



VAT alert Belgium

EU ECOFIN Council adopts VAT e-Commerce package

On 5 December 2017, the European Council adopted legislative proposals made by the European Commission in December 2016 for a drastic change to VAT rules for online sales of goods and services in Europe (previous coverage in VAT alerts of [2 December 2016](#) and [8 November 2017](#)). The package contains simplifications to the current Mini One Stop Shop (MOSS) regime for cross-border telecommunications, broadcasting and electronic services, as well as a switch to taxation at destination and simplified declaration through a One Stop Shop (OSS) for distance sales of goods. It also introduces a VAT liability for electronic interfaces (e.g. platforms) that facilitate supplies of (low value) goods imported from outside the EU or for sales made within the EU by non-EU based vendors. The new legislation enters into force in phases, namely in 2019 and 2021.

The Economic and Financial Affairs (ECOFIN) Council held a meeting where it adopted the amended European Commission proposal on VAT rules for online sales of goods and services. This legislative package consists of a two-tier package of measures.

New rules applicable as of 2019 for TBE services

Short-term improvements will be made as of 2019 to the Mini One Stop Shop (MOSS) system, with which businesses can declare cross border B2C supplies of telecommunication, broadcasting and electronic (TBE) services since 2015.

This includes a derogation allowing EU micro-businesses to charge their home country's local VAT on supplies, below a threshold of EUR 10,000, of cross border B2C supplies per year. Through this change, an estimated two thirds of suppliers currently registered under the MOSS will no longer be obliged to do so. Furthermore, many of these businesses will in practice benefit from a VAT exemption, as their supplies are often covered by a domestic SME exemption scheme.

Another simplification aimed at reducing SME's administrative burden, with cross border B2C sales below EUR 100,000 per year, is realised by only requiring one piece of evidence for their customers' location and hence the country of taxation.

Another alleviated flaw in the 2015 legislation concerns the invoicing rules that apply to cross border B2C supplies of TBE services. As of 2019, the Member State where the supplier is identified under the MOSS will define whether an invoice must be issued for such supplies.

Overhaul of VAT rules for cross border B2C supplies of goods as of 2021

The legislative package reserves the most important changes for 2021, which will see an overhaul of the rules applicable to cross border B2C supplies of goods (distance sales), modeled after the VAT regime applicable to B2C supplies of TBE services.

Currently, B2C cross border goods supplies are in many cases covered by the existing intra-EU distance sales regime, which allows the application of home country VAT as long as supplies towards individual Member States remain below EUR 35,000 or EUR 100,000 per year, or by the import exemption scheme for low value goods (intrinsic value below EUR 22). These schemes are regarded as being vulnerable to a high degree of non-compliance and fraud, and will therefore be replaced by new rules that should lead to effective taxation in the destination country.

Businesses' compliance with these new rules would be ensured through the use of different One Stop Shop (OSS) systems to declare all cross border B2C sales through a tax portal in one Member State. A first OSS would cover intra-Community distance sales of goods, B2C TBE services as well as other B2C services rendered by a taxable person outside his Member State of establishment (e.g. building works or car rental). It would be accessible for EU and non-EU taxable persons alike.

A second OSS will cover distance sales of goods imported from third territories or third countries (non-EU), as long as such goods have an intrinsic value of EUR 150 or below. Non-EU taxable persons will only be able to use this OSS if they appoint an intermediary within the EU, or if they are based in a country with which the EU has an agreement on mutual assistance and the goods are dispatched from that same country. For goods sent to the EU by businesses not opting for this OSS regime, special arrangements will apply for consignments with an intrinsic value of EUR 150 or below. In that case, logistics intermediaries can declare and pay import VAT in a simplified way, in the destination Member State and

possibly subject to the standard VAT rate (if the Member States imposes this).

Liability for marketplaces on B2C supplies of imported goods or by non-EU vendors

The final adopted legislation goes beyond these measures facilitating vendors' declaration and payment of VAT, and will make marketplaces and electronic platforms liable for VAT on certain B2C sales which they facilitate. This will apply to distance sales of imported goods (by EU or non-EU vendors) and to all B2C sales of goods made by non-EU vendors (both within one Member State and cross-border). For goods arriving directly from outside the European Union, it only applies for goods with a value of EUR 150 or below.

This liability is set up as a deemed supply under article 14a of the VAT Directive, meaning that the electronic interfaces become the principal liable party for supplies covered by the scheme, even if the actual supplier would be VAT registered in the destination country. The rationale for this measure is the existence of cross border fraud mechanisms whereby goods imported for distance sales enter the European Union VAT-free, in some cases through such marketplaces. In such scenarios, it is difficult for Member States to address the initial overseas vendor in order to collect the VAT due.

With this approach, the EU aligns responsibilities for electronic interfaces on VAT collection for sales of goods to the already existing deemed supplier EU rule for electronically supplied services sold through marketplaces (article 9a of Regulation 282/2011). The EU also joins other global jurisdictions implementing or considering such approach such as Australia and India.

Further adaptations to the MOSS/OSS schemes

Certain amendments to the technical functioning of the MOSS will also come into force as of 2021. This concerns specific rules on filing deadlines, corrections on past returns and coordination of auditing of transactions reported under the MOSS/OSS schemes.

A full overview of the key changes can be consulted [here](#).

Further legislative work ahead

As part of the ECOFIN Council's decision, the Commission is tasked with drafting implementation rules, in line with the Better Regulation Guidelines including stakeholder consultation and impact assessment. This will specifically focus on creating the necessary framework for the deemed supplier provisions applicable to electronic interfaces, as well as for the timely implementation of the relevant Customs systems (UCC National Import Systems Upgrade) that will need to support the import OSS as of 2021.

An assessment on the readiness of these arrangements is required by the European Commission by the end of 2019. This may lead to a full or partial delay of the 2021 changes if issues preventing the new rules' correct application are detected.

While the rules for the future are now clear for governments and for businesses, allowing them to adapt their systems and business processes to the new environment, uncertainty remains with respect to the precise timing of implementation. The further elaboration of implementing rules, in combination with the envisaged development of the Single VAT Area for B2B cross border supplies in the EU by 2022, still allows further consideration of business interests.

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