

EU: 2015 Place of
Supply Changes
Changes to the VAT place
of supply for e-services



EU: 2015—Changes to the place of supply

From 1 January 2015, supplies of telecommunications, broadcasting and electronically supplied services made by EU suppliers to private individuals and non-business customers will be taxable in the Member State of the customer. Current rules provide that the place of taxation is where the supplier is located, but with effect from 1 January 2015 this will move to the place of consumption (i.e. where the customer is located).

This change is the final phase of the EU VAT Package, which introduced new place of supply of services rules for VAT in the EU and new intra-EU VAT refund processes. The first phase of the VAT Package came into force on 1 January 2010.

The one-stop shop or VAT on e-services (VoES) scheme will also be adjusted to align to the new rules with effect from 1 January 2015.

Overview of the new rules

Introduction

From 1 January 2015, supplies of telecommunications, broadcasting and electronically supplied services by suppliers located in the EU to private consumers and non-taxable customers (i.e. those that are not deemed to be “in business” for VAT purposes) will be taxable in the Member State where the customer is established, or has a personal address or normally resides.

Currently, where these services are supplied to non-taxable persons, VAT is accounted for by the supplier based on where it is established. Any VAT collected on such sales is simply accounted for on the supplier’s normal VAT return.

Relevant Supplies

An EU Implementing Regulation providing further clarity on what the affected supplies are is due to be published in the Official Journal shortly. The Regulation sets out definitions of what is included within each of the three categories of services affected by the changes. Further detail on these definitions can be found in Appendix A.

Customers

A supply of telecommunications, broadcasting or electronic services can be considered as being made to a non-taxable customer (‘B2C’) where the recipient is established or resident within the EU.

Current position

For EU-based suppliers, B2C supplies of telecommunications, broadcasting and electronic services to customers in the EU are currently treated as supplied where the supplier is established, regardless of where the customer is located. This means that a UK established supplier accounts for UK VAT on all B2C sales regardless of which EU Member State the customer is resident or established in. For telecommunications and broadcasting services, to the extent that a supplier’s customer enjoys the service outside of the EU, VAT may not be due on this aspect of the supply.

For providers of telecoms and broadcasting services established outside of the EU, B2C supplies of telecoms and broadcasting services are currently treated as supplied where the provider is established (subject to use and enjoyment provisions). This basic position may be altered to the extent that these services are used and enjoyed within the EU, in which case VAT may be applicable.

B2C supplies of electronically supplied services by suppliers established outside of the EU are treated as made in the Member State of the relevant customer. The existing One-Stop Shop scheme, also known as the VAT on e-services (VoES) scheme, provides affected suppliers with a framework or mechanism to account for any VAT due across these Member States.

The following tables summarise the current position in terms of place of taxation on B2C supplies:

Telecoms and Broadcasting	EU Supplier	Non-EU Supplier
EU Customer	Taxed where the supplier is located	Outside the scope of VAT
Non-EU Customer	Outside the scope of VAT	Outside the scope of VAT

The above position is altered where the effective use and enjoyment of the service would lead to a different tax result. For example, if an EU supplier is supplying telecoms services to a non-EU customer, the starting point would be that these services would be outside the scope of VAT. However, if the services are used and enjoyed in the EU, VAT would then become due.

E-Services	EU Supplier	Non-EU Supplier
EU Customer	Taxed where the supplier is located	Taxed where the customer is located
Non-EU Customer	Outside the scope of VAT	Outside the scope of VAT

2015 changes

As of 1 January 2015, B2C supplies of telecommunications, broadcasting and other electronically supplied services provided by suppliers in the EU and made to non-taxable customers within the EU will be treated as supplied in the EU Member State where the recipient of the service is established or usually resides.

Suppliers of such services will therefore need to determine where their customers are established or usually reside and will need to account for VAT at the applicable rate in that Member State. This is a requirement irrespective of where the supplier itself is established or registered for VAT. Therefore, suppliers may (but see alternative below) need to register for VAT in all EU Member States where they have customers. No minimum thresholds will apply and so making supplies to just one customer in one Member State will trigger a VAT registration requirement in that country.

As an alternative to obtaining multiple VAT registrations in each Member State where a supplier has a customer, affected suppliers may be able to opt to account for VAT across the EU via a single electronic declaration. This return can be filed with the tax authority where the supplier is established (the "Member State of identification"). This system is known as the Mini One-Stop Shop ("MOSS") scheme. The MOSS scheme will be similar to the one presently in place for non-EU suppliers under VoES and so will allow for the value of B2C supplies made in all 28 EU Member States to be reported on a single electronic return.

What do the changes mean?

To prepare for the changes coming into effect, businesses will need to consider:

- whether they make cross border supplies of telecommunications, broadcasting and other electronically supplied services;
- whether such supplies are made on a B2C basis, including how to decide if a customer is a non-taxable person;
- how to determine where B2C customers are located and any additional contractual provisions and systems changes that may be required to capture this information;
- changes that may be necessary to invoicing procedures, such as meeting the invoicing rules of other Member States;
- how they will charge and account for VAT at the correct rate;
- whether they are eligible to use the MOSS scheme across all Member States or whether local registrations will be required in some instances;
- any additional VAT compliance obligations that may arise in other Member States as a result of the new rules and how to effectively manage these obligations;
- how to determine who is the supplier of B2C content when this is delivered over mobile devices or through the use of multiple aggregators;
- the impact of different VAT rates across the EU on profit margins and any changes that may be required to pricing structures;
- the impact of any changes to pricing structures on customer behaviour; and
- the impact of supplying packages of goods and services to consumers (i.e. hard copy periodicals supplied with online access);

Understanding the changes

Identifying the location of the customer

The key issue for suppliers will be to correctly identify where their customers belong. This is so they can apply the correct rate of VAT. In order to try to provide both clarity and certainty on this point the regulations contain a number of presumptions which will have legal effect in all 28 EU Member States.

The first step in this process will likely involve determining if any of the presumptions laid down in the draft implementing regulations apply. There are four sets of conditions which, if met, can be relied upon to determine where a customer belongs:

Physical location

If a supplier of telecommunications, broadcasting or electronic services provides services at a fixed location such as:

- a telephone box;
- a telephone kiosk;
- a wi-fi hot spot;
- an internet café;;
- a restaurant; or
- a hotel lobby

where the physical presence of the recipient at that location is needed for the service to be provided, the place of supply will be presumed to be that location.

If this is on board a ship, aircraft or train carrying out a passenger transport operation, the country of the location shall be the Member State of departure of the passenger transport operation.

Fixed line

For telecommunications, broadcasting or electronic services supplied via their fixed land line, the presumption shall be that the place of supply is the place of installation of the fixed land line.

Mobile networks

For telecommunications, broadcasting or electronic services supplied through mobile networks, the presumption shall be that that the place of supply is the Member State identified by the mobile country code of the SIM card used when receiving those services.

Viewing cards

For telecommunications, broadcasting or electronic services, for which the use of a decoder or similar device or a viewing card is needed and where a fixed land line is not used, the presumption is that the place of supply is the place where that decoder or similar device is located, or if that place is not known, the place to which the viewing card is sent with a view to being used there.

If none of the presumptions are relevant then the supplier will need to obtain two pieces of converging evidence from the following list to support where the customer is resident:

- a) the billing address of the customer;
- b) the Internet Protocol (IP) address of the device used by the customer or any method of geolocation;
- c) bank details such as the place where the bank account used for payment is and the billing address of the customer held by that bank;
- d) the Mobile Country Code (MCC) of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) card used by the customer;
- e) the location of the customer's fixed land line through which the service is supplied to him; and
- f) other commercially relevant information.

On-going supplies spanning 1 January 2015

Many suppliers will make continuous supplies of the services affected by the 2015 changes. For example, annual subscriptions or memberships.

Where supplies are made continuously on an on-going basis, the place of supply in respect of each chargeable event that occurs before 1 January 2015 shall be the place where the supplier is established, regardless of when the supply or continuous supply is completed.

The place of supply in respect of each chargeable event that occurs on or after 1 January 2015 shall be the place where the customer is established, has his permanent address or usually resides, regardless of when the supply or continuous supply commenced.

Electronic supplies made via aggregators, mobile phones and market places

It will be necessary for some transactions to be able to correctly identify who is making the supply, in order to confirm who is liable to account for the VAT. Scenarios where this will be the case will include supplies made through telecommunications networks or online market places.

The draft legislation indicates that in such circumstances an electronic services provider which manages a market place or supplies telecommunications services will be treated as acting in its own name unless it is explicitly indicated and can be clearly demonstrated, both in terms of the contract and in the information provided to the customer, that it is some other person that is supplying the service. In effect, the default position is that market place operators (and similar businesses) will need to account for VAT under the new rules

For a different provider to be responsible it must be clearly identified as being the supplier on any invoice, bill or receipt issued or made available.

It should be noted, however, that a taxable person that is not an electronic services provider (i.e. where they only provide the processing of payments in respect of electronic services or telephone services provided over the Internet, including voice over Internet Protocol (VoIP)) who does not take part in the supply of electronic services or telephone services cannot fall within these provisions.

As a result, all suppliers should evaluate how they make supplies of their service when using third party agents or market places.

Alternative Mini One-Stop Shop Scheme (MOSS)

Summary

A business which is registered for MOSS will need to submit quarterly VAT returns detailing its sales of telecommunications, broadcasting and electronic services to non-taxable persons in other Member States, along with the VAT due. The returns will be filed in the business' Member State of identification (typically the Member State in which the business has its business establishment). These returns and the VAT payable will then be transmitted to the relevant Member State of consumption via a secure communications network.

The MOSS VAT Returns are additional to the 'normal' VAT returns a business renders to its Member State under its domestic VAT obligations. Hence, if it signs up for MOSS it will be incurring additional administrative burdens. It will also need to be able to separate from its accounting system the different types of supplies it makes.

MOSS will be available to businesses which are established in the EU (the "union scheme"). For businesses which are not established within the EU the current VoES scheme will be known as the MOSS "non-union scheme". Without MOSS, a supplier would be required to register in each Member State in which it has a customer.

That said, MOSS is an optional scheme for businesses and a business may choose to register in each EU Member State if it wishes. However, if MOSS is used then it must be applied in all applicable Member State (it is not optional on an individual Member State by Member State basis). The only exception to this is when a business also has an establishment in another EU Member State from which it makes relevant supplies. In that instance, those supplies should be declared on a domestic VAT return in that country, not via MOSS.

Registration

A taxable person who opts to use MOSS will register for it in the country where it has its business establishment or head office. The taxable person will be identified for MOSS with the same VAT identification number with which it is identified for its domestic VAT returns.

If a taxable person has not established its business in the EU, it can choose any Member State in which it has a fixed establishment to register.

A taxable person can only have one MOSS registration across the whole of the EU.

Returns

A taxable person using either of the special schemes will be required to submit, by electronic means, a MOSS VAT return for each calendar quarter. If there have not been any supplies in a period then a NIL return must be submitted. The MOSS VAT return and accompanying payment is required to be submitted within 20 days of the end of the period covered by the return.

The MOSS VAT return should contain the details of sales made across the EU by the taxable person using the scheme.

The Member State of Identification ("MSI") generates a unique reference number for each MOSS VAT return, and informs the taxable person of this number. This number is important, as the taxable person must make a reference to it when it makes the corresponding payment.

Payments

Any VAT is due to the tax authority in the country for which it has registered for MOSS. It pays one amount, for the total of the MOSS VAT return (i.e. in respect of every country where it has made supplies). The money is then distributed to other Member States by the tax authority in the MSI.

Invoicing

The supplier will need to adhere to the invoicing rules in place where the customer belongs. This means the supplier will need to be aware of the relevant rules in all the Member States where they make B2C supplies.

Audits

Suppliers will be subject to audits in respect of these supplies from the tax authority in each Member State where it makes supplies. However, any questions and the audit itself will be coordinated by the tax authority of the Member State in which it is established. That said, the foreign tax authority may be allowed to visit during inspections and the taxable person will have to consider how to manage that position (i.e. how will it present its information, what language will be used, etc).

How can Deloitte help?

Feasibility studies

- Analyse the impact of the 2015 changes on business activities and identify any changes that may need to be implemented to comply with the new rules.
- Provide advice on any additional guidance issued by either the European Commission or by the local tax authorities in the build-up to the change date and highlight any impact this may have on businesses preparation for the new rules.

IT and systems

- Assist with identifying necessary changes to accounting, billing and invoicing systems.
- Advise on the types of information and systems that may need to be implemented to correctly capture the place of supply.
- Review and identify any gaps in current systems, which may be unable to deal with the changes to the rules and consider manual work-around solutions or additional bolt on software where required.
- Testing of systems to ensure that they are compliant with new rules prior to going live.

Compliance

- Identify additional compliance responsibilities that will be created as a result of the new rules.
- Assist with registration for the Mini One-Stop Shop scheme and/or in other Member States where the customers are established.
- Compliance outsourcing using Deloitte's European Compliance Centre in Belgium

Advisory

- Help identify instances where the changes to the rules could potentially create complex issues for businesses in specific sectors.
- Assist clients in assessing the potential impacts of these changes on profit margins, pricing structures for such supplies and any impact on customer behaviour.
- Provide guidance on VAT implications for contractual terms for any B2C supplies of services affected by the changes.
- Advise on appropriate VAT related terms and conditions for the supply of content through mobile phones or similar devices so there is clarity as to who is required to account for VAT.
- Advise businesses on the advantages or disadvantages of the Mini One-Stop Shop scheme and determine whether this would outweigh any benefits of retaining (or indeed creating) separate VAT registrations in other Member States.
- Advise on practices for determining whether customers are likely to be non-taxable persons and how best to establish and capture where they are located for the purposes of the new rules.
- Assist with determining which return to use to report B2C supplies if a business already has VAT registrations or branches/ fixed establishments in other EU Member States.
- Advise on approaches to valuing bundles of products consisting of both electronic services and goods
- Assist businesses to understand and meet the invoicing requirements that may be required across the different EU Member States.

EU references

Title	Date
EU Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax	28/11/2006
EU Council Directive 2008/8/EC of 12 February amending Directive 2006/112/EC as regards the place of supply of services	12/02/2008
Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast)	15/03/2011
Council Regulation (EU) No 967/2012 of 9 October 2012 amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non- established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons	09/10/2012
Proposal for a Council Regulation amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services	06/06/2013
European Commission website: VAT on electronic services	

Appendix A

Telecoms

Existing EU Implementing Regulations state that “Telecommunications services” constitute the following services. This is neither a definitive nor an exhaustive list:

- a) fixed and mobile telephone services for the transmission and switching of voice, data and video, including telephone services with an imaging component, otherwise known as videophone services;
- b) telephone services provided through the Internet, including voice over Internet Protocol (VoIP);
- c) voice mail, call waiting, call forwarding, caller identification, three-way calling and other call management services;
- d) paging services;
- e) audiotext services;
- f) facsimile, telegraph and telex;
- g) access to the Internet, including the World Wide Web; and
- h) private network connections providing telecommunications links for the exclusive use of the client.

Broadcasting

“Broadcasting services” include audio and audio-visual content, such as programmes which are provided via communications networks, by and under the editorial responsibility of a media service provider for simultaneous listening or viewing to the general public on the basis of a programme schedule.

In particular, broadcasting will include the following services:

- a) radio or television programmes transmitted or retransmitted over a radio or television network; and
- b) radio or television programmes distributed via the Internet or similar electronic network (IP streaming) if they are broadcast simultaneous to their being transmitted or retransmitted over a radio or television network.

It should be noted though that broadcasting services will not cover the following:

- a) the provision of information about particular programmes on demand;
- b) transfer of broadcasting or transmission rights;
- c) leasing of technical equipment or facilities for use to receive a broadcast; and
- d) radio or television programmes distributed via the Internet or similar electronic network (IP streaming) unless they are broadcast simultaneously over traditional radio or television networks.

Electronically Supplied Services

EU VAT law does not include a definition of “Electronically Supplied Services” . However, Annex II of Directive 2006/112 provides the following indicative list:

- a) website hosting and maintenance of website programmes and equipment;
- b) software & of updating software;
- c) images, text and information and the making available of databases;
- d) music, films and games (including games of chance and gambling games);
- e) political, cultural, artistic, sporting, scientific, educational or entertainment broadcasts (including broadcasts of events); and
- f) distance teaching.

Further, Article 7 of Implementing Regulation 282/2011 states that the following supplies are also those of electronically supplied services:

- a) the supply of digitised products generally, including software and changes to or upgrades of software;
- b) services providing or supporting a business or personal presence on an electronic network such as a website or a webpage;

- c) services automatically generated from a computer via the Internet or an electronic network, in response to specific data input by the recipient;
- d) the transfer for consideration of the right to put goods or services up for sale on an Internet site operating as an online market on which potential buyers make their bids by an automated procedure and on which the parties are notified of a sale by electronic mail automatically generated from a computer; and
- e) Internet Service Packages (ISP) of information in which the telecommunications component forms an ancillary and subordinate part (i.e. packages going beyond mere Internet access and including other elements such as content pages giving access to news, weather or travel reports; playgrounds; website hosting; access to online debates, etc.).

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