

Significant VAT changes for cross-border e-Commerce from 2021

A set of legal notices were published on 2 June amending the Value Added Tax Act as regards cross-border sales of goods and services to final consumers. The new rules extend the scope of the Mini One Stop Shop scheme currently applicable to the B2C supplies of telecommunications, broadcasting and electronic (TBE) services to a One-Stop-Shop scheme that covers all types of B2C services as well as to intra-Community distance sales of goods. Complementing the OSS, with effect from 1 July 2021 there will also be introduced an Import One Stop Shop Scheme (I-OSS) with respect to distance sales of goods imported from outside the EU together with a special arrangement for logistics companies assisting with same. The new VAT rules also introduce certain provisions for taxable persons facilitating supplies of goods or services made by other taxable persons using an electronic interface such as a marketplace, platform, portal or similar means.

The changes were set to apply from 1 January 2021. However, on 8 May 2020 the European Commission proposed to postpone the introduction of the new e-commerce VAT rules by six months. Once adopted by the Council, the rules will apply as of 1 July 2021 instead of 1 January 2021.



Intra-Community Distance sale of goods

Under current VAT rules, the sale of goods to private consumers transported from Malta (herein 'MS1') to another EU Member State ('MS2') is subject to the VAT rules of MS2 unless the distance sales threshold in MS2 is not exceeded, in which case Maltese VAT rules apply to the distance sale. From a practical perspective, distance sales thresholds and VAT compliance obligations differ across EU Member States, meaning that over the years, operators engaged in B2C intra-Community sale of goods have had to face additional complications and increased VAT compliance costs.

As a result of the 2021 changes, intra-Community distance sales provided by non-EU operators will be subject to the VAT rules of the Member State where the transport ends. On the other hand, a €10,000 threshold will apply to B2C operators established in the EU. Once EU operators exceed this threshold, the intra-Community distance sale will be deemed taking place in the MS where the transport of the goods ends. To ease the additional compliance burden associated with the wider application of the distance sales regime, both EU and non-EU operators may opt for the so-called OSS regime through which, operators engaged in Intra-Community distance sales will be able to remit VAT due in other Members States through one Return - the OSS Return.



OSS also applicable to B2C services taking place in a MS other than the MS where the supplier is established

With effect from 1 July 2021, businesses registered for VAT in multiple jurisdictions as a result of B2C supplies of services taking place outside the Member States where they are established will no longer be required to retain these multiple VAT registrations and instead can opt for the OSS regime. Businesses likely to be impacted by this change include businesses registered for VAT in multiple jurisdictions as a result of (a) hiring of means of transport, (b) supply of transport services, and (c) supply of services connected with immovable property, amongst others.



Distance sale of goods imported from outside the EU

With effect from 1 July 2021, the concept of distance sales will be widened to cover B2C sale of goods transported from outside the EU made by EU or non-EU operators. Currently, an exemption applies to the importation of goods with a consignment value of up to €22. As a result of the 2021 changes the small-value consignment VAT exemption will be abolished and instead the following rules will apply.

- **The Import One Stop Shop (I-OSS) scheme**

Operators engaged in the distance sale of imported goods with intrinsic consignment value of not more than €150 will have the option to register under the Import One-Stop-Shop (I-OSS) Scheme. Operators have the option to appoint a so-called intermediary to register under the I-OSS on their behalf. As long as the I-OSS scheme can be availed of and is opted for, VAT will be charged by the operator (or the intermediary appointed by the operator) at the point of sale to EU customer. No VAT will be charged by Customs at the point of importation. The operator or intermediary will then be required to remit the VAT collected to the Member State of importation together with the I-OSS Return.

The I-OSS is much less beneficial than the Community OSS Scheme as it is only applicable to consignments of a value not more than €150 and requires monthly VAT reporting. That said, non-EU operators may explore opportunities to set up a business within the EU in order to fall under Community OSS Scheme.

- **Special arrangement for importation of goods with intrinsic value of not more than €150**

Where the I-OSS is not or cannot be availed of, import VAT on distance sales of goods imported from outside the EU may be collected by the customs declarant including postal operators, courier firms and customs agents. The use of postal operators and courier firms is likely to facilitate the import process and the collection of import VAT.

In addition to the I-OSS and the complementary special arrangement, simplification place of supply rules have been introduced in case of distance sale of goods imported from outside the EU into a Member State which is not the Member State where the sale to the end customer is made.

The role of digital platforms and online marketplaces as facilitators of distance sales

Businesses operating electronic interfaces such as marketplaces or platforms will, in certain situations, be deemed for VAT purposes to be acquiring and onward supplying goods to customers in the EU themselves. Consequently, such facilitators will have the obligation to account for VAT on such distance sales notwithstanding the fact that they are mere facilitators. Such facilitators can also opt for the OSS or I-OSS.



How can KPMG help?

At KPMG we have the relevant expertise to help you navigate through the 2021 changes, helping you answer this and further questions you may have.

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KPMG Observations

The 2021 changes will bring material changes not solely to businesses engaged in B2C supplies of goods but will also have significant ripple effects on other players in the field including logistics companies and online market players acting as facilitators of distance sales. In light of the foregoing, it is imperative for the affected players to take stock of these changes and to ensure that they opt for the solution that fits their business. The following are some considerations which may need to be taken into account:

- Before opting for the OSS, operators engaged in intra-Community distance sales of goods need to consider other supplies which could fall within scope of the OSS (including supplies of services), and based on an overall cost-benefit analysis, determine whether the VAT savings associated with reduced compliance costs could be overshadowed by more burdensome procedures associated with input VAT recovery rights in other EU Member States;
- Non-EU operators engaged in intra-Community distance sales may consider restructuring their business to benefit from the advantages applicable to EU operators engaged in intra-Community distance sales;
- Operators engaged in distance sale of imported goods need to assess whether they are eligible for I-OSS and if so, in which Member State they should opt for I-OSS or whether it would pay them to appoint an intermediary;
- Logistics companies need to assess their obligations under the special arrangement for the collection of input VAT to ensure they are prepared for the changes and fully compliant with their VAT obligations;
- Online marketplaces need to assess whether they act as facilitators, and where they do, they need to consider the VAT compliance and on-going implications associated with their role. Certain marketplaces may consider changing the manner of operation to ensure they do not fall under the facilitators' umbrella.

