



Hochschule für Angewandte Wissenschaften Hamburg  
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## Bachelor thesis

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Title:

“The Union One-Stop Shop as an instrument for the EU to achieve simplification of VAT obligations for intra-Community distance sellers”

Date of submission:

16.08.2021

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**Degree program:**

Foreign Trade/International Management

## **Abstract**

Intra-Community distance sales occur in various constellations within commonly carried out transactions in the connection with e-commerce. However, the EU has recognised the administrative burdens, the compliance costs, and the complexity of VAT obligations for suppliers thereof and has developed different simplification aims and frameworks to overcome these hindrances. One practical measure that has been implemented as of 1 July 2021 is the Union One-Stop Shop.

Hence, this thesis assesses in how far the Union One-Stop Shop is a viable instrument for the EU to achieve the simplification aims for intra-Community distance sellers, using a practical approach to analyse common scenarios and examine the goodness and effectiveness of the regulation.

In practice, the Union One-Stop Shop is only partially a good and effective regulation for achieving a simplification of VAT obligations for intra-Community distance sellers, as various common transactions are not considered and covered by the Union scheme and certain local requirements remain obligatory.

**Keywords:** Intra-Community distance sales, Union One-Stop Shop, VAT compliance, e-commerce

**JEL classification:** F23, H21, H25, H32, H73, H87, K34, L81

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### **III List of abbreviations**

Amazon	Amazon.com, Inc. and applicable subsidiaries
B2B	Business-to-business
B2C	Business-to-consumer
Electronic commerce	E-commerce
ERP-system	Enterprise Resource Planning system
EU	European Union
FBA	Fulfilment by Amazon
MOSS	Mini One-Stop Shop
OECD	Organization for Economic Co-operation and Development
PwC	PricewaterhouseCoopers International Limited and applicable subsidiaries
SME	Small- and medium sized enterprise
VAT	Value added tax

## **1 Introduction**

### **1.1 Research problem**

Even though distance selling in the European Union (in the following “EU”) is not a new phenomenon, it has rapidly gained in importance over the past years with the increased utilization of electronic commerce (in the following “e-commerce”). The development of the digital economy through the adoption of new technologies, rising popularity of mobile devices, and most recently the consequences of the corona virus pandemic, has driven cross-border sales especially in the business-to-consumer (in the following “B2C”) sector. However, these developments can be challenging for distance sellers with the current tax laws in the EU as they can lead to complex VAT obligations. Therefore, inter alia, the EU Commission has adopted the so-called e-commerce VAT package with new VAT rules for intra-community distance sales coming into effect as of 1 July 2021.

As the EU has recognized the complexity and consequences of VAT in e-commerce, a modernization of the legal framework has been discussed in different contexts. Starting with discussions of the Organization for Economic Co-operation and Development (in the following “OECD”) in 1997, the EU has further developed and concretised their value added tax (in the following “VAT”) simplification aims over the years and adopted a four pillar Action Plan on VAT in 2016. Removing VAT obstacles to e-commerce and creating a level playing field for e-commerce businesses are two main objectives that the EU Commission is aiming towards following the Digital Single Market strategy and implementing the e-commerce VAT package.

One approach for a practical realization of these aims is the extension of the current Mini One-Stop Shop (in the following “MOSS”) to a more comprehensive Union One-Stop Shop, allowing suppliers to comply with their VAT obligations for eligible sales for all Member States in one place. Each Member State will have an online One-Stop Shop portal which locally registered suppliers or businesses with a fixed establishment within the respective country may use upon registration.

However, when looking at different common supply chains and transaction procedures in intra-Community distance selling, the Union One-Stop Shop reporting can only partially



be applied. Therefore, its applicability needs to be assessed on the basis of various practical scenarios.

Furthermore, different criteria with regards to the creation of a good and effective law need to be taken into consideration when evaluating the implementation of the regulation.

Consequently, the aim of this bachelor thesis is to analyse to what extent the Union One-Stop Shop is a viable instrument for the EU to achieve simplification of VAT obligations for Intra-Community distance sellers. Simplification is meant as a reduction of administrative burdens, compliance costs and complexity in connection with VAT obligations for the purpose of this thesis. The focus will be on transactions solely taking place in the EU, focusing on a practical approach to analyse selected, commonly used processes and constellations and assessing the goodness and effectiveness of the regulation.

## **1.2 Course of investigation**

This bachelor thesis will focus on legal, theoretical, and practical aspects of VAT obligations for intra-Community distance sellers and the simplification aims of the EU in that context. To answer the legal questions and to derive the aims of the EU, doctrinal legal research was conducted. For this purpose, the Council Directive 2006/112/EC, the Council Implementing Regulation 282/2011 in the most current versions as of the date of this thesis and further explanatory notes and working documents of the EU Commission, the European Parliament and the OECD have been used. Additionally, in order to analyse the legal and practical consequences of the VAT rules, literature-based research has been conducted. Furthermore, for the purpose of illustrating the applicability of the Union One-Stop Shop, a multiple, theoretical case studies approach was adopted.

In order to provide a clear understanding of intra-Community distance sales, the second chapter will elaborate the new regulations as of 1 July 2021. It will begin with defining and explaining the term itself. Afterwards, the new deemed supplier provision of electronic interfaces is going to be explained, followed by the place of supply rules in chapter 2.1.3. Chapter 2.2 will then outline different common transactions in e-commerce which take place in the context of intra-Community distance sales, focusing on direct sales, fulfilment centre structures and dropshipping.

The first subchapter of the third chapter will focus on the simplification aims of the EU for intra-community distance sellers, divided and structured by the aims derived from the implementation of different principles and strategies throughout the past years. In chapter 3.1, the beginning of the discussions in that field by the OECD will be described. Putting the matter in a more current and concrete frame, the Digital Single Market strategy and the EU Action Plan on VAT will be elaborated in chapters 3.1.2 and 3.1.3. Subsequently, the e-commerce VAT package as a means of providing a practical approach to reaching these previously defined aims will be described. Chapter 3.2 will then more concretely outline the objectives and the background of the aim to reduce the administrative burden and compliance costs for companies, followed by a description of the complexity that businesses face in terms of VAT obligations in different Member States.

In the fourth chapter, the Union One-Stop Shop as part of the e-commerce VAT package will be elaborated in detail. To begin with, the concept and scope of the Union One-Stop Shop will be defined. Next, the compliance obligations that arise from using the special scheme are going to be explained. In the following chapter, the auditing procedure for businesses using the Union One-Stop shop is introduced.

The fifth chapter will then analyse the applicability of the One-Stop Shop in different, common scenarios which have been elaborated in chapter 2.2 in the context of intra-community distance sales and evaluate how good and effective the regulation is according to certain characteristics. The chapter is divided in five subchapters. Chapter 5.1 is going to illustrate the case of direct sales with the usage of a single central warehouse in the EU. The second subchapter will explain a scenario with the involvement of an online marketplace. Chapter 5.3 describes the procedure with the utilization of fulfilment centres. This will be followed by chapter 5.4, which will be describing the respective processes and compliance consequences of dropshipping. Each of the sub-chapters from 5.1 to 5.4 will explain the general procedure based on an illustrated sample scenario, the current VAT implications, and the applicability of the Union One-Stop Shop reporting. Subsequently, chapter 5.5 will describe four main characteristics of a good and effective legislation and analyse the Union One-Stop Shop regulation based on those criteria. These will include the attributes of being justified and based on evidence, the consideration of stakeholder values, the adaptability and transparency of the legislation as well as how easy it is to comply with the newly introduced regulation.

Concluding with chapter six, all findings will be summarised, providing an answer to the research question posed in chapter 1.1. Furthermore, shortcomings in research and the findings will be critically reviewed and an outlook of possible future developments will be presented.

## **2 Intra-Community distance sales**

### **2.1 Regulations as of 1 July 2021**

#### **2.1.1 Definition**

In the explanatory notes on the VAT e-commerce rules (2020, p. 36), the EU Commission states that the Union One-Stop Shop, also referred to as “Union scheme”, is, inter alia, applicable for “intra-Community distance sales of goods”.

Even though the transaction scheme has been becoming increasingly popular, especially among e-commerce businesses throughout the past years (CBCommerce Europe, 2019), no clear definition has been provided for in the EU legislation prior to 2021.

As of January 2021, Article 14 para. 4 has been implemented in the Council Directive 2006/112/EC, defining intra-Community distance sales of goods as “supplies of goods dispatched or transported by or on behalf of the supplier, [...] from a Member State other than that in which dispatch or transport of the goods to the customer ends [...]”. This shall also apply in case the supplier is only indirectly involved in the transportation or dispatch of the goods (ibid.).

This can for example be the case if a third party is subcontracted for the delivery process (Council Implementing Regulation (EU) No 282/2011, 2021, Article 5a).

To fall under the above-mentioned definition, two further requirements referring to the VAT status of the recipient and the transported goods themselves need to be met (Council Directive 2006/112/EC, Article 14 para. 4) Firstly, the recipient needs to fall under one of the following two categories:

They are either a non-taxable person i.e., a private individual (ibid., Article 14 para. 4 No. 1 (a); European Commission 2016). Or they are a taxable or non-taxable legal person, and their intra-Community acquisitions are not subject to VAT according to Article 3 (1) of the Council Directive (Council Directive 2006/112/EC, Article 14 para. 4 No. 1 (a)). This section of the law exempts respective acquisitions, inter alia, of international air and sea

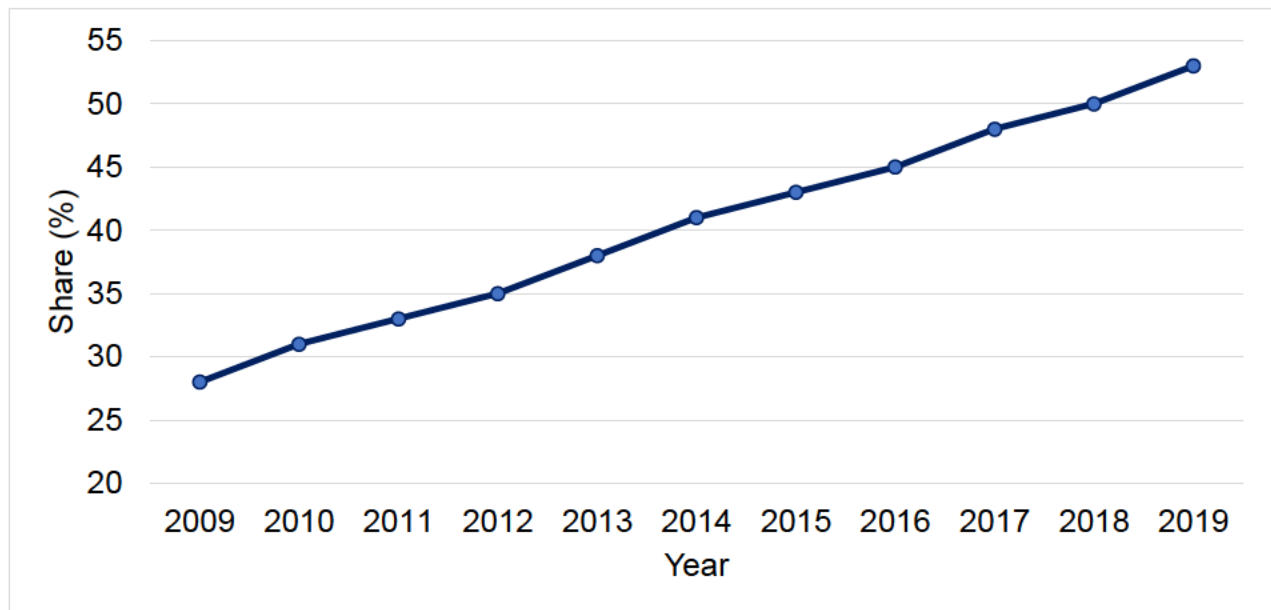
transport (ibid., Article 148) and international bodies such as the EU and of armed forces e.g., of the NATO (ibid., Article 151).

Secondly, the supplied goods are not “a new means of transport” (ibid., Article 14 para. 4 No. 1 (b)) nor goods that are supplied after they have been assembled or installed (ibid.).

### 2.1.2 Electronic interface as a deemed supplier

As the share of private customers in the EU who are utilizing e-commerce for their purchases has been rising consistently throughout the past years (cf. Eurostat and Statista 2020), the treatment of online marketplaces from a VAT perspective has been reconsidered in certain aspects. Figure 1 shows the development of the share of B2C e-commerce customers in the EU from 2009 to 2019, illustrating the rise of the number of private individuals in the EU who utilize e-commerce.

**Figure 1: Share of B2C e-commerce customers in the EU**



Source: Own graph based on Eurostat et al., 2020

With Amazon<sup>1</sup> being the leading online marketplace in Europe (Web Retailer, 2021), they alone have increased the share of sold units by third-party sellers by 29 percentage points throughout the second quarter of 2007 until the first quarter of 2021 (Amazon.com, Inc., 2021a).

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<sup>1</sup> „Amazon“ refers to the company Amazon.com, Inc. and any applicable subsidiaries

Therefore, new regulations for the VAT treatment of transactions fulfilled through the use of such electronic interfaces have been implemented as of 1 July 2021.

In terms of intra-Community distance sales, Article 14a para. 2 of the Council Directive 2006/112/EC indicates, that in case a supply is “[...] facilitate[d], through the use of an electronic interface such as a marketplace, platform, portal or similar means [...]”, the interface is to be treated as the deemed supplier who has “[...] received and supplied [the] goods himself.”. In order to be classified as a facilitation, the electronic interface shall enable the sale through the interface by letting the underlying supplier offer the goods and the customer purchase them and therefore conclude a contract leading to the supply of the goods (Council Implementing Regulation (EU) No 282/2011, Article 5b para. 1). In more concrete terms, “[...] this is reflected in the actual ordering and the checkout process being carried out by or with the help of the electronic interface.” (European Commission, 2020a, p. 17). It is necessary that the electronic interface is involved in either setting the terms and conditions for the respective transaction, in the termination of the payment process or in the order- or delivery process (Council Implementing Regulation (EU) No 282/2011, Article 5b para. 2). Furthermore, the electronic interface shall offer more than just the payment procedure, just the advertisement or just directing the customers to a different interface for the actual purchase and supply process (ibid).

Additionally, in order to fulfil the criteria for the deemed supplier provision, the underlying supplier shall not be established in any one of the EU Member States and the applicable transactions shall be carried out within the EU to private customers, i.e. fulfilling the criteria for intra-Community distance sales (Council Directive 2006/112/EC, Article 14a para. 2). Further transactions which are covered by the deemed supplier regulation are outside of the scope of this thesis and shall therefore not be included in this chapter.

The rules set out and explained above lead to the fictitious creation of two separate supplies. The first supply is the transaction of the underlying supplier to the electronic interface. Since both parties are taxable persons, this is a business-to-business (in the following “B2B”) supply. The place of supply shall be in the Member State in which the goods are stored when the supply is carried out (ibid., Article 31). Furthermore, it is exempt from VAT with the right to deduct input VAT from purchases relating to the supply (ibid., Article 136a in conjunction with Article 169 (b)). The second supply is the supply from the interface to the final consumer, i.e., the physical movement of the goods which is allocated

to the electronic interface (*ibid.*, Article 36b) and can be classified as an intra-Community distance sale of goods (*ibid.*, Article 14, para. 4). The electronic interface does, in all cases, rely on the underlying supplier or commissioned parties to forward any necessary information for the correct reporting and payment of the incurred VAT on all applicable transactions (Council Implementing Regulation (EU) No 282/2011, 2021, p. Article 5c). Therefore, in case the provided information is false, the electronic interface is not held responsible for respective non-declared VAT and the failed payment thereof (*ibid.*).

### **2.1.3 Place of supply**

Determining the place of supply is a crucial step in deriving the VAT obligations which arise from a transaction (cf. Council Directive 2006/112/EC). In the case of intra-Community distance sales of goods, it defines the place in which it needs to be taxed and where a registration for VAT purposes may be obligatory (*ibid.*, Article 59c; European Commission, 2020, p. 39).

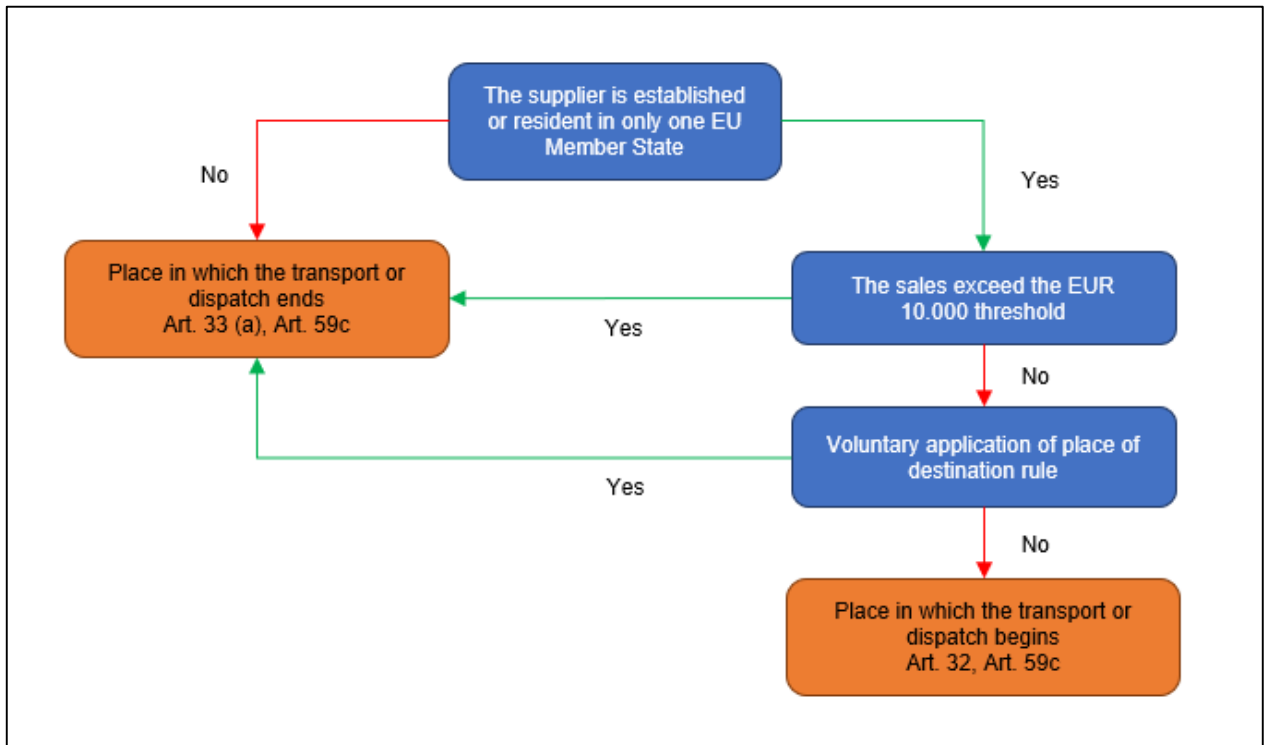
If the total intra-Community distance sales of a taxable person do not exceed the optional threshold of EUR 10.000 in the current or previous year and if the supplier is established or respectively resident in only one EU Member State, the intra-Community distance sales of goods are subject to VAT in the place in which the respective goods are located when the transport or dispatch begins (Council Directive 2006/112/EC, Article 59c para.1). In the case of this rule, this shall be the Member State in which the supplier is established (European Commission, 2020a, p. 40). Consequently, these intra-Community distance sales are treated similarly to supplies within one Member State from a VAT perspective (European Commission, 2020a, p. 39).

If the applicable sales do exceed the EUR 10 000 threshold or the supplier is established or resident in more than one EU Member State, the place of supply and hence the place in which the VAT is due is the Member State in which the transportation or dispatch ends, i.e. where the customer is receiving the goods (Council Directive 2006/112/EC Article 33 (a) in conjunction with Article 59c para. 1). It is important to note that the threshold regulation is not applicable for businesses which are established or resident in multiple EU Member States (*ibid.*; European Commission, 2020a, p. 40).

As mentioned above, the EUR 10 000 threshold is an optional parameter. It has been implemented “[t]o support micro-businesses [...] (European Commission, 2020a, p. 39)

and is not a compulsory requirement. Thus, if the intra-Community distance sales of goods of a supplier do not exceed the threshold, it is possible to voluntarily apply the place of supply determination rules as set out in Article 33 (a) despite falling below the threshold (Council Directive 2006/112/EC, Article 59c para. 3). Figure 2 summarises the rules for determining the place of supply of intra-Community distance sales.

**Figure 2: Place of supply of intra-Community distance sales**



Source: Own illustration based on Council Directive 2006/112/EC

After determining the place of supply, the supplier has the choice to either register for VAT purposes in the applicable Member States that he carries out supplies to, or to apply the Union One-Stop Shop procedure as elaborated in chapter 4 (European Commission, 2020a, p. 39).

## 2.2 Common transactions in e-commerce

### 2.2.1 Direct sales and usage of a single central warehouse

Insourcing logistics and shipping products directly to the customer is an opportune way to save inventory costs and therefore especially popular among small enterprises (Feng Ding, 2018, p. 22; Kawa, 2017, p. 430). The type of inventory management should be aligned with the business strategy and can therefore vary depending on the company's

operational business and its goals (Spencer and Schellenberg, 2015, p. 9). For example, enterprises which already have a brick-and-mortar store in place, utilizing this already established facility as a single warehouse for their e-commerce business can be a suitable option (ibid., p. 4). If a business wants to remain flexible, maintain the control and act independent from subcontractors, using their own logistics solution until they reach higher order counts is beneficial (Kawa, 2017, p. 430). However, limiting the distribution channels to a single central warehouse or shipping the products directly to the customer also results in longer delivery times (Spencer and Schellenberg, 2015, pp. 4).

### **2.2.2 Usage of fulfilment centres**

For expanding and established E-commerce businesses, working with fulfilment centres can be a feasible option for implementing a more efficient logistics system to provide overseas customers with their orders more quickly (Sun, Lyu, Yu and Teo, 2020, p. 627). Fulfilment centres are warehouses in which goods can be stored and orders are processed ready for delivery to the final customer (Houde, Newberry and Seim, 2017, p. 1). This service can be outsourced to external providers, which are then responsible for all necessary logistics processes such as managing the inventory, preparing and delivering orders and providing all respective documents to the customer and the seller (Kawa, 2017, p. 431). Thereby, costs can be reduced for the seller and economies of scale can be utilized more effectively (Houde et al., 2017, p. 1).

As the largest online retail platform (ibid.), Amazon offers a worldwide fulfilment network for their sellers which is referred to as “Fulfilment by Amazon” (in the following “FBA”) (Sun et al., 2020, p. 628). If sellers make use of the FBA program, their goods are eligible for Amazon’s Prime service, allowing for reliable and free shipping (Kawa, 2017, pp. 432). For businesses, which sell to European countries, Amazon offers the “Central Europe Program” as a fulfilment network extension (Amazon.com, Inc., 2021b). Participation in the program is advised by Amazon and non-participation leads to additional fees for sellers (ibid.). The retailers are asked to deposit their goods at one of Amazon’s warehouses in advance and from there Amazon fills the orders for them (Sun et al., 2020, p. 628). In the case of the Central Europe Program, the seller ships the goods to a distribution centre in Germany, from where Amazon distributes them to fulfilment centres



in Germany, Poland and the Czech Republic, depending on where they are needed for a fast supply to the customer (Amazon.com, Inc., 2021b).

### **2.2.3 Dropshipping**

One business model which has become increasingly popular in e-commerce is dropshipping (Singh, Kaur and Singh, 2018, p. 2). The concept of dropshipping describes a supply chain, in which the goods are directly shipped from the manufacturer or an underlying wholesaler to the customer, who has purchased them from a store of the retailer (Vellvé and Burgos, 2018, pp. 291–293). The retailer forwards the order and contact details of the customer to the dropshipper and adds a margin to the price, from which their profits are generated (Prasanth and Jyothsna, 2018, p. 13). This has multiple advantages for the retailer, who does not need to keep products in stock and therefore requires only a very limited initial investment for starting the business (Comănescu, 2021, p. 99; Singh et al., 2018, p. 2). Furthermore, the manufacturers or wholesalers offer a variety of products to choose from and by taking care of the logistics, make it easier for the retailer to build and manage his business and mainly focus on the marketing and sales aspects (Comănescu, 2021, p. 99; Vellvé and Burgos, 2018, p. 292). The concept of dropshipping is not a new one. Starting in the 1960s with sales being generated offline, it has grown increasingly and inter alia by utilizing e-commerce procedures, reached a peak in 2020 (Comănescu, 2021, p. 100; Singh et al., 2018, p. 2). Across the globe, multiple solutions around the business model of dropshipping have been founded, including Shopify and WooCommerce as online platforms or AliExpress and BigBuy as wholesale online stores (Comănescu, 2021, p. 104; Prasanth and Jyothsna, 2018, p. 13).

## **3 VAT simplification aims of the EU for intra-Community distance sellers**

### **3.1 Frameworks and development**

#### **3.1.1 Implementation of OECD principles**

Discussions about the handling of international e-commerce related topics have started among the OECD Member states in 1997 (Cockfield, 2006, p. 140; OECD, 1998a). Within the scope of the conference in 1997, the OECD has been selected to act as an international body to tackle e-commerce challenges and inter alia develop approaches in the area of consumption taxes, compliance, and tax treaties (OECD, 1998a, p. 8).

Following that agreement, another conference has been held among OECD members in 1998, in order to discuss more concrete steps (OECD, 1998b). The conference was based on the idea that the development in e-commerce is a global phenomenon which therefore also needs to be approached from a global perspective and requires all stakeholders, including the governments, the businesses, consumers and further authorities and institutions, to collaborate (ibid., p. 4). In the course of the meeting, it had been identified that a change in the current VAT systems would need to be envisaged, covering related topics such as administration, compliance and risk of tax avoidance (Cockfield, 2006, p. 141). The participants of the conference observed the requirement of regulations from the governments to support a competitive environment and an easy entrance to trade in the market while protecting public interests (OECD, 1998b, p. 5).

Since the businesses themselves as well as the remaining stakeholders are asked to actively contribute to the implementation of the rules, the governments shall only intervene when necessary and act “[...] proportionate, transparent, consistent, and predictable, as well as technologically neutral [...]” (ibid.). Recognising the economic and social potential of e-commerce, OECD members were striving to safeguard the positive development and keep the aspect of taxation as neutral as possible, neither preventing business activities nor getting impaired thereby (ibid., p.6; OECD, 1999, p. 23). The participants consent to implementing the five principles that also apply to taxation of non-electronic commerce into the new e-commerce guidelines, namely “[...] neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility.” (OECD, 2001, p. 50).

Consequently, the development of a standardised VAT return and electronic reporting were proposed (ibid., p. 39).

These agreements were negotiated and agreed upon by the OECD member countries, including the European community, and especially the consumption tax related matters were developed “[...] in close co-operation with the European Union.” (ibid., p. 14; OECD, 1998b, pp. 16–17).

### **3.1.2 Digital Single Market strategy**

One underlying motive for implementing the changes in VAT law as of 1 July 2021 for the EU were the goals for simplifying cross-border selling which were outlined in the so-called

“Digital Single Market Strategy for Europe” (European Commission, 2020a, p. 6). The concept is defined as follows:

“A Digital Single Market is one in which the free movement of goods, persons, services and capital is ensured and where individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality, or place of residence.”  
(European Commission, 2015, p. 3)

The European Commission states that there is a mismatch with the internet having no borders as such but the markets thereon being separated by barriers (European Commission, 2010, p. 7). The aspects as mentioned in the definition above are addressed in the agenda and imply the existence of certain barriers which shall be overcome. As a basis, standardized processes and platforms need to be created to improve the cooperation between public authorities in the EU (ibid., p. 6). The then prevailing VAT systems were identified as one of the main reasons that the monetary benefits of e-commerce in the EU have not yet reached their full potential (European Parliament, 2012, p. 8).

In order to achieve the goals which were set in the definition of a Digital Single Market, the strategy consists of three main pillars (European Commission, 2015, p. 3). Two of which can inter alia be addressed by modernizing VAT rules in the EU, namely with regards to creating better access to online commodities by removing barriers to cross-border online trade and setting the basis for fairness in competition for businesses in order to set suitable conditions for networks online (ibid. pp. 3-4; European Parliament, 2012, p. 8).

As a way of approaching the VAT system modernization, digitalising the compliance and collection processes is a suggested milestone by the European Parliament (2012, p. 9) within the scope of the Digital Single Market strategy. This could then be used in order to fulfil compliance obligations in the Member State of residence instead of on the basis of every EU country in which VAT liabilities arise (European Commission, 2015, p. 8). Additionally, the existence of difference VAT rates among Member States is recognized as an administrative and monetary burden for businesses operating and becoming liable

to account for VAT in more than one country in the EU, adding another point for discussion to the agenda (European Parliament, 2012, p. 32).

### **3.1.3 EU Action plan on VAT**

Further to the Digital Single Market strategy, another background for introducing the new e-commerce related VAT rules on 1 July 2021 was the action plan on VAT as announced by the European Commission in their approach “[t]owards a single EU VAT area [...]” (European Commission, 2016, 2020a).

The plan was created based on the necessity to concretely modernize the approach to VAT in the EU, as agreed upon by different stakeholders of the economy and of public institutions (Juanpere, 2019, p. 2). The European Commission (2016, p. 3) stated that the current, international economic situation is not sufficiently suited by the VAT system and thus creates obstacles for businesses and revenue risks for governments.

In more specific terms, firstly, the goals set in the strategy for a Digital Single Market regarding the barriers in international e-commerce trade shall be worked towards and implemented with a concrete legal proposal (ibid., p.14). Secondly, the interests of small- and medium sized enterprises (in the following “SME”s) shall be addressed more specifically to help them develop their business in an environment in which VAT compliance does not act as a barrier (ibid., p. 6). In order to achieve that, the MOSS system, as it was applicable from 2015, was subject to further extension plans (European Commission, 2016, 2017a, p. 5). The idea was to extent it from only being applicable for “[...]telecommunication services, television and radio broadcasting services and electronically supplied services [...]” (European Commission, 2017a) to tangible goods (European Commission, 2016, p. 5). This shall, in a first step, include intra-Community distance sales but also be extended to B2B supplies of goods eventually in a second step in July 2022 (European Commission, 2018, pp. 10, 13, 57). Additionally, implementing a VAT threshold and single audits was proposed (ibid.). Further, on the level of the public authorities, cooperation for administrative purposes for VAT shall be enhanced and help reduce fraud (ibid. pp. 6-7). Lastly, as mentioned within the scope of the Digital Single Market strategy, a facilitation of the VAT rate policy shall be worked on, and a more decentralised system as opposed to an approach on Member State basis shall be taken into consideration (ibid., pp.11-12).

### **3.1.4 E-commerce VAT package**

The e-commerce VAT package comprises various sets of rules which have been adopted from 2017 through 2021 and implemented in two main steps in 2019 and 2021 (European Commission, n.d.). The rules have been implemented to act as instruments to achieve the goals set out in the Digital Single Market Strategy and in the action plan on VAT as explained in the chapters 3.1.2 and 3.1.3 and therefore aim at creating fair competition, removing administrative barriers for VAT compliance and combating fraud (European Commission, 2015, p. 8, 2020a, p. 6; *ibid.*; Papis-Almansa, 2019, p. 221).

With the e-commerce VAT package, concrete measures for impacted businesses and applicable transactions have been introduced. More concretely, four types of transactions are impacted by the newly introduced rule sets, namely “[d]istance sales of goods imported from third territories or third countries [...]; [i]ntra-Community distance sales of goods [...]; [d]omestic sales of goods by deemed suppliers [...] [and] [s]upplies of services [...] to final consumers.” (European Commission, 2020a, p. 7).

For the purpose of this thesis, the rules concerning the intra-Community distance sales of goods will be considered. To that regard, the uniform supply threshold of EUR 10 000 was introduced as outlined in chapter 2.1.3 and the MOSS procedure is extended from 1 July 2021 to the One-Stop Shop as it will be elaborated further in chapter 4.

### **3.2 Reducing administrative burdens and compliance costs**

The functioning of the VAT System in the EU implies high compliance costs which could be avoided by reducing complexity and increasing harmonization among the Member States (European Parliament, 2012, p. 12). One main goal of the measures taken within the scope of the e-commerce VAT package, and in particular with the implementation of the One-Stop Shop procedure, is to simplify these respective VAT compliance obligations (European Commission, 2020a, 2021a, p. 4; Papis-Almansa, 2019, p. 221).

In order to assess the impact and potential improving effect on the administrative burden, an overview of the general activities and average costs in connection with being VAT-compliant shall be given.

A study conducted by PricewaterhouseCoopers International Limited and respective subsidiaries (in the following “PwC”) in 2013 has examined the various cost positions and drivers which arise in the context of filing a standard VAT return in the EU. For that

purpose, companies from eight different countries, which were Member States of the EU at the time of the conduction of the study, have been surveyed (ibid., pp. 11-13, 94). The countries in question are Belgium, Finland, France, Germany, Hungary, Italy, Poland and the UK (ibid. pp. 11-13).

According to PwC (2013, pp. 95-133), the costs that arise can be divided in four categories, namely set-up costs, recurring costs, generic costs and additional costs.

The set-up costs refer to costs which occur when preparing a VAT compliance system and respective processes (ibid., p. 95). Businesses often back their internal measures with an Enterprise Resource Planning system (in the following “ERP-system”) which can be crucial in compiling data for the VAT reporting (Goossenaerts, Zegers, Smits, 2009, p. 710). Therefore, initial software related costs such as the acquisition- and customization price as well as VAT-related adjustments are part of the set-up costs (PwC, 2013, p. 95). These adjustments can be comparatively complex and costly as a variety of components need to be taken into account (Goossenaerts et al., 2009, pp. 710–713).

Furthermore, once the ERP-system and respective programs are ready to use for VAT purposes, additional software costs per EU Member State arise due to specific adjustments to local legislation and reporting requirements (PwC, 2013, p. 95).

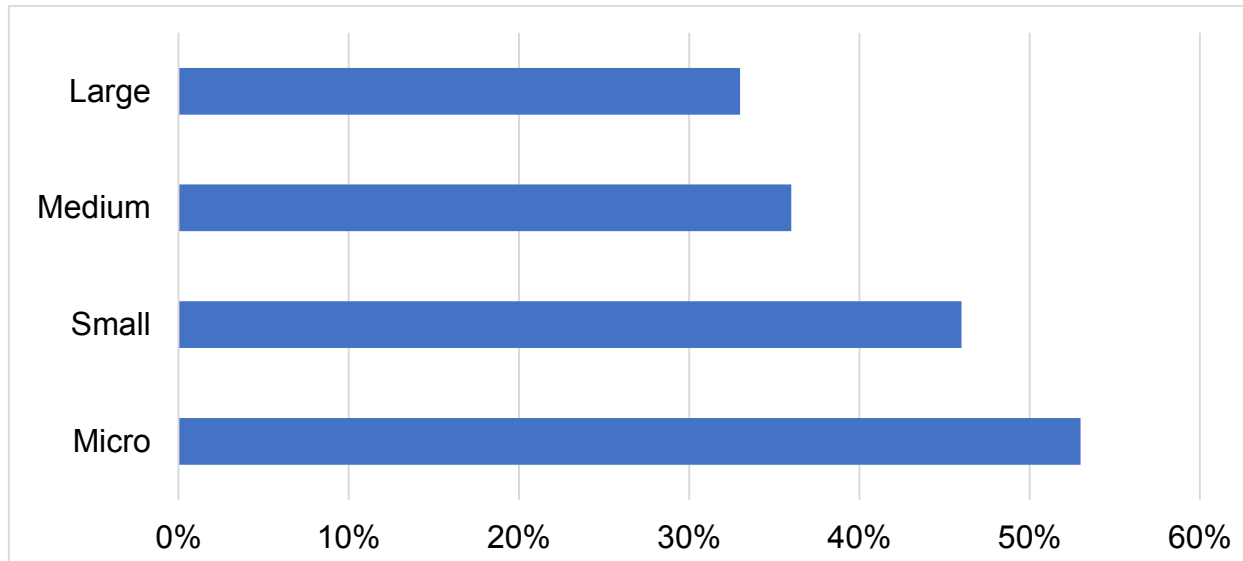
Additionally, when selling cross-border and reporting in more than the domestic Member State, comprehending, and structuring the local VAT compliance obligations is another cost positions which needs to be accounted for (ibid., pp. 95-97). A detailed explanation on the effects of different legislation and requirements in the individual EU Member States will follow in chapter 3.3.

On top of the aspects mentioned above, training the employees who are going to be responsible for the VAT compliance itself but also for the handling of the software is another cost factor (ibid., p. 97).

The next category refers to recurring costs, which occur during the course of preparing, reviewing, and filing the VAT return with all applicable preliminary and following steps (ibid., pp. 97-98). Due to the different requirements and scopes of national VAT legislation within the EU Member States, those costs may vary (ibid., p. 98; EY, 2021). According to PwC (2013, pp. 99-128), another main factor which influences the amount of recurring costs refers to the in- or outsourcing of processes, i.e., the usage of an external consultant vs. in-house preparation (ibid.). Especially micro enterprises and SMEs often to do not

have the internal capacities to manage their tax compliance without external help and therefore regularly face higher recurring costs (KPMG, 2018, p. 152).

**Figure 3: Percentage of businesses with outsourced VAT compliance by size of company<sup>2</sup>**



Source: Own illustration based on KPMG (2018, p. 14)

Therefore, as shown in figure 3 above, it becomes visible that the number of businesses which outsource their VAT compliance, either fully or in parts, decreases with the size of the company (ibid.).

Additionally, generic costs need to be considered in the context of the administrative burdens of VAT compliance (PwC, 2013, p. 129). These costs arise in connection with audits, overhead software payments, regular legislative updates in order to be acquainted with the current binding law, annual employee trainings as well as, if applicable, e-security and translations (ibid., p. 129-133).

VAT related matters have increasingly come to the fore of tax authorities in the EU, which leads to more VAT audits that are being conducted and costs that need to be covered by the concerned businesses (Hybka, 2018, pp. 153, 158). However, due to an increased digitalization and better data quality, VAT audits may become simpler and therefore also quicker and less cost-intense in the future (PwC, 2013, p. 148). Nonetheless, with VAT

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<sup>2</sup> Enterprise size definitions for micro, small and medium according to European Commission Recommendation (2003/361/EC), 2003. "Large" refers to businesses exceeding the criteria for medium sized enterprises (KPMG, 2018, p. 3)

being one of the taxation areas with the highest non-compliance rates (Hybka, 2018, p. 153), audits will likely remain an important and regular instrument of the tax authorities and the costs thereof will need to be planned with.

Overhead software costs refer to regular fees which need to be paid for licenses and for maintenance of programs used for VAT compliance where applicable (PwC, 2013, pp. 131, 148). Since administrative processes in connection with VAT are widely digitalized in the EU (Kovova, Malyshkin, Vicen, Shulyarenko, Sememnova and Shpyrko., 2018, p. 12), these costs are fairly relevant to businesses.

Furthermore, VAT legislation in the EU is subject to frequent changes. This implies that the employees do not only need to participate in initial training with respect to the general domestic VAT regulations but also need to be updated respectively with the adoption of new laws and jurisdictions (PwC, 2013, p. 148). With major changes to the EU VAT law, such as the new rules concerning call-off stock procedures, chain transactions in the EU, and requirements in connection with intra-Community supplies made within the scope of the so-called “2020 Quick Fixes”, numerous amendments to the Council Directive, Council Implementing Regulation and Council Regulation needed to be taken into consideration within the past two years especially (cf. European Commission, 2019). With the new rules announced within the e-commerce VAT package, companies are facing even more new and adjusted legislative changes with consequences for their business (cf. European Commission, 2020a). According to a study conducted by Stanciu (2021, p. 57), the slight majority of participating companies, i.e. 51.7%, refer to a consultant for assurance or clarification of the correct understanding of respective changes of the law, which can therefore lead to additional costs.

On top of VAT-related trainings, employees may also need to be informed about software updates or changes and corresponding features on an annual basis (PwC, 2013, p. 129). However, depending on the company and its activities, different or additional annual trainings on various topics may be necessary (ibid., p. 131).

Furthermore, KPMG (2018, p. 23) states that a majority of VAT returns in the EU are filed electronically as opposed to submitting a VAT return on paper. While this procedure may be associated with simplifications, it also requires time and costs spent in different regards, including meeting the requirements for electronic security by the local authorities (ibid., p. 23; PwC, 2013, p. 132).



When filing VAT returns in different EU Member States, not only different rules in terms of individual VAT legislation may apply, but also local language skills are required in order to be able to submit the VAT return, as the individual countries demand a filing in their respective national language (European Commission, 2013, p. 4). Depending on the accessible internal knowledge, translation costs may therefore occur for registered businesses (PwC, 2013, p. 133).

Lastly, depending on various factors, further additional costs may be applicable, for example when individual queries from the tax authorities follow the submission of a VAT return or when retrospective corrections need to be made (ibid., p. 133). In order to be able to answer potential questions regarding the reported transactions, specific record-keeping obligations arise for internationally operating companies, which adds an additional administrative barrier, “[...] going well beyond what they are typically required to do for domestic [...] purposes [...]” (European Parliament, 2012, p. 12).

### **3.3. Reducing the complexity of VAT obligations in different Member States**

With the regulations for determining the place of supply, intra-Community distance sales are taxable at the location of the consumer when the supply threshold of EUR 10.000 is exceeded, as discussed in chapter 2.1.3. As this may happen rather quickly for internationally trading businesses, local registration requirements arise if the Union One-Stop Shop procedure is not being utilized (European Commission, 2020a, p. 39).

However, the VAT registration in an additional EU Member State is viewed as another major barrier in cross-border trade in the EU, as the process to get a VAT number assigned by the local authorities can take a long time for businesses (European Parliament, 2012, p. 47).

In terms of VAT legislation, a lack of harmonization and a comparatively high degree of independence and autonomy for the individual Member States is a prevailing condition (European Commission, 2013, p. 3). Different legislations in EU countries provide for different submission deadlines, correction requirements, filing obligations and contents which need to be reported to the local authorities (PwC, 2013, p. 134). This is due to the freedom given within the Council Directive 2006/112/EC, which does provide for the basic legal framework with general principles and definitions for VAT regulations in the EU, but at the same time leaves room for interpretation and enforcement on the level of the

individual Member States (European Commission, 2013, pp. 3–4). The EU defines a directive as “[...] a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals.” (European Union, 2016).

As this imposes a significant administrative burden for companies, it holds back various businesses from beginning to sell cross-border or from expanding their international sales within the EU (European Commission, 2015, pp. 4–8).

In those Member States in which additional documents such as invoices or further explanatory papers need to be submitted together with the VAT return, the compliance procedure is regularly a more time consuming and costly one (PwC, 2017, p. 15). To give a brought impression of the effects that these difference can make, a study conducted by PwC and the World Bank Group (2017, p. 78) shows that annual working hours, which are needed for local consumption tax compliance, can range from approximately 14 hours in Estonia to approximately 165 hours in Bulgaria.

One aspect in which the concrete decisions are being made on a national level are the applicable VAT rates (Council Directive 2006/112/EC, Articles 98–99). The Council Directive 2006/112/EC sets a frame in which the Member States shall operate in, the specific standard and reduced rates are however decided on individually (ibid). Currently, 2.1 % is the lowest applied VAT rate which is used if specific requirements are met for taxable transactions in France, up to 27% in Hungary with the highest present VAT Rate in the EU (cf. European Commission, 2020b).

As this adds complexity to being VAT compliant in multiple EU Member States, the imposed expenditure is increased for businesses who operate cross-border (European Parliament, 2012, p. 32).

Since a difference in VAT rates also implies a difference in the amount of VAT which needs to be paid in the respective Member State, some businesses may see a necessity to adjust their prices according to the destination they are selling to, which in return leads to a variety of costly measures and consequences (ibid., p. 48).

Another difference in local regulations are the requirements with regards to invoicing according to national VAT laws. The EU VAT Directive does provide a list of elements which shall be included on an invoice issued in the EU (Council Directive 2006/112/EC, Article 226). However, the authorities of the individual Member States have been given

certain options to deviate from those rules, which leads to the necessity for businesses to act accordingly and to adjust their ERP-system set-up where applicable (Schlegel, 2011, pp. 255–256).

In the case of intra-Community distance sales, among other transactions, the individual invoicing regulations of the Member State in which the place of supply is determined apply (Council Directive 2006/112/EC, Article 219a para. 1) The invoicing regulations *inter alia* represent local documentation and audit requirements (*ibid.*, p. 255), which are heterogeneous among Member States and therefore require companies to be compliant in different ways and meet local standards for control mechanisms (European Parliament, 2012, p. 48).

Additionally, as outlined in Article 395 of the EU VAT Directive 2006/112/EC, deviations from all VAT regulations may be permitted if it facilitates the enforcement by the local authorities or reduces the risk of fraud. Consequently, even the regulations with an apparent binding character according to EU VAT law, may not be a reliable orientation for every Member State and individual derogations still need to be taken into consideration when conducting business.

## **4 The Union One-Stop Shop (OSS)**

### **4.1 Definition and scope**

As an extension of the MOSS procedure, the Union One-Stop Shop is an optional scheme through which certain taxable persons can report eligible sales “[...] via a web-portal in the Member State in which they are identified.” (European Commission, 2021a, p. 4). It is also referred to as the “Union scheme” (Council Implementing Regulation (EU) No 282/2011, Article 57a, para. 2).

The Union One-Stop Shop is available by choice for the reporting of intra-Community distance sales as well as services supplied to non-taxable persons from businesses established inside the EU (*ibid.*, p.14; Council Directive 2006/112/EC, 2021, p. Article 369b).

Furthermore, businesses which are established outside the EU may report their intra-Community distance sales via the Union One-Stop Shop procedure and deemed suppliers have the choice to report intra-Community distance sales as well as domestic supplies via

the aforementioned scheme (ibid.). An overview over the eligible sales and taxable persons for the One-Stop Shop reporting can be found in the table below.

**Table 1: Union One-Stop Shop reporting eligibility**

Taxable person	Type of sales	Union One-Stop Shop reporting
Inside the EU	Goods	Intra-Community distance sales
	Services	In the EU, to non-taxable persons
Outside the EU	Goods	Intra-Community distance sales
	Services	N/A
Deemed supplier in- or outside the EU	Goods	Intra-Community distance sales; domestic supplies
	Services	N/A

Source: Own table, based on European Commission, 2021, p. 14, Council Directive 2006/112/EC, Article 369b

If a business decides to use the Union One-Stop Shop scheme, it is obliged to inform its so-called “Member State of identification” and apply for registration in the respective State (ibid., Article 369c, 369d). The Member State of identification is defined as the Member State of establishment of the taxable person, or, in case of a non-EU supplier, the Member State in which its fixed establishment is located (ibid., Article 369a, para. 2). It is important to note that possessing a VAT ID number in a Member State does not alone qualify for having a fixed establishment but a variety of factors such as staff and production capacities in a structured way are needed (European Commission, 2021a, p. 8). In case of a business which is neither established in the EU nor has a fixed establishment in at least one Member States, the Member State of identification is determined as the one “[...] in which the dispatch or transport of the goods begins.” (ibid.). If multiple fixed establishments exist in different Member States or if a business dispatches or transports goods from different Member States, the Member State of identification can be chosen by the business itself (ibid.). It can then however not change the selected State for the ongoing and the two following calendar years (ibid.).

Once an application for the Union One-Stop Shop procedure is submitted, the Member State of identification checks if the taxable person is eligible for the special reporting scheme and if any exclusion criteria apply (European Commission, 2021a, p. 15). A business is not permitted for registration or for continuation of the Union scheme reporting if the requirements as outlined above are not met (Council Directive 2006/112/EC, Article. 369e). This can either be the case if the status or establishment of the taxable person change in a way that they do not entitle for the Union scheme reporting, no eligible sales are being conducted, or if a repeated incompliance is noted (ibid.).

Once the registration process is completed and the business was accepted for the Union scheme, it is obliged to report any eligible sales via the Union One-Stop Shop (ibid., Article 369b). It is therefore not possible to partially report transactions via the Union scheme and report further applicable sales, which would qualify for the Union One-Stop Shop reporting, via the national VAT return (European Commission, 2020a, p. 37).

#### **4.2 Compliance obligations**

The alternative to using the Union One-Stop Shop scheme is a local registration for VAT purposes in the respective Member States (ibid., p. 39) in connection with all applicable VAT compliance obligations and deadlines which apply nationally (PwC, 2013, p. 134). If a business however decides to file VAT returns using the Union scheme, a quarterly submission of the One-Stop Shop VAT return is due “[...] by the end of the month following the end of the tax period covered by the return.” (Council Directive 2006/112/EC, 2021, Article 369f), unifying the submission deadline irrespective of the Member States of destination of the affected transactions.

The VAT return is then submitted electronically via the web portal of the Member State of identification (European Commission, 2021a, p. 4). If the businesses fails to submit the VAT return in time, the Member State of identification will send a reminding notice, ten days after the deadline for filing the VAT return has passed (Council Implementing Regulation (EU) No 282/2011, Article 60a). If the taxable person does still not hand in the VAT return after receiving the reminder, the Member State of consumption may send out further reminders and respectively apply late filing penalties at their own discretion in accordance with the local regulations (ibid.; European Commission, 2021, p. 36).

Within the VAT return, the taxable person lists the applicable sales by Member State of consumption, indicating the local VAT rate and amount due for the respective period as well as any corrections if applicable (Council Directive 2006/112/EC, Article 369g, No. 1). The Member State of consumption refers to the state to which the goods are eventually supplied to in the case of an intra-Community distance sale (*ibid.*, Article 369a, para. 3, lit. (b)). If no eligible transactions have been conducted, a nil return has to be filed (*ibid.*, Article 369f; European Commission, 2021, p. 33). Since not all transactions can be reported within the Union scheme procedure, the local VAT return within the Member State of identification does still need to be filed additionally (European Commission, 2021a, p. 4). The businesses submitting a Union One-Stop Shop return are therefore not exempt from their domestic obligations of the Member State they are registered in (*ibid.*). Furthermore, it is intended that all amounts which are stated in the VAT returns via the Union scheme are uniformly denominated in euro (Council Directive 2006/112/EC, Article 369h, No. 1). However, exceptions are possible for Member States which do not regularly use the euro as their currency nationally, if they apply the official exchange rate for the particular reporting period (*ibid.*, No. 1,2).

Additionally, with the filing of the Union One-Stop Shop return, only outgoing sales can be declared and input VAT for respective ingoing invoices cannot be claimed using the special scheme (*ibid.*, Article 369j; European Commission, 2021, p. 39). In order to claim an input VAT refund, the taxable person will need to either apply for the refund process according to Directive 2008/09/EC if they are located in the EU, or according to the 13<sup>th</sup> Directive, 86/560/EEC in case of a non-EU business (*ibid.*; cf. Deloitte, 2019). If the taxable person is registered in the applicable Member State for VAT purposes, claiming the input VAT via the local VAT return is the appropriate process (European Commission, 2021a, p. 39).

As soon as the Union One-Stop Shop return is submitted, the Member State of identification will assign an individual number to it, which the taxable person shall then state when making the respective payment (*ibid.*, p. 33). Another responsibility of the Member State of identification, after receiving the VAT return, is to distribute the information to the concerned Member States of consumption and to the Member States in which the business is established or distributes the goods from (*ibid.*). Furthermore, since the payment is always being made to the Member State of identification (Council

Directive 2006/112/EC, Article 369i), it is also responsible for forwarding the VAT which is due in the individual consumption states to these respective Member States (European Commission, 2021a, p. 44).

As opposed to the requirements when not making use of the Union One-Stop Shop procedure, taxable persons do not need to issue an invoice for their intra-Community supplies which are reported via the Union scheme (European Commission, 2020a, p. 41). If they decide to voluntarily issue an invoice, the invoicing regulations of the Member State of identification become applicable (ibid.). A summary of the compliance obligations when using the Union One-Stop Shop reporting scheme in comparison to the compliance obligations in the case of a local registration can be found in table 2 below.

**Table 2: Compliance obligations for intra-Community distance sellers in the case of local registrations vs. the utilization of the Union One-Stop Shop**

Obligation	Member State registration	Union scheme
<b>VAT return filing period</b>	According to local requirements	Quarterly
<b>VAT return content</b>	All VAT relevant transactions according to local requirements	Only eligible sales
<b>Input VAT claim</b>	Via local VAT return	Not possible
<b>Payment</b>	To local authorities in the respective local currency	To Member State of identification in the currency of the Member State of identification
<b>Invoicing</b>	According to local requirements	No invoices required

Source: Own table based on Council Directive 2006/112/EC; European Commission, 2020a

However, even though no invoices need to be issued, the businesses are obliged to follow record-keeping regulations for every applicable sale which is reported using the Union One-Stop Shop VAT return (Council Directive 2006/112/EC, Article 369k). They need to be able to proof the underlying information of the reported transactions and be accessible

electronically for ten years, following the 31<sup>st</sup> of December of the year in which the reported sale has been conducted (ibid.).

### **4. 3 Audits**

With the new rules being in place, questions about possible auditing procedures may arise when cross-border transactions are being reported. According to the European Commission (2017b), it is the responsibility of the Member States that the respective businesses are registered in, i.e., the Member State of identification, to check and enforce compliance with the applicable regulations.

Conversely, this means that the Member States of consumption, which a taxable person may not be registered in, will take on a less central role when it comes to VAT audits.

However, if an audit by the Member State of identification is planned with regards to the transactions reported within the Union One-Stop Shop procedure, it is obliged to inform the remaining affected Member States (Council Regulation (EU) No 904/2010 Article 47j). Thereby, cooperation among all Member States which are affected by the intra-Community distance sales shall be included in the auditing process, with the Member State of identification being the main coordinator (European Commission, 2017b).

## **5 The Union One-Stop Shop and simplifications for intra-Community distance sellers in practice**

### **5.1 Case study: Direct sales and usage of a single central warehouse**

#### **5.1.1 Scenario**

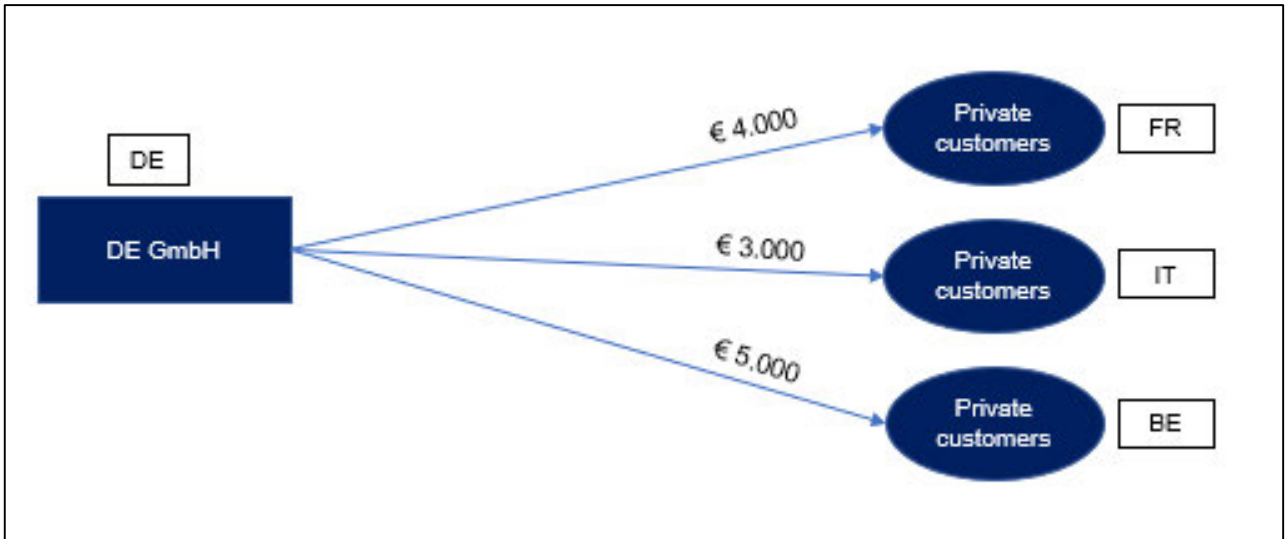
“DE GmbH” is an emerging business which started selling their goods across the EU in 2020. A GmbH is established in Germany and does not have fixed establishments in any other EU Member States.

As part of their business, DE GmbH is producing goods in their single central warehouse, which is located at the same address as the place of establishment in a German city. After manufacturing the goods, DE GmbH processes all necessary steps including the logistics itself.



After the goods are produced and stored in the warehouse in Germany, DE GmbH takes care of the transport of the goods to the customers, which are private individuals, resident in France, Italy and Belgium.

**Figure 4: Direct sales and usage of a single central warehouse**



Source: Own illustration

In 2020, their net sales in France amount to EUR 4.000, in Italy to EUR 3.000 and to EUR 5.000 in Belgium. The respective constellation is illustrated in figure 4 above. As the business is growing, it is expected that the number of sales is going to have increased compared to the year 2020 by the end of 2021. All sales are being conducted through DE GmbH's own website.

### 5.1.2 VAT implications

DE GmbH is a taxable person (Council Directive 2006/112/EC, Article 9, para. 1), established and registered for VAT purposes in Germany (ibid., Article 214, para. 1 (a)). It is supplying goods from one Member State (Germany) to non-taxable persons in different Member States than Germany, namely France, Italy and Belgium and no elimination criteria apply (ibid., Article 14 para. 4, (1) (b)). Therefore, the supplies of goods to DE GmbH's customers can be classified as intra-Community distance sales and the optional threshold of EUR 10.000 regulation is applicable (ibid., Article 59c, para. 1 (c)).

The total of DE GmbH's intra-Community distance sales amounted to a net sum of EUR 12.000 in 2020. Therefore, the optional threshold of EUR 10.000 was exceeded in the previous year. Consequently, the optional rule for determining the place of supply by the

place of establishment and therefore by the beginning of transport cannot be applied (ibid.). Thus, the place of supply is the Member State in which the transport to the final customers ends, i.e., respectively France, Italy and Belgium for the underlying transactions (ibid., Article 33 (a)). According to Article 214 (a) of the Council Directive 2006/112/EC, DE GmbH needs to report these transactions in the respective Member States and is generally obliged to register for VAT in France, Italy and Belgium.

### **5.1.3 Applicability of the Union scheme**

However, DE GmbH may be eligible to use the Union One-Stop Shop in order to report the intra-Community distance sales.

Generally, the Union scheme is applicable for intra-Community distance sales carried out by a taxable person (ibid., Article 369b (a)). Since this criterion is fulfilled in the case of DE GmbH, the Member State of identification shall examine if an exclusion criterion applies.

In the case of DE GmbH, as a business which is established in the EU, the Member State of identification is the Member State of establishment, i.e., Germany (ibid., Article 369a, para. 2). However, all conditions for the Union scheme are met as outlined above and a possible non-compliance according to Article 369e (d) could only apply after the successful registration over several periods. Thus, no exclusion criteria pursuant to Article 369e are met.

Concludingly, DE GmbH may opt for reporting all intra-Community distance sales via the Union scheme and submit a single Union One-Stop Shop return via the respective German web portal for France, Italy and Belgium as the Member States of consumption (ibid. Article 369c, 369g para..1; European Commission, 2021, p. 4).

## **5.2 Case study: Sales via an online marketplace**

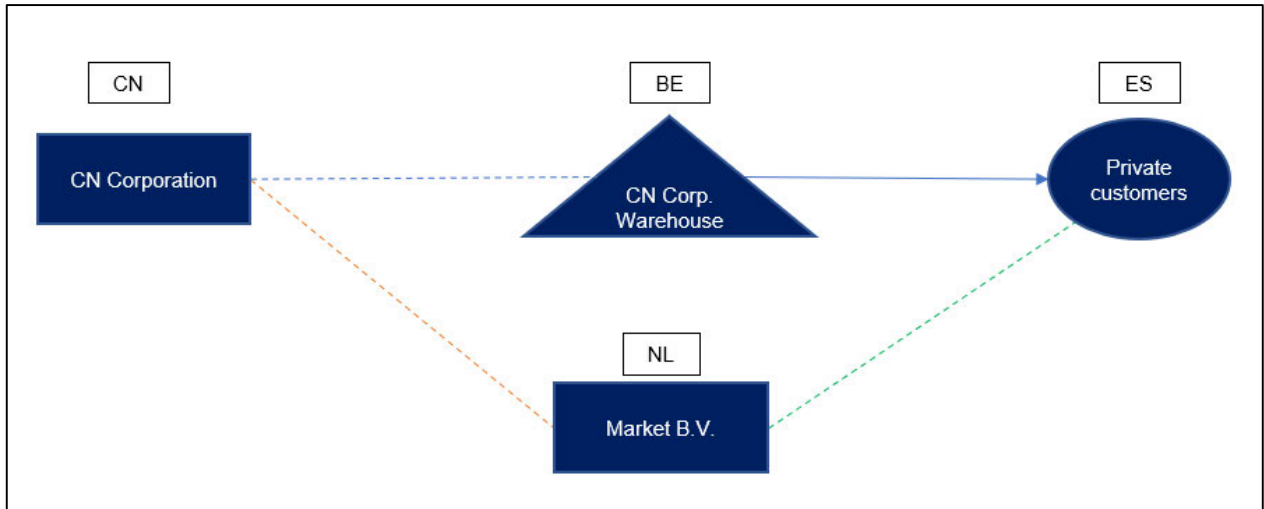
### **5.2.1 Scenario**

“CN Corporation” is a Chinese company which produces and sells goods in China and has now started to expand to sell to European Customers.

In order to do that, CN Corporation has established a warehouse in Belgium where it is storing its goods. Currently, CN Corporation is selling to private Spanish customers, who

purchase the goods via an online marketplace, “Market B.V.”, which is established in the Netherlands. An illustration of the scenario can be found in figure 5 below.

**Figure 5: Sales via an online marketplace**



Source: Own illustration

Market B.V. offers an online marketplace through which suppliers can offer their products and enter into contracts with customers who purchase them. The customers can see the products listed on the online platform and, if they decide to buy it, get guided through the checkout process, which is set up by Market B.V. As a part of that, Market B.V. also offers a payment system, enabling customers to choose their preferred payment method and then automatically forwarding the money to the supplier. Furthermore, Market B.V. has set certain criteria which suppliers on the platform need to meet in order to be eligible for selling via the marketplace. These include, inter alia, the conditions for listing a product and for qualifying as a vendor. Via the marketplace of Market B.V., sales from various non-EU suppliers are facilitated to private customers all over the EU, approximately amounting to a value of EUR 85.000.000 annually.

Once the purchase process is completed, the goods are sent from CN Corporation’s warehouse in Belgium to the final customer in Spain.

### **5.2.2 VAT implications**

It is necessary to consider, whether the deemed supplier provision outlined in Article 14a para. 2 of the Council Directive 2006/112/EC can be applied. Firstly, the provision presupposes the legal status of the concerned parties: The supply shall be facilitated by

a taxable person and carried out by a taxable person who is not established in the EU to a non-taxable person within the EU (Council Directive 2006/112/EC, Article 14a para. 2). CN Corporation is established in China and therefore outside of the EU. Additionally, due to its warehouse and related activities, CN Corporation is obliged to be a VAT registered taxable person in Belgium (ibid., Article 214 para. 1 (a) in conjunction with Article 9 para. 1). Simultaneously, Market B.V. is obliged to be VAT registered as a taxable person in the Netherlands (ibid.). As private individuals, the Spanish customers are non-taxable persons within the EU (ibid., Article 9 para. 1).

Furthermore, the deemed supplier provision shall only be applicable in case the supply is facilitated through an electronic interface (ibid., Article 14a para. 2).

As an online marketplace, Market B.V. is considered an electronic interface (ibid., Article 14a). Due to its activities concerning the enabling of the order and supply itself and the offerings concerning the checkout process as well as the terms and conditions provided by Market B.V., a facilitation according to Article 5b, Council Implementing Regulation No 282/2011, can be presumed.

Consequently, the conditions for a deemed supply are fulfilled. Therefore, while the physical movement of goods is carried out from the warehouse to the customer and the contract is concluded between CN Corporation and the customer (cf. blue lines in Figure 3) from a VAT perspective, two different supplies are taking place: Firstly, CN Corporation as the underlying supplier is deemed to supply the goods to Market B.V. (cf. orange line in Figure 3). As this is the B2B supply without a transport, the place of supply is in Belgium (Council Directive 2006/112/EC, Article 31), however, it is exempt from VAT with the right to deduct input VAT (ibid., Article 136a in conjunction with Article 169 (b)). The second supply (cf. green line in Figure 3) qualifies as an intra-Community distance sale (ibid., Article 14 para. 4) which is allocated to Market B.V. (ibid., Article 36b). As the eligible sales of Market B.V. exceed the optional EUR 10.000 threshold (cf. ibid., Article 59c (c)), the place of supply is Spain, as this is the Member State in which the transport to the customer ends (ibid. Article 33 (a)).

### **5.2.3 Applicability of the Union scheme**

The B2B supply from CN Corporation to Market B.V. does not fulfil any of the criteria for being eligible for the One-Stop Shop reporting (ibid., Article 358- Article 369x) and needs to be reported in the Belgian VAT Return of CN Corporation, where it is already VAT registered.

Market B.V. may, as the facilitator of the intra-Community distance sales, however, opt to make use of the Union scheme (ibid., Article 369b (b)).

As elaborated in 5.1.3, it can be presumed that no exclusion criteria apply.

As an EU-established business, Market B.V. can register and submit the One-Stop Shop reporting in the Netherlands as its Member State of identification (ibid., Article 369a, para. 2). Furthermore, all other applicable sales of goods and services that Market B.V. facilitates or incurs themselves are inevitably subject to the Union scheme, in case a registration is conducted (ibid., Article 369b).

Consequently, a single Union One-Stop Shop return can be filed for all eligible transactions in the Netherlands for all Member States of consumption, including the represented sales from the underlying supplier CN Corporation to its Spanish customers. CN Corporation is responsible for forwarding all relevant information for the VAT reporting and payment of the transactions to Market B.V. (Council Implementing Regulation (EU) No 282/2011, Article 5c).

## **5.3 Case study: Utilization of fulfilment centres**

### **5.3.1 Scenario**

AT GmbH is an Austrian company which recently started selling via Amazon, using FBA, more specifically the Amazon Central Europe Program.

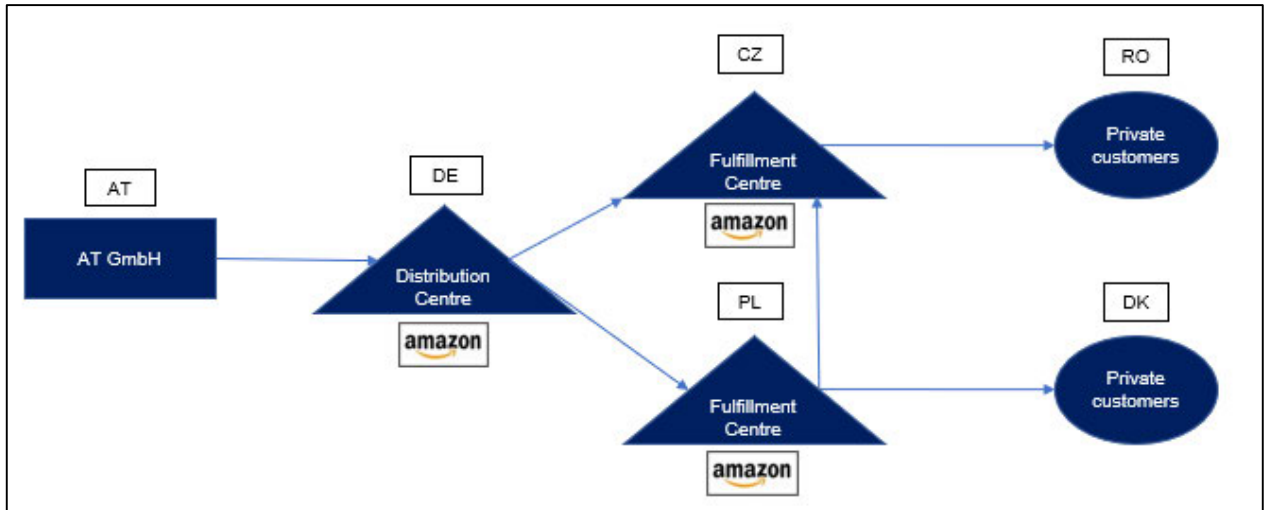
AT GmbH has several customers in Denmark and in Romania, with annual sales of a total of EUR 100.000 per country. As part of the Central Europe Program, Amazon advises AT GmbH to send the goods to a distribution centre in Germany in advance.

From there, parts of the goods are sent to a fulfilment centre in the Czech Republic and the other part is sent to a fulfilment centre in Poland.

The distribution centre as well as both fulfilment centres are operated and owned by Amazon. The goods which are stored in the Polish fulfilment centre are supplied to AT

GmbH's private customers in Romania upon purchase. AT GmbH's private Danish customers receive their ordered goods from the fulfilment centre in Poland. The constellation is illustrated in figure 6 below.

**Figure 6: Distribution via fulfilment centres**



Source: Own sample case illustration based on Amazon.com, Inc., 2021b

As a higher demand arises in Romania and the stocks in the Czech fulfilment centre are not sufficient, more goods which were stored in the Polish fulfilment centre are sent to the Czech warehouse in order to ensure a timely delivery to the Romanian customers.

### 5.3.2 VAT implications

As AT GmbH is selling via Amazon, which classifies as an online marketplace and thereby as an electronic interface (Council Directive 2006/112/EC, Article 14a), the question whether the deemed supplier provision (ibid., Article 14a para. 2) is applicable arises. Article 14a para. 2 presumes that the underlying supplier is established outside of the EU. AT GmbH is established in Austria and thereby within the EU. Thus, Amazon acting as a deemed supplier in the scenario described above can be ruled out.

As the supply of the goods from Austria to the distribution centre in Germany is carried out by AT GmbH for the purpose of their business, it can be classified as a “[...] supply of goods for consideration.” (ibid., Article 17 para. 1). This supply is exempt from VAT based on Article 138 para. 2 (c) and is treated as a VAT exempt intra-community supply of goods in Austria (ibid. Article 32) with a corresponding intra-community acquisition of goods in Germany (ibid. Article 40 in conjunction with Article 21). The supplies from the distribution

centre in Germany to the fulfilment centres in Poland and in the Czech Republic as well as the transportation of the goods from the Polish fulfilment centre to the Czech fulfilment centres are treated similarly and therefore classify as intra-community supplies of goods, by means of supplies of goods for consideration (*ibid.*, Article 17 para. 1), in Germany (*ibid.*, Article 32) and as intra-community acquisitions of goods in the Czech Republic and Poland respectively (*ibid.*, Article 40 in conjunction with Article 21). The intra-community acquisitions of goods are subject to VAT (*ibid.*, Article 21 in conjunction with Article 2 para. 1 (b) (i)) but the reported values can simultaneously be deducted as input VAT (*ibid.*, Article 168 (d)). All intra-Community acquisitions of goods lead to registration- and to reporting obligations in the respective Member States in which the transactions are carried out (*ibid.*, Article 214 para. 1 (b), (c)), i.e., Germany, Poland and the Czech Republic.

While the above-mentioned transactions are B2B supplies, AT GmbH carries out B2C supplies from the fulfilment centres to the final customers upon their purchase. As a VAT registered person in Poland or respectively the Czech Republic, AT GmbH performs intra-Community distance sales of goods to Denmark and Romania (*ibid.*, Article 14 para. 4).

### **5.3.3 Applicability of the Union scheme**

Based on the different transactions that AT GmbH carries out, the eligibility for the Union scheme differs by the type of transaction. In order to assess the applicability, the transactions in the specific case of AT GmbH can be divided into two categories: The B2B transactions from the original warehouse in Austria to the distribution centre and then to the fulfilment centres as well as between the fulfilment centres. And the B2C transactions which are carried out from the fulfilment centres to the final customers.

As the Union scheme does not cover B2B transactions (*ibid.*, Article 358 – Article 369x), neither one of the registration or reporting obligations in Austria, Germany, Poland or the Czech Republic can be facilitated with the utilization of the Union One-Stop-Shop procedure.

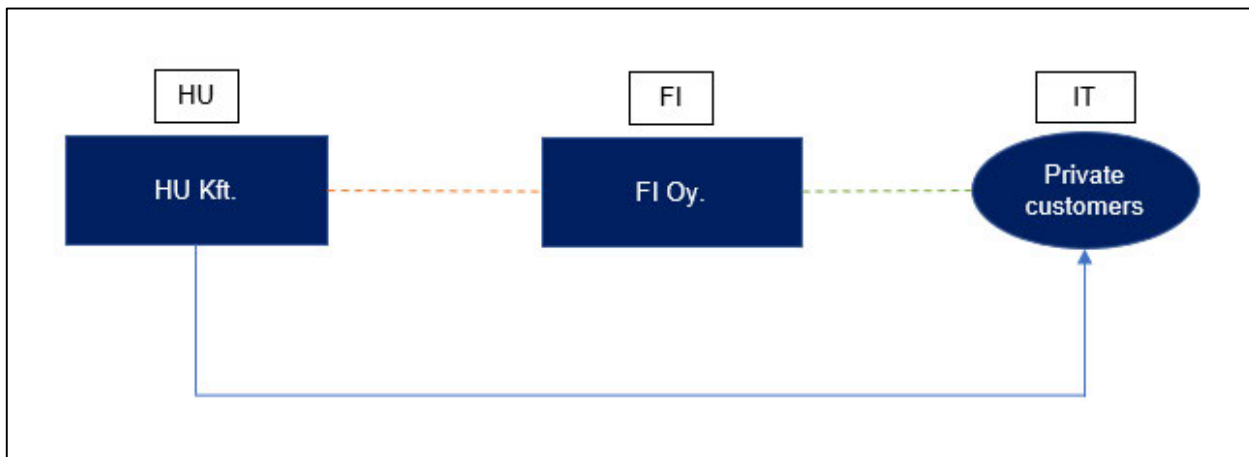
The B2C transactions as intra-Community distance sales do however qualify for the Union scheme and AT GmbH can therefore opt to report those transactions in a One-Stop Shop VAT Return (*ibid.* 369b (a)). As elaborated in 5.1.3, it can be presumed that no exclusion criteria apply. Austria is deemed to be the Member State of identification in that case (*ibid.*, Article 369, para. 2).

## 5.4 Case study: Dropshipping

### 5.4.1 Scenario

FI Oy. is VAT registered in Finland and uses the dropshipping procedure to fulfil orders from private customers in Italy. The customers order the goods from FI Oy, and FI Oy then forwards the necessary order details to the manufacturer HU Kft. in Hungary.

**Figure 7: Dropshipping**



Source: Own illustration

In order to save logistics costs, FI OY commissions HU Kft. with the transport of the goods, which are directly transported from the warehouse in Hungary to the customers in Italy. An illustration of the scenario can be found in figure 7 above.

### 5.4.2 VAT implications

In order to assess the VAT implications of the dropshipping scenario above, it needs to be considered how the individual transactions are to be treated from a VAT perspective. Article 36a Council Directive 2006/112/EC states that if a transport concerning the same goods is carried out directly from the first supplier to the last customer, the actual transport shall be the one from the first supplier to the intermediary supplier. As this applies in the described case, the transport can be ascribed to HU Kft. with the B2B transaction to FI Oy (cf. orange line in Figure 6). Therefore, this is a VAT-exempt supply (ibid. Article 138 para. 1 (a)) which is to be declared in Hungary (ibid. Article 32), with a subsequent intra-Community acquisition by FI Oy. in Italy, as this is the final destination of the transport (ibid. Article 40). Therefore, the final transaction in the chain is a local supply in Italy by FI



Oy. to the private customer. The implication that arises from this constellation is the obligation for FI Oy. to register in Italy for VAT purposes and declare the intra-Community acquisitions as well as the local supplies to the Italian tax authorities (ibid. Article 214 para. 1 (a), (b)). The intra-community acquisitions of goods are subject to VAT (ibid., Article 21 in conjunction with Article 2 para. 1 (b) (i)) but the reported values can simultaneously be deducted as input VAT (ibid., Article 168 (d)).

However, HU Kft. and FI Oy. can choose to shift the transport allocation to the supply from FI Oy. to the private customers in Italy if FI Oy. is VAT registered in Hungary and communicates his Hungarian VAT ID number to HU Kft.. In that case, FI Oy. carries out an intra-Community distance sale of goods (ibid. Article 14 para. 4) to the Italian customers which is subject to VAT in Italy (ibid. Article 33 (a)). The EUR 10.000 threshold is not applicable in this case as this constellation would imply that FI Oy. is VAT registered in more than one Member State, namely in Finland and in Hungary (ibid. Article 59c). The remaining transaction from HU Kft. to FI Oy. is then classified as a supply without transport and is therefore subject to VAT in HU (ibid. Article 31).

#### **5.4.3 Applicability of the Union Scheme**

In the first constellation, in which the transport of goods is allocated to HU Kft., the Union scheme cannot be applied for any of the transactions, as neither the B2B supply from HU Kft. to FI Oy., nor the local supply by FI Oy. in Finland are covered by the regulation (ibid., Article 358 – Article 369x).

In the second constellation, in which the transport of goods is allocated to FI Oy., an intra-Community distance sale of goods is carried out from Finland to Italy. Therefore, FI Oy. could use the One-Stop Shop reporting scheme in order to report these respective transactions (ibid. Article 369b (a)). However, the VAT registration in Hungary would remain necessary and could not be omitted. The supply without transport by HU Kft. would need to be reported by HU Kft. in their Hungarian VAT return without the option to utilize the Union scheme (ibid., Article 31, Article 358-369x).

## **5.5 Characteristics of good and effective legislation**

### **5.5.1 Justified and based on evidence**

Basing new legislation on evidential facts and circumstances is one aspect which contributes to the creation of a good law (European Commission, 2021b, p. 3). It requires a good understanding of the situation in order to be able to assess the effects that a new law will have and how it will change the status quo (ibid.).

To name one example of empirical research that has been conducted by the EU prior to the development of the Union scheme, the European Parliament (2012) has carried out a study in the course of the development of the digital single market strategy. An analysis of ongoing changes and deficiencies in the e-commerce and VAT system has been conducted and potential ways to overcome these challenges has been prepared (ibid.). In order to underline the findings, practical insights, inter alia based on evaluations by consulting firms such as PwC and Boston Consulting Group, have been taken into account (ibid). As a driver of the EU VAT package, this has had an influence on the development of the Union One-Stop Shop and acts as evidence for the necessity of the connected changes and justifies the implementation thereof.

### **5.5.2 Considering stakeholder values**

Furthermore, the EU Commission (2021b, p. 4) states that another principle for good legislation is an involvement of the affected stakeholders and the consideration of their values and expectations. When analysing the legitimacy of international law in a broader scope, Mattias Kumm (2004, p. 918) noted that law shall act as a way towards “[...] the establishment of welfare-enhancing cooperative endeavours between various actors.” Thus, it shall strengthen the trust among the concerned parties and eventually lead to a more efficient outcome (ibid.). The EU Commission (2021b, p. 7) adds that legislation is meant to positively influence citizens and businesses and the challenges they are facing. As the simplifications of VAT obligations for businesses were one of the main drivers for the implementation of the new regulation (European Commission, 2015, p. 8, 2020a, p. 6, n.d.), the interests of a key group of stakeholders, namely the businesses conducting inter-Community distance sales within the EU, have been taken into account. Furthermore, with the Union One-Stop Shop being part of the Council Directive, the

concept thereof implies that it is up to the individual Member States to a certain extent, how the practical implementation into national law is conducted (cf. chapter 3.3; European Union, 2016). However, as of now, the Council Directive 2006/112/EC does provide for a vastly detailed provision that does not leave much room for individual interpretation. Furthermore, the case studies conducted above show that stakeholder values in various scenarios are not sufficiently considered in the prevailing Union scheme, as a simplification through the Union One-Stop Shop is not possible in certain common constellations.

### **5.5.3 Adaptable and transparent**

Situations, trends and developments can change or be misjudged and thus the suitability of a law may as well. Therefore, it is important to revise existing laws, eliminate deficiencies and improve the quality of legislation (Müller, 2008, pp. 3–4). In terms of EU regulations, the EU Commission (2021b, p. 3) states that Member States are encouraged to communicate feedback after the implementation of a certain legislative act in order to enable successive amendments and improvements. As a part of that, the regulatory fitness and performance program (“REFIT”) has been developed, which lays out specific measures and instructions for an effective revision process (ibid., pp. 8-13). This is a potential way to benefit the learning effect that helps adapting existing legislation and develop improved legislation in the future, which is another factor that favours an effective law (Müller, 2008, p. 4). As a basis, transparency with regards to all involved stakeholders is a key aspect which can be achieved by comprehensible decision making processes and the possibility to hold the legal authorities responsible for their actions (ibid., p. 9; European Commission, 2021b, p. 7). In terms of the Union One-Stop Shop regulation, the explanatory notes as well as further working documents of the European Commission and European Parliament, as cited within the scope of this thesis, describe the incentives, aims and procedures of the law-making process and thereby create transparency (European Commission, 2016, 2020a, 2021a; European Parliament, 2012). Furthermore, as Member States are generally asked to provide post-implementation feedback (European Commission, 2021b, p. 3), it can be assumed that the regulation may be adapted if the necessity arises.

#### **5.5.4 Easy to comply with**

Lastly, a good law shall be “[...]easy to comply with and [...] not add unnecessary regulatory burdens” (European Commission, 2021b, p. 9). As one objective of the One-Stop Shop regulation is to achieve a facilitation of these burdens for businesses (European Commission, 2015, p. 8, 2020a, p. 6), the practical experience will have to show over time whether or not this objective has been achieved. The simplification benefits will have to outweigh the additional expenditures for the registration process and the internal re-structurings which will be inevitable for most businesses which want to make use of the Union scheme. However, the Union One-Stop Shop is an optional measure which businesses do not have to implement (Council Directive 2006/112/EC, Article 369b) . Furthermore, solely looking at the regulation itself, it can be said that the applicable Council Directive together with the respective Implementing Regulation as well as the explanatory notes provides a very clear guideline and examples which help businesses understand the necessary steps and therefore make it easier for them to comply with the new law (Council Directive 2006/112/EC; Council Implementing Regulation (EU) No 282/2011; European Commission, 2020a)

### **6 Conclusion**

#### **6.1 Summary**

In 2021, the EU has adopted an official definition of intra-Community distance sales within the legislation. Accordingly, cross-border transports or dispatches carried out within the territory of the EU from a taxable person to a non-taxable person shall be covered by the definition. Another act which has been implemented into the new version of the EU VAT legislation is the deemed supplier provision for electronic interfaces. It includes online marketplaces such as Amazon and covers facilitated intra-Community distance sales, making them the interfaces deemed suppliers.

In order to derive which VAT regulations apply, the place of supply needs to be determined. For intra-Community distance sales, the place of supply can generally be the place of destination or the place in which the transport or dispatch begins. The newly introduced uniform EUR 10.000 threshold is meant as a simplifying measure for micro businesses.

The developments in e-commerce have also paved the way for a variety of different transaction constellations in the context of intra-Community distance sales. Where especially small businesses may prefer selling directly via a single central warehouse to save costs and remain flexible while accepting longer delivery times, more established companies tend to consider fulfilment centre structures. Outsourcing parts of the logistics and enabling a faster supply to the customer are two main objectives which can be achieved by utilizing fulfilment centres, such as the Central Europe Program by Amazon. Another possible supply chain can be created using the dropshipping procedure, shipping goods directly from a first supplier to the final consumer. The supplier who enters the contract with the customer does not have to produce, store or transport the goods and solely forwards the order details.

The positive development of e-commerce has been recognized by the OECD and led to an agreement in 1997 to apply the principles of neutrality, efficiency, certainty, simplicity, and effectivity to the taxation thereof. More concrete plans have been worked on by the EU within the scope of the Digital Single Market strategy, later on acting as a motive for the e-commerce VAT package that was introduced in 2021. The strategy was developed to remove barriers in cross-border online trade and to set a basis for a fair competition therein. The VAT system was meant to be subject to modernization, including the digitalisation of compliance- and collection processes and shifting the compliance obligation to the Member State of residence. Furthermore, the different VAT rates that prevail within the EU have been recognised as an additional burden for businesses. The second concept which served as an objective for the e-commerce VAT package was the EU Action plan on VAT, which further focused on the modernization of VAT in the EU and developed concrete steps towards reaching that goal, along with setting the basis for extending the MOSS to intra-Community distance sales in 2021 and for cross-border B2B sales in 2022. The e-commerce VAT package has then eventually adopted parts of the proposed changes into the legislation, setting revised rules for intra-Community distance sellers, deemed suppliers and the Union One-Stop Shop.

The VAT system in the EU especially prior to the Union scheme entailed compliance costs which inevitably arise through various obligations and internal procedures. A study conducted by PwC has analysed the sources and estimated the amount of compliance

related costs in the context of a standard VAT return in the EU. Additionally, local registration requirements lead to more complex VAT obligations as the legislation is not completely harmonized among Member States and therefore different requirements and regulations are prevailing. With the Union One-Stop Shop however, businesses may register in their Member State of identification and file uniformized quarterly returns, reporting all eligible sales they conduct in respective Member States of consumption. Audits are then to be coordinated by the Member State of identification, providing relevant information to the affected countries.

In practice, the Union scheme is however not always applicable. The most noticeable benefits due to full applicability occur for direct sales from a single central warehouse to private customers across the EU, as all supplies can be reported using the Union scheme. Online Marketplaces as well qualify for the Union One-Stop Shop for reporting eligible intra-Community distance sales. All connected B2B supplies, such as the ones carried out by the underlying supplier to the marketplace or the several inevitable supplies of goods for consideration in fulfilment centre constellations cannot be reported using the special scheme. Typical supply chains in dropshipping involve B2B supplies as well as domestic supplies and the compliance thereof cannot be facilitated through the Union One-Stop Shop either.

The concept of the Union scheme generally fulfils most of the criteria of good and effective legislation, namely being justified and based on evidence, being adaptable and transparent and easy to comply with. However, practical insights show that stakeholder values are only considered to a certain extent.

To conclude, the Union-One Stop Shop does simplify VAT obligations for some intra-Community distance sellers, especially those who carry out direct supplies to their customers. However, in practice, often more complex supply chains which involve B2B- and domestic transactions are commonly used and cannot be facilitated through the Union scheme, leaving the administrative burdens, compliance costs and the complexity at a similar level for many businesses. Thus, the goodness and effectiveness of the regulation is limited. Furthermore, certain local criteria still need to be taken into account, such as the applicable VAT rates, which remains a heterogenous system adding to the complexity.

Therefore, in practice, the Union One-Stop Shop is only partially a viable instrument for the EU to achieve simplification of VAT obligations for intra-Community distance sellers.

## **6.2 Critical acclaim**

The focus of this bachelor thesis was laid on transactions solely taking place within the EU and thus the Union One-Stop Shop. Further constellations with regards to the non-Union scheme and import One-Stop Shop have not been covered. Furthermore, only a limited selection of common transactions and sample cases have been analysed. Examining further constellations would be sensible to conduct.

As the underlying basis for the reoccurring VAT compliance obligation of businesses, the standard EU VAT return was considered. To get a wider understanding, including the recapitulative statements, more precisely the EC Sales List and Intrastat return, in the estimation of compliance expenditures is necessary to consider for further reflections.

Additionally, EU legislation in terms of e-commerce and VAT regulations is going through a process of frequent changes. This bachelor thesis does only reflect the status of the current laws and publications. Lastly, the analysis has been carried out on the level of the EU as such. For more detailed insights and specific case assessments it would be required to look at the regulations on an individual Member State basis.

## **6.3 Outlook**

The Union One-Stop Shop regulation came into force with the new version of the Council Directive 2006/112/EC as of 1 July 2021. With the recent introduction, time will soon show first indicators for the success of the regulation and Member States as well as concerned businesses will be able to provide feedback and their personal assessment of the facilitative measures. From there, the EU Commission will be able to evaluate together with the stakeholders how the procedure is going to be maintained or revised and businesses may be able to notice potential benefits in the form of simplifications in their VAT compliance obligations. Furthermore, as the One-Stop Shop shall be extended to B2B supplies of goods in 2022 as part of the action plan on VAT, some of the shortcomings of the current Union scheme may be overcome by enabling businesses to report a vast majority of their intra-Community cross-border sales via the special reporting scheme, offering a more practical solution for distance sellers and their supply chain solutions.

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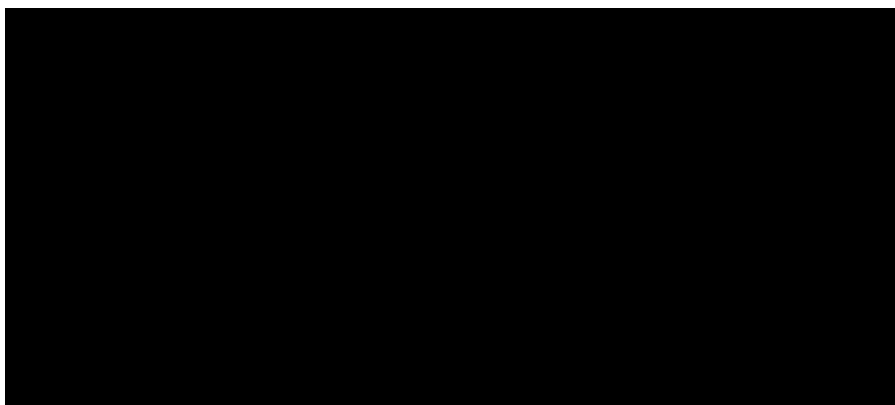
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**V Declaration of originality**

I hereby declare that this thesis and the work reported therein was composed by and originated entirely from me. Information derived from published and unpublished work of others has been acknowledged in the text and references are given in the list of references.



**VI Declaration of consent**

I hereby declare that I agree that a copy of my bachelor thesis will be included in the library of the department, rights of third parties will not be infringed.

