



Autumn 2014

## VATflash

# An update on the Mini One Stop Shop.

### DIGITAL SUPPLIES

We recently alerted you to the new Mini One Stop Shop (MOSS) VAT regime for supplies of digital products which is due to come into force on 1 January 2015. Information and guidance on the new regime is being released on a regular basis by the EU Commission and HMRC and it is clear that several aspects will have a significant impact on UK businesses which will need to be addressed.

Three fundamental principles need to be borne in mind when considering the impact of the MOSS regime for your business:

1. It only affects supplies to final consumers (B2C). It has no impact on business to business (B2B) transactions which are unaffected and continue with the normal VAT rules.
2. Businesses can choose whether or not to register for MOSS but, if they do not, they will have to register for VAT in every EU country where they have customers and file local VAT returns.
3. There are two separate but similar regimes. The 'Union' scheme is for businesses established in an EU country and the 'Non-Union' scheme is for those established outside the EU.

MOSS is a simplification therefore but like all tax systems there are conditions, catches and knock-on effects which need to be considered.

### MOSS REGISTRATION

Crucially, and unlike the system for normal VAT returns, there is no registration limit for digital supplies within the MOSS regime. It follows that if, for example, a UK business sells £1 of digital products to a final consumer in another EU country, the UK business will have to either register for VAT in that country, and file local VAT returns, or register for MOSS with HMRC.

Also, a business can only register for MOSS where it has its fixed establishment so, in the example above, the business can only register for MOSS in the UK.

An unintended side-effect of this will have a significant impact upon smaller businesses that may not be registered for VAT in the UK due to our high VAT registration threshold. Since a MOSS registration can only be applied for by VAT registered businesses, a small business in the UK will have to register for VAT first and then apply for a MOSS registration. Although this will deal with the EU supplies under the MOSS returns, the VAT registration itself will render all the UK sales subject to VAT when they were previously below the VAT registration threshold.

This could have a serious impact on small IT start-ups, App developers and freelance suppliers of digital services or downloads over the internet, who will all need to consider their exposure to MOSS and UK VAT registration as a result.

Non-EU businesses are able to choose in which EU country to apply for their MOSS registration and once registered will have a similar obligation to file MOSS returns and account for VAT at all the relevant VAT rates.

We understand that the online MOSS return will have a page for each EU country on which the supplier will declare the VAT due for that country or 'Nil' as the case may be.

The MOSS registration system is now available for applications ready for the system to go live on 1 January 2015.

### LOCATION AND STATUS OF THE CUSTOMER

Determining the location of the customer is vital as this will dictate which country's VAT must be accounted for and at what VAT rate.

**Presumption 1** - First, the supplier is entitled to presume the customer is a final consumer if he does not provide a local VAT number. This is important because if the supplier does charge and account for local VAT under the MOSS regime, the customer cannot reclaim it because, by definition, he is a final consumer and not a business. Later corrections have to be made to the original MOSS return.



The supplier will need to ensure that his invoices comply with the invoicing rules not of the UK, but of the customer's country.



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**Presumption 2** - Secondly, the supplier is entitled to presume that the location of the customer is where the customer is physically located when he downloads the digital product. For example, where his physical presence is needed, eg. at an internet café, wifi hotspot, restaurant, hotel, etc. or if he is aboard a ship, aircraft or train, the place of departure. For a mobile network, the country that issued the SIM card and for broadcasting services, the location of the TV decoder or viewing card. These, and others, are called 'rebuttable presumptions'.

The supplier is able to use a different location if he wishes to, for example, the credit card billing address, but will need two or three separate pieces of evidence to rebut the main presumption. The supplier is not obliged to depart from the main presumption and in many instances will only have the credit card billing address as alternative evidence which, on its own, would be insufficient anyway.

### SUPPLIES THROUGH INTERMEDIARIES AND AGENTS

One important aspect that goes to the heart of the MOSS regime is whether the supply is made to a business or a final consumer.

**Presumption 3** - Where the supply is made to an intermediary or agent, the supplier can presume that the intermediary acts in his own name and the supply is therefore business to business and outside the MOSS regime, unless this is specifically refuted in the agreements.

The relevance of course, is for those suppliers of Apps and digital downloads who sell through platforms such as iTunes, Google Play, Facebook, etc. Currently, the contracts used by the platforms differ in their arrangements as to whether the platform is acting as a principle or agent but it is believed that the main platforms are in discussion with the tax authorities to take on the obligation for the MOSS declarations. It follows that unless the agreements with the platforms specify otherwise, suppliers of digital products through the platforms can presume they are dealing with the B2C MOSS declarations and treat their own supply as B2B under normal VAT rules.

### RECORD-KEEPING AND INVOICING

In a major departure from the rules applying to normal VAT returns and record-keeping, the records supporting MOSS returns will need to be kept for ten years.

Also, when selling digital products to consumers in other EU countries, the supplier will need to ensure that his invoices, probably issued or receipted electronically, comply with the invoicing rules not of the UK, but of the

customer's country. Although many countries allow simplified VAT invoices for final customers, this is still likely to cause a major headache for suppliers, not least in the IT updates needed to their electronic systems and website shop windows.

### DISPUTES AND PENALTIES

One worrying aspect to the new MOSS regime is that although the MOSS registration is with HMRC, they only collect and distribute the VAT on behalf of the EU countries where the consumers are located. If there are any disputes over the amount of VAT declared in any particular country that is between the supplier and the relevant country.

UK suppliers may therefore find themselves tied up in disputes with several different EU countries if they dispute the amount of VAT declared. We can expect most EU tax authorities to communicate only in their own language so there is a huge likelihood of communications being misunderstood, deadlines missed, etc.

Disputes are subject to the rules in the relevant country and this has the potential to be a major burden on businesses. At the present time, there is no solution to this on the table but we will keep you updated as further guidance is published.

### BUNDLED SUPPLIES

We have referenced single vs. multiple supplies before and, unfortunately, the MOSS regime does not escape this.

Where a digital supply may be bundled or packaged with other supplies of goods or services, for example, a publisher providing hard-copy and online access in return for a subscription, then the package needs to be considered first to determine if the digital or electronic element is actually a separate supply in its own right. If it is, then it would fall under the MOSS regime, whereas if it is not and the overall supply is seen as something different, then the package may be outside the MOSS regime.

This is a facet of VAT that would take up an entire thesis in its own right and we can only recommend that, where you encounter this or believe that you fall into this category, you seek specific advice relevant to your individual circumstances.

### THE NEXT STEP

For further information or for advice in relation to your specific circumstances, please contact our specialist:

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