



ALERT:
New VAT Rules
for the Supply of
Digital Services
December 2014

ALERT:

Significant new VAT rules for suppliers of Digital Services take effect from 1 January 2015

In order to comply with an EU Directive, the Government has announced impending changes to the VAT rules - effective from 1 January 2015 - that will have a significant impact on providers of digital services, both with regard to the amount of tax they need to pay and the administrative procedures they will have to follow.

I. What is changing?

With effect from 1 January 2015, changes will be made to the VAT “place of supply of services rules” involving business to consumer (“B2C”) supplies of “digital services” (which include e-services, broadcasting and telecommunications) that take place within the EU. From 1 January 2015, the place where these services are deemed to be supplied, and therefore taxed, will change from the place where the supplier belongs to the place where the customer belongs. This means that an EU business providing digital services to consumers within the EU will be required to account for VAT in each consumer’s EU country of residence. This is subject to the MOSS scheme described in paragraph 3 below.

For example, a French business supplying music downloads to private customers in the UK should currently charge French VAT on those supplies. From 1 January 2015, it would instead need to charge UK VAT. As well as having taxation implications, the changes will also raise administrative and data gathering issues for businesses.

2. “Digital Services”

The rule changes apply to supplies of “digital services” which include:

2.1. E-services

Electronically supplied services (or e-services) means services that are supplied over the internet, where the nature of the service means that its supply is automated, involves minimal human intervention and would be impossible without information technology.

Examples of e-services include:

- digitised products such as music downloads, video on demand, downloaded applications (or apps), gaming and e-books;
- web hosting or the provision of websites;
- remote maintenance of programs and equipment;
- software and upgrades; and
- advertising space on a website.

Examples of services that are not e-services for VAT purposes include:

- supplies of goods where the order processing is done electronically via the internet (this is classed as a supply of goods and not services, the internet being merely the tool used to sell the goods); and
- teaching services where the course content is delivered live by a teacher over the internet (webinars).

2.2. Broadcasting

This includes the supply of television or radio programmes to a schedule by the person that has editorial control of those programmes.

2.3. Telecommunications

This includes the service of sending or receiving signals by wire, radio, optical or other systems - and includes fixed and mobile telephony, fax and connection to the internet.

3. Registering for VATMOSS

To avoid the need for EU businesses to register for VAT in every country in which they have private customers, EU businesses will be allowed to register for the extended mini one stop shop ("MOSS") scheme that is currently only available to non-EU businesses supplying digital services to EU consumers. This means that EU based B2C digital suppliers registered under the extended MOSS scheme will be able to use the scheme to account for VAT on all of their B2C digital supplies to EU consumers, wherever they reside.

4. What does this mean for businesses?

The changes aim to remove potential distortions of competition arising from the fact that currently suppliers of digital services to EU consumers charge VAT on those services at the rate applicable in the supplier's home country - providing a competitive advantage to businesses (such as Amazon and Apples' iTunes) established in a country with a lower

VAT rate. This provides an incentive for businesses to set up establishments in low VAT countries, such as Luxembourg for example, and supply digital services from there. The changes also mean that the same VAT rules will apply to both EU businesses and non-EU businesses that supply digital services to EU consumers.

However, there will be an additional administrative task for EU businesses, which will now have to take account of the VAT rates in each member state where they supply consumers with digital services. The rules focus on where the customer usually resides, and therefore MOSS registered businesses are required to collect and keep in their records sufficient evidence of where each customer normally lives. These records must be kept for a period of 10 years from 31 December of the year during which the transaction was carried out.

Businesses may therefore wish to review their terms and conditions and privacy policies accordingly. The requirements to store customer records also mean that UK-based suppliers of digital services to consumers may need to register as a data controller with the Information Commissioner's Office, if they have not already done so.

Supplies via internet portals, gateways or marketplaces

For businesses supplying digital services to consumers via an online marketplace (such as Google Play or iTunes), it is important to determine whether the business is making the supply to the end customer, or to the platform operator. Where the platform operator:

- sets the general terms and conditions;
- authorises payment or delivery; or
- does not clearly state the name of the supplier on the receipt or invoice issued to the consumer;

then the platform operator will be seen as making the B2C supply (even if they are contractually only an agent). In this situation, the new VAT rules would apply and the supplier's provision of services to the platform operators would be subject to VAT business to business ("B2B") rules. Normally, B2B services are taxable where the customer is based. This means if, for example, the supplier is in the UK and the business customer belongs in France, the business customer is required to account for VAT under the reverse charge procedure in France.

HMRC Guidance

HMRC guidance on the changes can be found at the following links:

[VAT: supplying digital services and the VAT Mini One Stop Shop](#)

Following concerns expressed by smaller UK companies (particularly those with turnovers below the current UK VAT threshold of £89,000), HMRC has also published guidance aimed at small and micro businesses:

[Revenue and Customs Brief 46 \(2014\): VAT rule change and the VAT Mini One Stop Shop - additional guidance](#)

For further guidance on MOSS including how to register please visit the following link:

[Register for and use the VAT Mini One Stop Shop.](#)

This Focus is offered on the basis that it is a general guide only and not a substitute for legal advice. Laytons cannot accept any responsibility for any liabilities of any kind incurred in reliance on this Focus.

If you wish to copy this focus sheet please do so, but please acknowledge its source. For further advice or more information, please contact your client partner or one of the team at the addresses set out below.