



## VAT alert Belgium

### EU ECOFIN Council delays decision on VAT e-Commerce package

*Shortly before the end of 2016, the European Commission published a legislative proposal for a drastic change to VAT rules for online sales of goods and services in Europe ([VAT alert of 2 December 2016](#)). This proposal, as amended during the Estonian EU Presidency, was on the agenda of the 7 November 2017 Council with the aim of reaching a political decision. As there was no unanimous approval on the current proposal, this decision has consequently been delayed until the next meeting on 5 December 2017.*

The Economic and Financial Affairs (ECOFIN) Council held a meeting to agree on the amended European Commission proposal on VAT rules for online sales of goods and services.

#### The proposed changes for e-commerce

As a reminder, the December 2016 proposals consisted of a two-tier package of measures :

- Short-term improvements to the Mini One Stop Shop (MOSS) system, with which businesses can declare cross border B2C supplies of telecommunication, broadcasting and electronic services since 2015. The proposal also includes a derogation allowing EU micro-businesses to charge their home country's local VAT on sales below a threshold of EUR 10,000 per year.
- From 2021, the proposal foresees an overhaul of the rules applicable to cross border B2C supplies of goods (distance sales) leading to effective taxation in the destination

country, for goods dispatched from either within or outside Europe. Compliance by businesses with these new rules would be ensured through the use of a One Stop Shop (OSS) system to declare all EU sales through a tax portal in one Member State.

Since the original proposal, certain amendments were made by the European Commission to meet Member State reservations and expectations. This mainly concerns making marketplaces and electronic platforms liable for VAT on certain cross border sales to private consumers. Furthermore, certain features of the initial proposal were deleted due to Member State opposition, and the short-term amendments initially scheduled for 2018 have been delayed until 2019.

## Marketplace liability

The current draft version foresees a new article 14a in the European VAT Directive, in which online platforms themselves are deemed to have received and supplied goods subject to so-called distance sales that they facilitate (the *'deemed supplier concept'*). The "deemed supplier" concept is limited to supplies facilitated for non-EU companies. For goods arriving directly from outside the European Union, it only applies for goods with a value not exceeding EUR 150.

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. By introducing a deemed supplier concept, the European Member States hope to tackle this issue.

As part of the proposal package, the Commission would be tasked with drafting Implementation rules for the "deemed supplier" concept, in line with the Better Regulation Guidelines including stakeholder consultation and impact assessment.

## ECOFIN Council discussion

In general, Member States supported the European Commission's amended proposal. Although it was rumoured that certain Member States had reservations regarding the implementation of marketplace liability in the run up to the Council meeting, no direct opposition was raised on this concept when the meeting took place.

However, the German delegation could not agree with the proposal, raising two issues to address:

- The extension of the OSS to all distance sales of goods and cross border services to end consumers, since it greatly reduces the capacity of the destination Member State to control VAT collection
- The elimination of the VAT exemption for imports of small consignments (value below EUR 22), which could lead to consumers being charged VAT upon parcel collection

In view of this disagreement, the European Commission and Member States committed to undertake further technical work

in order to find a final agreement during the [next meeting](#) of the ECOFIN Council on 5 December 2017.

## Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

- Johan Van der Paal, [jvanderpaal@deloitte.com](mailto:jvanderpaal@deloitte.com), +32 2 600 66 39
- Karen Truyers, [ktruyers@deloitte.com](mailto:ktruyers@deloitte.com), +32 2 600 66 13
- Charlotte Degadt (Laga), [cdegadt@laga.be](mailto:cdegadt@laga.be), +32 2 800 70 23

For general inquiries, please contact:  
[bedeloittetax@deloitte.com](mailto:bedeloittetax@deloitte.com), + 32 2 600 60 00

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