



VAT e-commerce package - new rules on VAT in e-commerce from 1 July 2021

In brief

As from 1 July 2021 the new provisions of the "VAT e-commerce package" enter into force.

The new rules were mainly introduced by Articles 2 and 3 of Directive 2017/2455/EU and by Directive 2019/1995/EU and have been implemented at national level by Italian Legislative Decree 83 of 25 May 2021, published on Italian Official Journal no. 141 of 15 June 2021.

Most recently, by Order no. 168315 of 25 June 2021, the Italian Revenue Agency approved their implementing provisions concerning, among other things, the procedures for participating in the new special OSS and IOSS schemes introduced by the reform.

The provisions of the VAT e-commerce package aim to:

- | simplify VAT obligations for taxable persons who carry out cross-border transactions (mainly using electronic means) with private consumers in the EU, with specific regard to small entities;
 - | combat fraud and ensure that VAT is paid correctly in the Member State where the transactions are considered to take place;
 - | remove elements that distort competition between EU and non-EU operators.
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Details

Subject	Description
Intra-EU distance sales	<ul style="list-style-type: none"> The scope of the VAT e-commerce package on intra-Community distance sales concerns the supply of goods: <ul style="list-style-type: none"> dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods; from a Member State other than the one in which dispatch or transport ends; intended for natural persons who are not taxable, or for persons to whom non-taxable supplies are made pursuant to Article 72 of Italian Presidential Decree 633/72 (such as diplomatic and consular offices and representations) or, except for excisable goods, for assignees, whether taxable or non-taxable persons, who are not required to apply tax on intra-Community purchases and have not opted to apply it (e.g., farmers using a special scheme, non-taxable bodies). As provided under the previous legislation, the following are not subject to the rules on distance sales: <ul style="list-style-type: none"> the supply of new means of transport; the supply of goods to be installed, erected or assembled by or on behalf of the supplier; the supply of second-hand goods, works of art, collectors' items and antiques subject to the margin scheme.
Rules applicable up to 30 June 2021	<ul style="list-style-type: none"> Under the previous rules, distance sales made in the EU are considered relevant for VAT purposes in the Member State of destination of the goods rather than the Member State of departure, in derogation from the general rule of VAT territoriality established for the supply of goods (Articles 33 and 34 of Directive 2006/112/EC; Article 7-bis of Italian



	<p>Presidential Decree 633/72 and Articles 40(3) and 41(1)(b) of Italian Decree Law 331/93).</p> <ul style="list-style-type: none"> However, this derogation was not applied if the amount of the distance sales made by the supplier in another Member State did not exceed, in the previous calendar year and in the current year, the protection threshold established by the State of destination (of between EUR 35,000.00 and 100,000.00)
<p>Single threshold from 1 July 2021</p>	<ul style="list-style-type: none"> As from 1 July 2021 the national protection thresholds will be abolished and a single threshold will be established at Union level, equal to a total of EUR 10,000.00, which also takes into account TBE services carried out for private individuals in other Member States. If the threshold is exceeded, the sales will be considered relevant in the State of destination of the goods. Instead below the threshold they will be considered relevant for VAT purposes in the Member State of departure, and accordingly will be subject to the same VAT treatment as domestic transactions. If the threshold is exceeded in the course of the year, the transactions already carried out in the period before said event will be considered conducted in the State of "origin", and the tax will be applied according to the principle of destination only from the sale that caused the threshold to be exceeded. It is still possible to opt to apply VAT in the State of destination from the first transaction.
<p>One stop shop (OSS)</p>	<ul style="list-style-type: none"> As from 1 July 2021, pursuant to Article 2 of Directive 2017/2455/EU, the Mini One Stop Shop (MOSS) mechanism applicable only for payment of VAT on TBE services provided to private individuals of other Member States, will be renamed One Stop Shop (OSS) and extended: <ul style="list-style-type: none"> to all types of B2C services provided to private individuals in Member States other than the supplier's state; to intra-Community distance sales of goods; to certain domestic sales of goods facilitated by electronic platforms. The OSS scheme, which is optional, allows taxable persons who carry out the B2C transactions listed above to fulfil the relevant obligations only in the State of identification; accordingly, they are no longer required to identify themselves in each Member State of "consumption" to discharge the related tax obligations. Under the special scheme, the taxable person declares and pays the tax on the aforesaid supplies and services carried out



	<p>in the other Member States according to the rates valid in the States of "consumption", through the Member State of identification, which will then pay it back to the other Member States.</p> <ul style="list-style-type: none"> Application of the OSS does not change the place where the services and goods are deemed to have been supplied, but only offers a simplified procedure for declaring and paying the VAT due in other EU States. Those participating in the OSS scheme are exonerated from the obligations set out in Title II of Italian Presidential Decree 633/72 (e.g., invoicing, annual tax return) for transactions falling within the special scheme, but are obliged: <ul style="list-style-type: none"> to submit every quarter, by electronic means, by the end of the month after the reference calendar quarter, a specific declaration summarising the transactions falling within the scheme; to pay the tax in the State of identification, according to the rates of the Member States of "consumption"; to retain the documentation on the transactions carried out under the scheme for 10 years and to show it at the request of the Italian administration or the authorities of the State of "consumption".
<p>"Non-EU" OSS (Article 74-quinquies of Italian Presidential Decree 633/72)</p> <p>"EU" OSS Article 74-sexies of Italian Presidential Decree 633/72).</p>	<ul style="list-style-type: none"> Persons who are not established in the European Union (that is, those who have not established their business in the EU and do not have a permanent establishment) can register for the "Non-EU" OSS. The fact that these persons are identified for VAT purposes in a Member State is not relevant. The "Non-EU" scheme applies to services provided to non-EU taxable persons. The following can participate in the "EU" OSS: <ul style="list-style-type: none"> persons established in the EU for the provision of services to customers that are non-taxable persons in countries other than the country of establishment and inter-Community distance sales of goods; persons not established in the EU for inter-Community distance sales of goods only; persons managing electronic interfaces regarded as "deemed suppliers" for inter-Community distance sales of goods and domestic B2C supplies of goods (that is, those where the Member State of departure and of arrival are the same).



<p>Import One Stop Shop (IOSS)</p>	<ul style="list-style-type: none"> The new IOSS scheme, which is optional, allows suppliers who make distance sales of low value goods, dispatched or transported from a third country or from a third territory to purchasers in the EU to declare and pay the tax due on these transactions in the Member State of identification. Furthermore, as from 1 July 2021 the VAT exemption on the importation of goods worth up to EUR 22.00 will be abolished, meaning that all goods imported to the EU, including low value goods, will be subject to VAT. In this new context, to simplify the collection of VAT on distance sales of low value goods imported from third territories and third countries, even when facilitated by electronic interfaces, a new special scheme named Import One Stop Shop (IOSS) will be introduced, governed by Articles 369-terdecies to 369-quinquies of Directive 2006/112/EC and, at national level, by Article 74-sexies.1 of Italian Presidential Decree 633/72. By adopting the IOSS, the importation of low value goods to the EU is exempt from VAT as the supplier charges the VAT when it sells the goods to EU purchasers at the rate in force in the State where the supply is made, collecting it as part of the purchase price, and declares and pays the tax in the Member State of identification only. Persons adopting the IOSS scheme are exonerated from the obligations set out in Title II of Italian Presidential Decree 633/72 (e.g., invoicing and annual VAT return), but are obliged: <ul style="list-style-type: none"> to submit every month, by electronic means, by the end of the month after the reference month, a specific declaration summarising the transactions falling within the scheme; to pay the tax in the State of identification, according to the rates of the Member States where supply is considered to have been made; to retain the documentation on the transactions carried out under the scheme for 10 years and to show it at the request of the Italian administration or the authorities of the State of "consumption". Taxable persons established in the EU and persons not established in the EU, including electronic interfaces operating as deemed suppliers, may adopt the IOSS scheme for sales of goods that comply with all the following conditions: <ul style="list-style-type: none"> the goods are located in a third territory or a third country at the time of sale and are transported or dispatched by or on behalf of the supplier to a consumer in a Member
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	<p>State (distance sale of imported goods);</p> <ul style="list-style-type: none"> they are dispatched in consignments with an intrinsic value of no more than EUR 150.00; they are not subject to excise duties.
<p>Sales through Marketplace</p>	<ul style="list-style-type: none"> In accordance with the new Article 14-bis of Directive 2006/112/EC (assimilated through Article 2-bis of Italian Presidential Decree 633/72), if a taxable person facilitates certain distance sales of goods by using an electronic interface, it is deemed to have received and supplied said goods and takes on the role of "deemed supplier". This means that it will assume the VAT rights and obligations of an "indirect supplier" for the supply made and will be responsible for paying the VAT due on such supply. The term "facilitate" refers to the use of an electronic interface which allows a purchase and a supplier selling goods through the interface to establish a contact that gives rise to a supply of goods through such interface (Article 5-ter of Regulation (EU) 282/2011). When a legal fiction, as referred to in Article 14-bis of Directive 2006/112/EC, is created, the transaction "doubles" for tax purposes, as facilitated distance sales are deemed to give rise to two separate transactions: <ul style="list-style-type: none"> a B2B supply from the supplier to the platform; a B2C supply from the platform to the customer. From an objective point of view, the legal fiction applies to the following transactions facilitated by platforms: <ul style="list-style-type: none"> distance sales of goods imported from third territories or third countries in consignments with an intrinsic value of no more than EUR 150.00 (regardless of whether the "indirect supplier" is established in or outside the EU); in this case they are deemed: <ul style="list-style-type: none"> dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods; from a third territory or third country with arrival of the dispatch or transport in a European Union Member State, intended for natural persons not subject to tax or for persons to whom non-taxable supplies are made pursuant to Article 72 of Italian Presidential Decree 633/72, or, excluding goods subject to excise duties, intended for assignees, whether or not



	<p>taxable persons, who are not required to apply tax on intra-Community purchases and who have not opted to apply it.</p> <ul style="list-style-type: none">I sales of goods within the EU (regardless of their value) by a taxable person not established in the EU to a "non-taxable person" (therefore including both intra-Community distance sales of goods and domestic supplies where the goods depart from warehouses located in the territory of a Member State and arrive at a consumer in the same State).II The facilitating platform is not considered a deemed supplier for the following types of goods:<ul style="list-style-type: none">I goods imported in the EU from third territories or countries in consignments with an intrinsic value of more than EUR 150.00, regardless of the underlying supplier;I goods already released for free circulation in the EU supplied in the Union by a supplier established in the EU.II Both the deemed B2B supply and the deemed B2C supply are regarded as being completed for VAT purposes when the payment of the consideration is accepted. At the same time the related tax becomes chargeable (Articles 66-bis of Directive 2006/112/EC and 6(7) of Italian Presidential Decree 633/72).
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