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VAT and cross-border e-commerce: regulatory amendments resulting from the 2016 Commission Action Plan*

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Abstract

This work contains a brief exposition and a first critical assessment of the most significant novelties that the harmonized regime of cross-border e-commerce transactions in the VAT will face in the short and medium term, that is, from 2019 and 2021 respectively, as As a result of the extensive amendments approved by the EU Council at the end of 2017. In particular, the so-called E-commerce package, which, as we will see later, will be subject to a gradual implementation during the next triennium, includes three different rules:
1. Directive (EU) 2017/2455, of the Council, of 5 December, 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.
2. Council Regulation (EU) 2017/2454 of 5 December 2017, amending Regulation (EU) nº 904/2010 on administrative cooperation and combating fraud in the field of value added tax.
3. Council Implementing Regulation (EU) 2017/2459 of 5 December 2017, amending Implementing Regulation (EU) nº 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added taxThis work contains a brief exposition and a first critical assessment of the most significant novelties that the harmonized regime of cross-border e-commerce transactions in the VAT will face in the short and medium term, that is, from 2019 and 2021 respectively, as As a result of the extensive amendments approved by the EU Council at the end of 2017.

Keywords: VAT; digital economy; cross-border e-commerce.

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1. Introduction. VAT reform and the challenges of the digital economy

1.1. The new cross-border e-commerce regime as an advanced component of the 2016 VAT Plan

This work contains a brief exposition and a first critical assessment of the most significant novelties that the harmonized regime of cross-border e-commerce transactions in the VAT will face in the short and medium term, that is, from 2019 and 2021 respectively, as As a result of the extensive amendments approved by the EU Council at the end of 2017. In particular, the so-called E-commerce package, which, as we will see later, will be subject to a gradual implementation during the next triennium, includes three different rules:

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3. Council Implementing Regulation (EU) 2017/2459 of 5 December 2017, amending Implementing Regulation (EU) nº 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

Through this block of provisions, in which the Directive (EU) 2017/2455 takes a prominent role, we have tried to establish one of the fundamental pillars of the Action Plan on VAT proposed by the Commission in 2016 April.[1] The premise which led to boost that Plan is that, despite its undoubted contribution to the construction of the European single market, the common system of tax designed by the harmonization provisions has not been able to evolve to the difficult challenges which are posed by the global, digital and mobile economy at the same time, has remarkable fragmentation and complexity for companies that work internationally and origins fraud.

On the base of this unfavourable diagnosis, the Action Plan, which is in full implementation phase with respect to other components, has tried to promote the making of a single EU VAT area, through two essential objectives. On the one hand, reducing the level of fraud, especially in intra-Community transactions and importations. On the other hand, improving and simplify the working of the tax with respect to cross-border e-commerce and small and medium-sized enterprises (SMEs).

In order to compliance these targets several strategic lines of action have been marked, between which the establishment stands out as definitive system of the principle of taxation in the State of destination of the goods; the expansion of the one stop shop (OSS), whose initial field of application (telecommunications, broadcasting and television services and the electronic services) will be gradually extended to all cross-border e-commerce, including remote sales of tangible goods; the reinforcement of administrative cooperation in the EU and with third countries; the introduction of simplification mechanisms in order to facilitate the compliance with their fiscal obligations by

1. COM (2016) 148 final, on 2016, April, 7th, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT, «Towards a single EU VAT area – Time to decide».

SMEs; or the recognition of a greater margin of autonomy of the Member States when setting the tax rates.

In the case of the specific treatment of international e-commerce for VAT, we must make clear that in the conception of the Plan of Action that includes any transactions arranged by electronic means, both on tangible goods and on fully digital products. This means a very significant change of paradigm with respect to the rules until now had been in force, which only contemplated electronic services in the strict sense, as we will check immediately, consisting of purely digital products supplied through networks, but in no case distance exchanges on tangible goods arranged digitally.

With this broad vision, more according to the current reality of online commercial traffic, Commission has opted to remove the obstacles of system in force since on 2015, January, 1st,[2] which considered excessively complex and costly them for Members States and companies. As an alternative, it proposes several ways of simplification and modernization, stand out the extension of the one stop shop (OSS) to the online sales of tangible goods destined for final consumers or the introduction of a simplification measure for small companies in the form of a common minimum threshold at EU level (below which companies may continue taxing in the Member State where are established, without registering in the other Member States where their current or potential clients can be reached). Also it is relevant the forecast of unique fiscal controls for companies with cross-border sales or the removal of the exemption recognized for small shipments imports sent by extra-community suppliers.

At following pages, we are going to review the main changes as consequence of regulatory before we have said. However, we must allude to the background, previously, in order to an understanding more exact about scope of these changes. Only knowing them, we will be able to value the new rules approved for e-commerce taxation aproppriately.

1.2. Reduced rates and electronic publications: the recent Directive (EU) 2018/1713

In addition to these preliminary considerations, we must make clear that, beyond the changes that specifically affect cross-border e-commerce, whether at intra-Community and international level, others aspects of the indirect taxation of the digital economy have been or may be substantially affected by the culmination of the strategic lines of action marked by the 2016 VAT action Plan, many of which are still in the phase of discussing.

It is paradigmatic from this incident, the recent adoption of the Council Directive (EU) 2018/1713 of 6 November 2018, amending Directive 2006/112/EC as regards rates of value added tax applied to books, newspapers and periodicals. Since on 2018 December 4th, it is possible that the Members States can extend, if they estimate convenient, to e-books and e-publications the reduced tax rates which to date have been established in their domestic regulatory for the publications provided in any means of physic support (paper, CDs, portable memories, etc.)[3]

2. This aim of reduction related to VAT in the cross-border sales had been already advanced in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions «A Digital Single Market strategy for Europe», COM (2015) 192 final, on 2015, May, 6th.

3. According to new writing of article 98.2 and annex III.6 of the Directive 2006/112/EC , the Members States may apply reduced rates for supply «including on loan by libraries, of books, newspapers and periodicals either on physical means of support or supplied electronically or both (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript form, maps and hydrographic or similar charts), other than publications wholly or predominantly devoted to advertising and other than publications wholly or predominantly consisting of video content or audible music».

   On the other hand, the new section 3 of article 99 allows to extend the same VAT treatment to the supply of electronic publications to Member States which, on 1 January 2017, applied, in accordance with Union law, reduced rates lower than the minimum laid down in this section 1 of this article 99 or granted exemptions with deductibility of the VAT paid at the preceding stage to the supply of publications in physical support.

This provision, that on 2017 March was going to be stopping almost during the transaction of the proposal submitted by the Commission on 2016 December,[4] has been long desired by economics agents of the publishing World. In addition, it responds to position defended by a broad sector of academic doctrine with in which we have aligned clearly in some previous works.[5] On particular, it is perceived like the solution most coherent and reasonable to preserve the principle of tax neutrality,[6] above all taking in account the enforcement since 2015 January 1st of principle of imposition in destination for electronic services has already done unnecessary to subjecting digital publications to the ordinary type of VAT to guarantee the establishment and operation interior market and avoiding the competition distortion.[7]

In order to give this importance change it has been necessary to beat the initial Commission resistance, that until the appearance *Green Paper on the future of VAT* that had come justified the asymmetric treatment between both form of publications with the argument, in our opinion little conclusive, that they were not equivalent products.[8] In addition, the obstacle that the EU Court of Justice had raised in several statements has been broken, in which he had valued the question with a strict interpretation in front of views most flexible defended by countries like France or Luxembourg. Without a doubt, the Court acted very limited due to the before writing of the article 98.2 of the Directive 2006/112/EC, which prohibited in a strict way services provided by electronic form like digital publications to benefit from a reduced rate.[9] Once this prohibition has been lifted, the

4. COM (2016) 758 final, on 2016 December 1st.

5. Vid. RAMOS PRIETO, J., ARRIBAS LEÓN, M., «El Impuesto sobre el Valor Añadido y el Comercio Electrónico. El régimen especial aplicable a los servicios prestados por vía electrónica», *Jurisprudencia Tributaria Aranzadi*, nº 15, 2006, pp. 26-30; RAMOS PRIETO, J., «El comercio electrónico y el IVA: problemas del régimen de las operaciones realizadas por vía electrónica», in LASARTE ÁLVAREZ, J. y DI PIETRO, A. (Dir.), *Observaciones al Libro Verde de la Comisión y propuestas sobre el futuro del IVA*, Mergablum, Sevilla, 2012, pp. 252-258; MACARRO OSUNA, J. M., «Non-Reduced Rates for E-Books: Has the ECJ Allowed a Violation of Fiscal Neutrality?», *International VAT Monitor*, vol. 27, n. 4, 2016, pp. 249-253; RAMOS PRIETO, J., MACARRO OSUNA, J. M., «Problemas de armonización del IVA: la tributación de los libros electrónicos y su adecuación al principio de neutralidad», in GONZÁLEZ SÁNCHEZ, A. I. (Coord.), *Mercado interior: avances y desafíos*, Colección «Cuadernos Jean Monnet sobre integración europea fiscal y económica», n. 1, Universidad de Oviedo, 2016, pp. 79 and following (http://www.uniovi.net/jeanmonnet/documentos/archivos/Cuaderno_Jean_Monnet_1.pdf); and RAMOS PRIETO, J., MACARRO OSUNA, J. M., «Problemas de armonización del IVA: la tributación de los libros electrónicos y su adecuación al principio de neutralidad», *Quincena Fiscal*, n. 1, 2017, pp. 23 and following (BIB 2016\86011).

6. Concerning fiscal neutrality when related to the principle of equal treatment, for being used as criteria to determine the tax that should be applied to similar products, we refer to thought of MACARRO OSUNA, J. M., *El principio de neutralidad fiscal en el IVA*, Thomson Reuters Aranzadi, Cizur Menor, 2015, pp. 368-379.

7. Until on 2014 December 31th, the provision of e-services intra-EU to consumers (that is, from suppliers establishment or situated in a Member State to people who do not have condition of taxable persons and they are in other Member State) was taxed in origin. This traditional criteria, which involve the application of standard rate of VAT in force in the supplier location of Member State, could cause situations of tax competition in any service which it could be served from distance and, specially, in the e-commerce. MACARRO OSUNA, J. — «La competencia fiscal y el comercio electrónico en el IVA», *Revista Española de Derecho Financiero*, n. 161, 2014 (versión digital BIB 2014\647) and «Competencia fiscal y comercio electrónico en el IVA», in RAMOS PRIETO, J. (Director), *Competencia fiscal y sistema tributario: dimensión europea e interna*, Thomson Reuters-Aranzadi, Cizur Menor (Navarra), 2014, pp. 248-249 —, explains that some countries kept a standard rate of VAT in low levels (in special, Luxembourg, who applied the possible minium of 15 per 100) «en un claro intento de atraer las compañías de comercio electrónico y, también las de telecomunicaciones (Amazon, Skype, AOL, etc.), cuyo régimen es similar».

8. In the Communication from the Commission to Council, the European Parliament, the Council, and the European Economic and Social Committee, Green Paper on the future of VAT: «Towards a simpler, more robust and efficient VAT system», COM (2010) 695 final, on 2010 December 1st, was stood up the incoherence in the VAT rates applicable to similars products or services. In this line, as consequence of result of process of public consultation due to the the publication of this Green Paper the Commission concluded the next: «Similar goods and services should be subject to the same VAT rate and progress in technology should be taken into account in this respect, so that the challenge of convergence between the on-line and the physical environment is addressed». Cfr. Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, «On the future of VAT. Towards a simpler, more robust and efficient VAT system tailored to the single market», COM (2011) 851 final, on 2011 December 6th.

9. Vid. Judgments of the Court of Justice on 2015 March 5th, *European Commission against French Republic*, affair C-749/13, and *European Commission against Grand Duchy of Luxembourg*, affair C-502/13, and Judgment of the Court

States who are going to fix reduced rates for publications in physical support must decide if they give the same treatment to their equivalents in digital support.

2. Background to the taxation of e- commerce in the common VAT system (2003-2018)

2.1. Remote background: Treatment of the electronically supplied services between 2003 and 2014

The starting point of the process for e-commerce in the harmonized normative framework of EU VAT could be in 1998. On some previous works,[10] in June of that year the Commission adopted a first positioning about topic through the Communication COM (1998) 374 final,[11] in which were defined six generic guidelines. Despite that it have happened more 20 years, from our point of view they refer to several aspects still being in the discussion centre:

1. Explicit exclusion of idea about introducing additional new taxes on e-commerce.
2. Qualification as supply of services for VAT of provision to the addressee of product in digital support through an e-network.
3. Safeguards of neutrality between intra and extra-EU operations through a scheme of taxation in destination, so that e-services are supplied by extra-Community with destination to EU consumers must be taxed by VAT in the correct Member State, and, in contrast, the services, which are destined for consumption outside the Community territory, should not be in the tax scope.
4. Introduction of rules that allow, on the one hand, to the electronic traders of the electronic commerce an easy and simple compliance, without unnecessary administrative loads, adjusting the imposition to the trade practices without making difficult the task of those in a transnational, diversified and decentralized market. On the other hand, that they guarantee that the tax will be controlled and levied effectively and efficiently.
5. Adoption of control instruments that ensure the effective taxation of electronically supplied services whose customer are both companies and individuals are established in the EU.
6. Use of electronic means in compliance with material and formal obligations derived from VAT (billing, payment, submission of tax returns, etc.).

2.1.1. The Directive 2002/38/EC as the first temporary adjustment of VAT to electronic services: review of the rules of locating and introduction a special scheme for services provided by non-EU suppliers to final consumers in the EU

From those basic principles the Directive did a first adjustment about the VAT regulatory normative to the e-commerce reality,[12] with a part and temporary scope. According to its preamble, the

of Justice on 2017 March 7th, *RPO*, affair C-390/15. In this last pronouncement (section 49) the Court of Luxembourg had already said that «the supply of digital books in any mean of physic support, on the one hand, and the supply of digital books by electronic way, on the other hand, are situations which can be compared» under the article 98.2, in relation with the annex III, section 6, of the Directive 2006/112/EC.

10. Look the «Provisional report on electronic commerce impact on VAT and customs», Workshop XXI/97/0359, on 1998 April 3th, of XXI General Direction of European Commission.

11. COM (1998) 374 final, on 1998 June 17th, Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: «Electronic commerce and indirect taxation».

12. Council Directive 2002/38/EC of 7 May 2002, amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services. The amendments introduced are analyzed in RAMOS PRIETO, J., ARRIBAS LEÓN, M., «El Impuesto sobre el Valor Añadido…», *op. cit.*, pp. 17 and following.

transitional amendment of Sixth Council Directive (77/388/EEC) tried to approach about insufficiency of provisions which did not allow to tax electronic services (so as broadcasting or television services) correctly in those situations that its consumption produced in EU, nor did they prevent the creation of distortions about fair competition in this trade field. These lacks were solved with the introduction of new specific rules in order to determine the place of taxation of the cross-border operations about this type of services between suppliers out of EU and Members States consumers and between suppliers are located in EU and clients from third countries.

In fact, until its approbation, the electronic supplied services by taxable persons from EU territory were always taxed VAT, independent of which would be the consume place, including if the costumer was located out of States Members territory. However, the services of this kind supplied by traders who acted from third countries or territories were not taxed, despite the services were consumed by resident people or permanent address in EU whithout acting like taxable person. This fault derived from the traditional criteria of location about supplied services, this is, in the State where the supplier has a fixed establishment from which the services supply or, in the absence of both connection points, where the supplier of service has his permanent address or usually resides.[13] It is evidence that the competitive disadvantage of EU companies in comparison with third countries without indirect taxation about this kind of electronic operations with consumers or exempted their exportation.

As consequence, it was necessary to do an update of VAT Directive in order to achieve three essential aims: 1) Covering the specifications of an new activity like e-commerce; 2) Creating equitable conditions of competition in this economic industry, similar as for European companies as for those companies act from third countries; 3) Managing the compliance of the taxation obligations for companies act from third countries. Moreover, all those about the base of principle of neutrality that inspires the configuration of tax, according to taxation treatment of commercial trading must be the same as if it is verified though of traditional as electronic means.

In order to improve the operating of interior market and solve these faults, the article 1 of the Directive 2002/38/EC did a review (in force since 2003, July, 1th) of the rules relating to place of transactions and taxation of services provided in the article 9 of Sixth Directive in force then. On particular, they were focused on getting that the electronic services supplied from third countries for consumption for clients who are not taxable person and have a permanent address or usually resides in a Member State. Otherwise, a rule of similar location was fixed, which caused that these services are not taxed when they are enjoying by stablished people (taxable person or no) out UE territory. Definitely, the principle of destination taxation in cross-border transactions was adopted between business to consumers (B2C) when one of the two parties to the operation is located out EU, according to place the person is established, usually resides or has permanent address of the customer of the transactions that are considered done by electronic means.

On the contrary, no change was operated at that time for the rest of electronically supplied services:

- Supplied services by traders having an establishment in a Member State to consumers having an establishment in other State (transactions B2C intra-EU), which continued under the principle of taxation in the State of origin (location according to his place of business, permanent establishment, permanent address or usually residence of employer or professional supplier);

Previously, the Commission had proposed a system of origin taxation, an unique tax European jurisdiction for traders from third countries have not stablished and a franchise scheme for Community traders who supplied services for an amount below 100.000 €, solutions that were not kept in mind by Directive 2002/38/EC. Cfr. Proposal for a Council Directive amending Directive 77/388/EEC as regards the value added tax arrangements applicable to certain services supplied by electronic mean. Communication COM (2000) 349 final, on 2000 June 7th.

13. This general rule of place location of supplied services to people who are not taxable persons is provided, nowadays, in article 45 of Directive 2006/112/EC.

- Supplied services by traders having an established in EU or third countries to entrepreneurs or professionals located in a Member State (transactions B2B intra and extra-EU), which continued under to taxation at destination through the reverse charge system (location according to his place of business, permanent establishment, permanent address or usually residence of trader or professional customer).[14]

Besides, a new special scheme was introduced next to the review about criteria of location (adding an article 26c to the Sixth Directive), that as we could see, has lasted until nowadays. Its aim consist of easing and simplifying the compliance of the tax obligations of those economic traders who, not being established nor having obligation to identify themselves relating tax in any Member State, supply electronically services to European consumers, who are not taxed like taxable person. They are the transactions between extra-EU business and consumers from one or several Member States.

For this, the firsts can choose if they have not another identification code for VAT within EU to sign in a single Member State (the one that is freely chosen), that will work like one stop shop, despite its activity can do in several of them. This taxable person will determine VAT borne in each transaction according to tax applied in force in the State where the client is. Periodically, they will inform the Tax Administration of the State where they have registered about the VAT passed on the customers and they will send the declaration-liquidation of the tax in electronic support, with details of the turnover for each Member State, after that, this Tax Administration does a reassignment of the collecting to each one of the Member States where the services have been supplied effectively. In addition, the entitled to full or partial reimbursement of the VAT is awarded to taxable person who chooses to this special system freely, in relating to goods and services using in its taxed activities according to this scheme, by Member State where it had been supplied.

The temporary rules on e-commerce have been introduced by Directive 2002/38/EC in relating to the criteria for the location of electronically supplied services and of the substantive and procedural aspects of the new special scheme for non-EU taxable people (cases of exclusion, transmission of information and redistribution of revenue between Member States, invoicing obligations) were developed at first by the Council Regulation (EC) nº 1798/2003 of 7 October 2003,[15] and the Council Regulation (CE) n.º 1777/2005, of 17 October 2005.[16] Later, the first was abolished by Regulation 904/2010, of 7 October 2010,[17] and the second was abolished by Council Implementing Regulation (EU) nº 282/2011,[18] 15 of March of 2011 which are the texts currently in force.

2.1.2. Successive extensions of the special treatment of electronically services until the end of 2014: from Directive 2006/58/EC to Directive 2008/8/EC

The amendments have been made to e-commerce by Directive 2002/38/EC were approved with a limited duration of 3 years, starting on July 1, 2003 (articles 4 and 5).The Council, on the basis of a preliminary report from the Commission, should have reviewed the situation before on 2006 June 30th and chosen for one of these two options:

14. As exception in order to avoid double taxation, non-taxation or the distortion of competition, the Members States were allowed to consider that the place of electronically supplied services will be out EU if the «effective use and enjoyment» of the services take place within the territory of the EU (article 9.4 of the Sixth Directive amended by Directive 2002/38/EC), instead of place of being in the Member State of location of customer.

15. The Regulation (EC) nº 1798/2003 added to its content (arts. 28 to 34) the provisions relating to special scheme that were already in the Council Regulation (EC) nº 792/2002, of 7 May 2002 amending temporarily Regulation (EEC) nº 218/92 on administrative cooperation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce. Later the Council Regulation (EC) nº 143/2008, of 12 February 2008, amended it.

16. Council Regulation (EC) nº 1777/2005 of 17 October 2005, laying down implementing measures for Directive 77/388/EEC on the common system of value added tax.

17. Council Regulation (EU) nº 904/2010 of 7 October 2010, on administrative cooperation and combating fraud in the field of value added tax. Vid. Arts. 38 to 47.

18. Council Implementing Regulation (EU) nº 282/2011 of 15 March 2011, laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

1. Creation of an appropriate electronic mechanism, of a non-discriminatory nature, in order to work out, declare, collect and allocate tax revenue from electronically supplied services, always according to the principle of taxation at the place of consumption.
2. Extension of the temporary period of application if we consider it necessary for practical reasons, unanimously and based on a proposal from the Commission.

The European authorities adopted a cautious approach. It was preferred to advance at a slow pace, in front of the alternative of revolutionizing the VAT regulatory framework at only once in order to try to answer to an emerging, unstoppable and highly mutable reality such as e- commerce. It was necessary to value if the desired objectives (in particular, the restoration of a balance between European and non-Community traders) and the effects of the measures implemented (one stop shop for non-EU suppliers and impact on tax revenues of Member States) were being achieved.

In practice, the second solution was used until the end of 2014. The Council Directive 2006/58/EC, of 2006[19] June 27th, did a first extension until December 31th of that year. Therefore, it was a minimum extension of just six months, much more limited than the one proposed by the Commission (until 2008, December 31th) in the proposal for the Directive presented to the Council on 2006,[20] May. This decision was strongly conditioned by the fact that several VAT regulatory initiatives were being discussed at that time, in particular the proposal of redefining of the rules about the place of supplied services between taxable person.[21]

Months later the Sixth Directive was replaced by the current Council Directive 2006/112/EC, of 28th November 2006, related on the common system of value added tax (we are going to refer to it as the Directive 2006/112/EC or, simply, as the VAT Directive), in force since 2007, January 1st. However, this new regulatory text did not have any variation in substance with respect to the taxation of on-line services, limiting to a mere systematic reordering of the articles which dealt with the content (articles 56 to 58 and 357 to 369 and annex II).

Shortly after the approval of this Directive 2006/112/EC, it was necessary to do a new extension of the period of application of these articles, as we have just indicated, ended on 2006, December 31st. The Council Directive 2006/138/EC, of 19th December 2006,[22] answered to that aim. The validity of these provisions was extended until 2008 December 31th, as the Commission had requested in its May 2006 proposal.

Finally, the Directive 2008/8/EC (articles 1 and 2)[23] extended with minimum adjustments until 31th December 2014 the criteria for the location of electronically supplied services and the special scheme applied for the taxation of services of this nature supplied by traders are outside EU.

2.1.3. Exclusion of tangible goods transactions (indirect e-commerce or off-line):

From the above brief summary, we can deduce a very important objective limitation to the scope of the rules introduced by the Directive 2002/38/EC and its implementing rules.

In the conception of the e-commerce assumed by such dispositions, that it has been remained practically until the end of 2018, the singular treatment for VAT refers only and exclusively to the so-called on-line transactions or direct e-commerce, that is, those operations under tax where the

19. Council Directive 2006/58/EC of 27 June 2006, amending Council Directive 2002/38/EC as regards the period of application of the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services.
20. COM (2006) 210 final, on 2006 May 15th.
21. COM (2005) 334 final, on 2005 July 20th.
22. Council Directive 2006/138/EC of 19 December 2006, amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services.
23. Council Directive 2008/8/EC of 12 February 2008, amending Directive 2006/112/EC as regards the place of supply of services.

contractual process is developed, formalized and, above all, executed entirely by electronic means. In other words, only selling or supply of services in which there is no physical presence of the buyer-recipient or the seller-supplier, which have as their object the exchange of an intangible or immaterial product and in which, consequently, the reciprocal relationship of the parties are channelled by electronic means, are included.

It is evident that it is not the same to formalise an electronically contract as implement the provisions/considerations derived from it for the parties through this mean. Although a contract can be legally qualified as electronic because of having concluded through this kind of mean,[24] this data is not enough to consider it an online operation from the point of view of VAT. On the contrary, it is necessary that the cycle or sequence request-service-payment happens in full through electronic procedures, from the moment of the request for the good or service on the part of the client until the provision of the service by the entrepreneur at the request of the client and in exchange for the agreed consideration.

Without defining what means electronically supplied services, the Directive 2002/38/EC chose to specify them adding an annex L to the Sixth Directive, in the form of an open list or merely by way of example (in no case with the character of *numerus clausus* and with the explicit clarification that simple communication by e-mail between the supplier of a service and its customer is not enough to confer the quality of electronic service. This annex of the Sixth Directive is reproduced in the current annex II of the VAT Directive.[25]

For its part, the Implementing Regulation (EU) n.º 282/2011 (assuming what the Regulation n.º 1777/2005 had done a few years earlier, articles 11 and 12 and annex I) clarifies in its article 7.1 that the notion of electronically supplied services includes «services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology». On this basis, in paragraphs 2 and 3 of the same provision it does a double positive and negative delimitation. The first one, through the express mention of a series of typical transactions,[26] completed by the detailed breakdown (annex I of the Regulation) of annex II of the Directive 2006/112/EC. And the second one, indicating a series of operations that are excluded from this condition, many of which lack the requirement that we have noted that the contractual process and its execution is developed entirely by electronic means (for example, goods whose order or process has done electronically, CD-ROMs, diskettes or similar tangible support, printed material such as books, newsletters, newspapers or magazines, CDs and audio cassettes, video tapes and DVDs, games on CD-ROM, etc.).

On the other hand, no particularities were introduced since 2003 in advance onwards for the so-called indirect electronic commerce transactions or off-line, that is, those in which only the order or request is made electronically by the customer for the good or service, but the provision is facilitated by material means. Until the approval of the E-commerce package of 2017, it has been considered that this variant of commercial acts has not differentiating features, according to its VAT taxation,

24. For example, we can see in the Spanish Law, the *Ley 34/2002, de 11 julio, de servicios de la sociedad de la información y de comercio electrónico*, that added to internal Law the Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). In its annex it is defined the meaning of «contrato celebrado por vía electrónica» or «contrato electrónico» like «todo contrato en el que la oferta y la aceptación se transmiten por medio de equipos electrónicos de tratamiento y almacenamiento de datos, conectados a una red de telecomunicaciones».

25. This annex includes an indicative list of the electronically supplied services referred to criteria of location at destination, alluding to the next: 1) Website supply, web-hosting, distance maintenance of programs and equipment; 2) Supply of software and updating thereof; 3) Supply of images, text and information and making available of databases; 4) Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events; 5) Supply of distance teaching.

26. Between them are included the supply of digital products in general, including software and changes to or upgrades of software; the services providing or supporting a business or personal presence on an electronic network such as a website or a webpage; or the services automatically generated from a computer via the Internet or an electronic network, in response to specific data input by the recipient.

with the rest of traditional business activities. The operation will a supply of goods, an intra-EU acquisition or an import of goods (with the possibility, of being subject to the particularities of the distance-selling scheme), when it concerns tangible goods and these are delivered or transported by physical means. Moreover, when it is based on the provision of services, the use of the Internet or any other electronic network for the purpose of contracting does not entail any specialisation with respect to the human intervention implied by traditional practices.

2.2. Immediate background: treatment of electronically supplied services between 2015 and 2018

Since 2015 January 1st the Directive 2008/8/EC (article 5) fixed indefinitely the criteria of taxation in destination of the two kinds of cross-border electronic transactions to which they tried to give an appropriate response has been sought since the Directive 2002/38/EC. We refer to digital services supplied by taxable persons located outside EU to final consumers have an establishment, permanent address or usually resident in Member States (B2C) as well as the services supplied by taxable persons established in the EU for people (final consumers or entrepreneurs or professionals) with no connection to EC territory (B2B and B2C). In the first case, it is applied the specific rule of article 58.c of the VAT Directive, whereas in the second one it is applied that provision or the general rule of article 44 depending on if the recipient is a final consumer or an entrepreneur or professional.

The article 59a of the Directive qualifies this scheme with the additional criteria of the effective use and enjoyment of the services, like a complement in order to avoid double taxation, non-taxation or the distortion of competition. Under it, the Members States can be exempted the previous rules of taxation according to the location of recipient in double sense. Firstly, if we consider that the place of supplied services to final consumers stablished in the territory of a Member State is out EU, because that is where the services are used and enjoyed effectively. Secondly, if we suppose that the place of supplied services to people located out EU is in its territory, because it is there where the recipient uses and enjoys of the services.[27]

The main developments introduced by Directive 2008/8/EC since 2015 were two.[28]

2.2.1. Extension of the taxation criterion in destination to intra-EU electronically services supplied to final consumers

During the period 2015-2018, the destination criterion according to the place of the customer has a fix establishment, permanent address or usually resides (article 58 of the Directive 2006/112/EC) is applied for electronically supplied services by taxable persons located in EU to clients who are final consumers from other Member State too (B2C intra-EU). The resulting option box after this modification is next:

27. MACARRO OSUNA, J., «La competencia fiscal y el comercio electrónico…», *op. cit.*, criticizes the indetermination of this criterion of effective using, because of each Member State can consider it in different ways, creates the doubt of if it should be priority or secondary relating to the rules of normal location. From his point of view, its application is a fantasy «por la extrema dificultad con que van a encontrarse los Estados miembros para conocer cuál es el verdadero lugar de uso y explotación efectiva de un servicio».

28. In order to anylise further aspects which are going to exam next (adoption of the principle of taxation in destination and the special scheme of electronically services like testing of a tiny one-stop shop) we can read the full study of MACARRO OSUNA, J. M., «El IVA en el comercio electrónico como punto de partida de un nuevo paradigma de las ventas a distancia en la Unión Europea», in MORENO GONZÁLEZ, S. (Director), *Tendencias y Desafíos fiscales de la Economía Digital*, Thomson Reuters Aranzadi, 2017, pp. 183-196.

Table 1 – Place of taxation of electronically supplied services 2015–2018

Recipient	Supplier: Entrepreneur / professional located in VAT territory of EU	Supplier: Entrepreneur / professional located out VAT territory of EU
Entrepreneur / professional located in VAT territory of EU	• Taxation in ME in destination (art. 44 VAT Directive) • Taxable person: Recipient of service (reverse charge system)	• Taxation in ME in destination (art. 44 VAT Directive) • Taxable person: recipient of the service (reverse charge system) • No administrative obligations for supplier entrepreneur of service
Final consumer located in VAT territory of EU	• Taxation in ME in destination (art. 58 VAT Directive) • Taxable person: Supplier of service • Special voluntary scheme of simplify compliance of obligations by taxable person	• Taxation in ME in destination (art. 58 VAT Directive) • Taxable person: Supplier of service • Special voluntary scheme of simplify compliance of obligations by taxable person
Person (entrepreneur, professional or final consumer) located out VAT territory of EU	• Transaction non-taxable VAT (arts. 44 and 58 VAT Directive) • Taxation in the State in destination, except that the ME, where the supplier is, considers that the place of supplied service would be in its territory because of the effective using or enjoying of service include in it.	• transaction non-taxable VAT • Taxation in the State in destination

The precision of place of establishment, domicile or habitual residence of the final consumer can be a problem. For this reason, the Council Implementing Regulation (EU) nº 1942/2013 of 7th October 2013[29] introduced specific rules in the Implementing Regulation (EU) nº 282/2011, in order to facilitate the Tax Authorities the identification of the recipients of the electronic services and their position.[30]

2.2.2. Introduction of a second special system for services of EU suppliers to EU final consumers

The Directive 2008/8/EC has created a great innovation from 1st January 2015. There is a voluntary duality of simplify rules to ensure the compliance of the taxable person (established in the EU or not) with the tax liability. This duality is for those who provide electronic services (or telecommunication, broadcasting or television) to people who are not accountable for VAT and are located in any Member State of the EU.

The first specific rule (articles 358a to 368 of the VAT Directive) affects taxable people not established in the EU and provide those services to clients who are established or have their place of residence in a Member State. This rule is similar to the Directive 2002/38/EC but there is an extra, its scope includes telecommunications, broadcasting and television services.

The second rule is new and is linked to the generalization of the taxing of digital services at destination. In particular, it affects to electronic services provided by taxable persons established in European territory but different from the purchase State where the recipient is (articles 369a to 369k). If they choose the special rule, they have to sign up only in the Member State where their economic activity or permanent establishment is (Member State of identification), in order to all the online transactions made with final consumers of another Member States where there is not headquarter or permanent establishment. The taxable person has to fulfil the obligations of the Member State of identification (quarterly tax return, deposit of tax due and the obligation of register all the registration, modification or removal) due to the provision of services to other EU Member State clients. Along with this, they avoid the obligation to be identify in all the States or designate a tax representative in each of them. This simplification of the formal obligations does not avoid to that the principle of taxation in destination would be kept, so these supplied services are taxed applying the tax in force in the consumer States, to what the Member State of identification delivers the correct amount of taxes.

3. Amendments in the taxation scheme of e-commerce in the VAT approved in 2017

3.1. Scope and context of the reform

As we explained in the introduction of this work, the Directive (EU) 2017/2455, supplemented with the Regulation (EU) 2017/2454 and the Implementing Regulation (EU) 2017/2459 have amended the treatment of digital trader exchanges in the VAT. However, the normative framework in force

29. Council Implementing Regulation (EU) nº 1042/2013 of 7 October 2013, amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services.

30. The Council Implementing Regulation nº 1042/2013 introduced several rules and presumptions in the Implementing Regulation nº 282/2011 in order to determine the State in which the recipient of an electronically service who is not a taxable person can be considered as located. For example, the place where a non-taxable legal person is established shall be the place where the functions of its central administration are carried out; or the place of any other establishment characterized by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs (article 13 a). The presumptions for the natural people can be seen in the articles 24 a, 24 b, 24 d, 24 e and 24 f in relating with the customer location y the means for its refutation.

until nowadays has been kept intact in many aspects. As a first approximation, the main lines of the modifications made by such norms can be grouped into four basic points[31]:

1. Taxation at destination of the transactions (supplies of goods and supplies of services) by taxable persons located in EU to final consumers (B2C) if the trader exceeds a threshold of EUR 10.000 per year in their sales in all the Member States.
2. Extension of the mini one stop shop (MOSS) mechanism to the cross-border supplies of goods and services, and the importations of low value (below EUR 150).
3. Elimination of the exemption provided for the importation of small consignments of goods.
4. New treatment for tax purposes of intermediary platforms in transactions made through the internet.

The Directive (EU) 2017/2455 has fixed a timetable for gradual implementation of these regulatory amendments, some of which will be in force from next year 2019 (article 1) while the main group would have to wait until 1st January 2021 (articles 2 and 3).

Relating to the context in which these changes are framed, positive and negative aspects have been taken into account after that several years, since the generalization of the taxation system at destination for the electronically supplied services to final consumers and the implementation of a double mechanism of mini one stop shop (MOSS) for the taxable persons of digital economy sector located within and out of territory VAT application in EU.

The Commission has favourably valued that more than 11.000 companies have registered in the one stop shop, through which they have accounted for tax 18.000 millions of selling with an amount of VAT of EUR 3.000 (a 70 percent of the turnover of electronically services and communications), besides, allowing to an overall decrease in the compliance costs of the companies of EUR 500 million.[32]

By contrast, high collection losses have been detected in the e-commerce, especially in the case of transactions on tangible goods because of the effect direct exemption applicable to the importation of small consignments of goods. The Commission did the directive proposal through the Communication, in which considered that the losses achieve a level of 5.000 million per year in all the Member States between the VAT has not collected and the non-compliance in that is incurred in the cross-border e-commerce. In addition, this Communication stood out that the cost of compliance of VAT obligations in relating with each Member State where a company supplies goods or services achieve around EUR 8.000 per year, so that this means a relevant load for small and medium-sized enterprises.[33]

3.2. Effective amendments since 2019

3.2.1. Rules of locating of the electronically supplied services to final consumers: introduction of a mixed scheme of taxation at source/destination for EU suppliers

The Directive (EU) 2017/2455 has meant a certain setback in the widespread implementation of the principle of taxation at destination of electronically services to final consumers, that since 2015

31. For an exhaustive analysis of the reform, we can see MACARRO OSUNA, J. M., «El nuevo régimen de ventas intracomunitarias a distancia de bienes y la generalización del reformado sistema de ventanilla única: ¿Un régimen definitivo para las operaciones intra-UE con consumidores?», *Revista Española de Derecho Financiero*, n. 181, 2019.

32. This information have been given by the Commission from the Report made by the consultancy Deloitte: *«Options for modernising VAT for cross-border E-Commerce Final Report»*, Document 3 *«Assessment of the implementation of the 2015 place of supply rules and the Mini-One Stop Shop»*. It can be read in https://ec.europa.eu/taxation_customs/publications/studies-made-commission_en

33. Proposal for a Council Directive 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.

had been useful to solve the phenomena of tax competition produced by the principle of taxation at origin in the intra-EU transactions previous the Directive 2008/8/EC.

Under the new writing of the article 58.2 of the Directive 2006/112 /EC, the place of supply of electronically services will be considered again in the Member State of location of the supplier if three conditions meet simultaneously:

1. The supplier is established or, in the absence of an establishment, has his permanent address or usually resides in only one Member State.
2. Services are supplied to non-taxable persons who are established, have their permanent address or usually reside in any Member State other than the Member State of location of the supplier.
3. The total value, exclusive of VAT, of the supplies to customers in other Member States does not in the current calendar year exceed EUR 10.000, or the equivalent in national currency, and did not do so in the course of the preceding calendar year.

This article shows a mixed scheme of taxation at origin or destination. The first will happen when the turnover is below the threshold said. The second (that is, the location of the place of supply of electronically services in the State where the consumer is established or has his permanent address o usually resides) will proceed when the supplier has chosen it, despite not to supply services above that amount in EU (option that will take effect at least two years), or when its turnover exceeds it.

A double reason explains this change. On the one hand, the lower limit of turnover (EUR 10.000) has been anticipated for the electronically supplied services that we will see later that it will be in force since 2021 for intra-Community distance sales of goods to final consumers in order to determine their location at destination or source. On the other hand, they have looked for simplify the formal obligations of SMEs, which will not have to register in the special one stop shop scheme when their transactions at destination to customers from others Member States mean a small turnover.[34]

However, this solution has some problems. As Macarro Osuna[35] has pointed out, it introduces an additional complexity because in the same State, the consumers will be able to access to electronically products that are taxed with different tax applied (depending on if the supplier has exceeded the threshold or not), affecting on the neutrality of the tax. In addition, abusive behaviours of certain sellers may be generated that take advantages from these different of tax applied and may even falsify invoicing in a Member State in order not to pass the limit that forces to the taxation at destination because of the limitations on cooperation between Tax Administrations of the Member States. As this author concludes, the threshold of EUR 10.000 may be appropriate to generalize the taxation at destination of intra-EU selling of tangible goods to final consumers of other Member States. However, we could think that the distortions will be greater as consequence of the lack of transaction costs and the ease of relocation for the transactions in the electronically services, since this partial reintroduction of the criterion of taxation at source[36] is too questionable.

34. This aspect is so relevant for the Directive (EU) 2017/2455 that, in the third recital, provides that: «the burden for micro-businesses established in a Member State occasionally supplying such services to other Member States of having to comply with VAT obligations in Member States other than their Member State of establishment should be reduced. A Community-wide threshold should therefore be introduced up to which those supplies remain subject to VAT in their Member State of establishment».

35. MACARRO OSUNA, J. M., «El IVA en el comercio electrónico como punto…», *op. cit.*, pp. 198-199. As the author correctly pointed out, «en el sector concreto de servicios por vía electrónica, en los que se presupone un nivel avanzado de conocimientos tecnológicos a los prestadores, y más siendo solo aplicable a los establecidos en la Unión, consideramos que la exigencia de aplicar las reglas de IVA del EM de consumo no suponían un esfuerzo desmesurado como para requerir la introducción de esta barrera de tributación en origen».

36. MACARRO OSUNA, J.M., «El nuevo régimen de ventas intracomunitarias…», *op. cit.*

3.2.2. Measures of simplification for the taxable persons associated with the special one stop shop scheme of the electronically services

The Directive (EU) 2017/2455 has modified several articles of the VAT Directive in order to ease the compliance of the formal obligations for the taxable persons associated with the special one stop shop scheme of the electronically supplied services.

Related on the invoicing rules, the new item 2.b) of article 219a allows to the taxable persons who have chosen by any one stop shop scheme in force since 2015 for their turnover will be tax to rules applicable in the Identification Member State instead of having to comply the provisions in force in all the consumer States where their clients are.

The conditions to be able to access to the special scheme are a less demanding one for taxable persons are not in EU. Until now, the article 358 a criticized that these suppliers of electronic services had not established their place of business or had a fixed establishment in the territory of the Community and nor that they had been obliged to identify themselves for VAT in some Members States (for example, for example, make sporadic transactions subject to) for other reason. Now, as a consequence of elimination this second request, that identification do not prevent the access to the one stop shop.

Finally, the rules of determination of Member State where the final consumer recipient of electronic services has an establishment, or has their permanent address or usually resides have been modified. In the new writing of the article 24b of Implementing Regulation (EU) nº 282/2011, fixed by the Implementing Regulation (EU) 2017/2459, to the operators who supply digital services by a total value (exclusive of VAT) does not exceed EUR 100.000, they are allowed to fix the location of client on the basis of one item of evidence provided by the present Regulation (in front of two requirements provided, in general, by the article 24f),[37] «provided by a person involved in the supply of the services other than the supplier or the customer» (for example, information given by intermediaries in the operation or payment). However, taxable persons have an establishment out from EU are excluded from this measure of simplify.

3.3. Effective amendments since 2021

For 2021, we expect that the changes in the configuration of VAT applicable to e-commerce will be in force. These modifications are more important, according to the several amendments that the articles 2 and 3 of the Directive (EU) 2017/2455 introduce in the Directive 2006/112/EC and Directive 2009/132/EC.[38]

We are going to show a summary about those aspects that, in our opinion, will have a greater impact on the mechanics of the operation of the tax in relation to the economic transactions associated to the development of the digital economy.

On the other hand, we must point out the fact that by approving Directive (EU) 2017/2455 the Council already manifested through an attached statement its concern about the risk of that the EU and the Member States are insufficiently prepared in 2021 to apply all these matters. It will be necessary that the Commission prepares and the Council unanimously adopts an implementing regulation in order to develop them and. In addition, the tax and customs administrations will have to do a significant effort of performance and an update technological means. For this reason, it may happen that, considering these difficulties, the Commission could be required to propose to

37. Between these items of evidence the article 24 f of the Implementing Regulation (EU) nº 282/2011 mentions the billing address of customer, the internet protocol of the device used to make the acquisition or any system of geolocation, bank data (the place where the bank account used for the payment or the billing address of customer which is available for the bank), the mobile country code (MCC) of the international identity of subscriber of mobile service of the of the SIM card (subscriber identity module), the place of installation of the fixed land line and other relevant information from the trade point of view.

38. Council Directive 2009/132/EC of 19 October 2009, determining the scope of article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods.

the Council a full or partial postponement of the implementation of the planned measures initially for that year.

3.3.1. New scheme of intra-Community distance sales of goods

Until 2021, the VAT Directive (articles 33 and 34) will keep the double regulation of intra-Community selling of dispatched or transported goods, by the supplier or on his own, with destination to final consumer from other Member State. In general (certain kind of goods are excluded, like those subject to excise duty), the distance sales to clients from other Member State whose global amount does not exceed EUR 100.000 in any one calendar year (limit that this consumer State can reduce until EUR 35.000) can be taxed at source, except that the taxable person transferor choose to the taxation at destination.

The situation will change since 2021. The article 14 of the Directive 2006/112/EC introduces the meaning of intra-Community distance sales of goods, in the taxable transactions relating to supply of goods, that coincides with the traditional idea due to the defining like the supply of goods which have been dispatched or transported directly or indirectly by the supplier or on his own from a Member State to other one with destination to a taxable person or legal entity whose intra-Community acquisition of goods are not subject to VAT or a person who is not a taxable person (final consumer). According to the new writing of the article 33, this selling will be located in the destination State, that is, in the country in which the dispatch or transport ends with destination to client. Until here, there is not any change respect on the present situation.

The different criterion is derived from the fact of application of the same threshold of EUR 10.000 fixed for all the Members States, been applied since 2019 for supply of intra-EU electronic services to consumers, by below the taxable person can tax in the State where he has an establishment. In others words, the fixed limit is lower because of changing since a limit of until EUR 100.000 by each Member State (or EUR 35.000 conforming stipulated of national law), and, above all, must value it in the whole of Members States, and not of individualize way for each other of them.[39] In this way, only companies with intra-EU turnover so little relevant will be able to continue accounting and paying for VAT at source in the Tax Administration of State where they supply.

On the other hand, taxable persons who do these intra-Community distance sales, as who supply electronic services to final consumers from other Members States, will benefit of a reduction of their formal obligations if they have been covered by the special one stop shop-OSS scheme provided with voluntary character.[40] On particular, according to the new article 220.1.2) is exempted from the obligation to issue invoices to its clients. Commission has justified this measure in that the invoicing obligation makes sense in order for the Member States of consumption were able to control the possibility of overcoming the threshold of remote transactions in their own territories.[41] From the moment in which the limit is going to refer to the invoicing in the EU countries as a whole, this verification is no longer found, especially when the declaration is added to the operations in all the member states through the one stop shop in the Identification Member States, it will be possible to check whether this global threshold is exceeded or not.

3.3.2. Redefining of the role of intermediaries in e-commerce transactions

In recent years, the intervention of intermediaries through electronic platforms or similar instruments has become a common practice in trade digital commerce (eBay, Amazon, Aliexpress, etc.).

39. These rules about location and thresholds of intra-Community distance selling of goods will not be applied to supplies of second-hand goods, works of art, collectors' items or antiques nor to supplies of second-hand means of transport (new article 35 of the Directive 2006/112/EC).

40. Since 2021, this scheme will be called «Special scheme for intra-Community distance sales of goods and for services supplied by taxable persons established within the Community but not in the Member State of consumption» (Section 3 of Chapter 6 of Title XII of the Directive 2006/112/EC).

41. COM (2016) 757 final.

The Council Implementing Regulation (EU) 1042/2013, which introduced article 9a of Council Regulation (EU) 282/2011, already took in account this reality related to the electronically supplied services.[42] However, the Directive of 2007 increase the role of electronic intermediaries, whose position in order to tax applied will depend on whether they intervene in intra-Community transactions or on the importation of goods.

Respect to firsts, the new article 242a of the VAT Directive refers to this figure as the taxable persons who, using an electronic interface of its ownership as an online market, a platform, a portal or other similar means, acts to facilitate the supply of goods or the provision of services to people who are not taxable persons within the EU (B2C operations). When this happens, the intermediary is obliged to keep a detailed record of such transactions,[43] which will facilitate to national tax administrations a valuable information resource for fight against fraud, which may be contrasted with the data included in the declarations-liquidations of taxable persons under the special arrangements for one stop shop.

In the case of importations, it has gone even further. The new article 14a of the Directive 2006/112/EC stipulates as taxable persons to the operators that have an electronic interface owner in order to facilitate the importations of goods sold in distance from third territories or countries (with an value no exceeding EUR 150) or the supplies of goods within the EU by a seller not established in the EU. For this reason, it is used a legal fiction which consist of that the intermediary has received goods of the extra-EU operator and these goods have been supplied by him to resident consumers of the EU.

3.3.3. More outstanding aspects of the new scheme for the importation of goods for final consumers

In the initial concept of electronic commerce as adopted by the Directive 2002/28/EC, the importation of merchandise from outside the EU territory was not subject to regulation, since the material or tangible goods did not fall into the definition of electronically supplied services, which is strictly limited to online commerce.

However, the sale of online goods by non-EU business to European consumers has grown exponentially in recent years, without this increase being accompanied by an adequate compliance with the tax obligations derived from VAT. Despite this, when submitting the proposal for reform, the European Commission made an estimate that around 65 per 100 of the deliveries received from third-party countries, for some 25.000 million euros, does not tax the duty.

In order to solve this dissatisfying situation the Directive (EU) 2017/2455 shows an ambitious strategy that, although at the beginning should work out since 2021, it is not strange that it may delayed like before we pointed by its complexity. Its fundamental axes are three.

The first and the most striking line of action is the elimination since 2021 of Title IV of the Directive 2009/132/EC, whose articles 23 and 24 regulate the exemption of imports of little value (goods with a price not exceeding EUR 10, although this amount may be increased by Member States up to EUR 22).[44] In practice, this fiscal benefit has been undermined by the customs of Member States,

42. This provision fixes the conditions through which, under the article 28 of the VAT Directive, the intermediaries of the electronic services that act in his own name but on behalf of another person receive and supplied the services. In this way, they will be considered taxable persons, except when the intermediary recognizes the direct supplier of the service as taxable person, so that certain aspects relating to billing will have to fulfill. Besides, the taxable person is considered like electronic intermediary if «authorizes the charge to the customer or the delivery of the services, or sets the general terms and conditions of the supply».

43. Under the article 242a, those records «shall be sufficiently detailed to enable the tax authorities of the Member States where those supplies are taxable to verify that VAT has been accounted for correctly». Besides, those records must be available electronically on request to the Member States concerned and must be kept for a period of 10 years from the end of the year during which the transaction was carried out.

44. Conforming to the article 24 of the Directive 2009/132/EC, exemption shall not apply to alcoholic products, perfumes and toilet waters and tobacco or tobacco products.

so that the verification that shipments are in line with this quantitative limit implies an inordinate burden of work not compensated by significant tax revenues. The consequence, as the Commission has emphasized, is that millions of 30 small packages have entered the EU every year without paying VAT, generating a massive fraud that has gone so far as to disguise high-priced technological products as low-value merchandise, with negative effects for the functioning of the internal market due to the competitive disadvantage that generates for the European companies.

Respect to second axe, the article 14 of the VAT Directive, introduces, in the taxable transactions relating to supply of goods, the meaning of distance sales of goods imported from third territories or third countries, that must be understood as the supply of goods that have been dispatched or transported direct or indirectly by the supplier or on him own from out VAT territory of the EU with destination to a taxable person o legal entity whose intra-Community acquisition of goods are not subject to tax or a person who is non-taxable person (final consumer). Conforming to the new writing of the article 33, if the Member State that receive of goods is different from the State of destination where the client is located, the distance sale will be considered to do in this last. In case of the importation has made directly in the Member State of the consumer, the supply will be located in this place if the taxable person declares VAT through the new special scheme which will implement for this kind of transactions (Title XII, chapter 6, section 4 of the VAT Directive).

Relating to the before, the third main element is the exemption of the importation which has been introduced in the article 143.1.c) for the distance sales of goods imported, that will be applied when the VAT must be declared under the special scheme which we have already mentioned and the supplier has provided his individual VAT identification for the application of the special scheme to the competent customs office in the Member State of importation. Whit this exemption, they get that the importations to consumers are done by taxable persons who choose this scheme of one stop shop do not subject to tax when they arrive to customs office (this supposes a reduction of workload), but in the periodical declaration from the special scheme. We must take into account that this will be able to apply to the distance sales of goods imported whose value does not exceed EUR 150, except to the products subjected to excise duty.

Extension of typology of the special scheme of the one stop shop (OSS)*

Finally, we must stand out that the intra-Community distance sales of goods and the distance sales of goods imported from third territories or third countries, like subtype of traditional taxable transactions integrated by supply of goods, will become since 2021 into extending of voluntary special schemes of one stop shop (OSS) related to development of cross-border e-commerce. These will be regulated in the Chapter 6 of XII Title of VAT Directive, where are including under the general section of «Special schemes for taxable persons supplying services to non-taxable persons or making distance sales of goods» ant the new chapter 7 of the same Title.

From a qualitative point of view, these remarkable systems of compliance with VAT obligations for operators of digital economy will have not limited its scope to services supplied by electronic means, so we have checked in previous pages will pass to understand certain transfers of the right to dispose on material products formalized in a distance though e-networks.

Table 2 – Specials schemes in the VAT Directive

Designation of special scheme	**Regulation in the VAT Directive**
Special scheme for services supplied by taxable persons not established within the Community	Title XII, chapter 6, section 2 Articles 358a to 369

Designation of special scheme	Regulation in the VAT Directive
Special scheme for intra-Community distance sales of goods and for services supplied by taxable persons established within the Community but not in the Member State of consumption	Title XII, chapter 6, section 3 Articles 369a to 369k
Special scheme for distance sales of goods imported from third territories or third countries	Title XII, chapter 6, section 4 Articles 369l to 369x
Special arrangements for declaration and payment of import VAT	Title XII, chapter 7 Articles 369y to 369zb

4. Conclusion

The next amendments implementation in the cross-board e-commerce treatment passed by Directive (EU) 2017/2455 beside its Regulations means, in our opinion, a remarkable change in the approach whit the EU had faced the challenges that this digital economy sector proposes to the configuration and application of VAT harmonized regime.

Apart from the relevant changes of VAT Directive several provisions which will have effect since 2019 or 2021, we can see an important fast pace in which the European authorities seem to try giving answers to several appeared difficulties as consequence of looking for an appropriate taxation of electronic sales of goods and services in this indirect tax. In fact, the Council was not sure about that on 2021 would be sufficient conditions in order to put in practice the new treatment of distance sales of goods in EU and the import of goods from third countries or territories.

This situation contrast whit previous experience. The first steps in order to approach the e-commerce taxation though Directive 2002/38/EC were given with a great number of precautions, due to the too limited scope, and, moreover, by the provisional and temporary meaning, that it lasted though successive extensions until the end of 2014 like a pilot experience. Only since 2015 the measures, which were introduced by Directive 2008/8/EC, had full effect that anyway following under electronically supplied services, without affecting to transactions on material goods.

Paused rhythm *versus* greater speed in changes. This great discussion, that European integration process had to face in several occasions since its origins, appears, right now, related to taxation of a mutable and in constant expansion reality in its business models such as the e-commerce.

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