



## VAT alert Belgium

### VAT e-commerce package: European Commission publishes explanatory notes

*On 30 September 2020, the European Commission published its [explanatory notes on the new VAT e-commerce rules](#), which will come into effect on 1 July 2021. The legislation that puts these new rules into place consists of changes to the EU VAT Directive and Implementing Regulations that govern more practical aspects, such as the reporting formats for the different One Stop Shop schemes ('[Modernising VAT for cross-border e-commerce](#)'). In parallel, changes were made to customs legislation to better accommodate import flows in the future regime.*

The explanatory notes contain extensive clarifications on these new rules, FAQs, as well as some specific scenarios on how to apply VAT e-commerce rules for suppliers and electronic interfaces involved in e-commerce transactions (e.g. marketplace, platform). In the near future, these explanatory notes will be further complemented by an update of the Guide to the One Stop Shop and specific guidance in the customs field.

#### Key clarifications in the explanatory rules

The explanatory notes not only provide many insights into how the new legislation will need to be applied, but also include more clarity on several points that were so far unclear.

## **EUR 10 000 threshold**

The key principle is that B2C supplies of goods are taxed at destination, requiring suppliers to apply a multitude of VAT rates in their cross border sales.

To support EU micro-businesses, an annual EUR 10 000 turnover threshold is applicable. This means that for turnovers under this threshold, the place of supply of TBE services (i.e. telecommunication, broadcasting and electronically supplied services) and distance sales of goods to consumers in another Member State remains in the Member State where the supplier is established.

This threshold does not apply to suppliers established outside the EU, or to those established in more than one EU Member State. If a supplier is established in one EU Member State but also performs distance sales from a stock located outside its Member State of establishment, the latter sales cannot benefit from this threshold and therefore remain subject to VAT in the destination EU Member State.

## **Electronic interface's limited liability**

A key feature of the new regime is that a taxable person facilitating a distance sale through the use of an electronic interface (e.g. marketplace or platform) is considered as the actual supplier of goods to the B2C customer (for VAT purposes), and is therefore liable to remit VAT on said sale. This applies to specific categories of B2C supplies: (i) imported distance sales of low value goods (i.e. intrinsic value not exceeding EUR 150 per consignment) and (ii) sales within the EU by non-EU suppliers.

Often, the electronic interface will not have all the information required to correctly fulfil its VAT obligations under this VAT "fiction", and will therefore need to rely heavily on information provided by the underlying supplier.

The explanatory notes provide clear guidance on conditions to be fulfilled to enable the electronic interface's reliance on the supplier's information, and be exempt from liability in case VAT is underpaid because of inaccurate supplier information. The bottom line is that the electronic interface will need to exercise due commercial care when making arrangements with underlying suppliers to ensure accurate, complete and timely information.

## **Imported distance sales**

The place of supply of distance sales of goods imported from third countries or third territories will depend on a wide range of parameters: where the goods are released for free circulation in the EU (i.e. Member State of importation), the goods' final destination (i.e. Member State of final customer), the intrinsic value of products and the supplier or electronic interface's option to apply the Import One Stop Shop. The European Commission listed and clarified the possible scenarios extensively. Unless the Import One Stop Shop is applied, low value goods should in principle be imported into free circulation and subject to import VAT in the destination Member State.

On the customer facing side, there can be situations where VAT on imported distance sales will be charged and paid as part of the purchase price to the supplier or electronic interface, by making use of the Import One Stop Shop. On the other hand, there can also be situations where VAT will only be payable upon import into the EU. Typically, the person designated as liable for the payment of import VAT in the latter case will be the customer. However, the explanatory notes explicitly mention the possibility for EU Member States to designate another person, such as the electronic interface, to be liable for the payment of import VAT. It is likely that diverse approaches will arise across the EU for situations where the Import One Stop Shop is not applied.

### **Next steps**

The VAT e-commerce package contains a complex set of new VAT rules that will have a major impact on all businesses active in the e-commerce space.

Now that the explanatory notes with practical guidance on how to apply these rules are published, it is time for companies to assess the impact and start preparing for 1 July 2021.

Further information and a view on how Deloitte can support companies in this respect is available on the [dedicated website](#).

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