

Conference

‘Similarities between artist/sportsman taxation and pillar 1 (and 2) and how to learn from VAT developments’

Wednesday, 2 November 2022 | 13.30 – 18.00

Van Donge & De Roo Stadion (Excelsior soccer stadium), Woudesteinzaal

Comparative approach from the viewpoint of direct and indirect taxation. How can states cooperate to avoid loss of tax revenue, eliminate double taxation and minimize administrative expenses.

Programme

13:00 – 14:00	Registration	
14:00 – 14:10	Welcome – Maarten de Wilde (EUR, chairman)	
14:10 – 14:30	Introduction artist and sportsman taxation – Dick Molenaar	P. 3
14:30 – 14:50	Introduction taxation of global companies – Maarten de Wilde	P. 10
14:50 – 15:10	Problems with artist and sportsman taxation – Luis Dura	P. 15
15:10 – 15:40	Break	
15:40 – 16:00	Explanation of plans with Pillar 1 (and 2) – Stefaan de Baets	P. 23
16:00 – 16:20	Cooperation between states for collection of VAT – Anne Janssen	P. 26
16:20 – 16:40	Platforms for VAT returns and payments – Jurian Lock	P. 32
16:40 – 17:20	Panel discussion	
17:20 – 17:30	Conclusions – Maarten de Wilde (chairman)	
17:30 – 18:30	Drinks	

Conference Chair

➤ **PROF. MAARTEN DE WILDE**
Erasmus School of Law, EFS, PWC

Speakers

➤ **DR. DICK MOLENAAR**
Erasmus School of Law,
All Arts Tax Advisers

➤ **LUIS DURÁ GARCIA**
University Valencia,
Durá Tax & Legal

➤ **STEFAN DE BAETS**
PwC Belgium

➤ **ANNE JANSEN**
Erasmus School of Law, Deloitte

➤ **JURIAN LOCK**
University Leiden

Conference

‘Similarities between artist/sportsman taxation and pillar 1 (and 2) and how to learn from VAT developments’

On 2 November 2022, EFS is organizing its concluding conference for the two post-master programmes, in international and European tax law and in EU VAT. The theme of the conference will be: ‘Similarities between artist/sportsman taxation and Pillar 1 (and 2) and how to learn from VAT developments’. This subject will be approached from two sides: the side of direct taxes and from indirect taxes. Five speakers will give their views on the developments which are currently taking place.

States are working together to develop a new nexus for direct company taxation. It will not be based on permanent establishments, but on the sale of the services in the states of the consumers. The OECD has developed the system of Pillar 1 to divide the taxing right over the states involved. This looks similar to the taxation of artists and sportsmen with Article 17 OECD Model. What can these two tax systems learn from each other?

For VAT, EU states are already cooperating for the collection of taxes and exchange of information for a long time, while platforms are created where companies can declare their foreign sales and pay their VAT. Can these developments be examples for artist and sportsman taxation and Pillar 1 (and 2)?

We are pleased to invite tax professionals from the Netherlands and abroad working in consultancy and practice, for government authorities and tax administrations, international organizations, industry and academic world to attend this conference.

The conference will officially mark the completion of the two 2022 EFS post-master programmes, in international and European tax law and in EU VAT.



About EFS, Erasmus University Rotterdam

EFS, Erasmus University Rotterdam is a partnership between the tax departments of the Erasmus University Rotterdam's Schools of Law and Economics.

EFS has been a leading education and research institute in the fields of indirect taxes (VAT and customs duties) and direct taxes (personal, corporate and source taxation) in a European and wider international context for over 30 years. EFS aims to pursue and promote academic education and research exploring the implications of international, and particularly EU, law for national tax systems. As well as regularly hosting academic symposia, conferences and lectures, EFS offers a wide range of post-master courses and top-level seminars.

EFS programmes are taught by renowned professors and prestigious guest speakers, whose experience and reputation in their specialised fields guarantee high educational standards. The programmes are designed for tax specialists with several or more years of professional experience, with the diversity in the backgrounds of participants and speakers making EFS a unique network platform for exchanging knowledge.

For more information, please visit our website: www.europesefiscalestudies.nl

INTRODUCTION ARTIST AND SPORTSMAN TAXATION

Erasmus Fiscal Studies
2 November 2022 - Rotterdam

Dr. Dick Molenaar
All Arts Tax Advisers / Erasmus University
Rotterdam, the Netherlands

1

SPECIAL RULES ARTISTES/SPORTSMEN

- Art. 17 OECD Model: since 1963 - "because of practical difficulties"
- It sets aside Art. 7 (+ 14) and Art. 15. Therefore, no PE needed in the country of work and/or no exemption for employees going abroad with or for their employer
- Art. 17(2) since 1977: also payments to others than the artiste or sportsmen fall under Art. 17
- Measure to counteract tax avoidance and non-compliance

2

2

TEXT OF ARTICLE 17 OECD MODEL

ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Article 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Article 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3

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RESIDENCE STATE

- Art. 23 OECD Model – Elimination of double taxation with tax credit in the residence country
- Followed by most states, even when they have exemption method for active income
- This means extra tax in residence state if foreign tax is lower → up to normal progressive tax rates
- But ordinary credit, which means that foreign tax credit is limited to amount of residence state tax on foreign income

4

4

1987 OECD REPORT ABOUT ART. 17

- Clear expression of mistrust (§ 7 and 8):
 - “clear evidence of non-compliance”
 - “rarely disclose casual earnings”
 - “sophisticated tax avoidance schemes, many involving the use of tax havens, are frequently employed by top-ranking artistes and athletes”
 - “relatively unsophisticated people – in the business sense – can be precipitated into great riches”
 - “travel, entertainment and various forms of ostentation are inherent in the business and there is a tendency to be represented by adventurous but not very good accountants”
- No deduction of expenses, but gross taxation, although at a lower rate (§ 94)

5

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WITHHOLDING TAX RATES

- Austria 20%
- Belgium 18%
- France 15%
- Germany 16%
- Italy 30%
- Spain 19% (24% for non EU states)
- UK 20%
- USA 30%

- Denmark not
- Ireland not
- Netherlands 20%, but not for treaty states

7

7

UNILATERAL MEASURES

- Australia: right to deduction expenses, but obligation to file tax return at normal, progressive rates
- EU: deduction of expenses + option to file tax returns (after ECJ decisions)
- UK: right to deduct expenses + use personal allowance of approx. £ 11,500 p.p. per year, but obligation to file tax return at normal, progressive rates
- USA: right to deduction expenses, but obligation to file tax return at normal, progressive rates

8

8

NEW REASONS FOR ARTICLE 17

- Discussion draft at OECD in 2010 – 2014
- Input: delete Article 17, but OECD denied this in 2014

- Reasons for keeping the article:
 - ◆ Residence state does get information about foreign income
 - ◆ Top earners are moving to low-tax jurisdictions
 - ◆ Source taxation is easy to administer

- But these reasons are wrong
 - ◆ Enough information (bank, internet)
 - ◆ Low-tax jurisdictions don't have tax treaties
 - ◆ Source taxation is administratively problematic

9

9

BENEFIT PRINCIPLE

- Does Article 17 exist because of the tax revenue?

- Figures from Belgium – 11 million citizens:
 - 17 – 21 million euros per year
 - Years: 2014 - 2018
- Can be extrapolated to other states
- Conclusion: quite low

- On the other side: tax credits for residents entertainers and sportspersons with foreign income and tax

- Conclusion: tax earnings are nil on balance

10

10

ALTERNATIVES IN COMMENTARY

- Commentary on Article 17 OECD Model changed in 2014
- Options for exemptions and deductions:
 1. Limitation to business activities, exclude employees
 2. Deduction of expenses
 3. Minimum threshold of 15.000 per artiste per year
 4. Exemption for activities supported by public funds
- But hardly used, besides exemption for subsidized artists or sportspersons. But threshold of 50% subsidy is high.

11

11

OTHER MODELS

- UN Model – Article 17
- Same as OECD model, but not with 2014 Commentary, but old Commentary
- US Model 2016 – Article 16
- Two striking differences:
 - ◆ Minimum threshold in 16(1): \$30,000 p.p. per year
 - ◆ Limited approach in 16(2): only applicable when organizer can appoint the performing artist or sportsperson
- Many states accept this in tax treaties with US
- Also tax credit method in Article 23

12

12

CONTACT DETAILS

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13

13

BUSINESS INCOME TAXATION IN A GLOBAL ECONOMY

ERASMUS FISCAL STUDIES CONFERENCE, ERASMUS UNIVERSITY ROTTERDAM

2 NOVEMBER 2022 | 13:30 – 18:00 | VAN DONGE & DE ROO STADIUM (EXCELSIOR STADIUM)

MAARTEN DEWILDE, EUR, PWC

1

AGENDA

- Paradigm shift
- BEPS 1.0
- BEPS 2.0
- Future...

2

PARADIGM SHIFT

- Market liberalisation, globalisation, internet
- Austerity
- Societal criticism
- Fair share
- Taxation and (geo)politics
- Isolationism v. multilateralism

3

BEPS I.0

- G20 / OECD
 - Substance
 - Coherence
 - Transparency
- EU
 - Abuse of Law
 - ATAD
 - Unshell
 - DACs
- Tax certainty

4

BEPS 2.0

- BEPS 2.0
 - G7 / G20 / OECD / Inclusive Framework
 - Pillar One: Tax base re-division
 - Pillar Two: Global minimum level of taxation, and top-up taxation
- EU
 - Business Taxation for the 21st Century
 - CCCTB/BEFIT, P2-Directive, Digital, Own Resources Package, DEBRA, and more to come

5

PILLAR ONE

- Tax base to markets
- Amount A – new taxing right
 - Scope, nexus, revenue sourcing, tax base determination, profit allocation, double tax relief, rule status
- Amount B – fixed return for certain baseline marketing & distribution functions (ALP)
 - Scope, quantum
- Tax certainty
 - Dispute prevention and resolution

6

PILLAR TWO

- Global minimum level of taxation, and top-up taxation
 - Income Inclusion Rule (IIR)
 - Undertaxed Payments/Profits Rule (UTPR)
 - Switch Over Rule (SOR)
 - Subject to Tax Rule (STTR)
- Scope, ETR calculation, operation of mechanisms, rule ordering, rule status

7

FUTURE...

- What's in store?
- Implementation
- More details expected soon
- Implementation envisaged for 2023, 2024, ...
- Final destination or a stop along the route?

8

WRAP-UP

- Maarten de Wilde
 - dewilde@law.eur.nl
 - Check out my papers: <https://papers.ssrn.com/sol3/results.cfm>

Problems with artist and sportsman taxation

LUIS J. DURÁ
LL.B. University of Navarra
LL.M. International Taxation, Leiden University

November 2, 2022



1

TABLE OF CONTENTS

1. SCOPE
2. NEXUS
3. TAXABLE BASE
4. DOUBLE TAXATION



2

SCOPE

- ✓ No need of PE
- ✓ Subjective approach: Who
 - Models/influencers
- ✓ Objective approach:
 - Personal Activities / Entertainment



Overvaluation subjective approach

DU
RA Tax
Legal



3

SCOPE

FORCE OF ATTRACTION

- **Spanish Supreme Court-U2 Case (12/07/2012)**
- No analysis of personal activities as such
- Overall approach: Related to U2's performance in Spain
- Infection's theory: No attention to contracts or items of income
- Misinterpretation Par.3 & 4 Commentary on Article 17 OECD
- Ascertain items of income within Article 17

DU
RA Tax
Legal



4

SCOPE

PERPETUAL MUSIC CONCERTS BY ROLEX

- Pandemic time –support singers & musicians
- Three concerts in Pesaro, Berlin and at the Palais Garnier of the Opéra national in Paris
- Relevance of performance
- Worldwide visibility
- Classical music online streaming platform (medici.tv)
- Article 12: Broadcasting rights



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RA Tax
Legal

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NEXUS



- 1996/2006/2016 US Models
- 30,000 USD
- No personal allowance
- Gross income
- Advance approval/refund



- Article 17 Comm. (10.1-10.4)
- Option IMF 15,000
- Dynamic definition
- Refund mechanism
- Only Article 17.1
- Not applicable in practice

**MINIMUM THRESHOLDS
SMALL-MEDIUM SIZED ENTERTAINERS**

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RA Tax
Legal

6

NEXUS



ARTICLE 17 Commentary: Par. 10.1

*Some States may also consider that it would be inappropriate to apply Article 17 to non-resident entertainers or sportsperson who (...), during a given taxation year, derives only **low amounts of income** from activities performed in that State (...) may be taxed in that other State, except where the gross amount of such income derived by that resident from these activities exercise during a taxation year of the other Contracting State does exceed an amount equivalent to (15000 IMF Special Drawing Rights) (...).“*



ARTICLE 16.1 US MODEL (...) may be taxed in that other Contracting State, except where amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed thirty thousand United States dollars (30,000) or its equivalent in ----- for the taxable year of the payment.



7

TAXABLE BASE

- **Domestic law** (Comm. Par 10)
 - Gross income
 - No low WHT (24% Spain)
- Change in 2014
 - Option **net basis**
 - Not applicable in practice
- **ECJ Cases**



8

TAXABLE BASE

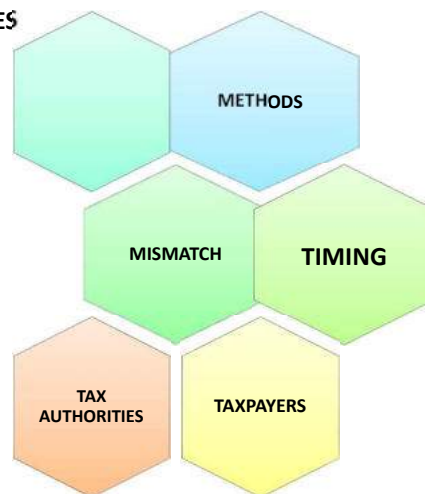
ECJ CASES

- Gerritse Case (C-234/01)
- Scorpio Case (C-290/04)
- Centro Equestre (C-345/04)
- Main conclusions:
 - Interaction EU freedoms vs. source taxation
 - Deduction of expenses at source
 - Filing tax returns should be allowed



DOUBLE TAXATION

DOUBLE TAXATION RELIEF MEASURES



DOUBLE TAXATION

- DTT aimed at relieving double taxation
- OECD Methods:
 - Imputation (credit): general rule
 - Exemption (certain DTT, Spanish Co, NL domestic relief DTT countries)
- Particular circumstances Article 17 OECD Model:
 1. Taxable gross income
 2. High WHT taxes
 3. Credit method

OVERTAXATION ARTICLE 17 OECD CONTEXT



11

DOUBLE TAXATION

TIMING

Non tax resident entertainers-
performances in Spain- **source country**:

1. WHT
2. **Tax Refund**



Spanish tax resident entertainers **worldwide**

performing:

Foreign tax credits-yearly tax return



12

DOUBLE TAXATION

MISMATCH



APPLICATION OF ARTICLE 17.1 & 17.2

- 17.1 In theory
- Choose between 17.1 & 17.2
- Taxpayer providing invoices



APPLICATION ARTICLE 17.1

- Application foreign tax credits
- Only to individuals
- September 24, 2021 Hoge Raad



13

DOUBLE TAXATION

TAXPAYERS

- Provide all information
- Burden of proof
- High administrative expenses

TAX ADMINISTRATION

- No use CRS
- Exceptional tax audits
- Reputational risk
- Secondary tax revenue - unknown

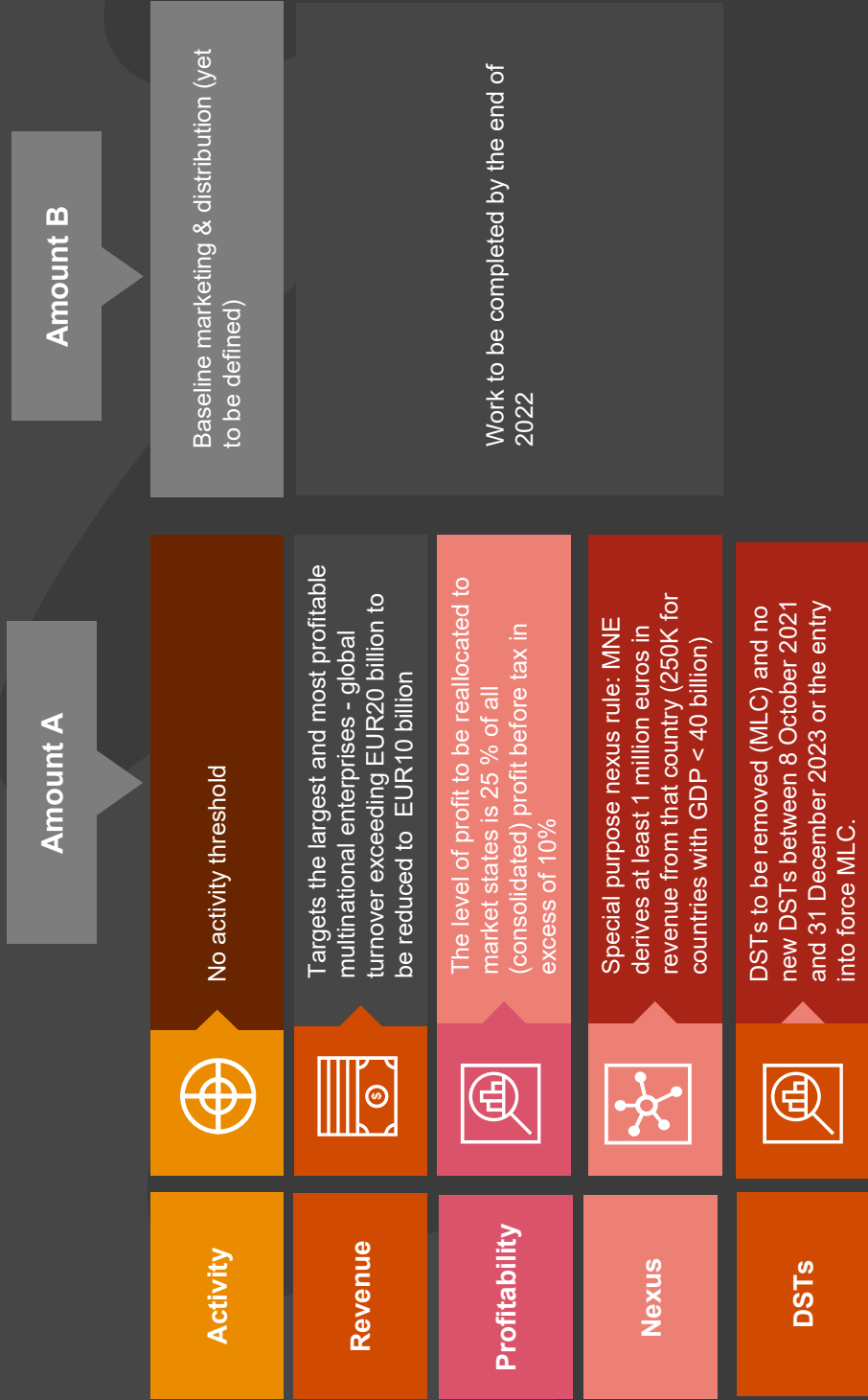


14



15

Pillar 1: Unified approach - Amount A & B



Pillar 2: GloBE in a nutshell

What?

- Introduction of a minimum tax - no matter where HQ is established
- Rate: 15% or higher
- MNEs with a turnover over €750 Mio

How?

- GloBE tax = top-up tax to the minimum tax of 15 %
- Income Inclusion rule (IIR) or Undertaxed Payment rule (UTPR)
- In addition Subject-to-tax rule (STTR) (and Switch-over rule (SOR)

Impact?

- Affected MNEs are mainly
 - Present in jurisdictions with no/low CIT rate or territorial regime
 - Present in jurisdictions offering preferential tax regimes with respect to certain income (e.g. IP Box, low taxed principal ...)
 - Difference between consolidated group accounts and local GAAP

Some issues

- Tax Certainty for Amount A (advance certainty panel, review panel, determination panel) → binding dispute resolution mechanism
- Tax Certainty for Issues related to Amount A (transfer pricing, PE allocation) → based on existing dispute resolution mechanisms
- Amount B: Said to be akin to TP – PE allocation
- In principle based on consolidated accounts
- Between taxpayer and TA and among TAs
- Do the tax authorities agree with
 - The determination and allocation as calculated under Amount A
 - The top up tax under Pillar II
- Specific returns for Amount A and Pillar II
- Eol needed – quid non treaty countries? MLC needed!
- Compliance cost for MNE substantial (adapting ERP systems) + potential of higher taxation (15 % minimum tax – possible higher taxation in market state)
- Compliance cost tax administration: legislative and implementation cost
- Revenue: impact assessments vary widely (some countries +, some ≈, some - -)

Tax certainty

Mismatches

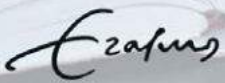
Returns & EOI

Financial impact

The Contribution of Trust to the Practical Implementation of VAT E-commerce Rules

A.D.M. Janssen LL.M.

Erasmus
University
Rotterdam



Introduction



LinkedIn

The wizard of OSS:
effective collection of VAT in
cross-border e-commerce



VAT e-commerce package causing confusion, say tax professionals

International Tax Review

Marketplaces Beware: Upcoming Enforcement on EU's VAT E-commerce Package

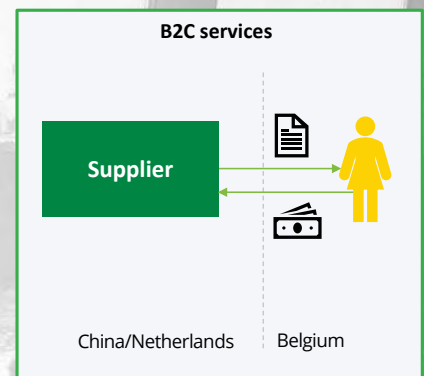
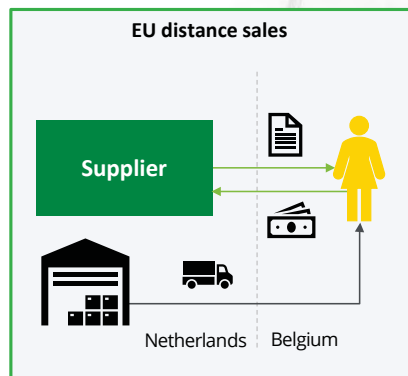
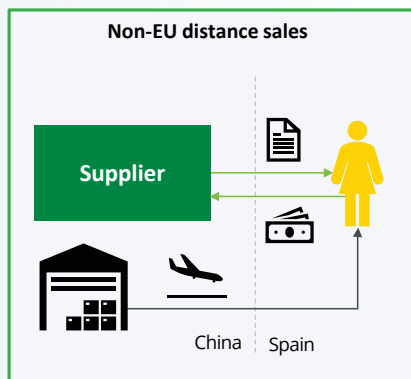
EU's Major VAT Reform Has Turned E-Commerce Upside Down: Part 1

Bloomberg Tax

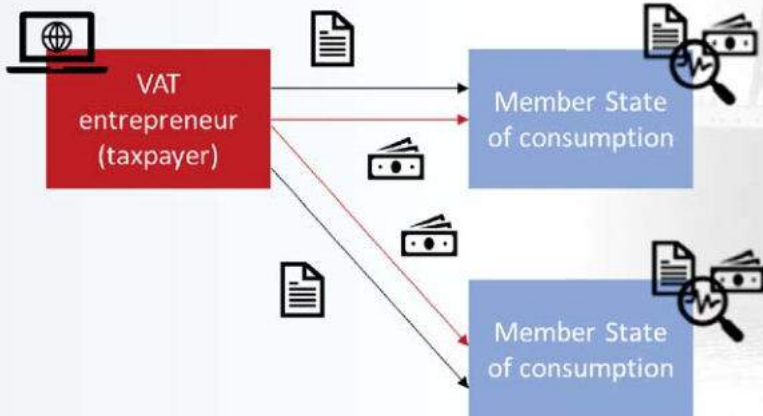


January 1, 2021

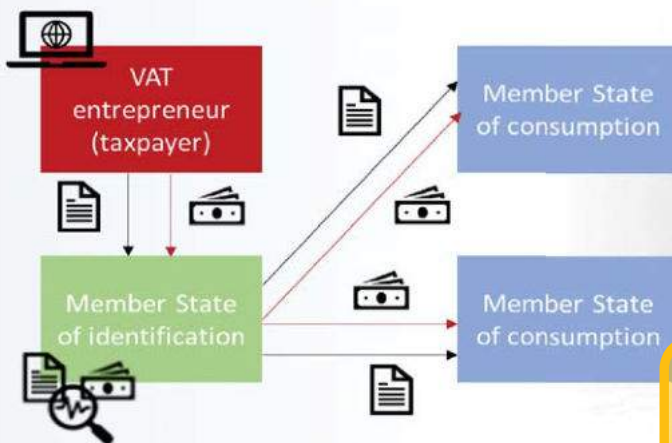
July 1, 2021



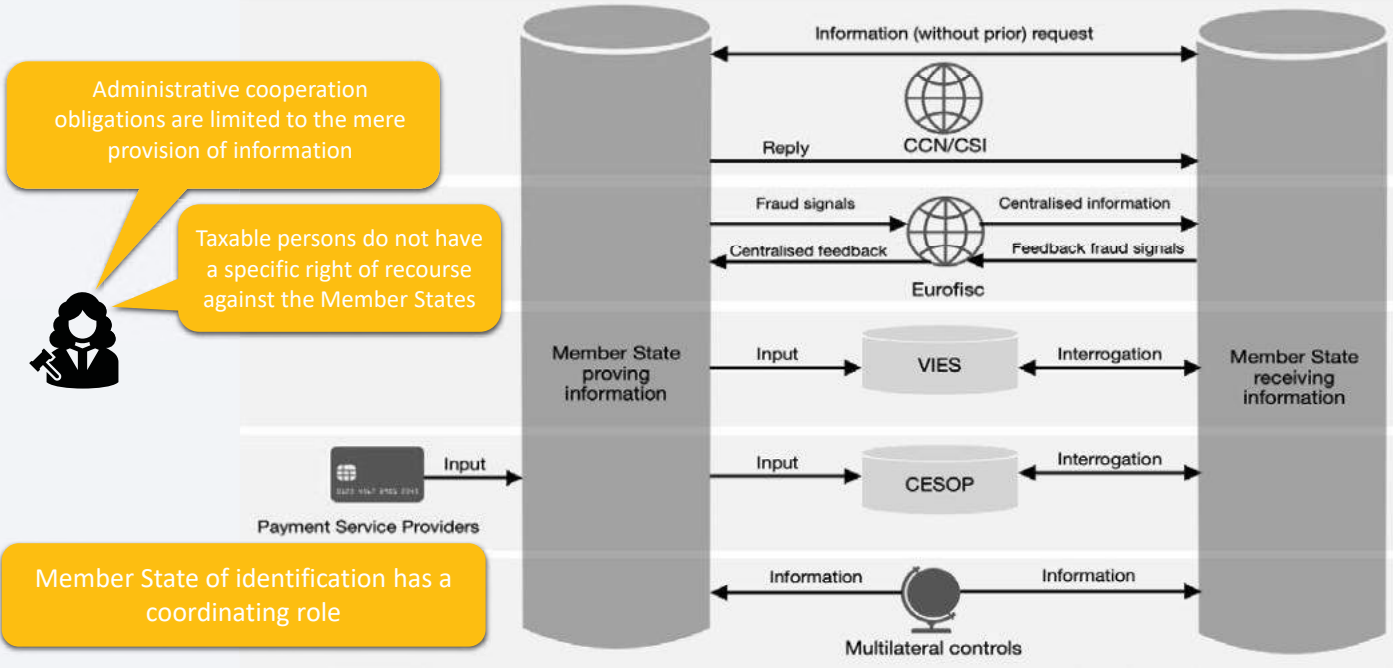
Without the (I)OSS system



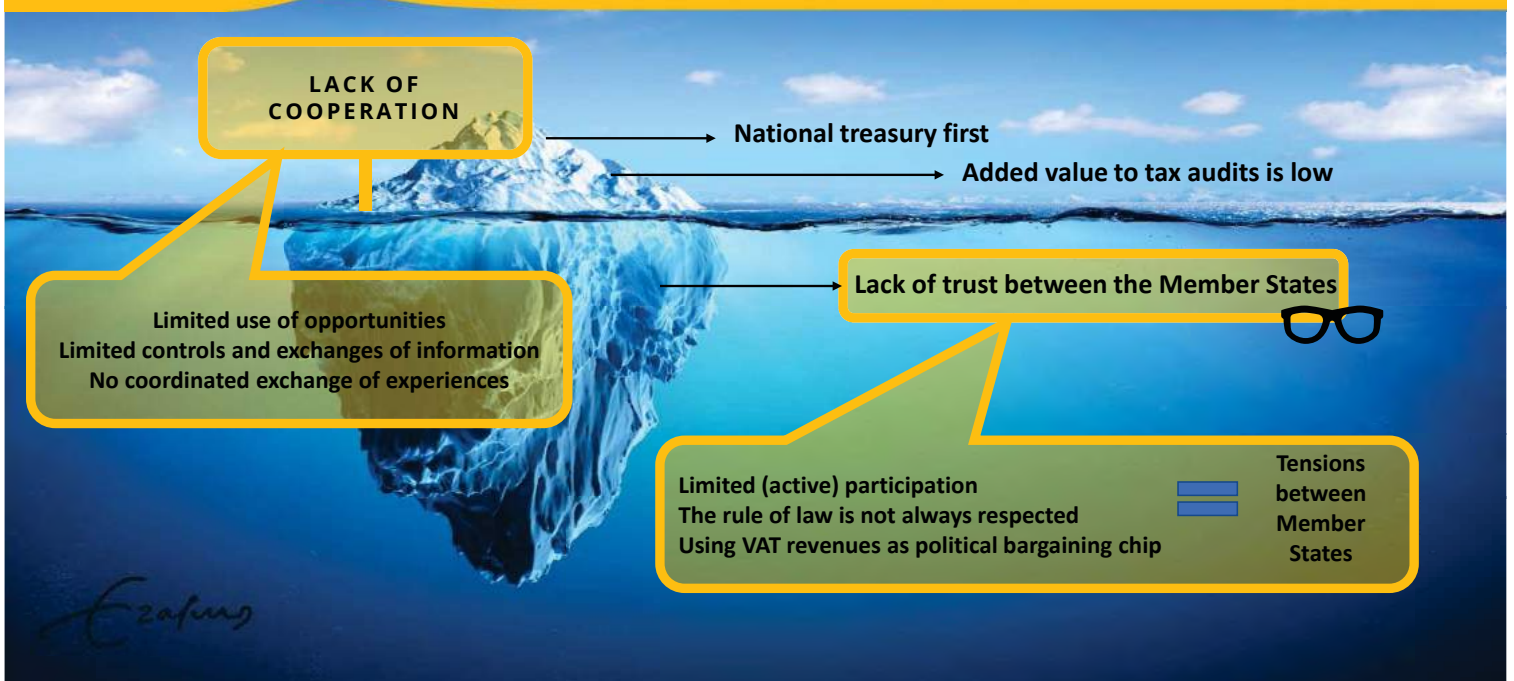
With the (I)OSS system

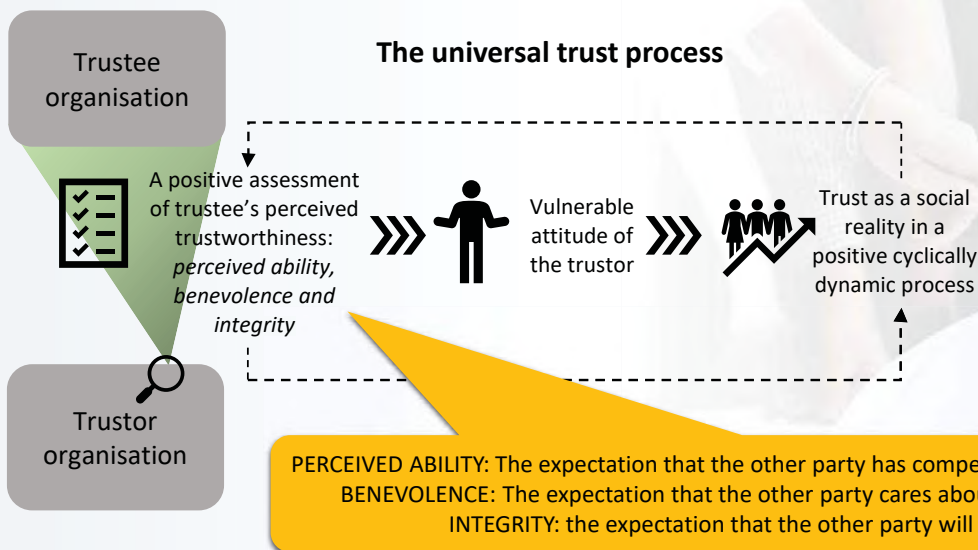
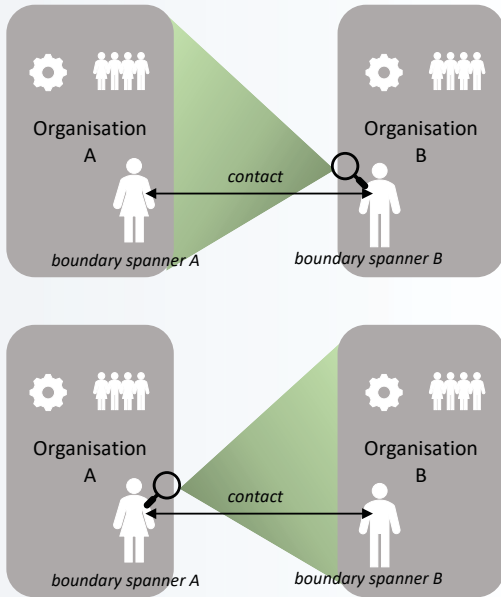


UNIQUE IN CONTRAST TO:
INTRA-COMMUNITY ACQUISITIONS
SUPPLY CHAIN TRANSACTIONS
CALL-OFF STOCK ARRANGEMENTS
INTERNATIONALLY PROVIDED B2B SERVICES



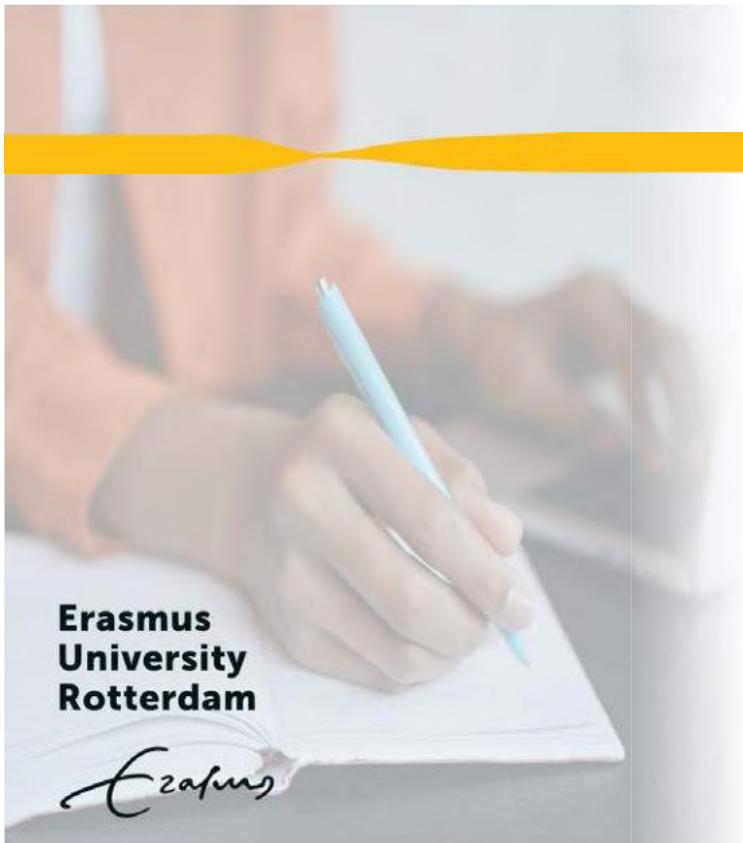
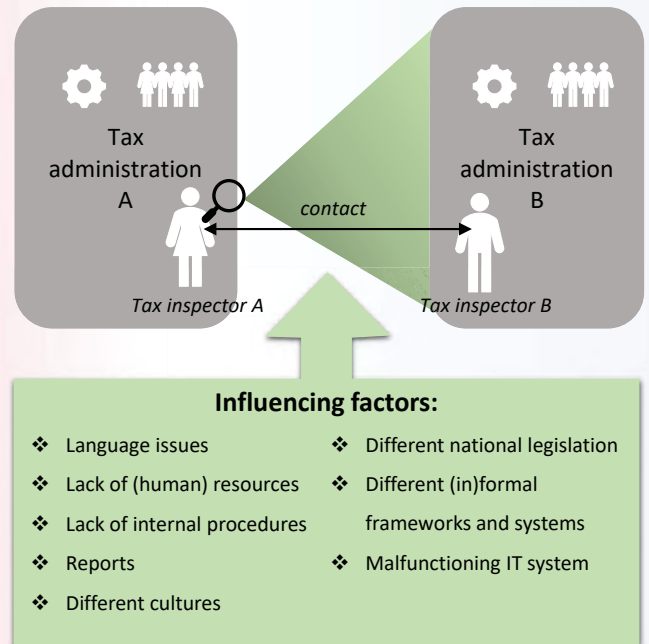
Problems regarding administrative cooperation







**THE USE OF TECHNICAL SOLUTIONS
& PARADIGM SHIFT**



Thank you!

Statement:

Trust between EU Member States is essential for an effective collection of VAT in a digitalized economy

Platforms for VAT returns and payments

Mr. drs. J.I.W. (Jurian) Lock
Rotterdam – 2 November 2022



Introduction: VAT and digitalization

Credit: Prof. Madeleine Merkx

Erasmus
University
Rotterdam



3

The EU's response to digitalization



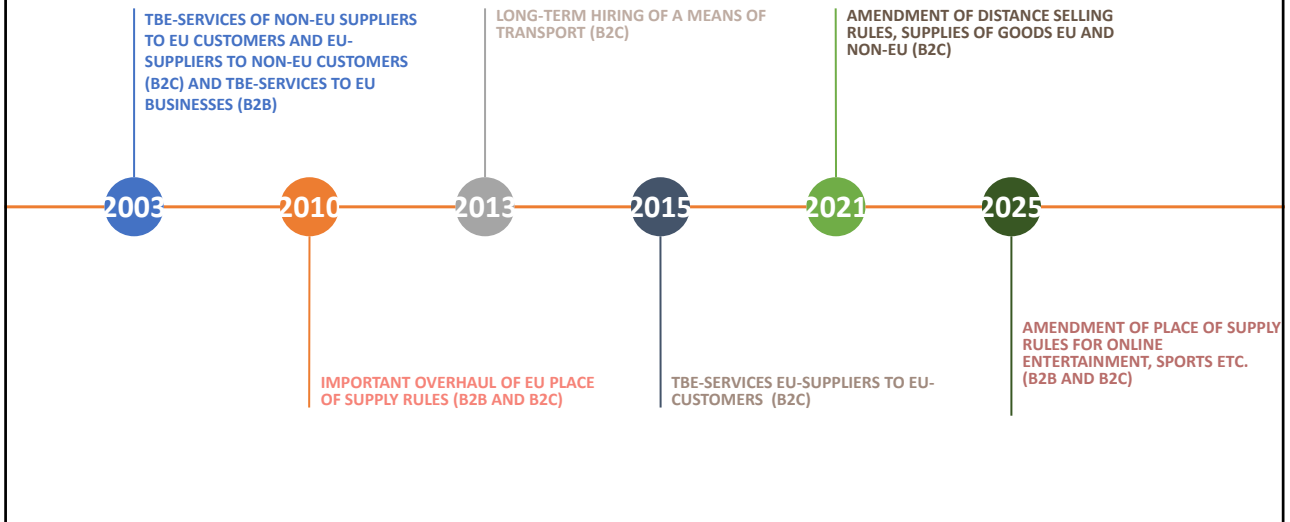
Place where the
supplier is established



Place where the
customer lives

4

The trend of the shift over time



5

The collection of VAT



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Difficulties and issues



Taxpayer's
compliance



2024: obligations for
PSPs to share
information with Tax
Authority



Administrative
cooperation



Resources



Expectations
and time



Culture & trust



Cooperation with non-
EU countries

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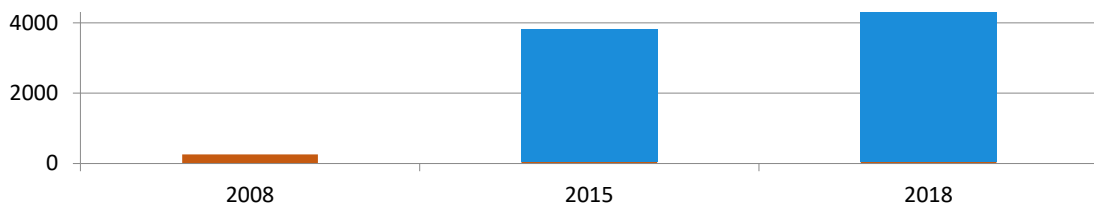
Platforms for VAT returns and payments

Mr. drs. J.I.W. (Jurian) Lock
Rotterdam – 2 November 2022



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Growth e-commerce x billion ¥



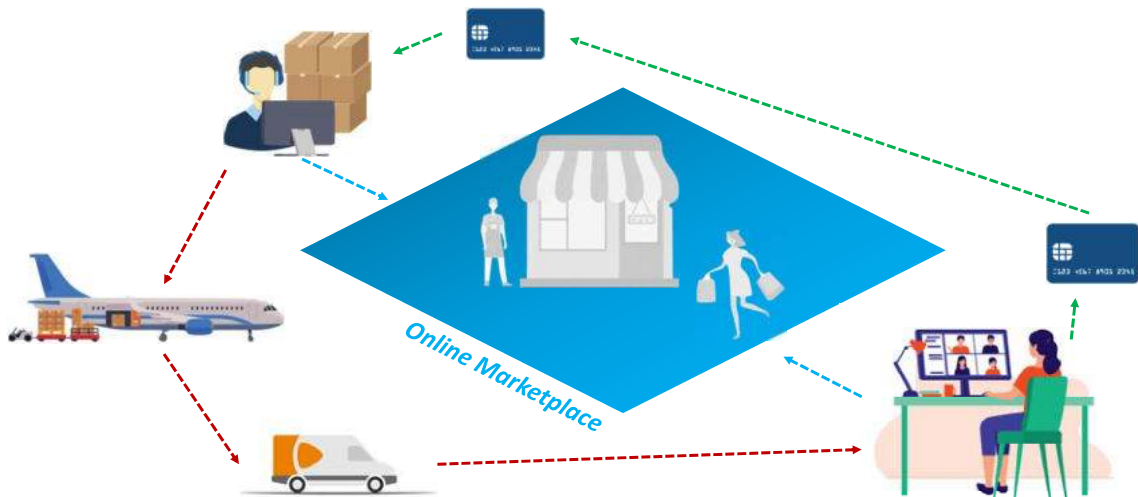
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E-commerce: distance sales



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E-commerce platforms / online marketplaces



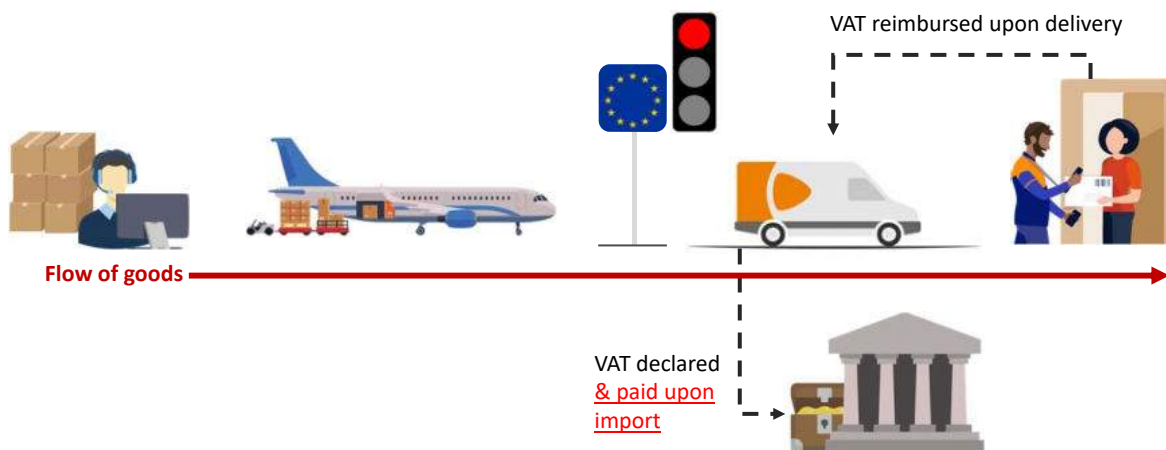
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2021 VAT rules

- Online marketplaces liable for VAT on certain facilitated sales
- New infrastructure for declaring VAT:
 - OSS, IOSS, Special arrangement

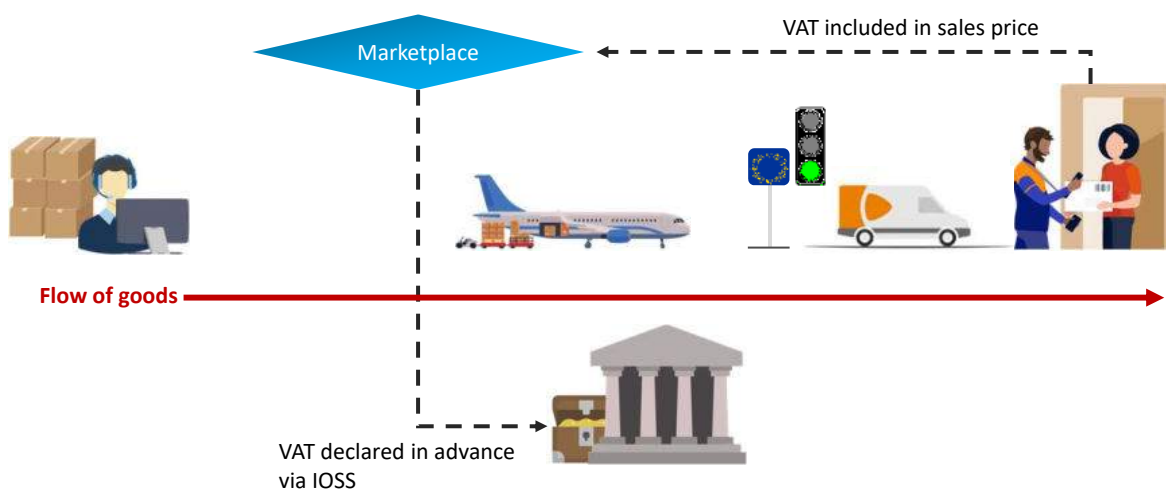
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Old situation: VAT-collection for distance sales (import)



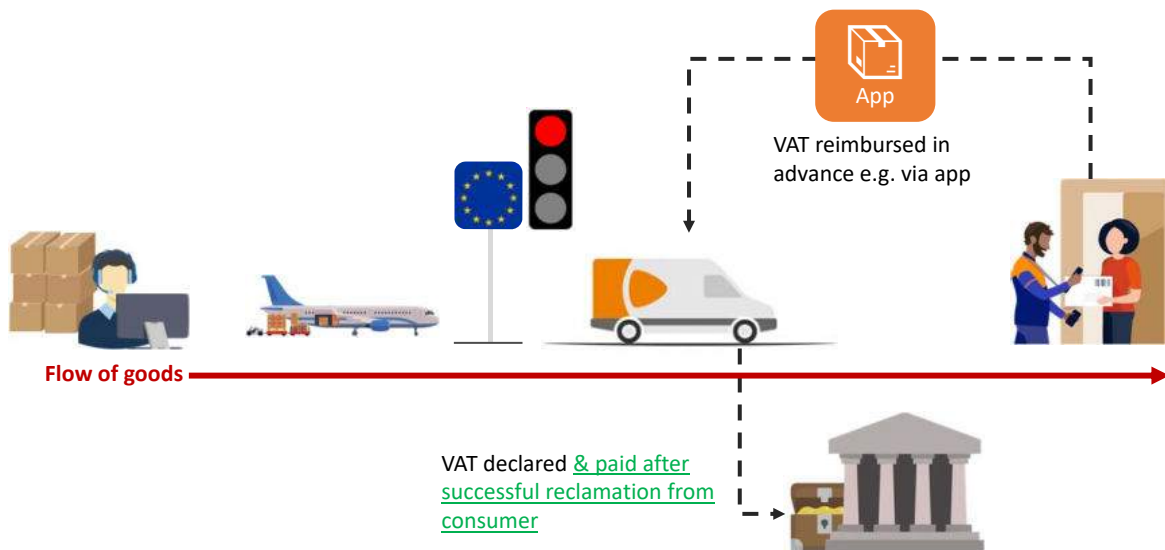
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New situation with IOSS



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New situation with Special Arrangement



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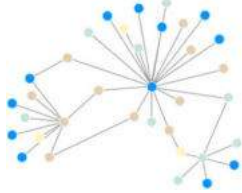
What can we learn?

- **Opportunities:** Digital technology creates issues, but also opportunities (e.g. tax portals and the option to have consumers reimburse VAT via an app).
- **Spill-over benefits:** Predictable, fast and reliable tax infrastructure provides spill-over benefits: faster logistics (fewer interruptions at the border), no hassle upon delivery.
- **Reduces VAT gap:** increased tax revenue.
- **Level-playing field:** more accessible compliance and improved supervision mitigates unfair price differences resulting from not levying (enough) VAT
- **More desirable tax collection:** honoring of the destination principle

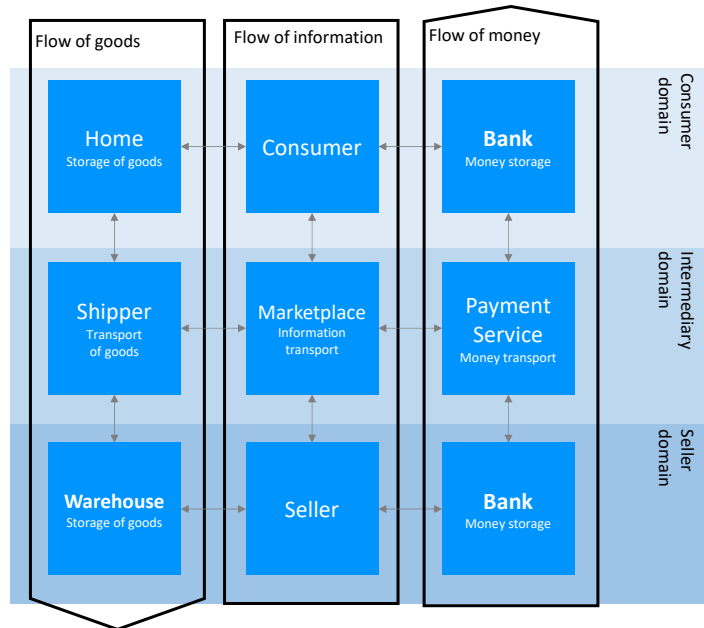
16

My research

E-commerce networks



Tax Technology



17

Is the new system perfect?

- Complexity & administrative burden
- Diverse range of online marketplaces (not all platforms involved in payment).
- Still a lack of complete and correct information
- Fraud (undervaluation) remains possible
- IOSS created new risk of **double taxation**
- International cooperation takes time
- System robustness: will it hold if the market changes?

18

Statement

Many online companies use technology to provide tailored services to their customers. States should follow this example and invest more resources in exploring technological solutions for tax collection.

E.g.

- Use of geolocation
- APIs

19

The end

- Contact: j.i.w.lock@law.leidenuniv.nl



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on LinkedIn



20