

On 13 May 2021, HM Revenue & Customs (HMRC) published a [Policy Paper \(EU VAT e-commerce package\)](#) outlining changes that will affect the VAT treatment of cross-border, business-to-consumer (B2C) e-commerce activities with effect from 1 July 2021.

The changes will impact the VAT treatment of:

- Movements of goods from Northern Ireland (NI) to the European Union (EU)
- Imports of “low value goods” into the EU or NI

The rationale for the [EU VAT e-commerce package](#) (introduced as part of the EU’s wider Digital Single Market Strategy) is to simplify cross-border online sales of goods, promote fair competition for EU businesses and combat VAT fraud by ensuring the correct amount of VAT due on a supply of these goods is accounted to the appropriate member state. In essence, the changes move the VAT place of supply rules closer to the principle of taxation in the jurisdiction of destination (and so away from the jurisdiction of source).

Although the EU VAT e-commerce package is primarily concerned with intra-EU sales, non-EU businesses (including those in Great Britain (England, Scotland and Wales) (GB) making direct B2C sales of goods to the EU will also be directly affected by the reforms. The new rules will also impact online marketplaces (OMP) that facilitate B2C sales of goods in the EU and, in both cases, there are special implications for NI businesses.

The UK has already implemented its own (broadly similar) version of the reforms so far as they relate to imports and the involvement of OMP. Based on the relevant measures in the EU VAT e-commerce package, the new UK VAT regime is similar to the EU reforms but with the obvious difference being its focus on the sale of goods into the UK. For a detailed summary of the UK’s new e-commerce VAT regime, please see our alert, [UK VAT – No Relief for Cross-border Sellers](#). The UK rules took effect on 1 January 2021. The EU delayed the application of its rules for six months because of COVID-19.

## Main Changes in the EU

The EU VAT e-commerce Package introduces five main changes:

- **Distance Sales Threshold**

A new, significantly reduced, EU-wide, threshold for intra-EU “distance sales” of goods (and cross-border supplies of telecommunications, broadcasting and electronically supplied (TBE) services) will be introduced. The threshold is equal to an annual turnover of €10,000 (or £8,818).

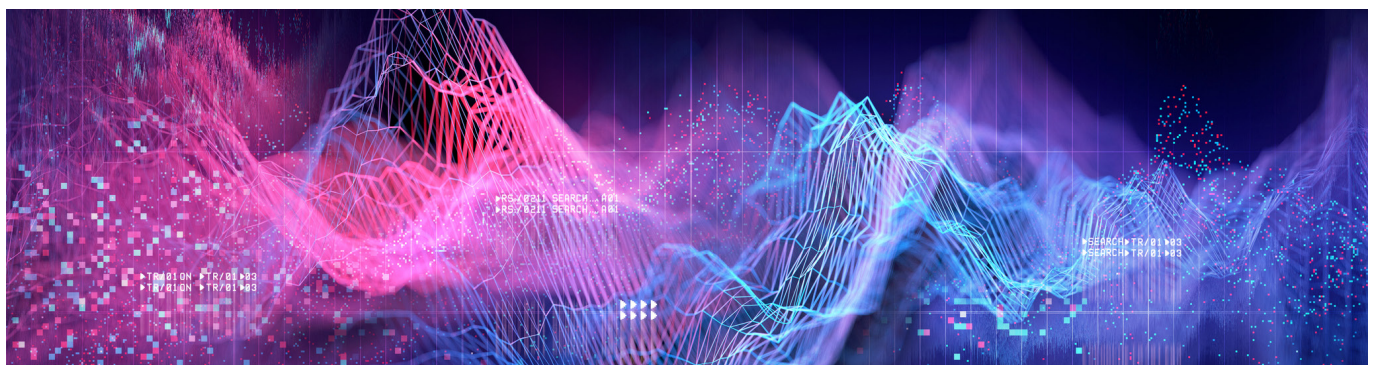
The threshold affects the rules determining the place of a supply. In effect, businesses whose supplies to final consumers located in EU member states exceed the threshold will be treated as making supplies in the member state of the consumer, and will need to register and account for VAT there. Where the threshold is not exceeded, distance sales of goods will remain subject to VAT in the jurisdiction where the supplier is established (or where those goods are located at the time of sale).

- **The VAT One-Stop Shop (OSS)**

The OSS is an extension of the VAT Mini One-Stop Shop (MOSS), currently available to suppliers of TBE services. The OSS will allow businesses making intra-EU distance sales of goods (and TBE services) in excess of the distance sales threshold to register for VAT in one member state and to account in that member state for any VAT due in that and any other member state.

- **Imports**

The current import VAT exemption for “small consignments” (up to €22) will be abolished. New rules will apply to distance sales of goods imported from third countries (including GB) with an intrinsic value not exceeding €150 (or £135). In brief, sales of goods crossing the border into the EU at (or below) this value will be treated as being supplied in the member state of the consumer, and the non-EU supplier will need to register for VAT in that member state.



- **The Import VAT One-Stop Shop (IOSS)**

In a similar manner to the OSS, an Import One-Stop Shop (IOSS) will be established to allow non-EU businesses making distance sales of goods with an intrinsic value not exceeding €150 (or £135) to register for VAT in one EU member state and to account in that member state for any VAT due in that and any other member state. Since use of the IOSS is voluntary, additional simplification measures for distance sales of imported goods in low value consignments will also be introduced.

- **OMPs**

A business that facilitates the supply of goods through the use of an online electronic interface (e.g. OMP) will be deemed for VAT purposes to have received and then supplied the goods itself. The effect is that, under a new article added to the EU VAT Directive (the “deemed supplier” provision), the OMP will need to consider whether it will be liable to account for VAT on the sales it facilitates and whether it wishes to register for an OSS or an IOSS.



## Impact in GB and NI

- **NI Distance Sales, VAT Registrations and the UK OSS**

In accordance with its obligations under the Northern Ireland Protocol, the UK must implement the EU e-commerce package in relation to supplies of goods in respect of NI (that is, the provisions relating to services will not apply). In effect, for VAT purposes, the direct sale of goods from businesses in NI to the EU consumers (and from businesses in the EU to NI consumers) will continue to be treated as intra-EU “distance sales” of B2C goods.

As a result, NI businesses selling B2C goods above the new annual threshold will be affected by the new rules (i.e. they will be treated as making supplies in each member state that their consumers reside in and will face the obligation to register and account for VAT in each one).

To ease the administrative burden the new rules impose, NI businesses will have the option (it is not compulsory) to register to use an OSS. An NI business opting to use an OSS will be able to use any OSS operated in any EU member state in which that business is VAT registered (i.e. it will need to register for VAT but will only need to do so once in one EU member state).

Alternatively, provided it is trading with the EU under the Northern Ireland Protocol, a NI business will also be able to register for VAT in the UK (if it is not already registered), obtain an XI indicator (essentially a special NI VAT registration number), and use a special UK operated version of the OSS. It is important to note that this obligation to VAT register is separate and distinct from the UK’s compulsory VAT registration threshold (£85,000 per annum).

Unfortunately, HMRC do not currently expect to be in a position to be able to launch the UK OSS registration portal before the new rules take effect on 1 July 2021. In the event that it is not operational, HMRC have promised to issue further guidance on what NI businesses should do. In the meantime, from 1 July until the UK OSS system is available, affected NI businesses will need to register and account for VAT in the relevant EU member state.

Once registered for an OSS (whether an EU or, once implemented, the UK version), the business will need to report and account quarterly through that OSS for the VAT due on all of its distance sales.

For the avoidance of doubt, GB businesses that do not trade with the EU under the Northern Ireland Protocol will not be impacted by the intra-EU distance sales aspects of the EU package.

- **GB Exports to the EU and NI, VAT Registrations and the UK IOSS**

The EU changes relating to imports of low value goods (i.e. non-excise goods in consignments whose intrinsic value does not exceed €150 (£135)) into the EU and (in accordance with the Northern Ireland Protocol) NI will have a wider impact and will affect all GB businesses that trade directly with customers in the EU and NI. In essence, direct B2C sales into the EU or NI, with a value at (or below) the €150 (£135) level, will be treated as supplies made in the member state of the consumer (or, as the case may be, NI). GB business selling into an EU member state will face an obligation to register and account for VAT in that member state. As exports from GB, the supplies should be zero-rated for UK VAT purposes.

To ease the administrative burden the new rules impose, the EU has created a new opt-in (again, it is not compulsory) scheme for distance sales of goods imported from third countries into the EU to facilitate the declaration and payment of VAT due on the sale of low value goods. The scheme will allow GB suppliers selling goods to customers in the EU to collect the VAT due from the customer (at the point of sale) and to report and account for it through the IOSS. Where the IOSS is used, the supply will be exempt from import VAT and impacted businesses will not need to register for VAT in every EU member state where they have customers.

GB businesses selling goods to customers in the EU or NI (generally via their own online shop) will be able to use the IOSS either:

- **Directly** – i.e. without the obligation to appoint an intermediary (possible because the UK has a VAT Mutual Assistance Agreement with the EU)
- **Indirectly** – i.e. through an intermediary; the intermediary must be a taxable person established in the EU that will fulfil the supplier’s obligations, including the submission of IOSS VAT returns and payment of VAT due in respect of the imported low value goods



A GB business opting to use an IOSS can register to do so in any EU member state (i.e. it will only need to register once in any one EU member state). Alternatively, GB businesses will also be able to register to use a UK-operated version of the IOSS. Unfortunately, as with the OSS, HMRC do not currently expect the UK IOSS to launch before the new EU rules take effect on 1 July 2021. Again, further guidance is expected in due course on how GB businesses wishing to use the UK IOSS should proceed. In the meantime, GB businesses that wish to opt to register for IOSS should register in any EU member state and account for the VAT due via their IOSS return.

The position is slightly different for GB-NI sales and depends on whether the GB business is UK VAT registered. VAT registered GB businesses that opt to register for an IOSS and that make direct supplies of low value goods to NI customers will be able to account for the VAT due via their IOSS return. GB businesses that are not UK VAT registered (e.g. because their turnover is below the compulsory UK VAT registration threshold) will still be able to register for an IOSS scheme but will not be required to charge VAT on supplies to customers in NI.

- **OMP, OSS and IOSS**

The UK partly implemented the new rules in respect of imports into NI from outside the UK (and the EU) from 1 January 2021. The principles that underpin those changes are broadly the same as those for the EU regime. Under the “deemed supplier” provision, a business that facilitates the supply of goods through the use of an electronic interface (broadly, an OMP, or other online platform, portal or similar) will be treated as the supplier of the goods in two situations:

- **Imports of low value goods** – i.e. distance sales of goods imported to the EU (or NI) from third countries in consignments with an intrinsic value of not more than €150 (£135) supplied to a customer in the EU
- **Goods already in the EU (or NI)** – i.e. any supply of goods that are located in the EU (or NI) at the point of sale by a non-EU (and non-NI) business to an EU (or NI) based consumer (whether the supply is domestic or intra-EU distance sales and, in either case, irrespective of its value)

It follows, therefore, that the “deemed supplier” provision is not triggered where either:

- The intrinsic value of a consignment of goods imported to the EU (or NI) exceeds €150 (£135)
- The goods sold to an EU-based consumer are already in the EU (or NI) at the point of sale and the seller is an EU (or NI) established business

Where the new rules apply, the supply is split into two separate supplies. In either case, the VAT consequences will depend on the nature of the transaction.

First, there is deemed to be a supply from the underlying supplier to the OMP (i.e. a deemed B2B supply):

- If the sale is an import of low value goods, the transaction takes place outside the scope of EU (and NI) VAT and no obligations arise
- If the sale is of goods already in the EU (or NI) by a non-EU (and non-NI) business to EU (or NI) customers, an invoice must be issued by the supplier but the supply itself will be zero-rated. Depending on the local rules, a reverse-charge mechanism may be available (i.e. where the OMP will “self-bill” as if it supplied the goods to itself)

Second, there is deemed a supply from the OMP to the consumer (i.e. a deemed B2C supply).

- If the sale is an import of low-value goods, the OMP will be obliged to charge the VAT applicable in the member state of consumption of the supply of goods (i.e. the member state of the customer) or, as the case may be, NI. The OMP will need to account for the VAT due to the tax administration in that member state (or NI).

The OMP may choose to register with an IOSS to ease the administrative burden the rules impose. As for businesses making direct supplies, where the OMP opts to register for IOSS, import VAT will no longer be due at the point of importation of the goods. OMPs that opt not to register for an IOSS will still be able to appoint an EU established intermediary to represent them, indirectly, and to account for VAT on their sales through IOSS. In other cases, the transactions will continue to be treated as exports and imports, and import VAT will continue to be due at the point the goods cross the border and will be collected in the normal way.

It is important to emphasise that an OMP will not be liable for VAT due in relation to supplies of low value goods by GB businesses to NI customers.

- If the sale is of goods already in the EU (or NI) by a non-EU business, the supply will be treated as taking place in the member state of the customer (or, where the customer is in NI, NI) and the OMP will be obliged to charge and account for the VAT applicable to the tax administration in that member state.

The OMP may choose to register with an OSS (including, in appropriate cases, the UK OSS) to ease the administrative burden the rules impose.

It is important to emphasise that the OMP will be liable for the VAT in relation to GB businesses that make sales of goods located in NI at the point if the sale is to EU-based customers, but not where the customer is in NI.

Legislation has been included in the Finance Bill currently progressing through Parliament (that will become Finance Act 2021) to implement the changes, including the creation of the UK OSS and UK IOSS systems.

## How Can We Help?

Businesses in GB, NI and across the EU will have to adopt new processes to ensure compliance with the new EU e-commerce VAT regime.

We have a dedicated team of leading tax experts around the globe ready to help you understand and anticipate developments in taxation. We can help you navigate the technical tax challenges presented by change but also provide strategic advice on how to anticipate the opportunities that arise.

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