

The VAT e-commerce package and the MOSS

What changes on 1 January 2019?

The VAT e-commerce package adopted by the Council on 5 December 2017 includes a number of changes to the place of supply rules for telecommunications, broadcasting and electronically supplied services ('TBE services') as well as to the Mini One Stop Shop (MOSS) which can be used to declare and pay VAT in a single Member State on supplies of these services to non taxable persons. The purpose of these changes is to reduce the burden for SMEs established in a Member State supplying such services to customers in other Member States.

These changes are included in Article 1 of [Council Directive \(EU\) 2017/2455](#) modifying Directive 2006/112/EC ('the VAT Directive') and in [Council Implementing Regulation \(EU\) 2459/2017](#) modifying Regulation (EU) 282/2011 ('the VAT Implementing Regulation').

1. Place of supply – EUR 10 000 threshold (Directive 2017/2455, Article 1, point (1))

The place of supply of TBE services supplied by a taxable person (the supplier) established in a Member State to a non-taxable person (the customer) in another Member State is in the Member State where the customer is established, has his permanent address or usually resides.

It follows that the supplier has to charge VAT to the customer at the rate of the customer's Member State. To declare and pay this VAT to the tax authorities in that Member State, the supplier must either register for VAT in (each of) the Member State(s) of the customer(s) or register for the MOSS in his own Member State. This is very burdensome and costly for micro-businesses, which only occasionally supply TBE services to customers in other Member States.

For this reason, an annual EUR 10 000 turnover threshold is introduced from 1 January 2019, up to which the place of supply of relevant supplies of cross-border TBE services remains in the Member State where the supplier is established, has his permanent address or usually resides. The application of this threshold is subject to the following conditions:

- a) the supplier is established, has his permanent address or usually resides in only one Member State;
- b) he supplies TBE services to customers who are established, have their permanent address or usually reside in another Member State;
- c) the total value of TBE services supplied to other Member States does not exceed EUR 10,000 (exclusive of VAT) in the current and in the preceding calendar year.

In case the supplier wants to apply the general place of supply rule (taxation in the Member State of the customer), he can do so and will be bound by this decision for two calendar years. As soon as the threshold of EUR 10,000 is exceeded, the general rule (Member State of the customer) applies without exception.

A taxable person who has already been using the MOSS and whose total value of TBE services in other Member States is below or equal to the threshold can deregister from MOSS as of 1 January 2019 (voluntary deregistration). A quarantine period of two calendar quarters will apply during which the taxable person will not be able to register for MOSS.

2. EUR 100,000 threshold– one piece of evidence (Council Implementing Regulation (EU) 2459/2017, Article 1)

A taxable person (the supplier) established in one Member State supplying TBE services to a non-taxable person (the customer) in another Member State must, for the majority of situations, keep two items of non-contradictory evidence to identify the Member State of the customer, which is the Member State where the supply is subject to VAT (the place of supply). This requirement is particularly onerous for small and medium-sized companies supplying TBE services to customers in other Member States.

A threshold of EUR 100,000, which will be applicable from 1 January 2019, has therefore been introduced up to which one piece of evidence is sufficient to determine the place of supply. The application of this threshold is subject to the following conditions:

- 1) the total value (exclusive of VAT) of TBE services provided by the supplier from his business establishment or a fixed establishment located in a Member State to customers who are established, have their permanent address or usually reside in other Member States does not exceed EUR 100 000 in the current and in the preceding calendar year;
- 2) the item of evidence is provided by a person involved in the supply of the services other than the supplier or the customer;
- 3) the item of evidence is listed in points (a) to (e) of Article 24f of the VAT Implementing Regulation.

As soon as the threshold is exceeded during a calendar year, the normal rules apply, meaning that again two pieces of evidence are required.

3. Invoicing rules (Directive 2017/2455, Article 1, point (2))

From 1 January 2019, a supplier using the MOSS will only have to respect the invoicing rules of the Member State in which he is identified for the MOSS, irrespective of the Member State of the customer, instead of the rules of each Member State where customers are located.

The invoicing rules of the Member States (in particular whether or not an invoice is required) can be consulted on the [MOSS Portal](#) (tab 'National VAT rules').

4. Non-Union scheme – Eligibility (Directive 2017/2455, Article 1, points (3) and (4))

A taxable person who is not established within the EU but who is registered or is obliged to register for VAT purposes in one of the Member States cannot use the MOSS (neither the non-Union scheme nor the Union scheme). As of 1 January 2019, such a taxable person will be allowed to use the non-Union scheme, which is the MOSS regime for taxable persons not established in the EU supplying TBE services to customers in the EU.