

New VAT e-Commerce Rules

by Brendan Lynch and Michael Brennan

For some time, the European Commission has been aiming to simplify the VAT obligations for companies carrying out cross-border sales of goods or services (mainly online) to final consumers, and to ensure that VAT on such supplies is paid correctly to the Member State of the customer, in line with the principle of taxation in the Member State of destination.

In order to do this the Commission proposed EU legislation in two stages with the first measures coming into force in January 2015 covering the supply of telecommunications, broadcasting and electronic services. The second package of measures was adopted by the Council in December 2017 and included new rules for distance sales of goods as well as for any type of service supplied to final customers in the EU.

A number of amendments have now been made to the EU VAT Directive 2006/112/EC that will affect cross-border business to consumer (B2C) e-commerce transactions with the new rules due to come into force of 1 January 2021. However, due to the ongoing impact of Covid-19 their introduction was postponed by six months and they will now come into force on 1 July 2021, giving Member States and businesses additional time to prepare.

The main changes are:

- The extension of the existing VAT Mini One-Stop Shop (MOSS) to a One-stop Shop (OSS);
- The introduction of an Import One-Stop Shop (IOSS);
- New arrangements for certain imports of goods; and
- The treatment of online marketplaces and platforms as deemed suppliers for certain transactions.

MOSS and OSS

The Mini One-Stop Shop was introduced on 1 January 2015 to simplify the VAT registration and payment obligations of cross-border suppliers of B2C telecommunications services, radio

or television broadcasting services and electronically supplied services (collectively called TBE services). The place of supply of these services is the Member State where the consumer is and VAT is payable by the supplier in that Member State. MOSS allows the supplier to register in one Member State and account in that Member State for VAT due on TBE services in all Member States. The scheme was confined to TBE services and this is the reason for "Mini" in the name.

Since 1 January 2019, a turnover threshold of €10,000 was applied to the scheme allowing suppliers who did not exceed the threshold to charge and account for VAT on the supply in their own Member States.

Traders could account for VAT within the original MOSS using two different schemes - the Non-Union Scheme and the Union Scheme. Under the new arrangements these will be retained, and their scope extended.

From 1 July 2021 the One-stop Shop will no longer be "Mini" and will be extended to cover all types of services where the place of supply is the customer's Member State. This will allow suppliers who must account for VAT in another Member State to account for the VAT through the One-stop Shop (OSS) portal in the Member State where they are established. The €10,000 threshold will still apply. The One-stop Shop will also extend to B2C distance sales.

Distance Sales

Under current rules, if the total B2C supply of goods to another Member State exceeds the Distance Sales threshold for that customer's Member

State, the supplier must charge VAT, register and account for VAT in that Member State. This means that some traders are registered for VAT in several or all other Member States. From 1 July 2021 the One-Stop Shop will extend to include distance sales and should reduce the VAT administration obligations on distant sellers.

The current distance sales thresholds for Member States vary between €35,000 and €100,000. A uniform distant selling threshold of €10,000 will apply to all Member States from 1 July 2021. For each Member State to which a supplier makes distance sales in excess of €10,000, the supplier must charge and account for VAT in that Member State. From 1 July this tax can be reported and paid through the One-Stop Shop portal in the Member State where the supplier is established.

OSS Non-Union Scheme

The Non-Union Scheme will be available only for businesses that have no business or fixed establishment in the EU. They can register for the scheme and account for VAT on supplies of services to customers in the EU. A business can choose which Member State it registers in but can register in only one.

OSS Union Scheme

The Union Scheme will cover cross-border B2C supplies of services, where the supplier is established in the EU. It will also cover intra-Community supplies of distance sales by both EU and non-EU established suppliers. Where the supplier's business establishment is an EU Member State the supplier must register for OSS in that Member state.

IOSS

The new Import One-Stop Shop is being introduced to report distance sales of goods into the EU from outside the EU. The low-value consignment VAT relief threshold of €22 will be abolished with effect from 1 July 2021. From that date, VAT will apply to all goods imported into the EU. However, the customs duty exemption on consignments valued below €150 will continue.

IOSS is optional and allows suppliers of imports valued at less than €150 to charge the customer VAT at the time of sale. The supplier will then declare and pay the VAT due in each Member State through one IOSS registration.

IOSS registration is available to both Non-EU and EU established suppliers. EU suppliers will normally register in their own Member State. Non-EU suppliers who are established in a country that has a VAT mutual assistance in place and are selling goods from that country into the EU can register directly in any Member State they choose. Other non-EU suppliers must appoint an intermediary in an EU Member State and register via the intermediary in that Member State.

New arrangements for certain imports of goods

These new arrangements will cover consignments of goods not exceeding €150 in value imported via postal operators, express carriers and customs agents, where the supplier has not availed of IOSS. Where these arrangements apply, the postal

operators, express carriers and customs agents will collect VAT at the standard rate from the customer and pay it to Revenue.

The treatment of online marketplaces and platforms as suppliers for certain transactions

Where certain supplies of goods are made through an electronic interface such as a marketplace, platform or portal, the business facilitating the supply through the electronic interface will become a deemed supplier of the goods.

The goods covered by the new provision are distance sales of goods from outside the EU in consignments of less than €150 value and B2C supplies within the EU to a customer in the EU by a taxable person not established in the EU. This provision will artificially split the sale from the underlying supplier to the final consumer into two transactions: a sale from the underlying supplier to the electronic interface operator and a sale from the operator to the consumer.

Brexit Issues

With effect from 1 January 2021 the UK is no longer a Member State of the EU and is now a third country. While Northern Ireland remains in the EU Single Market for goods transactions it is not in the Single Market for services.

The place of supply of a service supplied to a non-taxable person (consumer) is generally the place where the supplier is established. However, different rules apply for certain services, for example, the place of supply of a catering service is where the service is physically carried out, the place of admission services to an event is where the event actually takes place, and the short-term hire of a means of transport is where the means of transport is put at the disposal of the customer.

There are also special rules applying to a range of services, including lawyers and accountants, listed in Section 33(m) of the VAT Consolidation Act 2010 which provide that the place of supply of those services, when supplied to a consumer established outside the EU, is outside the EU.

Traders established in Ireland supplying services to consumers where the place of supply of those services is in the UK including Northern Ireland will not have to charge any Irish VAT on those supplies but may have VAT compliance obligations in the UK.

Traders from the UK including Northern Ireland who supply services to consumers where the place of supply of the service is here may have to register for VAT here or may account for any VAT due on the supply of the services using the OSS Non-Union scheme.

B2C sales to consumers in Northern Ireland are covered by the current distance sales rules as Northern Ireland remains in the Single Market. From 1 July the threshold will reduce to €10,000 and any Irish traders with distance sales to Northern Ireland in excess of that threshold must account for UK VAT on the sales. This can be done through OSS.



Brendan Lynch

Brendan is principal of B Lynch and Associates Tax Consultants and has over 30 years' experience lecturing in VAT in Ireland and internationally.



Michael Brennan

Michael has over 35 years of VAT experience in the Revenue Commissioners working in areas including Audit, Customer Services, and Policy and Legislation where he was deputy national delegate to the EU VAT Committee based in Brussels.

