

VAT E-COMMERCE RULES FOR SALES OF GOODS HAVE CHANGED



If your business makes cross-border sales of goods on the web to private customers in the EU, or you operate an online platform through which businesses can sell goods cross-border to private EU customers, you should know that the rules for charging value added tax (VAT) changed dramatically from 1 July this year.

This rule change affects businesses located both in the EU and outside the EU (which now of course includes the UK)¹, but it applies solely to sales to private customers (end-consumers) or entities not registered for VAT (so-called B2C sales) and does not affect sales of goods or services to other businesses (so-called B2B sales). Customers in B2C sales will be referred to as ‘consumers’ in this brochure from now on.

THE NEW RULES IN BRIEF

- Businesses dispatching or arranging for the dispatch of goods cross-border to EU consumers are in principle subject to VAT in the EU country of destination (the country to which the goods are dispatched and where the dispatch or transport ends). Distance-selling thresholds have been abolished.

To prevent the need to register for VAT in every Member State to which they send goods, suppliers may use the One-Stop Shop (OSS) to register in a single EU country and declare and pay the VAT due in all the destination countries via the OSS

- The previous VAT exemption for importing small-value consignments worth no more than EUR 22 has been abolished. From 1 July, import VAT is in principle due on every consignment of goods coming from non-EU countries, whatever their value. However, an Import One-Stop Shop (IOSS) is available for goods of a value no greater than EUR 150 to enable suppliers to report and pay VAT on sales (‘output VAT’) for all destination countries via the IOSS without registering in every country.
- In certain circumstances, it is now the operators of online platforms and marketplaces, and not the suppliers, who are responsible for reporting and paying VAT. This is the case either where the goods are worth EUR 150 or less and the supplier is from outside the EU or where the supplier is outside the EU and the goods are dispatched from stocks held in the EU, whatever their value.

EU BUSINESSES SELLING TO EU CONSUMERS

From 1 July, B2C sales of goods by suppliers based in one EU country to consumers in another EU country are subject to VAT in the EU country of destination (normally the country where the consumer lives). Note: this rule applies only if it is the supplier who arranges or pays for the transport.

¹⁾ The rules for businesses in Northern Ireland are different.

There is no longer a distance-selling threshold (which was usually EUR 35 000 or EUR 100 000) below which the supplier does not have to register for VAT in the country of destination (with one exception, see below). To avoid the need for multiple registrations, the supplier may register with the OSS in the supplier's own EU country. This simplification is known as the 'Union Scheme'. Suppliers using the Union Scheme must file a return ('the OSS return') every calendar quarter and pay the VAT due in every customer country in one amount.

The Union Scheme is not open to second-hand goods subject to a margin scheme.

Example

A Portuguese web shop sells handmade shoes to consumers in Belgium, Denmark and France. VAT is due in all three destination countries but if the supplier registers with the Portuguese OSS, it can pay all the VAT via the OSS each quarter without needing to register for VAT in Belgium, Denmark or France or to issue VAT invoices to consumers.

If it already is registered for VAT in those countries, by choosing the OSS, the Portuguese web shop may deregister in Belgium, Denmark and France.

Using an OSS is optional. Suppliers who do not use an OSS have to register for and pay VAT in each EU destination country.

EXCEPTION FOR 'SMALL BUSINESSES'

An EU-based business whose cross-border sales of goods and services to all other EU countries has not exceeded EUR 10 000 in the current year and did not exceed that threshold in the previous year remains subject to VAT in its own country (or the country from which the goods are dispatched, if different). It may still opt to register in the EU country of destination if it wishes, however.

EU SUPPLIERS IMPORTING GOODS FROM OUTSIDE THE EU

EU suppliers importing goods directly from outside the EU may also make use of the IOSS (see below) for sales to consumers in EU countries other than their own.

NON-EU BUSINESSES SELLING TO EU CONSUMERS

Before 1 July 2021, all goods arriving into an EU country from outside the EU were liable to import VAT and customs duty, with two exceptions. Goods with a shipment value of no more than EUR 22 were free of import VAT and goods with a value of less than EUR 150 were free of customs duty.

From 1 July 2021, the import-VAT threshold disappears so that goods arriving from a 'third country' (such as the US or Great Britain²) are now liable to import VAT, whatever their value. The import VAT is payable by the importer, so consumers are faced with a bill for the import VAT and also handling charges. The EUR 150 customs-duty threshold remains, however.

In order to simplify import procedures and create a level playing field between EU and non-EU suppliers, the latter are able to register with the so-called Import One-Stop Shop (IOSS) in an EU country of their choice in respect of any goods with a value of no more than EUR 150. This need not be a country where they have any customers. Suppliers using the IOSS are assigned a unique IOSS VAT number. Subject to conditions, this exempts the goods from import VAT, so that they can charge the consumer directly with the VAT rate applicable in the consumer's country and enable the supplier to file a simplified customs declaration. Each month, the supplier must file an IOSS return, declaring and paying the VAT charged to consumers throughout the EU or make a nil return if there have been no sales in that month.

Use of the IOSS is optional. Non-EU suppliers who do not use the IOSS have to register for VAT in the EU country where the importation takes place and in every EU country where the consumers are based. It is also possible to use the special arrangements for postal services.

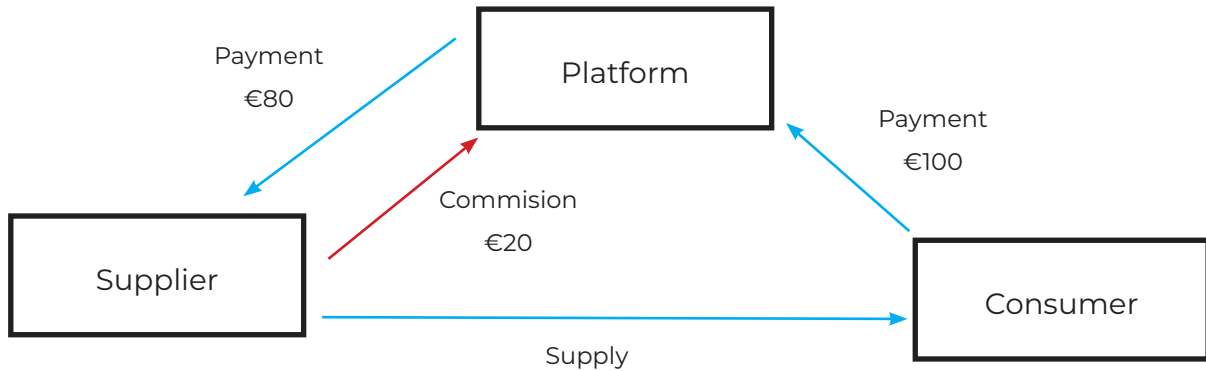
The IOSS may not be used for excise goods nor for goods valued at more than EUR 150.

Most EU countries will insist that non-EU suppliers appoint a VAT representative (or intermediary) in order to carry out IOSS registration. In some cases, the supplier may be able to register directly if there is a VAT mutual-assistance agreement in place between the EU and their country and the goods originate from that country. For UK suppliers, this opportunity is limited at the time of writing. Once the EU Member States have ratified the UK-EU Trade and Cooperation Agreement, however, the situation may be normalised.

² Northern Ireland remains in the EU Single Market for goods for most purposes.

ONLINE MARKETPLACES

In e-commerce, so-called online marketplaces (OMPs) play an important role (broadly, providing electronic interfaces such as platforms, portals and marketplaces). These platforms bring sellers and buyers into contact with one another via the OMP, but they are in themselves not part of the transaction chain. Platforms are involved in a large proportion of the online trade inside and outside the EU. This diagram shows how it mostly works:



From 1 July 2021, OMPs are in certain circumstances required to report VAT ('the OMP scheme'). They are deemed to purchase the goods that are traded via their platform from the supplier and then make an onward sale to the consumer. In this respect, it is irrelevant where the platform is based.

This 'fiction' applies only where the OMP 'facilitates' online sales. Broadly speaking, this involves matching a supplier with a purchaser so that a sale takes place on the platform.

The OMP scheme applies to:

- Consignments from a non-EU country with a value not exceeding EUR 150 (excluding VAT). Here, it is irrelevant whether the supplier is based inside or outside the EU, as long as the goods originate from outside the EU and
- Consignments by a non-EU supplier of goods stored and in free circulation in the EU. The value of the goods is irrelevant in this case.

The operator is liable to pay VAT at the rate applicable in the consumer's country on the sales price quoted on the platform at the time the payment is accepted.

HOW CAN WE HELP?

The new rules are complicated and many businesses, both within and outside the EU, will need to consider whether they should adapt and change their ways of doing business with EU end-consumers.

The Moore Global VAT Team is here to help. In the first instance, please contact one of our European VAT Steering Group members:

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