

MADRID VAT FORUM

July 1st 2021: New EU VAT rules for e-commerce activities

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April 28th 2021



› Background: 2015 VAT changes/MOSS

- › From 1 January 2015, B2C supplies of telecommunications, broadcasting and electronic services systematically subject to VAT in the Member State of destination
- › MOSS allows for VAT registration and payment in a single MS
- › MOSS = major milestone: collection of VAT by MS on each other's behalf
 - Business overall very happy with the introduction
 - IT system working well
 - Over EUR 3 billion of VAT collected in 2015- 5,6 billion in 2019
 - MOSS generally supported by MS and businesses
 - Reduce costs for business
 - Some concerns expressed by small business due to the lack of a de minimis threshold and identifying where the consumer is located



› Why new VAT e-commerce legislation

- › High cost of doing business cross-border – EUR 8000 annually per Member State for cross-border VAT obligations
- › Lack of neutrality for EU business
 - › **current system favours non-EU sellers with the current EUR 22 small consignments exemption**
 - › **high rates of non-compliance e.g. iPhones imported with declarations value of EUR 10. Estimated that EUR 25 billion of trade is non-compliant.**
- › Loss of revenues for Member States – Member States losing around **EUR 5 billion annually**. EUR 1 billion VAT foregone through exemption and EUR 4 billion through non-compliance. Significant growth on e-commerce year-on-year (minimum 15%)
- › Need for simplification measures for SMEs – the lack of a threshold in 2015, 10 year record keeping, etc...



› Main rules

Improvements of the current MOSS: **as of 2019/2021**

- 10 000 EUR threshold for micro-businesses
- Home-country rules for invoicing
- Improved VAT return correction & Extended deadlines for VAT return and payment

Special provisions for electronic interfaces: **as of July 2021**

- Deemed supplier obligations (Article 14a VAT Directive)
- Record keeping obligations (Article 242a VAT Directive)

Extension of the scope of MOSS: **as of July 2021**

- Extend the non-Union scheme to all cross-border B2C services (not just TBE services)
- Extend the Union scheme to i) cross border B2C services other than TBE services, ii) intra-EU distance sales of goods, iii) to certain domestic sales facilitated by EIS

Removal of the 22€ threshold of VAT exemption upon importation: **as of July 2021**

- Creation of the import scheme to simplify the distance sales of imported goods



› before

benefit

after



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- **E-commerce package legislation:**
- **Council Directive (EU) 2017/2455**, of 5 December 2017, amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods.
- **Council Directive (EU) 2019/1995**, of 21 November 2019, amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods.
- **Council Implementing Regulation (EU) 2019/2026**, of 21 November 2019, amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods.
- **Commission Implementing Regulation (EU) 2020/194**, of 12 February 2020, laying down detailed rules for the application of Council Regulation (EU) No 904/2010 as regards the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods

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■ New Rules as of July 1st 2021:

- Extension of MOSS return to Intra Community distance sales of goods (OSS).
- Extension of MOSS return to certain B2C services (OSS).
- New Import scheme (IOSS).
- Special arrangements for the collection of import VAT when IOSS is not used.
- Liability on the collection of VAT of the interfaces facilitating certain supplies.
- Some technical changes in the OSS return.

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- Situation as of July 1st 2021: Directive 2017/2455, modifies article 14 of the VAT Directive. An extensive definition of distance sales of goods is included. A clear distinction is made between:
 - “Intra Community distance sales of goods”; and
 - “Distance sales of goods imported from third territories or third countries”.

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- **Intra Community distance sales of goods**”: Supplies of goods 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 that in which dispatch or transport of the goods to the customer ends, where the following conditions are met:
 - (a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;
 - (b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier;

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- **“Distance sales of goods imported from third territories or third countries:** Supplies of goods 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, to a customer in a Member State, where the following conditions are met:
 - (a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;
 - (b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.’

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- New wording article 5a Regulation 282/2011:
- Goods shall be considered to have been dispatched or transported **by or on behalf of the supplier**, including where the supplier intervenes indirectly in the dispatch or transport of the goods, in particular **in the following cases**:
 - (a) where the dispatch or transport of the goods is **subcontracted by the supplier** to a third party who delivers the goods to the customer;
 - (b) where the dispatch or transport of the goods is provided by a third party **but the supplier bears either the total or partial responsibility** for the delivery of the goods to the customer;
 - (c) **where the supplier invoices and collects the transport fees** from the customer and further remits them to a third party who will arrange the dispatch or transport of the goods;
 - (d) **where the supplier promotes by any means the delivery services of a third party** to the customer, puts the customer and a third party in contact or otherwise provides to a third party the information needed for the delivery of the goods to the consumer.

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One Stop Shop (OSS) for Intra
Community distance sales of goods

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Intra Community distance sales of goods. New rules in 2021

- Place of supply rule (VAT applicable) is the Member State of arrival of the goods. However:
- If the turnover of EUR 10,000 is not surpassed (COMBINED threshold including TBE services) place of supply is the MS of dispatch.
- Threshold does not apply to non EU sellers and when there are several establishments in the EU.
- Determination of place of supply: Combination of articles 32, 33 and 59c of the VAT Directive.
- In case VAT of the country of arrival applies, how can it be declared and paid? Two options:
 - Follow the current procedure (VAT registration in each country where the goods arrive); or
 - Use OSS (current OSS return will be extended to Intra Community distance sales of goods as of July 1st 2021). To be filed in the MS of identification.
- Record keeping obligation.
- MS cannot oblige taxable persons carrying out Intra Community distance sales of goods to produce full VAT invoices.

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"Member State of identification":

- MS where the taxable person has established his business;
- If he has not established his business in the Community, where he has a fixed establishment;
- If taxable person has more than one fixed establishment, MS of identification shall be MS with a fixed establishment where that taxable person indicates that he will make use of this special scheme.
- If taxable person has not established his business in the Community and has no fixed establishment therein, the MS of identification shall be the Member State in which the dispatch or transport of the goods begins. Where there is more than one Member State in which the dispatch or transport of the goods begins, the taxable person shall indicate which of those MS shall be the MS of identification.

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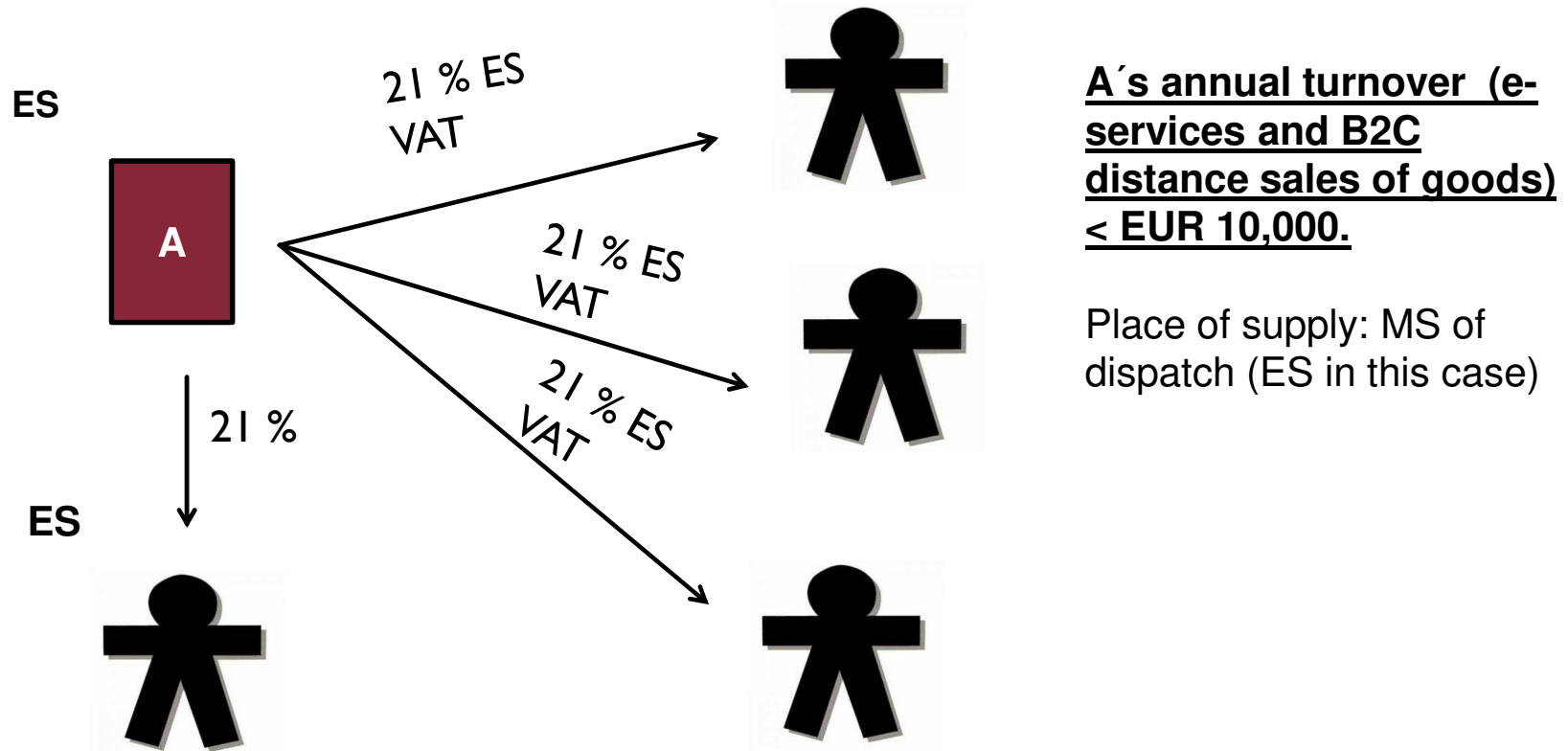
“Member State of consumption“:

- In the case of the supply of services, the MS in which the supply is deemed to take place (MS where consumer is domiciled);
- In the case of Intra Community distance sales of goods, the MS where the dispatch or transport of the goods to the customer ends;
- In the case of the supply of goods made by an interfaces the dispatch or transport of the goods supplied begins and ends in the same MS, that MS.

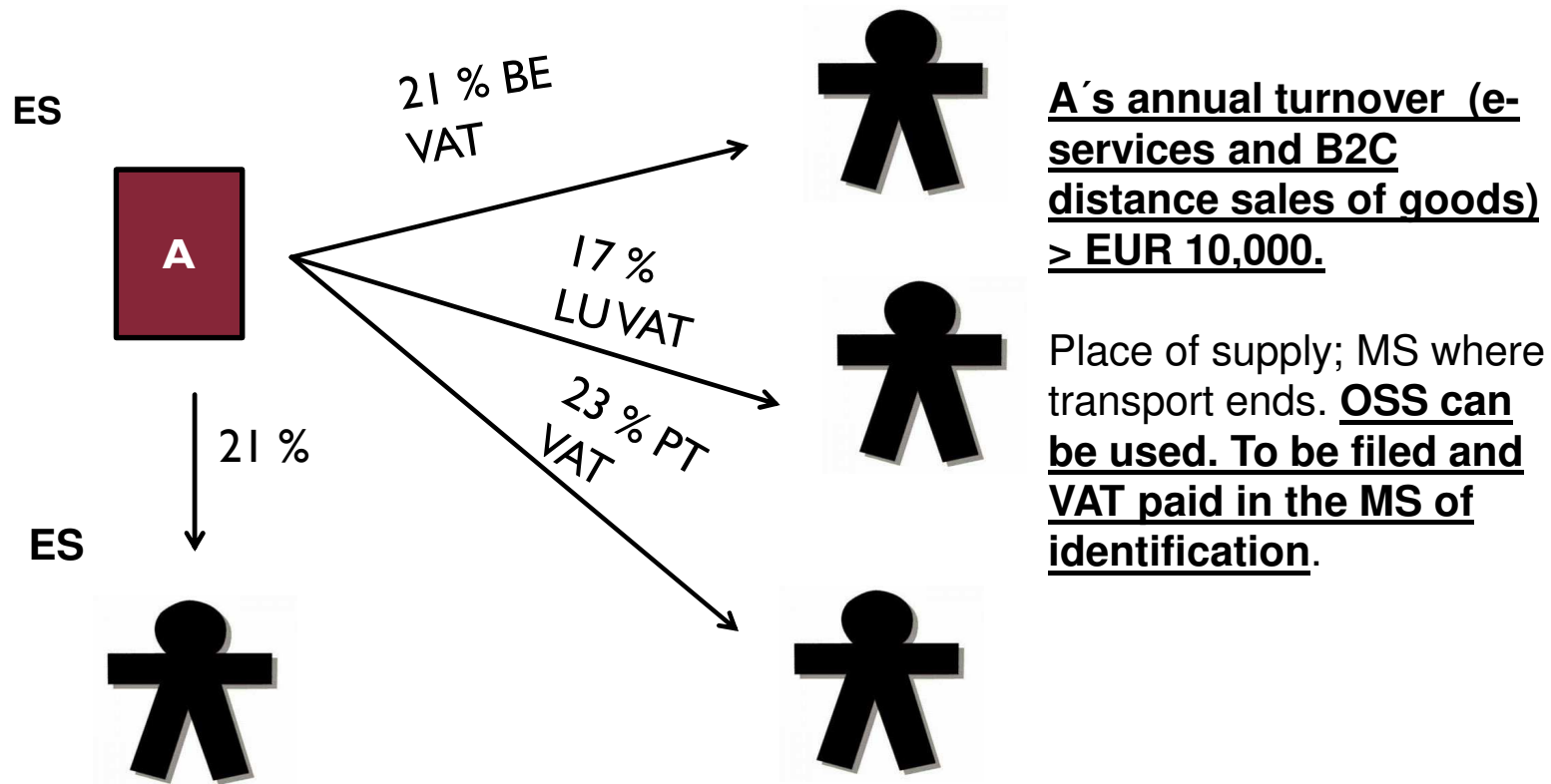
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- **Union scheme**: *Special scheme for intra-Community distance sales of goods, for supplies of goods within a Member State made by electronic interfaces facilitating those supplies and for services supplied by taxable persons established within the Community but not in the Member State of consumption.*
 - For any taxable person carrying out Intra Community distance sales of goods.
 - For EU taxable persons supplying B2C services.
- **Non- Union scheme**: *Special scheme for services supplied by taxable persons not established within the Community.*
 - For non-EU taxable persons supplying B2C services
- **A non-EU taxable person can therefore be within the Union and Non-Union scheme.**

Intracommunity distance sales of goods as of July 1st 2021



Intracommunity distance sales of goods as of July 1st 2021



A's annual turnover (e-services and B2C distance sales of goods) > EUR 10,000.

Place of supply; MS where transport ends. OSS can be used. To be filed and VAT paid in the MS of identification.

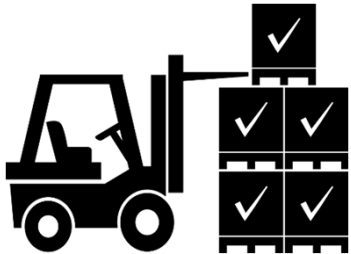
This transaction is to be reported in a standard VAT return in Spain. Not in OSS

Intracommunity distance sales of goods as of July 1st 2021

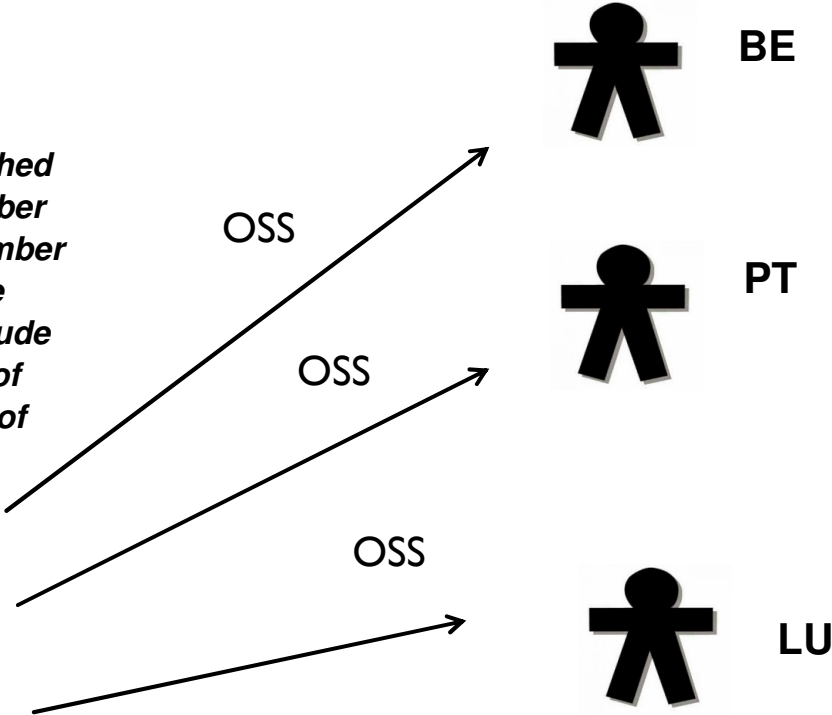
ES
MS of identification



*“Art. 369 g VAT Directive:
Where goods are dispatched
or transported from Member
States other than the Member
State of identification, the
VAT return shall also include
the total value exclusive of
VAT, the applicable rates of
VAT (...)”*



Warehouse DE

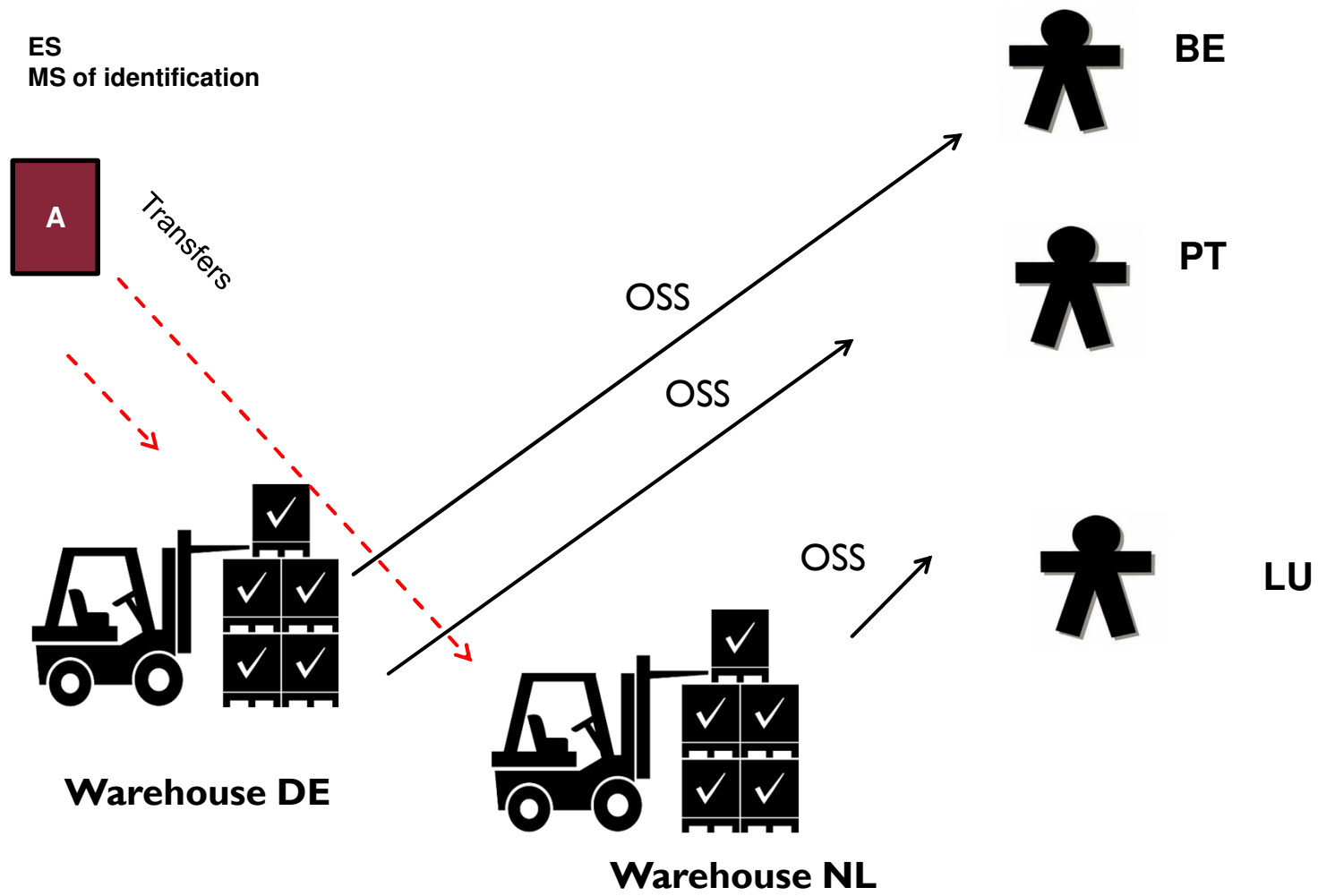


BE

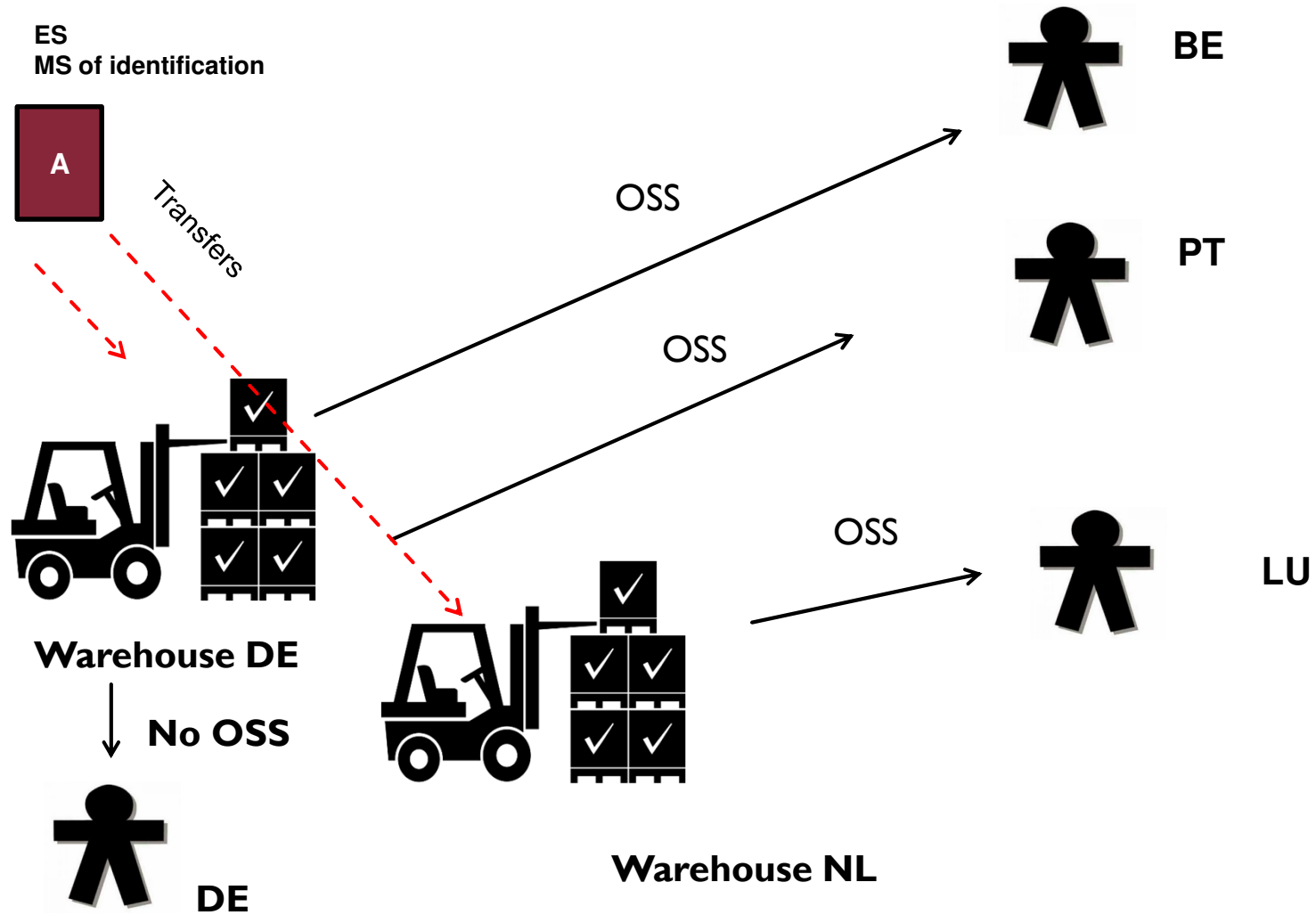
PT

LU

Intracommunity distance sales of goods as of July 1st 2021



Intracommunity distance sales of goods as of July 1st 2021



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Changes in the OSS return

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Changes in the OSS return

- Deadline for filing OSS return is extended (from 20 to 30 days).
- Simplification in the way **corrections** shall be done.
- They can be done directly in the next OSS return to be filed within a period of time of **three years** as of the date on which the initial return was required to be submitted.

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Changes in the OSS return

- OSS will be extended to the following transactions:
- Supplies of services (B2C) subject to VAT in the Member State of consumption. Not necessarily electronically supplied, telecom or broadcasting services.
- Supplies of goods that are dispatched or transported from Member States other than the Member State of identification (article 369 g of the VAT Directive).
- Supplies of goods facilitated by digital platforms where the dispatch or transport of those goods begins and ends in the same Member State.

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**Distance sales of goods imported from third countries
and territories. The import scheme (IOSS)**

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Import scheme (IOSS)

- New scheme for consignments of an intrinsic value not exceeding EUR 150.
- “Intrinsic value”: The price of the goods themselves when sold for export to the customs territory of the Union, excluding transport and insurance costs, unless they are included in the price and not indicated separately on the invoice, and excluding any other taxes and charges as ascertainable by the customs authorities from any relevant document.

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Import scheme (IOSS)

- Abolishment of the import VAT exemption for low value goods.
- Sellers can register for IOSS in one single MS (if they are from third countries or territories they must do it via an intermediary).
- The MS of IOSS registration is where the chargeable VAT is to be declared and paid.
- Taxable event when the payment is accepted by the customer.
- Exemption on import VAT.
- Monthly returns.
- Optional scheme.

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Member state of Identification

- Non-EU taxable person, MS in which he chooses to register.
- MS where the taxable person has established his business.
- If no place of business in the Community but has one or more fixed establishments, MS with a fixed establishment where the taxable person indicates he will make use of this special scheme.
- Where the intermediary has established his business in a MS, that Member State.
- If intermediary no place of business in the Community but has one or more fixed establishments, MS with a fixed establishment where the intermediary indicates he will make use of this special scheme.

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Member state of consumption

- MS where the dispatch or transport of the goods to the customer ends.

Intermediary

- Non EU taxable persons applying OSS scheme must appoint an intermediary, established in the EU territory.
- Intermediary must apply for its own IOSS number.
- Intermediary must also apply for the IOSS numbers of the taxable persons on whose behalf he is acting.
- These IOSS numbers must be communicated to customs for the application of the import VAT exemption.

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Import scheme (IOSS)

New wording article 33 (b) (c). Place of supply:

(b)the place of supply of distance sales of goods imported from third territories or third countries into a Member State other than that in which dispatch or transport of the goods to the customer ends, shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends;

(c)the place of supply of distance sales of goods imported from third territories or third countries into the Member State in which dispatch or transport of the goods to the customer ends shall be deemed to be in that Member State, provided that VAT on those goods is to be declared under the special scheme of Section 4 of Chapter 6 of Title XII.'

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Import scheme (IOSS)

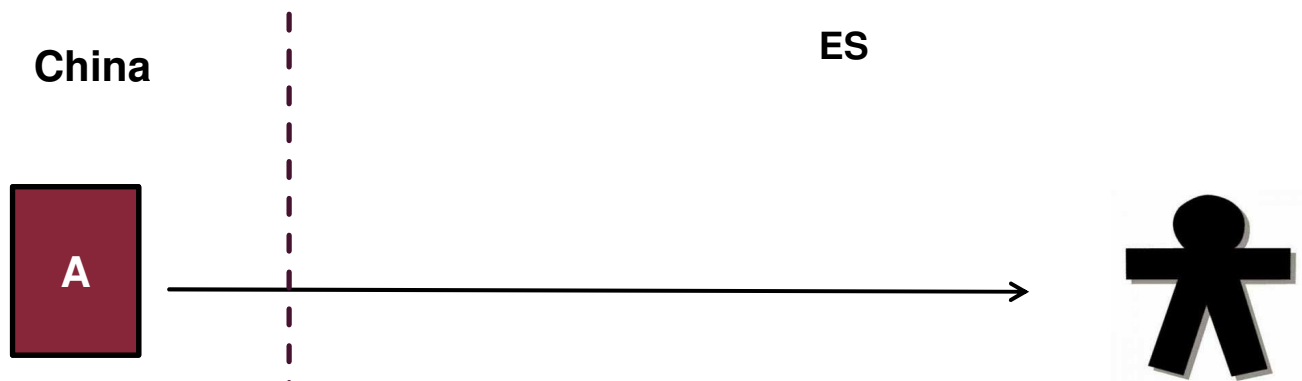
- Two taxable events:
- **Taxable event 1**: Distance sale of goods imported from third countries or third territories.
- **Taxable event 2**: Import of the goods into the EU territory.
- In order to determine where is the **place of supply, we need to distinguish**:
 - MS of importation is the same as MS of final destination of the goods.
 - MS of importation is not the same as MS of final destination of the goods.

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Import scheme (IOSS)

- **MS of importation is the same as MS of final destination of the goods.**
- **If IOSS is used:** Exempt importation in MS of importation + Distance sale is MS of destination (same as importation). Seller is the taxable person.
- **If IOSS is not used:**
- If final consumer acts as the importer: Distance sale out of the scope of EU VAT (transport starts outside the EU). Import VAT payable by customer (no import VAT relief!)
- If seller acts as the importer: Import VAT payable upon importation + VAT on the sale.
- **MS of importation is not the same as MS of final destination of the goods.**
- **If IOSS is used:** Exempt import + VAT on the distance sale. Place of supply, MS of arrival of the goods.
- **If IOSS is not used:** VAT on the import (place of supply is MS of import) + VAT on the sale (Place of supply is the MS of arrival of the goods).

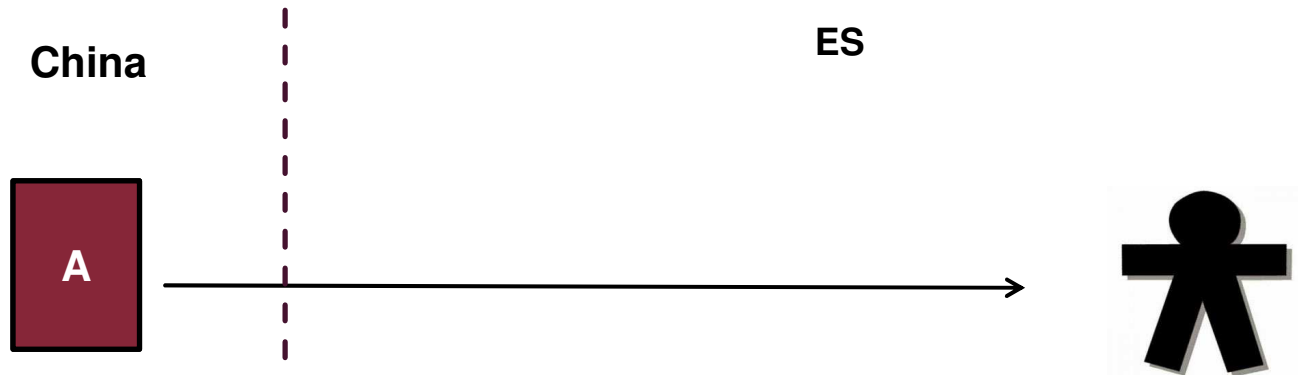
IOSS: MS of importation is the MS of final destination of the goods



Opt for IOSS is used:

- Exempt importation.
- Distance sale, place of supply ES.
- A is the taxable person
- A must communicate its IOSS number to customs.

IOSS: MS of importation is the MS of final destination of the goods



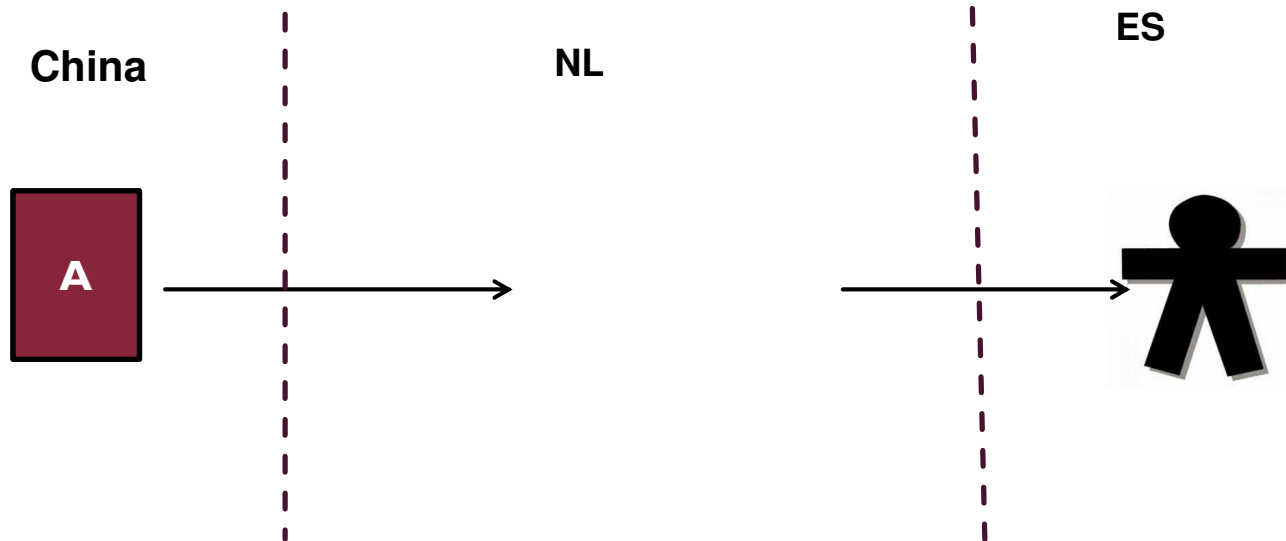
IOSS is not used and final consumer is the importer:

- Distance sale out of the scope of EU VAT (transport begins in China).
- Import in ES. No exemption applies. Possible to use special arrangements for the collection of import VAT.

IOSS is not used and seller is the importer:

- Import in ES. No exemption applies
- Distance sale Place of supply ES.
- A to register in Spain.

IOSS: MS of importation is not the MS of final destination of the goods



IOSS is used:

- Exempt importation.
- Distance sale. Place of supply ES.
- IOSS return.
- A to communicate IOSS number to customs

IOSS is not used:

- Import VAT. No exemption.
- Distance sale. Place of supply ES.
- A to register in Spain.

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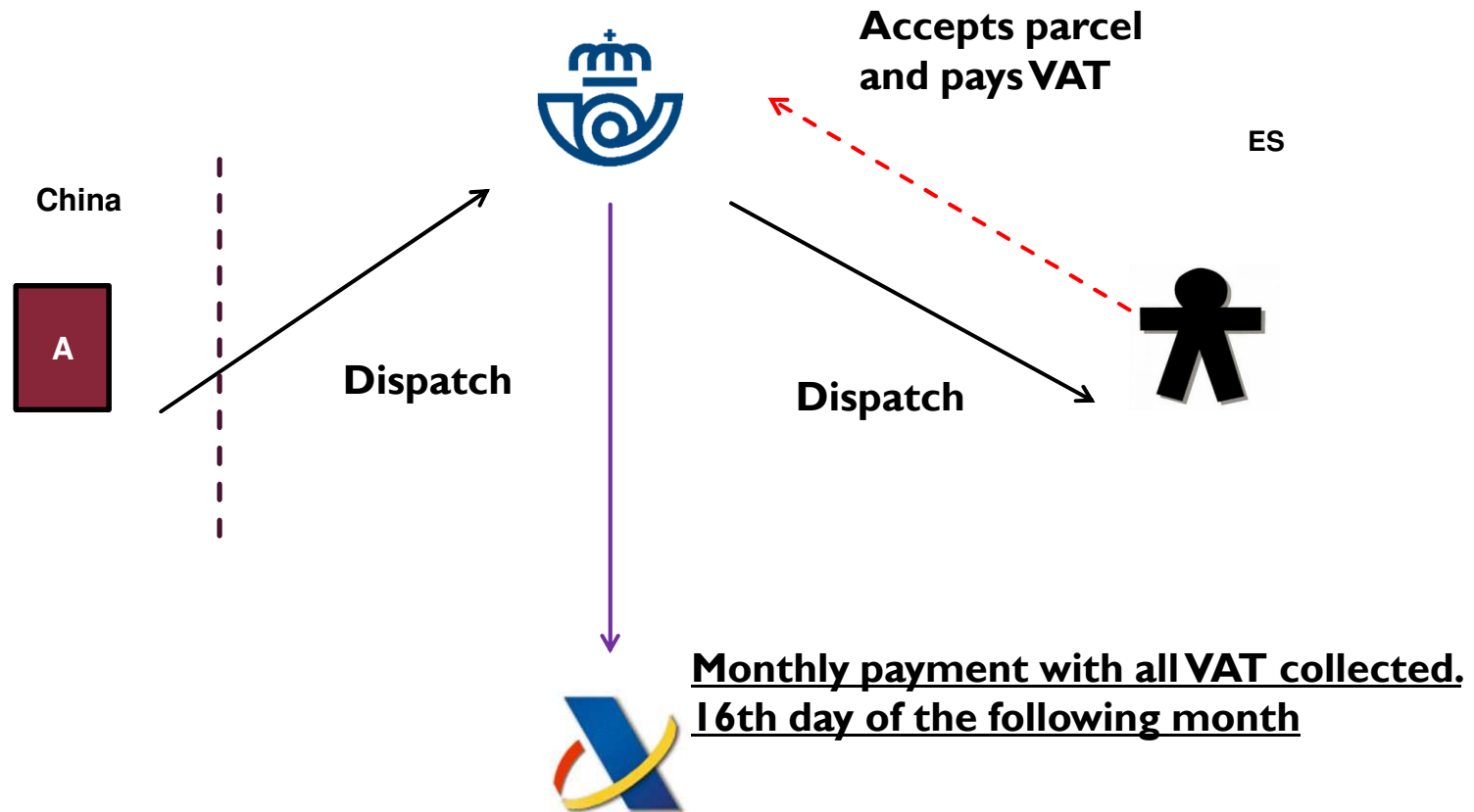
Special arrangements for the collection of import VAT when
IOSS is not used.

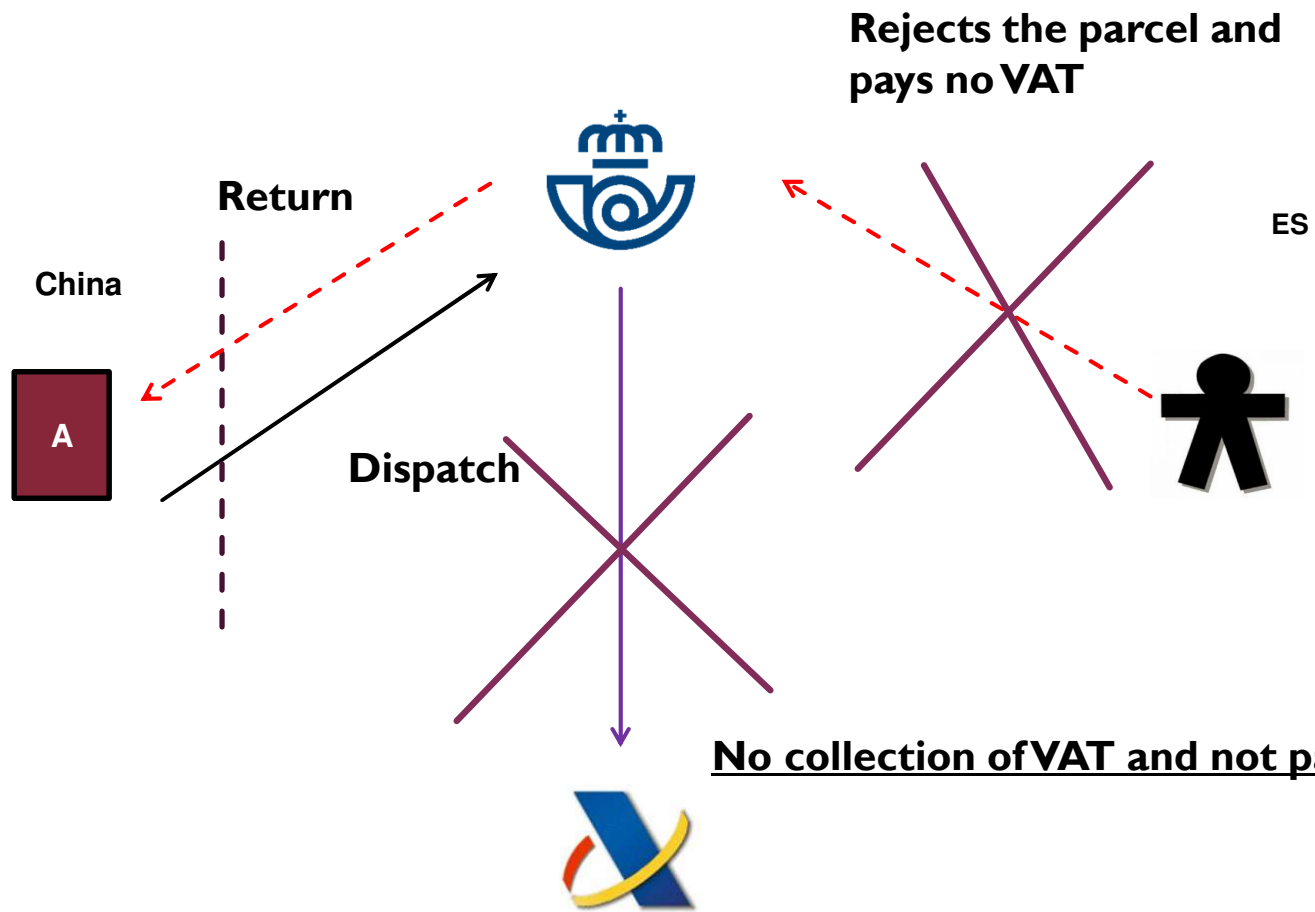
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Special arrangements when IOSS is not used.

- The person presenting the goods to customs will remit to the tax/customs authorities the VAT collected from the final customer during a calendar month.
- EU Member States may provide for the use of the standard VAT rate for all goods declared under the special arrangements.
- The declarant/person presenting goods to customs will make a single monthly payment to the competent authorities of all the VAT collected from customers (Article 369zb(2) of the VAT Directive).
- Payment until the 16th day of the month following the month when VAT is collected.

Special arrangements





No collection of VAT and not payment to the Tax Office

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VAT liability of the interfaces facilitating certain
supplies

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Digital interfaces facilitating distance sales

- Article 14a is added to the VAT Directive:

*“Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, distance sales of goods imported from **third territories** or third countries in consignments of an intrinsic value **not exceeding EUR 150**, that taxable person shall be deemed to have received and supplied those goods himself.*

*Where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or similar means, **the supply of goods within the Community by a taxable person not established within the Community** to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied those goods himself”*

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Digital interfaces facilitating distance sales

- The liability is limited to:
 - Distance sales of goods imported from third countries (intrinsic value below EUR 150), regardless where the supplier is established.
 - Intra-Community distance sales of goods and also domestic sales carried out by non-EU sellers.

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Digital interfaces facilitating distance sales (deemed provisions)

- **Facilitate means**: The use of an electronic interface to allow a customer and a supplier offering goods for sale through the electronic interface to enter into contact which results in a supply.
- **An interface does not facilitate when:**
 - It does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made;
 - It is not, either directly or indirectly, involved in authorizing the charge to the customer in respect of the payment made;
 - It is not, either directly or indirectly, involved in the ordering or delivery of the goods.

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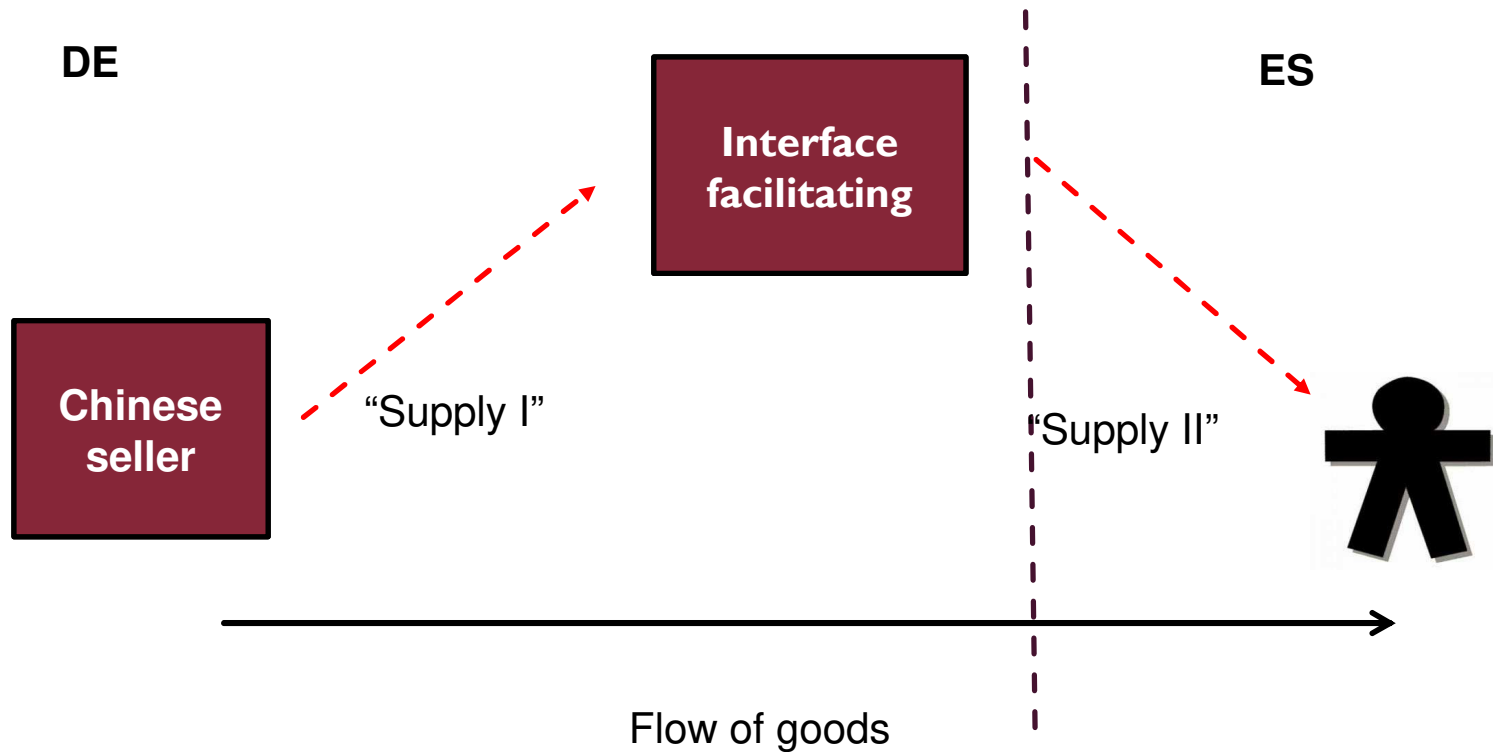
- **Deemed provision does not apply when the interface:**
 - Only processes payments in relation to the supply of goods;
 - Only provides advertising of goods;
 - Only redirects or transfers customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.
- **Interface will not be held liable for the payment of VAT if the following conditions are met:**
 - The interface is dependent on information provided by suppliers selling goods through an electronic interface or by other third parties in order to correctly declare and pay the VAT on those supplies;
 - The information provided is erroneous;
 - The interface can demonstrate that he did not and could not reasonably know that this information was incorrect.

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Digital interfaces facilitating distance sales (deemed provisions)

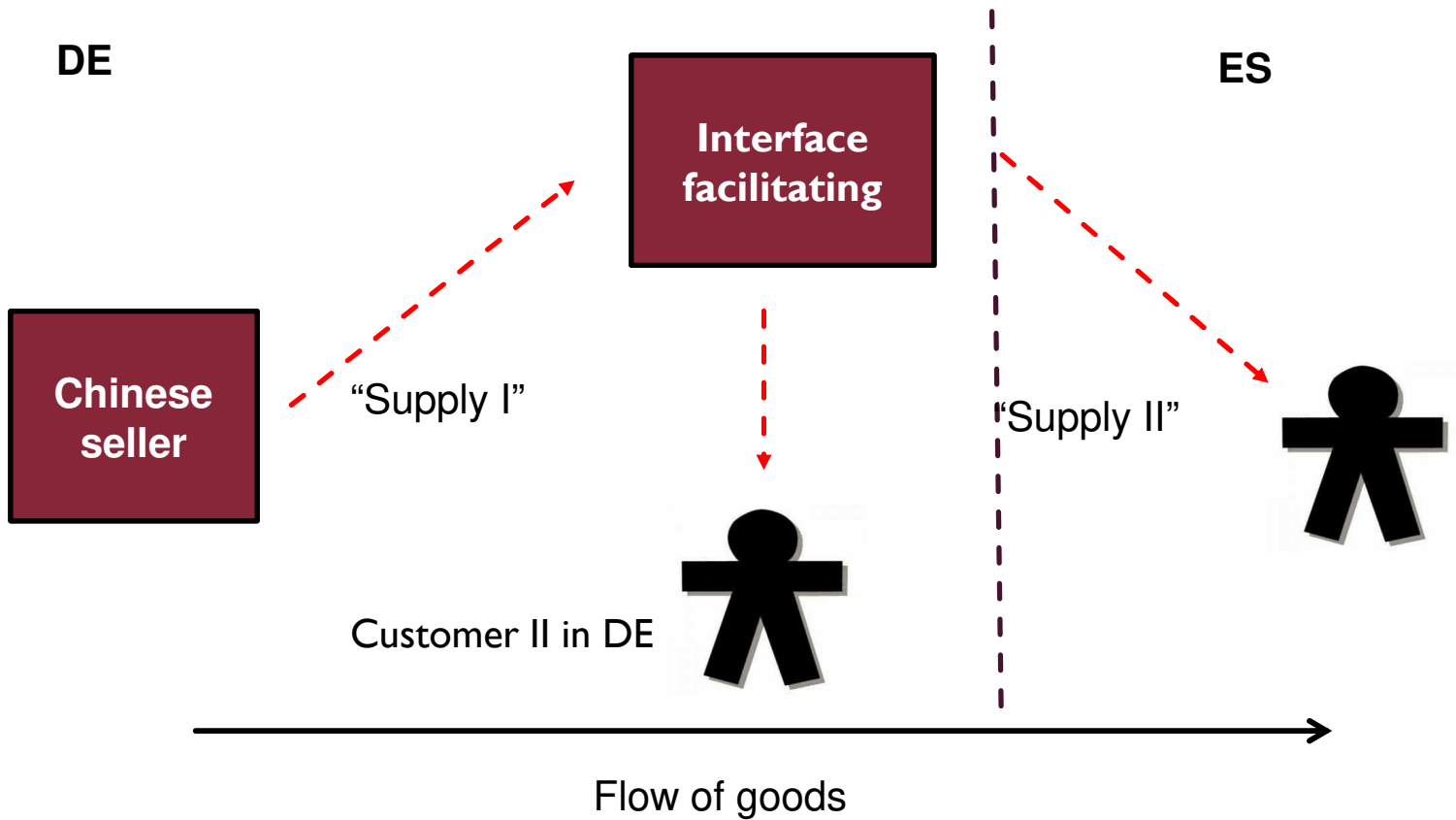
- Deemed provision
 - Two supplies take place:
 - First supply from the sellers to the interface: B2B, VAT exempt.
 - Second supply from the interface to the consumer: B2C, VAT chargeable.
 - Transport ascribed to the second supply.

Interface facilitating intra Community distance sales of goods



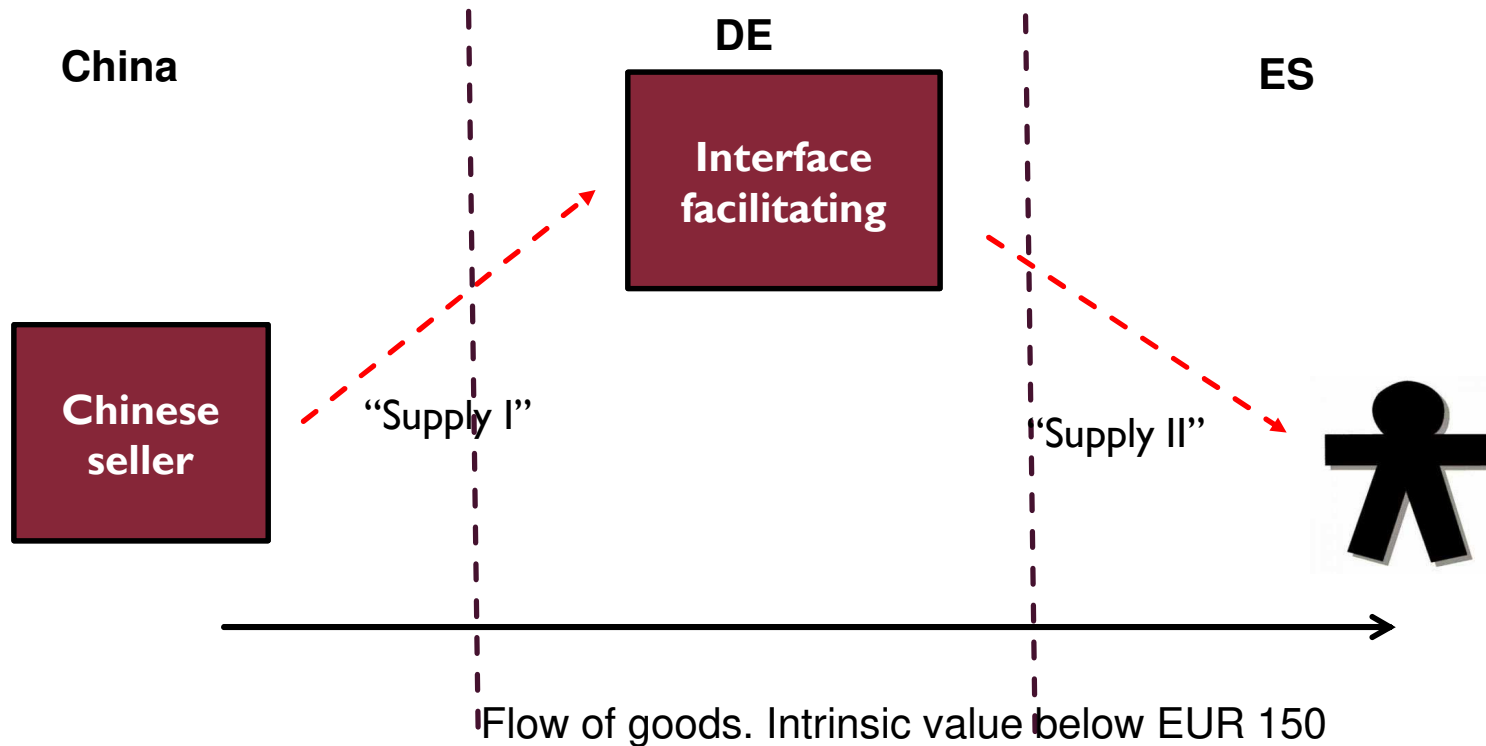
- Supply I in DE. B2B exempt.
- Supply II. Distance sale. Place of supply ES.
- Interface can use OSS return.

Interface facilitating intra Community distance sales of goods



- Supply I in DE. B2B exempt.
- Supply II. Distance sale. Place of supply ES.
- Interface can use OSS return even for the domestic supply to Customer II

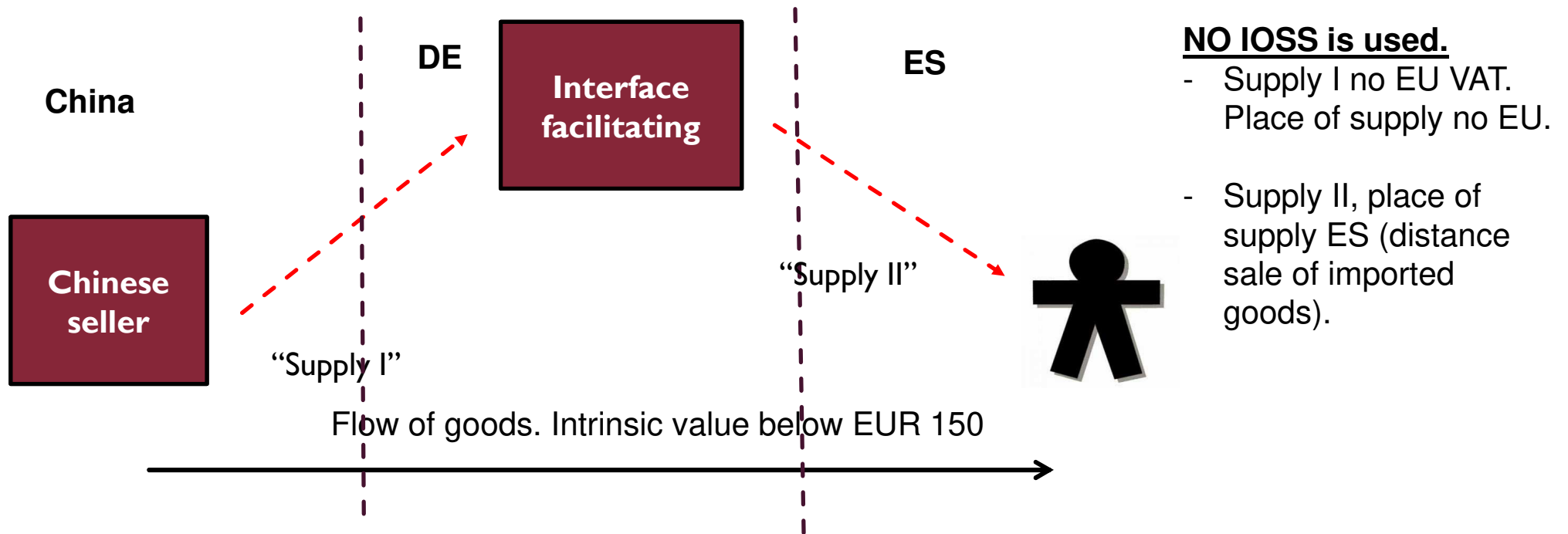
Interface facilitating distance sales of goods imported from third countries



IOSS is used.

- Supply I no EU VAT. Place of supply no EU.
- Import VAT exempt if IOSS number is communicated at customs.
- Supply II, place of supply ES (distance sale of imported goods).
- Taxable person is the interface.
- Interface can use IOSS return in Germany.

Interface facilitating distance sales of goods imported from third countries



If final consumer is the importer:

- Distance sale out of the scope of EU VAT (transport begins in China).
- Import in ES. No exemption applies. Possible to use special arrangements

If seller is the importer:

- Import in ES. No exemption applies
- Distance sale Place of supply ES.
- A to register in Spain.



[HTTPS://EC.EUROPA.EU/VAT-ECOMMERCE](https://ec.europa.eu/vat-ecommerce)

VAT for e-commerce

[New VAT rules](#) [The new OSS Schemes](#) [Latest News](#) [Resources](#) [Glossary](#)

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- What is changing?
- Which are the transactions covered by the 2021 changes?
- The benefits are wide and varied

WHO IS CONCERNED

- Online sellers
- Online electronic interfaces
- EU consumers
- Postal operators & couriers

THE NEW OSS SCHEMES

- OSS
- IOSS

new future-proof VAT rules

ARE YOU READY?
New VAT e-commerce rules are coming

Cross-border VAT e-commerce is being modernised in the EU.
We are making life simpler and fairer for all.
The new rules will come into force on 1 July 2021 but preparation can start right here, right now.

Who is concerned?

Everyone in the e-commerce supply chain is affected, from online sellers and marketplaces/platforms both inside and outside the EU, to postal operators and couriers, customs and tax administrations, right through to consumers.

Find out how!

- Online sellers
- Online electronic interfaces
- EU consumers
- Postal operators and couriers

Online sellers (EU and key non-EU countries)



Postal operators & couriers (EU and key non-EU countries)



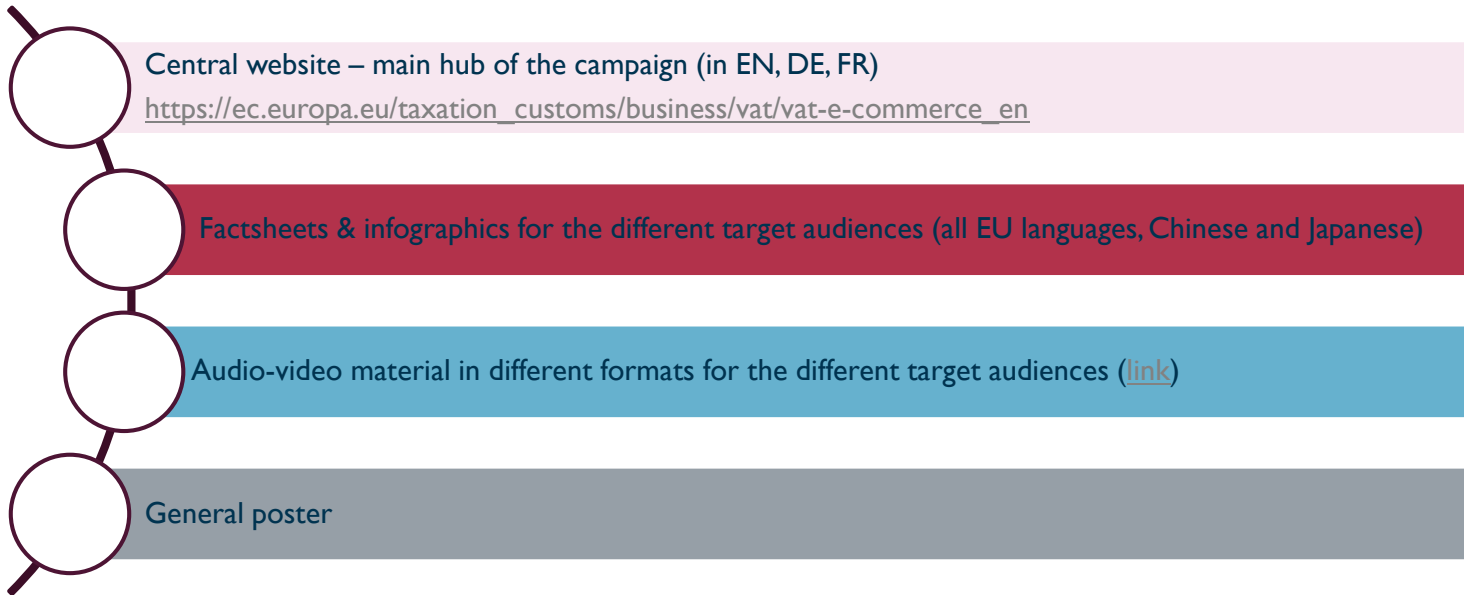
Online marketplace/platforms as direct suppliers (EU and key non-EU countries)



General public / consumer (EU)



CAMPAIGN MATERIAL



GUIDANCE DOCUMENTS (RESOURCES)

VAT e-commerce
explanatory
notes

Guide to the
VAT One-
Stop-Shop
(including
IOSS)

Customs
Guidance

Taxes in
Europe
Database
(TEDB)
VAT rates

Explanatory
Notes on
TBE services

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Thank you // Gracias

Q&A:info@spanishvat.es

www.madridvatforum.tax