

## Cross-Border VAT Changes from 1 January 2015

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### INTRODUCTION

Fundamental changes to the way VAT is accounted for first took hold on 1 January 2010 when the first and most significant of changes collectively known as the “VAT package” came into force. These changes will now be a matter of routine for all who deal regularly with cross-border VAT issues. In recent years additional changes have come into force and on 1 January 2015 the final elements of the VAT package became law.

These changes affect a small, but not insignificant, range of businesses. For those which are affected, the implications are fundamental.

### WHAT ARE THE CHANGES?

The changes affect suppliers of broadcasting, telecommunications and e-services (together known as BTE services) to non-business consumers in other EU member states. This article considers the perspective of a UK business although the implications should be mirrored for affected businesses located in other member states.

Until 1 January 2015, suppliers of such services account for VAT under the “basic rule” applying to the provision of services to non-business consumers. That is to say, UK VAT is charged by UK based businesses to all EU non-business customers.

From 1 January 2015, the ‘place of supply’ shifts such that instead of VAT being charged according to where the supplier belongs, it is determined by the customer’s location. As such, a UK business supplying BTE services to a non-business customer in Spain is required to charge Spanish VAT.

### WHAT ARE BTE SERVICES?

Before considering the implications of having to charge non-UK VAT, it is necessary to establish what exactly BTE services comprise. Broadcasting and telecommunications are reasonably self-explanatory; they will include services such as radio and television programmes, live broadcasts over the internet, mobile telephone services, access to internet, etc.

However, E-services are likely to affect a much greater range of businesses, including many small and medium sized businesses.

The EU law definition of “E-services” includes the following, where supplied electronically:

- Website supply, web-hosting, distance maintenance of programmes and equipment;
- Supply of software and updating thereof;
- Supply of images, text and information and making available of databases;
- Supply of music, films and games, including games of chance and gambling games, and of political cultural, artistic sporting, scientific and entertainment broadcasts and events;
- Supply of distance teaching.

A more extensive list has been agreed by the EC VAT Committee. This list includes, amongst others, online data warehousing, accessing or downloading software, accessing or downloading photographic or pictorial images, the digitised content of books, web logs, access or downloading of music, downloads of games and web-based broadcasting.

### ACCOUNTING FOR VAT ACROSS THE EU

In order to charge Spanish VAT to a Spanish customer, a business would ordinarily be required to register in Spain and to complete Spanish VAT returns.

This could potentially be a significant administrative burden on a small business which has just a few customers in Spain and a few more spread across Europe. Moreover, the VAT registration threshold enjoyed by many small businesses in the UK (and equivalently elsewhere in the EU), which removes the need to register and account for VAT where sales are below a certain level, does not apply to businesses operating in a country in which they have no place of business.

Thankfully, there is a way to avoid the need to register in multiple jurisdictions. A ‘Mini One Stop Shop’ (MOSS) has been created to enable businesses to account for VAT due to tax authorities across the EU. MOSS allows a UK business to submit one quarterly return via a portal on HMRC’s website and to make a single payment of VAT to HMRC. It is then HMRC’s responsibility to distribute the VAT collected to the relevant EU Member States.

## ARE YOU AFFECTED?

Businesses supplying relevant services should consider the following key points:

- There is no de minimis threshold for MOSS; businesses that are not otherwise required to register for VAT are nevertheless caught and will need to register. A concession has been brought in, however which exempts those businesses from having to charge VAT on sales with a UK place of supply until the UK VAT registration threshold is breached.
- Registration for MOSS is done online via HMRC Online Services.
- The deadline for registration is the 10th day of the month following your first non-UK digital services supply.
- Pricing structures will need to be considered carefully; standard VAT rates range considerably across the EU, from 17% in Luxembourg to 27% in Hungary.
- MOSS returns are prepared on a calendar quarter basis and are due by 20th of the following month.

## NON-EU CUSTOMERS AND SUPPLIERS

The above rules apply only to suppliers which are based within the EU.

There is no change to the place of supply rules for BTE services supplied to customers outside the EU, where the place of supply is already determined according to the location of the customer, meaning no VAT is chargeable.

In the reverse scenario, non-EU businesses which make supplies to consumers in the EU, must already account for VAT according to the customer's location, in the same way that EU businesses will have to from 2015. A special registration scheme has been in existence for some time for such businesses, which is replaced by another branch of MOSS (known as the 'non-union scheme') from 1 January 2015.

## FAILURE TO COMPLY

The implications of failing to either register in the relevant EU country to which supplies are made or accounting for VAT via MOSS, may be very unappealing. Failure to account for VAT to the relevant authority is likely to mean a business will suffer late registration penalties in that country and will potentially need to recover VAT paid to HMRC (where applicable) as well as pay over the amount owed to the correct authority. Furthermore, the diversity of VAT rates may mean an additional financial hit which cannot be recovered from the customer.

## CONCLUSION

As more and more business is conducted via the internet, which lends itself easily to cross-border trade, many businesses may find themselves affected by the changes highlighted in this article. Once implemented and with proper systems in place, it should be possible to keep the burden on businesses to a minimum, but failure to adhere to the regulations could be very costly.

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