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The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.

# Amending VAT rules on distance sales

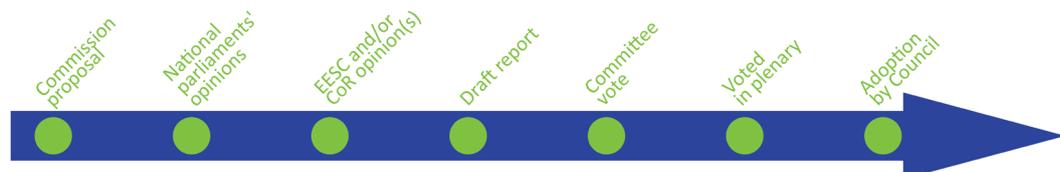
Since 1 January 2015, for some mobile transactions linked to telecommunications, broadcasting and electronically supplied services to non-taxable persons (business-to-consumer, B2C), the destination principle is applicable for value added tax – i.e. the VAT should be paid to the Member State where the consumer is located, via the mini-one-stop-shop (MOSS) portal. In its VAT digital single market package, published on 1 December 2016, the Commission proposed to extend payment possibilities through MOSS to online supply of goods and cross-border services to final consumers. The portal would also be extended to include payment for imports of small consignments of a value not exceeding €150.

The directive, significantly amended, was adopted by the Council – after consulting the European Parliament – on 5 December 2017. It is accompanied by Council Regulation 2017/2454. See also our [separate briefing](#) on the parallel dossier on improving administrative cooperation on VAT issues: 2016/0371(CNS).

#### Proposal for a Council Directive amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods

COM(2016) 757, 1.12.2016, 2016/0370(CNS), Consultation procedure (CNS) – Parliament adopts only a non-binding opinion

Committee responsible:	Economic and Monetary Affairs (ECON)
Rapporteur:	Cătălin Sorin Ivan (S&D, Romania)
Shadow rapporteurs:	Werner Langen (EPP, Germany); Bernd Lucke (ECR, Germany); Cora van Nieuwenhuizen (ALDE, the Netherlands); Paloma López Bermejo (GUE/NGL, Spain); Molly Scott Cato (Greens/EFA, United Kingdom); Barbara Kappel (ENF, Austria)
Procedure completed.	Directive (EU) 2017/2455 <a href="#">OJ L 348, 29.12.2017, pp. 7-22</a>



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## Introduction

As in other legal fields, taxation has to address the challenges resulting from technological developments, some of which do not fit into pre-existing patterns and rules. This is the case for digital goods and services which can be provided from any location, blurring the concept of the place of supply used in the EU VAT framework. Digitalisation has recently spurred a move to application of the concept of place of consumption for VAT (the [destination-based principle](#)), which also concerns this proposal amending the VAT Directive for some VAT obligations for supplies of services and distance sales of goods.

## Context

VAT is charged on the supply of goods and services to a taxable person, unless specifically exempted. It is charged on the additional value of each transaction and is collected at each stage of production and distribution.

### VAT framework

The EU Treaties have specifically addressed the need for harmonisation of domestic provisions on indirect taxation (covering turnover tax and VAT, as well as excise duties and other indirect taxes). Harmonisation of all major elements of value added taxation dates back to 1967.<sup>1</sup>

EU VAT legislation is based mainly on directives. At the core of the [current EU VAT framework](#) is the VAT Directive ([2006/112/EC](#)) of 28 November 2006, on the common VAT system, which gathers into [one](#) piece of legislation all the amendments to the original sixth VAT Directive.

## Existing situation

Since 1 January 2015, for some mobile transactions linked to telecommunications, broadcasting and electronically supplied services to non-taxable persons (business-to-consumer, B2C), VAT is subject to the destination principle. This means that VAT should be paid to the Member State where the consumer is located. This is referred to as the mini-one-stop-shop ([MOSS](#)), which is an electronic system allowing companies to register and account for VAT that they should pay to other Member States via a simplified online quarterly VAT return on a web portal hosted by the tax authorities in the Member State where the companies are located.<sup>2</sup> At present, when it comes to the online sales of goods and services other than e-services, companies with sales to customers in other Member States are obliged to register for VAT in all those EU countries.

<sup>1</sup> Turnover taxes were covered by Community provisions as early as 1967 (multi-stage but non-cumulative turnover tax, Council Directive 67/557/EC), and a common system of VAT was set up with the sixth directive (Council Directive 77/388/EEC), recast in 2006 (Directive 2006/112/EC).

<sup>2</sup> Presentations of the provisions are available in the [explanatory notes](#) (3 April 2014) and on the Commission webpage on [Telecommunications, broadcasting & electronic services](#)

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In its [impact assessment](#) of the proposal, the European Commission highlights some positive results of the MOSS, for example that for the first time Member States are collecting tax on behalf of each other, and that 12 000 businesses used the MOSS system in 2015. It underlines that electronic services covered by the MOSS represent 70 % of EU turnover of electronic services. According to the Commission, the MOSS has saved businesses €500 million, compared to what the cost would have been if the alternative of direct registration and payment had been used. This represents €41 000 per company on average and a 95 % reduction in costs. The Commission notes that business and Member States were very pleased with the introduction and implementation of the MOSS, and that the EU is considered the global leader for its mini-one-stop-shop system, with other jurisdictions following its example. The Commission also mentions some areas where improvements can be made. Micro-businesses have experienced problems due to the lack of a threshold and difficulties in identifying customers. Member States and the Commission need to communicate more with micro-businesses. Businesses are also worried by the potential risk of multiple audits from Member States into which they deliver supplies. Other areas to be looked at include how to correct past VAT MOSS returns; and the 10 year record-keeping, different invoicing rules, and burdensome correction methods.

## Parliament's starting position

In its [resolution](#) of 24 November 2016, towards a definitive VAT system and fighting VAT fraud, the European Parliament noted that different VAT regimes across the European Union may be seen as a non-tariff barrier in the single market. The Parliament considered the MOSS a useful tool in removing this barrier, which also can support SMEs in their cross-border activities. The EP called on the Commission to make it easier for companies to fulfil their VAT obligations across the EU.

## Council starting position

On 25 May 2016, the Council adopted a set of [conclusions](#) which addressed specific VAT elements, in particular the short- and medium-term actions in the VAT area, and SMEs. The Council also adopted [conclusions](#) on 'improvements to the current EU VAT rules for cross-border transactions' on 8 November 2016. The [VAT digital single market package](#) and its proposals were presented at the ECOFIN Council on 6 December 2016.



## Proposal

### Preparation of the proposal

In the 2011 [communication](#) on the future of VAT, the Commission considered a one-stop-shop as a crucial instrument facilitating access to the single market in a VAT system based on taxation at destination. The approach was to first 'ensure the smooth introduction and functioning of the MOSS and then to consider its broadening over time'.

The European Commission held a public consultation in 2015, in the context of the digital single market strategy, with a view to presenting proposals on modernising VAT for cross-border e-commerce. The consultation concerned the 2015 changes to the place of supply rules for B2C supplies of telecommunications, broadcasting and electronic services, and the MOSS. [Annex 2](#) of the impact assessment (IA) for the proposal on amending the VAT Directive as regards supplies of services and distance sales of goods provides a summary of the results of the consultation. These are presented in an in-depth study on the assessment of the implementation of the 2015 place of supply rules and the MOSS, focusing on stakeholders categories: businesses (broadly supportive of the initiative); tax practitioners (generally satisfied); micro-businesses and SMEs (advocating the introduction of a threshold and other simplification measures); postal operators/couriers (broadly in favour); Member States (supportive); and the European Parliament.

The [action plan](#) adopted by the European Commission on 7 April 2016 sets out the steps toward a single EU VAT area, and the [VAT digital single market package](#), adopted on 1 December 2016, aims at improving the VAT environment for e-commerce in the EU and allowing business (including SMEs) and consumers to more easily buy and sell goods and services online. The package includes a proposal to set up a digital online portal, one-stop-shop, which requires a parallel update of provisions so as to provide the basis for the underlying IT infrastructure and Member States' cooperation to ensure the success of the extension of the one-stop-shop.

### The changes the proposal would bring

In preparing the proposal, the Commission carried out a regulatory fitness check of the MOSS applied to B2C supplies of electronic services, which the proposal took into account. The [proposal](#) for a Council directive amending the VAT Directive as regards certain VAT obligations for supplies of services and distance sales of goods includes changes in the following areas:<sup>3</sup>

- > the MOSS would be extended to intra-Community distance sales of tangible goods and services other than electronic services, as well as to distance sales of goods from third countries;

<sup>3</sup> For a detailed discussion of the changes the proposal would bring, see '[Detailed explanation of the specific provisions of the proposal](#)'.



Preparation of the proposal

The changes the proposal would bring

- > simplified arrangements for global declaration and payment of import VAT for importers of goods destined for final consumer where VAT has not been paid through the MOSS system would be introduced;
- > the existing intra-Community distance sales thresholds would be removed, since they are a cause of distortions in the single market; at the same time, the existing VAT exemption for the importation of small consignments from suppliers in third countries would be removed, since it implies disadvantages for EU sellers;
- > a common Community-wide simplification measure including a VAT threshold for intra-Community distance sales of goods and electronic services would be introduced to help small start-up e-commerce businesses. There would also be simplified rules for the identification of customers;
- > EU sellers would be allowed to apply home country rules in areas such as invoicing and record keeping;
- > as for auditing of cross-border businesses who use the VAT system to ensure high compliance rates, greater coordination between Member States would be created.

Article 1 of the proposal includes provisions that would take effect on 1 January 2018, concerning amendments to the VAT Directive which do not require changes to the MOSS. Point 1 of this article aims to clarify Article 28 of the [VAT Directive](#) by adding: 'including cases where a telecommunications network, an interface or a portal is used for that purpose'. The effect of the addition would be that Article 28 also would apply 'where an electronic service is provided through an intermediary or a third party who is acting in his own name but on behalf of another person and who is using an electronic interface to make the supply'. Point 2 would introduce a threshold of €10 000 'below which the place of supply of services that may be covered by the intra-Community special scheme for electronic services remains in the Member State of the supplier'. Point 3 would amend the invoicing rules of Article 219a in the VAT Directive, so that 'invoicing rules of a single Member State instead of, as is the case today, of each Member State of destination to which supplies are made' should be used by suppliers. Points 4 and 5 would amend the definition in Article 358a of 'taxable person not established within the Community' in order to allow such tax payers to 'benefit from the simplifications offered by the MOSS'. Finally, points 6 and 7 would amend Articles 369(2) and 369k(2) on the period for keeping records, to adapt it to the record-keeping requirements of most Member States.

Article 2 of the proposal also concerns amendments to the VAT Directive, but these provisions would take effect only on 1 January 2021, due to the detailed implementing provisions and adaptations to the IT system that are required. This article would extend the VAT Directive's provisions on taxation of electronic services to other services and to distance sales of goods. The definitions of electronic services would be removed and a definition of 'distance sales of goods' would be added under Article 358. In Articles 358a, and 369a, a definition of 'Member State of consumption' would be added, stating that this would be 'the Member State in which the supply of services is deemed to take place'. Amendments would be made to Articles 364 and 365 on the deadline to submit a VAT return and on corrections to previous tax returns, respectively.

Article 2 would also add a definition of 'intra-Community distance sales of goods' to Article 369a of the VAT Directive for the purpose of extending the special scheme for electronic services supplied by taxable persons established within the Community, but not in the Member State of consumption to other services



Preparation of the proposal

The changes the proposal would bring

supplied to non-taxable persons as well as to intra-Community distance sales of goods. The thresholds for VAT obligations on distance sales laid down in Article 34 of the VAT Directive would be removed, since suppliers would have the possibility to use the MOSS and declare and pay VAT in a single Member State. Instead, there would be a threshold of €10 000 for micro-businesses, below which VAT obligations would remain in the Member State of establishment, that is, online cross-border sales would be treated as domestic sales. This new threshold would apply as of 1 January 2018. A new section 4, added to chapter 6 of title XII of the VAT Directive, would create a special scheme for distance sales of goods imported from third countries or third territories, where the intrinsic value of the good does not exceed €150. The aim is to create a level playing field for EU and non-EU businesses. When the import scheme is not used, the proposal provides for special arrangements for declaration and payment of import VAT for distance sales of goods from third countries or third territories.

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## Views

### Advisory committees

In its plenary session of 5 July 2017, the European Economic and Social Committee (EESC) adopted its [opinion](#) on the package (rapporteur: Amarjite Singh (Workers – Group II, United Kingdom)). The EESC welcomed that the proposed amendments to the MOSS addressed the concerns of SMEs. It also welcomed the proposed extension of the MOSS to goods, as it creates conditions for the possible removal of the Low Value Consignment Relief scheme. It noted, however, that, while the amendments to the VAT rates applicable to e-publications rules would eliminate the distinction between physical and non-physical publications, and ensure neutrality in this market, they may carry a risk for the VAT base.

### National parliaments

The [subsidiarity deadline](#) for national parliaments to submit comments on the proposals was 6 February 2017, and the proposals were scrutinised by the parliaments of 16 countries. No reasoned opinions were issued.

### Stakeholders' views<sup>4</sup>

In a [position paper](#) of 28 March 2017, BusinessEurope welcomes the proposal and specifically the extension of the MOSS to all B2C distance sales of goods and services. It also appreciates other elements of the proposal, for example the auditing, invoicing and record keeping rules, and the removal of the VAT exemption for the import of small consignments. It calls for transparent definitions of goods and services, in order for businesses to have access to clear information on the place of taxation. It welcomes the threshold for micro-businesses, but considers €10 000 as a minimum and would recommend a higher threshold.

<sup>4</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.



## Legislative process

In the European Parliament, the proposal was assigned to the Economic and Monetary Affairs Committee (ECON). A [draft report](#) (Rapporteur: Cătălin Sorin Ivan, S&D, Romania) was published on 23 May 2017. The report was adopted in [committee](#) on 16 October 2017 and the subsequent resolution adopted in [plenary](#) on 30 November 2018.

The Parliament's resolution stresses in its recitals that it is important to address VAT-related issues at EU level, and essential to adopt a definitive VAT regime based on the destination principle. To underline those points, it highlighted the important 'VAT gap' in the EU (the difference between revenues from VAT due and actually collected – estimated at €152 billion in 2015) and the VAT revenue loss due to cross-border fraud (€50 billion a year). It further noted that 99 % of the revenue processed by MOSS is declared only by around a tenth of registered businesses, and stressed the need for Member States to promote MOSS to a wider range of SMEs, in order to overcome barriers to cross-border e-commerce.

Amendment 7 (inserting a new article 14(3a)) provided that when taxable persons – acting in their own name on behalf of others – take part in a distance sale of goods imported from third countries 'in consignment of an intrinsic value of less than €150' (or national currency equivalent amount) and have an annual turnover exceeding €1 000 000 (or national currency equivalent), in the current calendar year, they will be deemed to have received and supplied those services themselves.

Amendment 9 concerns the exceptions to the place of supply of services to a non-taxable person. The resolution proposed to modify article 58(2)(c), so that the total value, exclusive of VAT, services supplied to non-taxable persons in a current calendar year does not exceed €35 000 (vs €10 000).

With amendment 10 to article 369(2)(2), the ECON committee proposed to set the period during which records must be kept by a taxable person not established within the EU to five years from the end of the year during which the transaction was carried out.

Amendment 16 concerned goods traded in foreign currencies, and provided that the value, which may not exceed €150, will be determined by currency conversion pursuant to Article 53 of the Union Customs Code.

Lastly, regarding the implementation period, several amendments added three months to the registration deadline for the new OSS (from 31 December 2020 to 1 April 2021).

In the Council, a [Presidency compromise](#) was published on 30 October 2017. On 5 December 2017, the Council adopted the act. Finally, on 29 December 2017, the directive was published in the [Official Journal](#). Member States are required to transpose its provisions by the end of 2018, for the amendments concerning telecoms and electronically supplied services, and by the end of 2020, for the amendments concerning provisions for small consignments. These measures shall apply from 1 January 2019 and 1 January 2021, respectively.



The Council amended the Commission proposal as follows:

- > **Article 14a (new article)**, partly taking into account the Parliament's amendments, providing that where a taxable person facilitates, through the use of electronic interfaces such as market places, platforms, portals and similar means,
  - > distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding €150, or
  - > the supply of goods within the EU by a taxable person not established within the EU to a non-taxable person,
- > then that taxable person will be deemed to have received those goods and supplied them themselves;
- > **Articles 58 and 59c**, to specify that the right provided by the Member State to taxable persons shall in any event cover two calendar years; and that the corresponding value in national currency of the threshold in euro shall be calculated by applying the ECB's exchange rate on the date of adoption of the directive;
- > **Article 368**, to change the cases where a taxable person using a special scheme can deduct VAT incurred: instead of the taxable person making use of the special scheme and, in addition, carrying out activities not covered by the scheme in the Member State of consumption, the taxable person making use of a special scheme must be registered in a Member State for activities not covered by the scheme;
- > **Article 369b**, to encompass all non-taxable persons and not only those who are established or have their permanent address or usually reside in a Member State;
- > **Articles 365, 369g and 369t** to add that, where any amendments to the VAT return are required after its submission, they will be included in a subsequent VAT return, which shall identify the relevant Member State of consumption, the tax period and the amount of VAT for which any amendments are required;
- > **Article 369m** (criteria for allowing taxable persons carrying out distance sales of goods imported from third territories/countries and who are represented by an intermediary established in the EU) to add that taxable persons can only appoint one intermediary at a time;
- > **Article 369x**, so that records of transactions<sup>5</sup> are kept for ten years from the end of the year during which the transaction was carried out;

5 The article provides that taxable persons making use of a special scheme will keep records of the transactions covered by the scheme, while intermediaries will keep records for each taxable person they represent.



- > **Article 369z**, so that the person for whom the goods are destined is liable for the payment of the VAT, while the person presenting the goods to customs within the territory of the EU collects the VAT from the liable counterparty and effects the payment of the VAT;
- > **Article 369zc** (new article), which contains provisions relative to the exchange value in national currency of the euro to be taken into consideration for the amounts mentioned in Articles, 369l (1) and 369y of Directive 2006/112/EC.<sup>6</sup>

<sup>6</sup> Namely that it shall be fixed once a year in line with Directive 2009/132/EC; that Member States may round off the amounts in national currency arrived at by converting the amounts in euro; and that Member States may continue to apply the amounts of the exemptions in force at the time of the annual adjustment provided for in paragraph 1, if conversion of the amounts of the exemptions expressed in euro leads, before the rounding-off provided for in paragraph 2, to an alteration of less than 5 % in the amount expressed in national currency or to a reduction in that amount.



## References

### EP supporting analysis

Remeur, C., [Reduced VAT rate for e-publications](#), EPRS, European Parliament, May 2017.

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### Other sources

[Value added tax \(VAT\): certain obligations for supplies of services and distance sales of goods](#), 2016/0370(CNS), European Parliament, Legislative Observatory (OEL)

[VAT Aspects of cross-border e-commerce – Options for modernisation, Assessment of the implementation of the 2015 place of supply rules and the mini-one-stop-shop](#), European Commission/Deloitte, November 2016

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