

**Baker
McKenzie.**

**International VAT Conference 2020
Webinar series**

VAT and e-commerce transactions

Wednesday 28 October 2020



Agenda

1 INTRODUCTION

2 E-COMMERCE DIRECTIVE

3 ONLINE MARKETPLACES

4 IMPORTED E-COMMERCE
PURCHASES

5 WIDER DEVELOPMENTS

6 CONCLUSIONS

7 Q&A

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1

E-Commerce Directive: EU Recap

**1 July
2021**

The EU has confirmed that the implementation of the new regime will be delayed until 1 July 2021. The original implementation date was intended to be 1 January 2021.

Changes under the e-commerce directive

Current regime

ESS

- MOSS limited to B2C supplies of ESS, telecoms and broadcasting services: Union and non-Union scheme
- Customer location: 2 pieces of non-contradictory evidence to determine customer location
- Online marketplaces deemed to act as supplier under Article 28: rebuttable presumption unless marketplace responsible for payment, delivery or setting terms and conditions

Distance selling

- Taxation at destination when annual sales exceed the threshold: thresholds differ between Member States
- VAT registrations may be required in other EU Member States

New regime

ESS

- Rules continue to apply as per 2015 regime
- Deemed reseller provision widely applied
- MOSS will also cover general services supplied by non-EU suppliers

Distance selling

- Harmonised distance selling threshold of €10,000
- Extension of MOSS to cover distance sales
- VAT due in destination Member state even where supplier only indirectly intervenes in shipment

Changes under the e-commerce directive

Current regime

Imported goods/place of supply

- Liability for import VAT depends on importer of record
- Import VAT exemption for low value goods (€22) – subject to potential fraud

Marketplace liability (see section 2)

- Marketplaces not liable for VAT on sales by third parties through their website
- JSL provisions

New regime

Import goods/place of supply

- Extension of MOSS ("IOSS") to cover imports of an intrinsic value not exceeding €150, where delivered to consumers
- Reform of import VAT accounting:
 - Exemption from import VAT where VAT declared under IOSS
 - Abolition of low value consignment relief and introduction of special accounting scheme for postal packages – see section 3
 - Existing regime applicable to shipments exceeding €150, but subsequent sale may be subject to MOSS
 - Risk of double taxation for goods imported for onward shipment

Marketplace liability

- Introduction of deemed reseller rule for marketplaces on:
 - intra-EU sales by non-established suppliers; and
 - Goods imported subject to the IOSS.

New regime for intra-EU transactions (B2C)



- Compliance benefits
- MOSS
- Cost efficient
- Uniform application of services
- Deduction via same system



- Changing landscape for marketplaces (OSS) of non-EU companies
- (Designated) intermediary necessary for non-EU companies
- Shifting VAT liability and compliance obligations
- Compliance burden
- Credit system to be determined
- Simplification?

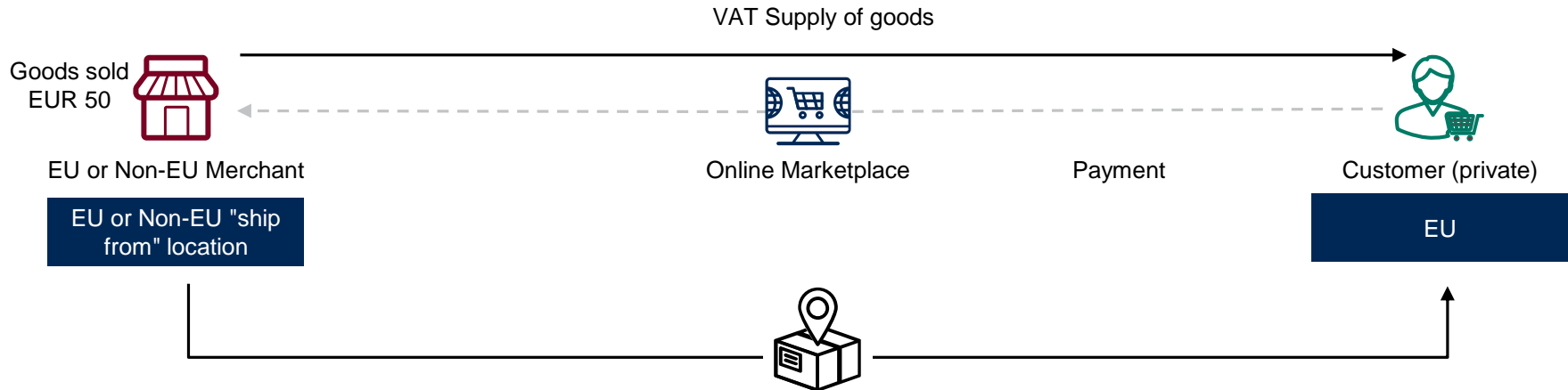


2

Online Market Places: Deemed Reseller and VAT Liabilities

Current rules for sales via online platforms

- No deemed supplies
- Some Member States introduced joint liability/ data sharing obligations



New EU VAT rules as of 1 July 2021



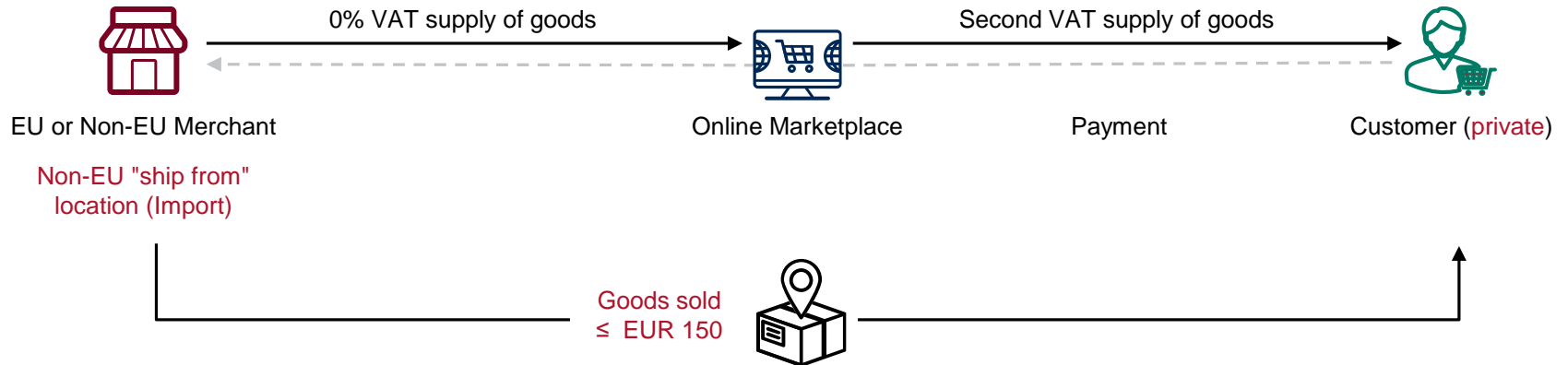
What is changing?

- Online marketplaces will be deemed to have received and supplied goods
- Applies to:
 - B2C sales of goods **located in the EU** by a **non-EU supplier**; and
 - B2C sales of **imported goods** of an intrinsic value not exceeding **EUR 150**



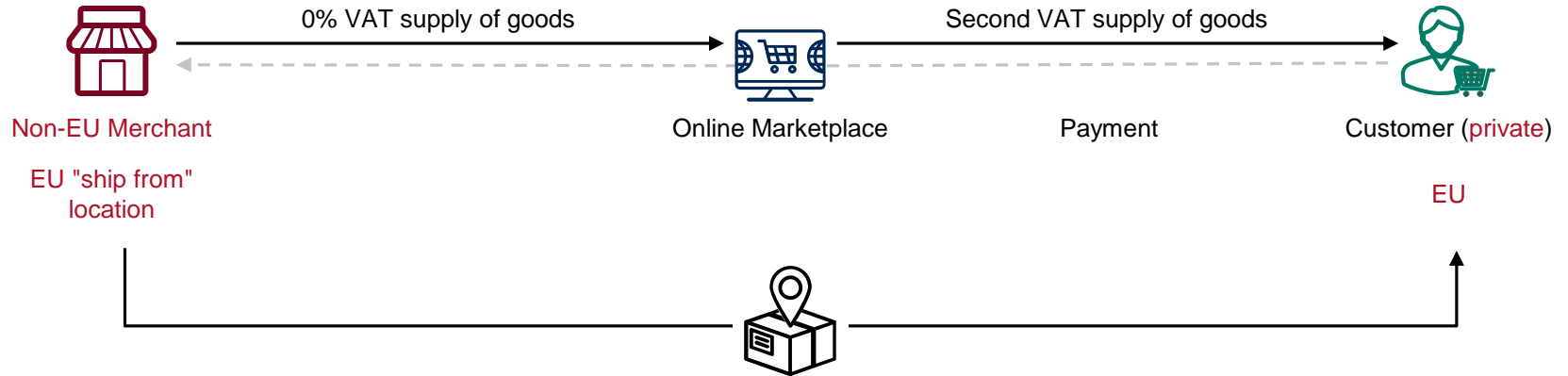
New EU VAT rules as of 1 July 2021

➤ Scenario 1: imported e-commerce sales through online platforms <EUR 150

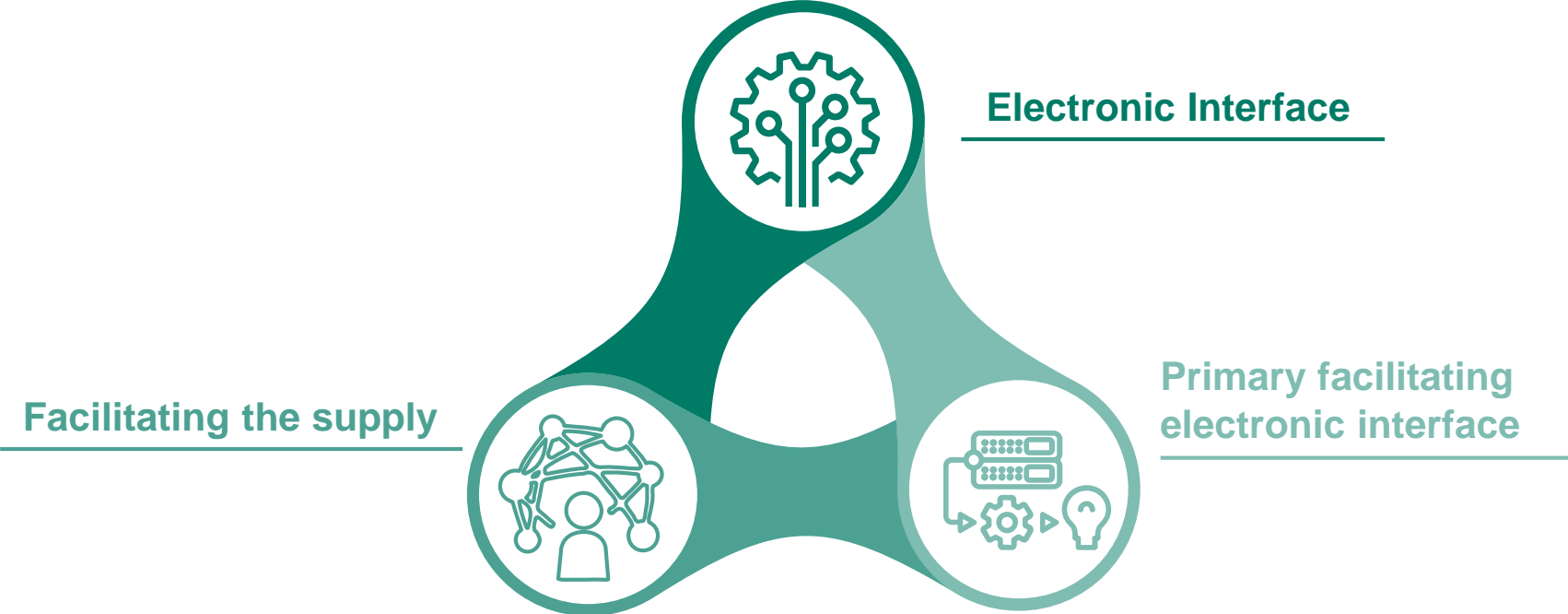


New EU VAT rules as of 1 July 2021

Scenario 2: Intra-EU e-commerce sales through online platforms



Requirements to qualify as deemed reseller:



Consequences for online platforms:

➤ Collect VAT from customer

➤ Register for VAT

➤ Report and remit VAT

➤ Issue VAT invoices

➤ Collect and retain detailed information and documents

➤ Diligence checks

Sales through marketplaces: deeming provisions



- Helps to reduce compliance for sellers
- Less VAT registrations
- Reduces the risk of fraud
- Cost reductions



- Introduces complexity for marketplaces and sellers
- Requires a B2B supply by sellers
- Relies on compliance of non-EU marketplaces
- Risk of fraud upon import remains

- Which marketplaces are concerned?
- Will law be rendered obsolete by alternative business models and technological developments?
- How will seller compliance with B2B reporting be ensured?
- Liability for customs debt?
- Product liability and regulatory requirements?
- IOSS optional for direct imports
- Goods imported for on-shipment risk double taxation





3

Imported e-commerce purchases: EU

Introduced measures

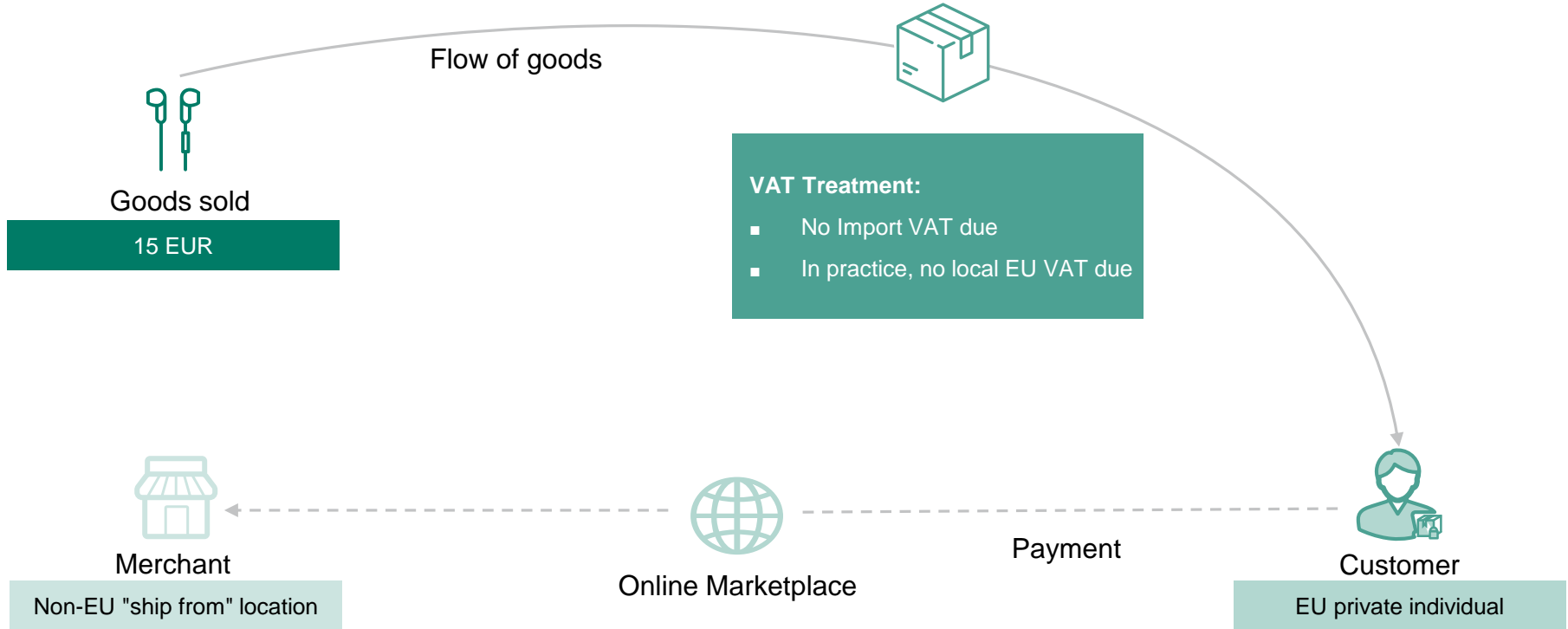
➤ Abolishment of import VAT exemption for low valued shipments

➤ Change in place of supply rules

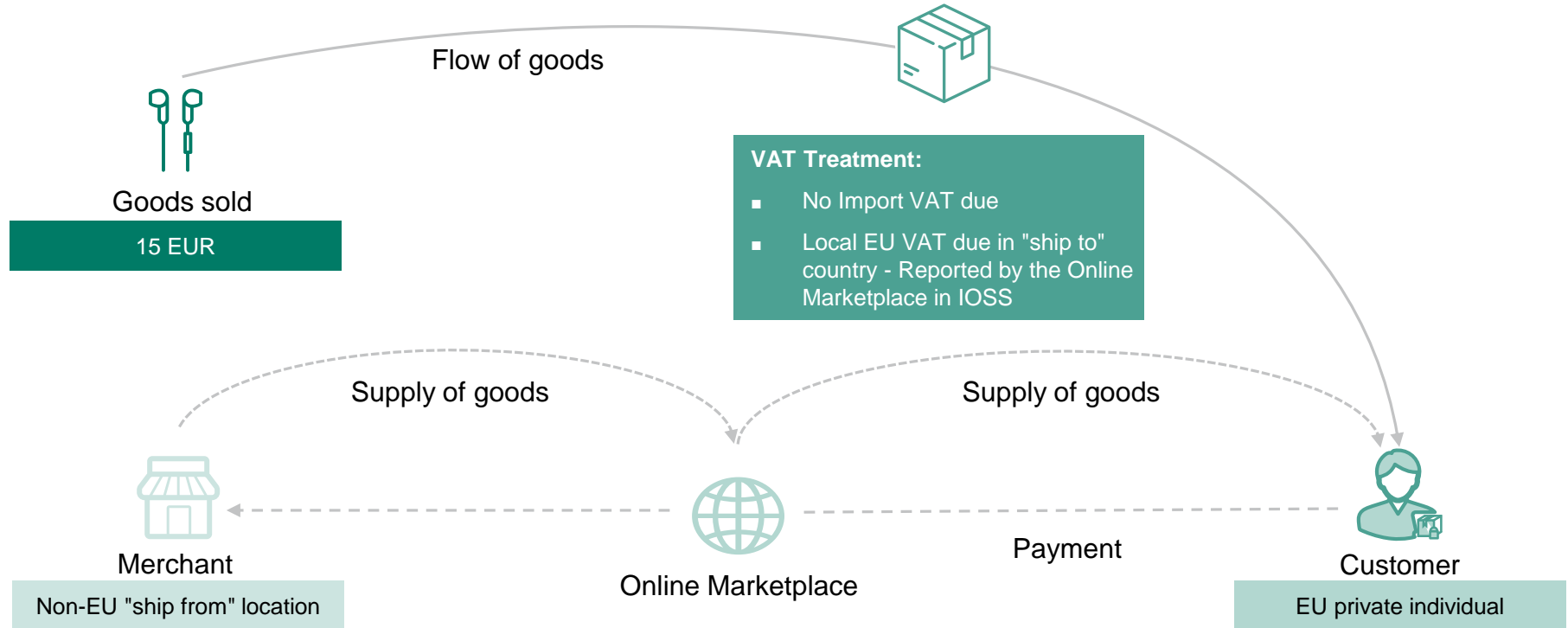
➤ Appointing reliable and EU-linked parties to collect, report and remit VAT

➤ Simplification of VAT reporting obligations

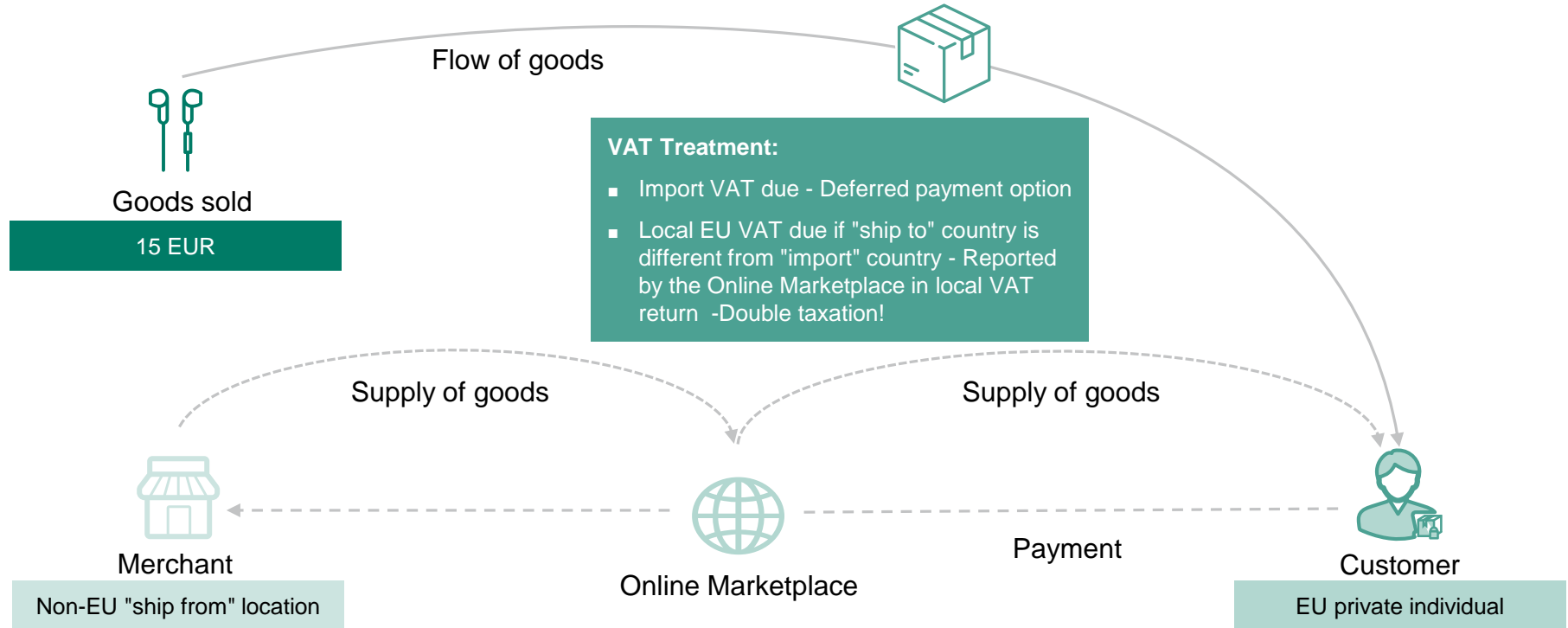
Current EU VAT rules for imported e-commerce purchases <EUR 22



New EU VAT rules for imported e-commerce purchases <EUR 150 with IOSS



New EU VAT rules for imported e-commerce purchases <EUR 150 without IOSS





4

Wider developments

UK e-commerce changes: impact of Brexit

➤ Hard border looks likely: introduction of import and export regime

➤ Postponed accounting introduced

➤ Distance selling regime abolished

➤ EU suppliers of digital services must register for MOSS in the UK

➤ UK suppliers of digital services must register for MOSS in EU

➤ Regime for services unchanged

UK e-commerce changes: new regime for B2C and marketplace supplies



Imported goods under £135 subject to VAT at the point of sale (reverse charge if customer is VAT registered) – VAT registration requirement



Online marketplaces required to account for VAT on B2C sales of imported goods under £135 (including for UK sellers), or goods are UK goods sold by non-established seller (regardless of value)



Complexity for Northern Ireland



Postal packets legislation

JSL – VAT liability for Market Places

Liability for marketplaces currently limited to JSL and data sharing obligations – which are increasing



JSL laws imposing liability for unpaid VAT

- UK, Germany



Data sharing obligations

- Consequences: JSL, penalties
- Require online platforms to share information and monitor compliance



Differing approaches

DAC7 Reporting

➤ Extension of tax transparency rules to digital platforms

➤ Based on OECD model rules of reporting for platform operators

➤ Reporting Platform Operator must perform due diligence on each Reportable Seller

➤ Includes an obligation to collect, verify and determine reliability of VRN by 31 December and report to the competent authority in one Member State by 31 January

➤ Penalties to be effective, proportionate and dissuasive



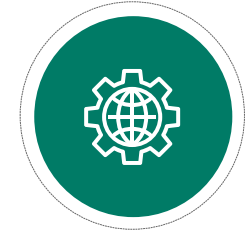
Digital services

Increasing requirement for registration globally



Digital service taxation

Unilateral rules with differing tax bases and rates



Global developments

E-commerce businesses subject to fast changing regulation with bespoke approaches required for different jurisdictions – leads to complexity and expense

A stylized world map with a green grid overlay, centered on the Atlantic Ocean. The map is rendered in shades of green and black, with the continents outlined in a lighter green. The grid consists of thin, light green lines forming a coordinate system. The word "Conclusions" is written in a bold, white, sans-serif font, centered over the map.

Conclusions

The image features a white speech bubble on the left side, containing the text 'Q&A'. The background is a dark green color with a fine grid pattern. There are also some abstract, lighter green shapes and lines scattered across the background, particularly on the right side.

Q&A



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