

Deemed Supplier

This document should be read in conjunction with sections 2, 91A, 91D, 91E, 91G, 91I, 91J and 91K of the VAT Consolidation Act 2010 and Implementing Regulation (EU) No. 282/2011 as amended by Council Implementing Regulation (EU) 2019/2026.

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Introduction

The eCommerce Package introduces a number of changes to the VAT rules applicable to cross border eCommerce supplies in the EU. From 1 July 2021, the scope of the Mini One Stop Shop (MOSS) is expanded to include other services supplied on a business to consumer (B2C) basis, intra-Community distance sales of goods and some domestic supplies of goods. The current MOSS becomes the One-Stop Shop (OSS), which includes the Union Scheme and the non-Union Scheme. More information on the [Union scheme OSS](#) and the [non-Union Scheme OSS](#) is available on Revenue's website.

The eCommerce VAT changes also create an Import One Stop Shop (IOSS), which is similar to the OSS, but relates to the importation of goods. More information on the [Import One Stop Shop](#) is available on Revenue's website.

The eCommerce Package also introduces a provision through which taxable persons operating electronic interfaces will be deemed to be the supplier of goods in specific circumstances.

This guidance deals with the new rules for those deemed suppliers.

1 Electronic Interfaces as deemed supplier of goods

The eCommerce Package introduces new rules in respect of the role of taxable persons who operate an electronic interface through which the sale of goods is facilitated.

From 1 July 2021, the taxable person operating an electronic interface will be deemed to be the supplier of goods in specific circumstances. As such, the electronic interface will assume the VAT obligations of a conventional supplier when making certain sales of goods to customers. These obligations include the collection and remittance of VAT on sales to the Revenue Commissioners.

The deeming provision will apply where the relevant conditions are fulfilled. It is not an optional provision.

1.1 What supplies are covered by the deeming provision?

An electronic interface will be a deemed supplier where it facilitates the following supplies of goods:

- distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding €150, regardless of where the underlying supplier has established their business, or
- the supply of goods within the Community to a non-taxable person where the underlying supplier is established outside of the Community, regardless of the value of that supply.

Whether an electronic interface will be the deemed supplier of goods will be considered on a per transaction basis, rather than applying in general to all supplies which the electronic interface facilitates.

An electronic interface may be a deemed supplier in respect of some supplies which it facilitates, and not a deemed supplier in respect of other supplies which it facilitates.

It should be noted that the margin scheme does not apply to the sale of second hand goods when they are sold through an electronic interface deemed to be the supplier of the goods. VAT on the full selling price (and not simply on the margin) must be applied to such supplies.

1.2 What is an electronic interface?

The term electronic interface should be understood as a broad concept which allows two independent systems or a system and the end user to communicate with the help of a device or programme. This could include a website, portal, gateway, platform, marketplace, application programme interface (API) or similar.

1.3 What does 'facilitates' mean?

Facilitates, in this context, should also be given a broad interpretation. Facilitates 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 of goods through that electronic interface.

In this context, 'facilitates' should be understood to mean that the sale of the goods to the customer is concluded or facilitated through the taxable person operating the electronic interface.

An electronic interface is facilitating a supply where the electronic interface:

- either directly or indirectly sets any of the terms and conditions under which the supply is made; or
- is involved, either directly or indirectly, in authorising the charge to the customer; or
- is involved, either directly or indirectly, in the ordering or delivery of the goods.

An electronic interface only needs to meet one of these conditions to be considered to be facilitating the supply of goods.

Examples of where an electronic interface will not be considered as facilitating a supply include (but are not limited to):

- where the electronic interface is only engaged in the processing of payments in relation to the supply of goods

- the electronic interface provides listing or advertising services in relation to goods, and
- where the electronic interface redirects or transfers customers to another electronic interface and the supply of goods is concluded by that latter electronic interface.

Where the electronic interface is involved in the sale of its own goods (i.e., there is no underlying supplier), the normal rules will apply to those transactions.

1.4 What does Intrinsic Value mean?

Intrinsic value, as referred to above, means:

- (a) for commercial goods: 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 separately indicated on the invoice, and any other taxes and charges as ascertainable by the customs authorities from any relevant document(s);
- (b) for goods of a non-commercial nature: the price which would have been paid for the goods themselves if they were sold for export to the customs territory of the Union¹.

Other costs which are not included in the value of the goods themselves, should be excluded from the intrinsic value of the goods, where those costs are included separately and indicated clearly on the invoice.

2 Application of the deeming provision

Where the deeming provision applies, a taxable person who facilitates the sale of goods through an electronic interface is deemed to have received and supplied the goods. The electronic interface is deemed to have made a simultaneous purchase and supply of the goods in question.

The effect of this deeming provision is that the taxable person operating the electronic interface is treated as the supplier of the goods for VAT purposes. This taxable person is therefore responsible for the VAT obligations which would otherwise be exercised by the underlying supplier. These responsibilities include accounting for VAT as the supplier and keeping books and records.

Where the deeming provision applies, the supply from the underlying supplier to the final consumer, facilitated through the use of the electronic interface, is split into two supplies:

¹ As contained in COMMISSION DELEGATED REGULATION (EU) 2020/877 of 3 April 2020 amending and correcting Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013, and amending Delegated Regulation (EU) 2016/341 supplementing Regulation (EU) No 952/2013, laying down the Union Customs Code

1. a supply from the underlying supplier to the electronic interface (B2B), and
2. a supply from the electronic interface to the final consumer (B2C).

Application of the deeming provision

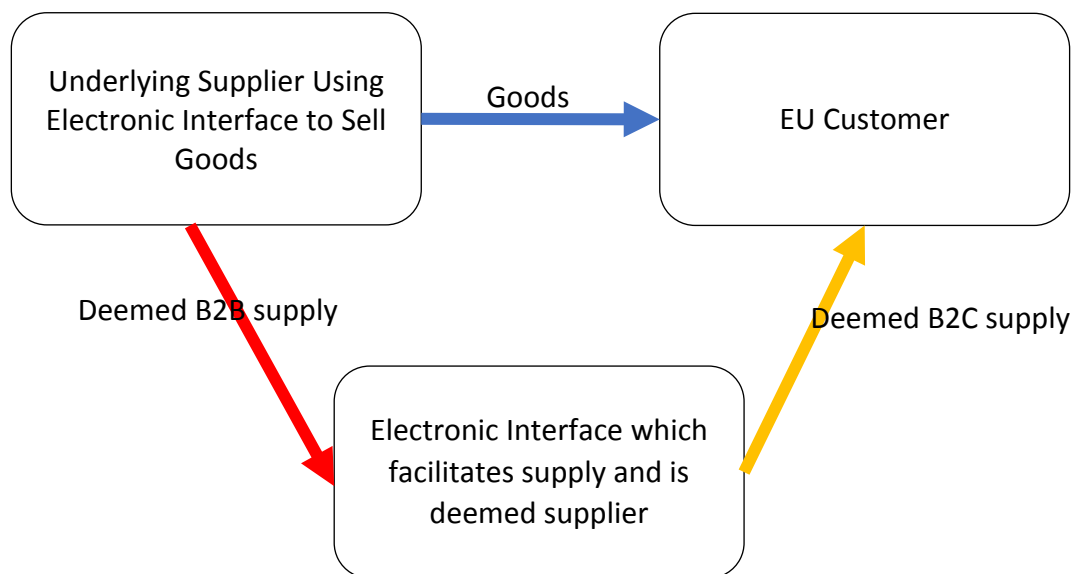


Figure 1: Supply of goods through an electronic interface as deemed supplier

2.1 Deemed Supply Scenarios

An electronic interface will not be deemed to be the supplier of goods in every transaction which it facilitates. There are two situations in which an electronic interface will be a deemed supplier:

- Where there is a distance sale of goods imported from outside of the EU which is facilitated through an electronic interface and the consignment has an intrinsic value not exceeding €150, and
- where there is a supply of goods, which are in free circulation within the EU, by a taxable person who is not established in the EU, to a non-taxable person in the EU facilitated through an electronic interface.

Both of these scenarios will be explored below.

2.2 Scenario 1 – Distance sales of goods imported from third territories or third countries

An electronic interface will be the deemed supplier of goods which are imported into the EU. Where:

1. a taxable person facilitates the distance sale
2. through an electronic interface
3. of goods which are imported from third countries or territories (outside of the EU)
4. in consignments with an intrinsic value not exceeding €150

the taxable person operating the electronic interface will be deemed to have received and supplied those goods.

Scenario 1

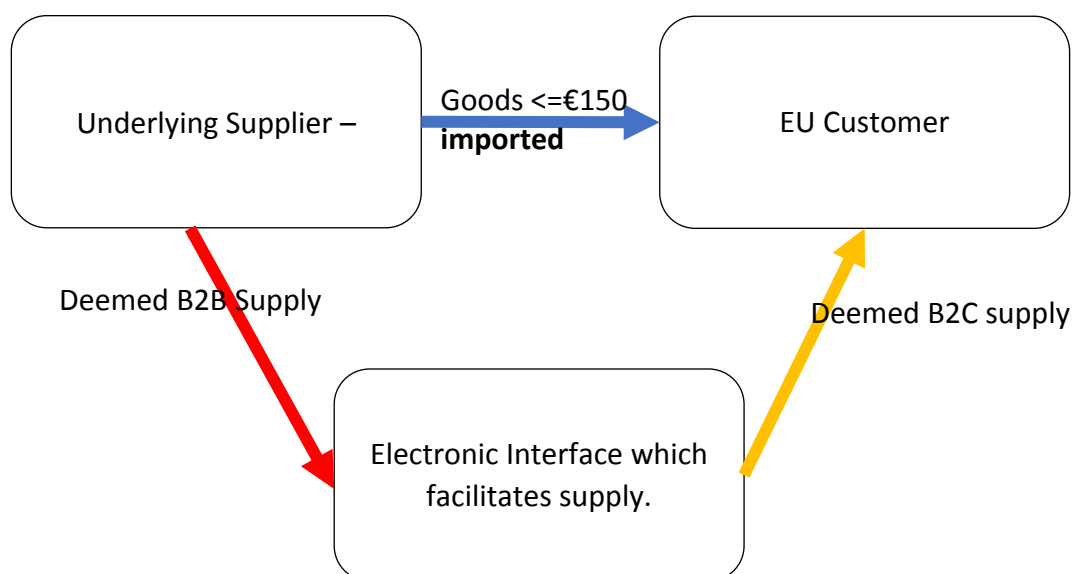


Figure 2: Distance sales of goods imported from third territories or third countries where the electronic interface is the deemed supplier

It is important to note that the underlying supplier can be established inside or outside of the EU. Regardless of the location of the underlying supplier, the electronic interface will be deemed to have received and sold the goods where the supply of the goods is facilitated by the electronic interface and the goods themselves are imported to the EU in a consignment with an intrinsic value not exceeding €150.

In this scenario, the deemed B2B supply of the goods from the underlying supplier to the electronic interface takes place outside of the EU. EU VAT rules do not apply to this deemed B2B supply and there are no VAT invoicing obligations in the EU for the underlying supplier. The VAT due on the deemed B2C supply from the electronic interface to the end customer must be accounted for by the electronic interface. The B2C supply, from the electronic interface to the consumer is the supply with transport and it takes place where the goods are when the transport to the customer ends.

There is no obligation in Council Directive 2006/112/EC ('the VAT Directive') to issue a VAT invoice for this B2C supply. However, Member States may still impose an obligation to issue an invoice for VAT purposes for this supply. The VAT invoicing rules of the Member State where the distance sale of goods imported from third territories or third countries takes place will apply to this transaction. No such obligation exists for B2C supplies to consumers in Ireland.

The customs authorities may require supporting documents for customs clearance which is typically the commercial invoice.

If the electronic interface is registered for the IOSS, the VAT invoicing rules of the Member State of identification, which is the Member State in which the electronic interface has registered for the scheme, will apply.

An electronic interface may register in the Import One Stop Shop in order to account for VAT on these sales. More information on the [Import One Stop Shop](#) is available on Revenue's website.

"Distance sales of goods imported from third territories or third countries" is a new concept introduced by the eCommerce Package, and these sales must be made to certain categories of persons. This concept is set out further in [Appendix III](#).

2.3 Scenario 2.1 – Goods in Free Circulation in the EU at time of sale

An electronic interface can be the deemed supplier of goods which are within the EU at the time the goods are sold. Where:

1. a taxable person facilitates the supply of goods which are in free circulation within the EU
2. through an electronic interface
3. by a taxable person who is not established in the EU
4. to a non-taxable person,

the taxable person will be deemed to have received and supplied those goods.

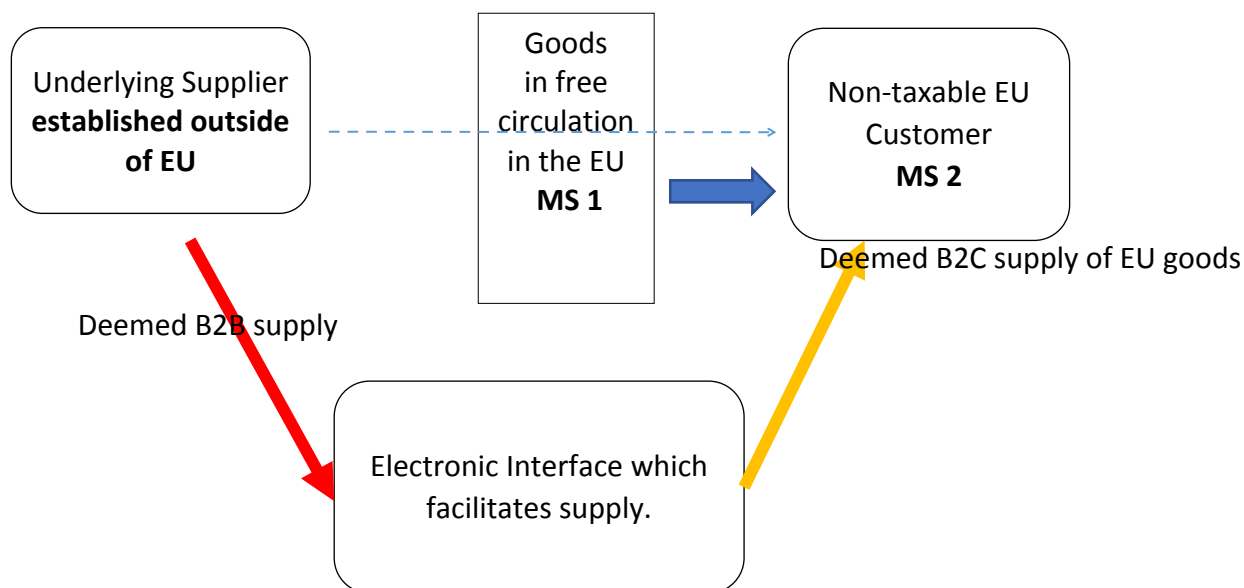
Scenario 2.1

Figure 3: Intra-Community distance sale of goods where the electronic interface is the deemed supplier

The deeming provision in this scenario will apply regardless of the value of the goods. This is in contrast to the €150 intrinsic value which applies in respect of the distance sale of goods imported from third territories or third countries.

In this scenario there is an intra-Community distance sale of goods taking place, the goods are located inside of the EU, in free circulation, and the underlying supplier is based outside of the EU.

“Intra-Community distance sales of goods” is a new concept introduced by the eCommerce Package, and these sales must be made to certain categories of persons. This concept is set out further in [Appendix IV](#).

An electronic interface may register in the Union scheme under the OSS in order to account for VAT on these sales. More information on the [Union scheme OSS](#) is available on Revenue’s website

2.4 Scenario 2.2 – Goods in Free Circulation at time of sale - Domestic Supplies

An electronic interface that facilitates a domestic supply of goods, i.e. where the goods and the customer are located in the same Member State may also be the deemed supplier. Where:

1. a taxable person facilitates the sale through an electronic interface
2. of goods which are in free circulation within the EU in Member State 1
3. by a taxable person who is not established in the EU
4. to a non-taxable person who is also located in Member State 1,

the taxable person operating the electronic interface will be deemed to have received and supplied those goods.

Scenario 2.2

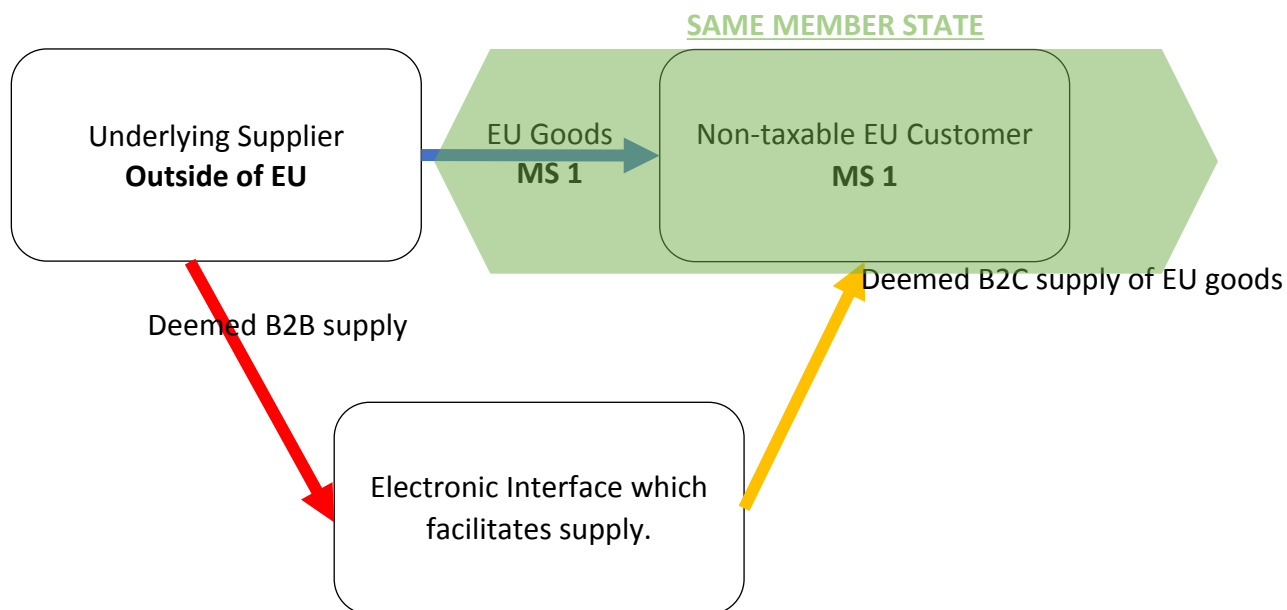


Figure 4: Domestic supplies of goods where the electronic interface is the deemed supplier.

The electronic interface will be a deemed supplier for this transaction, regardless of the value of the supply. This is in contrast to the €150 intrinsic value which applies in the case of distance sales of goods imported from third territories or third countries. In this scenario, there is a domestic supply of goods taking place, the goods and the end customer are located in the same Member State and the underlying supplier is based outside of the EU.

A deemed supplier can opt to avail of the Union scheme under the OSS to declare and pay the VAT due for supplies of goods that they facilitate within the EU. This includes domestic supplies of goods as outlined above. Only a deemed supplier may use the Union scheme in this way – it is not possible for other taxable persons to use the Union scheme to account for VAT due on domestic supplies.

For scenarios 2.1 and 2.2, a VAT invoice has to be issued by the underlying supplier to the deemed supplier in accordance with the rules of the Member State where the supply takes place.

This B2B supply is exempt from VAT with the right of deduction for the underlying supplier. Self-billing arrangements for these B2B transactions can be used. The self-billing rules of the Member State where the supply takes place will apply.

The VAT invoicing requirements for the B2C supply will depend on whether or not the deemed supplier declares the supply through the Union scheme under the OSS. Where the Union scheme is used, there is no obligation to issue a VAT invoice for the B2C supply. Where an invoice is issued, the VAT invoicing rules of the Member State in which the electronic interface makes use of the special scheme apply, i.e. the Member State of identification. No VAT invoice is to be issued for a B2C supply in Ireland.

When the Union scheme is not used for intra-Community distance sales of goods, a VAT invoice has to be issued by the electronic interface to the customer in accordance with the VAT invoicing rules of the Member State where the supply takes place. No VAT invoice is to be issued for a B2C supply in Ireland.

If the Union scheme is not used for a domestic supply of goods made by a deemed supplier, there is generally no obligation to issue a VAT invoice for this type of supply, however an invoice must be issued if required by the Member State in which the domestic supply is made. No VAT invoice is to be issued for a B2C supply in Ireland.

3 Responsibilities of a Deemed Supplier

Where the electronic interface is deemed to be the supplier of goods it must retain records as any other supplier in order to demonstrate to the Revenue Commissioners that the tax paid by it is correct.

The record keeping requirements for a deemed supplier are the same as any other supplier.

Where the deemed supplier registers for the OSS or IOSS, the record keeping requirements that apply under those schemes will apply to that deemed supplier.

An electronic interface that facilitates the supply of goods or services, but is not a deemed supplier, will also be required to retain records in respect of the supplies it facilitates. This applies regardless of the fact that the electronic interface is not treated as the supplier under the relevant deeming provisions.

Details of the records to be retained are set out in [Appendix II](#).

3.1 The presumption of the status of the underlying supplier and customer

To avoid an additional burden being placed on a deemed supplier, the deemed supplier will regard the person selling goods through an electronic interface as a taxable person and the person buying the goods as a non-taxable person, unless the deemed supplier has information to the contrary.

3.1.1 Presumption of status of the underlying supplier

The deemed supplier should consider that the underlying supplier is a taxable person, unless they have received information which indicates they are not. The absence of a VAT identification number or tax reference number does not automatically mean that the underlying supplier is not a taxable person.

If a supplier indicates that he or she will not be carrying out an economic activity, the electronic interface can consider him or her a non-taxable person. However, the electronic interface should assess this through reasonable verification processes to determine whether the supplies made by the supplier would not qualify him or her as a taxable person. It will be fairly straightforward in most cases to determine that a supplier is a taxable person because of the volume and value of sales so it is important that this validation is part of the due diligence process undertaken by the electronic interface.

3.1.2 Presumption of the status of the customer

A VAT identification number or tax reference number is not essential to be a taxable person. However, it is an important element of proof of the status of a taxable person. Therefore, if during the registration/ subscription process with the electronic interface the customer did not provide a VAT identification number or a tax reference number, and in the absence of the electronic interface having information to the contrary, the electronic interface shall treat the customer as a non-taxable person.

4 Limited liability of the deemed supplier

Where the deeming provision applies to a supply of goods the deemed supplier will be relying on information provided by the underlying supplier in order to fulfil his or her VAT obligations. It is likely that the deemed supplier will otherwise not have the information required to identify the nature of the goods supplied or to establish the place of supply. The deemed supplier will depend on the accuracy of the information provided by the underlying supplier making use of their electronic interface, in order to correctly declare and pay the VAT due.

A deemed supplier will have limited liability for VAT in certain situations.

The deemed supplier will not be held liable for the payment of VAT in excess of the VAT which has been declared and paid on supplies, where all of the following conditions are met:

- a) The taxable person 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.
- b) The information provided from the suppliers of goods referred to in point a) is erroneous.
- c) The taxable person can demonstrate that they did not and could not reasonably have known that the information received was incorrect.

The burden of proof will lie with the deemed supplier, who needs to prove that all the above conditions are met in order to rely on the limited liability provision.

Appendix I – Key Concepts

Consignment

Consignment means goods packed together and dispatched simultaneously by the same supplier or underlying supplier to the same consignee and covered by the same transport contract.

Distance sales of goods imported from third countries or third territories

Distance sales of goods imported from third countries or third territories means the supplies of goods dispatched or transported from a third country or third territory by or on behalf of the supplier, including where the supplier intervenes indirectly in the transport or dispatch of the goods, to a customer in a Member State.

Electronic interface

A market place, platform, portal, website or similar which allows for the completion of a supply of goods or services.

Facilitates

Facilitates 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 of goods through that electronic interface.

Intrinsic value

(a) Intrinsic value for commercial goods: 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 separately indicated on the invoice, and any other taxes and charges as ascertainable by the customs authorities from any relevant document(s).

(b) Intrinsic value for goods of a non-commercial nature: the price which would have been paid for the goods themselves if they were sold for export to the customs territory of the Union.

Member State of consumption

The Member State where the dispatch or transport of the goods to the customer ends.

Member State of identification

The Member State in which a taxable person is registered for the purposes of the OSS or IOSS.

Taxable person not established within the Community

Taxable person not established within the Community means a taxable person who has not established his business in the territory of the Community and who has no fixed establishment there.

Third territories and third countries

'Third territories' are those referred to in Article 6 of the VAT Directive and 'third country' means any state or territory to which the Treaty on the Functioning of the European Union is not applicable (see Article 5 of the VAT Directive). As of May 2021, third territories listed in Article 6 are the following: Mount Athos; the Canary Islands; the French territories of Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin; the Åland Islands; Campione d'Italia; the Italian waters of Lake Lugano; the Island of Heligoland; the territory of Büsingen; Ceuta; Melilla; Livigno.

Appendix II – Record Keeping

If the deemed supplier uses the IOSS or Union OSS in relation to its supplies, it must retain the following records:

For the Union OSS:

- (a) the Member State of consumption to which the goods or services are supplied
- (b) the type of services or the description and quantity of goods supplied
- (c) the date of the supply of the goods or services
- (d) the taxable amount indicating the currency used
- (e) any subsequent increase or reduction of the taxable amount
- (f) the VAT rate applied
- (g) the amount of VAT payable indicating the currency used
- (h) the date and amount of payments received
- (i) any payments on account received before the supply of the goods or services
- (j) where an invoice is issued, the information contained on the invoice
- (k) in respect of services, the information used to determine the place where the customer is established or has his or her permanent address or usually resides and, in respect of goods, the information used to determine the place where the dispatch or the transport of the goods to the customer begins and ends
- (l) any proof of possible returns of goods, including the taxable amount and the VAT rate applied.

For the IOSS (including where the deemed supplier uses an intermediary):

- (a) the Member State of consumption to which the goods are supplied
- (b) the description and quantity of goods supplied
- (c) the date of the supply of goods
- (d) the taxable amount indicating the currency used
- (e) any subsequent increase or reduction of the taxable amount
- (f) the VAT rate applied
- (g) the amount of VAT payable indicating the currency used
- (h) the date and amount of payments received
- (i) where an invoice is issued, the information contained on the invoice
- (j) the information used to determine the place where the dispatch or the transport of the goods to the customer begins and ends
- (k) proof of possible returns of goods, including the taxable amount and VAT rate applied
- (l) the order number or unique transaction number
- (m) the unique consignment number where that taxable person is directly involved in the delivery.

An electronic interface, must retain the following records in relation to all supplies which it facilitates even where the deeming provision does not apply to the transaction:

- (a) the name, postal address and electronic address or website of the supplier whose supplies are facilitated through the use of the electronic interface and, if available:
 - i. the VAT identification number or national tax number of the supplier
 - ii. the bank account number or number of virtual account of the supplier
- (b) a description of the goods, their value, the place where the dispatch or transport of the goods ends, together with the time of supply and, if available, the order number or unique transaction number
- (c) a description of the services, their value, information in order to establish the place of supply and time of supply and, if available, the order number or unique transaction number

Appendix III – Distance sales of goods imported from third territories or third countries

In a “distance sale of goods imported from third territories or third countries”, the goods in question must be sold to:

- a taxable person whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) of the VAT Directive
- a non-taxable legal person whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1), or
- a non-taxable person.

The goods supplied must not be new means of transport, or goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

Article 3(1) of the VAT Directive states that certain transactions are not subject to VAT. The transactions which are not subject to VAT under Article 3(1) are:

- The intra-Community acquisition of goods where the supply of the goods is exempt under articles 148 (supplies relating to international transport) and 151 (supplies treated as exports).
- The intra-Community acquisition of goods (other than new means of transport or excisable goods) by a taxable person in the flat rate farming scheme.
- The intra-Community acquisition of goods (other than new means of transport or excisable goods) by a taxable person who is exempt from VAT.
- The intra-Community acquisition of goods (other than new means of transport or excisable goods) by a non-taxable person.

Appendix IV – Intra-Community Distance Sales of Goods

It is important to note that an intra-Community distance sale of goods has a new, specific meaning provided for it in the VAT Directive.

“Intra-Community distance sales of goods” is defined as 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.

This definition is caveated by the following conditions. The supply must be made to a taxable person whose intra-Community acquisition of goods is not subject to VAT by virtue of Article 3(1), or non-taxable legal person whose intra-Community acquisition of goods is not subject to VAT by virtue of Article 3(1) or any other non-taxable person, and the goods supplied are not new means of transport, or goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

Article 3(1) states that certain transactions are not subject to VAT. The transactions which are not subject to VAT under Article 3(1) are:

- The intra-Community acquisition of goods where the supply of the goods is exempt under articles 148 (supplies relating to international transport) and 151 (supplies treated as exports).
- The intra-Community acquisition of goods (other than new means of transport or excisable goods) by a taxable person in the flat rate farming scheme.
- The intra-Community acquisition of goods (other than new means of transport or excisable goods) by a taxable person who is exempt from VAT.
- The intra-Community acquisition of goods (other than new means of transport or excisable goods) by a non-taxable person.

Furthermore, the goods must be in free circulation in the EU before the sale, i.e. the goods were produced in the EU or were imported by the supplier into the EU at some point before the sale.