



# VAT and cross border supplies of digital services

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# Introduction

Where a supply of services takes place across national borders, the 'place of supply rules' determine the state in which the transaction is subject to VAT and hence which tax authority gets to collect any output VAT due. On 1 January 2015 changes were made to these rules for certain supplies of 'digital services'. The changes affect UK businesses that supply, for consideration:

- Electronic, telecommunication or broadcasting services ('digital services')
- To non-business customers ('B2C')
- In other EU states ('intra-EU')

From 1 January 2015 the place of supply of such services is where the customer belongs rather than (as previously) where the supplier belongs. This means that, for example, a supply of digital services by a UK supplier to a non-business customer in France is subject to French VAT rather than UK VAT.

By default, a UK supplier of such services has to register for VAT in the customer's state, charge the customer state's output VAT at the appropriate local rate of VAT and pay this across to the customer state's VAT authority.

But to avoid the need to register for VAT and submit separate VAT returns in multiple EU states, the 'Mini-One Stop Shop' or 'MOSS' allows a UK supplier to register with HMRC, complete a single VAT return (the 'MOSS return') to cover all intra-EU B2C supplies of digital services and pay over the foreign output VAT to HMRC. HMRC will then pass the VAT and return onto each EU state concerned.

The MOSS VAT return is separate to and in addition to the normal UK VAT return. A UK business supplying digital services to UK customers should account for any UK output VAT due via the UK VAT return.

As an alternative to registering for MOSS the supplier can register for VAT in each EU state where they make B2C digital supplies and submit a separate VAT return to each state.

# What are digital services?

Digital services are:

- **Electronic services:** these are services delivered over the internet or over an electronic network where the supply is essentially automated, involves minimal human intervention and is impossible to ensure in the absence of information technology. Electronic services include sales of:
  - Downloaded newsletters, podcasts, electronic journals and publications
  - Access to online databases
  - Other downloads – images, pictures, videos, software, music etc.;

They exclude:

- Supplies of physical products such as printed publications, CDs or DVDs, including electronic products on physical products, for example an e-book on a CD
- Online services that require substantial human input such as online exams that are marked by people and courses that are presented by people (webinars)
- **Broadcasting services:** these are the supply of audio and audio-visual content for simultaneous listening or viewing by the general public on the basis of a programme schedule by a person that has editorial responsibility. This includes live streaming via the internet if broadcast at the same time as transmission via radio or television. Access to recorded broadcasts (such as podcasts) is a supply of electronic services
- **Telecommunication services:** are services relating to the transmission or reception of signals, writing, images and sounds or information of any nature by radio, optical or other electromagnetic systems e.g. the right to use capacity for such transmission, and the provision of access to global information networks

## B2B & B2C supplies

The change does not affect B2B supplies of digital services, it only affects B2C supplies of digital services.

- **'B2B' or 'business to business' supplies.** These are supplies to other businesses, unless the supply is for the private use of the business's owners or staff, in which case the supply comes under the B2C rule. To be B2B the supply does not have to be for the purposes of the customer's business activities and the customer does not have to be registered for VAT, the customer merely has to have some business activities.

The place of supply of B2B intra-EU digital services is where the customer belongs. If the customer belongs in another EU state, the 'reverse charge' applies. The supplier treats as in effect zero-rated (though technically it is outside the scope of UK VAT with a right of recovery of attributable UK input VAT) and the customer must self-account

for output VAT. If the customer is registered for VAT, the UK supplier must include the transaction on its EC sales list (using indicator flag 3).

- **'B2C' or 'business to consumer' supplies.** These are supplies to private consumers and entities with no business activities (for example some charities and public bodies). From 1 January 2015 the place of supply of intra-EU B2C digital services became where the customer belongs. The place of supply of B2C digital supplies to customers who belong outside the EU remains, as before 1 January 2015, where the customer belongs.

## Evidence of customer status

You must retain evidence to support your decision as to the customer's status (B2B or B2C). If the customer provides a VAT registration number then you should check the number conforms to the EU state's VAT number format (see Further information below). If it does, you can accept the supply is B2B unless you supply downloaded music, games, films and similar items of a kind normally supplied to a private consumer, in which case HMRC advise that the use of the VAT number should be questioned.

If the customer provides a VAT registration number, the supply is of electronic services and if the total value of electronic supplies to this customer exceeds £500 in a VAT quarter you should check the VAT number by ringing the HMRC VAT helpline or by using the online VIES checking system (see further information below).

If the customer is not VAT registered you can accept alternative evidence of business status such as evidence from the customer's website, audited accounts etc. However, in the absence of a valid VAT registration number, a customer cannot insist on B2B treatment and the decision as to whether the supply is B2B or B2C rests with the supplier.

You should retain a record setting out details of the check carried out and results. In the absence of any evidence of business status, the supply should be treated as B2C.

## Evidence of customer location

For intra-EU B2C supplies you must also retain evidence of the customer's location as follows:

- Digital supplies through a telephone box, a telephone kiosk, a Wi-Fi hot spot, an internet café, a restaurant or a hotel lobby, can be presumed to be made to where the phone box/kiosk etc. is located
- Digital supplies through a mobile phone can be presumed to be made to the country code of the SIM card
- Supplies through a decoder can be presumed to be made to the postal address where the decoder is sent or installed

- Digital supplies on board transport travelling between different EU states can be presumed to be made at the place of departure

Where one of the above presumptions apply, you are only required to retain evidence showing the relevant place. However, if you choose to, you may rebut the presumption with three pieces of non-contradictory commercial evidence.

If you are providing digital services in circumstances not listed above, you will need to support your decision by providing two pieces of non-contradictory commercial evidence.

Examples of acceptable commercial evidence include:

- The billing address of the customer
- The Internet Protocol (IP) address of the device used by the customer
- The location of the bank
- The country code of SIM card used by the customer
- The location of the customer's fixed land line through which the service is supplied
- Other commercially relevant information (e.g. product coding information which electronically links the sale to a particular jurisdiction).

Once you have two pieces of non-contradictory evidence that is all you need and you do not need to collect any further supporting evidence. This is the case even if, for example, you obtain a third piece of evidence which happens to contradict the other two pieces of information.

For UK micro-businesses, who are registered for VAT in the UK purely on the basis of their cross border digital supplies (see below), HMRC accept the supplier can rely solely on customer location information provided by their payment service provider.

## Supplies via agents

If a principal supplies electronic or telecoms services to a customer via an agent such as a third party run online market place or a publishing agent, then the supply is treated as a B2B supply of electronic or telecoms services by the principal to the agent and a separate B2C supply of electronic or telecoms services by the agent to the customer. As such it is the agent that must account for EU output VAT and register for MOSS.

## Registering for MOSS

The MOSS return is an online return accessed via the HMRC Government Gateway. You must register for VAT in the UK if you are not already registered, however UK businesses whose taxable supplies are below the UK VAT registration threshold can submit a nil UK VAT return as long as the level of UK taxable supplies remains below the UK VAT Registration

Threshold. As an alternative, you can register for VAT in each EU state where you have B2C digital services customers and then submit individual VAT returns to each of those states.

You must register for MOSS by the 10th of the calendar month following your first relevant digital supply. Your MOSS registration is then backdated to the date of your first MOSS digital supply. Once you have an online HMRC account set up, from that account select 'Services you can add', then select 'Mini One Stop Shop'.

## The MOSS return

The MOSS returns are due for fixed calendar quarters:

Return period	Return due date
1 January – 31 March	20 April
1 April – 30 June	20 July
1 July – 30 September	20 October
1 October – 31 December	20 January

There is no change to the deadline for the submission of the return if this date falls on the weekend or a public holiday. If you do not make any digital supplies to any EU consumers in a quarter, you must submit a 'nil return'.

Returns are completed by uploading a completed template spreadsheet provided by HMRC. There are two template spreadsheets (Excel and Libre Office) located at <https://www.gov.uk/government/publications/vat-mini-one-stop-shop-union-return>. You must complete the relevant template, then upload it to the relevant MOSS return.

You are required to list the total value of supplies and the VAT due to each member state of consumption separating out supplies at the standard and reduced rates. The VAT standard and reduced rates for each Member State are published by the European Commission on its website (see Further Information below). You cannot recover associated foreign input VAT via the MOSS return. There is a separate process for claiming such VAT, again operated by HMRC.

The UK MOSS return must be denominated in pounds sterling, using the appropriate exchange rate as published by the European Central Bank (ECB) on the last day of the tax period, or if there is no publication on that day, on the next day of publication. See Further Information below for a link to the ECB interest rate webpage.

Each successfully submitted VAT MOSS return will be issued with a unique reference number. You should arrange for payment to be made at the same time you file your VAT MOSS return and quote the unique reference number of that return.

Any adjustment you need to make to your VAT MOSS return must be made by making a correction to the original return and not by an amendment to any later returns. You can make amendments to your VAT MOSS returns up to 3 years after the end of the relevant period. You may be able to make later adjustments to your output VAT liability subject to the rules of the EU state concerned, but this cannot be done via the MOSS return.

Penalties for late returns, incorrect returns, underpayments etc. are determined in accordance with the rules of the EU state you make the return to. In the event of any dispute you must deal directly with the VAT authority of the EU state concerned.

You must keep VAT MOSS records for a period of 10 years from 31 December of the year during which the transaction was carried out. In general MOSS returns will be audited by HMRC. It will be possible for an authorised tax official from another Member State to attend any audit that is arranged, but the audit team will usually be led by an official from the HMRC.

## VAT invoices

You will need to raise and issue VAT invoices in accordance with the requirements of each Member State where your B2C consumer is located. The vast majority of Member States, including the UK, do not require VAT invoices to be issued for cross-border B2C supplies.

Member States cannot require a business to issue a full invoice for cross-border B2C supplies, but they can require a business to issue simplified invoices; so you will need to check the requirements in the Member States where your consumers are located. See Further Information below.

In practice, it will usually be simplest to issue all customers, B2B or B2C, with a full VAT invoice and hope this will meet any local requirements.

## Leaving and exclusion from the MOSS scheme

A business can leave the MOSS scheme voluntarily (deregistration), or it can be excluded from the scheme. It is also blocked from re-joining the scheme ('quarantined') in some situations.

- In order to deregister, the business is required to inform HMRC at least 15 days before the end of the calendar quarter before that in which it intends to cease using the scheme. Once deregistered the business is quarantined for two quarters
- A business is excluded from the scheme if it notifies HMRC that it no longer makes digital supplies. Once deregistered the business is quarantined for two quarters

- A business is excluded from the scheme if it has made no supplies under the scheme for 8 consecutive quarters (no quarantine period)
- A business is excluded from the scheme if it no longer meets the conditions for using the scheme (no quarantine period)
- A business is excluded from the scheme if it persistently fails to comply with the scheme rules – this includes where reminders to submit a return or pay have been sent for the immediately preceding three quarters and each return or payment has not been submitted within 10 days of the reminder. There is a quarantine period of 8 quarters.

## Exempt supplies

The change will not affect B2C digital supplies that are VAT exempt. Digital supplies might be exempt if, for example:

- They are provided as a part of a package of member benefits in return for a subscription by a non-profitmaking organisation with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature. See below for more on membership subscriptions
- They are a (or a part of a) supply of exempt education or vocational training. For example electronic course material sent to EU students

Both exemptions are a part of EU law so should apply on a broadly similar basis across the EU. However EU states are permitted limited discretion in determining which bodies are eligible to make such supplies exempt from VAT, so if the place of supply is another EU state, it is that state's VAT exemption rules which apply.

## Subscriptions to UK membership bodies

Many UK non-profit membership bodies provide a range of benefits for the subscription fee which may include digital services such as electronic publications and access to online databases.

Under HMRC's Extra statutory Concession 3.35, non-profit making membership bodies are allowed to apportion their membership subscriptions and treat them as a multiple supply of the benefits concerned. However this is a UK concession and does not apply across all EU states.

Where a package of benefits is provided in return for a subscription to a customer in another EU state, you should:

- Apply the standard VAT package tests ('single / multiple supply tests') to determine the nature of the supply ('what is supplied')
- Apply the place of supply rules to what is supplied in order to determine where it is supplied ('the place of supply')
- Apply the VAT rules of the state of supply to determine the VAT status of what is supplied (standard-rate, reduced-rate, exempt etc.)

For most UK public interest membership bodies it is unlikely that the provision of digital services as a part of a broad package of object related member benefits would be considered a single supply of digital services. However the single / multiple supply tests look at the facts of the situation, so a membership subscription that includes digital benefits should be assessed on its own merits taking into account the actual circumstances. In particular, if certain benefits are not accessible or relevant to EU members then the position may be different between UK and EU members and so separate assessments may be required.

Assuming the membership subscription does not amount to a single supply of digital services then it will not be affected by the 1 January 2015 changes.

However if a UK membership body provides digital services for an additional charge, for example access to an online database for an additional fee, then, assuming that is a separate but not closely related supply, those additional charges are potentially affected by the changes.

## Digital services outside the EU

The EU's approach of taxing imported digital services has also been adopted or is in the process of being adopted by many states outside the EU. If you supply digital services to customers in any of the states listed below, you may be required to register for VAT (or the local equivalent such as GST, sales tax or consumption tax), charge this tax to the specified types of local customer and pay that tax to the local tax authority.

### Switzerland and Liechtenstein

Switzerland and Liechtenstein operate a tax union under which they are treated as a single state for VAT purposes, with Liechtenstein VAT law following Switzerland's. Switzerland's VAT law is itself based on EU VAT law, although Switzerland is not a member of the EU.

Foreign suppliers of B2C electronic services to Swiss or Liechtenstein customers must register for VAT and charge local VAT (at the standard rate of 8%) if the annual turnover from such sales exceeds 100,000 Swiss francs (approximately £68,000) in a year. However there

is a higher registration threshold of 150,000 Swiss francs (approximately £102,000) for a non-profit, voluntarily-run sporting or cultural associations or a charitable organisations.

In addition, Swiss VAT exemptions are similar to the EU VAT exemptions, including exemptions for supplies of health services, welfare services and education. The education exemption applies to supplies of distance learning and interactive online teaching relating to courses, lectures, and other events of a scientific or educational nature.

The Swiss plan to abolish the registration threshold for foreign suppliers of B2C electronic services. From 1 January 2016 every foreign supplier selling non-exempt digital services to any Swiss customer (B2B or B2C) will have to register for VAT in Switzerland and charge Swiss VAT.

To register for VAT in Switzerland a foreign supplier must appoint a local Swiss representative and must also pay the Swiss tax authority a cash-deposit or a bank guarantee to cover the estimated quarterly VAT liability, subject to a minimum of 5,000 Swiss francs (approximately £3,400).

## Norway

The Norwegian VAT system is also closely modelled on the EU VAT system. Norway introduced a registration requirement for foreign suppliers of B2C electronic services to Norwegian consumers on 1 July 2011. From this date, non-established vendors must charge standard-rated Norwegian VAT (currently 25%) when supplying B2C electronic services to Norwegian consumers. B2B services are subject to a reverse charge.

There is a simplified registration process for foreign suppliers of B2C electronic services. However if the supplier also makes other supplies in Norway, they must follow the full registration procedure. See <http://www.voenorway.com/> for more on simplified VAT registration in Norway.

## Iceland

With effect from 1 November 2011 Iceland has introduced a requirement for foreign suppliers of B2C electronic services to Icelandic consumers to register for VAT in Iceland when the level of such sales has exceeded 1 million ISK (approximately £4,800) in any consecutive period of 12 months. The standard rate of VAT of 25% applies to most electronic services. However, e-books are taxed at a reduced rate of 11%.

To register for VAT in Iceland you must either appoint a local representative or set up a local branch or subsidiary.

## South Africa

From 1 June 2014 South Africa has applied VAT to supplies of electronic services made by foreign suppliers to South African customers (B2B or B2C). A foreign supplier of electronic services whose turnover on taxable supplies exceeds ZAR 50,000 (approximately £2,600) is required to register and account for South African VAT. The threshold is cumulative, comprising all supplies of e-services to South African customers since 1 June 2014. The standard rate of VAT (14%) applies. Registration is mandatory from the end of the month when the threshold is exceeded.

Electronic services are defined as:

- Educational services such as distance teaching, educational webcasts, and internet based courses and webinars. However educational services only qualify as e-services if supplied by a person that is not regulated by an educational authority in the supplier's country.
- Games and games of chance
- Internet-based auction services
- The supply of e-books, audio visual content, still images and music
- Subscription services to any blog, journal, magazine, newspaper, games, internet-based auction service, periodical, publication, social networking service, webcast, webinar, web site, web application and web series

To register for VAT, an application can be submitted online. The supplier is not required to appoint a VAT representative in South Africa or open a South African bank account. However, the supplier is required to provide contact details of a local representative for receiving information and correspondence.

## Albania

With effect from 1 January 2015, foreign suppliers of B2C digital services to Albanian consumers have had to register for VAT in Albania and charge Albanian VAT at 20%. There is a nil registration threshold and you must appoint a local fiscal representative to account for VAT and to meet your VAT obligations.

## South Korea

With effect from 1 July 2015, foreign suppliers of B2C digital services to consumers in South Korea must appoint a local fiscal representative and charge Korean VAT (currently 10%) on such supplies.

## Japan

With effect from 1 October 2015, foreign businesses supplying B2C electronic services to Japanese customers above the Japanese registration threshold must register for consumption tax in Japan by appointing a local agent or setting up an office in Japan. The threshold for registration is 10 million yen per year (approximately £51,000). The rate of consumption tax applicable is 8% (10% from 1 April 2017).

B2B supplies to Japanese businesses will be subject to a reverse charge in Japan. However the Japanese definitions of B2B and B2C and electronic services are somewhat different from the EU definitions. Electronic services (referred to as Telecommunication Online Services) include website advertising, setting up websites and English conversation classes via the internet. Certain electronic services such as e-books, music and games are always regarded as B2C even if purchased by a business for business use.

## Singapore

Suppliers of B2B and B2C digital services to Singaporean customers must register for GST in Singapore and charge GST at 7% if their turnover on all taxable supplies to Singapore has exceeded \$1 million (approximately £470,000) in the last four quarters, with quarters ending on 31 March, 30 June, 30 September and 31 December.

## Australia

In its 2015 budget the Australian government announced plans to extend its GST to cross border supplies of digital products and services imported by consumers from 1 July 2017. Under the current GST law, digital products and services imported by consumers are not subject to the GST.

The GST was designed to apply to all products and services, except those specifically exempted, for example fresh food, health and education. This measure will ensure that the GST applies to non-exempted products and services, including digital supplies purchased from overseas and from Australia. This change will require the unanimous agreement of the States and Territories prior to the enactment of legislation.

## Other states

Other states considering or in the process of introducing VAT registration requirements for foreign suppliers of digital services include: Canada, India, Indonesia, Israel, New Zealand, Thailand, Turkey, Russia and the USA.

## Further information

HMRC guidance on the MOSS

<https://www.gov.uk/government/publications/vat-supplying-digital-services-to-private-consumers/vat-businesses-supplying-digital-services-to-private-consumers>

European Commission guide to the MOSS

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/how\\_vat\\_works/telecom/one-stop-shop-guidelines\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/one-stop-shop-guidelines_en.pdf)

The VIES system for checking a VAT registration number

[http://ec.europa.eu/taxation\\_customs/taxation/vat/traders/vat\\_number/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/traders/vat_number/index_en.htm)

VAT rates throughout the EU

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/vat/how\\_vat\\_works/rates/vat\\_rates\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf)

European Central Bank list of exchange rates

<http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html>

EU VAT number formats

See section 16 of VAT Notice 725 <https://www.gov.uk/government/publications/vat-notice-725-the-single-market/vat-notice-726-the-single-market>

EU VAT invoice requirements

[http://ec.europa.eu/taxation\\_customs/taxation/vat/how\\_vat\\_works/telecom/index\\_en.htm#infosnational](http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#infosnational)