



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Value Added Tax

**VAT Expert Group
27th meeting – 5 October 2020**

taxud.c.1(2020)5849413

Brussels, 30 September 2020

VAT EXPERT GROUP¹

VEG No 094

VAT e-commerce Summary of the comments received from business stakeholders on explanatory notes

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¹ Group of experts on value added tax to advise the Commission on the preparation of legislative acts and other policy initiatives in the field of VAT and to provide insight concerning the practical implementation of legislative acts and other EU policy initiatives in that field.

1. INTRODUCTION

The Commission received an extensive number of submissions from business experts and VEG members on the draft Explanatory Notes on VAT e-commerce rules. All the comments (more than 500 in total) were analysed carefully and a significant number of them have been taken into account and are reflected in the final version of the VAT Explanatory Notes.

The Commission would like to thank business experts and VEG members for their comments and contributions.

2. EXPLANATORY NOTES ON VAT FOR E-COMMERCE

The finalised version of the Explanatory Notes is now published on the DG TAXUD website: https://ec.europa.eu/taxation_customs/business/vat/modernising-vat-cross-border-ecommerce_en.

Chapter 4 of the Explanatory Notes has been prepared in close collaboration with customs colleagues in DG TAXUD. It is recommended to equally consult the new customs guidance “Importation and exportation of low value consignments – new VAT e-commerce package”, especially its Chapter 3 – VAT scenarios, regarding the customs implications of the new VAT rules.

Next to the VAT Explanatory Notes on e-commerce, a Guide on the One Stop Shop (VAT OSS Guide) will be published including relevant information on the registration of traders in the various OSS schemes, as well as on the submission of VAT OSS returns, corrections and payment of the related VAT reported under each of these schemes. The VAT OSS guide outlines the provisions of [Council Implementing Regulation \(EU\) 2019/2026](#) and [Commission Implementing Regulation \(EU\) 2020/194](#).

The customs guidance and the VAT OSS Guide are still under preparation and their publication is envisaged before the end of the year.

3. THE COMMENTS RECEIVED

As a general comment, the Commission would like to note that these Explanatory Notes deal with the rules introduced by the VAT e-commerce legislative package. It is not the aim and it is impossible to include explanations/clarifications on all other (although linked) issues or make comparisons with other schemes.

The main comments made on chapters 1, 2 and 3 are summarised in **Annex 1**.

A summary of the comments concerning chapter 4 can be found in **Annex 2**.

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Summary of the comments received from business stakeholders
Chapters 1, 2 and 3

The main comments made on chapters 1, 2 and 3 of the Explanatory Notes can be summarised as follows:

1. EDITORIAL COMMENTS:

A number of editorial comments were taken on board, such as for example:

1. Align the wording to the terminology used in the VAT Directive.
2. Make the wording consistent throughout the text.
3. Inserting a number of definitions in the glossary.

2. COMMENTS/REQUESTS FOR CLARIFICATIONS:

A number of requests for clarifications were included in the text of the VAT Explanatory Notes, among others:

1. In order to clarify certain terms appearing in the Explanatory Notes several definitions were added in the glossary such as:
 - A definition of special schemes,
 - A definition of B2C supplies, which clarifies who can be the customer,
 - A definition of excise goods,
 - Definitions of intermediary and of tax representative.
 - Clarification on what are third territories and third countries.
2. An explanation on what should be understood under intra-Community distance sales of goods with detailed explanations on the customer side (see section 3.2.5).
3. Clarification on the treatment of goods which are in customs warehouse (in chapter 2 and chapter 4).
4. Clarification of invoicing obligations for supplies when the deemed supplier is involved. A table summarising the invoicing principles has also been included for better understanding in section 2.1.4.1.
5. Inclusion of explanations on the place of supply rules for distance sales of goods in chapters 3 and 4.
6. To address numerous comments on the confidentiality of the IOSS number, the wording was adapted to underline that the communication of the IOSS number should be kept to the necessary minimum.

7. To address comments made, the order of the text was changed whereby transactions covered by the deemed supplier rules were included first followed by explanations on the deemed supplier rule.
8. To clarify the figure demonstrating visually the deemed supplier provision the wording on the figure was changed into ‘deemed B2B and B2C supply’.
9. In order to clarify transactions covered by the deemed supplier provision a new scheme has been included in chapter 2, figure 1.
10. Insertion in the introduction that new record keeping requirements will be in place for businesses operating electronic interfaces which facilitate supplies of goods and services, including where the electronic interface is not a deemed supplier.
11. Changes were made to the characteristics of the situations when the EI is considered to facilitate the supply to make it clear that this is to be decided on a case by case basis, as well as that the indicators are examples and not strict definitions.
12. The section on the status of the seller has been redrafted (now section 2.1.10).
13. On the standard format for transmission of data a reference to Regulation 904/2010 on Administrative Cooperation was included.
14. In order to clarify the interpretation of Article 59c of the VAT Directive in particular on the situation where a vendor would have a stock of goods in a Member State other than his Member State of establishment and make intra-Community distance sales from that stock, some examples were included (see question 4, in section 3.3).
15. To clarify the application of the EUR 10 000 threshold being applicable to both TBE services and distance sales of goods an explicit example is included in question 6 of section 3.3.
16. The notes further clarify whether the EUR 10 000 threshold applies to EI.
17. Clarifications on the difference between the intermediary and the tax representative were included and thus the text in sections sections 3.1.5. and 3.2.9. was redrafted. Also chapter 4, section 4.2.5 provides information on the intermediary needed for the import scheme.
18. The inclusion of examples on a supplier established in a third territory (see questions 20 and 21 in chapter 3 and questions 15 and 16 in chapter 4).
19. A footnote was added to clarify with which countries there is currently a mutual assistance agreement in place.
20. For consistency reasons the notes refer systematically to Member State of destination of the goods rather than to the Member State of the customer.

Some comments were not taken into account as they were going beyond the subject of the Explanatory Notes. The latter cannot be exhaustive and we have to keep it clear and concise. Some more practical issues relating to VAT returns, registration, payment, etc. were not taken on board, as they will be addressed in the OSS guide. A number of issues pertaining to import

are included in chapter 4 and there is no need for repetition in chapters 1, 2 or 3. Some of the comments also relate to national practices and these are not taken on board in the Explanatory Notes.

These comments are among others:

1. Clarify that import scheme is optional.
2. Include list of countries which require fiscal representative.
3. Include list of Member States having VAT invoicing obligations for B2C transactions.
4. Mention that unified approach to self-billing would be welcome.
5. Clarify that for excise goods fiscal representative is still necessary.
6. Include explanations on filing VAT return and payment of VAT.
7. Interaction of e-commerce threshold with other thresholds of the Directive.
8. Clarify in which country you have to register for OSS.
9. Include definitions of Member State of identification/consumption.
10. Include definition of IOSS number.
11. Include an exhaustive list of services covered.
12. Explain the reasons why the threshold of EUR 10 000 is limited to TBE services and distance sales of goods.
13. Add information on taxable amount and the time of VAT payment.
14. Include a chapter that is dedicated to describing the format in which the taxable person should remit the VAT periodic return.

3. COMMENTS ON THE LIABILITY PART OF ELECTRONIC INTERFACES

A number of remarks and suggestions were made on this part, in particular by representatives of marketplaces. We reviewed them carefully with the aim to take them on board to the largest extent possible. It should, however, be underlined that it is impossible to provide exact guidelines on the scope of the limited liability of EI, because this will be assessed by Member States on a case by case basis taking into consideration all the circumstances and facts of the case.

The following comments were included:

1. The suggestion to include the basic sets of information that the electronic interfaces might need to collect from the underlying suppliers and subsequently need to rely on for the purposes of reporting on and collecting of VAT.

2. The comment that the Explanatory Notes should insist on the fact that the verification processes can be different for different interfaces, depending on the size for instance, automation, etc.
3. A number of examples, notions on when the EI would show due commercial care are included in the Explanatory Notes.
4. A few suggested examples on the limited liability situations.

Comments not taken into account:

1. The request to provide instructions on how the electronic interface can prove that ‘it didn’t know and could not reasonably know’.
2. The request to provide more examples of the types of steps that EI should take in order to protect its position.
3. Some examples which were too specific and could be misleading.
4. The request to prepare the checklist for the burden of proof of the EI.
5. Include decision chart on liability of deemed suppliers.
6. Joint responsibility on the underlying supplier for all situations where a deemed supplier would not pay VAT would be contrary to the principles of legal certainty, proportionality and protection of legitimate expectations.

4. COMMENTS ON EXAMPLES IN CHAPTER 3:

Comments taken into account:

1. Remove the UK from the examples – this will be dealt separately under BREXIT files
2. Include example on input VAT deduction.
3. Include an example involving the customs territory of the Community but outside the territorial scope of the VAT Directive.

Some suggested examples were not included as Explanatory notes cannot tackle all possible scenarios, namely: add additional examples on B2B and B2C supplies, exempt supplies, domestic supplies.

**Summary of the comments received from business stakeholders
Chapter 4**

1. EDITORIAL COMMENTS

1. The wording will be consistent with the customs guidance,
2. Vendor is renamed to supplier in the VAT Explanatory Notes,
3. IOSS return is renamed to IOSS VAT return in order to make the difference from the normal VAT return. The details of the monthly IOSS VAT return are published – see Commission Implementing Regulation (EU) [2020/194 – a standard return for all IOSS traders and all EU Member States](#).
4. More graphical presentations are included,
5. References and cross **references to the customs guidance** are included whenever applicable.

2. COMMENTS/REQUESTS FOR CLARIFICATIONS

1. The new concept of **distance sales of goods** imported from third territories or third countries and the related place of supply rules are included in the beginning of the chapter complementing the charts of chapter 5. See section 4.1.
2. Supply of goods stored in **customs warehouses** are not covered by the concept of distance sales of imported goods. This is due to the fact that in accordance with Article 155 of the VAT Directive, retail sales are not allowed to be made from a customs warehouse. See section 4.1.3.
3. **Article 201 of the VAT Directive allows Member States to make EI liable for import VAT.** The relevance of Article 201 of the VAT Directive is explained under section 4.1.4 complementing the reply given in Question 8 (6).
4. The exclusion of **excise goods** is clarified. See section 4.2.3.
5. Excise goods are typically alcohol or tobacco products according to Article 2(3) of the VAT Directive. However, perfume and toilet water are covered by the import scheme, even though they are excluded from the customs duty exemption relating to consignments with negligible value (Article 23 of Council Regulation (EC) No 1186/2009 setting up a Community system of reliefs from customs duty.)
6. The section on intermediary is revised in order to further clarify the liability of the **intermediary**. The registration procedure will be included in the OSS guide. There are no EU rules or conditions for becoming an intermediary. This is national competence. See section 4.2.5.

7. The time of supply (time when the payment has been accepted) which is relevant for the application of the correct **VAT rate** is clarified in [section 4.2.7](#).
8. It is clarified that the **VAT amount should be displayed when the ordering process is finalised**, as it may change during the check-out process if the customer is changing the destination country. [See section 4.2.9](#)
9. The new VAT rates database (**TEDB**) was launched on 25 September 2020. This database will contain the VAT rates for goods by CN code and for services by CPA code and it will be regularly updated by the Member States. Historical data can be queried in the database. It is not a legally binding database and there will be a disclaimer. The Commission will present the database well in advance of the entry into application of the e-commerce rules, most likely at the next VEG meeting end November. Hence further details are not included in these Explanatory Notes.
10. The registration process, reporting including corrections and payment of the VAT due will be covered in the **VAT OSS guide** not in these Explanatory Notes. This guide is under preparation.
11. **No transition period is foreseen for the use of IOSS**. For goods ordered before 1/7 and arriving after 1/7, IOSS cannot be used. Hence, VAT will be paid at the border either using the standard VAT collection mechanism or special arrangements. [See new question 2](#).
12. Businesses established **in the customs territory of the EU but outside of the VAT territory** of the EU can register in IOSS via an intermediary. [See new questions 15 and 16](#). The H7 (reduced) dataset can also be used for the importation of these goods, in accordance with Article 134 of UCC-DA (it will be clarified also in the customs guidance document).

3. COMMENTS ON THE IOSS VAT IDENTIFICATION NUMBER

Most of the comments received on the IOSS VAT identification number do not relate to the Explanatory Notes, but rather to the customs guidance or concern future audit activities of the Member States. Some further clarifications were, nevertheless, included in the Explanatory Notes and/or are clarified in the following points.

1. The importance of the **secure transmission of the IOSS VAT identification number** is highlighted. We understand the concern of the VEG member and the difficulty to keep this number confidential. However, all parties need to do their utmost to transmit this number only to the relevant parties. [See section 4.2.6](#).
2. There is no requirement set in the customs (or VAT) legislation whether the IOSS number should be in the ITMATT data. ITMATT requirements are defined by Universal Postal Union (UPU). The only requirement in relation with the provision of the IOSS number is to make it available to customs authorities at the latest in the customs declaration for release for free circulation. It is likely that including the IOSS number in the ITMATT message would facilitate the processing of the data by postal operators (it is up to them to confirm).

3. The possibility to **misuse of IOSS VAT identification numbers** should be kept to the minimum. In case of differences between the monthly report and the IOSS VAT return (potentially due to the misuse) this will need to be explained by the IOSS number holder. If the reconciliations between the monthly IOSS listings compiled by the customs authorities and the IOSS returns filed by the electronic interface regularly present inconsistencies leading to the suspicion of the IOSS number being misused, the Commission encourages the authorities to work together to identify the ‘misuser’ with the help of the electronic interface.

In case of an invalid or missing IOSS VAT identification number the standard VAT collection mechanism will apply and VAT will be paid upon importation. See section 4.2.8. The relevant procedure to amend the customs declaration is included in the customs guidance.

Customs will only check the validity of the IOSS number, it will not verify further information linked to that number (whether it was used by the IOSS number holder).

A new project group with marketplaces has just started its work in the field of customs. It aims to facilitate direct transmission of data from marketplaces to customs minimizing the misuse of IOSS number and the discrepancies in the monthly listing.

4. The **IOSS VAT identification number database** is a confidential database. The numbers cannot be checked by businesses in VIES or through any other public database. The availability of this database will be the highest possible to guarantee continuous operation. (The central node of the IOSS database is regularly synchronized with the local node. Should any of the two be down, the other one can act as a backup.) One of the key principles of the Union Customs Code is the electronic exchange of information. The use of paper-based fall back solutions is not supported. Instead, customs authorities have to ensure the high-availability of IT systems. This approach can guarantee that the validation of the IOSS number can take place upon release for free circulation and no double-taxation shall take place.
5. The concept of the **monthly reporting** will be described in Chapter 3 of the customs guidance. This is an exchange of information between customs and tax authorities. Detailed description of customs checks will not be included in this public document.

4. COMMENTS ON CUSTOMS PROCESSES

The different customs formalities and processes concerning low value goods will be explained in the customs guidance (Chapter 3 VAT scenarios) – references to this document are included in the Explanatory Notes. The main issues however are clarified below and in general are not included in these Explanatory Notes.

1. The **standard VAT collection mechanism** (referred as normal customs procedures by many VEG members) is included in the customs guidance. These explanatory notes will not repeat it.
2. Possible **green lane**: The customs declaration for the IOSS goods will go through an automated validation and verification process which covers non-financial aspects as well. Customs cannot waive all the customs checks.

3. The new paragraph 4 of Article 221 UCC IA introducing a special rule for the customs office competent for the release for free circulation of low value consignments (LVC) will enter into force at the same time as the new VAT e-commerce rules (1 July 2021). It will be applicable for the release for free circulation of all LVC with a value not exceeding EUR 150 except where the VAT was collected through IOSS. Based on Article 221(4) UCC IA, the **customs office competent for the release for free circulation (LVC) must be in the Member State where the dispatch or the transport of the goods ends** – see section 4.1.4 and scenario 4a.
4. The adopted definition of **intrinsic value** is included (no change) – see section 4.2.3. The customs implications (in particular the process to modify the customs declaration data) will be included in customs guidance. However, this will not specify the process of informing the EI about the discrepancy, as it falls outside the customs remits. Customs authorities will only inform the tax authority (to be agreed nationally how this exchange of information will take place). The concept and calculation of the intrinsic value is described in details in the customs guidance. The intrinsic value is based on the price of the goods themselves when sold for export to the customs territory of the Union. Therefore, **if discounts/promotions are applied, the price actually paid must be considered** for the purpose of the intrinsic value (see question 20).
5. **Commercial invoice** is a mandatory supporting document for customs purposes in order to prove the price paid even if it is not mandatory for VAT purposes in B2C supplies.
6. Suppliers are encouraged to **show the price on the commercial invoice in euro** in order to avoid exchange rate problems regarding the customs threshold at the border. Changes in Article 48 (new paragraph 4) UCC IA for the exchange rate to be aligned with Article 91(2) of the VAT Directive are under discussion.
7. **Exchange rate:** the COM proposed short and mid-term solutions to solve the exchange rate problem. It will align the two legislations in order to use the exchange rate applicable at the time of supply. The VAT directive will need to be amended to specify which exchange rate to be used at the time of supply. Moreover, the customs PG dealing with platforms reporting obligations will analyse this issue, including the possibility for direct reporting to customs that would eliminate this problem.
8. In case of **erroneous pricing or deliberate undervaluation** of the goods, the customs will not give the possibility to prove that the buyer paid the undervalued price. It will require new customs declaration. The proof of payment of the customs duty and VAT will most likely not include the order number. OSS guide will detail how to correct the VAT return in this situation. The customs guidance explains what the correct customs procedure in this situation is.
9. **Single consignment:** It is recognized that the EI have limited information at the check-out how the goods will be shipped. It is however required to make certain reasonable assumptions. When multiple goods are ordered by the same customer at the same time, from the same supplier and shipped from location, the electronic interface will presume that the goods will form one single consignment. Question 22 is worded accordingly. It will be further detailed in the customs guidance as well.

10. In case a **single order exceeding EUR 150 is split into multiple consignments** IOSS cannot be used, and customs does not have to check whether the split value would have been eligible for IOSS. As consequently no IOSS number is indicated, customs will charge VAT at importation. See question 25.

5. COMMENTS ON SPECIAL ARRANGEMENTS

The section on special arrangements has been enriched with additional information by replying to the questions raised in the submissions. The below three points were commented by many, hence their inclusion in this summary.

1. According to Article 369y of the VAT Directive Member States shall allow the use of special arrangements where the special scheme in Section 4 of Chapter 6 of the VAT Directive is not used. Hence, special arrangements are foreseen for cases when the IOSS is not used, i.e. special arrangements may apply to transactions for which the IOSS can be used, but is not used. Consequently, the **special arrangements apply to B2C sales only** (defined in Article 14(4) of the VAT Directive) and do not apply to B2B transactions (where the acquiring B manifests as such). See section 4.3.3.
2. VAT is not considered as part of the customs debt. Therefore, Article 101 UCC is not applicable in case of special arrangements. The payment of the import VAT will follow the rules provided for in the VAT legislation (Article 369zb). The **monthly declaration referred to in Article 369zb(1)** on which the monthly VAT payment is based, **is not a customs declaration.** See section 4.3.5.
3. The **appropriate measures referred to in Article 369z(2)** mean that the person presenting the goods to customs is liable for the information (based on the accompanying documents available for them) they provide in the customs declaration in accordance with Article 15 UCC. This is not included in these Explanatory Notes.
