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From: Presidency
To: Delegations

Subject: Presidency note on the use of the iOSS for goods not exceeding 150 EUR

Presidency note on the use of iOSS for goods not exceeding EUR 150

I. Background

As of 1 July 2021, the VAT e-commerce package abolished the VAT exemption on low value import consignments (< 22 EUR). Furthermore, it introduced the concept of distance sales of imported goods (DSIG). In parallel to these novelties, new methods for the payment of VAT due on the import and distance sales of imported goods were introduced with the aim of relieving customs authorities from the burden of having to collect small amounts of VAT on a very large number of consignments following the abolishment of this threshold.

According to the amended rules, the VAT on DSIG can be accounted and paid for by using the import One Stop Shop (iOSS). If the iOSS is not used, this can be done by using the special arrangements for declaration and payment of import VAT (SA) or, as a default, by letting the customs authority collect the import VAT. The rules on customs duty relief remained unchanged: the import of consignments with an intrinsic value not exceeding EUR 150 is duty free. The use of the iOSS and the SA is possible only for import consignments with an intrinsic value not exceeding EUR 150, since this is the case where only VAT is payable. The use of the iOSS is optional for the suppliers and deemed suppliers.

Regarding DSIG, it is the supplier or the deemed supplier making DSIG that is liable to pay the VAT. The deemed supplier is the platform facilitating the DSIG not exceeding EUR 150. The supplier and deemed supplier making DSIG not exceeding EUR 150 can opt to use the iOSS to account for the VAT.

- *iOSS is used*

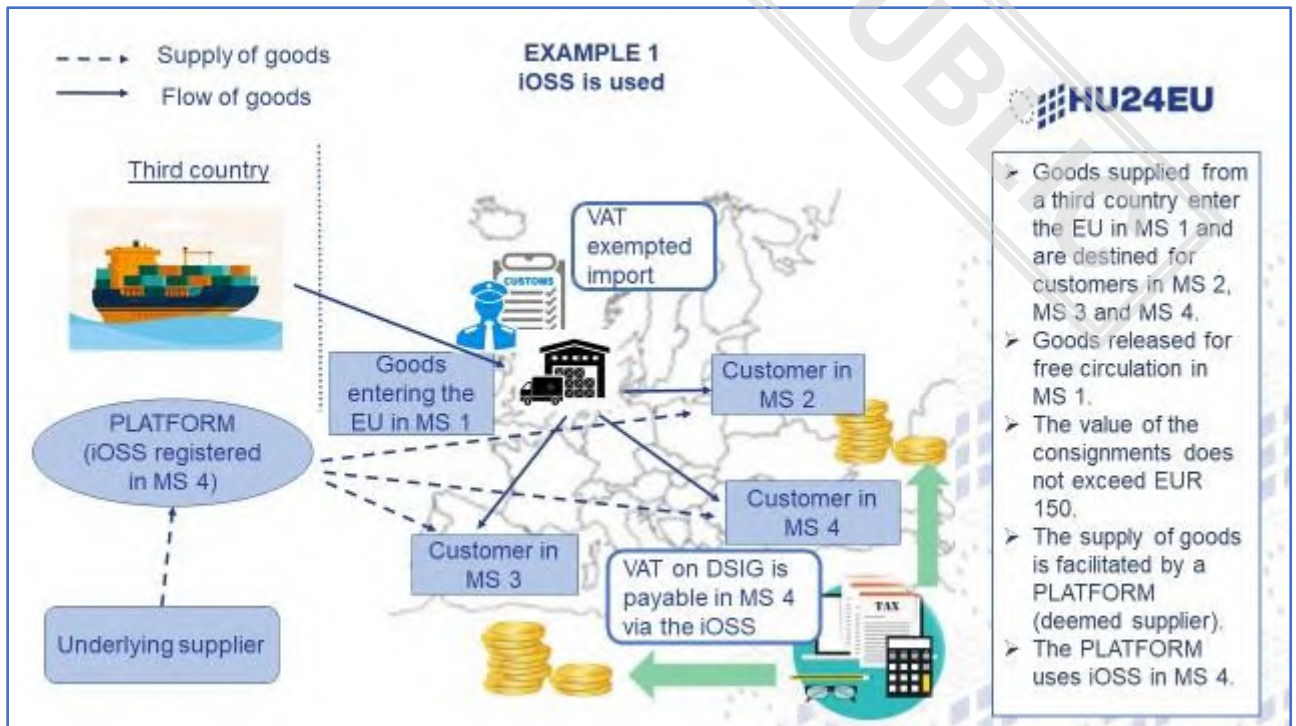
If the iOSS is used, the VAT on DSIG will be due in the Member State of final destination of the goods, irrespective in which Member State the goods were released for free circulation. However, the supplier or deemed supplier submits the iOSS declaration and pays the amount of VAT in the Member State where he is registered for the iOSS. Where iOSS is used, there would be two types of transactions on which VAT is due : (1) on DSIG and (2) on importation. In order to avoid double payment of VAT, the importation is exempt from VAT, provided that the supplier/deemed supplier indicates his valid iOSS identification number in the customs declaration.

Example 1:

The goods supplied from a third country enter the EU in MS 1 and are destined for customers in MS 2, MS 3 and MS 4. The supply of goods is facilitated by a platform (deemed supplier). The value of the consignments does not exceed EUR 150.

The deemed supplier opts for using the iOSS and registers for it in MS 4. In this case, the goods can be released for free circulation in any MS, and in this case are released in MS 1. The import VAT is due in MS 1, however it is exempt from VAT, provided that the deemed supplier indicates his valid iOSS identification number in the customs declaration. VAT is due on DSIG in MS 2, MS 3 and MS 4. Since the deemed supplier

makes use of the iOSS, he will submit his iOSS declaration and pay the VAT in MS 4. MS 4 will transfer the VAT due to MS 2 and MS 3.



- *iOSS is not used*

Where the iOSS is not used, the customs rules provide that import consignments with an intrinsic value not exceeding EUR 150 can be released for free circulation only in the Member State of final destination. If the supplier or the deemed supplier is not designated as liable for the payment of import VAT under Article 201 of the VAT Directive, the DSIG made by the supplier or the deemed supplier is not taxable in the EU, as the place of supply in this case is outside the EU, since the MS where the goods are released into free circulation and the MS of final destination are the same (first paragraph of Article 32 of the VAT Directive). The VAT on importation shall be paid in the Member State where the goods are released for free circulation. Under the current rules, it is up to the Member States to designate the person liable to pay the VAT on importation and in most of the cases, this is the consignee/customer.

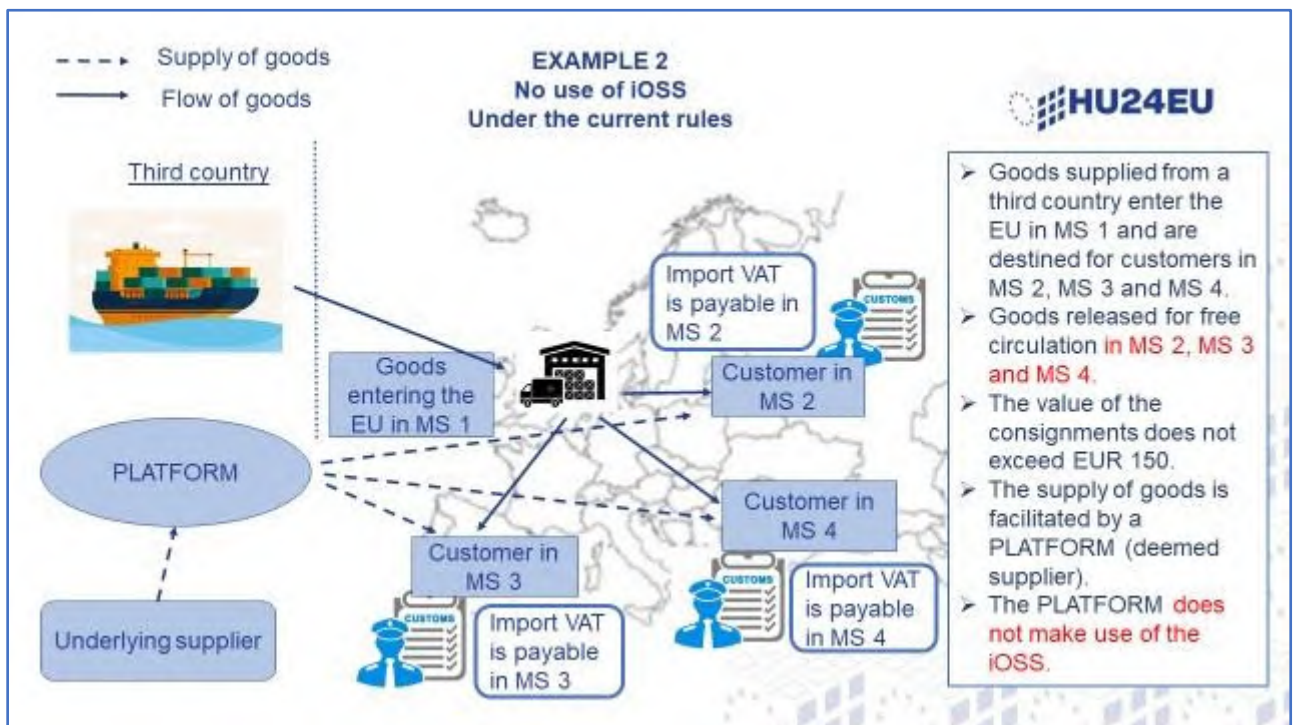
Following from the above, where the supplier or the deemed supplier is not designated as the person liable to pay the import VAT by the Member State of final destination and the supplier or the deemed supplier does not want to be liable for the payment of the VAT on DSIG, he can simply opt not to use the iOSS. This however will have the result that the import VAT has to be collected in the end from the consignee/customer either under the SA scheme by the person presenting the goods to the customs (typically the postal operator or the express carrier) or in worst case, by the customs authority on an individual basis.

Example 2:

The goods supplied from a third country enter the EU in MS 1 and are destined for customers in MS 2, MS 3 and MS 4. The supply of goods is facilitated by a platform (deemed supplier). The value of the consignments does not exceed EUR150. The deemed supplier does not make use of the iOSS.

Under the current rules

The goods can be released for free circulation only in the MS of final destination. This means that the goods which are destined for customers in MS 2, MS 3 and MS 4 can only be released for free circulation respectively in MS 2, MS 3 and MS 4. Thus, there is import VAT to be paid in MS 2, MS 3 and MS 4. Where the goods are shipped by an economic operator that is making use of the special arrangements for paying the import VAT, the VAT is collected from the customers by that economic operator and subsequently paid to the designated authorities of the MS concerned. Where there is no use of the SA, the customs authority will collect the import VAT from the person who is made liable for the payment of the import VAT (in most of the cases the customer). In case the deemed supplier is not designated as the person liable to pay import VAT, the deemed supplier does not have to pay VAT on DSIG, as the place of supply is outside the EU, and hence it is not taxable in the EU.



The question whether to make the iOSS optional or mandatory has already emerged during the discussions on the e-commerce package. The conclusion was that the use of the iOSS would be more attractive for the suppliers and deemed suppliers making DSIG, as this allows them to create a better customer experience as compared to the VAT collection during customs clearance, thus maintaining and potentially increasing the number of their clients. Put simply, those actors will have an incentive to use the iOSS. With regard to mandatory iOSS, the question has arisen how the use of the iOSS could be enforced in case of non-compliance of the supplier or the deemed supplier.

II. Use and improvement of the iOSS

Since the entry into force of the e-commerce package, the figures show that there is a widespread use of the iOSS by the suppliers and deemed suppliers, and a considerable part of the VAT on DSIG is accounted for and collected via the iOSS. However, when the iOSS was made operational, some weaknesses of the system emerged. These shortcomings have been identified and need to be addressed. The VAT in the Digital Age (ViDA) proposal includes provisions for fixing those identified weaknesses. In practical terms, there is an agreement on those provisions of the ViDA proposal and the work has already started in this regard. A Fiscalis workshop ("Single VAT Registration (SVR) and secured Import One-Stop Shop (IOSS) implementation"/ FWS/031/001) took place in Helsinki from June 25 to 27 also exploring measures to better secure the VAT exemption upon importation when iOSS is used.

III. Reasons behind the mandatory nature of the iOSS

The original proposal from the Commission on ViDA included a provision that would amend the VAT Directive by making the use of the iOSS obligatory for the deemed suppliers making DSIG.

The idea behind this provision, as stated by the Commission, is related to the concept of tackling the problems stemming from the extraordinary growth of e-commerce which generated an exponential increase of the number of imports of low value consignments.

The objective of the Commission proposals in the Customs Reform package is to make the Customs Union more efficient and future-proof, to enable EU Customs to better protect the financial and non-financial interests of the EU and its Member States as well as the Single Market by strengthening among others the control capabilities and simplifying customs procedures in order to free up resources to tackle illicit trade.

Regarding e-commerce, pursuing this objective would mean a shift in the responsibility from the customer to the deemed supplier both for financial and non-financial requirements. For this reason, the Customs Reform package introduces the concept of the 'deemed importer'. The deemed importer would be responsible for financial and non-financial risks. Based on the concept, any (deemed) supplier registered in the iOSS will become a deemed importer.

Consequently, for the concept of the deemed importer as proposed by the Commission to work, it is of utmost importance that deemed suppliers use the iOSS. However, since the deemed importer will become responsible for non-financial requirements, deemed suppliers may have an incentive not to use the iOSS, and therefore, not becoming deemed importers, and thus, being relieved from those responsibilities.

The provisions in the VAT Directive for the deemed supplier and the iOSS are applicable for DSIG not exceeding EUR150 and the new obligation to use the iOSS in the ViDA proposal would relate also only to consignments not exceeding EUR 150.

IV. Alternative to the mandatory iOSS

During the discussions, several Member States raised concerns on the mandatory use of the iOSS. Therefore, the Belgian Presidency put forward an alternative to the mandatory use of the iOSS. The idea of this alternative solution is to incentivise the use of the iOSS by making it more difficult in administrative terms not to use the iOSS. The concept itself was discussed in detail at the WPTQ meeting on 9 February 2024 and is explained in document WK 1623/2024 COR 1. Based on the discussions, in the following WPTQ meetings, the concept was further refined and the last version is included in document WK 5040/2024 REV 1 (ViDA amending Directive: full Presidency compromise text).

Although it could be perceived that the need for a mandatory iOSS stems from the customs reform and therefore, those amendments need to be agreed together and enter into force together, incentivising the use of the iOSS for DSIG not exceeding EUR 150 can in fact be adopted also as a stand-alone measure in the VAT field. The alternative solution has a merit on its own by levelling the playing field between suppliers/deemed suppliers using the iOSS and those not using the iOSS, and further alleviating the burden for customs authorities.

V. State of play

At the WPTQ meetings on 9 February, 25 March and 19 April 2024, the alternative proposal put forward by the BE PRES was discussed. According to the latest proposal (included in document WK 5040/2024 REV 1), the supplier or deemed supplier making DSIG not exceeding EUR 150 and not making use of the iOSS would be liable to pay the VAT on importation in the MS where the goods are released for free circulation. As in this case the place of supply would be in the MS of the final destination of the goods, the supplier/deemed supplier would be also liable to pay VAT on the DSIG (second paragraph of Article 32 VAT Directive).

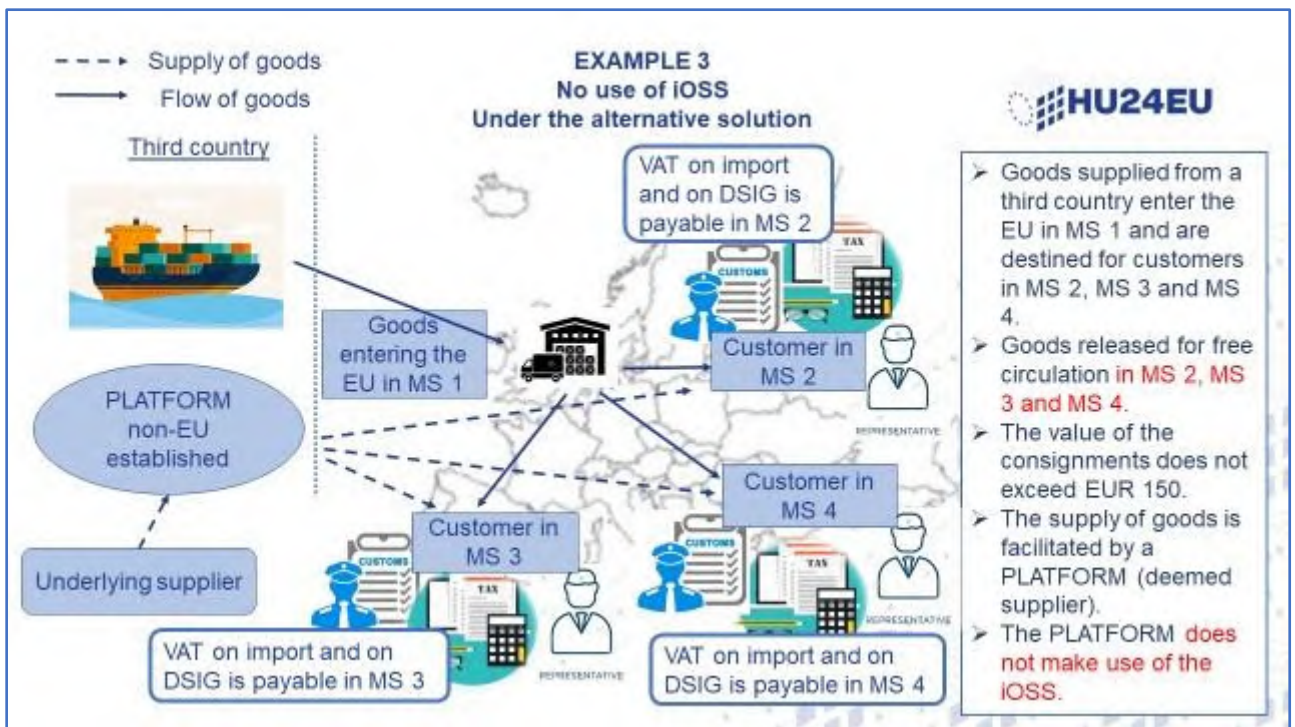
Since, according to the customs provisions, those goods can be released for free circulation only in the MS of final destination, the supplier/deemed supplier would be obliged to pay import VAT and the VAT on DSIG as well in the MS of final destination. If the supplier does not make use of the iOSS, he has to register for the payment of the VAT on DSIG in all those MS where he has a customer. In order to secure the collection of the VAT from suppliers/deemed suppliers established in third countries, the provisions provide that in this case it is obligatory to appoint a tax representative.

Example 3:

The goods supplied from a third country enter the EU in MS 1 and are destined for customers in MS 2, MS 3 and MS 4. The supply of goods is facilitated by a platform (deemed supplier). The value of the consignments does not exceed EUR 150. The deemed supplier does not make use of the iOSS.

Under the alternative solution

The goods can be released for free circulation only in the MS of final destination. This means that the goods which are destined for customer in MS 2, MS 3 and MS 4 can only be released for free circulation respectively in MS 2, MS 3 and MS 4. Thus, there is import VAT to be paid in MS 2, MS 3 and MS 4. The person liable to pay the import VAT is the deemed supplier. Therefore, the place of supply of the DSIG is the MS of final destination. This means that the deemed supplier is liable to pay import VAT and VAT on DSIG in MS 2, MS 3 and MS 4, respectively. For the payment of VAT on DSIG, the deemed supplier has to register for VAT in MS 2, MS 3 and MS 4. In case the deemed supplier is not established in the EU (or in Norway) he has to appoint a tax representative in MS 2, MS 3 and MS 4.



Additionally, to take into account their special status, a transitional period was given to postal operators until the end of 2031, during which they could make use of the SA, thus collecting the import VAT from the customer.

The shift from a legally mandatory use of the iOSS to a strong incentive for the use of the iOSS was seen as a positive step by several delegations. Concerns were raised however on the treatment of cases where the supplier/deemed supplier is not

compliant or not identifiable to the authorities, and thus it is not possible to collect the VAT from them. If there is no possibility to designate other persons than the supplier or deemed supplier as liable to pay the import VAT and thus it is not possible to collect the import VAT, the goods cannot be released for free circulation in accordance with the customs legislation. The customs provisions in this case would provide for destruction, re-export or abandonment of the goods in question. The comparison of the outcome on import consignments depending on the use of iOSS according to mandatory iOSS and alternative solution including customs point of view is demonstrated in Annex III.

This might be seen as far from optimal, as on the one hand, it places an additional burden on the customs authorities to deal with those goods, and on the other hand, it would “penalise” the customers that have already paid for the goods. Furthermore, other developments in the EU legislation have to be taken into account, such as the Ecodesign for sustainable products Regulation that envisages the prevention of destruction of unsold consumer goods (i.e.: goods returned by the customer on the basis of their right to withdrawal are regarded as unsold). It needs to be clarified to what extent the goods that will not be released for free circulation in the absence of payment of import VAT by the supplier/deemed supplier would be affected by those new rules.

Taking into account the above mentioned reasons, a suggestion was made to introduce a rule that would still allow to collect the VAT from the customer under these circumstances upon handing over the goods to them. However, some delegations objected that such a general rule could weaken the provisions aimed at incentivising the use of the iOSS, as the suppliers/deemed supplier that would like to escape the obligation to pay VAT and the obligation related to the import could also benefit from it. Therefore, if such a rule was envisaged, it would need to be well-targeted to manage the cases of non-compliance.

Additionally, some Member States considered that the transitional period for the application of the SA for the designated postal operators would provide them with a competition advantage over other economic operators. Moreover that provision could result in a shift in shipments to those economic operators so that the suppliers/deemed suppliers can escape the obligations linked to the DSIG.

VI. Possible solution for cases of non-compliance by the supplier/deemed supplier

The situation in the Member States seems to be divergent both in terms of experience with the operation of the iOSS and in terms of the number of the import consignments with an intrinsic value not exceeding EUR 150 that need to be treated. The geographical location of the Member States could also have an effect on the way the situation is perceived. Considering these aspects, a possible solution for the case of non-compliance could be designed taking into account the following aspects:

- flexibility for MSs to decide to maintain/introduce a measure for collecting import VAT from the customer, if the supplier or deemed supplier failed to fulfil his tax obligation,

- it would be up to the MS to establish the conditions and procedures for applying such a measure (i.e. they could set penalties or extra charges to discourage the use of this VAT payment method),

As having such a measure would be a possibility, but not an obligation for MSs, it would allow them to decide firstly whether to implement such a measure or not, and secondly to design it according to their needs based on their experience.

VII. Questions for Member States:

Q1: Do you share the conclusions on the state of play as described under point V?

Q2: Assuming that the iOSS is improved as included under the ViDA proposal, do you agree with incentivising the use of the iOSS by making the supplier/deemed supplier liable to pay the VAT on importation of goods not exceeding EUR 150 and as a guarantee measure to have the obligation to appoint a tax representative in the MS of importation for non-EU established suppliers/deemed suppliers according to the provisions included in Annex I?

Q3: Do you agree to have a rule as described under point VI (and as included in Annex II) that would allow MS to collect the import VAT from the customer in case of non-compliance by the supplier/deemed supplier?

Annex I

Article 201

On importation, VAT shall be payable by any person or persons designated or recognised as liable by the Member State of importation.

By way of derogation from the first paragraph ~~and where the special arrangements in Chapter 7 of Title XII are not applied,~~ **the supplier or, where applicable,** the deemed supplier in accordance with Article 14a(1), ~~or the supplier~~ making distance sales of goods imported from third-territories or third-countries in consignments of an intrinsic value not exceeding EUR 150, shall be the person liable to pay the VAT on importation.

Where the supplier or the deemed supplier is not established in the Community but in a third country with which the Union has not concluded an agreement on mutual assistance similar in scope to Council Directive 2010/24/EU and Regulation (EU) No 904/2010, that person shall appoint a tax representative in the Member State of importation as the person liable for payment of VAT ~~on importation and on the related distance sales of goods imported from a third territories or third countries.~~

Where the importation of goods is exempted in accordance with Article 143 (1) (ca), the third paragraph shall not apply.

The Commission is empowered to adopt an implementing act establishing the list of third countries with which the Union has concluded an agreement on mutual assistance similar in scope to Council Directive 2010/24/EU and Regulation (EU) No 904/2010. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011 and for this purpose the committee shall be the committee established by Article 58 of Regulation (EU) No 904/2010.

~~The Commission shall present, at the latest by 1 July 2027, to the European Parliament and to the Council, on the basis of information obtained from the Member States and taking into account the evolution of customs rules, an assessment report on the application of the second paragraph, including an in-depth assessment of the functioning of the special scheme provided for in Section 4 of Chapter 6 of Title XII, and shall submit, where appropriate, a legislative proposal to amend the relevant rules and, where necessary, to postpone the transitional period laid down in Article 369zba.²;~~

Presidency notes:

Article 201 has been amended to ensure that the supplier/deemed supplier (as relevant) will be liable for import VAT in all cases where they make distance sales of imported goods not exceeding EUR 150. The reference to the IOSS has been removed as, even if the import is exempt, the (deemed) supplier remains liable in case e.g. the conditions for the exemption are not fulfilled and VAT would still become due.

A third paragraph has been added to impose the use of a tax representative (which could be the person responsible for customs compliance) for non-established suppliers, with the exception

of countries with which the EU has an agreement on mutual assistance (currently Norway). This will avoid that non-IOSS vendors are treated more favourably than IOSS vendors; it will also reduce the risk of fraud.

This is as an alternative to the mandatory IOSS as discussed during the negotiations on the ViDA package. This will incentivise the use of IOSS since suppliers/deemed suppliers not registered in IOSS will have the obligation to register (or have a tax representative) in all the Member States where they supply (and import) goods.

Under the third paragraph, the obligation to impose a tax representative would also apply to the non-established (deemed) suppliers that rightfully apply the iOSS. As in this case the importation is exempt, in order not to disincentivise the use of iOSS a fourth paragraph has been added to relieve those (deemed) suppliers from the obligation to appoint a tax representative.

~~Article 369zba~~

~~This chapter shall cease to apply by 1 July 2027. However, designated postal service providers established in the EU, providing a universal postal service as referred to in the acts of the Universal Postal Union may, until 31 December 2031, continue to use these special arrangements in this chapter.²~~

~~The Commission shall present, at the latest by 1 July 2029, to the European Parliament and to the Council, on the basis of information obtained from the Member States and taking into account the evolution of customs rules, an assessment report of the functioning of the special scheme provided for in Section 4 of Chapter 6 of Title XII, and shall submit, where appropriate, a legislative proposal to amend the relevant rules and if necessary to postpone the transitional period laid down in Article 369zba.~~

Annex II

“Article 201a

Without prejudice to paragraph 2 of Article 201, where the supplier or, where applicable, the deemed supplier in accordance with Article 14a(1), fails to fulfil its tax obligations under that paragraph, Member States may provide, according to conditions and procedures they may lay down, that the VAT on importation and, where applicable, any related penalties can be paid by the customer on behalf of the supplier or deemed supplier.”

Presidency notes:

This new Article 201a includes an explicit wording of the possibility that might be offered to the customer, to pay the import VAT with the addition of possible penalties on top of the amount of VAT. This would increase the bad customer experience when IOSS is not used. The Article makes it clear that despite the fact that the customer pays the import VAT, the liability to pay VAT remains with the (deemed) supplier. A recital to that provision could be added explaining that as the (deemed) supplier remains liable to pay the import VAT, the customer can claim from the (deemed) supplier the amount of VAT paid instead of him.

