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Sunflower Accounts Limited • Chartered Certified Accountants
27 Poynder Place • Hilmarton • Calne •
Wiltshire • SN11 8SQ
T: +44(0)1249 760215 • M: +44(0)7735 363033 • info@SunflowerAccounts.co.uk •
www.SunflowerAccounts.co.uk

A guide to VAT Mini Stop One Shop (MOSS)

A SIMPLE GUIDE TO VAT MOSS

This is a basic guide prepared by the Technical Advisory Service for members and their clients. It is an introduction only and should not be used as a definitive guide, since individual circumstances may vary. Specific advice should be obtained, where necessary.

The European Union (EU) place of supply VAT rules will change for specific supplies from 1 January 2015. The changes impact Business to Customer (B2C) supplies of broadcasting, telecommunications and e-services (digital services) often referred to as 'BTE' supplies by changing the place of supply to where the customer is located. This is a complete reversal of the current situation which is determined currently by where the supplier is located.

Background

VAT MOSS was unanimously agreed by the member states in 2008, and has long been anticipated, so why is it being introduced? Currently intra-EU supplies of digital services to non-business customers are subject to VAT in the member state where the supplier belongs. From 1 January 2015 the place of supply will change to where the customer belongs.

The place of supply rule changes could lead to a digital services supplier having to register in each member state they make supplies and suffer the administrative burden that comes with it: that's a potential of 28 VAT registrations. The VAT MOSS will be implemented from 1 January 2015, giving the supplier an option of registering in just one member state and accounting for any VAT due to any member states through a single VAT MOSS return.

This should remove the incentive for businesses to locate offshore and level the playing field for all digital service suppliers. The aim is to reduce the administrative burden and associated costs of multiple VAT registrations.

There will be additional changes to the place of supply rules to align with other member states and to close minor loopholes used by certain anti-avoidance schemes.

This is the reason for VAT Mini One Stop Shop (MOSS); it saves having to register for VAT in every EU member state, where you supply broadcasting, telecommunications and e-services. Businesses may opt to use VAT MOSS for digital services made from 1 January 2015 and can be registered for VAT MOSS from 20 October 2014.

Defining digital services

This is an evolving sector and the list below is not exhaustive:

- broadcasting includes the supply of television or radio programs to a schedule by the person that has editorial control of those programmes
- telecommunications includes the services of sending or receiving signals by wire, radio, optical or other systems and includes fixed and mobile telephony, fax and connection to the internet
- e-services includes video on demand, downloaded applications, music downloads, gaming, e-books, anti-virus software and on-line auctions.

At this stage it is worth noting who is not affected by the changes:

- if you supply broadcasting, telecommunications and e-services, digital services to businesses only (including those who are self-employed) then these changes do not affect you
- if you are a business supplying digital services to consumers, these changes will affect you, so you need to start planning for them now
- if you supply digital services to a mix of businesses and consumers, then these changes affect you as far as the supplies to consumers are concerned
- if your customer does not provide you with a VAT Registration Number (VRN), and you have no other information that suggests that your customer is in business and VAT registered, you can treat this as a B2C supply
- if you supply consumers through an online store or gateway, and the online store or gateway is acting in its own name, then they will normally be considered to be supplying the consumer. This means that the online store or gateway will be responsible for declaring and paying any VAT due. You will be treated as supplying the store and so will be making a business to business (B2B) supply, rather than a B2C supply. If this is the case, these rule changes do not directly affect you.

Who is making the supply?

It is normally easy to determine who is making the supply, however in certain circumstances it is not so clear especially when supplied via an internet portal, gateway or marketplace. Care must be taken to determine whether the digital service is made to the customer or the platform. For example if the platform sets the general terms and conditions, authorises payment, delivery and does not clearly state the name of the supplier on the receipt or invoice then the platform is making the B2C supply even if the platform is only the agent.

Customer status

When determining the customer's status it is normal practice to obtain the VAT registration number, though there are alternative forms of evidence confirming business status. Certain EU countries will only accept a VAT registration number as proof of business status and it is up to the supplier to accept alternative evidence as a customer cannot convert a supply to a B2B supply unless they have provided the relevant VAT registration number.

The place of supply of digital services

It is important to identify the customer's establishment, which may be a permanent address or their usual place of residence. Article 12 and 13 of the VAT Implementing Regulations defines permanent address and usual residence. In some circumstances it is relatively easy to determine the place of supply of digital services, for example:

- through a telephone box/kiosk would be where the telephone box/kiosk is located
- on board transport travelling through various EU member states would be the place of departure for the customer
- through a customer's telephone landline would be where the landline is located
- through a mobile phone would be where the country code of the SIM card
- through a digital decoder would be the customer's postal address or where the decoder is sent or installed.

If a particular situation does not fit into one of the examples in reaching their decision of where the place of supply is, they are required to obtain and retain two pieces of non-contradictory evidence, for example:

- the billing address of the customer
- the internet protocol address of the device used by the customer
- location of the bank account
- the country code of SIM card used by the customer
- the location of the customer's fixed landline through which the service is supplied
- other commercially relevant information.

In order to determine the place of supply HM Revenue & Customs (HMRC) has recommended a three stage process:

1. determine whether a supply is a digital service
2. determine the place of supply
3. once point 1 and 2 are established determine whether an exemption exists as defined by the member state.

Transitional rules

The rules will come in from 1 January 2015 however, there will be some transitional rules particularly in relation to annual subscriptions.

Invoicing

Invoices need to be raised in accordance with each member state where the customer is located, however most member states like the UK do not require VAT invoices to be issued for cross-border B2C supplies.

Exchange rate

The Member State of Identification (MSI) is the state in which you have registered for VAT MOSS. If you invoice a customer in a currency other than your MSI the conversion rate used will be the one published by the European Central Bank (ECB) on the last working day of the calendar quarter.

Registering for the VAT MOSS Schemes

There are two types of VAT MOSS schemes, Union and Non-Union. Already registered in the EU, you can use the Union VAT MOSS online service from 1 January 2015.

For businesses that have no EU establishment and make supplies to the EU of digital supplies there was only the VAT on E-Services (VoES) registration available. From October 2014 there will be the non-Union VAT MOSS for supplies from 1 January 2015.

Registration is open to B2C digital suppliers from 20 October 2014 in any member state where you have a business establishment.

Similar to group VAT accounting, VAT MOSS will be available to groups, with the representative member registering and only one member of the group being allowed to register for VAT MOSS. On applying for VAT MOSS, any application must state that they are a member of the group. Other members of the group as with normal VAT groups will be able to use the VAT MOSS.

Due to the complications and different treatments of VAT groups across the member states, it has been agreed that when a VAT group registers for VAT MOSS any ties with VAT group members in other member states will be broken, only for VAT MOSS purposes. Also if a member of a VAT group has or will have a fixed establishment in another member state, those ties will be broken, only for VAT MOSS purposes. In this instance any supplies from that fixed establishment cannot be declared on the VAT MOSS return.

For further details on how to register for VAT MOSS please view guidance from GOV.UK <https://www.gov.uk/register-and-use-the-vat-mini-one-stop-shop>

De-registration

A business can voluntarily deregister at any point, however you will not be allowed to re-join the scheme again in any member state for two calendar quarters. In addition once a business chooses a MSI then the minimum period it needs to be used for is two years unless the business structure changes in such a way that an immediate change is required.

To remain in the scheme a business needs to comply with the legal requirements of its use, such as submitting declarations and making payments on time. For example, not making full payment within 10 days for three consecutive quarters would be a breach of the rules.

VAT MOSS returns

VAT MOSS returns and payment need to be submitted within 20 days of each quarter, the reporting periods are:

- 1 January to 31 March
- 1 April to 30 June
- 1 July to 30 September
- 1 October to 31 December.

There will be no flexing of the due date even if it falls on a bank holiday. If there is a period which resulted in no sales then nil returns will be accepted.

On the VAT MOSS return you will need to include the digital supplies at standard and reduced rates and the Commission will be publishing a full list of VAT rates in the EU's website.

http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm

There are no additional requirements to complete EC Sales Lists in connection with B2C digital service supplies. As there is no de-minimis therefore even low value sales will need to be declared.

Correcting returns and records

Unlike UK VAT returns corrections to the VAT MOSS returns will be made to the original return. The time limits for making amending returns will depend on each member state and as the VAT MOSS rules are not meant to override the national rules. Each return can be amended up to three years in accordance with Regulation 967/2012, Article 61 paragraph 2.

VAT MOSS records are expected to be kept for a period of 10 years and any request to see or audit records will be coordinated through your chosen MSI. Record keeping penalties will be dealt with in the same way as other penalties by your chosen MSI.

If your payment is not received within 10 days after the due date then a reminder will be sent.

Penalties

There will be special coordination between member states from 1 January 2015, in addition there will be greater coordination with non-EU jurisdiction through bi-lateral Treaty arrangements.

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