



VAT

NEW RULES FOR ELECTRONIC COMMERCE (E-COMMERCE)

On the **1st of July 2021**, the new rules applicable to the provision of services and the distance selling of goods (e-commerce) will come into force.

The amendments to the VAT Code and the VAT Regime for Intra-Community Transactions were introduced by **Law 47/2020, of 24 August**, which should have come into force on 1 January 2021. However, the pandemic forced the postponement of the application of the new rules in the European Union and, consequently, also in Portugal.

In this Article we outline the main changes and news.

1. Concepts to keep in mind before reading our Article:

1.1 Distance selling of imported goods: transmissions of goods dispatched or transported by or on behalf of the supplier, including when the supplier indirectly intervenes in the transport or shipment of goods, from a third country or third territory, to an acquirer in a Member State, when the following conditions are met at the same time:

- a) the purchaser is not subject to a system of taxing intra-Community purchases in the Member State in which the goods are dispatched or transported, that is to say, an individual;
- b) The goods are not new means of transport or goods to be installed or assembled.

1.2 Intra-Community distance selling of goods: **transmissions of goods** dispatched or transported by or on behalf of the supplier, including when the supplier intervenes indirectly in the transport or dispatch of goods, from a Member State other than the Member State of dispatch or transport to the purchaser, when the following conditions are met simultaneously:

- a) the purchaser is not subject to a system of taxing intra-Community purchases in the Member State in which the goods are dispatched or transported, that is to say, an individual;
- b) The goods are not new means of transport or goods to be installed or assembled.

1.3 Electronic interface: a market, a platform, a portal or other similar means.

2. New special VAT schemes (optional)

Applicable to taxpayers who provide services to persons who are not taxpayers, carry out distance selling and certain internal transfers and goods

2.1 Special regime applicable to intra-Community distance sales of goods, transfers of goods in a Member State by electronic interfaces and services provided by taxpayers established in the European Union, but not in the Member State of consumption.

This regime can be used to:

- a) A taxpayer established in the EU to declare and pay VAT for:
 - (i) B2C service provision taking place in a Member State in which it is not established;
 - (ii) Intra-Community distance sales of goods.
- b) A taxpayer not established in the EU to declare and pay VAT for intra-Community distance sales of goods.
- c) An electronic interface (established in the EU or outside the EU) that facilitates the delivery of goods in relation to:
 - (i) Intracommunity distance selling of goods;
 - (ii) Certain internal deliveries of goods.

2.2 Special regime applicable to services provided by taxpayers not established in the European Union to persons who are not taxpayers established or domiciled in the European Union.

This scheme can be used exclusively by taxpayers (suppliers or service providers) not established in the European Union, and covers all services which are provided in the EU and which are provided to persons who are not taxpayers (consumers).

2.3 Special regime applicable to distance selling of imported goods that are not products subject to excise duty, with an intrinsic value not exceeding 150 EUR.

As of 1 July 2021, all commercial goods imported into the EU from a third country or from a third territory will be subject to VAT regardless of their value.

However, the exemption from customs duties for goods with an intrinsic value not exceeding EUR 150 imported into the EU remains in force.

3. One Stop Shop (Balcão Único)

The Balcão Único regime now covers intra-Community distance sales of goods (until now it was only applicable to providers of telecommunications services, broadcasting and television services or electronic services).

Through registration at Balcão Único, a company that wants to sell to any EU country can make a single registration, not needing to register in all the countries where it concludes transactions, and will now be able to deliver VAT returns and make payments in one place.

Pre-registration at Balcão Único or OSS - One Stop Shop can be done until 30 June 2021, by taxpayers wishing to apply the new special regimes.

Taxpayers who, on June 30, 2021, are covered by the regime provided for in Decree-Law no. 158/2014, of October 24 (**Mini Balcão Único**), transition directly to the new regime as of June 1 July 2021. Taxpayers' data can be updated on the Finance Portal until 30 June 2021.

4. New threshold for intra-Community distance sales of goods

A new threshold is established from which intra-Community distance sales of goods are subject to taxation in the Member State of destination of the goods - **total value, net of VAT, of higher distance sales, in the current calendar year or in the previous year, to EUR 10,000.00.**

Taxpayers established in a single Member State, with a distance selling volume of less than EUR 10.000,00, and whose purchasers are individuals, are thus subject to taxation in the Member State where they are established or in the Member State where services are provided or where the goods are shipped.

5. New special regime for distance selling of imported goods

The VAT exemption on imports of small consignments of up to 22 EUR is revoked, and a new special regime is created for the distance selling of goods imported from third countries or third countries, the intrinsic value of which does not exceed 150 EUR.

6. Sales through an Electronic Interface

Taxpayers who facilitate distance selling of goods using an electronic interface are now involved in the collection of VAT on those sales.

In certain circumstances, these taxpayers are presumed to deliver in person and are responsible for accounting for VAT on these sales.

The obligation to register transactions carried out through electronic interfaces is foreseen for a period of 10 years.

7. New rules for distance selling

7.1 The following are not taxable:

- a) Intra-Community distance sales of goods when the place of arrival of the shipment or transport of the goods to the purchaser is located outside the national territory;
- b) Distance selling of goods imported in the national territory when the place of arrival of the shipment or transport of the goods destined for the purchaser is located outside the national territory.

7.2 The following are taxable:

- a) Intracommunity distance sales of goods when the place of arrival of the shipment or transport of the goods to the purchaser is located in the national territory;
- b) Distance selling of goods imported into another Member State when the place of arrival of the dispatch or transport of the goods to the purchaser is located in national territory;
- c) Distance selling of goods imported into the national territory when the place of arrival of the shipment or transportation of the goods destined for the purchaser is located in that territory, if the VAT due for these sales is declared under the special regime applicable to the distance selling of imported goods.

Final notes

The new VAT rules applicable to e-commerce have the main objective of creating a competitive market, combating fraud and diversion of tax revenues, and reducing administrative costs by simplifying procedures. In fact, what has happened to date is that companies based in third countries are not obliged to charge VAT, so companies in the European Union are not in an equal competitive position.

On the other hand, the regime that has been in force entails a significant administrative burden in requiring taxable persons based in the European Union to register and declare VAT in the consumer's Member State.

The new rules imposed by the European Directives and transposed to our legal system, thus represent an important step towards the Digital Single Market in Europe ●