



## **The future of VAT. Digital economy**

# **EU Commission proposals and projects. Overall presentation Action plan**

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## Commission's Proposals adopted or soon to be formally adopted by the Council

- *VAT e-Commerce package;*
- *Proposal amending the VAT Administrative Cooperation Regulation;*
- *General Reverse Charge Mechanism – temporary measure;*
- *E-books proposal;*
- *Proposals introducing cornerstones of the definitive VAT system, CTP notion and provisions harmonising and simplifying certain rules in the current VAT system*

# Proposals adopted by the Commission under discussion in Council

- *Proposal for a definitive VAT system for intra-Union B2B trade – technical details;*
- *Proposal on the VAT rates;*
- *Proposal simplifying the VAT rules for SMEs.*

# VAT e-Commerce package

- *Entry into force in 2019 and 2021*
- *Extension of the MOSS:*
  - All services
  - Distance sales of goods
- *Simplification of rules:*
  - Threshold
  - Invoicing
- *Removal exemption for small consignments*
- *Deemed supply: electronic interfaces*

# VAT Administrative Cooperation

- *Entry into force immediately or 2020*
- *Strengthens administrative cooperation*
- *Coordination administrative enquiries*
- *Joint audits*
- *Joint processing and data analysis: Eurofisc*

# Generalised Reverse Charge Mechanism (I)

- *Temporary measure: until 30 June 2022*
- *Criteria:*
  - VAT gap
  - Carousel fraud
  - Other control measures have not worked
  - Gains outweigh increase on burdens
  - Costs not higher than with other control measures
- *Applied to all non-cross border supplies of goods and services above EUR 17 500*

# Generalised Reverse Charge Mechanism (II)

- *Specific electronic reporting obligations on taxable persons*
- *Obligations of reporting to other Member States and to the European Commission*
- *Member States not applying have to report on the impact of the measure in their territory*
- *Possibility of repeal if considerable negative impact on the internal market*

# E-publications

- *Member States **can** align VAT rates for electronically supplied publications with those of publications on any means of physical support*
- *Optional for Member States*



# Quick fixes

## VAT Directive

- CTP
- CORNERSTONES
- QUICK FIXES
  - Chain transactions (CTP)
  - Call off stock (CTP)
  - VAT identification number

## VAT Implementing Regulation

- BURDEN OF PROOF FOR CROSS BORDER SUPPLIES (CTP)

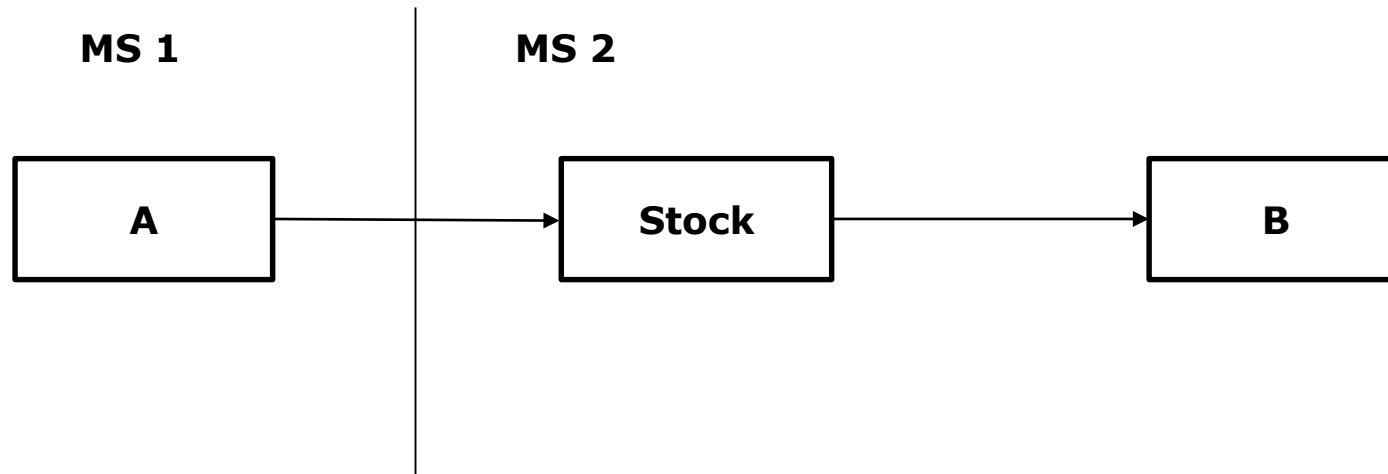
## Regulation on Administrative Cooperation

- CTP information recorded and exchanged by MSS

# Quick fixes - Outcome of the discussions in the Council

- *CTP and cornerstones to be discussed in the framework of the definitive regime*
- *Call-off stock, chain transactions arrangements and proof for cross-border transport within the EU applicable to all taxable persons, not only CTPs*
- *Modifications on the text proposed by the Commission*

# Call-off stock arrangements



- **Situation now: intra-Comm transfer by supplier/registration of supplier in MS2/domestic supply in MS2 (Art 194).**
- **Modified proposal (No CTPs): Identification of supplier: only in MS 1; Identification of customer: MS 2; Intra-Comm supply when goods are taken from stock/intra-Comm acquisition at that time by customer; Register + recapitulative statement.**

# Call-off stock arrangements

## *Modifications in the Council:*

- *Extension of the measure to all taxable persons*
- *Inclusion of a 12 month deadline*
- *No transfer if the goods are returned*
- *Possibility of change in the recipient of the goods*

# VAT identification number

## *The problem:*

- *the VAT number is only a formal requirement for the exemption of intra-Community supplies - weakness making the fighting of the carousel fraud more difficult*

## *The modified proposal:*

- *substantive value assigned to the VAT identification number of the customer for the exemption*
- *exemption linked to the good faith of the supplier if he provides incorrect information in the recapitulative statements*

# Chain Transactions - current situation

## *"Chain transaction"*

- *Consecutive supplies of the same goods*
- *Between three or more different parties*
- *Only one physical movement of the goods*

# Chain Transactions – current situation

## *Problems:*

- *The VAT Directive does not clarify which transaction is deemed to be the intra-Community supply in a chain transaction.*
- *Triangular transactions are the only solution available when certain conditions are fulfilled*
- *Serious divergences between Member States when attributing the transport to one of the supplies in the chain of transactions*

# Chain Transactions – current situation

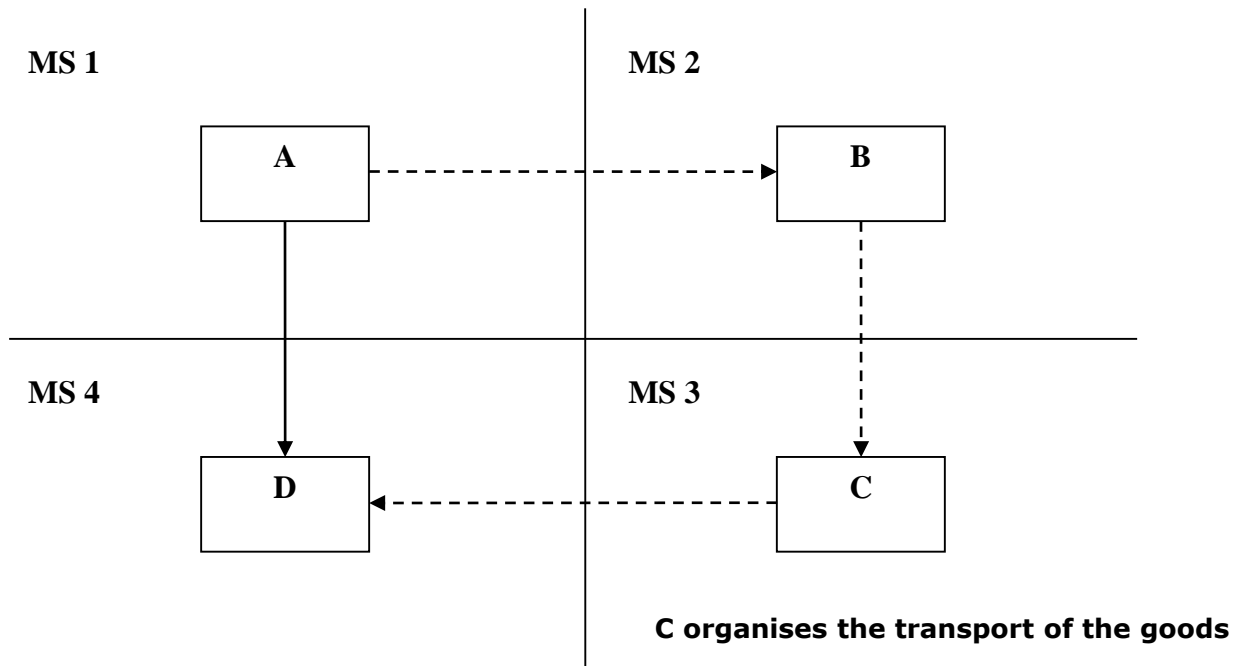
*Court of Justice of the European Union (CJEU): limited guidance for determining the VAT treatment of an intra-Community cross-border chain supply.*

*In a chain of supplies with a single intra-Community dispatch or transport of the goods:*

- *the dispatch or transport can only be linked to one of the supplies within the chain (benefiting from the exemption as an intra-Community supply);*
- *assessment of all specific circumstances needed;*
- *crucial to ascertain who among the parties has the power to dispose of the goods as owner at the time of the transport.*



# Chain Transactions – current situation



## Chain transactions – new situation Art. 36a of the VAT Directive

*The same goods:*

- *supplied successively*
- *dispatched or transported from one Member State to another Member State*
- *directly from the first supplier to the last customer in the chain*

*The place of supply rule = the dispatch or transport is ascribed only to the supply made **TO** the intermediary operator.*

*However ...*



## Chain transactions – new situation Art. 36a of the VAT Directive

*... when the intermediary operator*

- *communicates to his supplier*
- *the VAT identification number issued to him by the Member State from which the goods are dispatched or transported.*

*The place of supply rule (derogation from the first rule) = the dispatch or transport is ascribed only to the supply made **BY** the intermediary operator.*

## Chain transactions – new situation Art. 36a of the VAT Directive

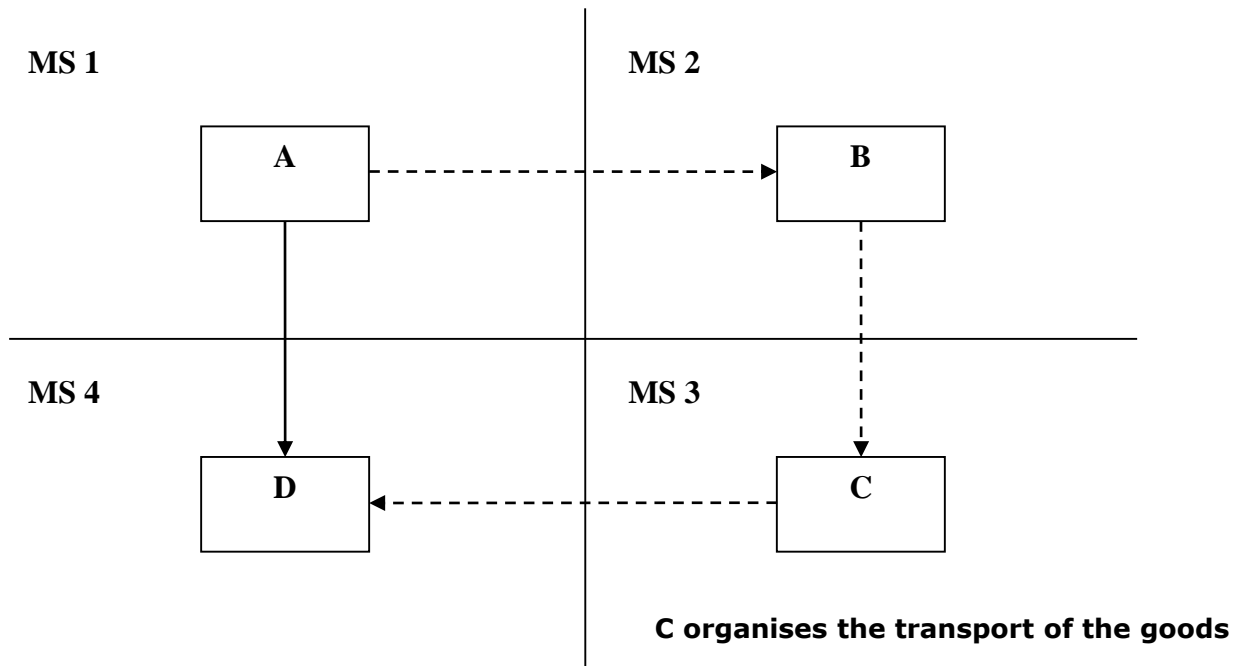
*Who is the 'intermediary operator'?*

- *A supplier in the chain other than the first supplier*
- *who dispatches or transports the goods -> himself or by a third party on his behalf.*

*What is excluded from the scope of Art 36a?*

- *The situations covered by Article 14a introduced by e-commerce Directive (entering into force 1.01.2021).*

# Chain Transactions – new situation



## Burden of proof for cross-border supplies

- *Article 45a of VAT Implementing Regulation*
- *Applicable to exemptions of intra-Community supplies in Article 138 of the VAT Directive*
- *Rebuttable presumption*
- *Two different situations are targeted by the provision:*
  - *The supplier is responsible for the transport or dispatch*
  - *The acquirer is responsible for the transport or dispatch*

## Burden of proof for cross-border supplies

Two list of valid proofs in paragraph 3 of Article 45a:

- (a) Documents relating to the transport or dispatch of the goods such as a signed CMR document or note, a bill of lading, an airfreight invoice, an invoice from the carrier of the goods;
- (b) Other documents:
  - i. Insurance policy with regard to the transport or dispatch of the goods or bank documents proving payment of the transport or dispatch of the goods;
  - ii. Official documents issued by a public authority confirming the arrival of the goods in the Member State of destination;
  - iii. Receipt issued by a warehouse keeper in the Member State of destination confirming the storage of the goods in that Member State.

## Burden of proof for cross-border supplies

The supplier is responsible for the transport or dispatch:

- 1) he indicates that the goods have been transported or dispatched by him or by a third party on his behalf, and
- 2) has at least **two items of non-contradictory evidence**
  - I) referred to in 3 point (a), or
  - II) any single item referred to point (a) in combination with any single item referred to in point (b)
    - confirming the transport or dispatch
    - issued by two parties independent of each other, of the vendor and the acquirer



## Burden of proof for cross-border supplies

The acquirer is responsible for the transport or dispatch.

The supplier needs:

- 1) **a written statement** sent to him
  - (i) no later than 10<sup>th</sup> day of the month following the supply
  - (ii) from the person acquiring the goods
  - (iii) saying that the goods were transported by the acquirer or by a third party on his behalf and indicating the Member State of destination of the goods;
  
- 2) **at least two items of non-contradictory evidence** collected in the same way as in the case when supplier is responsible for transport.

# Rates

- *Principle of taxation at origin abandoned in favor of taxation at destination*
- *Objective: Give more freedom to Member States to set rates while preserving a sufficient level of harmonisation*

# Rates

- *Member States can continue applying reduced rates in place*
- *In addition, they can apply one reduced rate with no 5% minimum and an exemption with right to deduct input VAT*
- *Reduced rates applied only for the benefit of final consumers and must ensure equal treatment.*
- *Weighted average rate has to exceed 12%*
- *List of goods and services subject to standard rate (at least 15%). Deletion of Annex III.*

# Special scheme SMEs

## *Objectives:*

- *Reduce compliance costs for SMEs*
- *Reduce distortions of competition both domestically and at EU level*
- *Reduce negative impact of the threshold effect*
- *Facilitate compliance by SMEs and monitoring by tax administrations*

# Special scheme SMEs

## *Measures:*

- *Exemption open for SMEs established in other Member States*
- *Updated value for the maximum level of thresholds*
- *Transitional period for SMEs exceeding the threshold*
- *Simplified obligations for both exempt and non-exempt SMEs*

# Special scheme SMEs

- *Definition of SMEs*
- *Elimination of graduated tax relief*
- *Exemption remains optional for Member States and taxpayers*
- *Level of threshold set by Member States below EUR 85 000*
- *Exemption applicable in a Member State other than that of establishment if:*
  - Turnover in the Member State below threshold
  - Overall turnover in the EU below EUR 100 000
- *If threshold exceeded the exemption stays applicable:*
  - For one year; or
  - Until SME threshold is exceeded for more than 50%

# Special scheme SMEs

## *Simplification of obligations for exempt SMEs:*

- *Only for SMEs that are benefiting from the exemption*
- *Release from the obligation to issue invoices*
- *Optional for Member States:*
  - No obligation to state beginning of activity and to be identified by means of an individual number
  - Release from certain or all accounting obligations
  - Release from obligation to submit VAT returns. Otherwise, simplified one that covers a calendar year
  - Release from all or certain other obligations regarding invoices, accounting, returns and recapitulative statements

# Special scheme SMEs

*Simplification of obligations for non-exempt SMEs:*

- *Simplified procedure to obtain an individual identification number*
- *Simplified obligations relating to storage of invoices*
- *Tax period covered by a VAT return shall be a calendar year*
- *Member States cannot require SMEs to make interim payments*



# **Definitive VAT system for intra- Union trade of goods COM(2018)329 of 25 May 2018**

## Why a definitive VAT system proposal now?

- The current system for B2B trade in force since 1993 is transitional in nature (Article 402 of the VAT Directive)
- It is fragmented, complex, burdensome for businesses and hampers intra-Union trade
- Cross-border VAT fraud responsible for EUR **50 billion** revenue loss a year in the EU; EUR **147 billion** the size of the VAT GAP

## Policy context

- 2011 Communication on the Future of VAT: change from taxation at origin to taxation at destination
- Taxation in the MS of origin politically unachievable (Ecofin conclusions, May 2012)
- 2016 VAT Action Plan "Time to decide": the best option is charging VAT on cross-border supplies of goods and services
- The Council and the EP endorsed a definitive system based on taxation at destination (Ecofin conclusions May 2016; Resolution of the EP of November 2016 )
- 2017 Communication "Time to act" sets out the legislative approach

# Introducing the Definitive VAT system

## Communication “Time to act” sets out a staged approach

### 1° legislative step:

- ❑ [October 2017 proposal](#): notion of CTP + cornerstones of the definitive system for intra-Union B2B trade of goods (Article 402 of the VAT Directive)
- ❑ [May 2018 proposal](#): detailed technical provisions for the operation of the definitive system (envisaged entry into force 1 July 2022).

**This proposal puts the cornerstones into operation for intra-EU supplies of goods**

### 2° legislative step :

- ❑ Definitive system extended to services (after implementation and monitoring of 1° step)

## Benefits

- Cross-border VAT fraud reduced by **83%** with saving of EUR **41 billion** a year (4,5% of the EU VAT revenue)
- VAT Compliance costs reduction for businesses of EUR **1 billion**
- Less derogations, more uniformity: intra-EU supplies and domestic supplies treated the same way

# Taxation at destination

Current system: B2B sale of goods transported from one MS to another MS is a single commercial transaction which is split, solely for VAT purposes, in 2 separate transactions:

- a supply in the MS of departure exempt from VAT;
- an Intra-Community acquisition in MS of arrival.

Proposal: only one transaction for VAT purposes

- a supply of goods taxed in MS of arrival;
- abolition of the Intra-Community acquisition.

# Converting the principle of taxation at destination into the VAT Directive

## Concept of "Intra-Union supplies of goods" [Art.14(4)(3)].

- supplies by a taxable person to a taxable person or non-taxable legal person;
- transport or dispatch of goods from one MS to another

**Attention: No threshold** for supplies to exempt taxable persons, taxable persons under farmer's scheme or non-taxable legal persons.

Consequence: such as supply is always an intra-Union supply of goods located in the MS where transport ends.

**Difference with current system:** supplier is liable for the VAT (currently it is the acquirer) + simplification + taxation at destination

# Converting the principle of taxation at destination into the VAT Directive

## Exclusions from the concept [Art.14(5)]:

- the supply of goods with assembly or installation;
- the supply of goods exempt pursuant to Article 148 or 151 (fuelling and provisioning of vessels and aircraft, diplomatic arrangements, international organisations, etc.)
- the supply of goods by a farmer covered by the common flat-rate scheme

**A transfer** by a taxable person of goods forming part of his business assets to another MS shall be treated as **an intra-Union supply of goods** [Article 17]

Concept of distance sales is amended [Articles 14(4)(1) and (2)]



# Converting the principle of taxation at destination into the VAT Directive

## Place of supply of goods with transport

- **General rule:** place where transport begins (= current rule of Art. 32 which is not amended).

- **NEW place of supply rule for Intra-Union supplies:**  
= place where transport ends [new Art. 35a].

**EXCEPTION:** Article 35a shall **not** apply to supplies made under **the margin scheme** [Art. 35c] so general rule will apply (= status quo with current system);

# Converting the principle of taxation at destination into the VAT Directive

**Intra-Union supplies of new means of transport: status quo ensured as regards the MS of taxation.**

- Art.9(2) is not amended;
- Definition of new means of transport moved to new Art.9(3);
- When customer is taxable person or non-taxable legal person, this is an **intra-Union supply** taking place where transport ends [Art.35a];
- When customer is non-taxable person other than non-taxable legal person, the supply also takes place where the transport ends [new Art. 35b];

# Taxation at destination: related aspects

**Chargeability of VAT: single rule for Intra-Union supplies and for supplies of new means of transport (Article 67 reviewed):** VAT shall become chargeable on issue of the invoice, or on expiry of the time limit referred to in the first paragraph of Article 222 if no invoice has been issued by that time.

**Exemptions:** Suppression of the exemption for IC supplies of goods (138, 139) and of the exemptions for Intra-Community acquisitions of goods (140 to 142).

# Liability of supplier or acquirer - CTP

**General rule: VAT is payable by any taxable person carrying out a taxable supply of goods (including intra-Union supply of goods) and services, except in the cases referred to in Articles...[Article 193]**

## **Exceptions supplies of goods:**

- a) Article 194a: liability of Certified Taxable Person if the goods are supplied by a taxable person not established within the territory of the Member State in which the VAT is due (this covers Intra-Union supplies of goods and also domestic supplies).
- b) Gold (Art. 198) NMT (Art. 200)

## **Exceptions supplies of services:**

- a) Optional RC Art 194
  - b) Compulsory RC Art 196
- CTP status does not play a role here.

# **Liability of supplier or acquirer - CTP**

**A provision on Certified Taxable Person is included in the proposal (Article 13a).**

- reason;**
- the criteria for obtaining the CTP status;**
- the taxable persons that cannot obtain CTP status;**
- the procedural aspects;**
- reciprocity.**

# Liability of supplier or acquirer - CTP

**Issue:** What to do with provisions allowing MS to apply Reverse Charge (RC) for certain transactions?

- Permanent RC of Article 199;
- Temporary RC of Article 199a;
- Quick Reaction Mechanism of Article 199b

**Approach followed:** Main driver for taxing Intra-Union supplies of goods = suppressing MTIC (carousel) fraud in goods.

**Consequence:** RC obsolete as a tool for tackling MTIC fraud in goods but maintained when used for other purposes.

# Liability of supplier or acquirer - CTP

**This means in practice:**

**Permanent RC of Art. 199 covers:**

- services (like construction services);
- goods supplied in situations whereby VAT is difficult to collect from the supplier, such as
  - suppliers already in financial difficulties,
  - waste collectors without residence.

**MTIC fraud is not the driver for any RC covered here**

**Therefore: no need to change Article 199**

# Liability of supplier or acquirer - CTP

**MTIC fraud is sole driver for the temporary RC and QRM**

## **Temporary RC of Art. 199a**

- Separate proposal for extension until 1 July 2022;
- In current proposal (for period after 1 July 2022) RC only for services

## **Quick Reaction Mechanism of Art. 199b**

- idem for QRM, this proposal limits the scope to services



# Liability of supplier or acquirer - CTP

## Other aspects:

- Invoicing rules of the MS of establishment of the supplier apply for intra-Union supplies or of the MS of identification when making use of the OSS [Amended Art 219a].
- Intra-Union supplies **not** to be included in recapitulative statements. The statements will only cover services [Amended Art. 262].

# One Stop Shop (OSS) scheme

**Currently in place and/or to become operational on 1 January 2021:**

- **MOSS for services supplied by non-EU established suppliers (Articles 358a to 369);**
- **MOSS for IC distance sales of goods and for services by EU taxable persons not established in MS of consumption (Articles 369a to 369k);**
- **MOSS for distance sales imported from 3rd countries (Articles 369l to 369zc).**

# One Stop Shop (OSS)scheme

**Present proposal: No substantive changes to:**

- MOSS for services supplied by non-EU established suppliers [Articles 358a to 369];**
- MOSS for distance sales imported from 3rd countries [Articles 369l to 369zc].**

**Proposal substantially amends the MOSS for IC distance sales of goods and for services by EU taxable persons not established in MS of consumption [Articles 369a to 369k]**

# One Stop Shop (OSS) scheme

## Proposed OSS compared to EU MOSS:

### What remains:

- Optional character;
- only 1 MS of identification for OSS;
- single payment

### What are the main changes:

- broad scope including B2B supplies of goods
- deduction of input tax within the OSS scheme
- more data on OSS return for offsetting deductible VAT with VAT due
- Application to non-EU established operators who appoint an intermediary.

# One Stop Shop (OSS) scheme

## Scope of OSS (Art. 369b)

A) Scope: MS shall permit the use of the OSS for supplies of goods and services for which the person liable to pay VAT is either:

- a taxable person established in the EU but not in MS of taxation;
- a taxable person not established within the Union who has appointed and mandated an intermediary.

Only transactions excluded: distance sales of goods imported from third territories or third countries covered by the special scheme.

This includes any supplies, B2B or B2C, of goods or of services, domestic or intra-Union, provided that the person liable for VAT is not established in the Member State where VAT is due.

B) Incompatibilities: Taxable persons not established within the Union cannot apply simultaneously this special scheme and the special scheme for B2C services.

Taxable persons not established within the Union **only** supplying B2C services for which they can use the MOSS for services are excluded from the OSS.

# One Stop Shop (OSS) scheme

## OSS VAT return: periodicity (Article 369f)

- Principle is a quarterly OSS VAT return;
- Monthly OSS VAT return if the Union annual turnover of the taxable person is above EUR 2,5 billion
- Union annual turnover = total annual value of supplies of goods and services, exclusive of VAT, made by a taxable person within the EU

# One Stop Shop (OSS) scheme

## Content of the OSS VAT return (Article 369g)

The OSS VAT return shall contain for each MS of taxation:

- *total value of the goods and services supplied, exclusive of VAT;*
- *applicable rates of VAT;*
- *total amount per rate of the VAT that has become chargeable;*
- *the total amount of VAT that has become chargeable;*

***These are data already to be provided currently***

# One Stop Shop (OSS) scheme

## Content of the OSS VAT return (Article 369g)

The OSS VAT return shall contain for each MS of taxation:

### **NEW DATA to be provided**

- *total amount of VAT that has become chargeable on supplies of goods and services for which the taxable person as recipient is liable to pay and on the importation of goods where the Member State exercises the option under the second paragraph of Article 211 [Reverse Charge];*
- *the VAT for which deduction is made;*
- *amendments relating to previous tax periods;*
- *the net amount of the VAT to be paid or credited*



# One Stop Shop (OSS) scheme

## Specific provisions concerning deduction (I):

- 1) In case the taxable person using the OSS is a so-called "mixed" taxable person, the deductible proportion shall be determined by the MS of identification for all the transactions carried out by the taxable person.
- 2) When the taxable person using the OSS has several establishments: the deductible proportion shall be determined by each MS of establishment for all the transactions carried out from that establishment.

**[Article 369ga]**

# One Stop Shop (OSS) scheme

## Specific provisions concerning deduction (II):

### On credit positions in a MS of taxation **[Art. 369ia]:**

- the excess shall be carried forward to the following period;
- the taxable person or his intermediary may request for a refund of excess VAT where he has a credit in the MS of taxation:
  - during two consecutive tax periods in case of quarterly OSS VAT returns;
  - during three consecutive tax periods in case of monthly OSS VAT returns.

### On credit positions in MS of identification **[Art. 369ib]:**

- credit position in the VAT return submitted in accordance with Article 250;
- on request from the taxable person;
- Member States shall consider the amount of VAT to be refunded as a payment.

# One Stop Shop (OSS) scheme

## Specific provisions concerning deduction (III):

On interaction between deduction in OSS and refund Directive  
**[Art. 369j]:**

A taxable person not making any supplies of goods and services covered by OSS in a MS of taxation in a given tax period, nor in the three preceding tax periods in case of quarterly OSS returns, nor in the 11 preceding tax periods in case of monthly OSS returns, can no longer deduct input VAT in that MS of taxation via OSS return. He must use the relevant refund Directive.

# What does not change?

No fundamental changes as regards notably the following topics:

- almost everything related to supply of services;
- almost everything related to importation of goods;
- customs procedures No 42 and 63 with adaptations (e.g. the importation of goods followed by an intra-Union supply of goods will remain exempt);
- certain rules on the place of supply of goods (e.g. general rules for supply with and without transport; supply with assembly or installation; gas and electricity);
- exemptions in the public interest [Art.132 to art.134] and exemptions for other activities like banking and insurance services [Art. 135 to 138];
- exemptions on exportation [Art.146-147], exemptions for certain transactions treated as exports [Art.151-152]; exemptions for transactions relating to international trade [Art. 154 – 163]

**Questions?**

***Thank you for your attention***