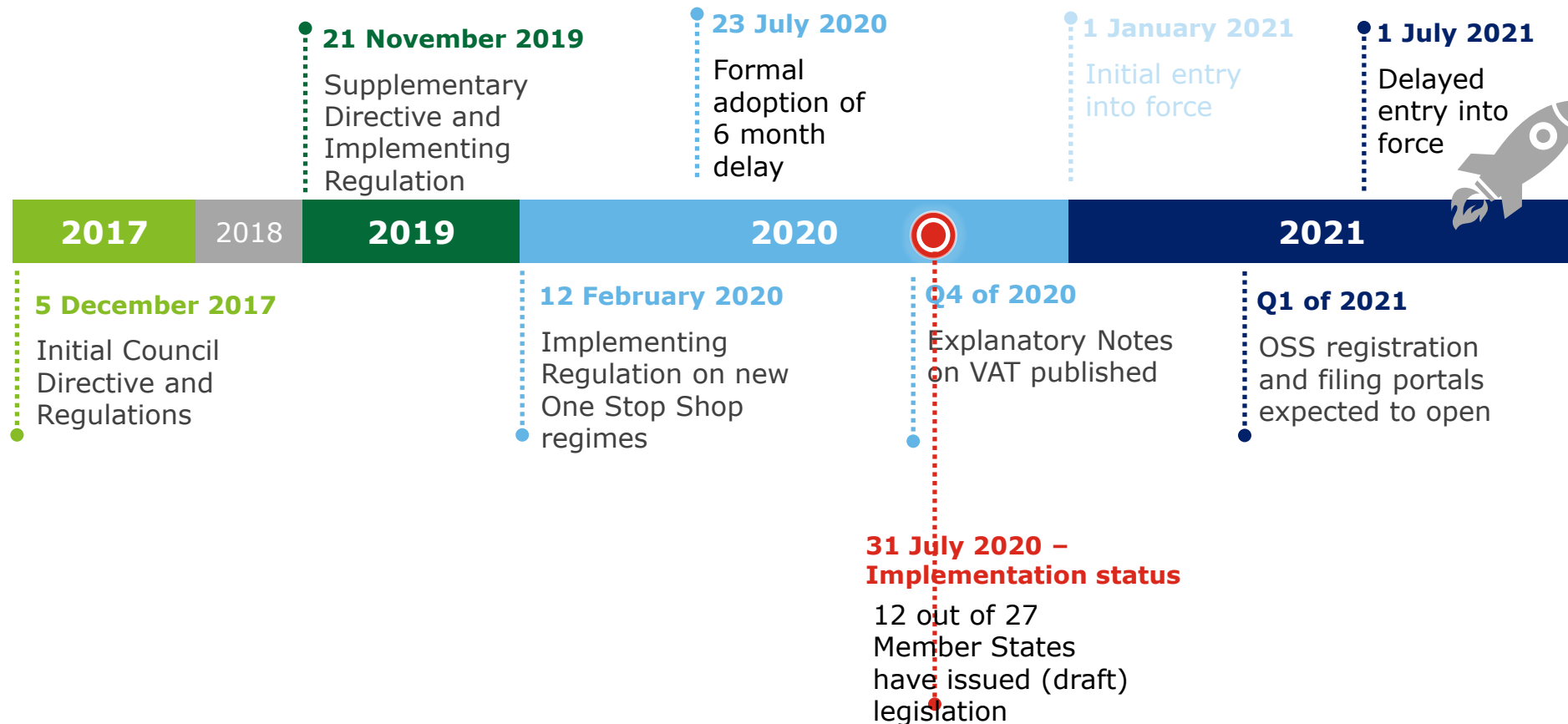


Christian Deglas – Eric Reolon

2021 – New VAT rules for e-commerce activities

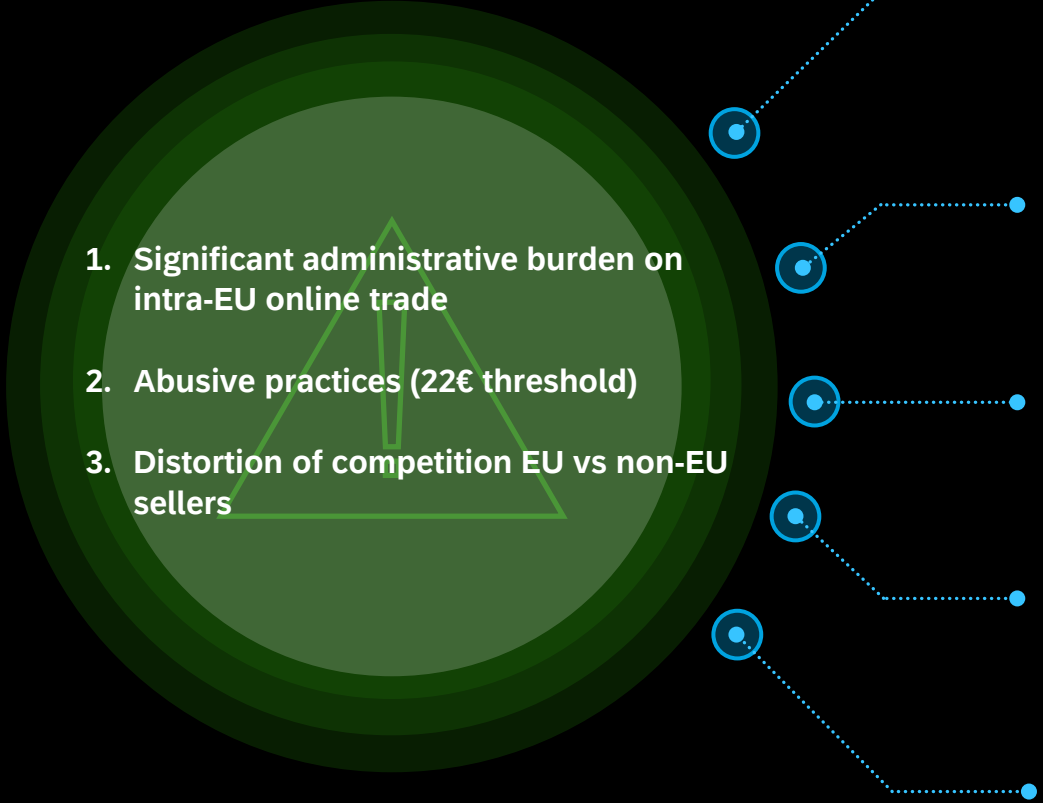
Chambre de Commerce – 18 November 2020

# Timeline to July 2021



# Introduction

## Genesis of the new rules

- 
1. Significant administrative burden on intra-EU online trade
  2. Abusive practices (22€ threshold)
  3. Distortion of competition EU vs non-EU sellers



### Deletion of the 22€ threshold

And setting of new regimes for low value imported goods (“Import Scheme” and other simplification measures)



### Lower the threshold for distance sales to 10,000€

Only very small businesses could charge their local VAT



### Ease the distance sales reporting

Extension of the existing MOSS to a broader “Union Scheme”



### Considering the electronic interfaces as deemed sellers

Special provisions are introduced



### New record-keeping requirements for electronic interfaces

Whether or not they are deemed sellers

# Introduction

## A complex set of legal sources

1. Council Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax, as amended by Council Implementing Regulation (EU) 2017/2459 and Council Implementing Regulation (EU) 2019/2026 (VAT Implementing Regulation)
2. Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax as amended by Council Regulation (EU) 2017/2454 (Administrative Cooperation Regulation)
3. Commission Implementing Regulation (EU) 2020/194 of 12 February 2020 laying down detailed rules for the application of Council Regulation (EU) No 904/2010 as regards the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods
4. Council Decision (EU) 2020/1109 of 20 July 2020 amending Directives (EU) 2017/2455 and (EU) 2019/1995 as regards the dates of transposition and application in response to the COVID-19 pandemic
5. Council Regulation (EU) 2020/1108 of 20 July 2020 amending Regulation (EU) 2017/2454 as regards the dates of application in response to the COVID-19 pandemic
6. Council Implementing Regulation (EU) 2020/1112 of 20 July 2020 amending Implementing Regulation (EU) 2019/2026 as regards the dates of application in response to the COVID-19 pandemic
7. Commission Implementing Regulation (EU) 2020/1318 of 22 September 2020 amending Implementing Regulations (EU) 2020/21 and (EU) No 2020/194 as regards the dates of application in response to the COVID-19 pandemic
8. Explanatory notes on VAT e-commerce rules published by the Commission in September 2020

# Introduction

## Content

1. The *deemed supplier* concept applying to electronic interfaces
2. Abolition of the low value consignment relief
3. Extension of the scope of the non-Union scheme
4. New concept of intra-community distance sales of goods
5. New concept of distance sales of goods imported from third territories or third countries
6. Special reporting schemes: who and what ?
7. Special arrangement for declaration and payment of import VAT
8. Record keeping obligations of electronic interfaces

# 1

## New obligations for Electronic Interfaces - The *deemed supplier* provisions

# Electronic interfaces being deemed suppliers

What are the electronic interfaces

*An **online marketplace** is a type of e-commerce site where product or service is provided by multiple third parties*

Wikipedia

Taxable persons who **facilitate** distance sales of goods through the use of an electronic interface are deemed **in certain circumstances** to make the supplies themselves and will be liable to account for VAT on these sales.

A taxable person, i.e. an electronic interface, is **not considered as facilitating the supply**, if:

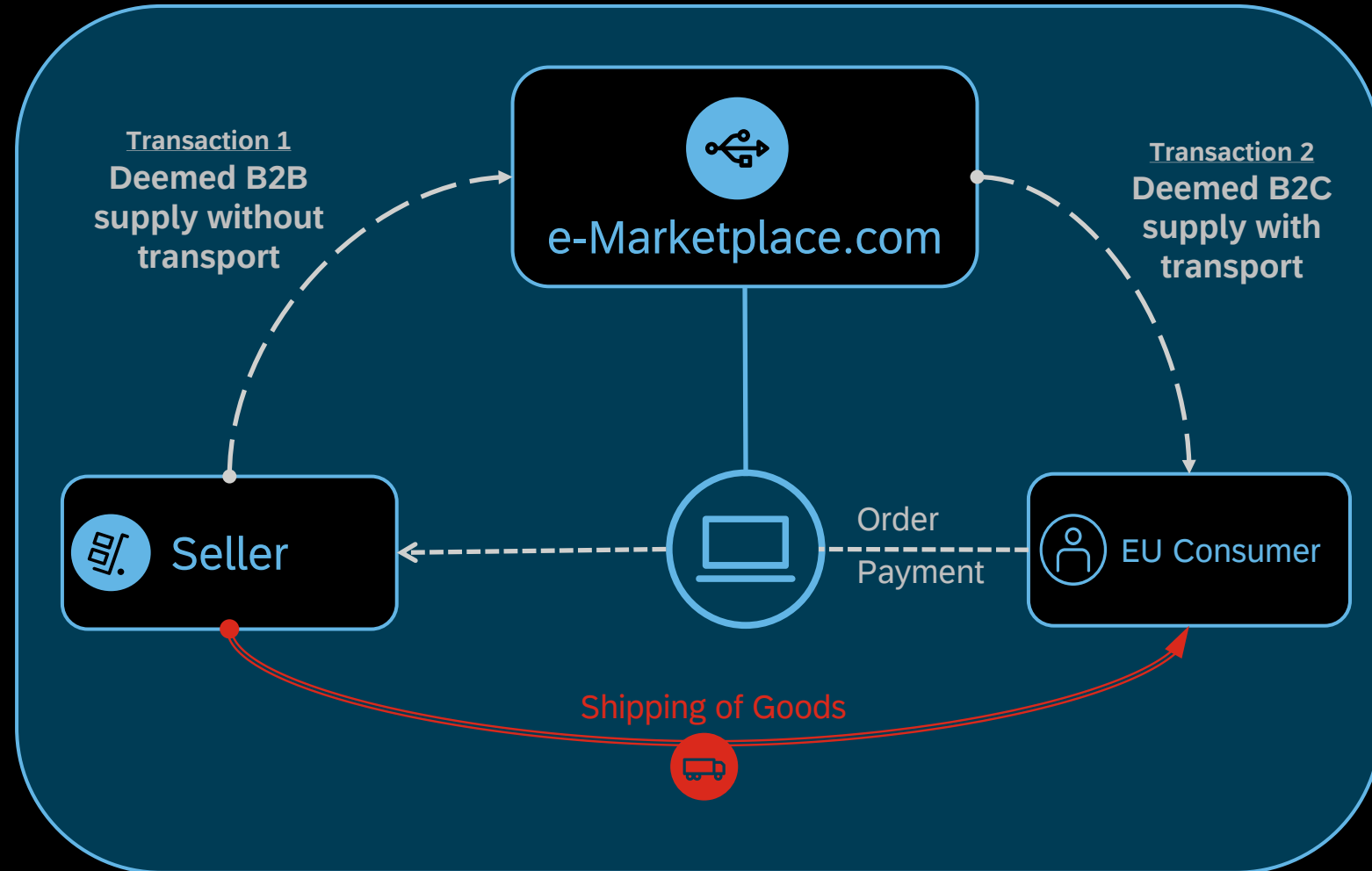
- a) he does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made; and
- b) he is not, either directly or indirectly, involved in authorizing the charge to the customer in respect of the payment made; and
- c) he is not, either directly or indirectly, involved in the ordering or delivery of the goods.

# Electronic interfaces being deemed suppliers

Two types of transaction are covered by the deemed supplier provision

Two types of transaction covered by the deemed supplier provision

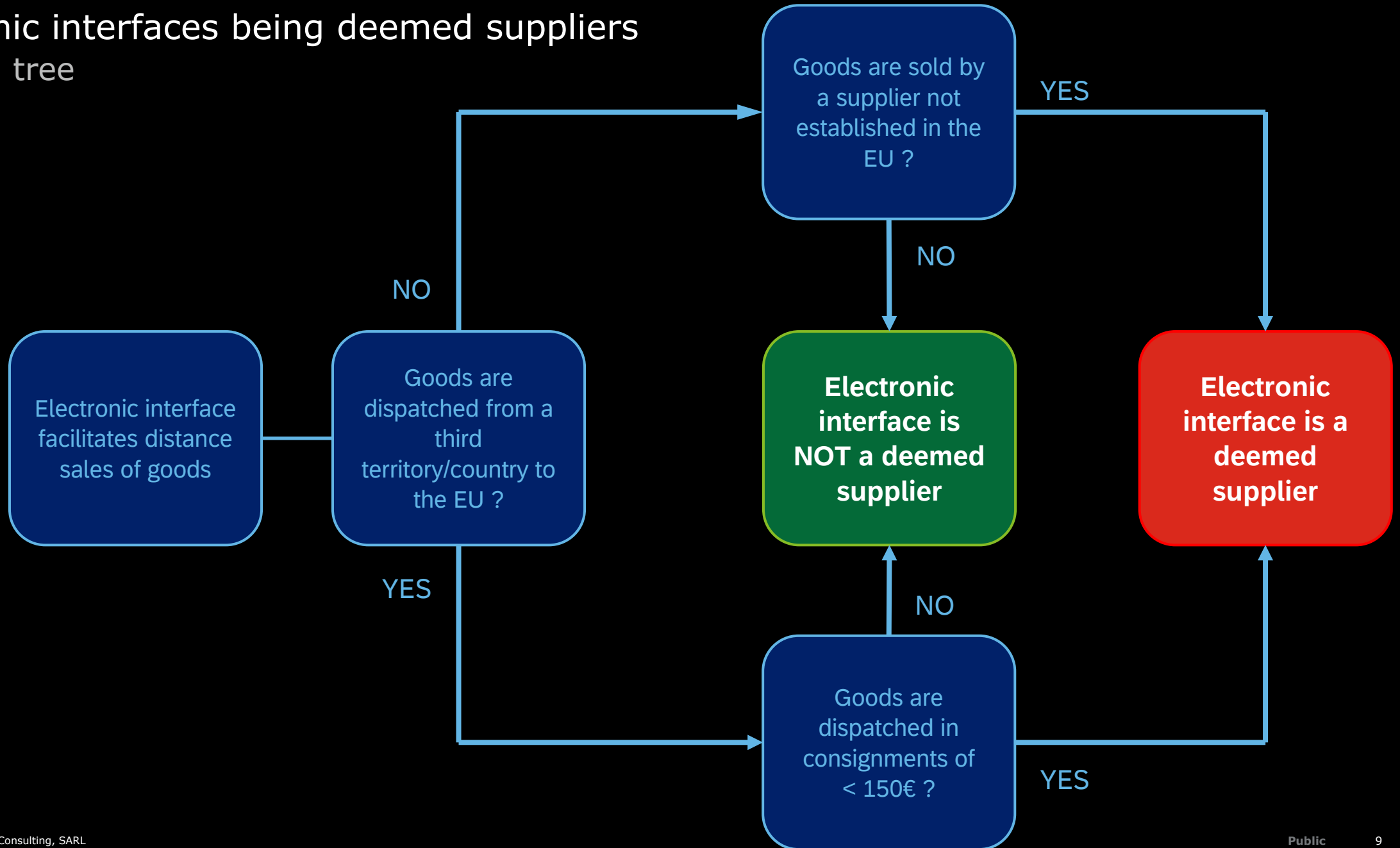
1. Distance sales of goods **imported** from third territories or third countries in consignments of an **intrinsic value not exceeding EUR 150**
2. Supplies of goods within the European Union **by a taxable person not established** there to a non-taxable person; both domestic supplies and intra-Community distance sales of goods are covered





# Electronic interfaces being deemed suppliers

## Decision tree



# 2

## Abolition of the low value consignment relief

# Abolition of the low value consignment relief

The end of the 22€ threshold on importations

As from 1 July 2021 VAT is due on goods imported into the EU (no threshold)

**Two simplifications for the collection of VAT are introduced**

**The Import Scheme (IOSS)**

**The special arrangements for declaration and payment of import VAT**

In practice, from 1 July 2021, the VAT on low value goods can be paid as follows:

1. Payment as part of the purchase price to the supplier using the IOSS whereby the importation of the related goods is exempt from VAT.
2. Payment upon importation in the EU, if the supplier does not use the IOSS:
3. Payment to the person presenting the goods to customs (i.e. lodging a customs declaration for release for free circulation) if that person chooses to use the special arrangements; or
4. Using standard VAT collection mechanism.

# 3

## Extension of the scope of the non-Union scheme

# Extension of the scope of the non-Union scheme

An extension of the previous regime to all B2C services provided by non EU suppliers to EU consumers

## What transactions ?

This scheme is currently available to report supplies of telecommunication, TV/Radio Broadcasting services and electronically supplied services.

As from 1 July 2021, the non-Union scheme will cover **all B2C supplies of services** with the place of supply in the EU to non-taxable persons (consumers).

## No need for a fiscal representative

Supplier is free to appoint a fiscal representative if the rules of MS of identification allows it.

## Who can use the non EU Scheme ?

The non-EU scheme can be used only by taxable persons **not established** within the EU.

If the provider is VAT registered within the EU, it can still use the non EU scheme for B2C supplies

## Invoicing rules of the MS of identification

Not a requirement as per the VAT Directive. Member State may require an invoice for these supplies



# 4

## New concept of intra-community distance sales of goods

# Intra-community distance sales of goods and Union scheme

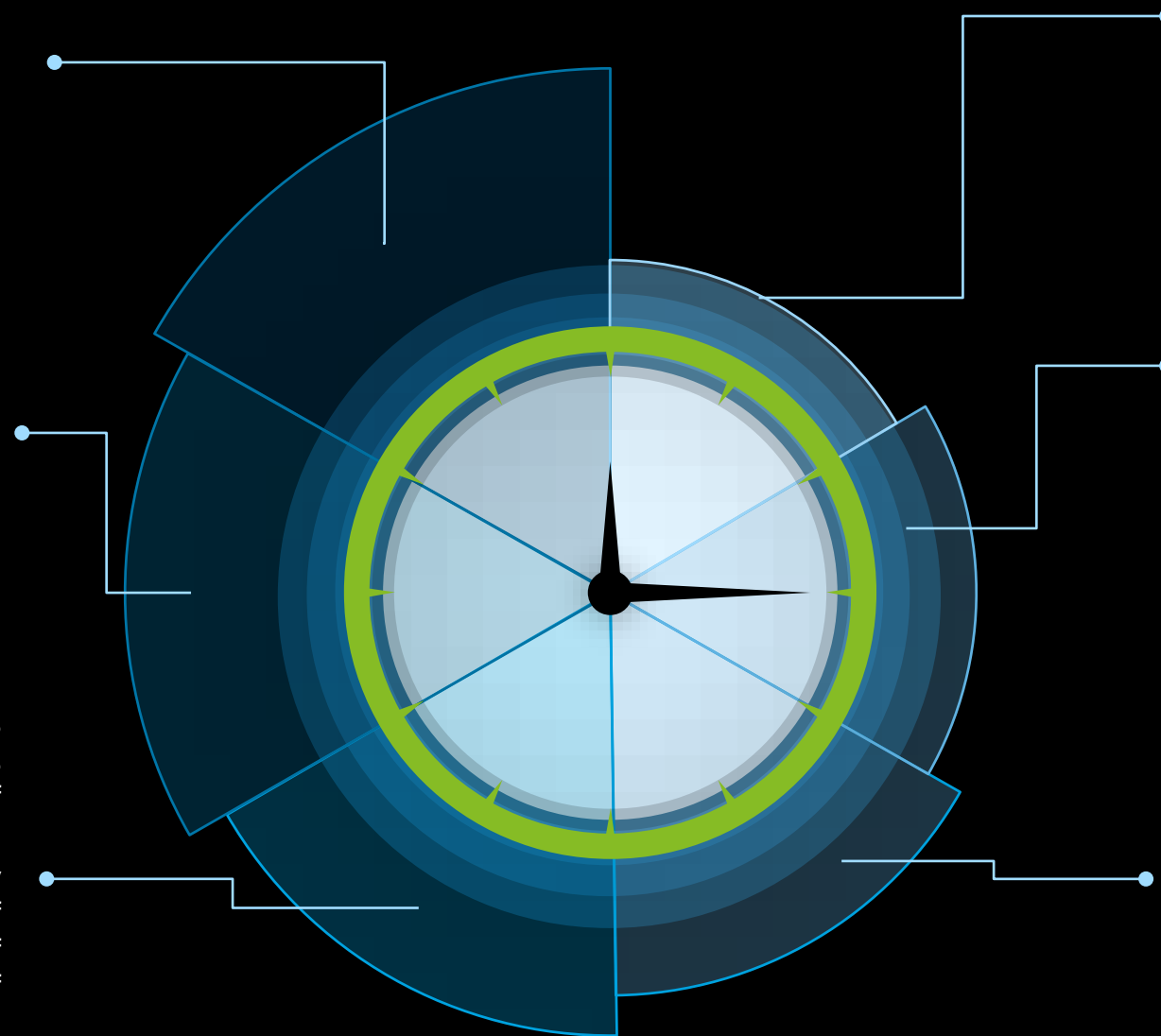
## Main features

No obligation for suppliers who are not established in the EU to appoint a **tax representative** in order to be able to use the Union scheme. However, the Member State of identification may require them to appoint a tax representative according to their national legislation.

**Invoicing** - In principle, suppliers have to issue an invoice. However, if they have registered for **the Union scheme**, they do not need to issue an invoice for these supplies of goods.

**The EUR 10,000 threshold** covers cross-border supplies of TBE services and intra-Community distance sales of goods.

Below the threshold, place of supply and VAT due in the Member State of dispatch or transport (in the case of intra-Community distance sales of goods)



**An intra-Community distance sale of goods** takes place when goods are dispatched or transported by or on behalf of the supplier from a Member State other than the one in which dispatch or transport of the goods to the customer ends

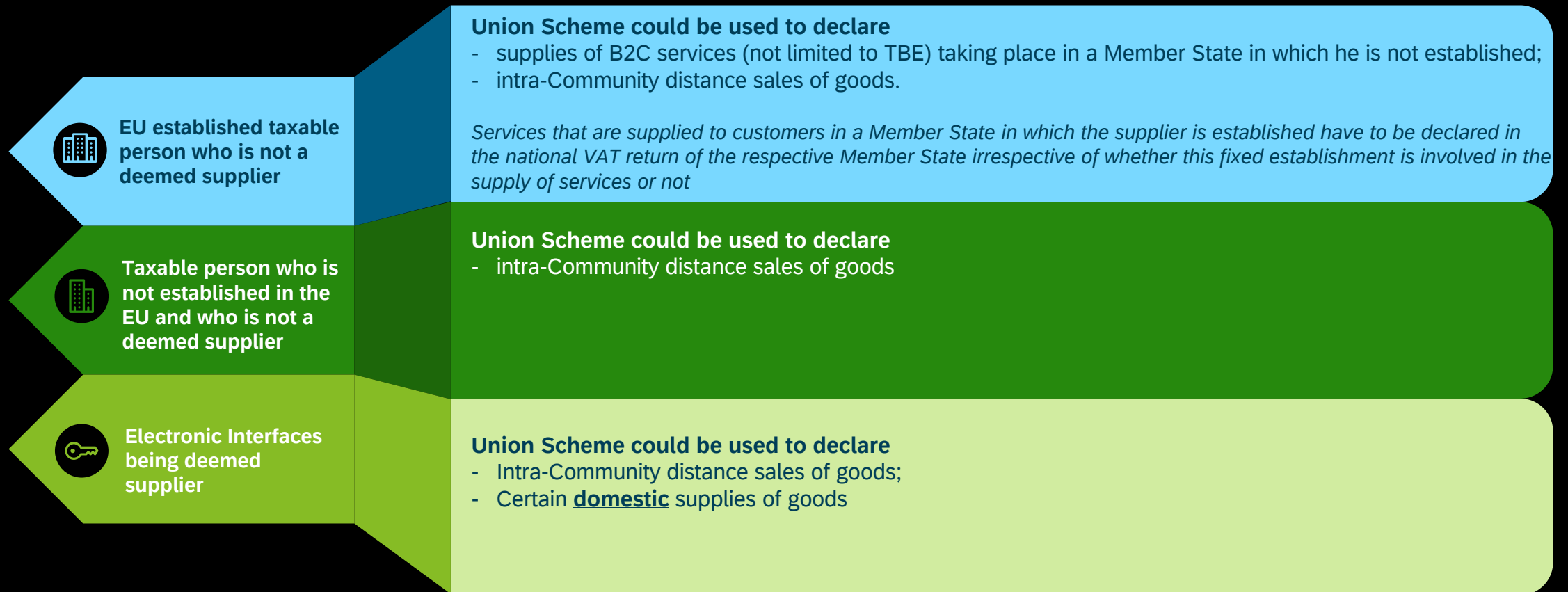
### Supplies in the scope:

- supplies of goods to non-taxable persons (consumers)
- supplies of goods (including excise products) to taxable persons or non-taxable legal persons listed in Article 151 of the VAT Directive (diplomatic arrangements, international bodies, NATO, etc.)
- supplies of goods (except excise products) to taxable persons benefiting from a derogatory regime.

**Place of supply** is the place where the goods are located when the dispatch or transport of the goods to the customer ends

# Intra-community distance sales of goods and Union scheme

From the current “MOSS” to a broader “OSS” – Who can use the Union scheme and for which supplies





# Intra-community distance sales of goods and The Union scheme

If you choose to use the Union scheme, you will be required to...

**1 - Display** the amount of VAT to be paid by the customer at the latest when the ordering process is finalized.

**2 - Collect**

from the customer the VAT on the cross-border B2C supplies of services, intra-community distance sale of goods and domestic supplies of goods by a deemed supplier

**3 - Submit** a quarterly OSS return to the Member State of identification for all the eligible supplies.

**4 - Make** a quarterly payment to the Member State of identification.

**5 - Keep** records of all eligible IOSS distance sales of imported goods for 10 years to cater for possible audits by EU tax authorities.

# 5

New concept of distance sales of goods  
imported from third territories or third countries

# Distance sales of goods imported from third territories or third countries

## Main features

### Suppliers established outside the European Union

These suppliers (or deemed suppliers) can use the scheme as follows:

- Directly (i.e. without the obligation to appoint an intermediary) if they are established in a third country with which the EU has concluded a **VAT mutual assistance agreement**. This applies only insofar as they carry out sales of goods from this specific third country. As soon as they also carry out supplies from other third countries or territories they will no longer be able to use the scheme directly, but will instead have to use the scheme indirectly.
- Indirectly, through an **intermediary** established in the EU

### No excise duties

The goods are not subject to excise duties (e.g. alcohol or tobacco products).

IOSS cannot be used when low value goods are bought and/or dispatched together with excise goods, irrespective of whether or not the value of the consignment exceeds EUR 150.

### Suppliers established within the European Union

These suppliers (or deemed suppliers) can use the IOSS directly

### Goods from third countries or third territories

The goods are physically dispatched/transported from a third territory or third country at the time they are supplied.

Goods in a customs warehouse in an EU country are not eligible

### Consignment of an intrinsic value not exceeding 150€

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

**Intrinsic value:** the price of the goods themselves when sold for export to the customs territory of the European Union, excluding transport and insurance costs, unless they are included in the price and not separately indicated on the invoice, and any other taxes and charges as ascertainable by the customs authorities from any relevant document(s)

### Transport/dispatch

The goods are transported or dispatched by or on behalf of the supplier, including where the supplier intervenes indirectly in the dispatch or transport of the goods from a third country or third territory, to a customer or any other eligible person in a Member State



# Distance sales of goods imported from third territories or third countries

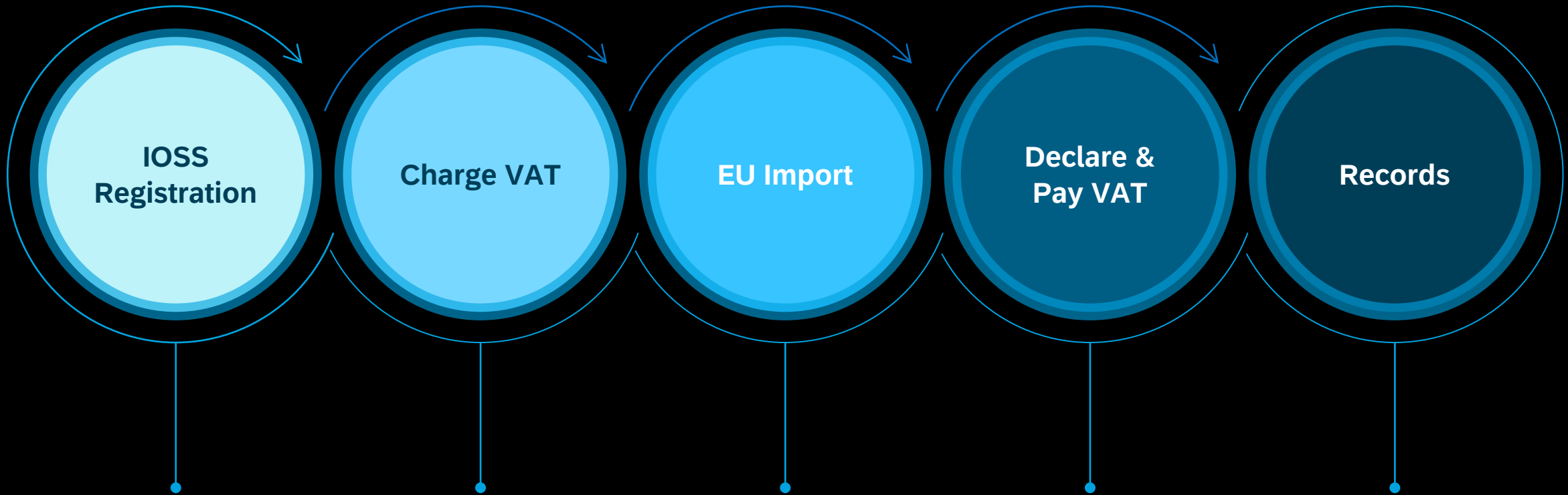
## VAT technical considerations: Place of supply

		<b>Tax event 1 Importation</b>	<b>Tax event 2 distance sale of imported good</b>
MS of importation <b>is not</b> the MS of final destination of the goods	Use of IOSS Scheme	Where the goods enter the EU or are released for free circulation (VAT exempt)	MS of final destination of the goods (VAT taxable)
	No Use of IOSS Scheme	Goods must be released for free circulation in MS of final destination. <b>Transit</b> from MS of importation to MS of final destination (VAT taxable)	MS of final destination of the goods (VAT taxable)

		<b>Tax event 1 Importation</b>	<b>Tax event 2 distance sale of imported good</b>
MS of importation <b>is</b> the MS of final destination of the goods	Use of IOSS Scheme	Where the goods enter the EU (VAT exempt)	MS of final destination of the goods (VAT taxable)
	No Use of IOSS Scheme	Where the goods enter the EU (VAT taxable)	If the customer's liable to pay the VAT: Place of supply in the ship from country (no VAT)
			If the supplier's liable to pay the VAT: MS of final destination of the goods (VAT taxable)

# Distance sales of goods imported from third territories or third countries

The Import Scheme (so called "IOSS") step-by-step



Seller obtains one EU VAT IOSS number valid for imports in all EU Member States

Seller charges EU VAT to the customer upon sale

IOSS goods are VAT exempt if valid IOSS identification number declared for importation with EU Customs

Seller declares and pays VAT to the EU tax authorities where registered via **one monthly IOSS VAT return and one payment**

Seller keeps records of sales listing for future control

# The Import Scheme (so called "IOSS")

If you choose to use the Import scheme "IOSS", you will be required to...

**1-Display** the amount of VAT to be paid by the customer in the Member State to which the goods will be sent/dispached at the latest when the ordering process is finalized.

**2-Collect** from the customer the VAT on supplies of all eligible goods dispached/transported to the EU (e.g. non-excise goods dispached to an EU Member State in consignments not exceeding EUR 150).

**Make sure** that eligible goods are shipped in consignments of an intrinsic value not exceeding the EUR 150 threshold

**5-Show** either on the VAT invoice (if issued) or on the commercial invoice accompanying the goods for customs clearance, a) the price paid by the customer in euro; and b) separately, per each VAT rate the VAT amount charged to the customer.

**6-Provide** to the transporter/customs declarant of the goods (such as postal operators or express carriers or customs agent) the information required for the customs clearance in the EU, including the IOSS VAT identification number in order to avoid that VAT is levied at the moment of importation.

**4-Make** a monthly payment to the Member State of identification of the VAT due as declared in the IOSS VAT return.

The deadline for the payment is the end of the month following the reporting month.

**3-Submit** a monthly IOSS return to the Member State of identification for all the eligible supplies of goods sold to customers across the entire EU.

The IOSS VAT return will contain the total value of the goods sold, their VAT rate and the total VAT amount to be paid, broken down for each EU Member State where the goods are transported to, as well as broken down in standard and reduced rate. The deadline to submit the IOSS VAT return is the end of the month following the reporting month.

**7-Keep** records of all eligible IOSS distance sales of imported goods for 10 years to cater for possible audits by EU tax authorities.

# 6

## Special schemes – Who and What ?

# Overview of the special schemes

Non-Union Scheme		Union Scheme "OSS"		Import Scheme "IOSS"	
Eligible taxable persons	Eligible types of supplies	Eligible taxable persons	Eligible types of supplies	Eligible taxable persons	Eligible types of supplies
Non-EU established	All B2C supplies of services to customers in the EU	Only EU established	All intra-community B2C supplies of services	EU and non EU established (via intermediaries) including electronic interfaces	Distance sales of imported goods in consignments < 150€
		EU and non-EU established	Intra-Community distance sales of goods		
		EU and non EU electronic interfaces being deemed suppliers	Domestic B2C supplies of goods		



# 7

## Special arrangement for declaration and payment of import VAT

# Special arrangement for declaration and payment of import VAT

An alternative simplification for the collection of import VAT e.g. for carriers and/or postal operators

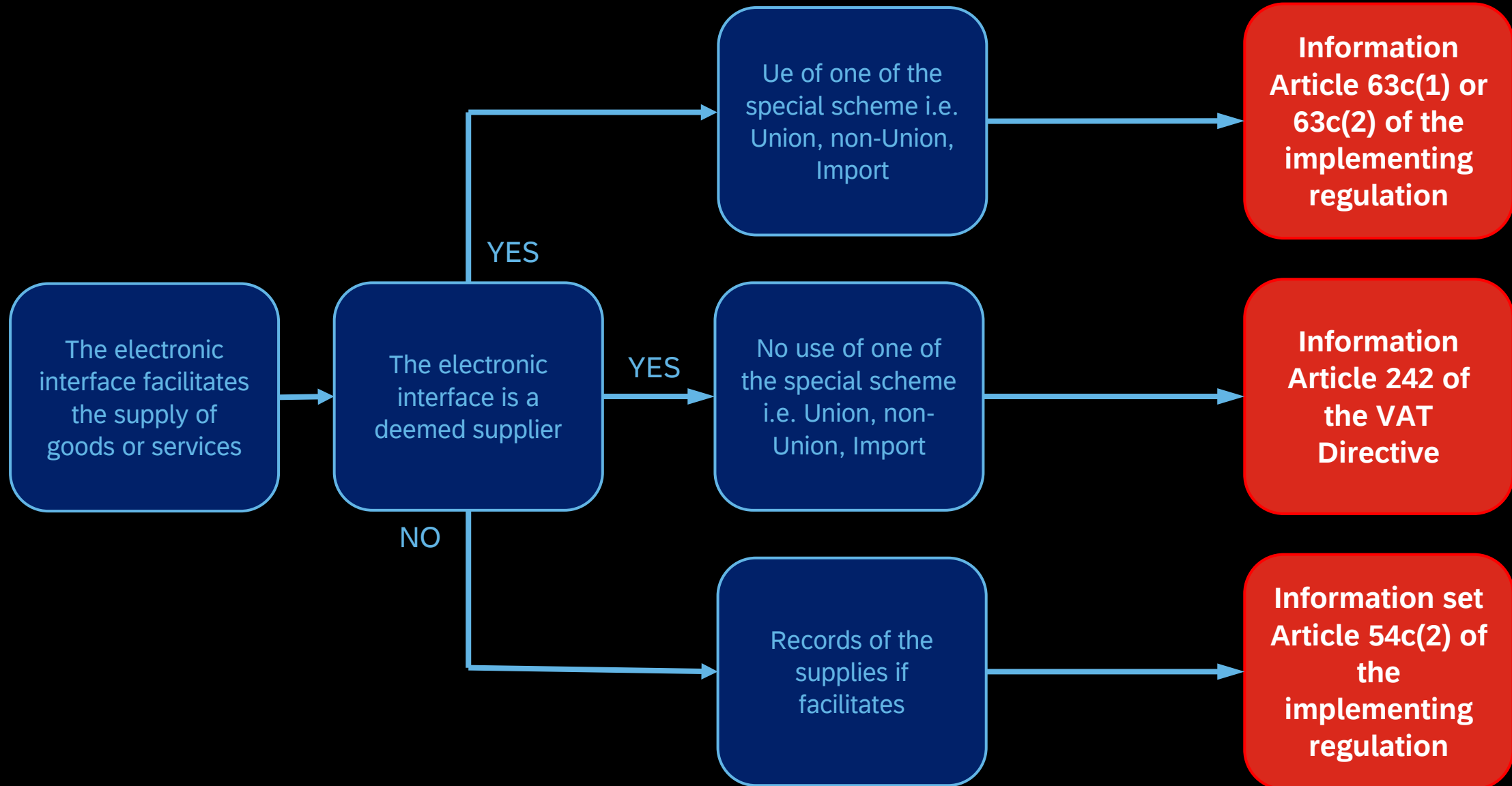


# 8

## Record keeping obligations of electronic interfaces

# Record keeping obligations of electronic interfaces

## Decision tree



# Start (or continue) preparing for 2021

Project-based approach



## 1 Identification

Identify the transactions in your business that are impacted by the 2021 E-commerce rules.



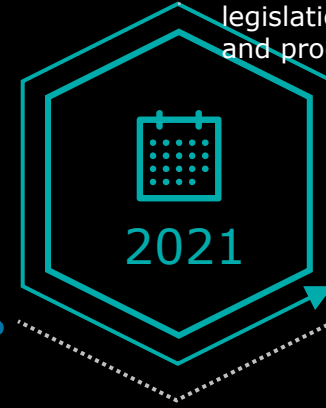
## 3 Analyzing the supply chain

Analyze the supply chain and assess whether adjustments and/or optimization are desired based on the findings of step 1 and 2.



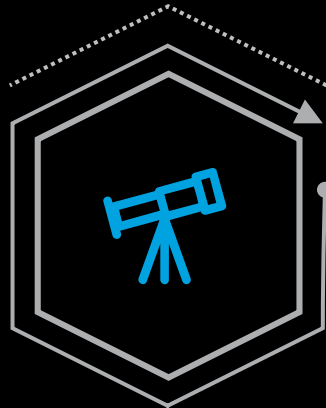
## 5 Registration and implementation

Prepare for the (possible) registration for the OSS or IOSS and implement the new VAT legislation in the ERP-system and procedures.



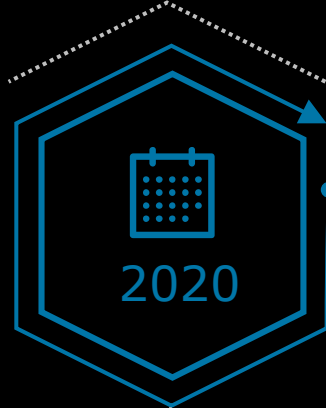
## 2 Assessment

Assess the correct VAT treatment of the transactions and the preferred VAT reporting mechanism as of 1 July 2021.



## 4 Decision making process

Prepare an action plan based on the findings.



# Contacts

## **CHRISTIAN DEGLAS**

Partner | Indirect Tax  
Deloitte Tax & Consulting  
D: +352 45145 2611  
M: +352 621508874  
[cdeglas@deloitte.lu](mailto:cdeglas@deloitte.lu) | [www.deloitte.lu](http://www.deloitte.lu)

## **ERIC REOLON**

Director | Indirect Tax  
Deloitte Tax & Consulting  
D: +352 45145 3677  
M: +352 661452238  
[ereolon@deloitte.lu](mailto:ereolon@deloitte.lu) | [www.deloitte.lu](http://www.deloitte.lu)



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