

E-Commerce

Towards a “brave new world”

February 25, 2021



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The role of the “electronic interface”

1. The historic perspective

❖ 2003: new rules for electronically supplied services and introduction of Mini One Stop Shop

- New place of supply rules for electronically supplied services:
 - B2C: place where the customer is established
 - Only from and to third countries
- Introduction of Mini One Stop Shop

1. The historic perspective

❖ 2015: new rules for electronically supplied services also within the EU

- Electronically supplied services: place of supply is always where the customer is located.
- Introduction of EU and non EU MOSS

1. The historic perspective

❖ Existing rules for ecommerce

- B2C: place where the customer is established
- Only in case certain thresholds are passed (EUR 35.000 or EUR 100.000)
- Individual VAT registrations required when passing the threshold

1. The historic perspective

❖ Reasons for changing the existing rules

- Currently significant administrative burden for EU businesses
- Import of low value goods and abusive practices
- Non-EU businesses do not have to VAT register for VAT in the EU

➤ New rules aim for simplification and equal footing between EU and non-EU businesses

2. e-Commerce changes

❖ 1/1/2019: new rules for micro businesses

- EUR 10.000 EU-wide threshold for EU businesses involved in cross border BTE services
- Simplified evidence for companies not exceeding an EU-wide threshold of EUR 150.000 (one piece of evidence instead of two pieces)
- Invoicing rules of Member State of establishment will apply when using the MOSS scheme
- Companies established outside the EU can make use of MOSS even when already VAT registered in the EU

2. e-Commerce changes

❖ 1/7/2021: new e-commerce rules

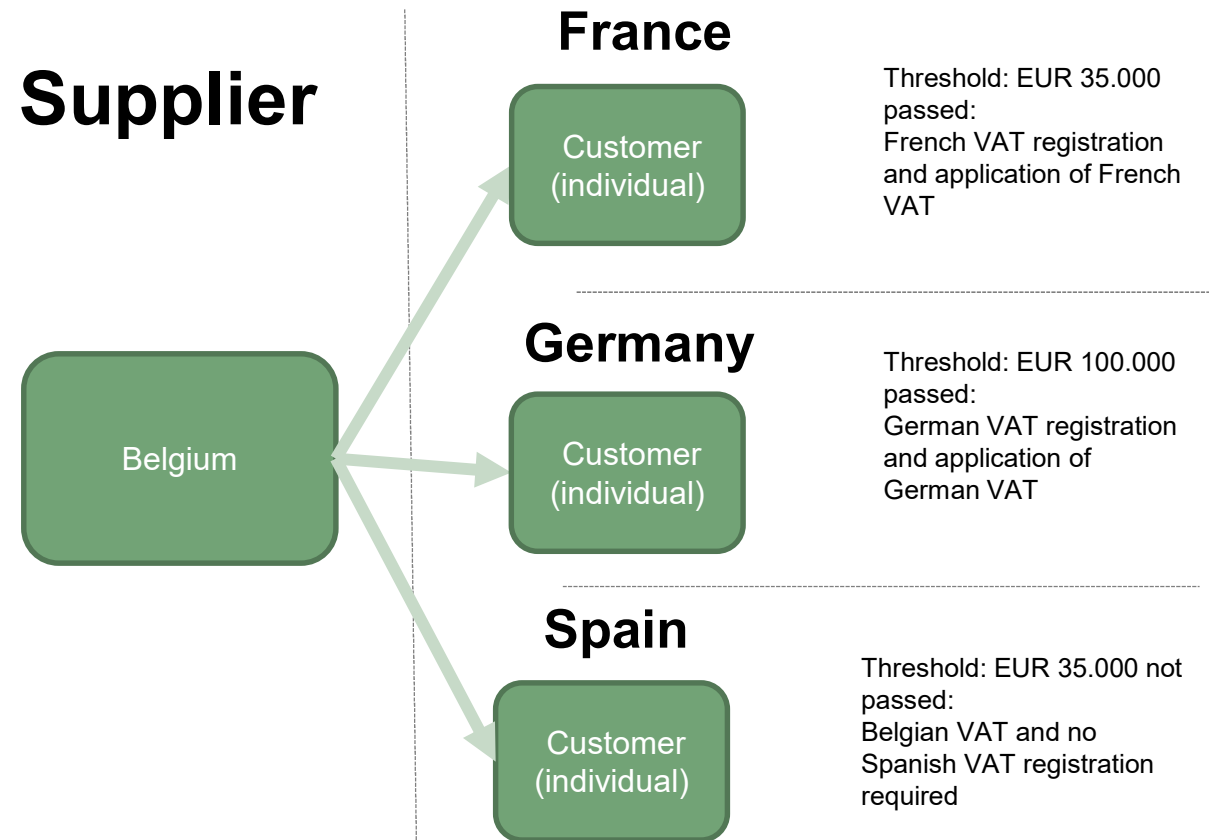
- Abolishment of the current distance sales thresholds per EU country;
- "Micro company" threshold of EUR 10.000 also applicable for distance sales of goods
- Extension of the MOSS scheme to distance sales of goods (it becomes OSS)
- Extension from TBE services to all B2C services to fall under OSS rules
- Abolishment of VAT exemption at importation of small consignments up to EUR 22;

2. e-Commerce changes

❖ 1/7/2021: new e-commerce rules

- New scheme for distance sales of goods imported from third countries of an intrinsic value not exceeding EUR 150;
- Simplification measures of distance sales of imported goods in consignments not exceeding EUR 150 in case IOOS is not used (special arrangements)
- New role for “electronic interfaces”: they can become deemed supplier

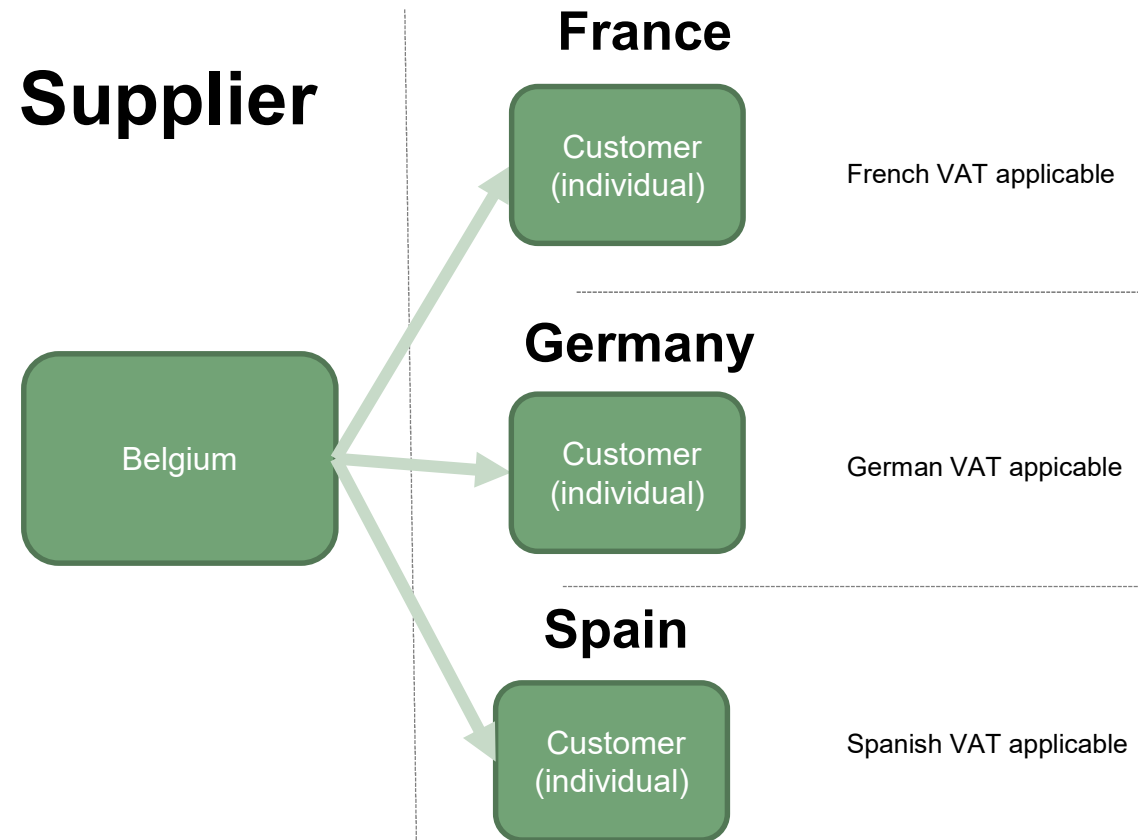
Example: old rules



VAT implications

- Monitoring thresholds
- Local VAT registrations required when passing local thresholds

Example: new rules



VAT implications

- Local VAT applicable
- OSS registration instead of local VAT registrations

3. Union, non Union and Import scheme

❖ Important legislation

- Council Directive (EU) 2017/2455 of 5 December 2017
- Council Directive (EU) 2019/1995 of 21 November 2019
- Council Implementing regulation (EU) 2019/2026 of 21 November 2019
- Explanatory notes on VAT e-commerce rules, published in September 2020
- Local (draft) legislation in different Member States

3.1. the non- Union scheme

❖ Rule as of 1/7/2021

- Businesses not established in the EU supplying services to non-taxable persons (consumers) do not need to VAT register in each member-state in which their supplies of services take place, but can use the OSS scheme

❖ Who can use the non-Union Scheme?

- Businesses not established in the EU (not establishment or fixed establishment). VAT registration for other supplies is no problem.

3.1. the non- Union scheme

❖ For which supplies?

- The non-union scheme will cover all supplies of services which will take place in the EU carried out by the above defined taxable persons to non-taxable persons (customers);
- Examples are:
 - Accommodation services;
 - Admission to cultural, artistic, sporting, scientific, educational , entertainment or similar events;
 - Services connected to immovable property;
 - Hiring of means of transport,
 - ...

3.2. the Union scheme

❖ Who can use the Union Scheme and for which supplies?

1. A taxable person established in the EU 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 supplies 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

3.2. the Union scheme

❖ Who can use the Union Scheme and for which supplies?

2. A taxable person not established in the EU to declare and pay VAT for:
 - Intra-community distance sales of goods

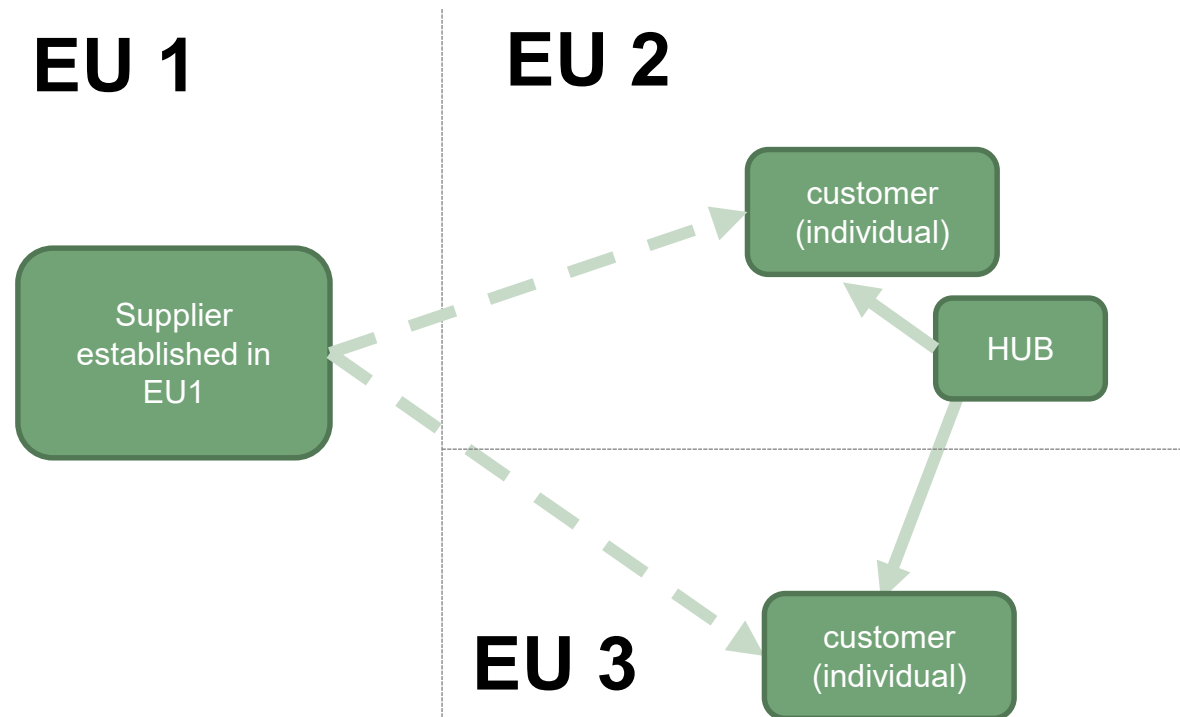
3.2. the Union scheme

❖ Who can use the Union Scheme and for which supplies?

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

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



VAT implications

- OSS registration of supplier in EU 1: Union Scheme
- Application of local VAT in EU2: local sale, no reporting in OSS, individual registration required
- Application of local VAT in EU 3: distance sale: reporting in OSS

3.3. the Import scheme

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

- Goods are dispatched/transported from a third territory at the time they are supplied;
- These goods are dispatched in a consignment of an intrinsic value not exceeding EUR 150;
- The goods are transported or dispatched by or on behalf the supplier, including where the supplier intervenes indirectly in the dispatch or the transport of the goods;
- The goods are not subject to excise duties.

3.3. the Import scheme

❖ Who can use the import scheme?

- Suppliers established within the EU (no intermediary required);
- Suppliers not established within the EU (intermediary required, unless the EU has conducted a VAT mutual assistance agreement);
- An electronic interface established in the EU facilitating distance sales of imported goods (no intermediary required);
- An electronic interface not established in the EU facilitating distance sales of imported goods (intermediary required, unless the EU has conducted a VAT mutual assistance agreement).

Example

Non EU

EU 1

Supplier

customer
(individual)

Supply from non-
EU country

EU 2

customer
(individual)

VAT implications

- Supplier established in EU1: can apply for IOOS
- No import VAT upon provision of IOOS VAT number to customs;
- Reporting of local sale in EU1 and EU2 in IOOS return;
- No obligation to report sale in EU1 in local VAT return

4. Roles of Electronic interfaces

❖ Principle

- 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;
- A new legal provision has been introduced in the VAT Directive (article 14a) 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.

4. Roles of Electronic interfaces

❖ When is the taxable person facilitating the supply?

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;
- b) He is not, either directly or indirectly, involved in authorizing the charge to the customer in respect of the payment made;
- c) He is not, either directly or indirectly, involved in the ordering or delivery of the goods.

These conditions have to be fulfilled cumulatively by a taxable person to be considered as not facilitating the supply.

4. Roles of Electronic interfaces

❖ Which transactions are covered by the deemed supplier provision

1. Distance sales of goods imported from third countries in consignments of an intrinsic value not exceeding EUR 150;
2. Supplies of goods within the Community by a taxable person not established in the EU to a non-taxable person:
 - Domestic supplies
 - Intra-Community distance sales

4. Roles of Electronic interfaces

❖ How does it work

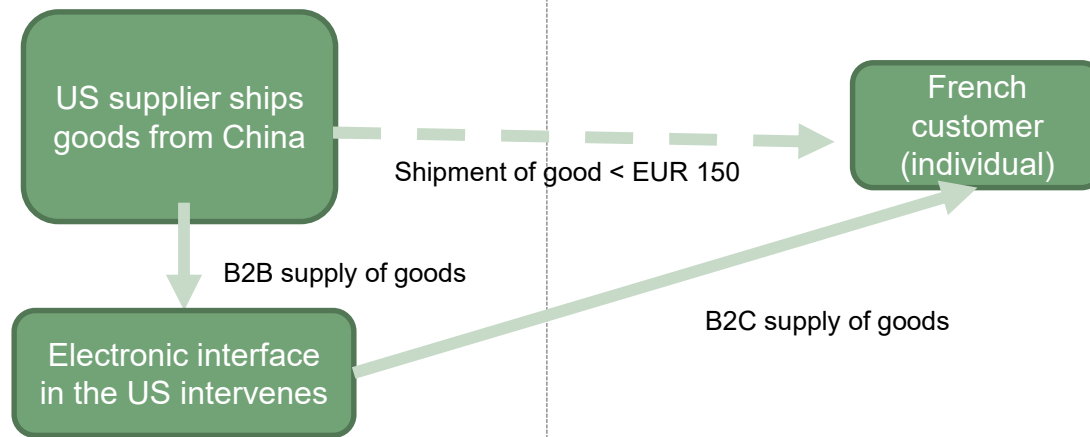
The B2C sale is artificially split up for VAT purposes into two supplies:

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.

Example

Non-EU

EU



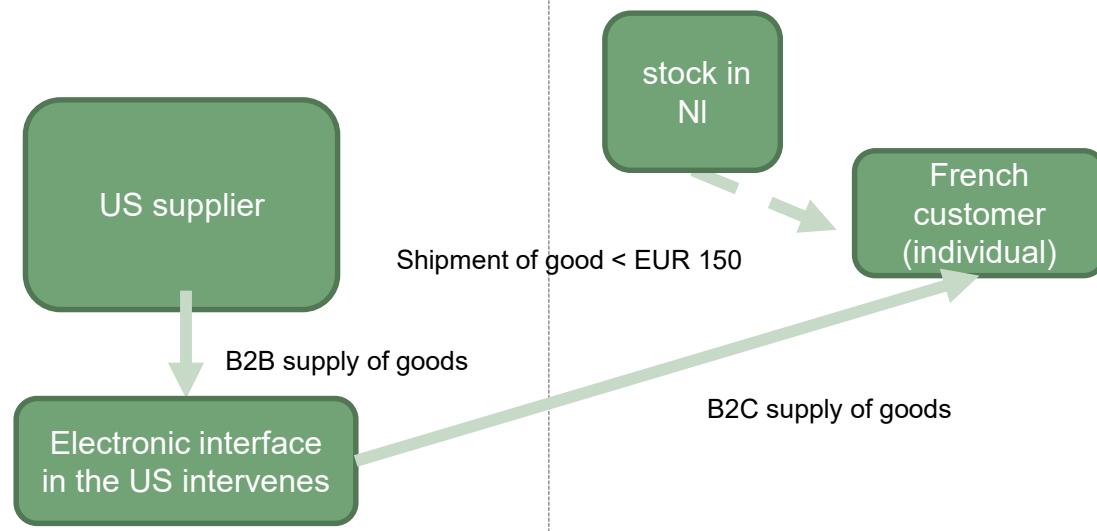
VAT implications

- B2B supply outside scope of EU VAT
- B2C supply: French VAT due
- Electronic interface: can use an IOSS to pay French VAT
- Importation: IOSS registration number to avoid import VAT
- Intermediary required for the electronic interface

Example

Non-EU

EU



VAT implications

- B2B supply: exempt from VAT (but Dutch VAT registration required for US supplier)
- B2C supply: intra-community distance sale
- Electronic interface: intervenes, can use the OSS union scheme to report French VAT
- Intermediary required for the electronic interface

Conclusion

❖ Real simplification for

- standard EU distance sales
- All B2C services

❖ More complicated in case

- Using an electronic interface
- Does not solve individual VAT registration obligations in some complex supply chain transactions
- Possible simultaneous use of Union, non-Union and Import scheme

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