2021 Guide: eCommerce EU VAT reboot

How the most fundamental overhaul of the EU VAT regime in over 20 years will impact B2C sellers and marketplaces
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On 1 January 2021, the member states of the European Union (EU) will introduce sweeping reforms to the VAT obligations of B2C eCommerce sellers and marketplaces.

The key reform will mean some sellers will be able to report all their pan-EU sales on a single VAT return in their home country instead of having multiple VAT registrations across the EU. The aim is to boost cross-border online trade and promote trade across the EU’s digital single market by reducing compliance obligations.

The changes also seek to tackle the stubborn €5 billion eCommerce VAT fraud gap, with member states looking to close import loopholes and co-opt online marketplaces into collecting VAT in place of sellers.

This guide provides an overview of the major reforms, and how it will affect sellers and marketplaces’ obligations. This is based on three major reforms planned for 2021.

A single EU VAT return for eCommerce

When the reforms come into effect, the existing ‘Distance Selling Thresholds’ rules will be withdrawn.

This will be accompanied by the roll out of a single EU VAT return, One Stop Shop (‘OSS’). Sellers shipping goods from their home country to customers across the EU may opt to use OSS to report all their pan-EU sales.

This is instead of the current requirement of being VAT registered in each country. This is an extension of the 2015 Mini One-Stop-Shop (‘MOSS’), which successfully trialled a single EU return for B2C sales of digital services (streaming media, e-books, apps etc.).

Implications

No action is required today.

After 2021, some eCommerce sellers will be able to close their foreign VAT registrations. They can instead complete a quarterly OSS return for their home country’s tax authority.

Non-EU sellers may use OSS, too. OSS will list sales by EU country, VAT % used, and VAT due. This VAT must be paid to the home country’s tax office.

Note: Sellers holding stocks in warehouses in other EU states will still have to remain foreign VAT registered following the 2021 reforms. This includes sellers using the Fulfilment by Amazon (FBA) program. There will be exceptions for sellers using marketplace facilitators (see Section 3).
Closing the import VAT exemption loophole

From January 2021, the €22 VAT exemption on small parcels being imported into the EU for delivery to consumers will be withdrawn.

This exemption has been heavily abused by many sellers mistakenly or deliberately under-declaring the import values of goods to avoid VAT. Instead, VAT must be charged at the point-of-sale for transactions up to the value €150.

This VAT is then declared and paid via a new submission, the ‘Import One Stop Shop’ (IOSS).

Implications

After 2021, EU sellers will no longer be disadvantaged on price versus non-EU sellers for imports as they have to charge VAT on all sales from 2021.

Non-EU sellers will have to register for IOSS in just one EU state, to declare the VAT on any affected imports on shipments below €150.

There are instances where a facilitating marketplace or delivery service can step in to report and pay the VAT. Customers will be charged VAT upfront on instead of at customs or via the delivery service.

Marketplaces become the deemed seller and VAT collector

The 2021 reforms will oblige marketplaces who facilitate for third-party sellers cross-border sales to consumers to become the ‘deemed seller’ in certain cases.

The EU has defined ‘facilitating’ as “electronic platforms assisting sellers and consumers to come together and strike a contract for the supply of goods on a cross-border basis”.

The new deemed supplier regime will apply in two use cases when the marketplace is facilitating a B2C sale: imports with a cross-border transaction not exceeding €150; and distance selling cross-border transactions of any value for non-EU sellers.

There is scope for the marketplace to opt out of this scheme, and the VAT obligations to be transferred to the delivery company of the seller.

Implications

After 2021, marketplaces will become responsible for charging and collecting VAT on affected transactions.

For imports below €150, instead of import VAT, the marketplace will charge the customer VAT at the point of sale and declare it instead of the seller. Both EU and non-EU sellers will benefit from reduced VAT obligations and may be able to deregister in some EU states.
At the heart of the 2021 eCommerce EU VAT reboot is the introduction of the One-Stop-Shop ('OSS') single EU VAT return.

From January 2021, B2C sellers dispatching their goods from a single country will no longer be required to register for foreign VAT and complete multiple VAT filings in countries where they are selling. Instead, they may opt to simply complete and file an OSS filing with their regular domestic VAT return that will list all their pan-EU sales. The seller then remits the VAT due to their home VAT authority, which then forwards the taxes to the appropriate countries. Non-EU sellers may also apply to use the OSS regime, and just need to nominate any single EU state to register and file in.

This builds on the successful launch of the single VAT return for B2C digital services in 2015, referred to as the MOSS return.

**Ending the distance selling threshold rules**

The current EU VAT regime ‘place of supply’ rules require sellers to charge the VAT of their customer’s country of residence – known as the destination principle. For EU cross-border sales this currently means sellers have to VAT register in each country where they are selling goods.

Currently, to reduce the burden on small sellers, the EU operates a special VAT registration threshold for eCommerce, known as distance selling thresholds. This is generally only available for sales from a seller’s domestic stocks.

From 1 January 2021, this registration threshold simplification will be withdrawn. Cross-border sellers will have to charge the VAT rate of the customer’s country of residence from their first sale and remit it to the foreign tax authorities.

**EU distance selling thresholds until Dec 2020**

€100,000 per annum: Germany, the Netherlands, Luxembourg, UK (£70,000).

For all other 24 members of the EU it is €35,000 per annum or local currency equivalent.

More information on these distance selling thresholds can be found at [avalara.com](http://avalara.com)
Launching the single OSS EU VAT return

At the same time as withdrawing the distance selling thresholds, the EU is extending the single VAT return, OSS, to eCommerce goods sales. This will replace the obligation to VAT register in every country where sellers are making sales to local consumers. The existing obligation to register in all countries is often called out as the principal barrier to cross-border trade in the EU. A single VAT return, listing all pan-EU sales, has already been in place (known as the Mini One-Stop-Shop, MOSS) since 2015 for B2C cross-border sales of digital services.

Sellers with existing foreign VAT registrations, and selling from stock in their country of residence, may opt to close these non-resident registrations from 1 January 2021.

Sellers will continue to declare any sales to customers in their own country of residence through their existing domestic VAT return.

The OSS filing is in addition to the regular domestic VAT return. Firstly, sellers will charge VAT at the rate of their customer’s country of residence. They can use the delivery address of their customer to identify the country of residence. Then determine the correct VAT rate, as well as applying reduced or nil VAT rates, according to the varying rates and goods classifications of each member state.

The OSS filing will be a quarterly return. It is intended as a simple listing to declare VAT due by the seller to each EU country apart from the domestic state. The OSS return will be standardised across all the EU member states, and will be structured as follows:

**Example OSS return from 2021**

<table>
<thead>
<tr>
<th>Member state</th>
<th>VAT rate type</th>
<th>VAT rate in member state</th>
<th>Total value of supplies exc VAT</th>
<th>VAT due</th>
</tr>
</thead>
<tbody>
<tr>
<td>France</td>
<td>Standard</td>
<td>20%</td>
<td>€238,000</td>
<td>€47,600</td>
</tr>
<tr>
<td></td>
<td>Reduced</td>
<td>5%</td>
<td>€15,000</td>
<td>€750</td>
</tr>
<tr>
<td>Germany</td>
<td>Standard</td>
<td>19%</td>
<td>€340,000</td>
<td>€64,600</td>
</tr>
<tr>
<td></td>
<td>Reduced</td>
<td>7%</td>
<td>€0</td>
<td>€0</td>
</tr>
<tr>
<td>Spain</td>
<td>Standard</td>
<td>21%</td>
<td>€123,000</td>
<td>€25,830</td>
</tr>
<tr>
<td></td>
<td>Reduced</td>
<td>10%</td>
<td>€4,500</td>
<td>€450</td>
</tr>
<tr>
<td>Poland</td>
<td>Standard</td>
<td>23%</td>
<td>€8,000</td>
<td>€1,840</td>
</tr>
<tr>
<td></td>
<td>Reduced</td>
<td>8%</td>
<td>€0</td>
<td>€0</td>
</tr>
<tr>
<td>Other states...</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>€141,070</td>
</tr>
</tbody>
</table>

The amounts should be shown in the seller’s domestic country’s currency. In the case of a foreign currency translation, sellers should be following their domestic country’s guidance on rates to use at the date of the transaction.

**Non-EU sellers**

Sellers who are non-resident in the EU may also use the OSS simplified filing. They must first register as a ‘non-Union’ taxpayer with the tax authority of any EU member state.

They can then file quarterly OSS filings like any EU ecommerce seller. There is no need to file a regular domestic VAT return unless the non-EU seller is holding stocks in the relevant country. VAT incurred on imports may be declared in the OSS, too.
Filing OSS

The OSS filing should be submitted on the same date as the regular quarterly VAT return. This is usually done though the tax authority’s regular online portal.

Tax-payers on monthly VAT returns should consult their local tax authority’s website to check the due date. The VAT due should be remitted by the same deadline.

The domestic tax authorities will then be responsible for dividing up and paying the VAT received from the seller to each country as appropriate.

What will this mean for a typical seller?

To show how this will affect a typical EU seller, let us look at the VAT filing obligations for an example seller today, and after the 2021 reforms.

Eurotrade GmbH, established in Germany, sells online to consumers across the EU. It holds most of its stock in Germany, from where it ships. However, it holds some stock in France for speedy delivery to its French consumers.

Eurotrade GmbH annual sales, and VAT obligations are as follows:

<table>
<thead>
<tr>
<th>Country</th>
<th>Annual sales</th>
<th>Today</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>€780,000</td>
<td>German domestic VAT return</td>
<td>German 19% GERMAN domestic VAT return</td>
</tr>
<tr>
<td>Spain</td>
<td>€54,000</td>
<td>Spanish VAT return</td>
<td>Spanish 21% OSS</td>
</tr>
<tr>
<td>Italy</td>
<td>€42,000</td>
<td>Italy VAT return</td>
<td>Italian 22% OSS</td>
</tr>
<tr>
<td>Hungary</td>
<td>€23,000</td>
<td>German domestic VAT return</td>
<td>German 19% OSS</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>€75,000</td>
<td>German domestic VAT return</td>
<td>German 19% OSS</td>
</tr>
<tr>
<td>France</td>
<td>€75,000</td>
<td>French VAT return</td>
<td>French 20% French VAT return</td>
</tr>
</tbody>
</table>

1 – Today, above the Distance Selling Threshold so must foreign VAT register; post-2021 may close this registration
2 – Today, below the Distance Selling Threshold so report sales under German rules; post-2021 switches to foreign VAT, reported via OSS
3 – Today, holding stock in foreign country so must VAT register there; post-2021 must remain foreign VAT registered in France

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Exemption for micro-businesses

The EU will grant micro-businesses an exemption from the OSS rules. This reflects the experience of the roll-out of the 2015 MOSS return which imposed overly complex customer tracking and VAT calculations on the smallest of sellers.

Any businesses selling less than €10,000 per annum cross-border on B2C goods and services will be exempt from the obligation to complete an OSS return.

Instead, they will be able to charge their domestic VAT rate and report the sales below this threshold in their regular domestic VAT return.

Brexit – the effect for UK and EU sellers

When the UK leaves the EU VAT regime, as part of leaving the EU, UK sellers will become non-EU sellers.

This will mean UK resident sellers will have to register in one of the EU states to file a ‘non-Union’ OSS return. This is the same for all non-EU sellers. UK sellers will still be able to close any EU VAT registrations if they are not holding stock in those states.

EU sellers selling to UK customers after Brexit will have to consider opening a UK VAT non-resident registration, if not already in place, since the OSS will not cover post-Brexit UK.

Should there be a delay to the UK leaving the EU VAT regime beyond 2021, either through a further Brexit postponement or an agreed Brexit implementation period, then UK sellers will be able to file OSS with their UK VAT return.

Closing the delivery VAT avoidance loophole

The EU member states have also agreed to close a delivery loophole being exploited by some eCommerce sellers to avoid charging and reporting foreign VAT.

A limited number of sellers are not directly providing delivery to the foreign consumer; instead organising a third-party fulfilment firm for the customer to sign a separate delivery contract. This potentially means the seller could just charge their national VAT rate instead of that of the customer’s country of residence.

To ensure that the tax authorities of the customer will be getting their fair share of VAT, the EU is closing this avoidance loophole in 2021.

Where the seller ‘indirectly intervenes’ to provide transport on a cross-border sale, they will have to charge foreign VAT and report it through their OSS filing.
Recovering foreign VAT

OSS does not allow sellers to recover local VAT incurred on hotel or taxi travel, for example.

Sellers will have to complete an 8th Directive VAT recovery claim for these reclaims. Similarly, non-EU sellers will still be required to complete a 13th Directive claim.

OSS is voluntary

Lastly, it will not be obligatory to use the OSS return. Sellers may still keep their foreign VAT registrations open and report local sales and VAT through them.

However, given the costs and efforts, VAT recovery aside, there will be no advantage to following this route.
Today, EU and non-EU sellers selling goods online to EU consumers can ship the goods into the EU, directly to the consumer, import VAT-free if the goods are valued at €22 or below.

This exemption, termed the ‘low value consignment stock relief’, was intended to relieve customs from the burden of checking large volumes of packages for small amounts of potential tax revenues.

However, it is leaving EU-based sellers at a major price disadvantage since they must charge VAT when the goods were dispatched from within the EU. The exemption has also encouraged large-scale fraud by sellers deliberately under-declaring the values of goods to escape the import VAT bill.

Switching import VAT to point-of-sale

The EU has therefore agreed to scrap the import VAT exemption threshold. Instead, it will oblige EU and non-EU sellers to charge VAT at the point of sale for transactions of €150 or below. This will mostly affect non-EU sellers.

To report the VAT charged at the point of sale, sellers will have to register for a new filing, termed the ‘Import One-Stop-Shop’ (IOSS). They will be issued a unique IOSS identification number which should be listed on all packages sent to the EU. This will indicate to customs that VAT is being properly declared and help ensure speedy customs clearance.

Sellers will charge VAT at the rate of their customer’s EU country of residence at the point of sale on the website. Sellers can use the delivery address of the customer to determine the country VAT rate. No VAT is due at the point of import in this case; it is declared and paid via the IOSS.

Like the OSS, IOSS will be a quarterly filing submitted to a tax authority in just one EU member state. It will declare import VAT due in all EU countries. The format and due dates will be the same as illustrated in the previous section covering OSS. Sellers will have to make a single cash payment of the VAT due to the country where they are IOSS registered.
What will this mean for a typical non-EU seller?

To understand the effects on a typical non-EU seller, let us consider the VAT obligations today and post-2021 reforms for an example non-EU seller, ShanghaiTrade LLC from China.

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Today</td>
<td>ShanghaiTrade LLC can sell and ship goods under €22 to EU consumers VAT free. Over that limit, then either the customer or ShanghaiTrade LLC has to pay import VAT at the rate of the country of import. To provide a good seller experience, ShanghaiTrade LLC pays the import VAT on behalf of its customers.</td>
</tr>
<tr>
<td>2021</td>
<td>ShanghaiTrade LLC will charge VAT at the point of sale and declare it in an IOSS return if below €150. They are then exempted from paying import VAT at customs. ShanghaiTrade LLC may also declare sales to customers around the EU via its OSS return, as discussed in the above section. For goods above the new €150 IOSS threshold, the import VAT must still be paid to customs. This could still trigger a regular VAT registration in the country of importation for ShanghaiTrade LLC if they wish to sell the goods locally or to consumers in the rest of the EU.</td>
</tr>
</tbody>
</table>

Simplified customs declaration

To help importers and customs authorities cope with the ballooning volume of low-value consignments, the standard customs declaration for goods below €150 is to be condensed.

From January 2021, sellers will be able to provide a simplified declaration at the point of import into the EU.

The existing duties exemption for most goods below €150 will remain in place.

Postal service and marketplaces may declare the VAT instead

If sellers are using postal services, the deliverer may handle the VAT reporting and settlement on transactions of €150 or below. In this case, the postal operator, courier firm or customs agent will be responsible. The postal service will remit the VAT to the tax authorities.

In certain circumstances, marketplaces facilitating the sale will be responsible for the VAT being charged at the point of sale for the EU or non-EU.

Brexit – the effect on IOSS

The UK is planning to withdraw its EU £15 low-value consignment stock relief threshold as soon as it leaves the EU VAT regime on Brexit. When the UK does leave the EU VAT regime, it is introducing a new £135 VAT parcel system, similar to the EU’s €150 IOSS scheme.

Non-EU sellers may already register with the UK’s HMRC to start declaring UK import VAT at 20% in anticipation of Brexit. Like IOSS, the foreign seller then declares and pays the VAT charged to their UK customers at the point of sale.

For sales to EU consumers post-Brexit, British resident sellers will be considered as non-EU residents. From 2021, they will be able to use the EU IOSS as non-Union sellers. This will require them to register in any one EU state for the quarterly filing and VAT payments.

If the UK’s departure from the EU VAT regime is delayed beyond the start of 2021, either by a postponement or Brexit implementation agreement, the UK sellers would be subject to all of the EU 2021 reforms. Non-UK sellers would also be able declare imports into the UK via IOSS.

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eCommerce VAT evasion is estimated to cost EU member states €5 billion per annum, a figure expected to grow to €7 billion by 2021.

Since online marketplace platforms now play such a controlling role in facilitating the colossal growth in online selling, EU member states have agreed to co-opt them in the fight against eCommerce VAT fraud.

From January 2021, marketplaces – defined as ‘electronic interfaces’ in the legislation – that facilitate cross-border sales may become the deemed supplier in two use cases:

1. For goods below €150, first imported by an EU or non-EU seller, and then distance sold to an EU consumer; and

2. For goods of any value distance sold by a non-EU seller to an EU consumer.

This means the marketplace will take legal title of the goods; and charge, collect and remit VAT.
When is a marketplace facilitating a sale?

Typically, characteristics of a marketplace facilitating sales include:

- The platform has control on the general terms of the sales contract
- The platform charges payment on behalf of the seller
- The platform participates in the ordering, fulfilment or delivery of the goods

If the marketplace only participates in some of the above activities, it may not trigger the deemed supplier obligation. Merely listing goods for sale, or only processing payments does not mean a facilitation of a sale.

To understand the two marketplace facilitation use cases, let us take two examples.

Example 1: Import followed by distance selling below €150

DeutschShopper GmbH is a German-resident seller. It makes sales to French and Italian consumers via a facilitating marketplace. The goods are valued below €150, and are sourced from China and imported into France initially.

Today:

DeutschShopper is VAT registered in France to recover the French import VAT and charge 20% French VAT to the consumer. It must also be VAT registered in Italy (assume it is over the distance selling threshold of €35,000) to report the distance sales from France to Italian consumers, and charge 22% Italian VAT.

From 2021:

The facilitating marketplace will become the deemed supplier, and will take responsibility for the import into France in its EU One Stop Shop (OSS) or IOSS declaration. See the new 2021 OSS single EU VAT return. It will charge the French and Italian consumers 20% and 22%, respectively, at the point of sale. This effectively replaces the import VAT. It follows the new rules under the withdrawal of the low-value consignment stock relief, also to be introduced in 2021. DeutschShopper can close its French and Italian VAT registrations if not using it for other purposes. For example, holding local stocks in Italy, selling via its own website or selling goods over €150.

Example 2: Non-EU selling goods across EU borders for any value

US Seller Inc, is a US-resident seller. It buys goods in France for resale to French and German consumers via a facilitating marketplace.

Today:

US Seller is French VAT registered to charge 20% French VAT on domestic sales, and to recover the French input VAT it is charged when it buys stocks. It is also German VAT registered (assume it is over the German distance selling threshold of €100,000) to charge 19% German VAT to consumers.

From 2021:

The facilitating marketplace will become the deemed supplier for the French and German sales to local consumers. The marketplace will report the sales through either its own local VAT registration in France or Germany. Or, if the marketplace does not have a local registration, it can instead use its single EU IOSS for sales in France and Germany. US Seller may deregister from France and Germany – unless it is selling off the marketplace or holding stocks locally. Lastly, it can recover the French VAT it paid when initially buying its stock via a 13th Directive VAT recovery claim.
Marketplace liable for misdeclared VAT?

The liability of the deemed supplier marketplaces to the correct VAT being charged and collected is still an open question.

At present, they will be held responsible for the correct determination and payment for the VAT. This may be limited where the seller has provided the marketplace with incorrect information.

Brexit implications?

The 2021 deemed supplier marketplace reforms will not apply to transactions in the UK if it has left the EU VAT regime by 2021. In the case that the UK is still in the EU VAT regime in 2021, either through an extension of the exit date or an agreed Brexit implementation period, the UK would still be subject to the new deemed supplier provisions from 2021.

The UK has not indicated that it would introduce similar marketplace deemed supplier rules post-Brexit. In this case, non-EU sellers would continue to be responsible for declaring UK sales VAT when they import and sell to UK consumers.
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