns in a next VAT return instead of correcting the initial submitted VAT return.

It will still be impossible to recover any input VAT via the OSS scheme. Companies incurring foreign VAT without having a local VAT identification number in that Member State, will still be required to submit a VAT refund claim (via the 8th or 13th Directive).

Finally a real simplification: distance sales under the OSS scheme

Distance sales of goods refers to the B2C sale of goods whereby the goods are dispatched or transported by or on behalf of the supplier, including where the supplier only intervenes indirectly in the transport or dispatch, from one Member State to another. Different from the definition of B2C for telecommunication, broadcasting and electronic

services, a consumer is a private individual or a member of the group of 4 (group of four = a non-taxable legal person such as a public institution, an exempt taxable person not entitled to deduct VAT such as a school or a non-profit organization, a company to whom a special VAT exemption applies such as small enterprises and an agricultural company).

Currently, if a company sells goods via an online shop to consumers (B2C) located in other Member States and the threshold of the distance sales is exceeded (in most Member States the thresholds are €35,000 or €100,000), the supplier is obliged to charge local VAT in the Member State of the customer. This implies that the supplier is obliged to request a local VAT identification number in the Member State of the consumer. Requesting a VAT identification number in one or more Member States and fulfilling all local VAT compliance obligations is for many companies an administrative nightmare.

To avoid high administrative costs, multiple VAT identification numbers and complex VAT legislations, the EU decided to bring the distance sales under the OSS scheme. This implies that the supplier of goods in a cross-border B2C relationship will, as from 2021, no longer require multiple VAT identification numbers for the (online) sale of goods. Instead, the supplier can use the OSS scheme to charge local VAT in the Member State where the customer is located. As for the telecommunication, broadcasting and electronic services, if the supplier applies the OSS scheme, the invoicing rules of the Member State where the supplier is established will apply. Finally some real simplifications which will in principle reduce the costs for the supplier.

The threshold of €10,000 which will be introduced as from 2019, will still be applicable but will, besides the telecommunication, broadcasting and electronic services, also need to take into account the distance sales of goods and the other B2C services which are deemed to take place in the Member State of the customer. If the supplier does not exceed the threshold of €10,000 but opts to charge VAT in the Member State which the customer is located, the supplier is liable to apply this option for at least two years.

EU wants to stop the distortion of competition: abolishment of VAT exemption on imported goods

Currently the import in the EU of small consignments (with a few exceptions) with a value of less than €22 (in Belgium), is exempt from (Belgian) VAT. In practice, imported high-value goods such as smartphones and tablets are consistently undervalued or wrongly

described in the importation paperwork in order to benefit from this VAT exemption. With around 150 million parcels imported free of VAT into the EU each year, this system is open to massive fraud and abuse, creating major distortions in the EU market.

1. Special OSS scheme if intrinsic value < €150

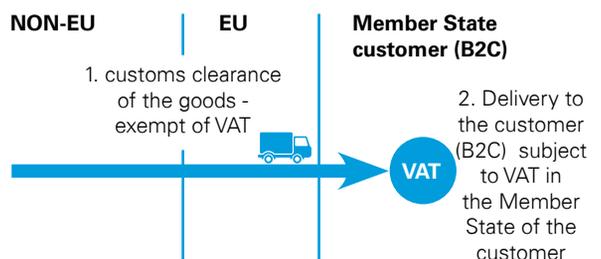
To stop the distortion of competition, the EU will abolish this VAT exemption as from 1 January 2021. As from that moment, a special OSS scheme for B2C imports will be applicable to the import of goods with an intrinsic value of less than €150.

A taxable person established outside the EU making use of this special scheme will be obliged to appoint an intermediary, unless he is established in a country with which the EU has concluded an agreement on mutual assistance. Also a taxable person established in the EU making use of the special scheme for distance sales of goods imported from third territories or third countries will be allowed to appoint an intermediary to fulfil the VAT obligations which come along with the use of the special OSS scheme. The vendor as such will be granted a special VAT identification number, a so-called IOSS VAT identification number (Import One-Stop Shop).

Under the special IOSS scheme, the vendor needs to charge VAT to the customers. This VAT will not become due on the moment of importation of the goods into the EU, but will instead become due on the moment of supply. The goods shall be regarded as having been supplied at the time when the payment has been accepted. This implies that the consignments will be VAT exempt upon importation of the goods into the EU (under the condition that the vendor provides its IOSS VAT identification number to the customs authorities).

The vendor (or its intermediary) should submit monthly VAT returns by the end of the month following the month in which the VAT became due.

New rules
Use of the IOSS scheme



2. Special arrangement if intrinsic value < €150

If the special scheme for distance sales of goods imported from third territories or third countries is not used (e.g. the seller fails to apply the IOSS scheme), the Member States should allow the use of special arrangements for the declaration and payment of import VAT for goods with an intrinsic value of less than €150. A special arrangement will be that a third party (like a postal operator) will, on behalf of the final customer, take care of the import formalities and the payment of VAT. The special arrangement will only be applicable under the condition that the final customer is established in the Member State where the goods are imported.

An important remark is that the third party (the declarant) only needs to pay VAT if the VAT has effectively been collected from the final customer.

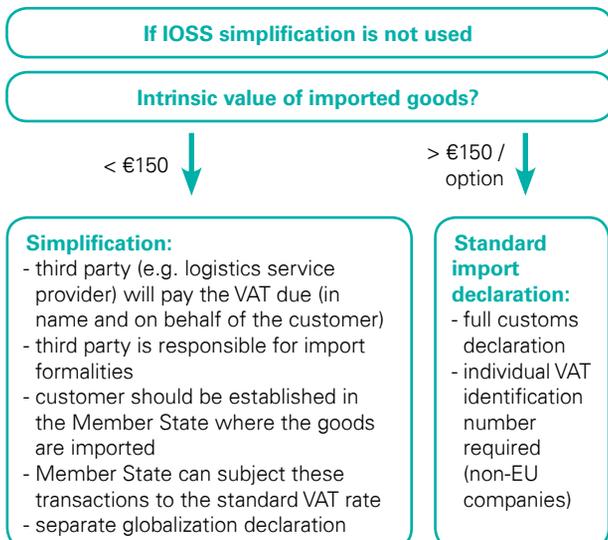
Making use of the special arrangement includes that the Member State where the goods are imported is allowed to subject these transactions to the standard VAT rate (even if the goods are in principle subject to a lowered VAT rate).

3. Intrinsic value > €150 or application of reduced VAT rate

If the intrinsic value of the imported good is more than €150, a full customs declaration will be required.

Also in case the Member State of importation does not provide for the application of the reduced VAT rate under the special arrangement, the final customer will be able to opt for the standard import procedure allowing him to benefit from the reduced VAT rate.

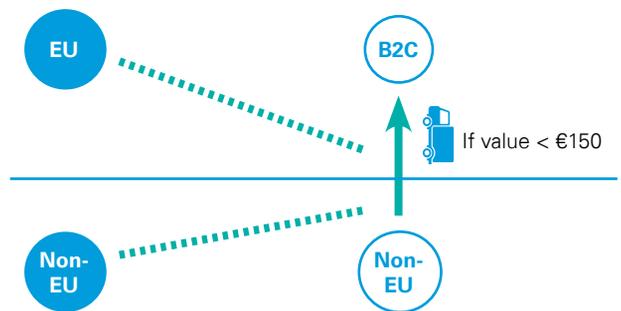
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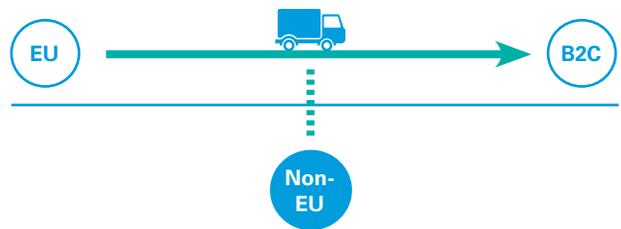
The future role of electronic interfaces: they will be deemed to be the supplier

What will have a massive impact are the new rules the Commission foresees for electronic interfaces.

Concretely, where a taxable person facilitates distance sales of goods imported from third territories or third countries in consignments with an intrinsic value of less than €150, through the use of an electronic interface such as a marketplace, platform, portal or similar means, that taxable person shall be deemed to have received and supplied those goods himself. In this respect it is irrelevant whether the goods are supplied by EU or non-EU suppliers.



Also where a taxable person facilitates the supply of goods within the EU whereby the vendor of the goods is established outside the EU (including a non-EU supplier with an EU VAT identification number) and the customer is a non-taxable person (B2C), that taxable person who facilitates the supply shall be deemed to have received and supplied those goods himself.



In both cases it is irrelevant whether the electronic interface is established in the EU or not.

The aforementioned implies that if supplies are facilitated through the use of an electronic interface, two supplies will be deemed to take place: i) a B2B supply between the seller and the electronic interface, and ii) a B2C supply between the electronic interface and the final customer.

Regarding the place of supply rules, the Commission indicates that the first supply (between the seller and the

electronic interface) will be a supply without transport and the second supply (between the electronic interface and the final customer) a supply with transport. In case goods are imported from outside the EU, the sale between the seller and the electronic interface will be deemed to take place outside the EU and will be outside the scope of VAT. In case the goods are already located in the EU, the sale between the non-EU seller and the electronic interface will be deemed to take place in the Member State where the goods are located and will be subject to local VAT. In the latter case, the proposal of the Commission might not seem viable given the tax burdens involved. In case, for example, the non-EU seller holds goods in France and the electronic interface is established in Belgium, the place of supply is France (where the goods are located). The electronic interface will incur French VAT, which the electronic interface will need to reclaim by filing a VAT refund claim.

The electronic interface facilitating the aforementioned supplies will be obliged to keep records of those supplies for a period of 10 years from the end of the year in which the transaction has been performed. And upon request of a Member State, the records should be made available electronically.

What now?

The new legislation offers real simplifications and also a more level playing field for EU businesses. On the other hand, the new rules will have a huge impact on electronic interfaces and third parties such as postal operators. It will be challenging for them to keep the responsibilities and costs as low as possible. They will anyhow need to make sure that their procedures are tight.

We can only advise you to be prepared for these changes. And we can only advise you to already start preparing your business for these changes.

KPMG has a dedicated team of professionals that are very keen to discuss the impact of the new EU VAT legislation on your business. Please do not hesitate to contact Gladys Cristiaensen for more information (gcristiaensen@kpmg.com or +32 (0)3 821 17 28).



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