

Revenue Commissioners

# Tax Briefing No 02

2014

# **New VAT rules 2015 - Place of Supply of Telecommunications, Broadcasting and Electronic (TBE) services and Mini One Stop Shop (MOSS)**

## **Place of supply rules**

New EU VAT rules in relation to supplies of telecommunications, broadcasting and e-services to consumers (B2C) will come into effect from 1 January 2015. At present, the place of supply of these services is as follows:

- When supplied by a supplier established in the EU to a non-taxable person (private individual) in the EU, the place where that supplier is located.
- When supplied by a supplier established outside the EU to a non-taxable person in the EU, the place where the customer is located.

**From 1 January 2015**, the place of supply in respect of all supplies of telecommunications, broadcasting and e-services to consumers **will be the place where the consumer resides**. This means that the VAT on such supplies will be chargeable at the rate applicable in the Member State where the consumer resides and the supplier will have to account for the VAT in that Member State. This is a major change for businesses supplying these B2C services because the VAT rate applicable will be the rate of the Member State where the consumer resides and there will also be additional record keeping obligations. If you are a business supplying these services, you may need to look at your billing, accounting and IT systems now to ensure that they are fit for purpose.

## **Mini One Stop Shop (MOSS)**

To simplify obligations of suppliers of telecommunications, broadcasting and eServices, a new special scheme known as the Mini One Stop Shop (MOSS) will come into operation on 1st January 2015. The MOSS will allow business to submit returns and pay the relevant VAT due to Member States through the web portal of one Member State, otherwise the business would be required to register and submit returns in several Member States. Use of the MOSS will be optional for business and it will be available both to businesses with establishments in the EU (the EU scheme) and to those established outside the EU (the non-EU scheme). The current VAT on E-Services scheme (VOES) which applies to non-EU businesses supplying e-services in the EU will be replaced by the MOSS.

### **How will MOSS work?**

Instead of registering for VAT in several Member States, businesses may opt to declare and pay the relevant VAT due to Member States through the MOSS in the Member State where the business has its place of establishment (known as the Member State of Identification or MSI). A business which is established outside the EU but which has a fixed establishment (or several fixed establishments) within the EU can choose to register for MOSS in any Member State where it has a fixed

establishment. A business with no establishment in the EU can choose any Member State in which to register for MOSS. A business opting to use the scheme will register for MOSS in the MSI and will submit a quarterly return and the related payment to the MSI. The MSI will then distribute the VAT due to the various Member States in accordance with the information on the return.

### **When will MOSS be available in Ireland?**

The new rules come into effect from 1 January 2015. Businesses will be able to register for MOSS with effect from 1st October 2014. The Revenue Commissioners are currently developing the MOSS system for use in Ireland and this will be accessible through the Revenue on Line service (ROS).

### **How do I know the place of Taxation for the Supply of TBE?**

For most TBE services, it will be very obvious where the consumer resides. You must make the decision about the place of supply of those services and you will need to support your decision with two pieces of non-contradictory evidence (e.g. billing address and credit card details indicate France – Place of taxation is France).

There will be some instances where this is less obvious and rules have been agreed between the Member States to assist business in determining the place where the consumer resides. If you provide TBE services in the circumstances listed below, you can make a **presumption** about the location of your consumer and the place of taxation as follows:

- If the service is provided at a telephone box, a telephone kiosk, a Wi-Fi hot spot, an internet café, a restaurant or a hotel lobby, the consumer location will be the place where the services are provided. Note: this rule applies to the initial service only (i.e. the connection to the telecom or internet service) and not to any *over-the-top services* delivered using the connection (e.g. downloading of games onto a laptop at a Wi-Fi hotspot);
- If the service is supplied on board transport travelling between different countries in the EU (for example, by boat or train), the consumer location will be the country of departure for the journey;
- If the service is supplied through an individual customer's telephone landline, the consumer location will be the place where the landline is located;
- If the service is supplied through a mobile phone, the consumer location will be identified by the country code of the SIM card;
- If a broadcasting service is supplied through a decoder without the use of a fixed land line, the consumer location will be where the decoder is located or the postal address where the viewing card is sent.

However, if the consumer advises you that he/she resides in a different location to that indicated by the presumption, you may override the presumption and change the place of supply. In order to do so, the consumer will have to produce three pieces of non-contradictory evidence to support that decision. An example here is where the country code of the SIM card is that of the UK, so based on the presumption above, the place of supply of the service is the UK. However, the consumer's billing

address, credit card details and phone usage evidences that he/she resides in Belgium so that address in Belgium should be used as the place of supply.

As indicated earlier, where the circumstances of the service are not covered by the presumptions described above, the Service Provider must decide the place of supply of the service and support that decision with two pieces of non-contradictory evidence (e.g. billing address and credit card details).

### **What evidence can I use in deciding on the place of supply?**

This will vary depending on the industry and business model but commercially relevant information such as evidence of the customer's billing address, his/her bank account details, his/her IP address, etc., would all be acceptable.

### **Records**

Business will be required to keep records of the information/decision making processes/systems used to determine the place of taxation of their supplies.

### **Further information**

These changes are being introduced as a result of the adoption of [Council Directive 2008/8/EC](#), [Council Regulation \(EU\) No 967/2012](#) and [Council Implementing Regulation \(EU\) No 1042/2013](#). New legislation will be enacted in Ireland during 2014 to give effect to the new rules in relation to the place of supply of TBE services and to the operation of the MOSS system.

A [Guide to the Mini One Stop Shop](#) has already been published by the European Commission. We have been working with the European Commission and all other Member States to finalise Community-wide guidelines on the implementation of the new place of supply rules. Full details and guidance for business will be published as soon as these are available in order to assist businesses in preparing for these changes.