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Explanatory Notes

on

VAT e-commerce rules

Council Directive (EU) 2017/2455

Council Directive (EU) 2019/1995

Council Implementing Regulation (EU) 2019/2026

Disclaimer: These Explanatory Notes are not legally binding and only contain practical and informal guidance about how EU law should be applied on the basis of the views of the Commission's Directorate-General for Taxation and Customs Union.

These Explanatory Notes aim at providing a better understanding of certain parts of the EU VAT legislation. They have been prepared by the Commission services and, as indicated in the disclaimer on the first page, they are not legally binding.

These Explanatory Notes are not exhaustive. This means that although they provide detailed information on a number of issues, there might be elements that are not included in this document.

It is advisable and recommended for any user of the Explanatory Notes, interested in a particular topic, to read the whole chapter which is dealing with that specific subject.

Contents

1 KEY ELEMENTS OF THE NEW VAT RULES TO APPLY AS FROM 1 JULY 2021 6

1.1 INTRODUCTION 6

1.2 TRANSACTIONS COVERED BY THE 2021 CHANGES 7

1.3 RELEVANT LEGAL ACTS 7

1.4 GLOSSARY 8

2 ROLES OF ELECTRONIC INTERFACES 11

2.1 ELECTRONIC INTERFACE BEING A DEEMED SUPPLIER – ARTICLE 14A OF DIRECTIVE 2006/112/EC 11

2.1.1 Relevant provisions 11

2.1.2 Why was Article 14a introduced? 11

2.1.3 Which transactions are covered by the deemed supplier provision? 11

2.1.4 What does Article 14a do? 13

2.1.5 Will the electronic interface be a deemed supplier for all the sales it facilitates? 16

2.1.6 When is the taxable person facilitating or not facilitating the supply? 17

2.1.7 Activities to which the deemed supplier provision does not apply 21

2.1.8 The involvement of several Electronic Interfaces 21

2.1.9 Limited liability of the deemed supplier (Article 5c of the VAT Implementing Regulation) 22

2.1.10 The presumption of the status of the seller and buyer 26

2.2 RECORD-KEEPING OBLIGATIONS OF ELECTRONIC INTERFACES 27

2.2.1 What are the record-keeping obligations of a deemed supplier? 27

2.2.2 Information to be kept by electronic interfaces facilitating supplies without being deemed suppliers 29

2.2.3 Outline – Reporting obligations of electronic interfaces 30

3 THE SPECIAL SCHEMES 32

3.1 THE NON-UNION SCHEME 33

3.1.1 Relevant provisions 33

3.1.2 What do the new rules do? 34

3.1.3 Who can use the non-Union scheme, and for which supplies? 34

3.1.4 What are the invoicing obligations? 35

3.1.5 Is there a need to appoint a tax representative? 35

3.2 THE UNION SCHEME 35

3.2.1 Relevant provisions 35

3.2.2 What do the new rules do? 36

3.2.3 Who can use the Union scheme and for which supplies? 36
3.2.4 Can the Union scheme be used for part of the supplies falling under the scheme? 37
3.2.5 What are intra-Community distance sales of goods? 37
3.2.6 Place of supply 38
3.2.7 Place-of-supply threshold (EUR 10 000) 39
3.2.8 What are the invoicing obligations? 41
3.2.9 Is there a need to appoint a tax representative? 41
3.2.10 If a non-EU supplier carries out supplies of services to consumers in the EU and intra-Community distance sales of goods, which scheme is to be used? 41
3.3 QUESTIONS AND ANSWERS ON THE SPECIAL SCHEMES 42
3.4 WHAT DO YOU NEED TO DO IF YOU USE THE NON-UNION OR UNION SCHEME? 49
3.5 THE IMPORT SCHEME 49
4 DISTANCE SALES AND IMPORT OF LOW VALUE GOODS 50
4.1 DISTANCE SALES OF IMPORTED GOODS 51
4.1.1 Relevant provisions 51
4.1.2 Why was the concept introduced? 51
4.1.3 What transactions are covered? 51
4.1.4 Place of supply 52
4.2 IMPORT SCHEME 54
4.2.1 Relevant provisions 54
4.2.2 Why was the import scheme introduced? 54
4.2.3 Which supplies of goods are covered by the import scheme? 54
4.2.4 Who can use the import scheme? 55
4.2.5 What is an intermediary? 56
4.2.6 IOSS VAT identification number 57
4.2.7 How does the import scheme work? 58
4.2.8 Validation of IOSS VAT identification number 59
4.2.9 What do you need to do if you use the import scheme? 60
4.2.10 IOSS Questions and answers 62
4.3 SPECIAL ARRANGEMENTS FOR DECLARATION AND PAYMENT OF IMPORT VAT 78
4.3.1 Relevant provisions 78
4.3.2 Why were the special arrangements introduced? 78
4.3.3 Which transactions are covered by the special arrangements? 79
4.3.4 Who can use the special arrangements? 79

4.3.5 How does it work? ... 79
4.3.6 What do economic operators using special arrangements need to do? ... 81
4.3.7 Practical example ... 81
5 APPLICATION OF ARTICLE 14A DEEMED SUPPLIER – SCENARIOS ... 83
5.1 DEEMED SUPPLIER FACILITATING SUPPLIES OF GOODS WITHIN THE EU ... 83
5.2 DEEMED SUPPLIER FACILITATING DISTANCE SALES OF IMPORTED GOODS ... 90

List of figures

Figure 1: Supplies of goods covered by the deemed supplier provision ... 13
Figure 2: Consequences of the deemed supplier model ... 14
Figure 3: Reporting obligations of electronic interfaces ... 31
Figure 4: IOSS scheme ... 58
Figure 5: IOSS customs process ... 60
Figure 6: Summary of import scheme ... 62
Figure 7: Summary of special arrangements ... 80

List of tables

Table 1: Invoicing ... 16
Table 2: Record-keeping obligations of the deemed supplier using one of the special schemes ... 28
Table 3: Overview of changes to the special schemes as of 1 July 2021 ... 32
Table 4: Overview of special schemes ... 33
Table 5: Place of supply threshold (EUR 10 000) ... 40
Table 6: VAT exemption before and after 1 July 2021 ... 50
Table 7: IOSS registration by type of supplier and place of establishment ... 56

1 KEY ELEMENTS OF THE NEW VAT RULES TO APPLY AS FROM 1 JULY 2021

1.1 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. The Council adopted these rules by Directive 2017/2455 in December 2017 and Directive 2019/1995 in November 2019 (VAT e-commerce Directives).

The rationale for these changes is to overcome the barriers to cross-border online sales as announced in the Commission's 2015 Communication "A Digital Single Market Strategy for Europe"[1] and the 2016 Communication on an action plan on VAT "Towards a single EU VAT area – Time to decide"[2]. In particular, the changes will address challenges arising from the VAT regimes for distance sales of goods and from the importation of low value consignments, namely:

- As EU businesses selling goods online to final consumers located in other Member States need to register and account for VAT in the Member State of the consumer when their sales exceed the distance sales threshold, i.e. EUR 35 000/100 000. This imposes a significant administrative burden on traders and impedes the development of intra-EU online trade.

- Since a VAT exemption is granted for the import of low value goods up to EUR 22 and this exemption leads to abusive practices, Member States lose part of their tax revenues.

- 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 new rules will place EU businesses on equal footing with non-EU businesses that according to the rules in force before July 2021 do not have to charge VAT, will simplify VAT obligations for businesses engaged in cross-border e-commerce and will deepen the EU single market. The main changes are the following:

- Given the success of the VAT Mini One Stop Shop (MOSS) allowing suppliers of telecommunications, broadcasting and electronically supplied (TBE) services to register for VAT in one Member State and to account in that Member State for the VAT due in other Member States[3], this system will be extended to other B2C services, to intra-Community distance sales of goods as well as to certain domestic supplies of goods, thus resulting in a bigger One Stop Shop (OSS).

- The existing threshold for intra-Community distance sales of goods will be abolished and replaced by a new EU-wide threshold of EUR 10 000 below which the supplies of

1 COM(2015) 192 final.
2 COM(2016) 148 final.
3 See the Explanatory Notes and Guides prepared by the Commission on the VAT treatment on TBE services: https://ec.europa.eu/taxation_customs/business/vat/telecommunications-broadcasting-electronic-services/content/guides_en

TBE services and intra-Community distance sales of goods may remain subject to VAT in the Member State where the taxable person supplying those TBE services is established or where those goods are located at the time when their dispatch or transport begins;

- Special provisions will be introduced whereby a business facilitating supplies through the use of an online electronic interface is deemed for VAT purposes to have received and supplied the goods themselves ("deemed supplier");

- The VAT exemption at importation of small consignments up to EUR 22 will be removed and a new special scheme for distance sales of goods imported from third territories or third countries of an intrinsic value not exceeding EUR 150 will be created and is referred to as the Import One Stop Shop (IOSS);

- Simplification measures for distance sales of imported goods in consignments not exceeding EUR 150 will be introduced, in case the IOSS is not used (special arrangements);

- New record-keeping requirements will be introduced for businesses facilitating supplies of goods and services through the use of an electronic interface, including where the electronic interface is not a deemed supplier.

1.2 TRANSACTIONS COVERED BY THE 2021 CHANGES

The following transactions are covered by the new provisions:

1) Distance sales of goods imported from third territories or third countries carried out by suppliers and deemed suppliers (defined in the second subparagraph of Article 14(4) of the VAT Directive), except for goods subject to excise duties;

2) Intra-Community distance sales of goods carried out by suppliers or deemed suppliers (defined in the first subparagraph of Article 14(4)of the VAT Directive);

3) Domestic sales of goods by deemed suppliers (see Article 14a(2) of the VAT Directive);

4) Supplies of services by taxable persons not established within the EU or by taxable persons established within the EU but not in the Member State of consumption to non-taxable persons (final consumers).

More explanations on transactions covered by point 1 can be found in chapter 4 of these Explanatory Notes. For the supplies covered by points 2, 3 and 4, please see chapter 3 for more details.

1.3 RELEVANT LEGAL ACTS

The legal acts referred to in the Explanatory Notes include:

- Council Directive 2006/112/EC on the common system of value added tax, as amended by Council Directive (EU) 2017/2455 and Council Directive (EU) 2019/1995 (VAT Directive)

- Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, as amended by Council Implementing Regulation (EU) 2017/2459 and Council Implementing Regulation (EU) 2019/2026 (VAT Implementing Regulation)

- Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax as amended by Council Regulation (EU) 2017/2454 (Administrative Cooperation Regulation)

- Commission Implementing Regulation (EU) 2020/194 of 12 February 2020 laying down detailed rules for the application of Council Regulation (EU) No 904/2010 as regards the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods

- Council Decision (EU) 2020/1109 of 20 July 2020 amending Directives (EU) 2017/2455 and (EU) 2019/1995 as regards the dates of transposition and application in response to the COVID-19 pandemic

- Council Regulation (EU) 2020/1108 of 20 July 2020 amending Regulation (EU) 2017/2454 as regards the dates of application in response to the COVID-19 pandemic

- Council Implementing Regulation (EU) 2020/1112 of 20 July 2020 amending Implementing Regulation (EU) 2019/2026 as regards the dates of application in response to the COVID-19 pandemic

- Commission Implementing Regulation (EU) 2020/1318 of 22 September 2020 amending Implementing Regulations (EU) 2020/21 and (EU) No 2020/194 as regards the dates of application in response to the COVID-19 pandemic

1.4 GLOSSARY

B2C (business-to-consumer) supplies – refers to supplies to final consumers and covers transactions listed in section 1.2 (further described in these Explanatory Notes). A consumer can also be referred to as a customer in these Explanatory Notes.

Consignment – goods packed together and dispatched simultaneously by the same supplier or underlying supplier to the same consignee and covered by the same transport contract.

Deemed supplier – is the taxable person who is deemed to receive the goods from the underlying supplier and to supply the goods to the final consumer. Thus a deemed supplier has the same rights and obligations for VAT purposes as the supplier. In the context of these Explanatory Notes the deemed supplier is the taxable person facilitating supplies through an electronic interface as laid down in Article 14a of the VAT Directive (see section 2.12.1 of chapter 2).

Distance sales of goods – refers to intra-Community distance sales of goods and distance sales of goods imported from third territories or third countries, which are defined in Article 14(4) of the VAT Directive.

Electronic interface – should be understood as a broad concept which allows two independent systems or a system and the end user to communicate with the help of a device or

programme. An electronic interface could encompass a website, portal, gateway, marketplace, application program interface (API), etc.

For the purpose of these Explanatory Notes, when reference is made to an electronic interface, depending on the context, it can mean the electronic interface as defined above or a taxable person operating an electronic interface.

EU Member States – are the countries within the EU where these VAT rules apply. These are Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden.

Excise goods – are products subject to harmonised excise duties, such as alcohol, tobacco and energy.

Fulfilment services – are services provided to suppliers of goods and consisting of storing goods in a warehouse, preparing orders and shipping the goods from the warehouse.

Intermediary – is a person established in the Community appointed by a supplier or a deemed supplier carrying out distance sales of goods imported from third territories or third countries as the person liable for the payment of the VAT and responsible for fulfilling the obligations laid down in the import One Stop Shop scheme.

Intrinsic value –
(a) for commercial goods: the price of the goods themselves when sold for export to the customs territory of the Union, excluding transport and insurance costs, unless they are included in the price and not indicated separately on the invoice, and excluding any other taxes and charges as ascertainable by the customs authorities from any relevant document(s);
(b) for goods of a non-commercial nature: the price which would have been paid for the goods themselves if they were sold for export to the customs territory of the Union.

Low value goods – goods in consignments whose intrinsic value at import does not exceed EUR 150 (except products subject to excise duties).

Tax representative – is a person established in the Community appointed by a supplier as the person liable for the payment of VAT and responsible for fulfilling the VAT obligations.

Special schemes – special schemes cover the non-Union scheme, the Union scheme and the import scheme.

The ‘non-Union scheme’ means the special scheme for services supplied by taxable persons not established within the Community provided for in Section 2 of Chapter 6 of Title XII of the VAT Directive – more explanations can be found in chapter 3;

The ‘Union scheme’ means the special scheme for intra-Community distance sales of goods, for supplies of goods within a Member State facilitated by electronic interfaces and for services supplied by taxable persons established within the Community but not in the Member State of consumption provided for in Section 3 of Chapter 6 of Title XII of the VAT Directive – more explanations can be found in chapter 3;

The ‘import scheme’ means the special scheme for distance sales of goods imported from third territories or third countries provided for in Section 4 of Chapter 6 of Title XII of the VAT Directive – more explanations can be found in chapter 4.

Supplier – is the taxable person selling goods or services within the EU or making distance sales of goods imported from third territories or third countries directly to customers where the supply was not facilitated by an electronic interface.

Taxable person not established within the Community – means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there.

Third territories and third countries – ‘third territories’ are those referred to in Article 6 of the VAT Directive and ‘third country’ means any state or territory to which the Treaty on the Functioning of the European Union is not applicable (see Article 5 of the VAT Directive). At the moment of publication of these Explanatory Notes, third territories listed in Article 6 are the following: Mount Athos; the Canary Islands; the French territories of Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin; the Åland Islands; Campione d'Italia; the Italian waters of Lake Lugano; the Island of Heligoland; the territory of Büsingen; Ceuta; Melilla; Livigno.

Underlying supplier – is the taxable person supplying goods or making distance sales of goods imported from third territories or third countries through an electronic interface (see section 2.1 of chapter 2).

2 ROLES OF ELECTRONIC INTERFACES

2.1 ELECTRONIC INTERFACE BEING A DEEMED SUPPLIER – ARTICLE 14A OF DIRECTIVE 2006/112/EC

2.1.1 Relevant provisions

The relevant provisions can be found in the VAT Directive and in the VAT Implementing Regulation.

VAT Directive

- Article 14, Article 14a
- Article 31 – 33
- Article 36b
- Article 66a
- Article 136a
- Article 169
- Article 205
- Article 219a – 221
- Article 242, Article 242a

VAT Implementing Regulation

- Article 5b
- Article 5c
- Article 5d
- Article 41a
- Article 54b
- Article 54c
- Article 63c

2.1.2 Why was Article 14a introduced?

To ensure effective and efficient collection of VAT, while at the same time reducing the administrative burden for suppliers, tax administrations and consumers. Taxable persons who facilitate distance sales of goods through the use of an electronic interface (EI) will be involved in the collection of VAT on those sales. In this respect, a new legal provision (Article 14a) has been introduced in the VAT Directive providing that these taxable persons are deemed in certain circumstances to make the supplies themselves and will be liable to account for VAT on these sales (the deemed supplier provision).

2.1.3 Which transactions are covered by the deemed supplier provision?

The taxable person facilitating the supply of goods through the use of an electronic interface such as a marketplace, platform, portal or similar means[4] is the deemed supplier in case of:

[4] The term 'similar means' is meant to cover any current and future technologies which would allow to conclude the sale electronically.

1) distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150, frequently referred to as low value goods – Article 14a(1), or

2) supplies of goods within the Community by a taxable person not established there to a non-taxable person; both domestic supplies and intra-Community distance sales of goods are covered – Article 14a(2).

In other words, the taxable person facilitating the supply through the use of an electronic interface becomes a deemed supplier for supplies of the following made via its electronic interface:

- 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;

- 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/seller is not established in the EU[5].

As a consequence, the taxable person facilitating the supply through the use of an electronic interface will **not** become a deemed supplier, for transactions involving the following:

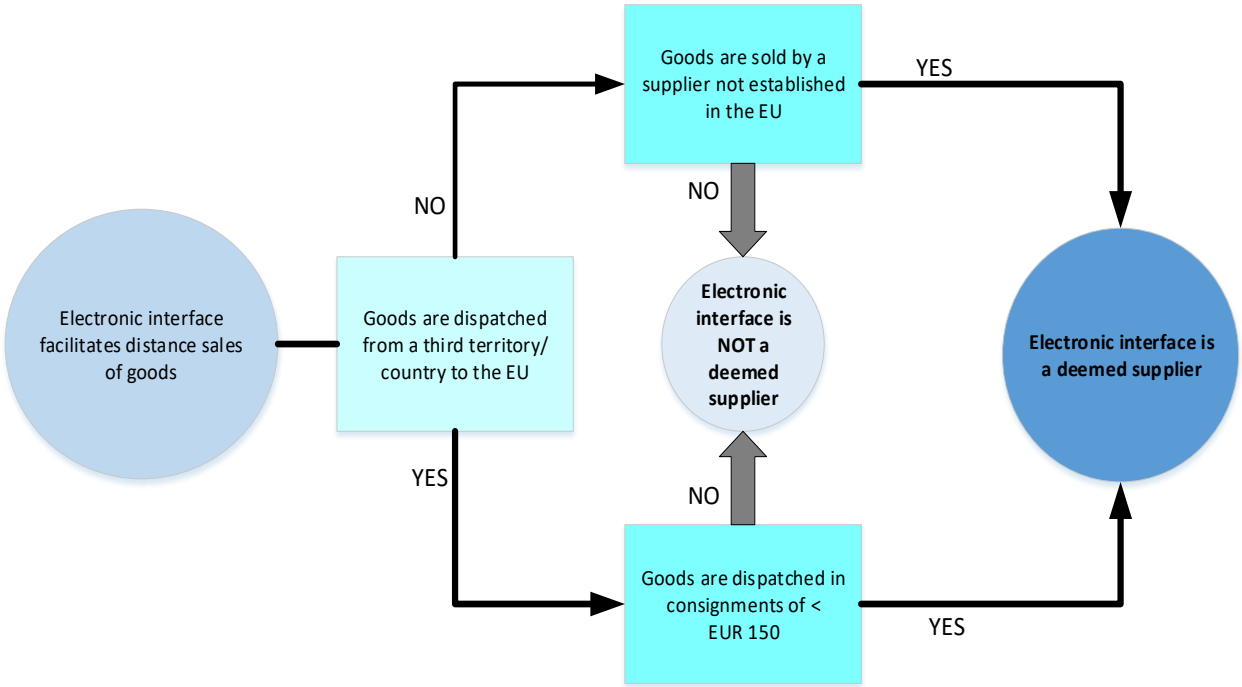
- Goods in consignments where the intrinsic value is exceeding EUR 150 imported in the EU, irrespective of where the underlying supplier/seller is established;

- Goods which were already released into free circulation in the EU and goods which are located in the EU and supplied to customers in the EU, irrespective of their value, where the underlying supplier/seller is established in the EU.

This is summarised in the below figure 1.

[5] Goods placed in a customs warehouse in the EU are already on the EU territory and, therefore, they cannot be considered to be dispatched from third countries or third territories as required to be covered by the concept of distance sales of imported goods.

Figure 1: Supplies of goods covered by the deemed supplier provision



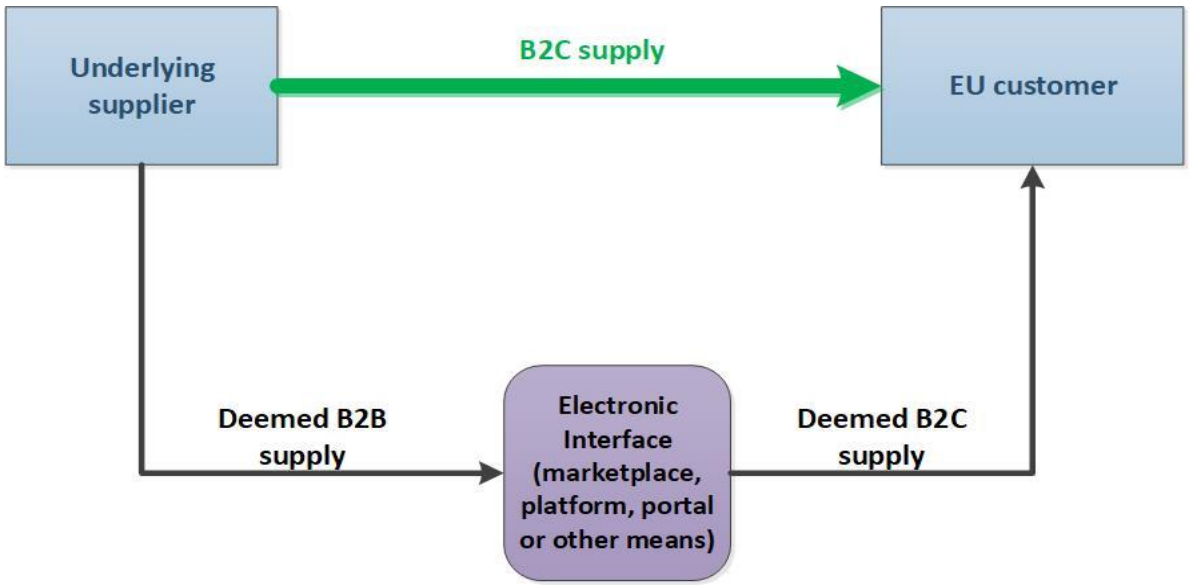
2.1.4 What does Article 14a do?

The new Article 14a introducing a deeming provision for VAT purposes ('the deemed supplier provision') provides that the taxable person who facilitates the supply shall be deemed to have received and supplied the goods himself (the so-called deemed supplier). 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.

Figure 2: Consequences of the deemed supplier model



The result of this deemed supplier provision is that the taxable person facilitating the supply through an electronic interface is treated for VAT purposes as if he is the actual supplier of the goods. This implies that he will be considered for VAT purposes to have purchased the goods from the underlying supplier and sold them onwards to the customer.

2.1.4.1. What are the VAT invoicing obligations for these supplies?

For supply 1) – the supply from the underlying supplier to the electronic interface (deemed B2B supply):

The deemed B2B supply can be:

a) a distance sale of imported goods (Article 14a(1))[6]

Since such a supply takes place outside the EU, the EU VAT rules do not apply to this deemed B2B supply. There are, therefore, no VAT invoicing obligations in the EU for the underlying supplier.

b) a supply of goods within the EU (Article 14a(2))

A VAT invoice has to be issued by the underlying supplier to the deemed supplier in accordance with the rules of the Member State where the supply takes place.

This deemed B2B supply is exempt from VAT with the right of deduction for the underlying supplier (Articles 136a and 169(b) of the VAT Directive). While the VAT Directive provides Member States with the possibility to release taxable persons from the obligation to issue an invoice in case of exempt supplies (Article 220(2) of the VAT Directive), no such possibility exists for this particular supply. Self-billing arrangements for these deemed B2B transactions can be used. The self-billing rules of the Member State where the supply takes place will apply.

[6] See scenarios for the application of Article 14a(1) in chapter 5 of the Explanatory Notes.

For supply 2) – the supply from the electronic interface to the customer (deemed B2C supply):

The deemed B2C supply can be:

a) a distance sale of imported goods (Article 14a(1))

The provisions of the EU VAT legislation in relation to invoicing apply to this deemed supply provided the place of supply of the distance sale of imported goods is in the EU. The VAT Directive provides that there is no obligation to issue a VAT invoice for B2C supplies and thus also not for this deemed B2C supply. However, Member States may still impose an obligation to issue an invoice for VAT purposes for this supply (Article 221 of the VAT Directive). In addition, the customs authorities may require supporting documents for customs clearance which cover typically a commercial invoice.

In case an invoice is issued and the electronic interface makes use of the special scheme, the invoicing rules of the Member State of identification (Article 219a of the VAT Directive) will apply. If the special scheme is not used, the invoicing rules of the Member State where the distance sale of imported goods is deemed to take place will be applicable. The electronic interface will have to charge the VAT applicable in the Member State of consumption to the supply of goods and to remit this VAT to the tax administration in that Member State. The IOSS identification number of the electronic interface should not be mentioned on the invoice since communication of the IOSS number should be kept to the necessary minimum.

b) a supply of goods within the EU (Article 14a(2))

This situation covers both domestic supplies of goods and intra-Coommunity distance sales of goods made by the electronic interface[7] acting as a deemed supplier.

Regarding domestic supplies by the electronic interface, there is normally no obligation to issue an invoice for this deemed B2C supply. However, a Member State of consumption may still impose an obligation to issue an invoice for VAT purposes for this supply (Article 221 of the VAT Directive). In case an invoice is issued and the electronic interface makes use of the special scheme for this domestic B2C supply, the invoicing rules of the Member State of identification (Article 219a of the VAT Directive) will apply. If the special scheme is not used, the invoicing rules of the Member State where the supply takes place will be applicable.

Regarding intra-EU distance sales of goods, in case the Union scheme is used, there is no legal obligation to issue an invoice for this B2C supply (Article 220(1), point 2 of the VAT Directive[8]). In case the electronic interface issues an invoice, the invoicing rules of the Member State in which the electronic interface makes use of the special scheme will apply, i.e. the Member State of identification (Article 219a of the VAT Directive). When the Union scheme is not used, an invoice has to be issued by the electronic interface to the customer and this follows the invoicing rules of the Member State where the supply takes place.

Irrespective of whether the Union scheme is used or not, the electronic interface will have to charge the VAT applicable in the Member State of comsumption to the goods supplied and has to remit this VAT to the tax administration.

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7 See scenarios for the application of Article 14a(2) in chapter 5 of the Explanatory Notes.

8 Corrigendum to Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC (OJ L 348, 29.12.2017).

Below is table 1 summarising the different invoicing obligations.

Table 1: Invoicing

Supplies		Obligation to invoice according to the VAT Directive?	Can Member States impose invoicing obligation?	Which Member State's invoicing rules?
Deemed B2B supply	**A distance sale of imported goods (Article 14a(1))**	Not applicable* * Commercial invoice for customs clearance	Not applicable	Not applicable
	A supply of goods within the EU (Article 14a(2))	YES	Not applicable	Member State where the supply takes place
Deemed B2C supply	**A distance sale of imported goods (Article 14a(1)) <u>taking place in the EU</u>**	NO* * Commercial invoice for customs clearance	YES	a) Use of the special scheme – Member State of identification b) No use of the special scheme – Member State where the distance sale of imported goods takes place
	A supply of goods within the EU (Article 14a(2)): **1) domestic supply by EI** **2) Intra-EU distance sales of goods by EI**	1) NO 2) a) Use of the special scheme – NO b) No use of the special scheme - YES	1) YES 2) a) NO b) YES	a) Use of the special scheme – Member State of identification b) No use of the special scheme – Member State where the distance sale of imported goods takes place

2.1.5 Will the electronic interface be a deemed supplier for all the sales it facilitates?

The assessment of whether the electronic interface facilitates a supply of goods and is thus a deemed supplier should be made on a transactional basis, taking into account the criteria outlined in the following sections. Consequently, the electronic interface can be considered as facilitating some of the supplies and thus be a deemed supplier for those supplies of goods and at the same time be involved in other supplies for which it is not a deemed supplier.

For instance, an electronic interface can be involved in: 1) supplies of goods in consignments of an intrinsic value exceeding EUR 150 to be imported into the EU for which it will not be a deemed supplier and 2) supplies of goods (being already in free circulation in the EU) within the EU by an underlying supplier/seller not established in the EU for which the marketplace will be a deemed supplier.

2.1.6 When is the taxable person facilitating or not facilitating the supply?

Article 5b of the VAT Implementing Regulation provides clarifications on when a taxable person should be considered to facilitate the supply of goods for the purpose of the application of the deemed supplier provision.

The term 'facilitates' means the use of an electronic interface to allow a customer and a supplier, offering goods for sale through the electronic interface, to enter into contact, which results in a supply of goods being made through that electronic interface to that customer. In other words, the sale-purchase from the seller to the customer is realised/concluded with the help of the taxable person operating the electronic interface. The concept encompasses situations where customers initiate the purchase process or make an offer for purchasing goods and underlying suppliers accept the offer via the electronic interface. Generally, for e-commerce transactions this is reflected in the actual ordering and the checkout process being carried out by or with the help of the electronic interface. In addition, *"which results in a supply of goods through that electronic interface"* means that a transaction is concluded on the electronic interface (website, portal, gateway, marketplace, application program interface (API), or similar means), but it is not determined by the physical delivery of the goods, which may or may not be arranged/carried out by the taxable person operating the electronic interface.

A taxable person, i.e. an electronic interface, is **not** considered as facilitating the supply, if:

a) he does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made (see section 2.1.6.1); and

b) he is not, either directly or indirectly, involved in authorising the charge to the customer in respect of the payment made (see section 2.1.6.2); and

c) he is not, either directly or indirectly, involved in the ordering or delivery of the goods (see section 2.1.6.3).

These conditions have to be fulfilled cumulatively by a taxable person in order to be considered as not facilitating the supply. Consequently, even if a taxable person carries out only one of the above listed activities, he may still be considered as facilitating the supply of goods.

The deemed supplier provision does also not apply to the following activities (see section 2.1.7 for more details):

a) the processing of payments in relation to the supply of goods;

b) the listing or advertising of goods;

c) the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.

2.1.6.1 When does the electronic interface set any of the terms and conditions of the supply?

a) The concept of 'setting the terms and conditions'

According to Article 5b(2)(a) of the VAT Implementing Regulation, if the taxable person operating the electronic interface sets, either directly or indirectly, any of the terms and

conditions under which the supply is made, he will be considered as facilitating that supply of goods and will be treated as deemed supplier.

The terms and conditions should be understood as the rights and obligations of the underlying supplier and the customer linked to the supply, such as the price, the type/nature of the goods, arrangements for payment, delivery or any guarantees. It also covers the conditions for both underlying supplier and customer to use the website/platform (including conditions to maintain an account on the website/platform).

Since the provision refers to any of the terms and conditions, which can be set directly or indirectly, the concept should be interpreted broadly. It is meant to cover a wide variety of taxable persons operating a marketplace, platform, portal or any similar business model existing or emerging in the online/e-commerce trade.

The use of "indirectly" and "any" in setting the terms and conditions under which the supply of goods is made is meant to prevent artificial splitting of rights and obligations between the electronic interface and the underlying suppliers. For example, the indication that the seller (underlying supplier) is responsible for the goods sold via a marketplace/platform or that the contract is concluded between the underlying supplier and the customer is not sufficient to relieve the taxable person operating the electronic interface from the VAT obligations as a deemed supplier.

The concept thus goes beyond the contractual relationship and looks at the economic reality and in particular the influence exercised by or the contribution of electronic interfaces to the actual supply of goods.

b) Examples of activities falling under this concept

Different elements/characteristics can be indicative of a taxable person operating an electronic interface setting the terms and conditions. In order to arrive at the final conclusion, all the features of the supply need to be taken into account. Nonetheless, below are some examples (not cumulative and not exhaustive) of activities indicating that the taxable person operating an electronic interface directly or indirectly sets the terms and conditions:

- The electronic interface owns or manages the technical platform through which the goods are supplied,
- The electronic interface sets rules for the listing and selling of goods through his platform,
- The electronic interface owns customer data related to the supply,
- The electronic interface provides for the technical solution for the order taking process or the buying initiation (e.g. by placing the goods in a shopping cart),
- The electronic interface organises/manages communication of the offer, acceptance of the order or payment for the goods,
- The electronic interface sets conditions under which the supplier or customer is responsible for paying the costs of the return of goods,

- The electronic interface imposes on the underlyig supplier one or more specific payment methods, storage or fulfilment conditions or shipping or delivery methods used to fulfil the transaction,

- The electronic interface has the right to process or withhold the customer's payment from the underlying supplier or otherwise restrict access to funds,

- The electronic interface is in a position to credit the sale without the underlying supplier's permission or approval in case the goods were not properly received,

- The electronic interface provides customer service, assistance with returns of goods or exchanges, or grievance or dispute management procedures for suppliers and/or their customers,

- The electronic interface has the right to set the price at which goods are sold, such as by offering a discount through a customer loyalty programme, has control or exerts influence over the pricing,

2.1.6.2 When is the electronic interface involved in authorising the charge to the customer in respect of the payment made?

a) The concept of 'authorising the charge'

According to Article 5b(2)(b) of the VAT Implementing Regulation, if the taxable person operating an electronic interface is, either directly or indirectly, involved in authorising the charge to the customer in respect of the payment made, he is considered as facilitating the supply of goods and will fall under the deemed supplier provision.

The concept of 'authorising the charge' refers to the situation where the electronic interface can influence whether, at what time or under which conditions the customer pays. The electronic interface authorises the payment when it decides that the customer's account, bank card or similar can be debited/charged as payment for the supply or when he is involved in receiving the payment authorisation message or the commitment for payment from the customer. This concept does not imply that the electronic interface has to effectively collect or receive the payment or that it should be involved in each step of the payment process.

b) Examples of activities covered by this concept

Different elements/characteristics can be indicative of an electronic interface authorising the charge. In order to draw the final conclusion, all the features of the supply need to be taken into account. Nonetheless, below are some examples (not cumulative and not exhaustive) of activities suggesting that the electronic interface is involved in authorising the charge to the customer in respect of the payment made:

- The electronic interface communicates to the customer information about the payment such as the price to be paid, its components, any additional charges due, the time for the payment, methods of payment, etc.,

- The electronic interface initiates the process through which the customer is charged,

- The electronic interface collects/receives from the customer payment data/information such as credit/debit card number, validity of the card, security code, name and/or

account of the payment holder, digital or crypto currency account information, digital wallet information, etc.,

- The electronic interface collects the money for the goods supplied and then transfers it to the underlying supplier,

- The electronic interface connects the customer to a third party who processes the payment following the instructions received from the electronic interface (activities of a taxable person who only processes the payment without any other involvement in the supply are excluded from the deemed supplier provision – see section 2.1.7).

2.1.6.3 When is the electronic interface involved in the ordering or delivery of goods?

a) The concept of 'being involved in the ordering or delivery of goods'

According to Article 5b(2)(c) of the VAT Implementing Regulation if the taxable person operating an electronic interface is either directly or indirectly involved in the ordering or delivery of the goods, he facilitates the supply of goods and falls under the deemed supplier provision.

The concept of 'being involved in the ordering or delivery of goods' should be interpreted broadly.

The involvement in the ordering of goods does not necessarily mean that the electronic interface is involved in generating the purchase order, but refers to situations where the electronic interface can influence in any way the ordering of goods.

The concept of 'being involved in the delivery of goods' is not limited to the physical delivery of goods, which may or may not be arranged/carried out by or on behalf of the electronic interface. It refers to situations where the electronic interface can in any way influence the delivery of goods.

b) Examples of activities falling under this concept

Different elements/characteristics can be indicative of a taxable person operating an electronic interface being involved in the ordering or delivery of goods. In order to draw the final conclusion, all the features of the supply need to be taken into account. Nonetheless, below are some examples (not cumulative and not exhaustive) of activities suggesting that the electronic interface is involved in the ordering or delivery of goods:

- The electronic interface provides the technical tool to take the order from the customer (typically the shopping cart/check-out process),

- The electronic interface communicates the confirmation and/or details of the order to the customer and to the underlying supplier,

- The electronic interface charges to the underlying supplier a fee or commission based on the order's value,

- The electronic interface sends approval to start delivery of the goods/instructs the underlying supplier or a third party to deliver the goods,

- The electronic interface provides fulfilment services to the underlying supplier,

- The electronic interface organises the delivery of the goods,
- The electronic interface communicates details of the delivery to the customer.

2.1.7 Activities to which the deemed supplier provision does not apply

Article 5b of the VAT Implementing Regulation includes a limited list of activities to which the deemed supplier provision does not apply. When the electronic interface **exclusively** carries out any of these listed activities or a combination of them, it will not be treated as a deemed supplier. These activities are:

a) the processing of payments in relation to the supply of goods, and/or

b) the listing or advertising of goods, and/or

c) the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.

When an electronic interface carries out activities which provide access to a payment system or merely create awareness of possible goods for sale, like for instance click through advertising redirecting potential customers to a seller's website or small adds websites not offering purchasing possibilities, it will not be treated as a deemed supplier. The electronic interface is not directly or indirectly involved in the supply which happens between the supplier and the customer completely independently and therefore would not in the normal course of business have knowledge of elements such as i) if and when a transaction is concluded, ii) where the goods are located, or iii) where the goods are transported to. Without such information it would be impossible for the electronic interface to fulfil the VAT obligations as a deemed supplier.

Even though the electronic interface is not considered a deemed supplier for these above activities/supplies, it could still be a deemed supplier with respect to other supplies it facilitates.

2.1.8 The involvement of several Electronic Interfaces

Article 5b of the VAT Implementing Regulation brings further clarification on the deemed supplier concept: *"allow a customer and a supplier, offering goods for sale through the electronic interface, to enter into contact which results in a supply of goods through that electronic interface*". This refers to situations where the actual ordering and/or checkout process is managed/carried out via the electronic interface. It entails that there can only be one electronic interface that is the deemed supplier, this being the electronic interface where the order is taken and through which the supply is concluded. Any other intermediary in the supply chain typically carries out a B2B supply either to the underlying supplier, to the electronic interface being the deemed supplier or to potentially any other electronic interface.

Example 1:

A customer orders goods offered for sale by an underlying supplier via electronic interface 1. The underlying supplier does not have a stock of the goods he offers for sale but purchases them via electronic interface 2 (a drop-shipping platform). The underlying supplier instructs electronic interface 2 (drop-shipping platform) to ship the goods directly to the customer.

In order to establish which electronic interface is the deemed supplier in this case, one should explore via which electronic interface the sale is actually concluded with the customer, thus via which electronic interface the ordering and/or checkout is carried out by the customer. In case the ordering and/or checkout process is carried out via electronic interface 1, the drop-shipping platform (electronic interface 2) provides a service to the underlying supplier.

Example 2:

A customer intends to order goods displayed for sale on an electronic interface (EI 1). When he proceeds to the order he is redirected to another electronic interface (EI 2) where goods are offered for sale by an underlying supplier. The sale is finally concluded via the electronic interface 2 (EI 2).

Although the initial contact was made with electronic interface 1, the sale is concluded with electronic interface 2, thus it will be the latter who will be the deemed supplier.

2.1.9 Limited liability of the deemed supplier (Article 5c of the VAT Implementing Regulation)

2.1.9.1 Why was the provision introduced?

The deemed supplier provision is a 'fiction' created for VAT purposes. The deemed supplier is usually not in possession of the goods and the transfer of ownership of the goods occurs between the underlying supplier and the customer. Hence, the deemed supplier will often not have at his disposal the information required to establish the place of supply and to fulfil his VAT obligations, such as the place where goods are located at the moment of the transaction ('ship from' location) or the nature of the goods supplied. The electronic interface will have to receive such information from the underlying supplier. Furthermore, the deemed supplier will need to determine his VAT obligations at the moment of checkout by the customer. Consequently, the deemed supplier will often depend on the accuracy of the information provided by the suppliers before or at the latest upon check-out to be able to ensure the correct VAT treatment (payment and reporting obligations) of the supply. In order not to impose a disproportionate burden on marketplaces, more legal certainty is provided and their liability for the payment of VAT is limited in pre-defined cases.

Based on Article 5c of the VAT Implementing Regulation, the taxable person operating the electronic interface, who is deemed to have received and supplied the goods himself, shall not be held liable for the payment of VAT in excess of the VAT which he declared and paid on these supplies, where **all of the following conditions** are met:

a) the taxable person is dependent on information provided by suppliers selling goods through his electronic interface or by other third parties in order to correctly declare and pay the VAT on those supplies;

b) the information provided from the suppliers of goods referred to in point (a) is erroneous;

c) the taxable person can demonstrate that he did not and could not reasonably know that the information received was incorrect.

When the above conditions for limiting the liability are fulfilled, the electronic interface will not be responsible for the VAT difference in regard to the supplies concerned and potential late payment penalties and interests in case there is a re-assessment of the VAT due. In that case, the liability of the underlying supplier can be invoked when the Member State has introduced national measures providing for joint and several liability of such underlying supplier. The new/correct information is to be applied by the electronic interface for future transactions.

Example 1:

A consumer orders goods via an electronic interface from an underlying supplier indicating an address of delivery in Member State A. The VAT charged by the electronic interface is the one applicable to the goods in Member State A. After the order, the customer and the underlying supplier agree for the delivery to be made in Member State B which has a VAT rate higher than Member State A for the good supplied. The electronic interface is not informed thereof. In this situation, the electronic interface is not responsible for the VAT difference and the potential late payment penalties and interests in Member State B. The liability of the underlying supplier can be invoked only if Member State B has introduced national measures providing for joint and several liability of the underlying supplier.

Example 2*:*

The electronic interface is informed by the underlying supplier about the value and nature of the good according to which the VAT due is EUR 100. The electronic interface declares VAT of EUR 70 by mistake. The limited liability provision does not apply in this situation and the electronic interface is still liable for the EUR 30 (the difference between EUR 100 and EUR 70) and potential late payment penalties and interest.

Example 3:

During an audit, the tax authorities establish that the VAT liability should have been EUR 120 and not EUR 100 as established by the electronic interface according to the information received from the underlying supplier. Since the limited liability provision applies to amounts not reported because of incorrect information received from the underlying supplier/other third party, the electronic interface will not be liable for the VAT of EUR 20 (the difference between EUR 120 and EUR 100). In that case, the liability of the underlying supplier can be invoked in case the Member State has introduced national measures providing for joint and several liability of the underlying supplier.

Example 4:

Goods are listed on the website of the electronic interface by an underlying supplier with place of business or fixed establishment in the EU. The electronic interface is informed by the underlying supplier that the listed goods are located in Member State A. The electronic interface does therefore not declare VAT in respect of sales of these goods. However, in the course of a tax audit it turns out that the goods (all or partly) were shipped to the consumer in EU directly from a non-EU location in one consignment and the value of the goods in that consignment did not exceed EUR 150. The electronic interface will not be held liable for the respective VAT amount as a deemed supplier for distance sales of imported goods. There should however be no VAT loss on this transaction as the VAT will have been collected at importation of the goods in the EU (IOSS exemption is not possible).

2.1.9.2 Burden of proof with respect to the above conditions

The burden of proof will indeed lie with the taxable person operating the electronic interface (deemed supplier), who needs to prove that all the necessary conditions are met in order to rely on the limited liability provision. Since every case can be different, it is not possible to provide well-defined guidelines on when the conditions would be fulfilled for each and every scenario. This should be assessed and proven on a case-by-case basis. Nevertheless, the following considerations should be taken into account by an electronic interface:

In the first place, the deemed supplier should make commercially reasonable and diligent efforts to collect all the necessary information from the underlying supplier so that it can fulfil its VAT obligations. This should be worked out as part of the commercial relationship between the supplier and the electronic interface acting as deemed supplier, including the required level of detail. This can therefore differ depending on the electronic interface (its size, its level of automation, etc.).

The information that the electronic interface might need to collect from the underlying supplier and subsequently has to rely on for the purposes of reporting and collecting the VAT include:

- Place of establishment of the underlying supplier,
- Description of goods,
- Taxable amount for VAT purposes (based on checkout price),
- 'Ship from' location (based on information available up to the point of check-out),
- Information on returns of goods and cancellations of sale.

The electronic interface should thus within the commercial relationship with the underlying supplier insist on and make the underlying supplier aware of the importance of providing all relevant information. If the underlying supplier persistently fails to provide the necessary information, the deemed supplier (electronic interface) should take appropriate action.

In the second place, the electronic interface needs to act in good faith and should exercise due commercial care. Whether this is indeed the case, should be assessed based on the particular circumstances of the supply, but also taking into account the internal organisation of the electronic interface and the information that can be available within the electronic interface systems/environment. Exercising due commercial care can differ depending on the size of the company, the business model, the volume of transactions for which the electronic interface is a deemed supplier, number of underlying suppliers, etc. For instance, while some electronic interfaces might be able to put in place a fully automated solution for verification of the information provided by underlying suppliers and detecting possible errors, others would not have the resources to implement such a wide-spread solution and would thus perform random verifications of data only.

The limited liability clause takes into account the differences between electronic interfaces and accepts that the notion of due commercial care translates into different processes for different interfaces. The deemed supplier rule should not put a disproportionate burden on electronic interfaces and does not aim to require a wide-spread standard of checks to be performed for every supply, which might put a heavier burden on smaller platforms compared to larger platforms and might ultimately lead to certain larger platforms obtaining an even larger market share. However, inevitably the internal business controls of electronic interfaces will likely be impacted and may need to be adapted in order for an electronic interface to apply the due commercial care.

Some theoretical guidance, in particular what concerns the level of responsibility of the taxable person, can be found in the jurisprudence of the Court of Justice of the European Union (CJEU). In those cases, the CJEU stressed that a trader should act in good faith and take every step which could reasonably be asked of him to ensure that the transaction which he is carrying out does not result in tax evasion[9]. Therefore, the responsibility of the taxable person is limited to what is a normal trader's due diligence or (due commercial care[10]) in the course of his business.

In practical terms, the following examples (non-exhaustive list) could demonstrate the exercise of due commercial care by electronic interfaces:

- The electronic interface has communicated to the underlying suppliers (e.g. when they decide on accepting traders to make use of the electronic interface, in the terms and conditions, etc.) the necessary information to be provided by them, and has made it clear how crucial this information is for the correct reporting and collection of VAT;
- The electronic interface requests the underlying suppliers to properly communicate this information to the electronic interface (e.g. requires them to upload description of the goods, provides clear guidance on how to classify the products listed by them on the electronic interface, requests them to communicate the location of the goods from which they will be shipped, etc.). As part of the efforts to collect correct information and eliminate errors, the electronic interface can offer additional guidance to the underlying suppliers, for instance when the suppliers struggle to correctly classify the products (e.g. via FAQs or via support teams if such are in place);
- The electronic interface has set up reasonable verification processes as regards the information provided by underlying suppliers for certain product categories (e.g. product categories where a variety of VAT rates could apply based on specific product characteristics). This could be based on visual verification (matching product picture with description) as well as machine learning techniques (using search terms applied for products listed with key tax rate characteristics of the product). The way these checks will be performed will largely depend on the size of the business, volume of transactions, business model, etc. of each and every electronic interface and must be appropriate and proportionate.
- If the electronic interface, in addition to the data provided directly by the underlying supplier, has other readily available data on the goods from internal or external sources

[9] See in this context for example CJEU judgments of 14 June 2017 in case C-26/16 *Santogal M-Comércio e Reparação de Automóveis*, paragraphs 71 and 72, of 6 September 2012 in case C-273/11 *Mecsek-Gabona*, paragraph 48, of 31 January 2013 in case C-643/11 *LVK – 56*, paragraph 63, of 21 February 2008 in case C-271/06 *Netto Supermarkt*, paragraphs 24 and 25, and of 6 September 2012 in case C-324/11 *Gábor Tóth*, paragraph 45.

[10] Case C-271/06 *Netto Supermarkt*, paragraph 27.

that could help in correcting the erroneous information, the electronic interface should use such data as part of his obligations to exercise due commercial care.

2.1.9.3 Who is liable for VAT when the deemed supplier does not pay VAT?

As already explained above in section 2.1.4, the result of the deemed supplier provision is that the taxable person facilitating the supply through the use of an electronic interface is treated like the actual supplier of goods vis-à-vis the customer (for VAT purposes). The electronic interface takes over the VAT rights and VAT obligations of the underlying supplier for the supply made to that customer. Thus, it will be the deemed supplier (and not the underlying supplier) who will be liable for the payment of VAT due on that supply.

However, based on Article 205 of the VAT Directive, Member States may introduce the necessary national measures providing for joint and several liability of the underlying supplier.

2.1.10 The presumption of the status of the seller and buyer

Following Article 5d of the VAT Implementing Regulation, the deemed supplier shall regard the person selling goods through an electronic interface as a taxable person and the person buying the goods as a non-taxable person, unless he has information to the contrary. This provision should free him from the disproportionate burden of verifying the status of the seller and the buyer in every instance and thus aims at providing more legal certainty to the deemed supplier.

2.1.10.1 Presumption on the status of the seller

The electronic interface should consider that the underlying supplier is a taxable person, unless it has received information from the supplier or other sources, which proves the contrary. The mere absence of the VAT identification number or tax reference number (for instance no such number was provided during the registration/subscription process with the electronic interface by the supplier) does not automatically mean that the underlying supplier is not a taxable person.

If the underlying supplier indicates to the electronic interface that he acts as a non-taxable person, the electronic interface should consider him as such. The electronic interface should however have a verification process in place to assess whether the supplies of this underlying supplier would not qualify him as a taxable person.

2.1.10.2 Presumption on the status of the customer

Although the VAT identification number or tax reference number is not an absolute prerequisite to be a taxable person, it is an important element of proof of the status of a taxable person. Therefore, unless the electronic interface has information to the contrary, if during the registration/subscription process with the electronic interface the customer did not provide the VAT identification number or a tax reference number, the electronic interface shall treat the customer as a non-taxable person.

2.2 RECORD-KEEPING OBLIGATIONS OF ELECTRONIC INTERFACES

2.2.1 What are the record-keeping obligations of a deemed supplier?

As explained above in section 2.1.4, the result of the deemed supplier provision is that the taxable person facilitating the supply through the use of an electronic interface is treated like the actual supplier of goods for VAT purposes. For the purpose of this provision, the deemed supplier takes over the rights and obligations relating to VAT of the underlying supplier for the supply to the customer. The same applies where a taxable person takes part in a supply of electronically-supplied services for which he is presumed to be acting in his own name in accordance with Article 9a of the VAT Implementing Regulation. The deemed supplier therefore has record-keeping obligations like any other supplier. In this respect, Article 54c(1) of the VAT Implementing Regulation clarifies that the deemed supplier shall keep the following records:

1. If he uses one of the special schemes provided for in Chapter 6 of Title XII of the VAT Directive[11]: the records as set out in Article 63c of the VAT Implementing Regulation (see section 2.2.1.1);

2. If he does not use any of these special schemes: the records as set out in Article 242 of the VAT Directive. In this situation, each national legislation sets out what are the records to be kept by taxable persons and in which form they should be kept.

2.2.1.1 Record-keeping obligations of the deemed supplier using one of the special schemes

Article 63c of the VAT Implementing Regulation clarifies which information should be contained in the records kept by taxable persons using one of the special schemes. This applies to all taxable persons who opted to use one of the special schemes, including the deemed supplier.

The below table 2 presents the elements which should be included in the records of the taxable persons depending on which scheme is used.

[11] Non-Union scheme, Union scheme or import scheme.

Table 2: Record-keeping obligations of the deemed supplier using one of the special schemes

	When the taxable person uses the Non-Union Scheme (OSS) or the Union Scheme (OSS) Article 63c(1) of the VAT Implementing Regulation	When the taxable person uses the import Scheme (IOSS) Article 63c(2) of the VAT Implementing Regulation
Information to be included in the records of the taxable person	(a) the Member State of consumption to which the goods or services are supplied; (b) the type of services or the description and quantity of goods supplied; (c) the date of the supply of the goods or services; (d) the taxable amount indicating the currency used; (e) any subsequent increase or reduction of the taxable amount; (f) the VAT rate applied; (g) the amount of VAT payable indicating the currency used; (h) the date and amount of payments received; (i) any payments on account received before the supply of the goods or services; (j) where an invoice is issued, the information contained on the invoice; (k) in respect of services, the information used to determine the place where the customer is established or has his permanent address or usually resides and, in respect of goods, the information used to determine the place where the dispatch or the transport of the goods to the customer begins and ends; (l) any proof of possible returns of goods, including the taxable amount and the VAT rate applied.	(a) the Member State of consumption to which the goods are supplied; (b) the description and quantity of goods supplied; (c) the date of the supply of goods; (d) the taxable amount indicating the currency used; (e) any subsequent increase or reduction of the taxable amount; (f) the VAT rate applied; (g) the amount of VAT payable indicating the currency used; (h) the date and amount of payments received; (i) where an invoice is issued, the information contained on the invoice; (j) the information used to determine the place where the dispatch or the transport of the goods to the customer begins and ends; (k) proof of possible returns of goods, including the taxable amount and VAT rate applied; (l) the order number or unique transaction number; (m) the unique consignment number where that taxable person is directly involved in the delivery.

The records as set out in Article 63c of the VAT Implementing Regulation have to be kept for 10 years from the end of the year in which the supply was carried out and should be made available electronically upon the request of Member States. Such records may be submitted to the Member States concerned using a standard form[12].

[12] Article 39 of Council Regulation (EU) 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, OJ L 268, 12.10.2010, p. 1-18.

2.2.2 Information to be kept by electronic interfaces facilitating supplies without being deemed suppliers

Article 242a of the VAT Directive is applicable to electronic interfaces that **facilitate the supplies of goods and services** but who **are not deemed suppliers.** This will occur when:

- The electronic interface facilitates a supply of services to a non-taxable person[13],
- The electronic interface facilitates a supply of goods within the Community (including domestic supplies) and the underlying supplier is established in the EU,
- The electronic interface facilitates a distance sale of imported goods in consignments exceeding EUR 150 taking place in the EU, irrespective of where the underlying supplier/seller is established.

Article 242a of the VAT Directive imposes on those electronic interfaces an obligation to keep records on the supplies they facilitate for a period of 10 years from the end of the year in which the supply was carried out. For example, for supplies made in 2021, the electronic interface should keep the records until the end of 2031. These records must be sufficiently detailed and must be made available electronically on request by Member States. The information to be kept in the records of the electronic interface takes account of what information is available to such a taxable person (electronic interface), is relevant to tax administration and is proportionate to the purpose of the provision. It also takes account of the need to comply with the General Data Protection Regulation (EU) 2016/679 (see Statement to the Council Minutes issued upon the adoption of the amendments to the VAT Directive[14]).

2.2.2.1 When is a taxable person facilitating the supply without being the deemed supplier?

Article 54b of the VAT Implementing Regulation defines when the taxable person should be considered as facilitating supplies of goods or services for purposes of reporting obligations under Article 242a (i.e. without being a deemed supplier).

The definition of the term 'facilitates' included in this provision is similar to the one included in Article 5b of the VAT Implementing Regulation provided for the deemed supplier. While Article 5b only applies to supplies of goods, Article 54b also covers supplies of services. Nonetheless, the guidance included above in section 2.1.6 is to be applied in order to assess whether the electronic interface facilitates the supplies of goods or services in which case it is obliged to keep records of those supplies.

2.2.2.2 What information must be kept?

In line with the aims agreed upon at the adoption of the VAT e-commerce package, Article 54c(2) of the VAT Implementing Regulation clarifies which information must be kept by electronic interfaces facilitating the supplies of goods or services without being deemed suppliers. This should ensure that tax authorities receive a minimum set of information that can be used in their enforcement activities when controlling the VAT collection on B2C supplies taxable in the EU.

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[13] Provided the electronic interface is not considered to be the deemed supplier of telecommunications, broadcasting or electronic services based on Article 9a of the VAT Implementing Regulation.

[14] Council document 14769/1/17 REV 1.

Respecting the proportionality principle, the electronic interfaces should keep, in relation to all supplies of goods or services for which the place of the supply is within the EU, the following minimum information:

a) *the name, postal address and electronic address or website of the underlying supplier whose supplies are facilitated through the use of the electronic interface and if available:*

   i) *the VAT identification number or national tax number of the underlying supplier;*

   ii) *the bank account number or number of virtual account of the underlying supplier;*

b) *a description of the goods, their value, the place where the dispatch or transport of the goods ends together with the time of supply and, if available, the order number or unique transaction number;*

c) *a description of the services, their value, information in order to establish the place of supply and time of supply and, if available, the order number or unique transaction number.*

The term 'virtual accounts' in this context is meant to cover emerging payment solutions and payment services such as digital or crypto currencies, digital wallets solutions, etc.

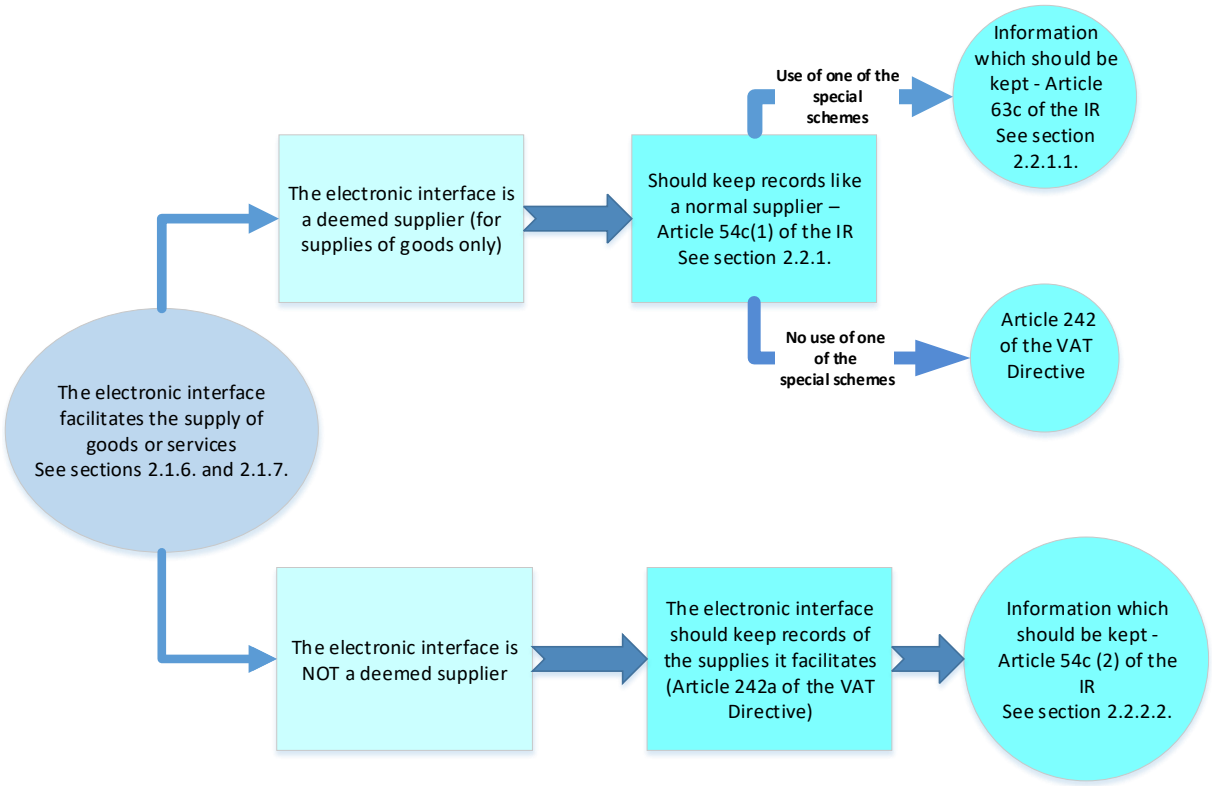
The term 'if available' should be interpreted as referring to information collected or which can be collected within the usual course of business of electronic interfaces. In other words, such information can usually be obtained by an electronic interface without carrying out specific in-depth searches.

The 'order number or unique transaction number' is a number allocated to a transaction. It can be allocated by the underlying supplier or by the electronic interface.

2.2.3 Outline – Reporting obligations of electronic interfaces

The below figure 3 presents in a schematic way the reporting obligations of electronic interfaces.

Figure 3: Reporting obligations of electronic interfaces



3 THE SPECIAL SCHEMES

The new provisions modify the existing VAT special schemes[15] laid down in the VAT Directive (non-Union scheme, Union scheme) and add a new one (import scheme). The below table provides an overview of the amendments that will apply as from 1 July 2021.

Table 3: Overview of changes to the special schemes as of 1 July 2021

	Non-EU established taxable person/supplier		EU established taxable person/supplier	
Transactions	**Special scheme**	**Need for intermediary or tax representative**[16]	**Special scheme**	**Need for intermediary or tax representative**
Supplies of B2C services	Non-Union scheme (OSS)	NO[17]	Union scheme (OSS)	NO
Intra-Community distance sales of goods	Union scheme (OSS)	NO[18]	Union scheme (OSS)	NO
Domestic supplies by EI	Union scheme (OSS)	NO[19]	Union Scheme (OSS)	NO
Distance sales of imported goods from third countries or third territories in consignment not exceeding EUR 150	Import scheme (IOSS)	YES[20]	Import scheme (IOSS)	NO[21]

What is the OSS?

The Mini One Stop Shop (MOSS) is an electronic system allowing taxable persons supplying telecommunications, broadcasting and electronic (TBE) services to consumers in the EU to declare and pay VAT due in all EU Member States in one single Member State. As from 1 July 2021, MOSS will be extended to all B2C services taking place in Member States where the supplier is not established, to intra-Community distance sales of goods and to certain domestic supplies of goods and will thus become a One Stop Shop (OSS).

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15 See the definition in the glossary.

16 For the definition of the intermediary and tax representative, please see the glossary.

17 Member States may not oblige non-EU suppliers to appoint a tax representative to use the non-Union scheme (Article 204 of the VAT Directive).

18 According to Article 204 of the VAT Directive, Member States may in this case require the taxable person to appoint a fiscal representative who will be the person liable to pay VAT.

19 According to Article 204 of the VAT Directive, Member States may in this case require the taxable person to appoint a fiscal representative who will be the person liable to pay VAT.

20 Except for a supplier established in a third country with which the EU has concluded an agreement on mutual assistance – see further details in chapter 4.

21 No obligation to appoint an intermediary to use the import scheme, but the taxable person is free to do so.

A new scheme will be created for the declaration and payment of VAT on distance sales of low value goods imported from third countries or third territories, the Import One Stop Shop (IOSS).

Table 4 provides a break-dawn of the types of supplies and types of taxable persons covered by each of these special schemes.

Table 4: Overview of special schemes

	Non-Union Scheme/OSS	Union Scheme/OSS	Import Scheme/ IOSS
Types of supplies	ALL B2C supplies of services to customers in the EU	a) ALL intra-Community B2C supplies of services b) Intra-Community distance sales of goods c) Article 14a(2) domestic B2C supplies of goods	Distance sales of imported goods in consignments ≤ EUR 150
Taxable persons	Non-EU established	a) Only EU established b) EU & non-EU established c) Electronic interfaces EU and non-EU established	EU & non-EU established, including electronic interfaces

What are the advantages of the OSS?

The One Stop Shop simplifies VAT obligations for businesses selling goods and supplying services to final consumers throughout the EU, allowing them:

- to register for VAT electronically in one single Member State for all the eligible sales of goods and services to customers located in all the other 26 Member States;
- to declare in a single electronic VAT OSS return and to make a single payment of the VAT due on all these sales of goods and services;
- to work with the tax administration of the Member State in which they are registered for the OSS, and in one language, even though their sales are EU-wide.

Regarding the practicalities of the OSS and IOSS, such as registration and de-registration, VAT returns, corrections, payment of VAT, etc. please see the Guide to the VAT OSS[22].

3.1 THE NON-UNION SCHEME

3.1.1 Relevant provisions

The relevant provisions can be found in the VAT Directive and in the VAT Implementing Regulation:

[22] The Guide to the VAT OSS is under preparation.

VAT Directive	*VAT Implementing Regulation*
• Articles 358a-369	• Articles 57a-63c

3.1.2 What do the new rules do?

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 Member State in accordance with the place-of-supply rules**.

This means that as from 1 July 2021, businesses not established in the EU supplying services to non-taxable persons (consumers) in the EU, do not need to register for VAT in each Member State in which their supplies of services take place. Instead, the VAT due on these supplies can be declared and paid in one single Member State (the so-called Member State of identification) via the One Stop Shop (OSS, non-Union scheme).

The new rules do not change the place of supply of those services, but only offer a simplified procedure to declare the VAT due in the EU Member States where the supply takes place.

3.1.3 Who can use the non-Union scheme, and for which supplies?

The non-Union scheme can be used exclusively by **taxable persons** (suppliers) **not established in the EU**. This means a taxable person who has not established his business and who has no fixed establishment in the EU. Even if this taxable person is registered or obliged to register for VAT purposes in one of the Member States for supplies other than B2C services, he can still use the non-Union scheme for B2C supplies.

As from 1 July 2021, the non-Union scheme will cover **all supplies of services** (including TBE services) with the place of supply in the EU carried out by the above defined taxable persons to non-taxable persons (consumers). If the supplier opts to use the non-Union scheme, he has to use the scheme to declare and pay VAT for all these B2C supplies of services in the EU.

Examples of B2C supplies of services (a non-exhaustive list) that could be reported under the non-Union scheme are:

- Accommodation services carried out by non-established taxable persons,
- Admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events, such as fairs and exhibitions,
- Transport services,
- Services of valuation and work on movable tangible property,
- Ancillary transport activities such as loading, unloading, handling or similar activities,
- Services connected to immovable property,
- Hiring of means of transport,

- Supply of restaurant and catering services for consumption on board ships, aircraft or trains etc.

Example 1:

A supplier not established in the EU is carrying out services connected with immovable property (e.g. renovation works) located in Germany, in France and in Hungary to customers in those Member States. The same supplier is registered for VAT in Germany for other types of supplies (e.g. B2B supplies of goods). The supplier chooses to use the non-Union scheme in France (Member State of identification). He therefore has to declare and pay VAT on all supplies of services falling under the special scheme via the OSS in France. He cannot choose to declare the supplies of these services related to immovable property in Germany via the German VAT return. Other supplies (the B2B supplies of goods) in Germany, which do not fall under the special scheme will have to be declared via the German domestic VAT return. He can deduct any German VAT incurred by him through the German domestic VAT return. For any French or Hungarian VAT incurred by him, he will need to make a VAT refund request under the 13th Directive to the respective Member State tax authority.

Example 2:

If the same supplier chooses to register for OSS in Germany, he has to declare and pay VAT on all the supplies of services falling under the special scheme via the OSS in Germany. Other supplies in Germany (e.g. B2B supplies of goods), which do not fall under the OSS will have to be declared via the German domestic VAT return. He can deduct any German VAT incurred by him through that domestic VAT return. For any French or Hungarian VAT incurred by him, he will need to make a VAT refund request under the 13th Directive to the respective Member State tax authority.

3.1.4 What are the invoicing obligations?

The VAT Directive does not provide for a mandatory invoicing obligation for supplies of services to consumers in the EU by taxable persons not established in the EU. Nonetheless, Member States may in their national legislation require an invoice for these supplies. If the supplier is registered for the non-Union scheme, the invoicing rules of the Member State of identification will apply. If the supplier is not registered for the non-Union scheme, the invoicing rules of the Member State where the supply takes place apply.

3.1.5 Is there a need to appoint a tax representative?

Member States may not require non-EU suppliers to appoint a tax representative to be able to use the non-Union scheme (Article 204 of the VAT Directive), but the supplier is free to appoint one.

An intermediary (as described in section 4.2.5) is only appointed for the use of the import scheme.

3.2 THE UNION SCHEME

3.2.1 Relevant provisions

The relevant provisions can be found in the VAT Directive and in the VAT Implementing Regulation:

VAT Directive

- Article 14
- Article 14a
- Article 59c
- Articles 369a-369k

VAT Implementing Regulation

- Articles 57a-63c

3.2.2 What do the new rules do?

The new rules that will apply from 1 July 2021 extend the scope of the Union scheme in a twofold way:

1. The range of **supplies** that can be declared in the Union scheme is broadened, namely:
   - In addition to cross-border supplies of TBE services to non-taxable persons in the EU, a supplier can also declare all other cross-border supplies of services to non-taxable persons taking place in the EU. Regarding examples of services that can be declared under the Union scheme, please see section 3.1.3;
   - The supplier can declare all intra-Community distance sales of goods;
   - Electronic interfaces who become deemed suppliers for supplies of goods within the EU can declare intra-Community distance sales of goods as well as certain domestic supplies of goods in the Union scheme.
2. The scope of **taxable persons (suppliers)** who can use the Union scheme is enlarged (see section 3.2.3).

3.2.3 Who can use the Union scheme and for which supplies?

The Union scheme can be used by:

1. A taxable person **established in the EU (who is not a deemed supplier)** to declare and pay VAT for:
   - supplies of B2C services taking place in a Member State in which he is not established;
   - intra-Community distance sales of goods.

Services that are supplied to customers in a Member State in which the supplier is established have to be declared in the national VAT return of the respective Member State irrespective of whether this fixed establishment is involved in the supply of services or not.

2. A taxable person **not established in the EU** to declare and pay VAT for
   - intra-Community distance sales of goods.
3. An electronic interface (established in the EU or outside the EU) facilitating supplies of goods (**deemed supplier**) for:

- intra-Community distance sales of goods;
- certain domestic supplies of goods.

Domestic supplies of goods, i.e. where the goods are located in the same Member State as the customer to whom they are sent to, can exceptionally be declared under the Union scheme, but only by an electronic interface for the supplies where it becomes a deemed supplier (see section 2.1.3).

3.2.4 Can the Union scheme be used for part of the supplies falling under the scheme?

If a supplier or a deemed supplier decides to register for the Union scheme, he has to declare and pay VAT for all supplies that fall under the Union scheme. He cannot choose to declare them in the national VAT return.

Example 1:

A supplier established in the EU carries out intra-Community distance sales of goods and supplies of services to customers in various Member States of the EU. The supplier would like to register for the Union scheme and declare and pay VAT exclusively on the supplies of services via the Union scheme. He would like to declare and pay VAT on distance sales of goods according to general VAT rules in the respective domestic VAT return of the Member State concerned.

The supplier who decided to register for the OSS should declare all his supplies falling under the Union scheme under the OSS. Consequently, the supplier cannot choose to use the Union scheme only for supplies of services. Once registered in the Union scheme, both supplies of services and distance sales of goods have to be declared under the OSS.

Example 2:

An electronic interface established in the EU is a deemed supplier for intra-Community distance sales of goods and domestic supplies of goods to customers in the EU. The electronic interface also provides cross-border electronic B2C services to customers in the EU. The electronic interface would like to use the OSS for declaration and payment of VAT on distance sales of goods only. VAT on domestic supplies of goods as deemed supplier and electronic services would be declared and accounted for by the electronic interface according to general VAT rules.

A supplier who decides to register for the OSS should declare all his supplies falling under the Union scheme under the OSS. Consequently, the electronic interface cannot choose to use the OSS for selected supplies. Once registered in the Union scheme, all its eligible supplies (distance sales of goods, domestic supplies of goods as deemed supplier and supplies of services) have to be declared under the OSS.

3.2.5 What are intra-Community distance sales of goods?

An intra-Community distance sale of goods takes place when goods are dispatched or transported by or on behalf of the supplier from a Member State other than the one in which dispatch or transport of the goods to the customer ends (the first subparagraph of Article 14(4) of the VAT Directive). This Article also provides that the supply of goods must be carried out for:

- A taxable person or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) of the VAT Directive[23]; or
- Any other non-taxable person.

To sum up, the term 'intra-Community distance sales of goods' covers supplies to the **following customers**:

- supplies of goods to non-taxable persons (consumers);

- supplies of goods (including excise products) to taxable persons or non-taxable legal persons listed in Article 151 of the VAT Directive (diplomatic arrangements, international bodies, NATO, etc.); and

- supplies of goods (except excise products) to: i) taxable persons carrying out only supplies of goods or services in respect of which VAT is not deductible, ii) taxable persons subject to the common flat-rate scheme for farmers, iii) taxable persons subject to the second-hand margin scheme and iv) non-taxable legal persons – (also known as the group of 4).

Distance sales of goods can cover any type of good irrespective of its value, including products subject to excise duty. The scope of the first subparagraph of Article 14(4) of the VAT Directive and thus the Union scheme cover **supplies of goods subject to excise duty** only in specific cases depending on the customer to whom the goods are supplied, thus only if supplied to:

- non-taxable persons; or
- taxable persons or non-taxable legal persons whose intra-Community acquisitions are not subject to VAT pursuant to Article 3(1) of the VAT Directive, thus those listed in Article 151 of the VAT Directive.

Intra-Community distance sales of excise goods to a member of the so-called group of 4 are not covered by the first subparagraph of Article 14(4) of the VAT Directive and can thus not be declared under the Union scheme (see Article 3(1)(b) of the VAT Directive).

3.2.6 Place of supply

The place of supply of TBE services made by a taxable person (the supplier) established in a Member State to a non-taxable person (the customer) in another Member State is in the Member State where the customer resides.

The place of supply of intra-Community distance sales of goods shall be deemed to be the place where the goods are located when the dispatch or transport of the goods to the customer ends (Article 33(a) of the VAT Directive).

For other types of services covered by the Union scheme, the place-of-supply rules did not change. More details can be found in Articles 47 to 58 of the VAT Directive.

[23] If the customer carries out an intra-Community acquisition of goods subject to VAT, it is already ensured that the supply is taxed in the Member State of arrival of the goods.

It follows that in cases of intra-Community supplies of goods or services to customers, the VAT will be due in more than one Member State. To declare and pay the VAT due, the supplier can either register for VAT in (each of) the relevant Member State(s) or register for the Union OSS, generally in the Member State in which he is established.

3.2.7 Place-of-supply threshold (EUR 10 000)

To support micro-businesses, an annual EUR 10 000 turnover threshold has been introduced as from 1 January 2019, up to which the place of supply of TBE services to consumers in another Member State remains in the Member State where the supplier is established. As of 1 July 2021, this threshold covers cross-border supplies of TBE services and intra-Community distance sales of goods but not supplies of other types of services carried out to customers in the EU. The threshold is calculated by taking into account the total value of cross-border TBE services and intra-Community distance sales of goods and applies both to suppliers and to deemed suppliers.

Consequently, cross-border supplies of TBE services and intra-Community distance sales of goods will be subject to VAT in the Member State where the supplier is established if the following conditions are met (Article 59c(1)):

1. the supplier is established, has his permanent address or usually resides in only one Member State;

2. he supplies TBE services to customers who are established, have their permanent address or usually reside in another Member State or he makes intra-Community distance sales of goods and dispatches or transports those goods to another Member State than the Member State where he is established;

3. the total value of these supplies of TBE services and intra-Community distance sales of goods made to consumers in other Member States does not exceed EUR 10 000 (exclusive of VAT) in the current and in the preceding calendar year.

This means that supplies of cross-border TBE services and intra-Community distance sales of goods up to EUR 10 000 will have the same VAT treatment as domestic supplies.

However, the supplier may decide not to apply the EUR 10 000 threshold and to apply the general place-of-supply rules (e.g. taxation in the Member State of the customer in the case of TBE services and the Member State to which the goods are dispatched or transported in the case of intra-Community distance sales of goods). In this situation, he can choose to register for the OSS in the Member State where he is established even if he does not exceed the threshold. In this case, the supplier will be bound by his decision for two calendar years.

In any case, as soon as the annual threshold of EUR 10 000 is exceeded, the general rule applies and VAT will be due in the Member State of the customer for TBE services and the Member State to which the goods are dispatched or transported in the case of intra-Community distance sales of goods.

This threshold does not apply to:

i) supplies of TBE services made by a supplier not established in the EU (non-Union scheme),

ii) intra-Community distance sales of goods made by a supplier established outside the EU,

iii) distance sales of imported goods (import scheme),

iv) supplies of services other than TBE services,

v) domestic supplies of goods made by a deemed supplier,

vi) supplies of goods by a supplier who is established, has his permanent address or usually resides in more than one Member State.

The below table 5 presents the consequences of the application of the EUR 10 000 threshold.

Table 5: Place of supply threshold (EUR 10 000)

<table>
<tr><th></th><th colspan="2">B2C TBE services* and intra-Community distance sales of goods</th></tr>
<tr><th>Threshold</th><th colspan="2">By suppliers established only in one Member State</th><th>By suppliers established outside the EU or suppliers established in more than one Member State</th></tr>
<tr><td>≤ EUR 10 000 per year</td><td>Place of supply and VAT due in the Member State of the supplier (in the case of TBE services) and in the Member State of dispatch or transport (in the case of intra-Community distance sales of goods)**</td><td>Supplier can decide to apply the general rule of place of supply in the Member State of the customer or in the Member State to which goods are dispatched
- registration in the Union scheme or
- VAT registration in each Member State (of the customer or to which goods are dispatched)</td><td rowspan="2">Threshold not applicable</td></tr>
<tr><td>> EUR 10 000 per year</td><td colspan="2">Place of supply and VAT due in the Member State of the customer/where goods are dispatched or transported to
- registration in the Union scheme or
- VAT registration in each Member State of the customer/end of dispatch or transport</td></tr>
</table>

* For TBE services, the threshold of EUR 10 000 already applies as from 1 January 2019.

** For the threshold to be applicable the goods must be sent from the Member State of establishment.

3.2.8 What are the invoicing obligations?

Supplies of services

The VAT Directive does not impose a mandatory invoicing obligation for supplies of services to consumers in the EU. Nonetheless, Member States may require in their national legislation an invoice for these supplies. If an invoice is issued the applicable rules are as follows:

- the invoicing rules of the Member State in which the supplier is registered for the Union scheme (Member State of identification) or

- the invoicing rules of the Member States where the supply takes place if the supplier is not registered for the Union scheme.

Intra-Community distance sales of goods

The VAT Directive provides that in case of intra-Community distance sales of goods, suppliers have to issue an invoice if they do not use the Union scheme. If they have registered for the Union scheme, they do not need to issue an invoice for these supplies of goods. If the supplier chooses to issue an invoice, the invoicing rules of the Member State in which the supplier is registered for the Union scheme (Member State of identification) will apply.

3.2.9 Is there a need to appoint a tax representative?

Suppliers who are established in the EU do not need to appoint a tax representative in order to be able to use the Union scheme.

There is no obligation for suppliers (including deemed suppliers) who are not established in the EU to appoint a tax representative in order to be able to use the Union scheme. However, the Member State of identification may require them to appoint a tax representative according to their national legislation.

An intermediary (as described in section 4.2.5) is only appointed for the use of the import scheme.

3.2.10 If a non-EU supplier carries out supplies of services to consumers in the EU and intra-Community distance sales of goods, which scheme is to be used?

If a non-EU supplier carries out both supplies of services to consumers in the EU and intra-Community distance sales of goods, he has to use and thus register in two different schemes, namely:

- The non-Union scheme for supplies of services, and

- The Union scheme for intra-Community distance sales of goods.

The non-EU supplier cannot declare supplies of goods in the non-Union scheme, since the non-Union scheme only covers supplies of services (see section 3.1.3). Nor can he declare his supplies of services in the Union scheme, because he is not established in the EU (see section 3.2.3).

Example 1:

A supplier is established in Switzerland and supplies services to customers in Austria. He also supplies goods that are dispatched from France to customers in Spain. He wants to use the OSS to declare and pay VAT for these supplies.

Which schemes does he have to use for these supplies?

The supplier is not established in the EU. This means that for the supply of services to customers in Austria, he has to use the **non-Union scheme** (free choice of Member State of identification).

For the intra-Community distance sales (where the goods are dispatched from France to customers in Spain), he has to use the **Union scheme.** The Member State of identification for a taxable person not established in the EU is the Member State of dispatch of the goods, thus France (Article 369a of the VAT Directive). If the taxable person dispatches or transports goods from more than one Member State, the taxable person shall indicate which of those Member States shall be the Member State of identification.

3.3 QUESTIONS AND ANSWERS ON THE SPECIAL SCHEMES

The below examples apply for supplies carried out as of 1 July 2021.

1. *I am a business established (only) in Belgium and I sell goods from my warehouse in Belgium to customers in France and Luxembourg (distance sales of goods). The total value of my cross-border sales to customers does not exceed EUR 10 000. What changes for me?*

In principle, nothing changes for you in this scenario. Since you are only established in one Member State (Belgium) and the total value of your supplies of goods to customers in other EU Member States (France, Luxembourg) does not exceed EUR 10 000, they will have the same VAT treatment as your supplies to customers in Belgium.

If you want, you can choose to apply the normal rules and tax in the Member State of destination of the goods. If you choose this option, you can register for the Union scheme in Belgium (where you are established). This is a simple online registration in the Belgian VAT One Stop Shop portal. After registration, you will be able to declare and pay the VAT due in France and Luxembourg via this Belgian One Stop Shop portal. If, however, you choose not to register in the OSS, you can register for VAT in the Member States of arrival of the goods, thus France and Luxembourg.

2. *I am a business established (only) in Poland and I only make distance sales of goods to customers in Germany, Czechia and Sweden. The total value of my cross-border sales to customers exceeds EUR 10 000, but individually for each Member State does not exceed EUR 35 000. What changes for me?*

From 1 July 2021, the threshold for distance sales of goods becomes EUR 10 000 per year and it covers all distance sales of goods to customers in all EU Member States. The previous annual EUR 35 000 distance sales threshold for each Member State (or EUR 100 000 for a limited number of Member States) disappears.

In the present scenario, since the EUR 10 000 threshold is exceeded, the place of supply of distance sale of goods is in the country to which the goods are dispatched. To report the VAT

due on the distance sales of goods dispatched to Germany, Czechia and Sweden as of 1 July 2021 you have two possibilities:

a) Register in each of these Member States and declare and pay the VAT due in the national VAT return of the respective Member State (here Germany, Czechia and Sweden); or

b) Register in the Union scheme (in Poland). This is a simple online registration in the Polish VAT One Stop Shop portal (where you are established) which is to be used for all your cross-border distance sales of goods and all supplies of services to customers in other EU Member States. After registration, you will be able to declare and pay the VAT due in Germany, Czechia and Sweden via this Polish One Stop Shop portal.

3. I am a business established in Austria and I make domestic supplies of goods. I occasionally distance sales of goods not exceeding EUR 10 000 to customers in Germany. I also have a fixed establishment in Hungary from where I supply various (TBE and/or other) services. Is the EUR 10 000 threshold applicable to me?

No, the EUR 10 000 threshold is applicable only to a business established in one single Member State. Since you are established in Austria, but also have a fixed establishment in Hungary, the threshold of EUR 10 000 does not apply.

4. I am a business established in France and I have a stock of goods in Germany. I make distance sales of goods from France and from the stock in Germany to Polish customers amounting to EUR 4 000 and to Belgian customers amounting to EUR 4 500. Is the EUR 10 000 threshold applicable to me?

No, the EUR 10 000 threshold is not applicable to you because goods are dispatched from two Member States, resulting in distance sales from more than one Member State. For the threshold to be applicable the supplier must be established in one Member State and goods must be sent from that Member State of establishment.

5. I am a business established in Italy and I supply TBE services amounting to EUR 4 000 to customers in Spain and Portugal. I also supply TBE services amounting to EUR 20 000 to an international organisation in Spain that is exempt from VAT for its acquisitions of goods and services. Is the EUR 10 000 threshold applicable to me?

No, the EUR 10 000 threshold is not applicable in your case. The international organisation that is exempt from VAT for its acquisitions of goods and services is considered as a non-taxable person (consumer) for the supply of TBE services. Your total threshold of cross-border TBE services is thus EUR 24 000, which exceeds the EUR 10 000 threshold.

6. I am a business established (only) in France. I supply TBE services amounting to EUR 2 500 to customers located in Belgium and Germany and make distance sales of goods amounting to EUR 7 000 to customers in the Netherlands. Is the EUR 10 000 threshold applicable to me? Can I opt for the place of taxation in the Member State of the customer only for distance sales of goods?

The total value of your cross-border TBE services and intra-Community distance sales of goods is EUR 9 500, thus below EUR 10 000. You can therefore apply the same VAT treatment to these cross-border supplies as for your domestic supplies. You can also opt for the place of taxation in the Member State of the customer, but this choice has to be made for

both TBE supplies and distance sales of goods. You will be bound by this decision for two calendar years.

7. I am a business established (only) in the Netherlands. I make supplies of TBE services amounting to EUR 2 500 to customers located in Belgium and Germany, supplies of training services amounting to EUR 3 000 to customers physically carried out in Germany and Denmark and distance sales of goods amounting to EUR 4 000 to customers in Belgium. Is the EUR 10 000 threshold applicable to me?

The EUR 10 000 threshold is applicable only to the supplies of TBE services and intra-Community distance sales of goods. The total turnover of the supplies covered by the threshold is therefore EUR 6 500. For these supplies, you can apply the same VAT treatment as for your domestic supplies or you can choose to apply the VAT in the Member State of the customer.

The EUR 10 000 threshold does not cover training services (or any services other than TBE services). You have two alternatives when it comes to reporting the VAT on these training services:

a) Register in each of these Member States where training services are carried out and then declare and pay the VAT due in the national VAT return of the respective Member State (here: Germany and Denmark); or

b) Register in the Union scheme. This is a simple online registration in the Dutch VAT One Stop Shop (where you are established) which is to be used for all your intra-Community distance sales of goods and all supplies of services to customers in other EU Member States. After registration, you will be able to declare and pay the VAT due in Germany and Denmark via this Dutch One Stop Shop portal.

8. I am a business established (only) in Germany and I make intra-Community distance sales of goods (EU origin or in free circulation in the EU) exclusively via various electronic interfaces. The total value of my distance sales of goods does not exceed EUR 10 000. Is the threshold applicable to me?

Yes, the EUR 10 000 threshold is applicable to you. You should keep clear evidence of your distance sales carried out via the electronic interfaces. If the distance sales threshold of EUR 10 000 is subsequently exceeded you need to charge the VAT of the Member State where the goods are dispatched or transported to.

Note: The electronic interface is not a deemed supplier in this example, because you, as the seller, are established in the EU.

9. I am a business established (only) in Spain and I make distance sales of goods to customers in the entire EU for more than EUR 10 000. What changes for me?

From 1 July 2021, the threshold for intra-Community distance sales of goods becomes EUR 10 000 per year and it covers all distance sales of goods to customers in all EU Member States. The previous annual EUR 35 000 distance sales threshold for each Member State (or EUR 100 000 for a limited number of Member States) disappears. The VAT of the Member States to which the goods are dispatched/transported is applicable to your distance sales of goods. That means that you need to charge to your customer the correct VAT rate of the Member State to which the goods will be dispatched/transported at the moment of sale. To report the VAT, you have two possibilities:

a) Register in each of these Member States where you have customers (up to 26 additional registrations) and then declare and pay the VAT due in the national VAT return of each respective Member State; or

b) Register in the Union scheme. This is a simple online registration in the Spanish VAT One Stop Shop (where you are established) which can be used for all your distance sales of goods and all supplies of services to customers in other EU Member States. After this registration, you will be able to declare and pay the VAT due on the distance sales of goods made in the entire EU via this Spanish One Stop Shop portal.

10. I am a business established in Ireland and I make intra-Community distance sales of goods to customers located across the entire EU via my own website and via various electronic interfaces. What changes for me?

The reply is similar to the one given to question 9 and VAT is due in the Member States to which the goods are dispatched/transported, irrespective of how the sales are made (own website or via electronic interface).

You remain liable for VAT on all the distance sales you make irrespective of how the sales are carried out (own website or via electronic interfaces). You should ensure that the correct VAT is applied on distance sales made via electronic interfaces.

If you choose to register for the Union scheme, you should report and pay the VAT due on all your distance sales via the OSS, including the ones made via an electronic interface. The electronic interface does not become a deemed supplier in this scenario, because the supplier is established in the EU.

11. I am a business established outside the EU and I have a stock of goods in France from which I make distance sales of goods to various customers via my own website. The distance sales of goods do not exceed EUR 10 000. Is the EUR 10 000 threshold applicable to me?

No, the EUR 10 000 threshold is only applicable to businesses established in the EU.

12. I am a business established outside the EU and I have a stock of goods in France from which I make distance sales of goods via my own website. What changes for me?

The reply is similar to the one given to question 10. If you choose to use the Union scheme, you should register for VAT purposes in France where you have your stock of goods.

13. I am a business established outside the EU and I have a stock of goods (EU origin or in free circulation in the EU) in France. I sell my goods to customers in France and all other EU Member States exclusively via electronic interfaces. What changes for me?

In this situation, you are deemed to make your supplies to the electronic interface, which supplies them onwards to your customers in France and in other EU Member States. You need to register for VAT purposes in France where you have your stock of goods. Your supplies to the electronic interface are exempt from VAT with the right of deduction.

The electronic interface becomes the deemed supplier and is liable to collect VAT from your customers. You are liable to provide the complete information to the electronic interface on the nature of the goods supplied and on where the goods will be dispatched/transported to. The electronic interface can make use of the Union scheme to declare and pay the VAT due

on supplies made to customers in France and distance sales made to customers in other EU Member States.

14. *I am a business established outside the EU and I have a stock of goods in France (EU origin or in free circulation in the EU). I sell my goods to customers in the entire EU via my own website and via electronic interfaces. What changes for me?*

VAT is due in the Member State to which the goods are dispatched/transported irrespective of how the distance sales are made (own website or via electronic interfaces). You need to keep clear evidence of the distance sales carried out via your own website and those carried out via electronic interfaces.

For the distance sales of goods sold via your own website, you remain liable for the VAT to be paid. See reply given to question 10 as to how you can declare and pay that VAT.

For distance sales of goods sold via an electronic interface, it is the electronic interface that is liable for the VAT due. See reply given to question 13.

15. *I am a business established in France without any fixed establishment elsewhere in the EU. I have registered for the Union scheme in France (my Member State of identification). I supply goods from a warehouse in Belgium to customers in France. What changes for me?*

You have to declare these supplies of goods made from Belgium to customers in France in the Union scheme. They are intra-Community distance sales of goods (Belgium-France) whose place of supply is in France. Even though France is the Member State of identification, they are to be declared in the OSS return and may not be included in the domestic (French) VAT return.

16. *I am an electronic interface established in Italy. I am involved in the following supplies of goods dispatched from a warehouse in Italy. The goods are of EU origin or are in free circulation in the EU:*

    a. *supplies of own goods to customers in Italy*
    b. *distance sales of own goods (exceeding the threshold of EUR 10 000) to customers in France, Spain and Portugal*
    c. *facilitated supplies of goods made by Italian suppliers to customers in Italy and distance sales of goods made by Italian suppliers to customers in France, Spain and Austria*
    d. *facilitated supplies of goods made by Chinese sellers to customers in Italy and distance sales of goods made by Chinese sellers to customers in France, Spain and Austria.*

    What changes for me?

For the supplies under point a) of own goods to customers in Italy, there are no changes. You continue to apply the VAT rules in Italy, declare the VAT in the Italian VAT return and pay the VAT to the Italian tax authorities.

For the supplies under point b) (distance sales of own goods), the VAT of the Member States to which the goods are dispatched/transported is applicable. That means that you need to charge to your customer the correct VAT rate of the Member State where the goods will be

dispatched/transported to already when you sell these goods. To declare and pay the VAT, you have two possibilities:

a) Register in each of these Member States to which your goods are dispatched/transported (France, Spain and Portugal) and then declare and pay the VAT due in the national VAT return of the respective Member State; or
b) Register in the Union scheme. This is a simple online registration in the Italian VAT One Stop Shop (where you are established) which can be used for all your intra-Community distance sales of goods and all supplies of services to customers in other EU Member States (if the case). After this registration, you will be able to declare and pay the VAT due on the distance sales made in France, Spain and Portugal via this Italian One Stop Shop portal.

For the supplies under point c) made by Italian suppliers which you facilitate you do not become a deemed supplier and the liability for the VAT due remains with those suppliers. You are however obliged to keep records of these transactions[24].

For the supplies under point d) you become the deemed supplier and you need to account for the VAT due in Italy, France, Spain and Austria, as follows:

a) If you have not opted for the Union scheme for your own distance sales of goods under point b), you must declare the supplies made to Italian customers in your Italian VAT return, the ones for France and Spain in the respective domestic VAT returns and additionally register in Austria to declare and pay the VAT due there.
b) If you have opted for the Union scheme for your own distance sales of goods under point b), then VAT on all the supplies made under point d), including the ones to Italian customers, will be declared and paid via the Italian One Stop Shop Portal.

17. I am an electronic interface established in China and I am involved in the following supplies of goods:

a. Supplies made by Chinese suppliers from a stock held in Germany and France with delivery to customers in Germany, France, Belgium, Netherlands, Hungary, Romania and Bulgaria
b. Supplies made by Chinese suppliers from stocks of goods held in China and Switzerland to customers in France, Germany, Sweden and Denmark.

What changes for me?

You become a deemed supplier for the supplies made under points a) and b).

For the supplies made under point a), since goods are already in free circulation in the EU, you need to apply the correct VAT rate depending on where the goods are dispatched or transported to (e.g. Germany, France, Belgium, Netherlands, Hungary, Romania and Bulgaria). For this, you can register in the Union scheme either in Germany or in France where the underlying suppliers have a stock of goods. If you choose to register in the German One Stop Shop, this single registration is valid for all the supplies you facilitate for the Chinese suppliers from their stocks in Germany and France. VAT on all these supplies will be declared and paid via the German One Stop Shop portal.

[24] Article 242a of the VAT Directive.

You can also choose to register in all EU Member States where you facilitate the supplies of the Chinese suppliers, meaning in France, Germany (for the domestic supplies) and respectively in Belgium, Netherlands, Hungary, Romania and Bulgaria for the distance sales of goods to customers there. In this case, you will have a VAT registration in each of those seven Member States, as well as seven VAT returns to submit and seven VAT payments to be made to each of the tax authorities in the mentioned Member States.

For the supplies you facilitate for Chinese suppliers from their stocks in China and Switzerland you in any event become a deemed supplier if the value of the goods are dispatched in consignments not exceeding EUR 150. You can choose to register in the Import One Stop Shop. The VAT implications are presented in chapter 4, section 4.2.10 question 5.

18. *I am a business established in Poland. I supply goods from Poland and from Germany to customers in the Netherlands and France. I am registered for the Union scheme in Poland. I am also registered for VAT in Germany. Can I deduct input VAT incurred in Germany via the OSS return?*

You carry out distance sales of goods which take place in the Netherlands and France. You have to declare them in your OSS return filed in Poland (your Member State of identification) via the OSS. You cannot deduct VAT incurred in Germany via the OSS return. This VAT is to be deducted in the German domestic VAT return.

19. *I am a business established in Poland. I supply goods from Poland and Germany to customers in the Netherlands and France. I am registered for the Union scheme in Poland. I am not registered for VAT in any other Member State. Can I deduct VAT incurred in Germany via the OSS return?*

You carry out distance sales of goods which take place in the Netherlands and France. You have to declare them in your OSS return filed in Poland (your Member State of identification) via the OSS. You cannot deduct VAT incurred in Germany via the OSS return. If you hold a stock of goods in Germany, you will normally be required to register for VAT purposes in Germany and you can deduct the input German VAT via the normal VAT return. If you are not required to register for VAT purposes in Germany, the refund of the VAT incurred in Germany may be granted based on Directive 2008/9/EC.

20. *I am a business established in the Canary Islands which are in the customs territory of the EU but outside of the VAT territory of the EU. I sell cosmetic products to customers in the EU via my on-line store. Are my sales to be considered as intra-Community distance sales or distance sales of imported goods?*

Canary Islands are considered as third territories to which the VAT Directive does not apply (Article 6 of the VAT Directive). Your sales are therefore distance sales of imported goods. Please see chapter 4, question 12a.

21. *I am an electronic interface and a number of the suppliers selling goods through my interface are established in the Canary Islands. These underlying suppliers dispatch/transport their goods from stocks kept in EU locations to customers throughout the EU. Do I become a deemed supplier for these supplies?*

The businesses established in the Canary Islands or other third territories are not considered as established in the EU. Consequently, you become a deemed a supplier for the distance sales of goods they make within the EU from stocks within the EU. For further details please see the reply to question 16, in particular point d).

3.4 WHAT DO YOU NEED TO DO IF YOU USE THE NON-UNION OR UNION SCHEME?

A supplier using the non-Union scheme or the Union scheme or a deemed supplier using the Union scheme should ensure the following:

- Display the amount of VAT to be paid by the customer in the EU at the latest when the ordering process is finalised,
- Collect the VAT from the customer in the EU on the cross-border B2C supplies of services, intra-Community distance sales of goods and domestic supplies of goods by a deemed supplier,
- Submit a quarterly OSS return to the Member State of identification declaring all eligible supplies,
- Make a quarterly payment of the VAT declared in the OSS return to the Member State of identification,
- Keep records of all supplies for 10 years for possible audit by Member States' tax authorities.

More information on how to submit the VAT return and how to make the VAT payment can be found in the Guide to the VAT OSS.

3.5 THE IMPORT SCHEME

The import scheme is described in chapter 4.

4 DISTANCE SALES AND IMPORT OF LOW VALUE GOODS

According to the VAT rules applicable up until 1 July 2021, no import VAT has to be paid for commercial goods of a value up to EUR 10/22 imported into the EU[25]. 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[26]. A new concept of distance sales of goods imported from third countries or third territories is introduced (see section 4.1).

The customs duty relief for goods with an intrinsic value not exceeding EUR 150 imported into the EU[27] 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). For the purpose of these Explanatory Notes, these goods are also referred to as 'low value goods'.

In the table below, you can see the general treatment of low value goods imported into the EU before and as of 1 July 2021 from a VAT and customs perspective.

Table 6: VAT exemption before and after 1 July 2021

Value of imported goods in consignments**	Before 1 July 2021		As of 1 July 2021	
	VAT	**Customs duty**	**VAT**	**Customs duty**
≤ EUR 10/22[28]	Exempt from VAT[29]	Exempt from customs duty	VAT due in EU*	Exempt from customs duty
> EUR 10/22 and ≤ EUR 150	VAT due in EU*	Exempt from customs duty	VAT due in EU*	Exempt from customs duty
> EUR 150	VAT due in EU*	Customs duty due in EU	VAT due in EU*	Customs duty due in EU

* EU Member State where import takes place /goods are dispatched or transported to
** Except goods subject to EU excise duties

As from 1 July 2021 VAT is due on all low value goods imported into the EU. At the same time the following simplifications for the collection of VAT are introduced:

- The special scheme for distance sales of goods imported from third countries or third territories – The import scheme/Import One Stop Shop or IOSS – see section 4.2.
- The special arrangements for declaration and payment of import VAT – see section 4.3.

[25] Title IV, Articles 23 and 24 of Directive 2009/132/EC.
[26] Member States have the possibility to abolish the VAT exemption on certain imports (mail orders) even before 1 July 2021 (Article 23(2) of Directive 2009/132/EC).
[27] Chapter V, Articles 23 and 24 of Council Regulation (EC) No 1186/2009.
[28] For VAT-exempt import thresholds in each Member State, see Annex B of this study
[29] Some jurisdictions in the EU already decided to eliminate this VAT exemption earlier.

In practice, from 1 July 2021, the VAT on low value goods can be paid as follows:

- Payment as part of the purchase price to the supplier/electronic interface using the IOSS whereby the importation of the related goods is exempt from VAT.

- Payment upon importation in the EU, if the supplier/electronic interface does not use the IOSS:

  ✓ To the person presenting the goods to customs (i.e. lodging a customs declaration for release for free circulation) if that person chooses to use the special arrangements; or

  ✓ Using standard VAT collection mechanism.

Regardless of the application of the import scheme or the special arrangements for declaration and payment of import VAT, customs formalities must be completed for low value goods imported into the EU. More information on customs procedures can be found in the customs guidance[30].

4.1 DISTANCE SALES OF IMPORTED GOODS

4.1.1 Relevant provisions

The relevant provisions can be found in the VAT Directive and in the VAT Implementing Regulation.

VAT Directive

- Article 14(4)(2), Article 33(b) and (c)

VAT Implementing Regulation

- Article 5a

4.1.2 Why was the concept introduced?

The technological advances in the past decades led to digitalisation in all fields of trade. Amongst them, e-commerce and distance sales of goods witnessed an explosive growth in the EU and worldwide. The existing VAT rules, in particular, for the importation of commercial goods by final consumers pre-date these technological advances and provide a VAT exemption for these transactions (see above table 6). Under these circumstances, this VAT exemption currently leads to a serious distortion of competition to the detriment of EU suppliers. In order to restore a level playing field for EU traders and to protect the tax revenues of the EU Member States, 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.

4.1.3 What transactions are covered?

The concept "distance sales of goods imported from third countries or third territories" refers to the supplies of goods dispatched or transported from a third country or third territory by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, to a customer in a Member State (Article 14(4), second subparagraph).

[30] The customs guidance is in preparation. This document will be updated to provide a link to the customs guidance when published on our website.

The goods must be physically dispatched from a third country or third territory to be considered as distance sales of imported goods. If low value goods are placed in a customs warehouse in an EU Member State from which subsequently supplies of goods will be made to customers in the EU, such supplies will not be covered by the concept of distance sales of imported goods. This is due to the fact that goods in a customs warehouse within the EU are already on EU territory and, therefore, they cannot be considered to be dispatched from third countries or third territories as required by the concept of distance sales of imported goods.

Furthermore, in accordance with Article 155 of the VAT Directive, goods aimed at final use or consumption are not allowed to be supplied from a customs warehouse (see also question 14).

The distance sales of goods imported from third territories or third countries covers supplies to customers as described in section 3.2.5.

4.1.4 Place of supply

Under the EU VAT legislation, the place-of-supply rules need to be analysed in order to assess whether a transaction is subject to VAT in the EU. When dealing with goods purchased in a third country or third territory that are dispatched or transported to the EU, typically two taxable events occur:

- VAT taxable event 1: the distance sale of imported goods from the third country or third territory to an EU customer;
- VAT taxable event 2: the importation of goods in the EU.

The present Explanatory Notes describe the place-of-supply rules for low value goods not exceeding EUR 150.

The place of supply of these goods depends on where goods are released for free circulation in the EU (i.e. the Member State of importation) and where the final destination of the goods is. The following situations may occur:

1) The EU Member State of importation is also the Member State of the final destination of the goods.

a) Place of supply of the distance sale of goods (VAT taxable event 1):

i) If the import scheme (IOSS) is used – the EU Member State in which the dispatch or transport of the low value goods to the customers ends (Article 33(c) of the VAT Directive).

ii) Where the import scheme (IOSS) is not used:

(1) If the person liable to pay VAT is the customer – where the low value goods are located at the time when the dispatch or transport of the goods to the customer begins, meaning in the third country or third territory (Article 32(1) of the VAT Directive). In this situation, the distance sale of goods is not taxable in the EU.

(2) If the person liable to pay VAT is the supplier or an electronic interface as a deemed supplier – where the goods are imported in the EU (Article 32(2) of the VAT Directive). In this situation, the distance sales is taxable in the EU.

b) Place of supply of importation of low value goods (VAT taxable event 2): it is the place where the low value goods enter the EU (Article 60 of the VAT Directive).

i) If the import scheme (IOSS) is used, the importation of low value goods is exempt from VAT (Article 143(1)(ca) of the VAT Directive). To recall that VAT is collected by the supplier or electronic interface (if deemed supplier) from the customer on the distance sale of imported goods (see point 1(a)(i) above).

ii) If the import scheme (IOSS) is not used, VAT is payable upon importation.

2) The EU Member State of importation is not the Member State of final destination of goods.

a) Place of supply of distance sale of goods (VAT taxable event 1):

i) The EU Member State where the low value goods are located at the time when the dispatch or transport of the goods to the customer ends, meaning in the Member State of final destination (Article 33b of the VAT Directive).

To be noted that subsequent to the introduction of the VAT e-commerce package, the customs rules[31] were modified and only low value goods covered by the import scheme (IOSS) can be released for free circulation into a Member State other than the Member State of final destination of the goods.

Thus, if low value goods which are not declared via the IOSS arrive in a Member State other than the one of final destination, for customs purposes they will be 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.

Thus in practice, this scenario will have a VAT treatment such as that in point 1(b)(ii) above.

b) Place of supply of importation of low value goods (VAT taxable event 2): it is the place where the low value goods enter the EU or are released for free circulation (Article 60 or Article 61 of the VAT Directive).

i) If the import scheme (IOSS) is used, the importation of low value goods is exempt from VAT (Article 143(1)(ca) of the VAT Directive). To recall that VAT is collected by the supplier or electronic interface (if deemed supplier) from the customer on the distance sale of imported goods (see point 1(a)(i) above).

ii) If the import scheme (IOSS) is not used, VAT is payable at importation in the EU Member State of final destination of the goods (see explanations in point 2(a)(ii) above).

If the VAT is not collected by the IOSS registered supplier or electronic interface and VAT becomes due upon importation into the EU in the Member State of final destination, that Member State can decide freely on the person liable to pay the import VAT (either the customer or the supplier or the electronic interface – Article 201 of the VAT Directive).

More details can be found in chapter 5, scenarios 3a–3c and 4a–4b.

[31] Article 221(4) UCC IA (Commission Implementing Regulation (EU) 2015/2447 amended by Commission Implementing Regulation (EU) 2020/893)

4.2 IMPORT SCHEME

4.2.1 Relevant provisions

The relevant provisions can be found in the VAT Directive and in the VAT Implementing Regulation.

VAT Directive

- Articles 369l-369x, Article 369zc

VAT Implementing Regulation

- Articles 57a-63c

4.2.2 Why was the import scheme introduced?

From 1 July 2021 VAT is due on all commercial goods imported into the EU regardless of their value. 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.

This scheme, more commonly referred to as the import scheme, allows suppliers[32] selling goods dispatched or transported from a third country or third territory to customers in the EU, to collect VAT on distance sales of imported low value goods from the customer and to declare and pay this VAT via the Import One Stop Shop (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.

The use of this special scheme (IOSS) is not mandatory.

4.2.3 Which supplies of goods are covered by the import scheme?

Supplies of goods are covered by the import scheme when:

- the goods are dispatched/transported from a third territory or third country at the time they are supplied, and
- these goods are dispatched in a consignment of an intrinsic value not exceeding EUR 150, and
- the goods are transported or dispatched by or on behalf of the supplier, including where the supplier intervenes indirectly in the dispatch or transport of the goods from a third country or third territory, to a customer or any other eligible person in a Member State, and
- the goods are not subject to EU harmonised excise duties (typically alcohol or tobacco products according to Article 2(3) of the VAT Directive)[33]. Note, that IOSS cannot be used when low value goods are bought and/or dispatched together with excise goods, irrespective of whether or not the value of the consignment exceeds EUR 150.

Intrinsic value[34] is defined as follows:

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[32] Suppliers and deemed suppliers (i.e. electronic interfaces facilitating such a supply of goods).

[33] However, perfume and toilet water are covered by the import scheme, even though they are excluded from the customs duty exemption relating to consignments with negligible value (Article 23 of Council Regulation (EC) No 1186/2009 setting up a Community system of reliefs from customs duty).

[34] Article 1(48) of Commission Delegated Regulation (EU) 2015/2446

a. for commercial goods: the price of the goods themselves when sold for export to the customs territory of the European Union, excluding transport and insurance costs, unless they are included in the price and not separately indicated on the invoice, and any other taxes and charges as ascertainable by the customs authorities from any relevant document(s);
b. for goods of a non-commercial nature: the price which would have been paid for the goods themselves if they were sold for export to the customs territory of the European Union.

Any other related costs, beside transport and insurance, that do not reflect the value of the goods themselves must also be excluded from the intrinsic value, whenever they are separately and clearly indicated in the invoice (e.g. tooling costs, license fees, export tax etc.). The term "other taxes and charges" refers to any tax or charge levied on the basis of the value of the goods or on top of a tax or charge applied to such goods.

4.2.4 Who can use the import scheme?

The following taxable persons can use the import scheme:

- Suppliers established in the EU selling the goods referred to under section 4.2.3 above to a customer in the EU. This is generally when the suppliers sell via their own online shop.
- Suppliers not established in the EU selling these goods to a customer in the EU. This is generally when the suppliers sell via their own online shop. These suppliers can use the scheme as follows:
  - ✓ Directly (i.e. without the obligation to appoint an intermediary) if they are established in a third country with which the EU has concluded a VAT mutual assistance agreement[35]. This applies only insofar as they carry out sales of goods from this specific third country. As soon as they also carry out supplies from other third countries or territories they will no longer be able to use the scheme directly, but will instead have to use the scheme indirectly.
  - ✓ Indirectly, through an intermediary established in the EU (see section 4.2.5).
- Electronic interfaces established in the EU facilitating distance sales of imported low value goods for underlying suppliers (so-called deemed suppliers – see for more details chapter 2).
- Electronic interfaces not established in the EU facilitating distance sales of imported low value goods for underlying suppliers (so-called deemed suppliers). These electronic interfaces can use the scheme as follows:
  - ✓ Directly (i.e. without the obligation to appoint an intermediary) if they are established 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 third country.
  - ✓ Indirectly, through an intermediary established in the EU (see section 4.2.5).

[35] At the date of publication of this Explanatory Notes, the EU has concluded such an agreement only with Norway.

Table 7: IOSS registration by type of supplier and place of establishment

Type of suppliers	Direct/Indirect Registration	Member State of Identification	Intermediary
EU suppliers (sales via e.g. own website)	Direct registration	EU Member State of establishment	Can appoint an intermediary
Non-EU suppliers from countries with a mutual assistance agreement with the EU on VAT (sales from that country via e.g. own website)	Direct registration	EU Member State of choice	Can appoint an intermediary
All other non-EU suppliers (sales via e.g. own website)	Indirect registration	EU Member State of establishment of the intermediary	Has to appoint an intermediary
EU electronic interfaces being a deemed supplier	Direct registration	EU Member State of establishment	Can appoint an intermediary
Non-EU electronic interfaces from countries with a mutual assistance agreement with the EU on VAT for supplies from that country	Direct registration	EU Member State of choice	Can appoint an intermediary
All other non-EU electronic interfaces being a deemed supplier	Indirect registration	EU Member State of establishment of the intermediary	Has to appoint an intermediary

4.2.5 What is an intermediary?

Taxable persons (suppliers and electronic interfaces) who are not established in the EU or in a third country with which the EU has concluded a VAT mutual assistance agreement need to appoint an intermediary to be able to use the import scheme. Other taxable persons (i.e. the ones established in the EU) are free to appoint an intermediary, but are not obliged to do so.

The intermediary needs to be a taxable person established in the EU. He has 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. However, 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. In practice, Member States will attempt to recover the VAT from the intermediary and if this attempt fails Member States can try to recover VAT from the supplier. It must be pointed out that the intermediary is not necessarily the person that lodges the customs declarations for release in free circulation.

Before being able to register a taxable person in the IOSS, the intermediary first needs to sign up in the Member State where he is established to be able to use the IOSS for suppliers making distance sales of imported low value goods. He will receive an identification number enabling him to act as intermediary in the import scheme (Article 369q(2) of the VAT Directive). This number serves for that Member States the purpose of identifying the intermediary. However, this intermediary identification number is not a VAT number and cannot be used by the intermediary to declare VAT on taxable transactions. Subsequently the intermediary will register in his Member State of identification each taxable person he represents and he will receive an IOSS VAT identification number in respect of each taxable person for which he is appointed (Article 369q(3) of the VAT Directive).

Member States may lay down rules or conditions to be imposed on taxable persons who want to act as intermediary in the IOSS (e.g. guarantees).

4.2.6 IOSS VAT identification number

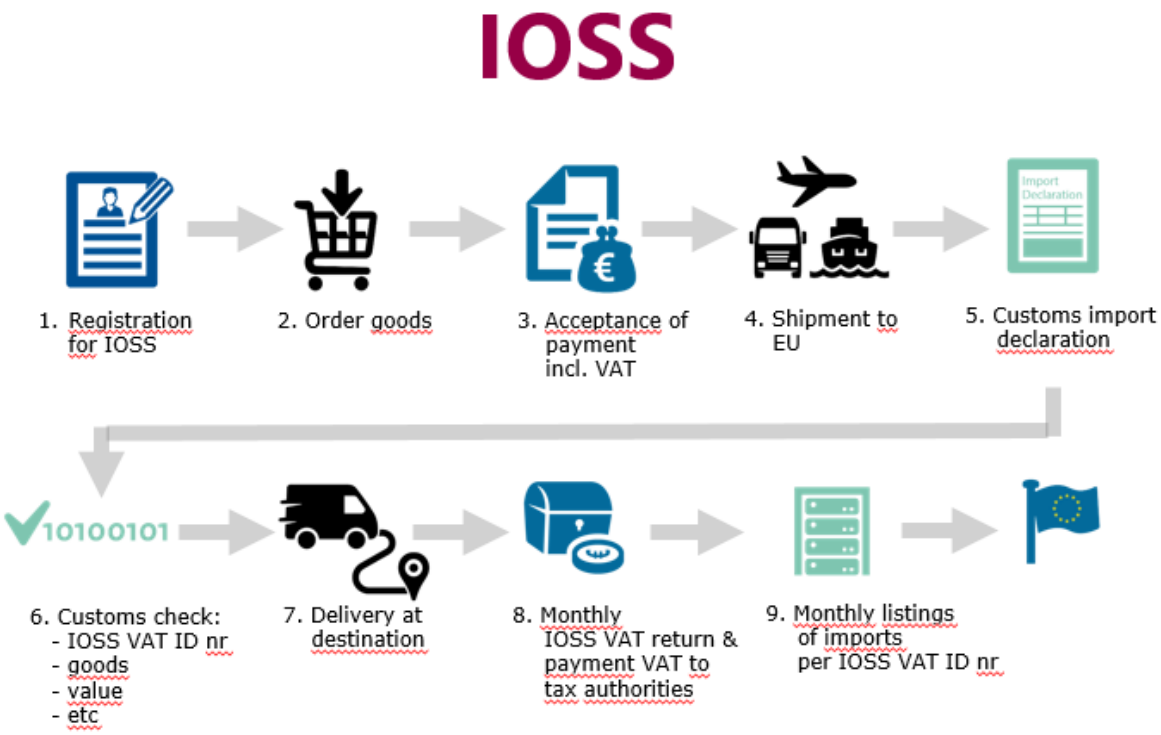
Upon registration for the IOSS, the tax authorities in the Member State of identification will issue an IOSS VAT identification number to suppliers or to electronic interfaces who are deemed suppliers, to intermediaries acting on behalf of suppliers or of electronic interfaces. To be noted that an electronic interface will have a single IOSS VAT identification number irrespective of the number of underlying suppliers for which it facilitates distance sales of imported low value goods to customers in the EU, because the electronic interface is deemed to be the supplier of all these sales. Intermediaries, however, will receive a separate IOSS VAT identification number for each taxable person they represent.

This IOSS VAT identification number can only be used to declare distance sales of imported goods under the import scheme and not for any other supplies of goods or services that a supplier or electronic interface may carry out. Note that for supplies eligible for the Union or non-Union scheme, separate registrations are needed (see chapter 3). A supplier or electronic interface having chosen to use the import scheme, will declare all such distance sales of imported goods to customers in the entire EU using this IOSS VAT identification number. The IOSS VAT identification number will be provided to the customs authorities in the customs declaration in order to release the goods for free circulation in the EU under VAT exemption. It is important that the supplier or the electronic interface as the deemed supplier makes sure that the IOSS VAT identification number is securely transmitted via the supply chain to the customs authorities. Communication of the IOSS VAT identification number should be kept to the minimum necessary and thus it should only be transmitted to the parties in the supply chain that will need it for the release for free circulation in the Member State of importation.

The IOSS VAT identification number consists of 12 alphanumeric characters. More information on how to register for the IOSS and the structure of the IOSS VAT identification number can be found in the VAT OSS portal.

4.2.7 How does the import scheme work?

Figure 4: IOSS scheme



The first step that a supplier or an electronic interface needs to take in order to be able to use the import scheme is to register in the electronic portal of a Member State (see details in sections 4.2.4 to 4.2.6)

When a supplier or an electronic interface using the import scheme supplies goods dispatched or transported from outside the EU to customers in the EU, the place of supply of those goods is in the EU, specifically in the EU Member State where the ordered goods are delivered to (see section 4.1.4 above). Consequently, the supplier or electronic interface making use of the import scheme will need to charge the VAT already when selling those goods to customers in the EU.

When to apply the VAT?

The time of supply is the moment when the payment has been accepted by the supplier or electronic interface. This is the time when the payment confirmation, the payment authorisation message or a commitment for payment from the customer is received by or on behalf of the supplier selling goods through the electronic interface, regardless of when the actual payment of money is made, whichever is the earliest (Article 41a of the VAT Implementing Regulation).

In practice, the supplier or electronic interface will show the price of the goods and the amount of VAT due on the respective order and the customer will need to pay the entire amount to the supplier or electronic interface.

Which VAT rate?

The correct VAT rate is the one applicable to the respective good in the EU Member State where the supply takes place. In practice, this is the Member State where the customer indicates that the goods are to be delivered.

Most goods are subject to the standard VAT rate, however certain goods are subject to a reduced VAT rate depending on the nature of the goods and the EU Member State in which the supply takes place. Information on the VAT rates throughout the EU can be found on the website of each Member State. The European Commission also centralises this information on the following link:

http://ec.europa.eu/taxation_customs/tedb/splSearchForm.html

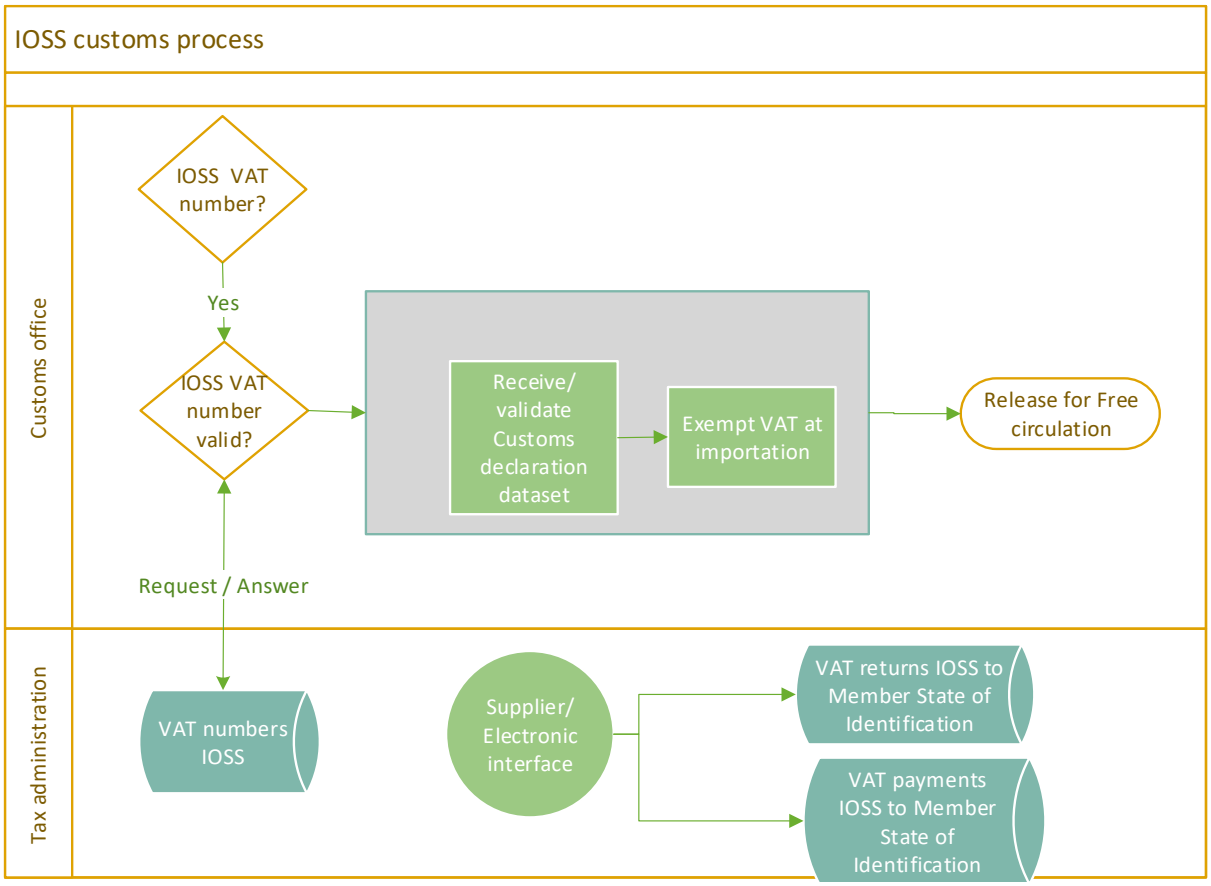
The release for free circulation of low value goods reported under the import scheme is exempt from VAT on condition that a valid IOSS number is provided at the latest in the customs declaration (see section 4.2.8). This is to avoid double taxation of the same goods.

4.2.8 Validation of IOSS VAT identification number

All the IOSS VAT identification numbers issued by tax authorities in EU Member States will be made available electronically to all customs authorities in the EU. The database of IOSS VAT identification numbers is not public. The customs authorities when receiving an IOSS VAT identification number in the dataset of the customs declaration will make an automatic check of its validity against the IOSS VAT identification number database. If the IOSS number is valid and the intrinsic value of the consignment does not exceed EUR 150, the customs authorities will not request the payment of VAT on low value goods imported under the IOSS.

The person who declares the goods to customs (e.g. postal operators, express carriers, customs agents, etc.) does not and cannot check the validity of the IOSS VAT identification number.

Figure 5: IOSS customs process



A monthly listing containing the total value of imports of low value goods declared in the EU for each IOSS VAT identification number during a given month will be prepared based on the customs declarations submitted in each EU Member State. The declarants will not be involved in compiling these IOSS monthly listings.

The aggregated monthly listings will be made available to tax authorities in the EU. The tax authorities will use these listings to analyse the value of imports declared as exempt under an IOSS VAT identification number with the value of the VAT declared in the IOSS return by the same taxable person. More details can also be found in customs guidance, section 3.1.6.

In case of an invalid or missing IOSS VAT identification number, VAT will have to be paid upon importation (see also replies to question 35 and question 36).

4.2.9 What do you need to do if you use the import scheme?

A supplier or electronic interface (deemed supplier) using the import scheme should ensure the following in respect of VAT:

- Display the amount of VAT to be paid by the customer in the Member State to which the goods will be sent/dispatched at the latest when the ordering process is finalised.

- Collect from the customer the VAT on supplies of all eligible goods dispatched/transported to the EU (e.g. non-excise goods dispatched to an EU Member State in consignments not exceeding EUR 150).

- Make sure that eligible goods are shipped in consignments of an intrinsic value not exceeding the EUR 150 threshold.

- Either on the VAT invoice (if issued) or on the commercial invoice accompanying the goods for customs clearance, it is recommended to show:

  a) the price paid by the customer in euro;

  b) separately, per each VAT rate the VAT amount charged to the customer.

- Provide to the transporter/customs declarant of the goods (such as postal operators or express carriers or customs agent) the information required for the customs clearance in the EU, including the IOSS VAT identification number in order to avoid that VAT is levied at the moment of importation (release for free circulation). An IOSS registered supplier will provide this information directly to the transporter/customs declarant. An electronic interface that is not involved in the dispatch or transport of the goods will generally provide this information to the underlying supplier and agree on strict rules about the use of its IOSS VAT identification number, including communicating it to the transporter/customs declarant.

  Neither the transporter nor the customs declarant of the imported goods needs to verify the amount of VAT collected or the VAT rate applied by the IOSS supplier or electronic interface. If an IOSS VAT identification number is mentioned in the customs declaration submitted in relation with the consignment and that number is valid, the importation is VAT exempt. The VAT was paid as part of the purchase price to the supplier or electronic interface at the moment of sale (acceptance of payment).

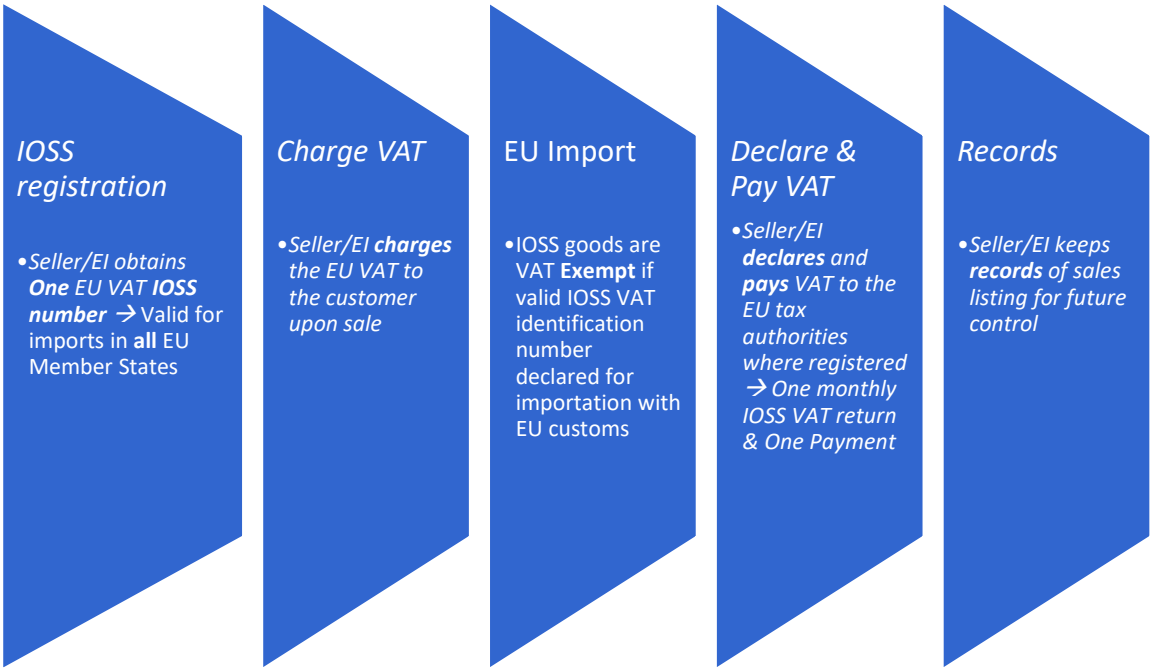
- Submit a monthly IOSS return to the Member State of identification for all the eligible supplies of goods sold to customers across the entire EU. If you are registered through an intermediary, make sure that the intermediary has all the information he needs to fulfil his obligation to submit the monthly IOSS VAT return to his Member State of identification. The IOSS VAT return will contain the total value of the goods sold, their VAT rate and the total VAT amount to be paid, broken down for each EU Member State where the goods are transported to, as well as broken down in standard and reduced rate. The deadline to submit the IOSS VAT return is the end of the month following the reporting month.

- Make a monthly payment to the Member State of identification of the VAT due as declared in the IOSS VAT return. The deadline for the payment is the end of the month following the reporting month. If you are registered through an intermediary, make sure that the intermediary pays the VAT monthly to his Member State of identification.

- Keep records of all eligible IOSS distance sales of imported goods for 10 years to cater for possible audits by EU tax authorities. Article 63c of the VAT Implementing Regulation provides what those information and records need to be (see chapter 2, section 2.2.1.1).

More information on how to submit the IOSS VAT return, how to make the VAT payment and on the record keeping obligations can be found in the VAT OSS portal.

Figure 6: Summary of import scheme



4.2.10 IOSS Questions and answers

For the following questions, the transactions described are distance sales of imported goods in consignments of an intrinsic value not exceeding EUR 150, also referred to as low value goods.

a) General

1. What are the advantages of using the IOSS?

By using the IOSS, a supplier or an electronic interface (deemed supplier) ensures a transparent transaction for the customer who pays a VAT inclusive price at the time of the online purchase. The customer has certainty about the total price of the transaction and is not confronted with unexpected costs (VAT and, in principle, additional clearance fee) to be paid when goods are imported into the EU.

Furthermore, the use of the IOSS aims for a quick release of the goods by the customs authorities and a speedy delivery of the goods to the customer, which is often crucial for the latter.

The use of the IOSS also simplifies logistics as the goods can enter the EU and be released for free circulation in any Member State, regardless as to which Member State they are ultimately destined for.

2. Goods purchased before 1 July 2021 and arriving in the EU after 1 July 2021

A supplier or an electronic interface (as deemed supplier) cannot use the IOSS to declare distance sales of goods made before 1 July 2021. Consequently, goods purchased from a third territory or third country before 1 July 2021 (e.g. in June 2021 or earlier) and arriving in the EU on or after 1 July 2021 will be subject to VAT upon importation.

b) Registration

3. I am a business established outside the EU and I sell low value goods to customers in the EU exclusively via my own online shop. What do I need to do?

From 1 July 2021, all commercial goods imported into the EU will be subject to VAT. You can use the simplification to collect the VAT on sales relating to low value goods and register in the IOSS in one of the EU Member States (online registration using an EU established intermediary[36] – see sections 4.2.4 and 4.2.5 and the VAT OSS portal)

If you decide to register in the IOSS, you will only have to register in one of the EU Member States and you will be able to sell in all 27 EU Member States. You will need to appoint an intermediary who will register you in the IOSS in the Member State where he is established. The IOSS VAT identification number issued by the Member State where you registered for IOSS (Member State of Identification) is to be used to declare all of your IOSS sales of low value goods to customers in all the EU Member States.

At the moment of sale, you will need to charge to the customer the VAT rate applicable to the goods in the Member State to which those goods will be dispatched. When you send the goods to the customer in the EU, it is advisable to securely transmit your IOSS VAT identification number to the person who is responsible for the declaration of the goods for release for free circulation in the EU (e.g. postal operator, express carrier, customs agent) so that the VAT is not paid again to customs in the EU when the goods are imported. You should not transmit this IOSS VAT identification number to other parties than those involved in the declaration of the goods for release for free circulation. The customs authorities will be performing their duties to ensure compliance with the customs legislation and other legislation governing movement of goods through borders without assessing or collecting any VAT.

Each month, your intermediary who registered you in IOSS will need to submit an IOSS VAT return by the end of the month following the reporting month (e.g. for sales in September, the IOSS VAT return is to be submitted by 31 October). The IOSS VAT return contains all the IOSS sales of low value goods in the EU broken down per Member State of destination and per VAT rate and shows the total VAT due in the EU. Similarly, by the end of the month following the reporting month the intermediary needs to pay to the Member State of identification the total VAT amount as declared in the IOSS VAT return (e.g. for sales in September, payment to be done by 31 October).

If you do not register in the IOSS, the competent authorities will collect VAT upon importation of the low value goods. The customer in the EU will only receive the goods after the VAT has been paid. It could be that the representative submitting the customs declaration on behalf of the customer (e.g. postal operators or express carriers) will also charge an additional clearance fee[37] to the customer. As the customers in the EU are used to a price that includes VAT, the payment of additional fees at the time of importation might lead to the customer refusing the package/parcel.

[36] Except when you are established in a third country with which the EU concluded a mutual assistance agreement on recovery of VAT

[37] This is generally a fixed fee, typically not linked with the value of the goods or the value of VAT paid.

4. *I am a business established outside the EU and I sell low value goods to customers in the EU exclusively via my own online shop. Is there a threshold to register in the IOSS?*

No, there is no threshold to register in the IOSS. Businesses selling low value goods to customers in the EU can register in the IOSS, irrespective of the total turnover they will be making from sales to customers in the EU. Please see question 3 for more details.

5. *I am a business established outside the EU and I sell low value goods to customers in the EU exclusively via an electronic interface that facilitates the supply (e.g. marketplace, platform, etc.) and do not sell any goods through my online shop. What do I need to do?*

If you only make sales of low value goods to customers in the EU via an electronic interface, you do not need to register in the IOSS. It is the electronic interface who becomes the deemed supplier for these B2C sales of goods and thus is liable to fulfil the VAT obligations regarding the sales (see further details on the deemed supplier concept in chapter 2, more specifically in section 2.1.3, section 4.1.4 and scenarios 3a-c, 4a-b in chapter 5).

When you sell goods via an electronic interface, you are deemed to supply your goods to the electronic interface and then the electronic interface makes a supply to the customer. The electronic interface (deemed supplier) is obliged to charge and collect the VAT from the customer. The electronic interface can register for the IOSS and fulfil the VAT obligations as described in question 3 above.

If the electronic interface registers in the IOSS and also organises the dispatch or transport of your goods to the customer, you have no specific VAT related obligations in the EU. However, if you organise the dispatch or transport to your customer, the electronic interface will give you its IOSS VAT identification number to be transmitted to the person that is responsible for the declaration of the goods for release into free circulation in the EU (e.g. postal operator, express carrier, customs agent). The latter will communicate the IOSS number to customs authorities in order to release the goods for free circulation without VAT to be paid. You should not transmit this IOSS VAT identification number to other parties than those involved in the declaration of the goods for release for free circulation (most likely the electronic interface will impose clear commercial conditions on you before providing this IOSS VAT identification number).

If the electronic interface does not register in IOSS, the VAT related to those goods will be collected upon importation in the EU. The VAT is due in the Member State where the dispatch or the transport of the goods ends. It shall be paid by the person designated as liable for the payment of import VAT in accordance with the national VAT legislation. Most Member States designate the customer in the EU receiving the goods to be the person liable to pay VAT. However, Member States may designate the electronic interface (deemed supplier) to be the person liable to pay VAT in these situations.

6. *I am a business established outside the EU and I sell low value goods to customers in the EU exclusively via several electronic interfaces. What do I need to do?*

The reply is similar to the one in question 5.

If each electronic interface registers in the IOSS, you should keep clear evidence of the sales carried out via each electronic interface. In case you organise the transport, you should make sure to provide to the person who is responsible for the declaration of the goods for release

into free circulation in the EU (e.g. postal operator, express carrier, customs agent) the IOSS VAT identification number that corresponds to the electronic interface via which the sale was made. You should not transmit this IOSS VAT identification number to other parties than those related to the declaration of the goods for release for free circulation (most likely each electronic interface will impose clear commercial conditions on you before providing their IOSS VAT identification number).

7. *I am a business established outside the EU and I sell low value goods to customers in the EU via my own online shop and via an electronic interface that is IOSS registered. What do I need to do?*

You should keep clear evidence of the goods sold via your online shop and the goods sold via the electronic interface. If you choose to register in the IOSS for the sales made via your online shop, you should provide your own IOSS VAT identification number to person that is responsible for the declaration of the goods for release into free circulation in the EU (e.g. postal operator, express carrier, customs agent) for the goods sold via your own website.

For the goods sold via the electronic interface, you should provide to the person that is responsible for the declaration of the goods for release into free circulation in the EU the IOSS VAT identification number of the electronic interface, since you organise the transport. When you sell goods via an electronic interface, you are deemed to supply your goods to the electronic interface and then the electronic interface makes a supply to the customer. The electronic interface is obliged to charge and collect the VAT from the customer (see section 2.1.3, question 5 above and scenarios 3a-3c in chapter 5) and to declare and pay VAT to the tax authorities.

If you do not register in the IOSS for the sales via your online shop, you cannot use the IOSS VAT identification number of the electronic interface for the sales made via your own website. Instead, the VAT for the goods sold via your online shop will be collected from the customer at the moment of importation in the EU.

Note that the tax authorities will compare the total value of the transactions declared upon importation under each IOSS VAT identification number with the IOSS VAT returns submitted under the respective VAT IOSS identification number.

8. *I am a business established outside the EU and I sell low value goods to customers in the EU via my online shop for which I am registered in the IOSS. I also sell low value goods via an electronic interface that is not IOSS registered. What do I need to do?*

As in question 7, you should keep clear evidence of the goods sold via your own online shop and the goods sold via the electronic interface.

For the goods sold via your online shop, you should charge VAT to your customers and provide your IOSS VAT identification number to that person who is responsible for the declaration of the goods for release into free circulation in the EU. For the goods sold via the electronic interface you cannot charge VAT to your customers, as you are deemed to supply those goods to the electronic interface and then those goods are deemed to be supplied by the electronic interface to the customer (see section 2.1.3). Thus, for the sales made via the electronic interface you cannot use your own IOSS VAT identification number when the goods are imported into the EU.

Since the electronic interface did not register in IOSS, the VAT due for those goods will be collected upon importation into the EU. The VAT is due in the Member State where the

dispatch or the transport of the goods ends. It shall be paid by the person designated as liable for the payment of import VAT in accordance with the national VAT legislation. Most Member States designate the customer in the EU receiving the goods to be the person liable to pay VAT. However, Member States may designate the electronic interface (deemed supplier) to be the person liable to pay VAT in these situations.

Note that if you erroneously use your IOSS VAT identification number for low value goods sold via the electronic interface, the Member State of identification will expect a higher value of VAT to be declared and paid via your IOSS VAT return. This is because Member States will also have a monthly listing with the value of all goods declared for your given IOSS VAT identification number. The Member State of identification will compare this amount with the one declared in the IOSS VAT return.

9. *I am a business established in the EU and I sell low value goods only to customers in the Member State in which I am established. The goods are dispatched directly from a place outside the EU to customers in the Member State where I am established. What do I need to do?*

The reply is similar to that given to question 3. You can choose to register in the IOSS, however you are not obliged to have an intermediary for this purpose. In this case, the Member State in which you are established is the Member State of identification. You will charge to and collect from the customer the VAT applicable in the Member State where goods are dispatched or transported to. You will need to communicate the IOSS VAT identification number to the person responsible for the declaration of the goods for release into free circulation in the EU so that VAT is not paid again upon importation. You should not transmit this IOSS VAT identification number to other parties than those related to the declaration of the goods for release for free circulation.

If you choose not to register in the IOSS, the person designated as liable to pay the import VAT in accordance with the national VAT legislation (typically the customer) will have to pay the VAT at importation in the EU and also a customs clearance fee charged by the company declaring the low value goods to customs, where applicable. These sales of goods are not to be included in the domestic VAT return.

10. *I am a business established in the EU and I sell low value goods to customers in the entire EU via my online shop. The goods are dispatched directly from a place outside the EU to customers in the EU. What do I need to do?*

The reply is similar to that given to question 3 and to question 9. If you register in the IOSS, you need in each case to apply the VAT rate of the Member State to which the goods are dispatched or transported.

11. *I am a business established in the EU and I sell low value goods to customers in the EU exclusively via electronic interfaces that facilitate the supplies (e.g. marketplace, platform, etc.) and not through my online shop. The goods are dispatched directly from a place outside the EU to customers in the EU. What do I need to do?*

The reply is the same as the one given in question 5. In this situation the electronic interface becomes the deemed supplier. You should ensure that the electronic interface is clearly informed about the dispatch or transport of the goods taking place from a place outside the EU before the supply and you should keep clear evidence of the goods being dispatched or transported from a place outside the EU in your VAT records.

From a VAT perspective, you supply these goods to the electronic interface and the electronic interface supplies the goods to your customer (see further details on the deemed supplier concept in chapter 2, more specifically in section 2.1.3, section 4.1.4 and scenarios 3a-c, 4a-b in chapter 5).

For these transactions you have record-keeping obligations.

12. *I am a business established in the EU and I import low value goods in bulk in my company's name in the Member State where I am established. After they are customs cleared, I sell those goods to customers in the Member State where I am established. Do I need to register in the IOSS for these transactions?*

No, you cannot register in the IOSS for these transactions.

If you import low value goods in your own name before selling them on to customers in your own country, you cannot use the IOSS for these transactions. For the importation of goods, you follow the general rules (standard or simplified procedure) applicable to the entry and import of goods into the EU – for details, please see the Guidance on Customs Formalities on Entry and Import into the European Union. The subsequent sales to customers in the Member State in which you are established follow the normal rules for domestic supplies. You need to report those sales in your domestic VAT return.

13. *I am a business established in the EU and I import low value goods in bulk in my own name in the Member State where I am established. After they are customs cleared, I sell those goods to customers in the Member State in which I am established and to customers in other EU Member States. Do I need to register in the IOSS for these transactions?*

No, you cannot use the IOSS for these transactions, as the sales only take place after you have already imported the goods into the EU. The sales to customers in the Member State in which you are established follow the normal rules for domestic supplies. You will report those sales in your domestic VAT return. To declare, collect, and pay the VAT on the sales made to customers in other EU Member States (i.e. where the destination of the goods is), you have two options: i) register directly in each Member State where the goods are sent to or ii) use the Union scheme (Union One Stop Shop – see chapter 3, section 3.2).

14. *I am a business established in or outside the EU and I bring goods into the EU where they are placed in a customs warehouse before they are sold to customers in the EU. Can I use the IOSS for these transactions?*

No, you cannot use the IOSS for these transactions. When goods are already in the EU, you cannot use the IOSS since one of the conditions to use the IOSS is that goods are dispatched or transported by or on behalf of the supplier from a third country or third territory to the customer in the EU. Moreover goods aimed at final use or consumption cannot be placed in a customs warehouse (Article 155 of the VAT Directive).

You need to remove the goods from the customs warehouse and release them for free circulation in the EU for which you will pay the VAT (i.e. at the VAT rate applicable in the Member State of importation) and customs duties (if applicable) (see the Guidance on Customs Formalities on Entry and Import into the European Union). After that, you will charge the VAT of the Member State to which the goods are dispatched/transported. If you have customers in several EU Member States, you can use the Union scheme (Union One Stop Shop – see chapter 3, section 3.2).

15. I am a business established in the Canary Islands, i.e. in the customs territory of the EU but outside of the VAT territory. I sell low value goods that are dispatched/transported from the Canary Islands to customers in the EU via my on-line store. Are my sales to be considered as distance sales of imported goods and can I register for IOSS for these supplies? Or will my sales be considered as intra-Community distance sales and thus can I register for the OSS scheme?

The Canary Islands are part of the EU customs territory, but not part of the EU VAT territory (see the list of third territories in section 1.4 – Glossary). Distance sales of imported goods cover sales made from third countries, as well as third territories (see section 4.1.3). Consequently, your sales are distance sales of imported goods for which you can register in the IOSS via an intermediary. See also reply to question 3.

16. I am an electronic interface established in the EU and a number of the suppliers selling goods through my platform are established in the Canary Islands. The goods sold and dispatched/transported by these suppliers from the Canary Islands often do not exceed the value of EUR 150. Should I treat these sales as distance sales of low value imported goods? Or should these sales be regarded as intra-Community distance sales and if so am I the deemed supplier for these supplies?

As said in the reply to question 15, the goods supplied from the Canary Islands qualify as distance sales of imported goods. Consequently, you become a deemed supplier as you are the electronic interface facilitating those distance sales of goods to be dispatched or transported to the EU. See also the replies given to question 5.

c) EUR 150 threshold

It is recommended to suppliers and electronic interfaces to pay attention to the intrinsic value of the consignments dispatched or transported to the EU. The examples presented in questions 18 to 25 should be very limited in practice if suppliers, underlying suppliers and electronic interfaces implement the suggestions recommended in these Explanatory Notes.

17. How do you determine the 'intrinsic value'?

Several examples are presented below to clarify how to determine the intrinsic value.

<u>Example 1</u>: Invoice indicating total amount of the price paid for the goods not split between net price of the goods and transport charges. VAT amount indicated separately.

Price of the goods as indicated in the invoice: *EUR 140*

VAT (20%) as indicated in the invoice: *EUR 28*

Total invoice amount: *EUR 168*

In this example, transport costs are not mentioned separately in the invoice and therefore cannot be excluded. However, the net price of the goods is not exceeding EUR 150 and therefore, IOSS can be used and no VAT or customs duties is levied at importation.

<u>Example 2</u>: Invoice indicating total amount of the price paid for the goods split between net price of the goods and transport charges. VAT amount indicated separately.

Price of the goods as indicated in the invoice: *EUR 140*

Transport charges as indicated in the invoice: *EUR 20*

VAT (20%) as indicated in the invoice: *EUR 32*

Total invoice amount: *EUR 192*

In this example, transport costs are mentioned separately in the order/invoice. As such, transport costs are excluded from the intrinsic value. The intrinsic value of the goods is not exceeding EUR 150 and therefore, IOSS can be used and no VAT or customs duties is levied at importation. To be noted that VAT is applied on the total value of the sale (e.g. the EUR 160 value of the goods and the transport charges).

18. What happens if customs authorities consider that goods for which IOSS was used are undervalued and the correct intrinsic value exceeds EUR 150?

In certain situations, the intrinsic value upon importation may exceed the EUR 150 threshold.

For situations where despite the good faith of the supplier or the electronic interface (as deemed supplier) the intrinsic value may seem to exceed EUR 150, it is recommended that the customs authority of the Member State of importation allows the consignee to demonstrate that he has purchased the goods for a price (excluding VAT) not exceeding EUR 150 before they collect import VAT and customs duty upon clearance of the goods. Examples of such situations can be i) reduced value following a promotion/discount (see reply to question 20), ii) exchange rate fluctuations (see reply given to question 21), iii) bundled consignments (see replies given to questions 22-24).

However, in case of deliberate undervaluation or any suspicion of fraud, it will not be possible for the consignee to demonstrate that he has purchased the goods for a price not exceeding EUR 150 (excluding VAT). Moreover, the IOSS scheme cannot be used. When such a situation arises, the customer (consignee) may:

- accept the delivery of goods. In this case, he will pay import VAT and, possibly, customs duty to the customs authorities, even if he already paid the VAT to the supplier or electronic interface;
- refuse the goods. In this case the usual customs practices and formalities for refusal of goods will apply.

In both cases, the customer (consignee) can contact the supplier or electronic interface to reclaim the VAT paid incorrectly at the time of supply (and possibly the amount paid for the goods in case of refusal).

In case of deliberate undervaluation detected by customs, the supplier or electronic interface (as deemed supplier) should not include this distance sales of goods in the IOSS VAT return and should keep in their records relevant proof (e.g. proof of VAT payment of the customer to the EU customs, respectively proof of export, destruction or abandonment to the State). Please see chapter 3, section 3.1.2 of the customs guidance on the customs implications of such a situation.

19. What happens if goods are undervalued, but the corrected intrinsic value does not exceed EUR 150?

In this situation, importation of low value goods may still benefit from the exemption of VAT upon importation provided that the valid IOSS number of the taxable person claiming the

import exemption is mentioned in the customs declaration. The goods will be released without payment of additional VAT to customs (the correct VAT amount has to be declared in the IOSS VAT return and has to be paid by the supplier or electronic interface or intermediary).

From a customs point of view, the conditions for using the import declaration with super-reduced dataset are still met. More details on the customs formalities can be found in chapter 3, section 3.1.2 of the customs guidance.

20. *At the moment of purchase, the goods benefited from a promotion/discount period which is no longer valid when the goods enter the EU. The discounted/promotional price paid by the customer does not exceed EUR 150 and is shown in the document accompanying the consignment of goods. Will customs accept the discounted/promotional price as the intrinsic value?*

The intrinsic value at importation is the net price paid by the customer at the time of supply (i.e. at the time when the payment by the customer was accepted), as shown in the document accompanying the goods (i.e. commercial invoice). In case of doubt, customs authorities may request proof of payment from the customer (consignee) prior to the release of the goods for free circulation.

21. *In a situation where goods sold are paid in a currency other than the euro what happens if the intrinsic value in EUR did not exceed the EUR 150 threshold (or the equivalent value in national currency in a Member State not applying the euro) at the time of supply but, due to exchange rate fluctuations, exceeds that threshold at the time of importation?*

Suppliers or electronic interfaces always need to make the calculation at the time of supply for the purpose of determining whether the sale of goods can be declared under the import scheme. To avoid the situation described in this question, it is recommended that the supplier or electronic interface indicates on the invoice accompanying the consignment the price in EUR, as determined at the moment of acceptance of payment. This value will be accepted by the customs authorities upon importation of the goods into the EU (unless there is suspicion of deception or fraud) and thus prevent possible double imposition of VAT upon importation.

In the case where the Member State of importation uses a currency other than the euro, it is recommended that the Member State accepts the amount indicated in EUR on the invoice as provided above, for both customs and taxation purposes.

Example:

Distance sales of goods with final destination in Germany, imported in Poland where they are declared for release for free circulation. The invoice accompanying the consignment is expressed in EUR. As the goods are destined for Germany, the Polish customs authorities are advised to accept the invoice amount in EUR, for both customs and VAT purposes. If, however, the goods are imported into Poland and are destined for a Polish customer, the invoice accompanying the consignment could be expressed in Polish Zloty.

In the case of goods declared via the IOSS, if the invoice amount is expressed in a foreign currency and, upon importation, the conversion falls within the vicinity of EUR 150, it is recommended to customs authorities to adopt an appropriate strategy regarding monitoring of the intrinsic value of EUR 150. In such situations, they should consider giving the possibility for the customer (consignee) to prove that the amount paid did not exceed EUR 150 at the time of the sale and, thus, VAT was correctly paid under the IOSS. For example, the customer

can prove the amount paid and the date of payment. Therefore, VAT should not be charged again, and, in addition, customs duty (if applicable to the goods in question) should not be due at importation. More details can be found in chapter 3, section 3.1.3 of the customs guidance.

d) Multiple orders

22. What is a single consignment?

Goods packed together and dispatched simultaneously by the same consignor (e.g. supplier, underlying supplier or possibly electronic interface acting as deemed supplier) to the same consignee (e.g. customer in the EU) and covered by the same transport contract (e.g. airway bill) shall be considered as a single consignment.

Consequently, goods dispatched by the same consignor to the same consignee that were ordered and shipped separately, even if arriving on the same day but as separate parcels to the postal operator or the express carrier of destination, should be considered as separate consignments, unless there is a reasonable suspicion that the consignment was split intentionally in order to avoid the payment of customs duty. In the same manner, goods ordered separately by the same person, but dispatched together, would be considered as a single consignment.

In case the goods are ordered via an electronic interface, the latter generally does not, at the time of supply, dispose of the information on whether the underlying supplier dispatches the goods in one consignment or multiple consignments.

The electronic interface is thus required to make certain reasonable assumptions, e.g. when multiple goods are ordered by the same customer at the same time and from the same supplier, the electronic interface should presume that the goods will form one single consignment. When several distinct orders are placed by the same customer on the same day, the electronic interface should likewise presume that the goods belonging to the different orders will form separate consignments.

More details can be found in the customs guidance (section 1.3.2 and section 3.1.4)

23. What happens for IOSS purposes if the customer makes a single order exceeding EUR 150 via a single electronic interface but the goods are supplied by different suppliers using the same electronic interface?

Under Article 14a(1) of the VAT Directive, each underlying supplier supplies his goods to the electronic interface which subsequently supplies them to the customer in the EU. Consequently, each underlying supplier's part of the order forms a separate supply of goods which will normally be dispatched/transported in a separate consignment.

In this case, the supplies of goods by each underlying supplier can be declared under the IOSS if the intrinsic value per consignment does not exceed EUR 150. Where the intrinsic value of the supplies of goods per consignment of an underlying supplier exceeds EUR 150, the IOSS cannot be used.

Example 1: A customer orders via an electronic interface the following goods, supplied by different underlying suppliers, delivered in three separate consignments and the total value of the order is EUR 375:

supply a: goods from underlying supplier 1 amounting to EUR 50

supply b: *2 goods (good 1: EUR 30 + good 2: EUR 140) from underlying supplier 2 amounting to EUR 170*

supply c: *1 good from underlying supplier 3 amounting to EUR 155.*

Supply a) made by underlying supplier 1 is facilitated by the electronic interface according to Article 14a(1). Thus, the electronic interface is the deemed supplier and supply a) can be declared in the IOSS.

Supply b) cannot be declared via the IOSS, since it is considered a single supply to be dispatched or transported in one consignment and its intrinsic value exceeds EUR 150. The deemed supplier rule in Article 14a(1) does not apply.

Supply c) cannot be declared via the IOSS because its intrinsic value exceeds EUR 150. The deemed supplier rule in Article 14a(1) does not apply.

VAT on supply b) and supply c) is collected upon importation in the EU. VAT will be paid once imported following standard VAT collection mechanism.

Example 2: A customer orders via an electronic interface the following goods, supplied by different suppliers, delivered in two separate consignments and the total value of the order is EUR 160:

supply a: *goods from underlying supplier 1 amounting to EUR 50*

supply b: *goods from underlying supplier 2 amounting to EUR 110.*

Both supply a) made by underlying supplier 1 and supply b) made by underlying supplier 2 are facilitated by the electronic interface and the deemed supplier rules in Article 14a(1) apply. Both supply a) and supply b) from this example 2 can be declared in the IOSS.

24. *What happens if a customer makes multiple orders, each of them not exceeding EUR 150, with the same supplier (via own webshop)? Subsequently all goods ordered are packed and dispatched/transported together by the supplier in a single consignment exceeding EUR 150. Same question if low value goods are ordered with the same underlying supplier (via an IOSS registered electronic interface) and they are packed and dispatched/transported together in a single consignment exceeding EUR 150.*

Each order is considered a separate supply irrespective of whether it is made by a supplier or by an underlying supplier selling via an electronic interface. As each separate order/supply does not exceed EUR 150 at the moment of acceptance of payment, the VAT should be charged by the IOSS registered supplier or respectively by the IOSS electronic interface.

When such multiple orders are packed and dispatched/transported together they will be considered as a single consignment. If suppliers or respectively electronic interfaces know that the goods of multiple orders will be dispatched or transported in a single consignment exceeding EUR 150, they should take a cautious approach and not declare the respective consignment under in the IOSS. The supplier or respectively electronic interface should reimburse the VAT collected at the moment of sale to the customer, indicating that VAT and customs duty will have to be paid upon importation into the EU. The supplier or electronic interface should keep evidence that the respective orders were dispatched in one consignment exceeding EUR 150.

If suppliers or electronic interfaces (deemed suppliers) send the respective orders in one single consignment exceeding EUR 150 in value and still indicate the IOSS number, they should be aware that customs will levy customs duty (where due) and VAT upon importation on the entire value of the consignment (including any customs duty) and will disregard the IOSS number. The supplier or electronic interface will need to reimburse the VAT paid under IOSS to the customer based on the proof of payment at EU customs. The supplier or electronic interface will be able to correct their IOSS VAT return (if already submitted) in order to reflect that the VAT is no longer due under the IOSS. The supplier or electronic interface should also keep in their records this proof of payment of VAT by the customer. See also reply given to question 18.

25. What happens for IOSS purposes if a single order from one supplier or underlying supplier exceeding EUR 150 is split (dispatched/transported to customer) into multiple consignments not exceeding EUR 150?

When purchasing several goods in a single transaction (e.g. order) this would be considered as a single supply for VAT purposes. The expectation is that the goods are dispatched/transported in a single consignment.

Since the intrinsic value of the transaction exceeds EUR 150 at the time of supply, the IOSS cannot be used by the supplier or electronic interface. Consequently, VAT should not be charged to the customer at the moment of acceptance of payment and this distance sales of imported goods should not be reported in the IOSS VAT return, even if the goods are dispatched in separate consignments. If the sale is facilitated by an electronic interface, the electronic interface is not a deemed supplier in this case since the intrinsic value of the order/transaction from one single underlying supplier exceeds EUR 150.

Even if the intrinsic value of the single (partial) consignment does not exceed EUR 150, VAT will have to be calculated at the time of importation as the IOSS could not be applied at the time of supply (intrinsic value of order exceeded EUR 150) and an IOSS number must not be provided in the customs declaration. Note that the customs authorities may carry out verifications to assess whether an order or a consignment was artificially split to benefit from duty relief, case in which customs duty will be levied as well.

26. A customer purchases in the same order/transaction a good of EUR 25 and an excise good (e.g. bottle of wine) of EUR 30 from the same supplier (via own website)/underlying supplier (via an electronic interface). The goods will be dispatched in a single consignment or in separate consignments. Can IOSS be applied on this order/transaction?

The sale of the two goods in one order/transaction constitutes one single supply. Since excise goods are not covered by the IOSS, the entire order/transaction will not be subject to VAT at the moment of purchase. The fact that the value of the order/transaction does not exceed EUR 150 is not relevant. VAT will be paid upon importation irrespective whether the goods are dispatched together in the same consignment or in separate consignments.

27. A customer purchases in two separate orders/transactions a good of EUR 25 and an excise good (e.g. bottle of wine) of EUR 30 from the same supplier (via own website)/underlying supplier (via an electronic interface). The supplier/underlying supplier decides to dispatch both goods in a single consignment. Can IOSS be applied in this scenario?

The first order/transaction contains a low value good. Consequently, a supplier or an electronic interface registered in the IOSS should apply VAT on this first distance sale. The second order/transaction contains an excise good that cannot be declared in IOSS. Consequently, a supplier or an electronic interface registered in the IOSS cannot apply VAT on the second distance sale.

The supplier/underlying supplier decides to dispatch/transport both goods purchased separately in the same consignment. For customs purposes, this will be considered as a single consignment that is taxable at the moment of importation (customs duties and excise duties, where applicable, plus VAT).

The suppliers or electronic interfaces knowing that both IOSS eligible and IOSS non-eligible goods will be dispatched/transported in a single consignment, should take a cautious approach and not declare the respective consignment in the IOSS. The supplier or electronic interface will need to reimburse the VAT paid under IOSS to the customer based on proof of payment to EU customs. The supplier or electronic interface will be able to correct its IOSS VAT return (if already submitted) in order to reflect that the VAT is no longer due under the IOSS. The supplier or electronic interface should also keep in its records this proof of payment of VAT by the customer. See also the reply given to question 18 and question 24.

e) VAT rate

28. If the IOSS is used, who should check the correctness of the VAT rate applied at the time of supply?

It is the responsibility of the supplier or electronic interface registered in the IOSS to charge the correct VAT rate applicable to the supply in the relevant Member State of consumption (e.g. the Member States to which the goods are dispatched). For the electronic interface this will be based upon the information received from the underlying supplier. The Member State of consumption will check the correctness of the rates declared in the IOSS VAT return.

f) Importation of goods or intra-Community supply

29. How to detect and treat situations where the underlying supplier declares that the goods will be delivered from the EU but at the moment of completing the order, it occurs that part of the goods needs to be imported from a third country (which is not traceable for electronic interfaces as such arrangements are made by the underlying supplier)?

The electronic interface should obtain from the underlying supplier(s) the information required to establish whether it is a deemed supplier or not, namely:

- Location of the goods at the time of supply;
- Type of supplier (EU/non-EU established).

Concerning the location of the goods, in addition to the declaration from the underlying supplier(s), the electronic interface may implement some additional controls such as delivery/dispatch time (e.g. the underlying supplier declares that goods are located in the EU however systematically delivery time exceeds normal averages for domestic or intra-Community supplies).

For instance, an electronic interface that is facilitating the dispatch/transport of the goods knows where the goods will be shipped from and thus is in position to establish/confirm the

location of the goods at the time of supply. On the other hand, for an electronic interface that only receives a tracking number from the carrier (this information usually comes after the time of supply) it may be too late to change the VAT treatment. In such latter case, the platform can only be expected to do periodic random reconciliations and if it finds systematic misrepresentation by the sellers, take appropriate action (notifying / blocking the seller).

30. I am an electronic interface registered in the Union OSS and IOSS facilitating for EU and non-EU established businesses the following supplies of goods:

i) for an EU established business, an intra-Community distance sale. The EU business declares that the goods are dispatched from Belgium to a customer in Germany. Subsequent to the supply, the EU supplier informs the electronic interface that the goods in question were in fact dispatched from Switzerland to Germany.

Based on the information available to the electronic interface at the time of supply, it does not become a deemed supplier for this intra-Community distance sale of goods and will not be liable for VAT on distance sales of imported goods (Article 5c of the VAT Implementing Regulation). When goods arrive at the EU border from Switzerland, VAT will be paid upon importation as the electronic interface did not know the transaction qualified as distance sale of imported goods.

ii) for a non-EU established business, a distance sale of imported goods. The non-EU business declares that the goods are dispatched from China to a customer in France. Subsequent to the supply, the non-EU supplier informs the electronic interface that the goods in question were in fact an intra-Community distance sale of goods dispatched from Spain to France.

Given that the electronic interface facilitates the supply for a non-EU business, it will become a deemed supplier in either of the scenarios: the distance sale of imported goods or the intra-Community distance sale of goods. The French VAT charged is still correct as both transactions have their place of supply in France.

Based on the information available to the electronic interface at the time of supply, the transaction was considered a distance sale of imported goods to be declared in the IOSS VAT return. It is advisable that the electronic interface transmits its IOSS VAT identification number to the non-EU established business (underlying supplier) only when it disposes of a confirmation of the dispatch/transport confirming that goods are coming from a third country. In the present example, since the goods will be coming from Spain (EU), the IOSS number should not be given to the non-EU business.

The electronic interface should make the appropriate corrections in its records and report this transaction in the Union OSS VAT return (either directly or as a correction). If the IOSS VAT return was already submitted, it will also need to be corrected.

iii) for a non-EU established business, an intra-Community distance sale of goods. The non-EU businesses declares that the goods are dispatched from Denmark to a customer in Sweden. Subsequent to the supply, the non-EU supplier informs the electronic interface that the goods in question were in fact a distance sale of imported goods dispatched from the Canary Islands to Sweden.

Given that the electronic interface facilitates the supply for a non-EU business, it will become a deemed supplier in either of the scenarios: the intra-Community distance sale of goods or the distance sale of imported goods.

If the non-EU business informs the electronic interface of the change in the dispatch location only after the release for free circulation in the EU took place, the IOSS VAT identification number was not used at the importation. Consequently, the VAT was collected upon importation of the goods in the EU.

The electronic interface should make the appropriate corrections in its records and the Union OSS VAT return if it was already submitted. The electronic interface is not liable for VAT on distance sales of imported goods (Article 5c of the VAT Implementing Regulation) and will need to reimburse the Swedish VAT to the customer.

If the non-EU business informs the electronic interface of the change in the dispatch location before the release for free circulation in the EU, the IOSS VAT identification number could potentially still be used in the customs clearance formalities.

The electronic interface should make the appropriate corrections in its records and declare this transaction in the IOSS VAT return and not the Union OSS VAT return. The Swedish VAT charged is still correct as both transactions have their place of supply in Sweden.

g) IOSS VAT Identification Number

31. How can misuse of the IOSS VAT identification number be avoided?

Where an electronic interface is used, it is for that electronic interface to agree on strict rules about the use of its IOSS VAT identification number by its underlying suppliers and to provide for sanctions (e.g. exclude them from the platform) against underlying suppliers not respecting these rules. The electronic interface may also negotiate transport/logistic packages for the dispatch/transport of goods sold by its underlying suppliers thus allowing it to be in contact with the transporter(s) and transmit the IOSS VAT identification number directly to it, under the same strict contractual terms.

In the medium term, the EU is working on introducing a direct exchange of information between electronic interfaces/suppliers and customs authorities. Hence, electronic interfaces would not need to rely on the diligence of the underlying suppliers.

32. Can the electronic interface be involved in the flow of data to customs, i.e. sending the electronic data on consignments directly to customs?

If the electronic interface lodges the customs declaration itself, the IOSS VAT identification number can be provided directly to the customs authorities in the EU Member State of importation. It is not possible for the electronic interface to transmit the IOSS VAT identification number to the customs authorities in the EU Member State of importation without lodging the customs declaration. However, in the medium term, the European Commission is working on introducing a direct exchange of information between electronic interfaces/suppliers and customs authorities.

33. How will the IOSS VAT identification number be validated in practice? How will this be controlled and who is responsible?

The validity of the IOSS VAT identification number included in a customs declaration is checked electronically by customs authorities in the IOSS VAT identification number registry/database. The database will contain all the IOSS VAT identification numbers assigned by all Member States, including their start and end validity date. The database will not be publicly available.

When sales are made by underlying suppliers through an electronic interface which is deemed to be the supplier, the same IOSS VAT identification number of the electronic interface has to be used for all sales made through this electronic interface, irrespective of who is the underlying supplier. However, when an underlying supplier makes distance sales of imported goods through several electronic interfaces, he needs to keep clear evidence of those sales and provide in the customs declaration the correct IOSS VAT identification number for each electronic interface via which the sale was made.

The control of the correct use of the IOSS VAT identification number by underlying suppliers who are in charge of the transport is in the first place the responsibility of the electronic interface to whom this number has been allocated. The contract, agreement or general conditions to be respected by underlying suppliers should clearly describe the obligations of the underlying suppliers related to the use of the IOSS number.

The Member States will be able to control the use of the IOSS number by reconciling the amounts declared in the monthly IOSS VAT return with the monthly listing compiled from the customs declarations submitted to customs containing the total value of imports reported for each IOSS VAT identification number.

34. Do declarants only have to check the presence of the IOSS VAT identification number in the import declaration or should they also check its validity?

Declarants can only check the presence of the IOSS VAT identification number. They cannot check the validity as they do not have access to the IOSS VAT identification number database themselves. Only Member States through their national import system have access to that database enabling electronic verification of such numbers indicated in the import declaration.

35. On whose behalf does the declarant claim the VAT exemption upon import when the IOSS is used? What happens if the IOSS VAT identification number mentioned in the import declaration is not valid or is not provided at all in the import declaration?

In general, the declarant claims the VAT exemption under the IOSS. If the declarant is an indirect representative, he will claim the VAT exemption under the IOSS on behalf of the importer/consignee who has acquired the goods from a supplier or electronic interface disposing of an IOSS VAT identification number. The customer may decide, however, to import the goods directly without the use of a customs representative. More details on the declarant can be found in section 2.2.2 of the customs guidance. The supplier or electronic interface will have to communicate this number to the declarant or his customs representative.

When the IOSS VAT identification number mentioned in a customs declaration is not valid or is not provided at all, the import scheme cannot be used and the VAT exemption upon importation will not be granted. As a consequence, VAT will be levied upon importation by the customs authorities.

The responsibility for providing a valid IOSS VAT identification number lies with the supplier or the electronic interface. A customs declaration with an invalid IOSS VAT identification number cannot be accepted and it will be necessary to amend the customs declaration with a view to using the special arrangements (see section 4.3) or the standard VAT collection mechanism. Nevertheless, when an error has occurred in the initial transmission of the IOSS VAT identification number, the declarant can still amend the customs declaration where he disposes of the correct IOSS VAT identification number.

36. I am an IOSS registered supplier who makes a distance sale of goods from China to a customer in Belgium on 20 July 2021 (IOSS VAT no. 1). On 1 August 2021, I change my Member State of identification and I obtain a new IOSS VAT identification number (IOSS VAT no. 2). What happens with the goods sold on 20 July 2021 which are dispatched/transported on 21 July 2021 and are imported into Belgium on 15 August 2021?

The IOSS VAT identification number valid at the moment of transaction should always be used (i.e. the IOSS VAT no. 1). Please note that the IOSS VAT identification number first attributed remains valid up to two months after you changed your Member State of identification. This period of maximum 2 months allows the goods rightfully sold under the IOSS (IOSS VAT no.1) being released for free circulation in the EU.

The IOSS number to be put in the customs declaration lodged on 15 August 2021 should be IOSS VAT no. 1 as it was the correct one on the date of the transaction (20 July 2021). IOSS VAT no. 1 will still be valid up to 2 months after deregistration from the former Member State of identification. The goods will thus be exempt from VAT upon importation.

h) Intermediary

37. Are there any common EU criteria for intermediaries in the IOSS?

EU legislation does not lay down any common criteria or rules for acting as intermediary. However, the concept is similar to the one of 'tax representative' which certain Member States have implemented in their national legislation. Member States could decide to apply both concepts in the same way.

38. If a taxable person using the import scheme changes intermediary, will he always be attributed a new IOSS VAT identification number irrespective of the fact that both intermediaries might be established in the same Member State?

Yes, a change of intermediary automatically implies the attribution of a new IOSS VAT identification number for the respective taxable person. To be noted that previous IOSS VAT identification numbers have to be communicated to the Member State of identification when the taxable person requests registration via a new intermediary.

A new IOSS VAT identification number is also allocated in case the intermediary remains the same but changes Member State of identification.

4.3 Special Arrangements For Declaration And Payment Of Import VAT

4.3.1 Relevant provisions

The relevant provisions can be found in the VAT Directive and in the VAT Implementing Regulation.

VAT Directive

- Articles 369y-369zc

VAT Implementing Regulation

- Article 63d

4.3.2 Why were the special arrangements introduced?

As of 1 July 2021, all commercial goods imported into the EU will be subject to VAT. The special arrangements were 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. Similarly to the import scheme, use of the special arrangements is not mandatory.

4.3.3 Which transactions are covered by the special arrangements?

The special arrangements cover the importation of the following low value goods, for which neither the import scheme described in section 4.2 nor the standard VAT collection mechanism are used:

- goods are supplied to customers in the EU. The types of customers are defined in Article 14(4) of the VAT Directive (see more details in section 3.2.5), and
- goods are dispatched in consignments of an intrinsic value not exceeding EUR 150 to customers in the EU, and
- goods are not subject to EU harmonised excise duties (typically alcohol or tobacco products according to Article 2(3) of the VAT Directive)[38], and
- goods are released for free circulation in the Member State where the dispatch or transport ends.

4.3.4 Who can use the special arrangements?

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. Member States 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.

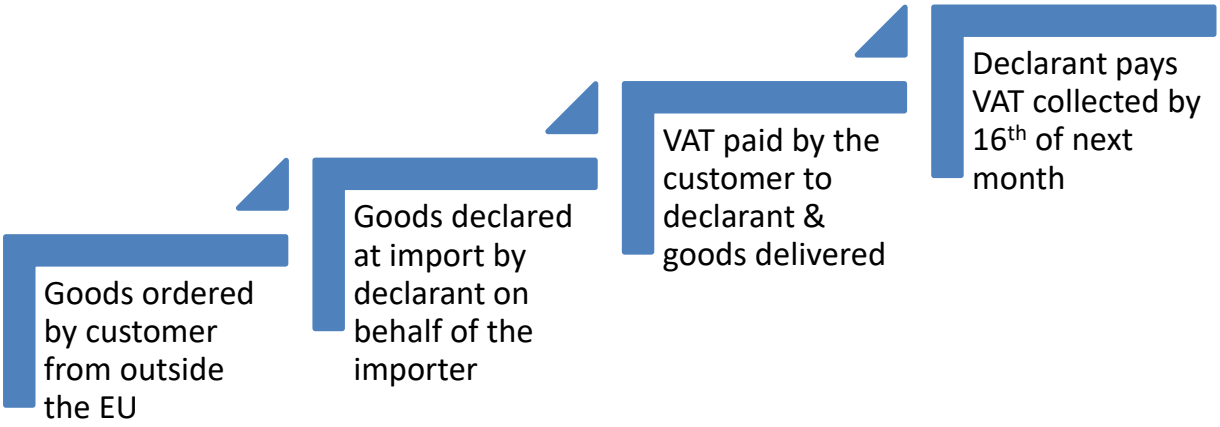
4.3.5 How does it work?

When goods are ordered from outside the EU, VAT is generally due in the EU from the customer who orders and imports the goods. Under the special arrangements, the customer pays the VAT to the declarant/person presenting the goods to customs. In the majority of cases, this declarant/person will be a postal operator, express carrier or customs agent. These special arrangements can only be used if the release for free circulation is made in the Member State in which the low value goods will be delivered to the customer/importer.

The sequence of events is set out in figure 7 below:

[38] However, perfume and toilet water are covered by the special arrangements, even though they are excluded from the customs duty exemption relating to consignments with negligible value (Article 24 of Council Regulation (EC) No 1186/2009 setting up a Community system of reliefs from customs duty).

Figure 7: Summary of special arrangements



The following facilitations are provided under the special arrangements:

- EU Member States may provide for the use of the standard VAT rate for all goods declared under the special arrangements. This facilitates the declaration process for the declarants who may face difficulties having to determine the correct VAT rate on highly diverse goods contained in low value consignments. However, the customer may refuse the automatic application of the standard rate and can choose the reduced rate. In this situation, the declarant (person presenting the goods to customs) can no longer apply the special arrangements for this importation of goods. He will collect the VAT from the customer via the standard VAT collection mechanism and will need to amend the initial customs declaration in what regards the type of payment arrangement (replacing special arrangements with the standard VAT collection mechanism).

- The person presenting the goods to customs will remit to the tax/customs authorities only the VAT he actually collected from the customer during a calendar month. This measure avoids that for goods not delivered or not accepted by a customer/importer, the declarant/customs representative would be liable to pay the related VAT. Note that since import VAT is not considered as part of the customs debt, the person presenting the goods to customs only becomes liable for such VAT under the VAT Directive and not under the customs legislation. The declarant/customs representative should keep proof of non-delivery/non-acceptance (e.g. proof of exit) from the customer/importer to justify the waiver of the VAT due on those consignments. To comply with the customs rules, the goods need to be exported with a view of their return to the original supplier's address or another address indicated by that supplier and the customs declaration for release for free circulation needs to be invalidated.

- The declarant/person presenting goods to customs will make a single monthly payment to the competent authorities of all the VAT collected from customers (Article 369zb(2) of the VAT Directive). Since for the special arrangements the reference period is the calendar month, the monthly payment is deferred until the 16th day of the month following the month when VAT is collected.

- The monthly declaration referred to in Article 369zb(1) of the VAT Directive serves as a basis of the single monthly payment and does not represent a customs declaration. This declaration is submitted electronically and shows the VAT amounts effectively collected by the person making use of the special arrangements from the individual customers during the relevant calendar month. Member States may accept any document which contains the information necessary to connect the global payment to the VAT collected on the imports having taken place during the preceding calendar month.

- Example*:* Goods are imported on 31 August 2021 in Belgium via the Belgian postal operator. The customer pays to the Belgian postal operator the amount of VAT corresponding to the standard VAT rate on 2 September 2021. The Belgian postal operator is required to pay this VAT by 16 October 2021 together with any other VAT collected under special arrangements during the month of September 2021. Note that in practice the month of importation will often coincide with the month when VAT is collected as the declarant will generally ensure that he has received the amount of VAT to be paid prior to delivery of the goods.

- The special arrangements do not change the existing principles of customs clearance. The application of the special arrangements does not oblige Member States to require the person presenting the goods to customs to provide the evidence of his empowerment by the customer.

4.3.6 What do economic operators using special arrangements need to do?

The economic operators using the special arrangements need to ensure that the VAT they collect is correct based on the commercial invoice/documents accompanying the imported goods. In essence, they need to ensure that the intrinsic value declared is correct, apply the correct VAT rate and generally ensure that they do not deliver the goods until they receive payment of the VAT from the customer in the EU.

The economic operators also need to keep records of the transactions covered by the special arrangements. These records should, inter alia, allow them to justify the non-payment of VAT on parcels refused by the customer. It is for the Member States to determine the period during which the records must be kept. This record-keeping requirement does not introduce new obligations for the declarant in addition to their existing record-keeping obligations under customs legislation.

4.3.7 Practical example

A Portuguese citizen buys 2 books online in the web-shop of a Brazilian editor for a total value of EUR 40. This price does not include VAT.

The Brazilian editor packs the books in an envelope. This consignment is picked up by the Brazilian Post from the warehouse of the Brazilian editor, together with other similar consignments. The Brazilian Post sends an ITMATT message to the Portuguese Post based on the information provided by the Brazilian editor inter alia on the identity and address of the Portuguese customer and a description of the goods (including the value and the relevant commodity code). The consignment is transported by air in a postal bag and arrives in Lisbon, where the postal bag is handed over to Portuguese Post.

Fiscal treatment:

- Import VAT is due in Portugal. Under the special arrangements, Portugal may allow systematic application of the standard VAT rate (23%). If it does not allow for this option, the books will be subject to the reduced Portuguese VAT rate (6%);

- The person presenting the goods to customs (e.g. Portuguese Post) submits a customs import declaration with a reduced dataset[39] to Portuguese customs. The VAT amount to be paid by the customer to the person presenting the goods is EUR 9.20 or EUR 2.40 depending on whether or not Portugal provides for the standard VAT rate to be applied;

- When Portuguese Post delivers the goods, the customer may accept or refuse the parcel:

  - ✓ If the customer accepts the parcel, he pays VAT to Portuguese Post most likely before or at the time of delivery. Portuguese Post declares and pays this VAT together with the VAT collected on all imports under the special arrangements for the respective calendar month to the Portuguese customs by the 16th day of the month following the month when VAT is collected;

  - ✓ If the customer refuses the parcel (e.g. the wrong books were supplied, or he did not expect having to pay additional amounts), and does not pay the VAT to Portuguese Post, no VAT is collected. Therefore no VAT is to be paid by the Portuguese Post for this operation. Portuguese Post will have to keep records justifying the non-payment of the VAT on refused parcels. To comply with the customs rules, the goods need to be exported with a view of their return to the original supplier's address or another address indicated by that supplier and the customs declaration for release for free circulation needs to be invalidated. The customer may claim back the amount paid for the goods (EUR 40) from the supplier under normal commercial procedures.

[39] See section 3.2 of the customs guidance.

5 APPLICATION OF ARTICLE 14A DEEMED SUPPLIER – SCENARIOS

We are presenting below certain scenarios for the application of the deemed supplier provisions in Article 14a. These scenarios present in a schematic way the VAT implications and, if applicable, the customs implications arising for electronic interfaces becoming deemed suppliers under Article 14a.

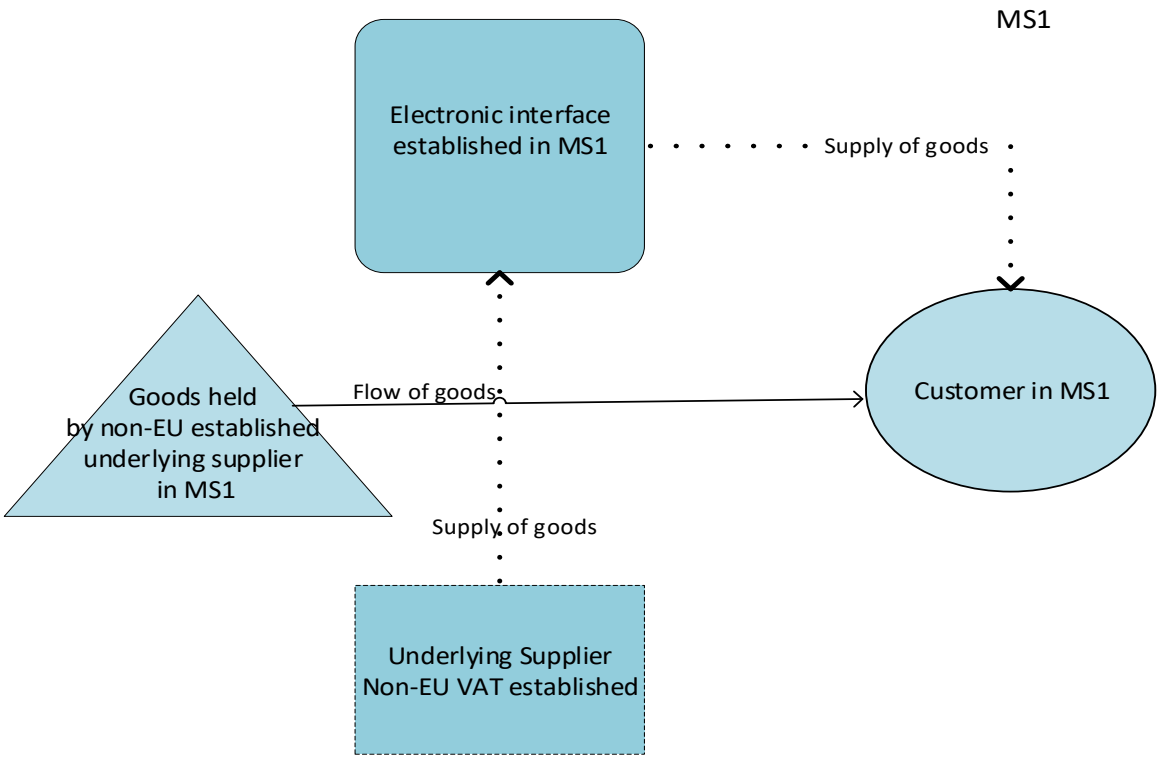
5.1 DEEMED SUPPLIER FACILITATING SUPPLIES OF GOODS WITHIN THE EU

For Scenarios 1a, 1b and 1c and Scenarios 2a, 2b and 2c, the goods are either EU goods or goods already in free circulation in the EU. For the application of Article 14a(2), it is possible that goods were imported from a third country by the underlying supplier at a previous stage (separate transaction).

If the underlying supplier imported the goods before supplying them to customers in the EU, this latter supply to the customer does not qualify for being a distance sale of imported goods under Article 14a(1).

Scenario 1a: Domestic supplies under Article 14a(2) (goods, the electronic interface and customers are in the same Member State)

- Customer in MS1 orders goods via an electronic interface (EI) from a non-EU established underlying supplier. The EI is established in MS1.
- The underlying supplier holds goods in MS1 which are dispatched/transported to the customer in MS1 (domestic supply of goods).



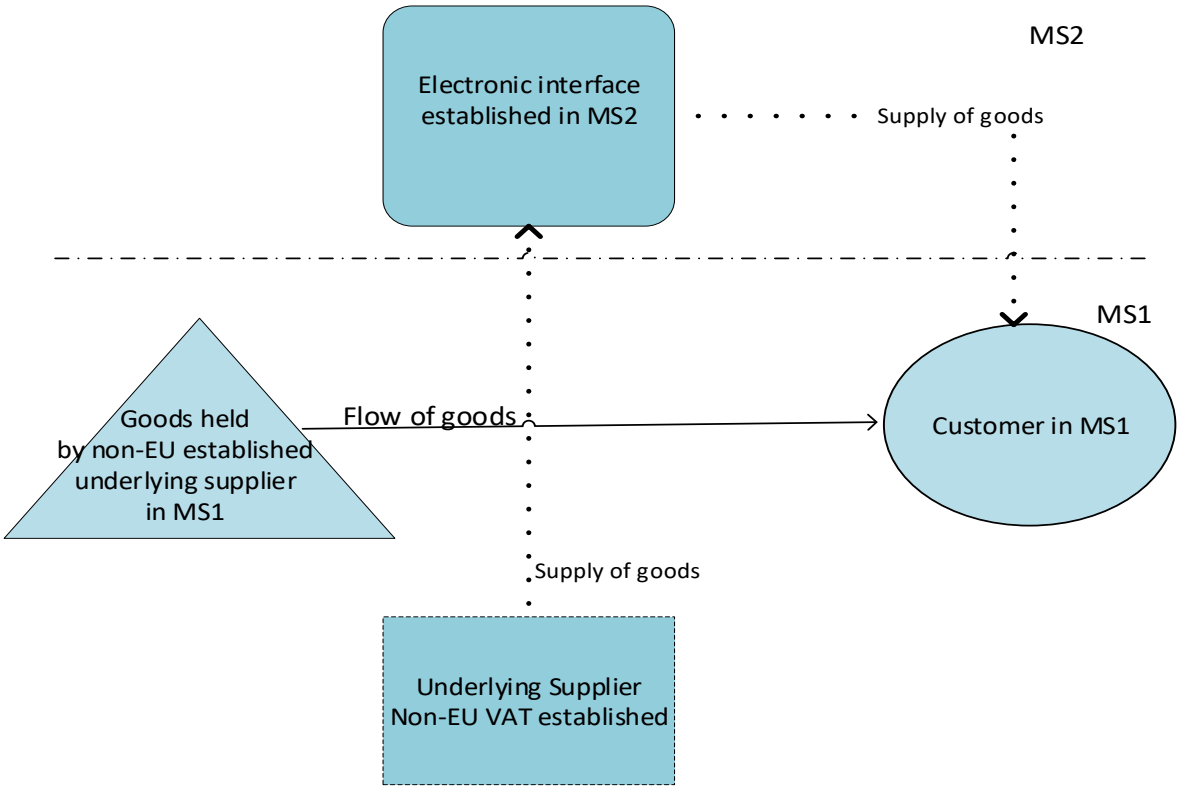
VAT Implications:

1. Taxable person: EI is the deemed supplier as the underlying supplier is not established in the EU (Article 14a(2)) → EI can opt to use Union scheme (Article 369b(b)) → EI registers in Union scheme in MS1 where it is established and will use the VAT identification number it already has in MS1 (Article 369d)
2. Taxable transactions:
   a. B2B supply from the underlying supplier to the EI;
   b. B2C supply from the EI to customer in MS1
3. Place of supply (PoS): allocation of transport in Article 36b
   a. B2B supply is without transport → PoS in MS1 (Article 31) → underlying supplier must register for VAT in MS1 (revised Article 272(1)(b))
   b. B2C supply is with transport → PoS in MS1 (Article 32(1))→ VAT is due in MS1 (VAT rate applicable to the goods in MS1)
4. VAT chargeability: for B2B supply and B2C supply, when payment is accepted by the underlying supplier (Article 66a)
5. Person liable to pay VAT:
   a. B2B supply: exempt with right of deduction (Articles 136a and 169)
   b. B2C supply: EI is liable to pay VAT via OSS to MS1 tax authorities
6. VAT reporting: EI submits OSS VAT return to MS1 tax authorities (Article 369g(1)(b))

Note: This is pure domestic transaction. If the EI does not use the Union scheme, it must report this B2C supply in its domestic VAT return to be submitted in MS1 (Article 250).

Scenario 1b: Domestic supplies under Article 14a(2) (goods and customer are in MS1 and EI is in MS2)

- Customer in MS1 orders goods via an EI from a non-EU established underlying supplier. The EI is established in MS2.
- The underlying supplier holds goods in MS1 which are dispatched/transported to the customer in MS1 (domestic supply of goods).

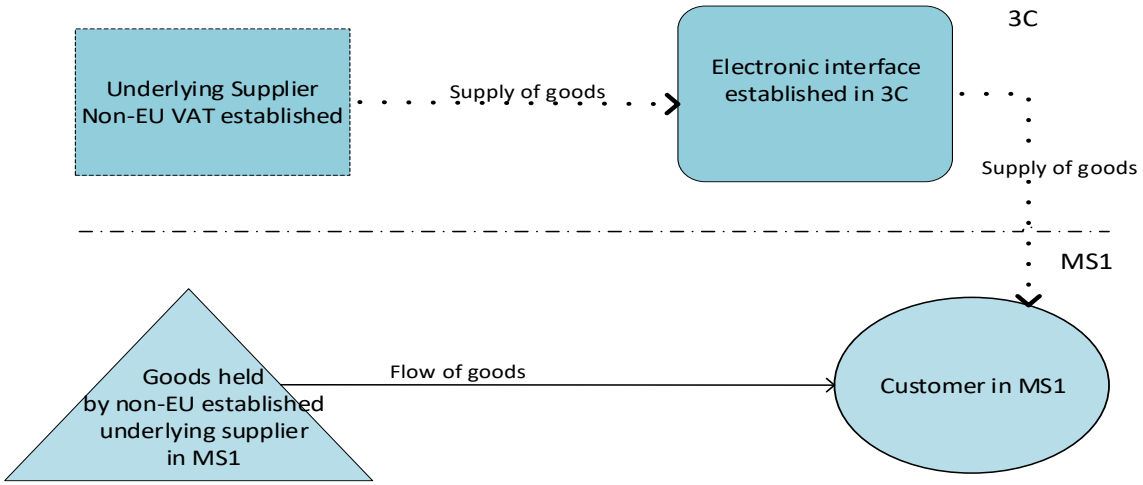


<u>VAT Implications</u>

1. Taxable person: EI is the deemed supplier as the underlying supplier is not established in the EU (Article 14a(2)) → EI can opt to use Union scheme (Article 369b(b)) → EI registers in Union scheme in MS2 where it is established and will use the VAT identification number the EI already has in MS2 (Article 369d)→ EI does not need to register for VAT in MS1
2. Taxable transactions:
   a. B2B supply from the underlying supplier to the EI;
   b. B2C supply from the EI to customer in MS1
3. Place of supply (PoS): allocation of transport in Article 36b
   a. B2B supply is without transport → PoS in MS1 (Article 31) → The underlying supplier must register for VAT in MS1 (revised Article 272(1)(b))
   b. B2C supply is with transport → PoS in MS1 (Article 32(1)) → VAT is due in MS1 (VAT rate applicable to the goods in MS1)
4. VAT chargeability: for B2B supply and B2C supply, when payment is accepted by the underlying supplier (Article 66a)
5. Person liable to pay VAT:
   a. B2B supply: exempt with right of deduction (Articles 136a and 169)
   b. B2C supply: EI is liable to pay VAT via OSS to MS2 tax authorities who will transfer the VAT to MS1 tax authorities
6. VAT reporting: EI submits OSS VAT return to MS2 tax authorities → declares the VAT amount and VAT rate of MS1 (Article 369g(2)(b))

Scenario 1c: Domestic supplies under Article 14a(2) (goods and customer are in MS1 and EI is in a third country)

- Customer in MS1 orders goods via an EI from a non-EU established underlying supplier. The EI is established in a third country (3C).
- The underlying supplier holds goods in MS1 which are dispatched/transported to the customer in MS1 (domestic supply of goods).



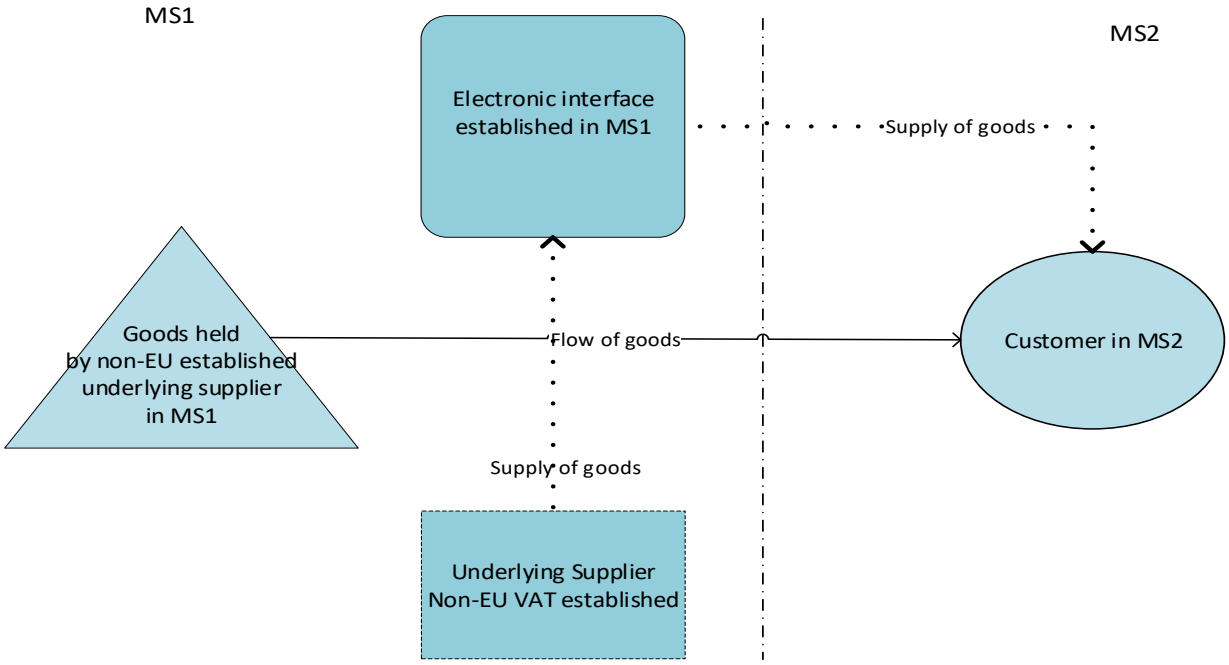
VAT Implications

1. Taxable person: EI is the deemed supplier as the underlying supplier is not established in the EU (Article 14a(2)) → EI can opt to use Union OSS (Article 369b(b)) → MSI can be any MS where goods are supplied from (the third subparagraph of Article 369a(2)) → EI registers in MS1[40]
2. Taxable transactions:
   a. B2B supply from the underlying supplier to the EI;
   b. B2C supply from the EI to the customer in MS1
3. Place of supply (PoS): allocation of transport in Article 36b
   a. B2B supply is without transport → PoS in MS1 (Article 31) → underlying supplier must register for VAT in MS1 (revised Article 272(1)(b))
   b. B2C supply is with transport → PoS in MS1 (Article 32(1)) → VAT is due in MS1 (VAT rate applicable to the goods in MS1)
4. VAT chargeability: for B2B supply and B2C supply → when payment is accepted by the underlying supplier (Article 66a)
5. Person liable to pay VAT:
   a. B2B supply: exempt with right of deduction (Articles 136a and 169)
   b. B2C supply: EI is liable to pay VAT via OSS to MS1 tax authorities
6. VAT reporting: EI submits OSS VAT return to MS1 tax authorities (Article 369g(1)(b))

[40] More details on the registration process can be found in the OSS guide.

Scenario 2a: Intra-Community Distance Sales under Article 14a(2) (goods and EI in MS1 and goods dispatched to customer in MS2)

- Customer in MS2 orders goods via an EI from a non-EU established underlying supplier. The EI is established in MS1.
- The underlying supplier holds goods in MS1 which are dispatched/transported to the customer in MS2 (intra-Community distance sale of goods).

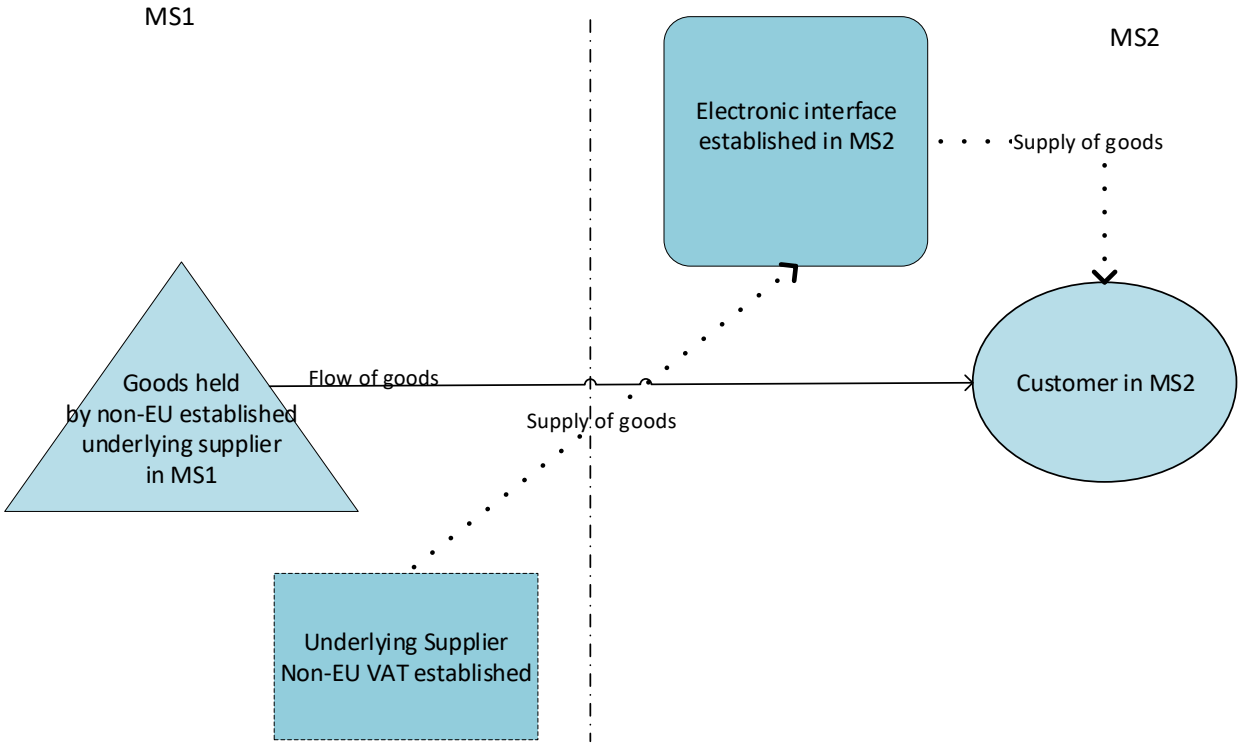


VAT Implications

1. Taxable person: EI is the deemed supplier as the underlying supplier is not established in the EU Article 14a(2) → EI can opt to use Union scheme (Article 369b(b)) → EI registers in Union scheme in MS1 where it is established and will use the VAT identification number it already has in MS1 (Article 369d)
2. Taxable transactions:
   a. B2B supply from the underlying supplier to the EI;
   b. B2C supply from the EI to the customer in MS2
3. Place of supply (PoS): allocation of transport in Article 36b
   a. B2B supply is without transport → PoS in MS1 (Article 31) → underlying supplier must register for VAT in MS1 (revised Article 272(1)(b))
   b. B2C supply is with transport → PoS in MS2 (Article 33(a)) → VAT is due in MS2 (VAT rate applicable to the goods in MS2)
4. VAT chargeability: for B2B supply and B2C supply → when payment is accepted by the underlying supplier (Article 66a)
5. Person liable to pay VAT:
   a. B2B supply: exempt with right of deduction (Articles 136a and 169)
   b. B2C supply: EI is liable to pay VAT via OSS to MS1 tax authorities who will transfer the VAT to MS2 tax authorities
6. VAT reporting: EI submits OSS VAT return to MS1 tax authorities → VAT amount and VAT rate of MS2 (Article 369g(1)(a))

Scenario 2b: Intra-Community Distance Sales under Article 14a(2) (goods in MS1, EI and customer in MS2)

- Customer in MS2 orders goods via an EI from a non-EU established underlying supplier. The EI is established in MS2.
- The underlying supplier holds goods in MS1 which are dispatched/transported to the customer in MS2 (intra-Community distance sale of goods)

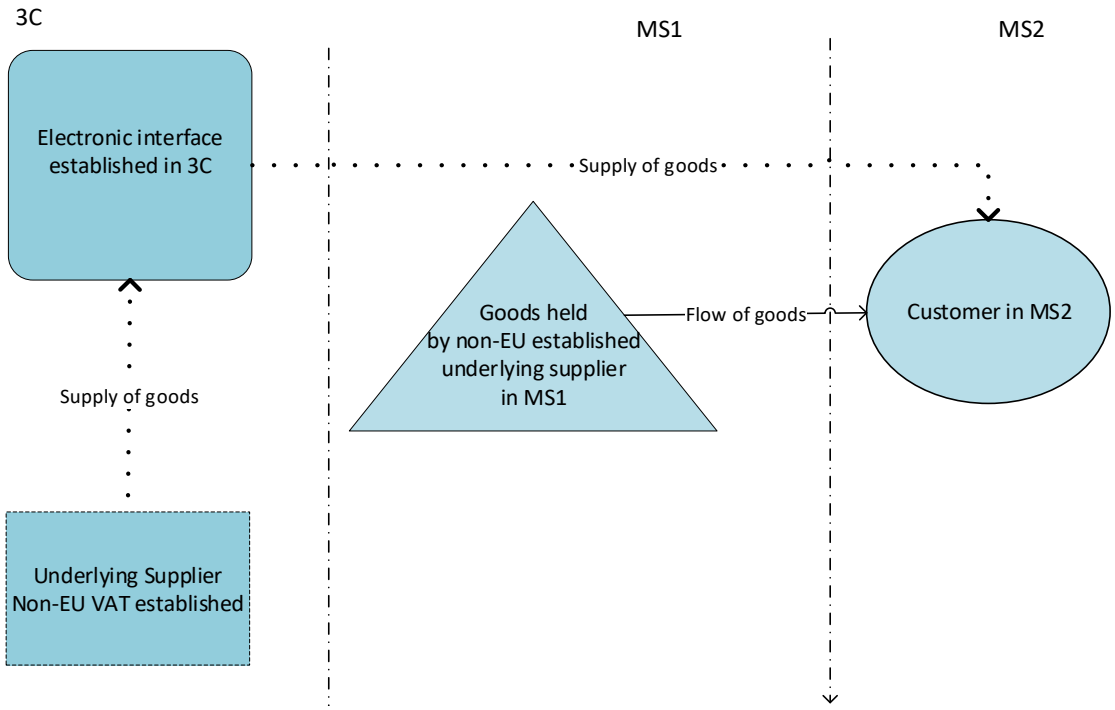


<u>VAT Implications</u>

1. Taxable person: EI is the deemed supplier as the underlying supplier is not established in the EU (Article 14a(2)) → EI can opt to use Union scheme (Article 369b(b)) → EI registers in Union scheme in MS2 where it is established and will use the VAT identification number it already has in MS2 (Article 369d) → EI does not need to register for VAT in MS1 (wherefrom goods are dispatched)
2. Taxable transactions:
   a. B2B supply from the underlying supplier to the EI;
   b. B2C supply from the EI to the customer in MS2
3. Place of supply (PoS): allocation of transport in Article 36b
   a. B2B supply is without transport → PoS in MS1 (Article 31) → underlying supplier must register for VAT in MS1 (revised Article 272(1)(b))
   b. B2C supply is with transport → PoS in MS2 (Article 33(a)) → VAT is due in MS2 (VAT rate applicable to the goods in MS2)
4. VAT chargeability for B2B supply and B2C supply: when payment is accepted by the underlying supplier (Article 66a)
5. Person liable to pay VAT:
   a. B2B supply: exempt with right of deduction (Articles 136a and 169)
   b. B2C supply: EI is liable to pay VAT via OSS to MS2 tax authorities
6. VAT reporting: EI submits OSS VAT return to MS2 tax authorities → VAT amount and VAT rate of MS2 (Article 369g(2)(b))

Scenario 2c: Intra-Community Distance Sales under Article 14a(2) (goods in MS1, customer in MS2 and EI in a third country)

- Customer in MS2 orders goods via an EI from a non-EU established underlying supplier. The EI is established in a third country (3C).
- The underlying supplier holds goods in MS1 which are delivered/transported to the customer in MS2 (intra-Community distance sale of goods)



VAT Implications

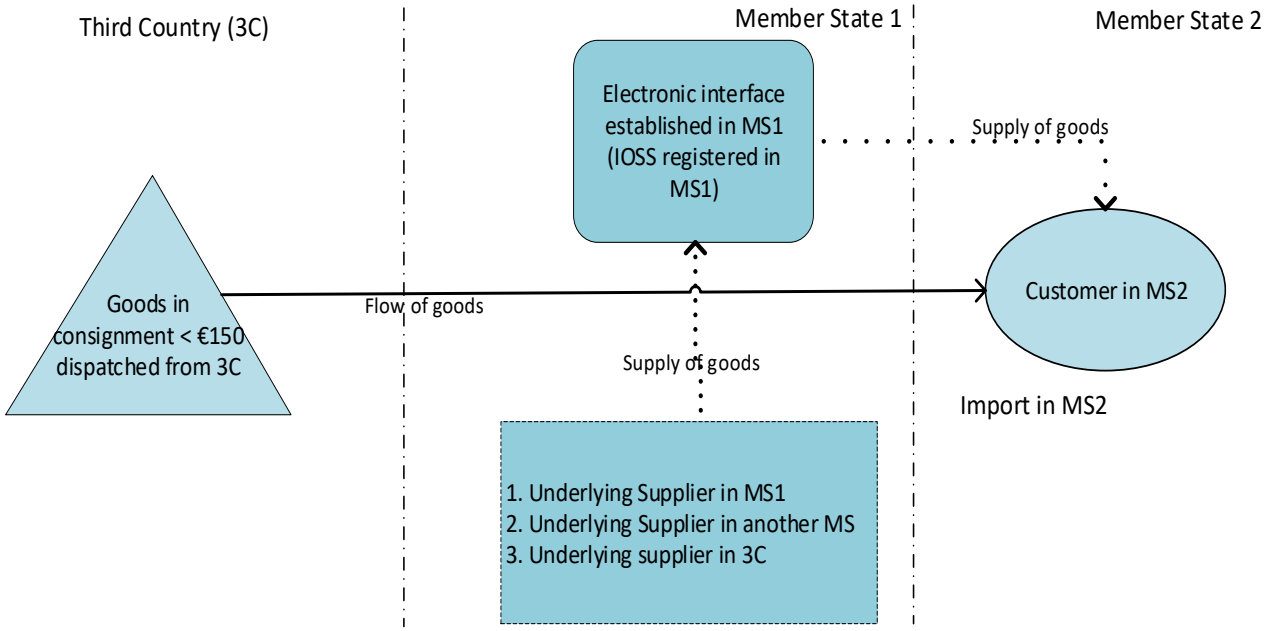
1. Taxable person: EI is the deemed supplier as the underlying supplier is not established in the EU (Article 14a(2)) → EI can opt to use Union scheme (Article 369b(b)) → MSI can be any MS where goods are supplied from (the third subparagraph of Article 369a(2)) → EI registers in MS1
2. Taxable transactions:
   a. B2B supply from the underlying supplier to the EI;
   b. B2C supply from the EI to the customer in MS2
3. Place of supply (PoS): allocation of transport in Article 36b
   a. B2B supply is without transport → PoS in MS1 (Article 31) → underlying supplier must register for VAT in MS1 (revised Article 272(1)(b))
   b. B2C supply is with transport → PoS in MS2 (Article 33(a)) → VAT is due in MS2 (VAT rate applicable to the goods in MS2)
4. VAT chargeability: for B2B supply and B2C supply, when payment is accepted by the underlying supplier (Article 66a)
5. Person liable to pay VAT:
   a. B2B supply: exempt with right of deduction (Articles 136a and 169)
   b. B2C supply → EI is liable to pay VAT via OSS to MS1 tax authorities which transfer the VAT to MS2 tax authorities
6. VAT reporting: EI submits OSS VAT return to MS1 tax authorities → declares the VAT amount and VAT rate of MS2 (Article 369g(1)(a))

5.2 DEEMED SUPPLIER FACILITATING DISTANCE SALES OF IMPORTED GOODS

In Scenarios 3a-3c and 4a-4b, the goods are always dispatched from a third territory or a third country to a customer in an EU Member State. The scenarios aim to briefly describe the VAT and customs implications when the electronic interface (as deemed supplier) registers in the IOSS or when it does not register in the IOSS.

Scenario 3a: Importation of goods – use of IOSS (EI and customer are in different Member States)

- Customer in MS2 orders goods not exceeding EUR 150 through an EI established in MS1 from an underlying supplier. Customer indicates place of delivery to be in MS2.
- Goods are dispatched on behalf of the underlying supplier from a third country (3C) to the customer in MS2 where the goods are imported[41].



A. VAT Implications:

1. Taxable person: EI is the deemed supplier (Article 14a(1)) → EI registers in IOSS in MS1 (Article 369m) and obtains an IOSS VAT identification number in MS1 (Article 369q(1))
2. Taxable transactions:
   a. Distance sale of imported goods: 2 supplies from the application of Article 14a(1)
      i. B2B supply from the underlying supplier to the EI
      ii. B2C supply from the EI to customer in MS2
   b. Importation in MS2 (Article 30(1)).
3. Place of supply (PoS):
   a. Distance sale of imported goods: 2 supplies from the application of Article 14a(1)
      iii. B2B supply is without transport (Article 36b) → PoS in the 3C (outside the EU) (Article 31) → no EU VAT obligations
      iv. B2C supply is with transport (Article 36b) → PoS in MS2 (Article 33(c)) → VAT is due in MS2 (VAT rate applicable to the goods in MS2)
   b. Importation: in MS2 (Article 60)

[41] When IOSS is used, goods can be customs cleared in any EU MS, regardless in which MS the consumer is established.

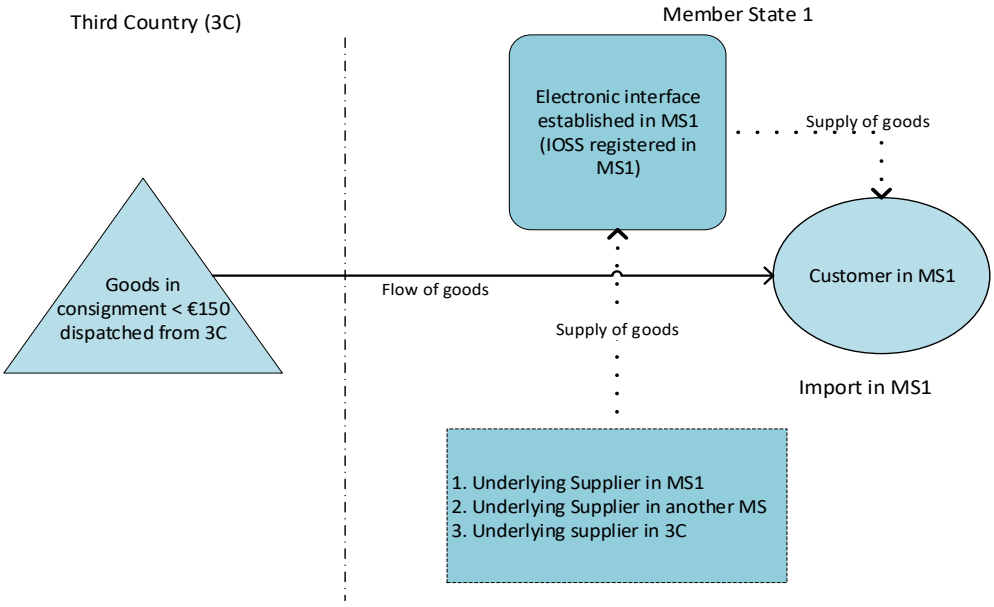
4. VAT chargeability for B2C supplies: when payment is accepted by the underlying supplier (Article 66a)
5. Person liable to pay VAT:
   a. Distance sale of imported goods:
      i. B2B supply: outside the scope of EU VAT (Articles 31 and 36b – see point 3a(i) above)
      ii. B2C supply: EI is liable to pay VAT via IOSS to MS1 which transfers the VAT to MS2 tax authorities
   b. Importation: IOSS number sent electronically to customs in MS2 in the customs declaration (H7 or I1 or H6 or H1 dataset, data element 3/40) → Customs checks validity of the IOSS number electronically in the IOSS database:
      i. Valid IOSS number → VAT exempt importation in MS2 (Article 143(1)(ca)) → goods are released for free circulation
      ii. Invalid IOSS number → taxed importation in MS2 (standard rules or special arrangements can be used) → **person designated to pay VAT in MS2** (Article 201) → see Scenario 4a no IOSS
6. VAT reporting:
   - EI submits monthly IOSS VAT returns to MS1 tax authorities indicating the VAT amount and rate in MS2 (Article 369s)
   - EI keeps records of sales and returns of goods (Article 63c of VAT IR)

B. Customs Implications:

1. Importer: Consignee = customer in MS2
2. Exporter: Consignor = underlying supplier (seller of the goods)
3. Presentation to customs: by carrier/declarant at the first point of entry in the EU (Article 139 UCC)
4. Customs declaration: lodged in any of the EU MS (choice of the declarant)
   Form of the customs declaration:
   - standard customs declaration with super reduced dataset (Article 143a UCC DA with H7); or
   - simplified customs declaration (Article 166 UCC with I1); or
   - customs declaration for postal consignments up to EUR 1 000 (Article 144 UCC-DA with H6); or
   - standard customs declaration with full dataset (Article 162 UCC with H1)
5. Declarant: post/ express carrier/ customs agent/consignee
6. Customs procedure: release for free circulation
7. Acceptance of the customs declaration: by customs, upon presentation of the goods and check of the requirements for the choice of the customs declaration (e.g. validity of the IOSS VAT identification number, value of the goods declared not to exceed EUR 150, etc.)
   1. Release of the goods: by customs, no VAT and no customs duties due.
   2. Monthly reporting: periodic transmission of relevant data elements in the customs declaration to Surveillance3 system

Scenario 3b: Importation of goods – use of IOSS (EI and customer are in the same Member State)

- Customer in MS1 orders goods not exceeding EUR 150 through an EI established also in MS1 from an underlying supplier. Customer indicates place of delivery to be in MS1.
- Goods are dispatched on behalf of the underlying supplier from a 3C to the customer in MS1 where the goods are imported[42].



A. VAT Implications:

1. Taxable person: EI is the deemed supplier (Article 14a(1)) → EI registers in IOSS in MS1 (Article 369m) and obtains an IOSS VAT identification number in MS1 (Article 369q(1))
2. Taxable transactions:
   a. Distance sale of imported goods: 2 supplies from the application of Article 14a(1)
      i. B2B supply from the underlying supplier to the EI;
      ii. B2C supply from the EI to customer in MS1
   b. Importation in MS1 (Article 30(1))
3. Place of supply (PoS):
   a. Distance sale of imported goods: 2 supplies from the application of Article 14a(1)
      i. B2B supply is without transport (Article 36b) → PoS in the 3C (outside the EU) (Article 31) → no EU VAT obligations
      ii. B2C supply is with transport (Article 36b) → PoS in MS1 (Article 33(c)) → VAT is due in MS1 (VAT rate applicable to the goods in MS1)
   b. Importation: in MS1 (Article 60)
4. VAT chargeability for B2C supplies → when payment is accepted by the underlying supplier (Article 66a)
5. Person liable to pay VAT
   a. Distance sale of imported goods:
      i. B2B supply: outside the scope of EU VAT (Articles 31 and 36b – see point see point 3a(i) above);
      ii. B2C supply: EI is liable to pay VAT via IOSS to MS1 tax authorities.
   b. Importation: IOSS number sent electronically to customs in MS1 in the customs declaration (H7 or I1 or H6 or H1 dataset, data element 3/40) → Customs checks validity of IOSS number electronically in IOSS database:

[42] When IOSS is used, goods can be customs cleared in any EU Member State, regardless in which Member State the consumer is established.

i. Valid IOSS number → VAT exempt importation in MS1 (Article 143(1)(ca)) → goods are released for free circulation
ii. Invalid IOSS number → importation in MS1 (standard rules or special arrangements can be used) → **person designated to pay VAT in MS1** (Article 201) → see Scenario 4a no IOSS

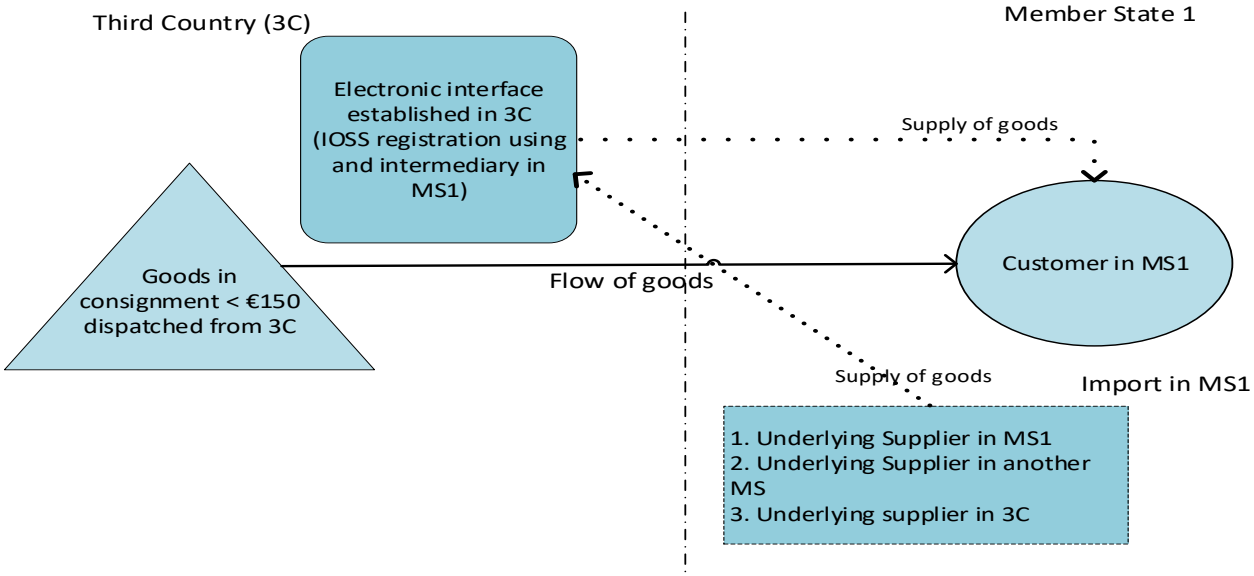
6. VAT reporting:
   - EI submits monthly IOSS VAT return to MS1 tax authorities indicating the VAT amount and rate in MS1 (Article 369s). These supplies are **not** reported in **the domestic VAT return**.
   - EI keeps records of sales and returns of goods (Article 63c of VAT IR)

B. Customs Implications:

Overall the same as in Scenario 3a, only difference is replacing MS2 by MS1.

Scenario 3c: Importation of goods – use of IOSS (3C-established EI and customer is in a Member State)

- Customer in MS1 orders goods not exceeding EUR 150 through an EI established in a 3C from an underlying supplier. Customer indicates place of delivery to be in MS1.
- Goods are dispatched on behalf of the underlying supplier from a 3C to the customer in MS1 where the goods are imported[43].



A. VAT Implications:

1. Taxable person: EI is the deemed supplier (Article 14a(1)) → EI registers in IOSS via intermediary established in MS1[44] (Article 369m). Intermediary obtains an IOSS VAT identification number in MS1 for the EI (Article 369q(3))
2. Taxable transactions:
   a. Distance sale of imported goods: 2 supplies from the application of Article 14a(1)
      i. B2B supply from the underlying supplier to the EI;
      ii. B2C supply from the EI to customer in MS1
   b. Importation in MS1 (Article 30(1))
3. Place of supply (PoS):
   a. Distance sale of imported goods: 2 supplies from the application of Article 14a(1)
      i. B2B supply is without transport (Article 36b) → PoS in the 3C (outside the EU) (Article 31) → no EU VAT obligations
      ii. B2C supply is with transport (Article 36b) → PoS in MS1 (Article 33(c)) → VAT is due in MS1 (VAT rate applicable to the goods in MS1)
   b. Importation: in MS1 (Article 60)
4. VAT chargeability for B2C supplies → when payment is accepted by the underlying supplier (Article 66a)
5. Person liable to pay VAT
   a. Distance sale of imported goods:

[43] When IOSS is used, goods can be customs cleared in any EU Member State, regardless in which Member State the consumer is established.

[44] Intermediary does not have to be established in the Member State of final destination of the goods, he can be established in any EU Member State and it will be there he will register for IOSS the EI. In this example the intermediary is registered in MS1. Intermediary needs to register to be allowed to use the IOSS for suppliers/EIs (Article 369q(2)). It is not a VAT identification number.

i. B2B supply: outside the scope of EU VAT (Articles 31 and 36b – see point see point 3a(i) above);
ii. B2C supply: intermediary is liable to pay VAT on behalf of EI via IOSS to MS1 tax authorities.

b. Importation: IOSS number sent electronically to customs in MS1 in the customs declaration (H7 or I1 or H6 or H1 dataset, data element 3/40) → Customs checks validity of IOSS number electronically in IOSS database:
   i. Valid IOSS number → VAT exempt importation in MS1 (Article 143(1)(ca)) → goods are released for free circulation
   ii. Invalid IOSS number → importation in MS1 (standard rules or special arrangements can be used) → **person designated to pay VAT in MS1** (Article 201)→ see Scenario 4a no IOSS

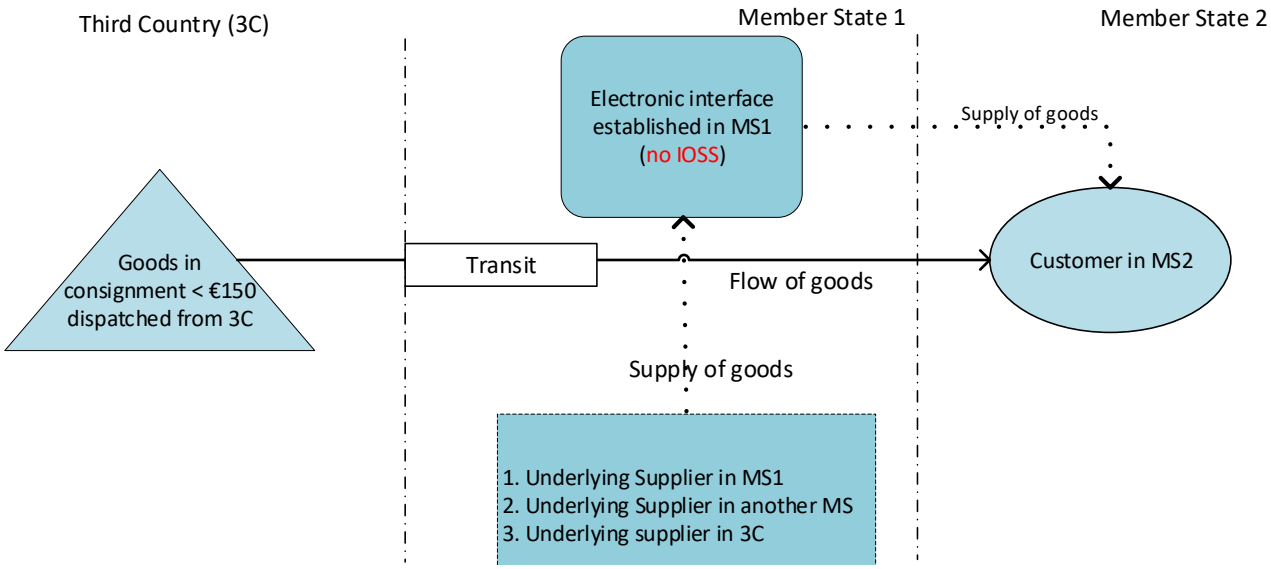
6. VAT reporting:
   - Intermediary, on behalf of the EI, submits monthly IOSS VAT return to MS1 tax authorities indicating the VAT amount and rate in MS1 (Article 369s)
   - Intermediary, on behalf of the EI, keeps records of sales and returns of goods (Article 63c of VAT IR)

B. Customs Implications:

Same as in Scenario 3a, only difference is having to replace MS2 by MS1.

Scenario 4a: Importation of goods – no use of IOSS → Arrival of goods in MS1, transit to MS2 and import into MS2

- Customer in the EU (e.g. MS2) orders goods not exceeding EUR 150 through an EI established either in a MS (or in a 3C) from an underlying supplier. Customer indicates place of delivery to be in MS2.
- Goods are dispatched on behalf of the underlying supplier from the 3C to MS1 and from MS1 transported to MS2 be delivered to the customer.



Article 221 of the UCC IA[45] was amended[46] to clarify that the customs office competent for declaring the import of low value goods is the customs office situated in the Member State where the dispatch or the transport of the goods ends, if those goods are declared for VAT purposes under a scheme other than the IOSS. The objective of this amendment was to ensure that the VAT rate of the Member State of destination of the goods is charged on these goods. Thus, as of 1 July 2021, all such goods will be placed in transit until arrival in the final EU Member State of destination.

In practice, the goods can only be put then into free circulation in the Member State of destination of goods. Thus, when goods first arrive in MS1 they will have to be placed under transit procedure and transported to MS2.

A. VAT Implications:

1. Taxable person: EI is the deemed supplier (Article 14a(1)). EI does not register in IOSS.
2. Taxable transactions:
   a. Distance sale of imported goods: 2 supplies from the application of Article 14a(1)
      i. B2B supply from the underlying supplier to the EI;
      ii. B2C supply from the EI to customer in MS2.
   b. Importation in MS2 (Article 30(1));
3. Place of supply (PoS):
   a. Distance sale of imported goods: 2 supplies from the application of Article 14a(1)

[45] Commission Implementing Regulation (EU) 2015/2447
[46] Commission Implementing Regulation (EU) 2020/893, Article 221(4).

   i. B2B supply is without transport (Article 36b) → PoS in 3C (outside the EU) (Article 31) → no EU VAT obligations
   ii. B2C supply is with transport (Article 36b) → PoS is in 3C where the transport of goods begins (outside the EU) (Article 32(1)) → no EU VAT obligations
  b. Importation in MS2 by customer (Article 61)
4. VAT chargeability
  a. Distance sale of imported goods: N/A (PoS outside the EU – see point 3a above)
  b. Importation: When goods are imported, after transit procedure ends (Article 71)
5. Person liable to pay VAT: Importation in MS2 – person to be designated to pay VAT in MS2 (Article 201). If person liable to pay VAT in MS2 is the customer, VAT on importation can be paid through:
  a. special arrangements: customer pays VAT to post/express carrier/customs agent and goods are delivered → monthly payment of the VAT collected by post/express carrier/customs agent to competent authority in MS2 (Article 369zb(2))
  b. standard procedure – VAT payment by declarant to customs and release into free circulation, irrespective of value of goods.

Note: Member States may decide freely the person liable to pay import VAT. The general practice in Member States is to consider the customer/consignee to be the person liable for VAT. Thus, Scenario 4a will be normally applicable if the IOSS is not used, irrespective of the obligation provided under Article 14a(1).

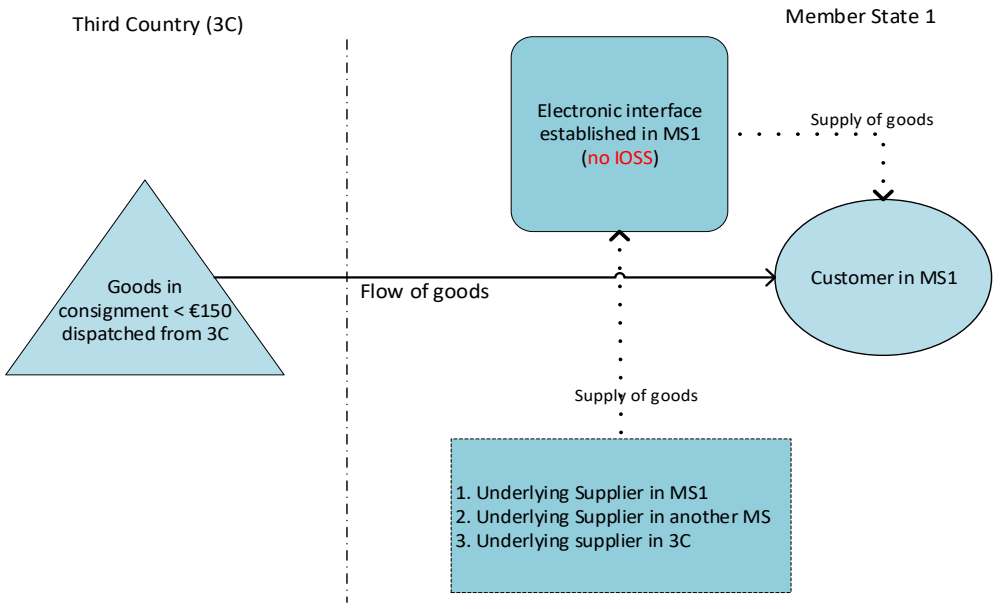
However, at the moment of publication of this Explanatory Notes one Member State decided to designate the EI the person liable to pay VAT.

B. Customs Implications:

1. Importer: Consignee = customer in MS2
2. Exporter: Consignor = underlying supplier (seller of the goods)
3. Presentation to customs: by carrier/declarant (if different than carrier) at the first point of entry in the EU (Article 139 UCC)
4. Transit declaration: goods to be placed under transit procedure and moved to MS2
5. Customs declaration for release for free circulation: lodged only in MS2 (Article 221(4) UCC IA)
   Form of the customs declaration:
   - standard customs declaration with super reduced dataset (Article 143a UCC DA with H7); or
   - simplified customs declaration (Article 166 UCC with I1); or
   - customs declaration for postal consignments up to EUR 1 000 (Article 144 UCC-DA with H6); or
   - standard customs declaration with full dataset (Article 162 UCC with H1)
6. Declarant:
   - post/express carrier/customs agent (special arrangements)
   - exclusively post (H6 customs declaration)
   - post/express carrier/customs agent/customer (standard procedure).
7. Customs procedure: release for free circulation
8. Acceptance of the customs declaration: by customs, upon presentation of the goods and if H7 customs declaration check of the EUR 150 threshold
9. Release of the goods: by customs, immediately upon acceptance of the customs declaration, with collection of VAT due, unless special arrangements are used or deferral is granted.

Scenario 4b: Importation of goods – no use of IOSS → arrival and import into MS1

- Customer in MS1 orders goods not exceeding EUR 150 through an EI established also in MS1 from an underlying supplier. Customer indicates place of delivery to be also in MS1.
- Goods are dispatched on behalf of the underlying supplier from the 3C to MS1 where they are released for free circulation



A. VAT Implications:

1) Taxable person: EI is the deemed supplier (Article 14a(1)). EI does not register in IOSS.
2) Taxable transactions:
   a) Distance sale of imported goods: 2 supplies from the application of Article 14a(1)
      i) B2B supply from the underlying supplier to the EI;
      ii) B2C supply from the EI to customer in MS1
   b) Importation in MS1 (Article 30(1))
3) Place of supply (PoS):
   a) Distance sale of imported goods: 2 supplies from the application of Article 14a(1)
      i) B2B supply is without transport (Article 36b) → PoS in 3C (outside the EU) (Article 31) → no EU VAT obligations
      ii) B2C supply is with transport (Article 36b) → PoS is in 3C where the transport of goods begins (outside the EU) (Article 32(1)) → no EU VAT obligations
   b) Importation in MS1 by customer (Article 60)
4) VAT chargeability
   a) Distance sale of imported goods: N/A (PoS outside the EU – see point 3a above)
   b) Importation: When goods are imported (Article 70)
5) Person liable to pay VAT: importation in MS1 – person to be designated to pay VAT in MS1 (Article 201). If person liable to pay VAT in MS1 is the customer, VAT on importation can be paid through:
   a) special arrangements: customer pays VAT to post/express carrier/customs agent before delivery of goods → monthly payment by post/express carrier/customs agent of the VAT collected to competent authority in MS1 (Article 369zb(2))
   b) standard procedure – VAT payment to customs before release into free circulation, irrespective of value of goods.

Note: Member States may decide freely the person liable to pay import VAT. The general practice in Member States is to consider the customer/consignee to be the person liable for VAT. Thus,

Scenario 4a will be generally applicable if the IOSS is not used, irrespective of the deeming provision under Article 14a(1).

However, at the moment of publication of these Explanatory Notes one Member State has decided to designate the EI as the person liable to pay VAT.

B. Customs Implications:

1. Importer: Consignee = customer in MS1
2. Exporter: Consignor = underlying supplier
3. Presentation to customs: by carrier/declarant (if other than carrier) in MS1 as the first point of entry in the EU (Article 139 UCC)
4. Customs declaration: lodged in MS1
   Form of customs declaration:
   - standard customs declaration with super reduced dataset (Article 143a UCC-DA with H7); or
   - simplified customs declaration (Article 166 UCC with I1); or
   - customs declaration for postal consignments up to EUR 1 000 (Article 144 UCC-DA with H6); or
   - standard customs declaration with full dataset (Article 162 UCC with H1)
5. Declarant:
   - post/express carrier/customs agent (special arrangements)
   - exclusively post (H6 customs declaration)
   - post/express carrier/customs agent/customer (standard procedure)
6. Customs procedure: release for free circulation
7. Acceptance of the customs declaration: by customs, upon presentation of the goods and if H7 customs declaration is used check of the EUR 150 threshold
8. Release of the goods: by customs, immediately upon acceptance of the customs declaration, with collection of VAT due, unless special arrangements are used or deferral is granted.