VAT focus

The European Commission's proposals to reform e-commerce

Speed read

The European Commission has released its proposals to simplify and modernise the VAT rules on e-commerce in stages between now and 2021. The changes will initially introduce thresholds for small businesses and simplified rules under the mini-one stop shop (MOSS) compliance scheme. These will be followed by an extension of the MOSS to include B2C goods and other services, along with the removal of distance selling thresholds and low value consignment relief for imported goods. As with the introduction of the 2015 rules, we are likely to see detailed implementing regulations; however, now is the time to begin assessing the impact of these changes on businesses.

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In December 2016, the European Commission released its proposals for new measures to modernise B2C e-commerce as part of its digital single market strategy. The key aims of these proposals are to combat fraud and non-compliance, and to make it easier for small businesses and start-ups to trade their goods and services online. The majority of the new VAT rules are expected to take effect as of 1 January 2018 and 1 January 2021.

Overview of proposals

Proposed measures include:	Proposed date of implementation
Same reduced VAT rate for e-books as printed equivalents	Once agreed by all EU member states
Simplified rules for the mini one stop shop (MOSS): ● €10,000 annual registration threshold for EU businesses; ● simplified invoicing rules; ● reduced record keeping period; and ● single piece of evidence for customer location where annual sales don't exceed €100,000.	1 January 2018
An extension of the MOSS to cover distance sales of goods and all B2C services	1 January 2021
Further simplified rules for the MOSS: ● extended submission deadline to 30 days; and ● retrospective corrections in current returns.	1 January 2021
Removal of 'low value consignment relief' for goods (and introduction of a separate scheme for imports of goods from outside the EU where the consignment does not exceed €150)	1 January 2021
Coordinated MOSS audits via the tax authority of the member state of identification	1 January 2021

Why has the EC made these proposals?

The EC has outlined three main drivers for these proposals.

First, many small businesses refuse to engage, or claim they are unable to engage, in cross-border e-commerce due to the complexity of the current VAT obligations. This effectively means there is a block on cross-border trading which needs to be addressed.

Second, many non-EU businesses are making VAT-free supplies into the EU, putting EU traders at a disadvantage, particularly where EU VAT rates can be as high as 27%. The proposal aims to level the playing field.

Third, member states are losing tax revenues as a result of non-compliance (due to the complexity of the rules) and the current VAT exemption for the importation of small consignments of goods. Across the EU, it is estimated that the current annual impact on tax revenues is €5bn.

What is proposed to change and when?

Reduced rates for e-publications

The proposal seeks to allow member states to apply reduced (and super reduced) VAT rates to e-books and other e-publications, thereby harmonising the treatment between these and physical publications. The proposal does not include a definition of a book, newspaper or periodical at EU level, as it wisely acknowledges that this could become outdated very quickly. However, the reduced rates will not be applicable to 'publications wholly or predominantly consisting of music or video content'.

In a stakeholder survey held by the EC in 2016, 94% of respondents agreed that member states should be allowed to apply a reduced rate of VAT to e-books, therefore this proposal is likely to be very popular across the industry. If the UK chooses to implement the new measure, the rate of VAT on e-books could be reduced from 20% to zero, allowing for increased margins, assuming the full difference isn't passed on to the consumer. Even though it won't reduce the administrative burden for suppliers, this new measure should remove the complexity of taxing supplies of physical books bundled with e-books.

The amendment to the Directive could enter into force as soon as it is agreed by the Council and, given its popularity, publishers should be getting ready to see this happen soon.

MOSS simplifications from 1 January 2018

The MOSS currently applies to B2C sales of broadcasting, telecoms and electronically supplied services ('BTE services'). The simplification measures for 2018 apply to these services.

Where an EU business makes less than €10,000 revenue (excluding VAT) per calendar year from the sale of BTE services (EU wide), the proposal states they should be allowed to tax these supplies where their business is established, rather than where the customer belongs. This will apparently take 6,500 small businesses out of the MOSS system from 1 January 2018 (and will no doubt cover many more that don't currently comply), reducing the associated administrative burden.

Presently, users of the MOSS must apply the specific invoicing rules of the member state where each customer belongs, and must keep records for at least ten years. This adds significant costs to all sizes of business, with some requiring systems changes and professional advice in order to comply. The new measures will allow businesses to apply the invoicing and record keeping rules of just their member state of identification under the MOSS, which is likely to be a welcome relief.

A further simplification will allow EU businesses with BTE sales revenue below €100,000 (excluding VAT) per annum to determine the place of supply (i.e. where their customer is established, has their permanent address or usually resides) based on a single piece of evidence. (Under current rules, they have to capture two pieces of non-contradictory evidence.) Examples of acceptable evidence include the customer's billing address, bank details or IP address. The practical benefits of this for small businesses will be significant, as many do not have the technical capability to capture multiple pieces of evidence and check they are non-contradictory during the check-out process. The burden of data storage and data protection will also be reduced.

Businesses not established within the EU are excluded from applying the €10,000 or €100,000 thresholds, even if they are registered for the MOSS non-union scheme.

An extension of the MOSS to cover distance sales of goods and all B2C services from 1 January 2021

One of the biggest changes proposed is the extension of the MOSS to cover intra-community B2C sales of goods and *all* B2C services from 2021. In conjunction with this, it is proposed that the existing distance selling thresholds for goods across the EU will be removed (along with the requirement to issue distance selling invoices). Instead, the annual €10,000 MOSS threshold will apply to EU sales of goods and BTE services (but not to other B2C services).

For UK suppliers of zero or reduced rated goods who currently trade below the distance selling threshold into EU countries without the same low VAT rates, this change could remove a competitive advantage, hence levelling the playing field as intended.

The proposal to extend the MOSS to cover *all* B2C services (not just BTE services) could mean a fundamental change to the general rule for the place of supply of those services, which is currently where the supplier belongs. Whilst not explicitly addressed in the proposal, this would be in alignment with the EC's move towards taxation in the place of consumption.

While increasing the scope of the MOSS, the proposed measures also include further simplifications and improvements. For example, MOSS returns will have a submission and payment deadline of 30 days (rather than 20 days) following the end of the tax period. The extension of the submission deadline by ten days will create a small cash-flow benefit to businesses, but will also give telecoms networks and e-services platforms longer to collate data from multiple sources to complete their returns. Also, corrections or amendments to previous MOSS returns will be allowed in subsequent returns, as long as such corrections are within three years of the original return's submission deadline.

Removal of low value consignment relief for imports of goods, and introduction of a special import scheme from 2021

Consignments of goods into the EU that are worth less than €22 (set at £15 in the UK) are currently exempt from VAT and this is commonly referred to as low value consignment relief (LVCR). This relief gives some non-EU suppliers an unfair advantage, and is apparently abused regularly by businesses undervaluing their products in order to fall under the threshold. In 2012, the UK removed LVCR for mail order goods imported into the UK from the Channel Islands, so as to remove the competitive advantage held by large scale suppliers established there.

Under the new proposals, the LVCR VAT exemption will be removed. As a new simplification, a special import scheme will be introduced for the collection of VAT on B2C sales of goods originating from outside the EU. In order to qualify for the special scheme, consignments must have a value not exceeding €150. For such imports, it will be possible for VAT to be accounted for via the MOSS; and the place of supply will be the member state where the dispatch or transport to the customer ends.

In order to use the special import scheme, non-EU businesses will be required to be authorised by the member state of identification (i.e. the member state where they have registered to use the MOSS non-union scheme); or they must be established in a country with which the EU has concluded an agreement of mutual assistance. If neither of these conditions are met, a business must appoint an EU intermediary to act as their representative in order to use the scheme.

Where consignments into the EU fall below the €150 threshold but are not imported under the special import scheme, an alternative special arrangement is proposed for declaring and paying import VAT. In this instance, whichever person presents the goods to customs (typically, an express courier or postal operator) will be allowed to electronically report and pay import VAT on behalf of the customer.

Coordinated audits via the tax authorities of the member state of identification

In an effort to prevent taxpayers from receiving requests for information from up to 28 different member states during a MOSS audit, the proposal seeks to implement a coordinated approach through the member state of identification. If the member state of identification does not agree that there is a need for an enquiry, then the member state of consumption can take appropriate action under its national law. If, however, more than one member state of consumption agrees that an enquiry is needed, then the member state of identification must coordinate the audit.

If adopted, this is likely to be welcomed by taxpayers, most of whom would prefer to correspond directly with their home tax authority than with several overseas authorities in multiple languages. In addition, it is hoped that a coordinated approach will be more efficient and effective for the tax authorities, meaning they can focus more efforts on combating non-compliance and fraud.

What are the next steps?

The current proposal is a key part of the EC's wider VAT Action Plan to modernise VAT rules and strengthen the internal market.

The European Parliament will submit its opinion on the current proposal, before it can be adopted by the European Council. As we saw prior to the 2015 changes, we can expect detailed implementing regulations to be drafted, with invitations for key stakeholder input and amendments likely.

In the meantime, businesses making B2C intra-EU sales should familiarise themselves with the proposed rules and take time to assess whether their VAT compliance position will change. As we saw with the 2015 rules for BTE services, businesses often need long lead times in order to amend their IT systems and these changes, particularly the reduced VAT rate treatment of e-publications, are not that far away. ■

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- News: EU VAT changes for digital single market (7.12.16)
- MOSS and VAT changes for e-services (Vaughn Chown, 8.1.15)