

The latest VAT developments that could affect you or your clients' businesses

## VAT and Brexit - MOSS, TOMS and OSS

Brexit is not a big deal for suppliers of B2B services - see Part 1 of my earlier VAT and Brexit Insight.

For B2C the picture is rather different. Suppliers of B2C services, along with distance sellers of goods, are more likely to face the prospect of multiple VAT registrations. But for Covid-19, the One Stop Shop ("OSS") would have come to the rescue. OSS is an extension of the Mini One Stop Shop (MOSS) to:

- all B2C services where the place of supply is an EU country *and*
- distance selling.

OSS has largely escaped attention in the UK because the changes needed were introduced by the EU after the 2016 referendum. Its scheduled implementation from 1 January 2021 has been deferred to 1 July 2021 because of the pandemic. A similar extension of the UK's transition period could have reduced a great deal of temporary red tape.

Taking each of the affected activities in turn:

### Digital B2C services



These include:

- Telecoms
- TV and radio broadcasting
- Electronically supplied services

"Electronically supplied services" include almost everything supplied digitally from web hosting, games,

software, music and films, to distance teaching. The service will normally be delivered over the internet and without the need for human intervention.

The place of supply of these services is where the customer "is established, has his permanent address or usually resides".

### Now

VAT is currently accounted for on these services through MOSS. Currently UK suppliers can either:

- Register for VAT in each country where they supply such services, or
- Use MOSS.

Where they use MOSS, they account for VAT on all their B2C digital services to HMRC and at the rate applicable in each of their customer's countries. HMRC passes the tax on to the appropriate tax authorities. There have been special rules since 1 January 2019 enabling suppliers with an annual turnover of less than £8,818 to account for UK VAT on all their supplies.

### After Brexit

From 1 January 2021, UK B2C suppliers of digital services have the following choices:

- If they are established, or have a fixed establishment, in an EU country, then they can switch from the UK scheme to the "Union scheme" under MOSS in that country.
- They can use MOSS by registering for the "non-Union scheme" in an EU member state of their choice by the 10<sup>th</sup> day of the month following their first sale to an EU individual customer.
- They can register for VAT in each and every EU country in which they make B2C supplies of digital services.

Under either of the MOSS options, the supplier will account for VAT to the tax authority in the member state concerned, along the same lines as they do to HMRC now.

Whatever option they choose, they will need to make changes effective from 1 January 2021 if they are to remain in these markets.

From 1 July 2021 for "MOSS" read "OSS". The option of multiple registrations will still be available.

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## Tour Operators Margin Scheme ("TOMS")

### Now

The EU invented the TOMS to address problems otherwise arising for "tour operators" from at least two special place of supply rules, which apply whether a transaction is B2B or B2C; namely, land-related services and passenger transport:

#### Land-related services

Land-related services are subject to VAT where the land is located. To be land-related, a service must be sufficiently directly connected to a particular building, plot of land or area of the seabed. Hotel services are specifically included.



#### Passenger transport

Passenger transport is supplied where it takes place.

TOMS is mandatory in any case where a person acts as principal or undisclosed agent and buys in accommodation and/or passenger transport for resale without material alteration. Where TOMS applies, the supplier accounts for output tax as if the gross margin on these sales is inclusive of VAT at the standard rate. Where the supplies take place outside the EU, the margin is treated as zero-rated. Input tax cannot be claimed on any purchases directly related to sales subject to TOMS.

The advantage of TOMS is that a business within the scheme only has to register for VAT in the country where it is established. Without TOMS, a tour operator might have to register in every EU country where it

bought and sold hotel accommodation or passenger transport.

### After Brexit

To date, HMRC's public announcements regarding TOMS have been limited to assurances that it is consulting with the sector. If the UK decides to keep TOMS in place, it will presumably make all supplies made outside the UK zero-rated. However, that would not deal with the problem that the supplier of, for example, hotel accommodation in, say, Ireland, France, and Spain, would have to register for VAT in each of those countries. From 1 July 2021, OSS should provide a remedy.

## B2C Professional services - some good news

### Now

EU place of supply rules treat a number of B2C professional services, such as consultancy, legal and accountancy services, as supplied where the customer is based if the customer is based outside the EU. In practice this means UK suppliers currently charge UK VAT on these services if the customer is in the UK or the EU, but not otherwise.



### After Brexit

From 1 January 2021, the UK rules will only treat these services as subject to VAT if the supplier and the customer are both based in the UK. Where the customer is based in the EU, the EU rules would treat the supply as made where the supplier is established, which would be the UK and, therefore, outside the scope of EU VAT. The only circumstance in which this would change

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would be where an EU country had implemented a “use or enjoyment” rule. In the absence of such a rule, the services of, say, a UK based accountant to a private individual based in the Netherlands, would escape VAT altogether. To summarise this in a table:

Business supplier established in	Consumer in	VAT applicable	VAT applicable
		Now	From 1.1.21
UK	Netherlands	UK	None
UK	US	None	None
Netherlands	UK	Dutch	None

Thus, in the absence of any use or enjoyment rule, UK based suppliers of these professional services do not need to worry about registration outside the UK from 1 January 2021.

### Distance selling

#### Now

Distance selling for EU VAT purposes refers to the situation where a supplier in country A sells goods to non-VAT-registered persons in country B and arranges the transport of those goods to those customers. The place of supply of the goods is as follows:

- Unless the supplier opts to be VAT-registered in country B, the supplies are subject to VAT in country A until the distance selling threshold in country B is exceeded; and
- Once that threshold is exceeded, the supplier must register for VAT in country B and account for VAT in that country.

#### After Brexit

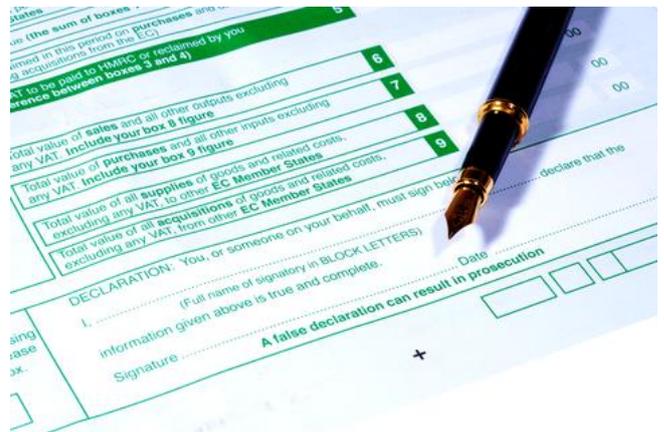
From 1 January 2021, a UK distance seller would normally be the importer of record in each country to which it sent its goods and would need to register and account for VAT in each of those countries. From 1 July 2021 the OSS should be available to distance sellers. OSS has already been deferred six months because of Covid-19 and distance sellers will already have enough to contend with in adjusting to the new customs regime. However, once things have settled after 1 January 2021, they may wish to investigate whether

OSS might make their lives simpler, as it could mean just one EU VAT registration from 1 July 2021. For UK distance sellers the relevant OSS would normally be the Import Scheme or "IOSS".

There are special rules relating to distance sales of goods sold through an “electronic interface”.

### VAT returns after 31 December 2020

I have seen suggestions that UK VAT returns might need fewer boxes after Brexit. This seems to me unlikely unless the NI Protocol is jettisoned. As long as NI remains part of the EU for VAT in relation to the supply of goods, there is not a single one of the 9 boxes that would not be needed.



### Are you ready?

How does Brexit affect you or your clients in relation to VAT? While there are questions still to be answered and so much could change, have you done what you can to get ready? At the time of writing there are less than 7 weeks to go ...!

To discuss how this may affect your clients or your business, or to talk about a VAT issue in general - contact:

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