

*Indirect Taxation
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*VAT E-COMMERCE PACKAGE AND MOSS
Changes that came into force as from 1st of January 2019*

On 5 December 2017, the Council of European Union adopted several changes regarding the place of supply rules for telecommunications, broadcasting and electronically supplied services as well as to the Mini One Stop Shop (MOSS) scheme which can be used to declare and pay VAT in a Member State on supplies of these services to non-taxable persons.

The purpose of these changes is to reduce the burden for small and medium-sized entities established in a Member State supplying such services to customers in other Member States, through introducing thresholds for reporting and obtaining corroborating evidence as well as through simplifying the invoicing rules for the specific services.

Background - Basic principles of the MOSS up to 31 December 2018

The place of supply of telecommunication, broadcasting and electronically supplied services (TBE services) supplied from a person in business (supplier) established in one Member State to non-taxable persons (B2C) (customer) established in another Member State as from the 1st of January 2015 was the place where the customer is established or usually resides.

The supplier of the services has the obligation to charge VAT on the services provided at the VAT rate applicable in the Member State of the customer. The Mini One Stop Shop (MOSS) came into force on 1 January 2015 allowing to the suppliers of TBE services

offered to customers in the Member States in which they do not have an establishment, to proceed with registration under MOSS in one member state and pay the VAT charged to that member state instead of registering in each member state that the customers are located.

Legislation applicable as from 1 January 2019

(i) Place of supply – EURO 10,000 threshold (Directive 2017/2455, Article 1, point (1))

An annual turnover threshold of Euro 10.000 is introduced from 1 January 2019, up to which the place of supply of relevant supplies of cross-border electronic services remains in the Member State where the supplier is established, has his permanent address or usually resides. The application of this threshold is subject to the following conditions:

- a) the supplier is established, has his permanent address or usually resides in only one Member State;
- b) he supplies TBE services to customers who are established, have their permanent address or usually reside in another Member State;
- c) the total value of TBE services supplied to other Member States does not exceed EURO 10,000 (exclusive of VAT) in the current and in the preceding calendar year.

The supplier has the choice to continue to apply the general place of supply (the member state of the customer), but if he chooses to apply that, he will be bound by this decision for two calendar years. Once the threshold is exceeded, the general rule applies with no exception.

Taxable persons that already use the MOSS system and whose total value of TBE services in the other member state is below or equal to the threshold can deregister from MOSS as from 1st of January 2019. A quarantine period of two calendar years will apply and during that period the taxable person will not be able to register for MOSS unless the threshold is exceeded.

(ii) EURO 100,000 threshold– one piece of evidence (Council Implementing Regulation (EU) 2459/2017, Article 1)

A taxable person (the supplier) established in one Member State supplying TBE services to a non-taxable person (the customer) in another Member State must, for most cases, keep two items of non-contradictory evidence to identify the Member State of the customer, which is the Member State where the supply is subject to VAT (the place of supply).

As from 1 January 2019, a threshold of EURO 100,000, has been introduced up to which one piece of evidence is enough to determine the place of supply. The application of this threshold is subject to the following conditions:

- a) the total value (exclusive of VAT) of TBE services provided by the supplier from his business establishment or a fixed establishment located in a Member State to customers who are established, have their permanent address or usually reside in other Member States does not exceed EURO 100,000 or equivalent in national currency in the current and in the preceding calendar year;
- b) the item of evidence is provided by a person involved in the supply of the services other than the supplier or the customer;
- c) the item of evidence should be one of the following:
 - the billing address of the customer;
 - the internet Protocol (IP) address of the device used by the customer or any method of geolocation;
 - bank details such as the location of the bank account used for payment or the billing address of the customer held by that bank;
 - the Mobile Country Code (MCC) of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM)card used by the customer;
 - the location of the customer's fixed land line through which the service is supplied to him;

(iii) Invoicing rules (Directive 2017/2455, Article 1, point (2))

As of 1 January 2019, a supplier using the MOSS scheme will have to follow only the invoicing rules of the Member State in which he is identified for MOSS purposes irrespective of the Member State of the customer, instead of applying the rules of each Member State where customers are located as depicted under the rules prior to 1 January 2019.

(iv) Non-Union scheme – Eligibility (Directive 2017/2455, Article 1, points (3) and (4))

Currently, a taxable person who is not established within the EU but who is registered or is obliged to register for VAT purposes in one of the Member States cannot use the MOSS scheme (neither the non-Union scheme nor the Union scheme).

As of 1 January 2019, such a taxable person will be allowed to use the non-Union scheme, which is the MOSS scheme for taxable persons not established in the EU supplying TBE services to customers in the EU.

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