

# **New VAT e-commerce rules** as of 1 July 2021



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Get ready for the new VAT e-commerce rules!

## For whom?

- Do you supply goods to consumers in (other) EU countries?
- Are you a logistics service provider importing goods with a value not exceeding € 150?
- Do you operate an online platform or marketplace for the cross-border sale of goods to consumers in the EU?

Have you answered one or more questions with 'yes'? Then you need to get ready for the new VAT rules, which will take effect throughout Europe on 1 July 2021.

## What will change?

The new VAT rules read as follows:

1. In the future, cross-border sales to consumers within the EU will, in principle, be subject to VAT in the country to which the goods are dispatched or transported. It is, however, not necessary to maintain a VAT registration in multiple countries. As the supplier, you may report the VAT due in one country through the One-Stop-Shop ("OSS").
2. The VAT exemption for importing small consignments for consumers (goods with a value not exceeding € 22) will be abolished. This means that small consignments from a non-EU country will, in the future, always be subject to import VAT.

To reduce the administrative burden, suppliers that dispatch or transport packages (in the future with a value not exceeding € 150) to EU consumers may use a simplified "Import Scheme", to avoid having to pay import VAT in multiple EU countries all the time. Instead, suppliers may report the VAT on the small consignments in one country through the Import

One-Stop-Shop ("Import OSS").

3. If the Import Scheme referred to under 2 is not used, proper VAT payment will, in the event of import, usually be the responsibility of the logistics service provider (before it passes on the VAT to the consumer). To limit the increase in the burden for logistics service providers, the new VAT rules offer logistics service providers the opportunity to report the import VAT on packages with a value not exceeding € 150 electronically in a monthly declaration (in accordance with the customs declarations filed).
4. Operators of online platforms and marketplaces will, in the event of cross-border sales to consumers in the EU, in certain situations, be responsible for reporting VAT, even if they do not contractually form part of the supply chain. This regards consignments from a non-EU country with a value not exceeding €150 or where the supplier is based outside the EU.

## What to do?

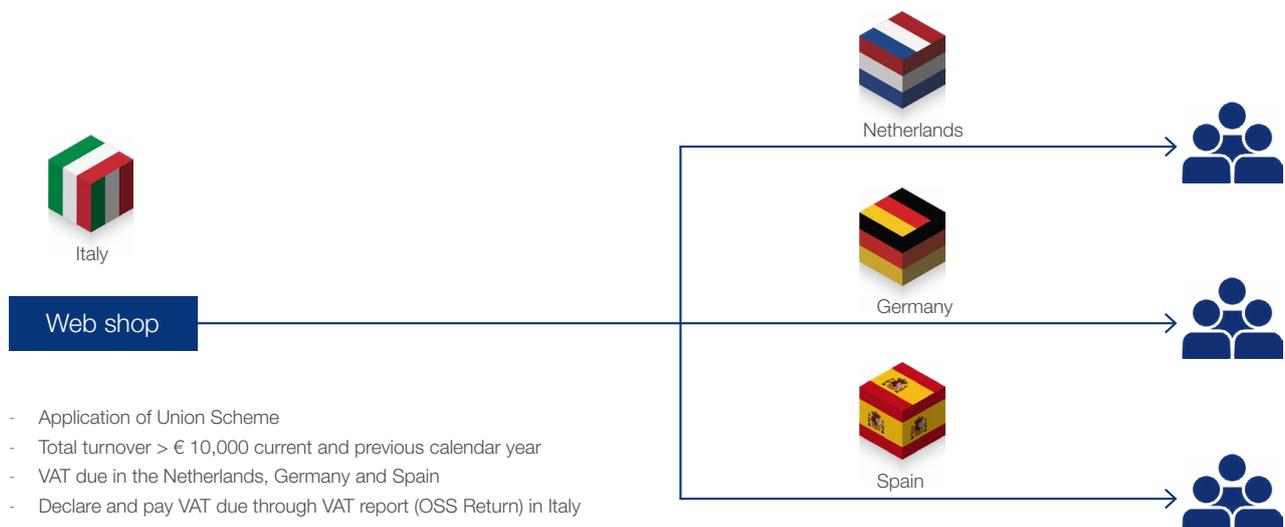
In the next few chapters we will further elaborate on the new VAT e-commerce rules and on what actions you need to take to get ready.

## 1. Cross-border sales to consumers within the EU

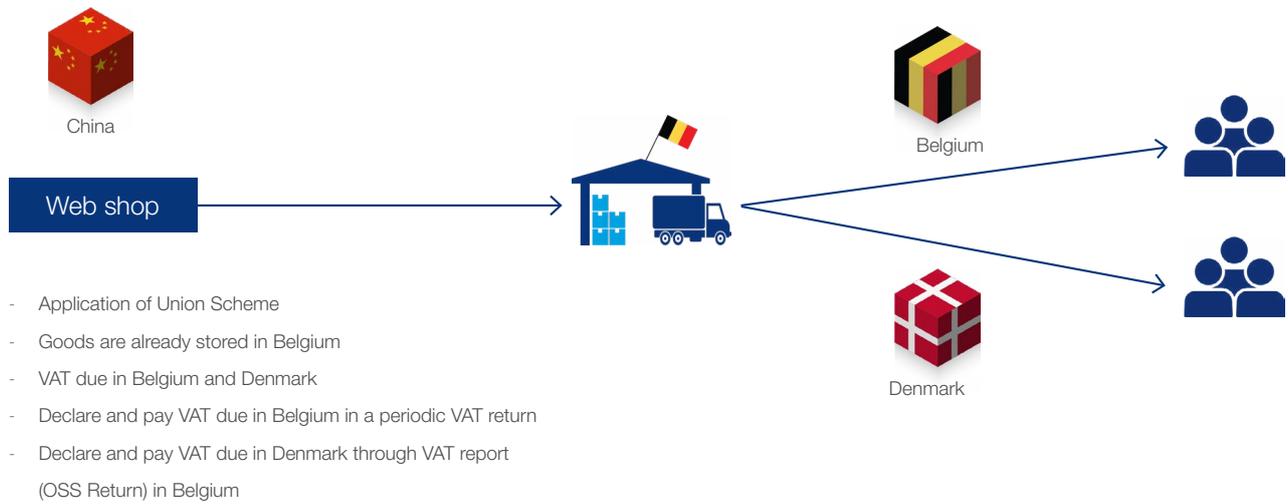
### What will change?

- As of 1 July 2021, cross-border sales of goods to consumers (including governments) within the EU, where dispatch is arranged by or at the expense of the supplier, will be subject to VAT in the country to which the goods are dispatched or transported (usually the country where the consumer resides). This means that the annual turnover threshold that is currently in effect for each EU country (in many countries € 35,000) will be abolished.
- To minimise the administrative burden, you, as the supplier, can opt to declare and pay the VAT due in the various EU countries through the "OSS". You may do so in your country of residence or, if you are not based and nor have a fixed establishment in the EU, in any EU country from which the goods are dispatched. This simplified scheme is also referred to as the "Union Scheme".
- If you use the Union Scheme, you do not have to issue any VAT invoices. Entrepreneurs that do not use the Union Scheme will still be required to issue invoices to their customers. They must, in all EU countries to which goods are sent or transported, file VAT returns and pay VAT.
- A supplier that uses the Union Scheme must, for each calendar quarter, file an electronic VAT report (the "OSS Return").
- An exception is made for 'small' entrepreneurs. These are suppliers that are based in one EU country and that have a maximum total turnover for cross-border sales (of goods as well as services) in the current calendar year of € 10,000 (exclusive of VAT), which amount was not exceeded in the previous calendar year either. For these suppliers, the basic principle is that VAT is due in the country from which the goods are dispatched. They may, however, opt still to pay VAT in the country to which the goods are dispatched or transported, for example because the VAT rate in that country is lower than that in the country from which the goods are dispatched or transported.
- The new VAT rules will not apply to supplies of second-hand goods subject to the margin scheme.

### Example - Union Scheme (I)



### Example - Union Scheme (II)



### What action do you need to take?

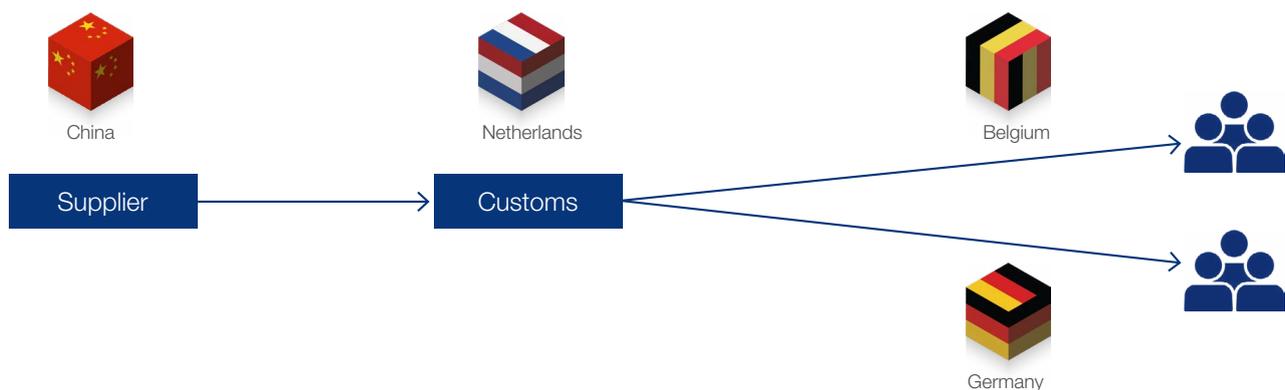
- Check whether your VAT registrations in other EU countries can be terminated to reduce the administrative burden.
- Set up a process for making proper, punctual and efficient VAT reports (OSS Returns).
- Expand your ERP system and, where necessary, adjust your Tax Control Framework.

## 2. Abolition of VAT exemption for import and introduction of “Import Scheme”

### What will change?

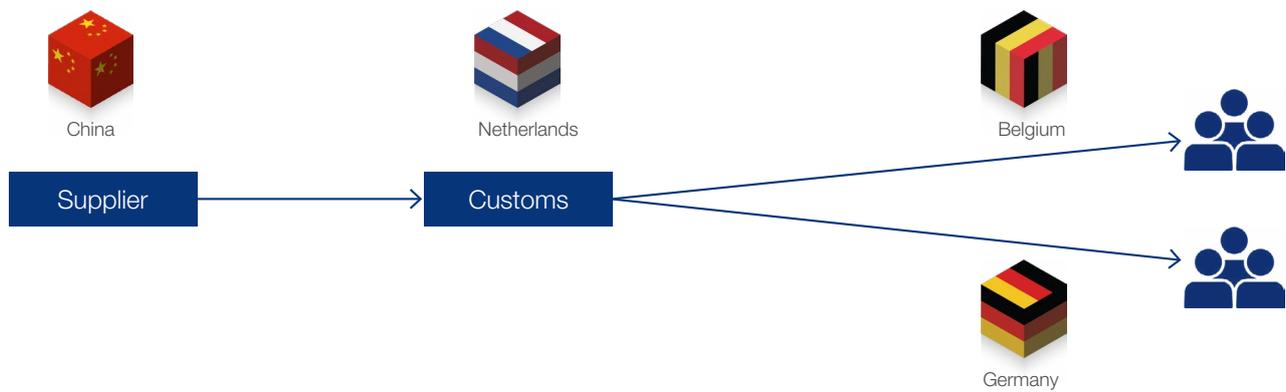
- The VAT exemption for the import of small consignments for consumers with a value not exceeding € 22 (exclusive of costs of freight, transport and insurance) will be abolished. This means that small consignments from a non-EU country will, in the future, always be subject to import VAT in the EU. In addition, a customs declaration will have to be filed.
- The import of small consignments is, however, exempt from import VAT if the supplier uses the “Import Scheme”. In respect of subsequent deliveries, suppliers should report the VAT due on the supplies to consumers within the EU in one country through the “Import OSS”. This Import Scheme is possible for goods with a value not exceeding € 150. This amount links up to the exemption for goods with a negligible value in customs legislation.
- The Import Scheme may be applied by suppliers that are based in the EU. Non-EU suppliers will, in principle, have to appoint an EU representative. Both are assigned an individual VAT identification number.
- A supplier that uses the Import Scheme must, for each calendar quarter, file an electronic VAT report (the “Import OSS Return”). A VAT report must be filed, even if no goods are imported in any given month. Note that this VAT report is independent of the VAT report under the OSS Return (see section 1 above). Therefore, a situation may occur where two separate reports need to be made.
- In the context of this scheme, goods are declared to customs via a simplified customs declaration. Customs will thereby verify, among other things, the validity of the individual VAT identification number and the value of the goods.
- The Import Scheme cannot be applied to goods that are subject to excise duties, such as alcoholic beverages, tobacco products, and fuels.

### Example - Non-application of Import Scheme



- Value of the goods > € 150
- File customs declaration in the name of a Dutch entity or through indirect representative. In the event of indirect representation, the customs declaration will be filed on behalf of the Chinese supplier but in the name of, e.g., the customs agent.
- Dutch import VAT due by Chinese supplier, after which this VAT can be deducted.
- Belgian and German VAT due by Chinese supplier
- VAT registration required in Belgium and Germany

## Example - Application of Import Scheme



- EU representative appointed in the Netherlands
- Value of the goods  $\leq$  €150
- File customs declaration in the name of a Dutch entity or through indirect representative. In the event of indirect representation, the customs declaration will be filed at the expense of the Chinese supplier but in the name of, e.g., the customs agent.
- Dutch import VAT exempt
- Dutch representative performs the VAT obligations in the name and on behalf of the Chinese supplier and has access to the supplier's Import OSS number
- Belgian and German VAT due through VAT report (OSS Return) in the Netherlands
- No VAT registration required in Belgium and Germany

### What action do you need to take?

- Check to what extent you may benefit from the Import Scheme.
- Set up a process for making proper, punctual and efficient VAT reports.
- Where necessary, appoint an EU representative.
- Expand your ERP system and, where necessary, adjust your Tax Control Framework.
- Assess whether your prices, contracts, and terms and conditions need to be adjusted.

### 3. Scheme for logistics service providers

#### What will change?

- If the 'Import Scheme' (see section 2 above) is not used, the import formalities for (small) consignments from a non-EU country will, in practice, often have to be performed by a logistics service provider. In such event, the import VAT will be passed on by the logistics service provider to the consumer.
- For these logistics service providers, this may - as a result of abolition of the VAT exemption for the import of small consignments not exceeding € 22 - lead to a substantial increase in tax burden.
- To limit this increase in tax burden, the new VAT rules provide for (continuation of) the option to obtain deferment of payment for all consignments with a value not exceeding € 150 (without any requirement to provide security), on the condition that the country of importation is also the country where the dispatch or transport of the packages ends.
- Customs declarations must be filed for each separate good in each EU country in which the goods are imported. Logistics service providers must report the import VAT electronically in a monthly declaration (in accordance with the customs declarations filed).

#### Example - Scheme for logistics service providers



- Import Scheme not applied
- Value of the goods  $\leq$  € 150
- Import VAT due in the Netherlands
- Logistics service provider is responsible for the import VAT due and the subsequent monthly customs reporting obligations
- Logistics service provider oncharges the import VAT to the Dutch consumer for whom the goods are intended

#### What action do you need to take?

- Are you a logistics service provider? Check whether or not your customers apply the Import Scheme.
- Check your customs declarations processes.
- Expand your ERP system and, where necessary, adjust your Tax Control Framework.
- Assess whether your contracts and terms and conditions need to be adjusted.

## 4. VAT liability for operators of online platforms and marketplaces

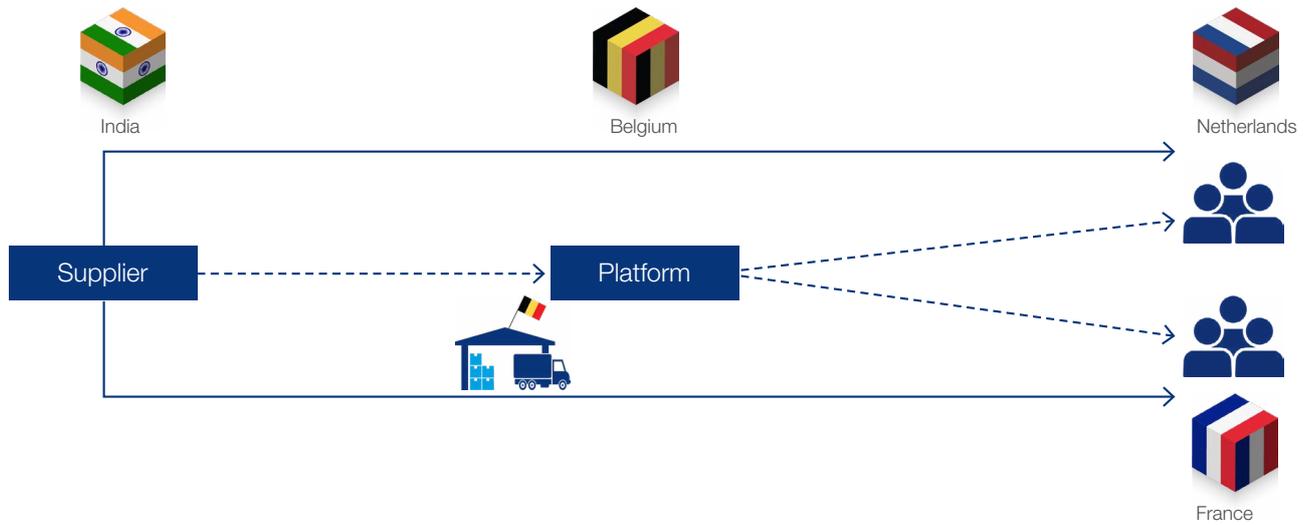
### What will change?

- Operators of online platforms and marketplaces that facilitate cross-border sales of goods to consumers within the EU – whilst not forming part of the commercial supply chain - will under certain circumstances be required to report VAT. For purposes of levying VAT, these operators are deemed to purchase goods that are traded via the platform or the marketplace from the supplier and then resell such goods to the consumer (the “deemed supplies”). In this respect, it is irrelevant where the operator of the online platform or the marketplace is based.
- This new scheme will apply only if the platform ‘facilitates’ online sales. Facilitating means - but briefly - matching a supplier with a purchaser, resulting in a sale on the platform or the marketplace. There are a few specific exceptions, which we do not touch up in this brochure.
- The VAT liability for platforms will apply in two situations:
  1. Consignments from a non-EU country with a value not exceeding € 150 (exclusive of VAT). In this respect, it is irrelevant whether the supplier is based in or outside the EU. The only thing that is relevant is that the goods come from outside the EU.
  2. Consignments from an EU country, whereby the supplier is not based in the EU. The value of the goods is irrelevant.
- The transport of the goods is allocated to the deemed supply by the operator facilitating a platform or marketplace, to the consumer.
- The operator is liable to pay VAT on the sales price via its online platform or marketplace at the time of acceptance of payment. If payment does not run through the operator, but is made directly by the consumer to the seller, it is important to record how the operator settles the VAT with the supplier.
- VAT payment is made in accordance with the methods referred to in [sections 1 and 2](#) above.
- The liability for any deficit in VAT payment on these transactions for operators of online platforms and marketplaces will be limited if the following two cumulative conditions are met:
  1. The information provided by the supplier to the operator about the sales on a platform or marketplace is incorrect.
  2. The operator can demonstrate that it did not know, and could not reasonably know, that such information was incorrect.

### Example – Consignments from a non-EU country



### Example – Consignments from an EU country



- 0% VAT rate applies
- Goods are already stored in Belgium and have already been released into free circulation
- Value of the goods is irrelevant
- Application of Union Scheme
- Deemed supply by platform to consumers is taxed with Dutch and French VAT through VAT report (OSS Return) in Belgium
- No VAT registration required in the Netherlands and France

### What action do you need to take?

- Carefully check whether your business model comes under the broad definition of a platform or marketplace and check whether you are thereby 'facilitating'.
- Assess whether your prices, contracts, and terms and conditions need to be adjusted to see if there are any situations in which the consumer pays directly to the supplier.
- Set up a process for making proper, punctual and efficient VAT reports.
- Expand your ERP system and, where necessary, adjust your Tax Control Framework.

## Questions?

Of course, we will be happy to consult with you on the impact of the new e-commerce rules on your organisation. Should you have any questions, please do not hesitate to contact your adviser at Loyens & Loeff.

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