



VAT Aspects of cross-border e-commerce - Options for modernisation

Final report – Lot 3

Assessment of the implementation of the 2015 place of supply rules and the Mini-One Stop Shop

November 2016

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List of abbreviations

B2B	Business to business
B2C	Business to consumer
CAGR	Compounded annual growth rate
CGE	Computable general equilibrium
DSM	Digital Single Market
EC	European Commission
ERP	Enterprise Resource Planning
ESS	Electronically supplied services
EU	European Union
FTE	Full time equivalent
GDP	Gross domestic product
IO	Information Obligation
MOSS	Mini one Stop Shop
MSI	Member State of Identification
MSC	Member State of Consumption
SAD	Single administrative document for customs declarations
SCM	Standard cost model
SEM	Single Electronic Mechanism
SME	Small and medium-sized enterprises
TBE services	Telecommunications, broadcasting and electronic services
TOR	Terms of reference
VAT	Value added tax
VAT Directive	Recast Directive 2006/112/EC of 28 November 2006

Executive Summary

Between 2009 and 2014, e-Commerce in Europe has grown by between 17% and 20% per year. In 2015, the growth of e-Commerce was decreasing slightly, to 13.4%, although it should be borne in mind that this is based on higher volumes¹. E-commerce has become a key part of the digital economy and an important driver of economic growth. From 2009 to 2014, the contribution of e-Commerce to GDP has almost doubled². Recognising the importance of e-Commerce, the European Commission is committed to ensuring the free movement of goods and services and to ensuring that “individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition”³ as set out in the Digital Single Market strategy.

The 2015 place of supply changes together with the supporting Mini One Stop Shop (MOSS) system are a significant step towards a fair and smoothly functioning single market for e-Commerce despite their limited scope. However, before expanding these rules to cross-border B2C supplies of other services and goods (including distance sales and imports), the implementation and application of the 2015 changes have to be properly assessed in order to learn from this experience and also use the opportunity to further improve the system.

This report provides evidence that the initial experience from the 2015 place of supply rules and MOSS is generally positive and that these new rules indeed form a good basis for further expansion, especially when the recommendations for potential improvements are taken into account in any future reform.

Background to this report

In 2011, the European Commission issued a Communication on the Future of VAT.⁴ This states as its goal the delivery of a simple, efficient, neutral and robust VAT system, which is fit for the Single Market. In January 2015, new legislation entered into force affirming the destination principle for telecom, broadcasting and electronically supplied services (TBE services), accompanied with the implementation of a MOSS.⁵ The MOSS allows businesses supplying these TBE services to final consumers in the EU to register for VAT once with their home Member State tax authorities, rather than registering for VAT in every EU Member State to which the business supplies.

The implementation of the MOSS is seen as a major milestone by the European Commission and by many EU Member States, since it enables them to collect tax on each other's behalf. The MOSS system has already led to a collection of EUR 3 billion of VAT revenues in 2015, through both the Union and the Non-Union scheme. In 2016, already EUR 1, 58 billion of VAT revenues was collected through MOSS in the first two quarters. A cautious projection for the whole of 2016 estimates the VAT revenues collected at EUR 3,2 billion.

¹ European B2C E-commerce Report 2016, Ecommerce Europe, , p. 4.

² E-Commerce Europe, <https://www.about-payments.com/newsroom/news/30517/double-digit-growth-for-european-e-commerce-sales>.

³ “A Digital Single Market Strategy for Europe,” European Commission Communication, May 2015.

⁴ http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/communications/com_2011_851_en.pdf, consulted on 26 July 2016.

⁵ Council Implementing Regulation No 1042/2013 of 7 October 2013 amending Implementing Regulation No 282/2011, see http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/explanatory_notes_2015_en.pdf for further details, consulted on 26 July 2016.

Given the support expressed for the scheme, including by businesses, the European Commission is considering options for the wider implementation of this concept, with the objective of reducing the administrative burden associated with the VAT treatment of cross-border e-Commerce.

The Commission was actively involved throughout the implementation process of the place of supply changes and the MOSS. They prepared the place of supply explanatory notes⁶, MOSS guidelines⁷ (involving the Member States and businesses) and audit guidelines⁸, provided IT support to Member States implementing their national MOSS portals and set up the MOSS web portal to support the access of businesses to national VAT rules relating to 2015 place of supply changes and the MOSS.⁹ The Commission has been also actively promoting the application of the MOSS in their communication events.

This report is the third lot in a wider study intended to assess the need for the modernisation of the VAT system applicable on cross-border B2C e-commerce and the potential impacts of a number of different policy proposals. The objective of this report is to evaluate the implementation and application of the 2015 place of supply rules for TBE services and the MOSS, and identify the best practices and room for possible improvements. The findings of this assessment will be taken into account to consider policy options for a legislative initiative by the Commission in 2016.

The analysis presented here focuses on the following areas:

- ✔ Assessment of the 2015 place of supply rules;
- ✔ Assessment of the Mini One Stop Shop;
- ✔ Administrative cooperation, audit and audit guidelines;
- ✔ Quantitative assessment of the 2015 place of supply rules and the MOSS;
- ✔ Conclusions and recommendations.

This study uses a range of methodologies to carry out these evaluations, including in-depth interviews with tax authorities and businesses in eight Member States, questionnaire based surveys with tax authorities and microbusinesses, application of analysis tools (Standard Cost Model, hereinafter SCM), a stakeholder seminar, arranged jointly with the EU Commission and the Irish Revenue to confirm the initial findings and stakeholder workshops. The exercise was done in two separate stages in order to monitor any evolutions.

The main findings from the evaluation are summarised below.

Assessment of the 2015 place of supply rules

Since 1 January 2015, all cross-border B2C TBE services, previously taxed in the Member State of the establishment of the supplier (for EU suppliers), are subject to VAT in the Member State of the

⁶ EUROPEAN COMMISSION (DG TAXUD), Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, 3 April 2014.

⁷ EUROPEAN COMMISSION, Guide to the VAT mini One Stop Shop, Brussels 23 October 2013. http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/one-stop-shop-guidelines_en.pdf, consulted on 26 July 2016.

⁸ Information for businesses signing up for the Mini One Stop Shop, Additional Guidelines – Auditing under the MOSS. http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/one-stop_add_guidelines_en.pdf, consulted on 26 July 2016.

⁹ http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#new_rules, consulted on 26 July 2016.

residence of the customer. The first section of the study (Chapter 2) provides a qualitative assessment of the impact of the place of supply changes on the Member States and businesses, aiming to evaluate the effectiveness of the implementation and application of the new rules and to identify best practices, issues and room for improvement.

Member States' perspective

The findings from the assessment of the impact on Member States focussed mostly on the implementation of necessary legislative changes and supporting guidance and communicating the changes to taxpayers. The key findings are:

- The legislative implementation of the place of the supply changes was timely and generally successful. In most cases, the legislation was accompanied with administrative guidance.
- There was high appreciation for the active role of the Commission in providing further guidance on the interpretation of the new rules.
- The Member States used a wide range of communication channels to promote the new rules. However, there may be some scope for improvements regarding tailoring the communication for specific groups of businesses (especially microbusinesses).
- The Member States have started to identify mismatches in the national interpretation or the application of the rules. In some cases, these mismatches have been brought to the level of the VAT committee. EU level discussions or further guidance may help to reduce such mismatches or find a way to address the consequences.

Businesses' perspective

- The assessment showed that the impact of 2015 place of supply rules on businesses depends on the size and business model of the business and the nature of its supplies. The general conclusion is that SMEs, especially microbusinesses, are impacted by the new place of supply rules more significantly than larger companies, and are struggling with the application of the new rules. Therefore, further consideration on ways to simplify the application of rules by these businesses would be useful, such as, for example, requiring a lower standard on collection of evidence or including a threshold.
- The changes in the place of supply rules were widely endorsed as the principle of taxation in the country of consumption is considered as fair and providing a level playing field for businesses. However, the fact that businesses are confronted with potentially 28 different sets of national rules was ranked by businesses as their main issue, affecting the smallest businesses most.
- Regarding the implementation of the new rules, many businesses had to adapt their cross-border sales and related processes. In this regard, businesses found communication activities on both the EU and national level helpful. However, the awareness was significantly lower amongst the smallest businesses. The Commission's explanatory notes are considered very helpful, but quite technical (especially for small businesses) and it was seen as unfortunate that not all Member States follow or endorse these. The effectiveness of national guidance was considered to differ depending on the Member State. Some additional national guidance targeted to the smallest businesses would be welcomed generally.

The other key findings from the assessment of the application of the new place of supply rules were as follows:

- Regarding identifying the customer status (B2B or B2C), the business systems rely mostly on assumptions (e.g. checking the VAT registration number or assuming B2C due to the nature of the supply) and correcting the transaction post sales, when challenged by a business customer.
- In terms of locating the customers, some of the proxies included in the Implementing Regulation were seen as very helpful for businesses and are widely applied. The majority of the businesses interviewed however rely on two pieces of information¹⁰ to locate their customers and apply a (self-created) hierarchy of evidence in case of mismatches.
- The presumption that the tax obligation lies with the intermediary (unless rebutted) when trading through a platform or marketplace (Article 9a of the Implementing Regulation) was considered as considerably simplifying the administrative burden for smaller companies, although further guidance would be welcomed. Intermediaries (app stores and marketplaces) have mixed reactions to the presumption, depending on their business model.
- Although for most companies the qualification of their services as an electronically supplied service was fairly straightforward, some businesses are struggling with it, especially regarding services, which may be either taxed under new rules or exempt (e-learning, gaming, financial services...) and where national rules tend to differ.

Assessment of the Mini One Stop Shop

The MOSS was implemented to mitigate the administrative burden of the 2015 place of supply changes by allowing the supplier to report its cross border B2C supplies of TBE services through an electronic portal in the Member State where it is established (or in case of a non-EU supplier in a Member State of its choice). The second section of the report (Chapter 3) contains a qualitative assessment of the impact of the implementation and the application of the MOSS on the Member States and businesses.

Member States' perspective

The main conclusion from the assessment of the impact on Member States is that the launch of the MOSS has been successful and that the MOSS system functions well. There is some evidence of 'teething' problems, such as the issues around registrations and related communications around payment information messages, requirements to register etc. However, these concerns do not seem significant and ought to be addressed in the short term. The support of the European Commission during the implementation process was very much appreciated by the Member States.

The other key findings of the assessment are the following:

- The average IT cost for a Member State for implementing the MOSS portal was about EUR 2.2 million, with very large variations across countries.

¹⁰ The evidence required can be the 1) the billing address of the customer, 2) the IP address of the device used by the customer or any other method of geolocation 3) bank details of the customer, 4) the mobile country code stored on the SIM card of the customer, 5) the location of the customer's fixed land line, and 6) other commercially relevant information (article 24f of Council Implementing Regulation 282/2011 of 15 March 2011).

- The current number of around 14 000 registered businesses does not reflect the reality of the uptake of the MOSS as many businesses supplying cross-border e-services are complying through intermediaries (platforms).
- The main problems identified in relation to the MOSS are in fact linked to its design and scope or the limitations of it, such as the application to TBE services only, without a threshold and the exclusion of the input VAT deductions, or the revenue sharing mechanism, which received very mixed reaction from the Member States.
- The assessment identified a list of mostly operational issues, which may be addressed in the medium term, such as the MOSS return correction procedure, a review of the currency exchange principles, a *de minimis* for transfers of funds between Member States or other simplifications on payments and reimbursement processes.

Businesses' perspective

- Similarly to the Member States, it can be confidently concluded that the launch of the MOSS has been successful also from the business perspective and that the MOSS functions well as a reporting tool, mitigating the administrative burden for businesses supplying B2C TBE services. This is confirmed by the evaluation of the related administrative burden. However, for small- and microbusinesses even this lower administrative burden seems difficult to overcome.
- Regarding business experiences with the MOSS registrations, the experiences were very positive, although Member States indicated that there was a learning curve. The issues identified relating to the MOSS registrations were:
 - a. Business were somewhat uncertain whether supplies fall into the scope of the MOSS, which was mostly a problem for smaller and micro companies.
 - b. The lack of the possibility to register retroactively is considered to cause a disproportionate burden.
 - c. The fact that non-EU suppliers cannot use the MOSS if they already have a local registration is likely to cause problems with compliance.
- Regarding the system itself, the MOSS is generally considered easy to use and it is seen as very convenient to be able to file only one single VAT return and make one single payment.
- The system is, however, not without its flaws and there are operational elements which could be simplified, such as the treatment of credit notes (and the associated important refunds) and currency conversions, the possibility of providing notifications and balance statements by the portal and the storage period for the MOSS documentation. The Commission's forthcoming proposal to extend the system to cross-border supplies of goods should provide an opportunity to address these issues.

Administrative cooperation, audit and audit guidelines

Despite the implementation of the MOSS, businesses still need to apply up to 28 sets of national rules and may receive direct information requests from other Member States. Since VAT audit rules are not harmonised in the EU, this could be particularly burdensome for the businesses. However, strengthened administrative cooperation between Member States, together with EU level guidance

such as the MOSS audit guidelines are aiming to reduce this burden. Effective administrative coordination is crucial also from the tax authorities' perspective.

Member States' perspective

The main outcome from the assessment is that it is still too early to draw conclusions on the compliance or effectiveness of the administrative cooperation and the MOSS audit, as the experiences are still very limited.

The compliance of suppliers, especially non-resident suppliers, is a concern for Member States, but there is not yet enough data to estimate the level of compliance. It is however expected that the larger suppliers are generally compliant and the non-compliance is more likely amongst the smallest businesses, partly due to the perceived high administrative burden. Considering the high level of concentration in TBE supplies (in MOSS 13% of suppliers paying 99% of VAT), the VAT loss due to non-compliance is therefore likely to be limited.

Co-operation between the Member States on the interaction and the functioning of the MOSS portal has increased since the implementation of the 2015 rules. However, the Member States appear to expect difficulties in administrative cooperation in the near future. It may therefore be useful to continue monitoring their experiences and arrange discussions to pre-empt the difficulties and find solutions to the identified potential issues. The VAT Action plan will provide a good way forward as it aims to strengthen cooperation between Member States on VAT compliance and to tackle tax avoidance and fraud. Regarding, the administrative cooperation with third countries, the existing multilateral conventions and bilateral treaties for administrative cooperation in tax area provide a good basis, but would need to be used more efficiently, especially in VAT matters. The Commission is also intending to strengthen administrative cooperation with international organisations and third countries in order to improve compliance.

Although the MOSS auditing experience is still very limited, it is positive to note that a large majority of Member States have endorsed the MOSS audit guidelines and are getting ready for further cooperation on audit and other information exchange. A single audit mechanism is seen as one of the ways forward. However, the Member States see some inherent risks and challenges in it and in any case expect it to take a long time and significant effort. As an alternative, the VAT Action plan suggests further developing the legislative framework on joint audits. Meanwhile, the full application of audit guidelines and effective cooperation on audits would be desirable.

Businesses' perspective

Businesses have so far no experience with the MOSS audits, although a few have received information requests from Member States of Consumption. Despite the lack of direct experience, the businesses have a negative perception of a potential audit by multiple Member States. Their main concerns are linked to a lack of awareness of the process, an expected high administrative burden, but also language issues. Businesses have therefore a strong preference for audits conducted by the Member State of Identification.

Quantitative analysis of the 2015 place of supply changes and MOSS

The implementation of the 2015 place of supply changes created costs for both tax authorities and businesses. The ongoing application of the new rules affects the revenue of the Member States, influenced by the uptake of the MOSS and the revenue declared through the MOSS. The businesses

that chose to register for the MOSS or to apply alternative compliance measures (such as registering directly or trading through platforms) suffer different administrative burdens, depending on their choice as well as their size and business model.

One of the objectives of the study is to carry out a quantitative assessment of the uptake of the MOSS, the revenue impact on the Member States, and to identify and quantify the costs of doing business in other Member States for businesses providing B2C cross-border TBE services. To do the latter, we applied the Standard Cost Model (SCM) methodology, which is a widely used tool to estimate the administrative burden for businesses to comply with legal requirements translated into Information Obligations (IOs). The findings of this quantitative assessment have been provided below.

Take up of the MOSS

The number of businesses registered to the MOSS was provided by Member States and increased over the course of 2015, reaching about 11 100 in the EU scheme and slightly below 800 in the non-EU scheme in the beginning of December 2015. By end Q2 2016 the number of registrants in the Union scheme totalled 12 899. The number of registrants in the Non-Union scheme totalled 1 079.

The total number of EU businesses supplying cross-border B2C TBE services is estimated to be about 83 000. This does not mean that 72 000 (83 000 less the 11 000 registered to the MOSS in the beginning of December 2015) EU businesses supplying cross-border B2C TBE services are still doing so outside of the MOSS system.¹¹ In fact, a significant part of those businesses (especially smaller ones) is not using the MOSS but is trading through a platform or marketplace, which is registered for the MOSS (Article 9a of the Implementing Regulation). As such, they are not directly eligible for the MOSS but instead the intermediary assumes most of the fiscal obligations. Other businesses are directly registered in the Member States of consumption, for example because they also sell goods, and report through these VAT numbers.

It may also be the case that some businesses are not compliant in that they continue to charge domestic VAT for intra-EU transactions. However, the study did not find any cases of large-scale abuse or wrongful application of the new place of supply rules.

Based on data collected and stakeholders interviewed, it is our estimate that about 15% of businesses supplying cross-border B2C TBE services are registered for the MOSS.

According to expert assessment, between 60 and 80% of the value of cross border B2C TBE services was reported through MOSS. For the purposes of the report and the VAT loss calculation, we have assumed it is 70%. This number should be slightly lower in 2016 since a few large businesses deregistered for MOSS for internal business reasons.

Implementation costs and administrative burden for businesses

Businesses not using the MOSS

According to our estimates, the overall costs that businesses face when engaging in cross-border B2C e-Commerce of TBE services under the 2015 place of supply rules (but not using the MOSS) amount to about EUR 1.4 billion. In other words, this theoretically amounts to about EUR 41 500¹²

¹¹ For the purposes of the below calculations with respect to the administrative burden, we have only considered the MOSS registrations numbers as at December 2015.

¹² An average of eight VAT registrations was used.

annually per business per year, or about (on average) EUR 5 200 per business per each Member State they sell to cross-border. This is less than the overall average cost for businesses engaged in cross border e-Commerce (around EUR 8 000) as there are relatively more SMEs in the segment of businesses supplying TBE services.¹³ To be observed that this is not a new burden but a cost which is linked to already existing obligations of companies which, for one reason or another, are already VAT registered in the Members States of consumption.

VAT registration is perceived as particularly burdensome by businesses, as they have to deal with differences in the national procedures and time necessary for registration across Member States. It is quite common for businesses in such situations to outsource these tasks and to use external advisors, especially for large enterprises.

Submitting the VAT return represents by far the most burdensome and expensive recurring administrative cost, as it represents more than 95% of the total compliance costs for businesses applying the 2015 place of supply rules, but not using the MOSS. Companies often choose to outsource at least part of the related activities, as a way to cope with the different requirements and frequencies across Member States.

Businesses using the MOSS

According to our estimates, the overall costs that businesses face when engaging in cross-border B2C e-Commerce of TBE services using the MOSS amount to about EUR 23 million, or about EUR 2 200 per business per year, or about (on average) EUR 434 for each Member State to which a business has cross-border sales.¹⁴ As anticipated, this represents an increase in the administrative burden, due to the change in the place of supply rules, counter-balanced by the MOSS. The overall cost for businesses using the MOSS is about 95% lower than of those not using the MOSS, resulting in a total saving for businesses using it of about EUR 500 million. Similar cost savings can be expected from the extension of the MOSS to intra-EU B2C supplies of goods proposed in the Commission's Digital Single Market Strategy of May 2015, for businesses making such supplies of goods for which at present they are registered in the various Member States of destination (*i.e.* where the goods are shipped to).

In addition, submitting VAT returns and paying VAT via the MOSS presents economies of scale for businesses, deriving from the fact that they have to file only one VAT return (and carry out one payment) for each reporting period, irrespective of the number of Member States they have supplied cross-border B2C TBE services to. The marginal cost for submitting the VAT return and paying the VAT thus decreases for each additional Member State TBE services are supplied to. Such economies of scale translate into a reduction of the costs per company per Member State from 92% when the VAT return is filed for three Member States, up to 95% when it is filed for 27 Member States.

Submission of VAT returns through the MOSS represents by far the most burdensome task, accounting for approximately 98% of the total administrative costs related to the use of the MOSS. The submission of VAT returns via the MOSS is carried out by businesses either in-house or with the support of external advisors.

¹³ Stage 1 of the study determined that cross-border VAT compliance costs are lower for SMEs. However, these costs relative to the companies' revenues are proportionately higher.

¹⁴ An average of five Member States was used.

Overall, businesses do not consider the MOSS return/declaration as a complex or particularly burdensome task. However, some of the businesses interviewed would appreciate an improvement in the MOSS functionality such as allowing a direct dialogue between the business accounting system and the MOSS as a means to input data directly.

VAT revenue impact for Member States

The net revenue impact (loss or gain) from the new set of rules depends on whether each Member State has more cross-border consumption or sales. Nearly all Member States expected the net revenue impact of the new rules to be positive (with a few exceptions). Indeed, based on the MOSS data for Q1 and Q2 2015, most Member States had a net gain and only a limited number of Member States experiences a net loss.

The total VAT revenue declared via MOSS in 2015 exceeded EUR 3 billion (EU scheme around EUR 2 754 million and non-EU scheme around EUR 350 million). Comparing revenue from the non-EU scheme to the revenues reported through the VoES in 2014 of about EUR 140 million, the estimates for 2016 indicate revenues of over EUR 500 million, which is over 350% increase. This is a clear indicator that the communication strategy employed by the Commission and Member States to advise non-EU business of their responsibilities to pay tax in the EU through the MOSS has been successful. Although the concentration of supplies of TBE services is high and therefore in terms of VAT revenues compliance is high, there is a need for Member States to be vigilant particularly in respect of supplies from businesses who are not established in the EU. Member States continue to develop compliance and communication strategies to maximise compliance rates both in terms of revenues and the number of businesses.

Based on the information received, in all countries analysed, a small number of large businesses account for the large majority of the revenues collected under the Union MOSS. Data collected from Member States show that more than 99% of the VAT revenue processed via the MOSS is declared by about 13% of the businesses registered (with small differences across Member States).

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The table below provides an overview of the main results of the analysis, based on data available beginning of December 2015 (and updated where possible with data that are more recent).

Table 1 – Overview of main results from the quantitative analysis

Main results from the analysis			
Total number of EU businesses supplying cross-border B2C TBE services	About 83 000		
Businesses registered to the MOSS ¹⁵	Union Scheme 12 899 registrations	Non-Union Scheme 1 079 registrations	
Compliant EU businesses outside of the MOSS supplying TBE services (direct registration)	About 34 000		
EU businesses supplying through intermediary or non-compliant	About 36 000		
Administrative burden in 2015 for EU businesses supplying TBE services ¹⁶	Overall: EUR 1.437 billion	In MOSS - Overall: EUR 23 million - Per business: EUR 2 172 - Per business per Member State: EUR 434	Outside MOSS - Overall: EUR 1.414 billion - Per business: EUR 41 623 - Per business per Member State: EUR 5 203
First Member States of Identification ¹⁷	In terms of No. of registrations		In terms of revenue
	<u>Union scheme:</u> - Germany (2 943); - UK (2 578) Germany and the UK hold 43% of all registrations.		<u>Union scheme:</u> - Luxembourg (55%/45% of revenue – 2015/2016 ¹⁸) - Ireland (15%/19% of revenue – 2015/2016) The total VAT revenue reported for 2015 amounts to EUR 2 692 million . The estimated VAT revenue which is expected to be reported in 2016 amounts to EUR 2 735 million .
	<u>Non-Union scheme:</u> - United Kingdom (616) - Ireland (166) The United Kingdom and Ireland		<u>Non-Union scheme:</u> - United Kingdom (50%/79% of revenue - 2015/2016) - Ireland (34%/8% of revenue – 2015/2016) The total VAT revenue reported for

¹⁵ Situation at end Q2 May 2016. The number of registrations in the beginning of December 2015 totalled 11 094 in the Union Scheme and 800 in the Non-Union Scheme.

¹⁶ To calculate these, the registration numbers as the beginning of December 2015 were used.

¹⁷ Situation with respect to the registrations numbers end Q2 2016. Revenue numbers based on information communicated by the Member States up to and including the second quarter of 2016 and extrapolated for 2016..

¹⁸ The 2016 figure is an estimate based on data from Q1 and Q2 2016

Main results from the analysis		
	hold 72% of all registrations	2015 amounts to EUR 306 million . The estimated VAT revenue which is expected to be reported in 2016 amounts to EUR 508 million .
	<u>VoES¹⁹ registrations:</u> <ul style="list-style-type: none"> - UK (54% of registrations) - The Netherlands (21% of registrations) 	<u>VoES revenues:</u> <ul style="list-style-type: none"> - 2012: EUR 103.5 million - 2013: EUR 118.1 million - 2014: EUR 137.9 million
First Member States of Consumption in 2015	<u>Union scheme</u> <ul style="list-style-type: none"> - UK - Germany - France - Italy 	<u>Non-Union scheme</u> <ul style="list-style-type: none"> - UK - Germany - France - Italy
	Most Member States underestimated their net gain.	
VAT revenue from VAT returns with a declared turnover below/above EUR 10 000	<u>Total VAT revenue (below):</u> EUR 1,1 million (0,1%)	<u>Total VAT revenue (above):</u> EUR 2,9 billion (99,9%)

Evaluation of the overall impact of the 2015 place of supply changes and MOSS on SMEs

From a quantitative point of view, for 2015, about 6 500 companies with an annual turnover of less than EUR 10 000 were registered for the MOSS. In total, the MOSS revenue generated by these companies amounted to EUR 1.1 million, which is less than 0.5 per cent of the total VAT revenue reported through MOSS in 2015.²⁰

Although the tax authorities have still very limited evidence on the level of non-compliance, it is assumed that the compliance level is lower amongst the small businesses, in comparison to the large ones. Regarding the main reasons or types of non-compliance, the Member States still suspect a lack of knowledge or understanding of the changed VAT rules, especially amongst the micro-businesses who may not even realise that they are considered to be carrying out business activities. Other types of non-compliance include deliberate avoidance, which is assumed to be the case especially amongst the suppliers trading from third countries.

In general, our analysis has confirmed that SMEs and microbusinesses have been significantly more impacted by the 2015 POS rules than larger companies have. The administrative burden resulting from the 2015 POS rules, as described in this report, is often higher for small and micro companies as they have fewer resources at their disposal. A number of medium and large-sized businesses had

¹⁹ The VAT on Electronic Services system or "VoES" was a system similar to the non-Union MOSS and was introduced on 1 July 2003.

²⁰ See table 12 - MOSS revenue distribution per turnover category in 2015.

already decided to register for VAT purposes in several Member States for other reasons, and were thus more prepared to cope with the legislative changes.

Regarding small businesses, the sole implementation of the destination principle without MOSS would have brought a major burden on micro and small businesses (EUR 5 200 annually per Member State they trade), which would have forced many of them to stop trading cross-border or to be non-compliant, as their turnover from such transactions does not cover such costs. The introduction of a simplification measure like the MOSS was therefore necessary to support the change in the legislative framework, and was considered very positively by businesses, although some concerns on some of the current features were expressed.

Despite the simplification provided by the MOSS (and the related reduction of the administrative burden), microbusinesses and small businesses still face challenges in implementing the 2015 place of supply rules. The absence of a threshold was therefore often mentioned as a main downside and its inclusion as a key improvement to facilitate the participation of microbusinesses and small businesses to cross border e-Commerce.

In particular, SMEs and microbusinesses often do not have the necessary resources (including personnel, budget and knowledge) to identify the customer's location and to deal with divergent foreign VAT law in all EU Member States. This could result in a competitive disadvantage and reduced market access for SMEs.²¹ Additionally, in case of an audit, SMEs would possibly have to deal with multiple foreign tax authorities, which seems an even more disproportionate burden on SMEs.

It should be noted, however, that article 9a of the VAT Implementing Regulation has greatly reduced compliance costs for SMEs who make supplies through intermediaries as the obligation is on the intermediary to account for the tax. The current absence of a threshold may also work to the advantage of intermediaries as the compliance costs may act as a barrier to a small business selling products to the customer directly or taking a multi retail channel approach. At the same time, operating via an intermediary could result in a lower profit margin as the supplier is obliged to pay a commission. The upside is, of course, that these intermediaries can assist business in accessing markets.

²¹ For more detail, see "2.3.5. Other difficulties encountered by businesses" under "Reduced market access for SMEs".

1 Introduction

1.1. Introduction to the Study

1.1.1. Background

Between 2009 and 2014, e-Commerce in Europe has grown by between 17% and 20% per year. According to Ecommerce Europe, in 2015 e-Commerce has grown in the EU by 13.4%. Still according to Ecommerce Europe the growth rate is decreasing slightly.²² E-commerce has become a key part of the digital economy and an important driver of economic growth. From 2009 to 2014, the contribution of e-Commerce to GDP has almost doubled. Recognising the importance of e-Commerce, the European Commission is committed to ensuring the free movement of goods and services and to ensuring that “individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition” as set out in their Digital Single Market strategy.²³

However, in order for the Digital Single Market of the EU to realise its full potential, a number of issues still need to be addressed, amongst others, regarding the allocation and collection of VAT for the EU Member States in cross-border e-Commerce.

The international trend towards moving to a destination based VAT instead of an origin based one, increases the need to address these issues even further. Already at the 1998 Ottawa Conference, the destination principle was agreed to be one of the OECD principles for taxation of e-Commerce. Both the G20 and the OECD favour in a broad sense the application of the destination principle, but also have highlighted the challenges regarding the allocation and collection of VAT.

The key merits of the destination principle can be summarised as follows:

- The destination principle reduces the incentive for companies to establish themselves in countries with lower VAT rates. In other words, it reduces possible distortions of competition and creates a **level playing field**, which is in line with the establishment of an internal market in the European Union;
- The destination principle enhances **VAT neutrality** vis-à-vis domestic and foreign-produced goods and services;
- The destination principle is the **international norm**, as explained above;
- The destination principle is consistent with the concept of VAT. Since VAT is intended to **tax consumption**, VAT rules of the country of consumption should be applicable, and VAT revenues of consumption in a particular Member State should accrue to that Member State.

The European Union has also moved towards such a destination-based system for supplies of certain services. More specifically, the adoption of the VAT package in 2008²⁴ led to the implementation of the new destination based B2B general place of supply rule as from 2010.

²² European B2C E-commerce Report 2016, Ecommerce Europe, <http://www.ecommerce-europe.eu/>, p. 4.

²³ <http://ec.europa.eu/digital-agenda/en/our-goals>, consulted on 26 July 2016.

²⁴ Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services.

Similarly, with respect to B2C transactions, one of the adopted rules entails that, as from 1 January 2015, telecom, broadcasting and electronically supplied services (“TBE services”) are always subject to VAT in the Member State of residence of the customer. This new place of supply rule entails a localisation of TBE services at their place of consumption (for EU suppliers), in conformity with the destination principle.

The consequential VAT administrative burden of having to potentially register in 28 EU Member States and file 28 returns, is tackled by the introduction of a Mini One Stop Shop (the “MOSS”). The MOSS, allows suppliers of cross-border B2C TBE services to account for the VAT due on those supplies via a web portal in the Member State in which they are established or identified.

Such a ‘One Stop Shop’ is a crucial instrument in facilitating access to the single market, in particular for small and medium-sized enterprises.²⁵

The 2011 Commission Communication envisages a more general implementation of the destination principle by a broadening of the MOSS to a One Stop Shop (OSS) over time to all intra-EU and third country online sales of tangible goods if the MOSS proves to be an effective mechanism for reducing the administrative burden for businesses.

A broad One Stop Shop Scheme had already been proposed by the Directorate-General for Tax and Customs Union in 2004.²⁶ Moreover, a 2014 report by the Commission Expert Group on Taxation of the Digital Economy²⁷ proposed that the EU should pursue the destination principle for all supplies of goods and services and this intended action was reiterated as part of the Digital Single Market strategy and the European Commission’s Action Plan on VAT.²⁸ More specifically, the European Commission, in the context of the May 2015 Communication on a strategy for a Digital Single Market for Europe, and again in its Action Plan on VAT, has indicated that it will make a proposal in 2016 to extend the scope of application of the MOSS. The MOSS would then become a Single Electronic Mechanism (SEM) applicable to all intra-EU and third country B2C online sales of services other than TBE services and tangible goods.

Therefore, a thorough evaluation of the MOSS is paramount in further building the business case for such a SEM, and, consequently, for a more general implementation of the destination principle.

1.1.2. Objective of this study

The destination principle, which demands that VAT should be levied at the place of destination, is the international norm.²⁹ The European Union also wishes to implement this principle more broadly. Indeed, in 2011, the European Commission abandoned the objective of implementing the origin

²⁵ See Report from the Commission to the Council on article 6 of Council Directive 2008/8/EC, COM (2014)380.

²⁶ Because of the comments received through the public consultation, the Commission decided to extend the scope to all supplies for which a taxable person is liable to pay VAT in a member State where he is not established; http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/rep_one_stop_en.pdf, consulted on 26 July 2016.

²⁷ http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/good_governance_matters/digital/report_digital_economy.pdf, consulted on 26 July 2016.

²⁸ Commission Communication of 6 May 2015 on a Digital Single Market Strategy for Europe, COM(2015)192 final, http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf, consulted on 26 July 2016; Commission Communication of 7 April 2016 on an action plan on VAT – Towards a single EU VAT area – Time to decide, COM(2016)148 final, http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/action_plan/com_2016_148_en.pdf, consulted on 26 July 2016.

²⁹ Cf. international VAT/GST guidelines, <http://www.oecd.org/ctp/consumption/international-vat-gst-guidelines.pdf>, consulted on 26 July 2016.

principle in its “Communication on the future of VAT”. Later, both the European Parliament³⁰ and the Council of the EU³¹ agreed that the definitive system should be based on the destination principle as well.

However, such a broad implementation would entail a high administrative burden for businesses, if businesses would have to register in up to 28 Member States and would have to file up to 28 returns.

A Single Electronic Mechanism (SEM) would avoid this high burden, as such a mechanism allows suppliers to account for the VAT via a web portal in the Member State where they are established or identified. In other words, a good functioning and successful SEM would provide the possibility to implement and/or alleviate the burden of applying the destination principle for all intra-EU and third country online B2C sales of services other than TBE services and tangible goods.

This is why it is crucial to carry out an assessment of the implementation of the current MOSS that is in place for suppliers of cross-border B2C TBE services. This assessment will assist with the consideration of future policy options including the proposal to extend the MOSS to cross-border B2C supplies of goods and services which is a proposed policy option in Lot 2 and which is in line with the objective of the realisation of the Digital Single Market as part of the Europe 2020 Strategy of the Juncker Commission.³²

An assessment of the 2015 place of supply rules is also needed, as they increased complexity for businesses, which have to comply with up to 28 different sets of VAT rules and have to determine the location of their customer based in the EU. Moreover, up to 28 different Member States might audit them.

This report constitutes the draft final report for Lot 3 of the Deloitte Study on VAT aspects of cross-border e-Commerce. More specifically, it is the third and final part of this study wherein we assess the implementation of the 2015 place of supply rules and the MOSS from both a tax authority perspective and a business perspective, also with a view of identifying best practices and room for possible improvements. Given the relatively recent introduction of the current rules, the assessment does not constitute a full evaluation. The focus is on the implementation of the 2015 changes and includes an analysis of the costs incurred and costs savings, but it may be too early to fully assess the long-term impacts. It is important to stress that the assessment is linked to the Regulatory Fitness and Performance Programme (REFIT).

Lot 1 provided an overview of the volume, value and growth trends of e-Commerce as well as the level of compliance, the barriers, the administrative burdens and the obstacles for growth. Lot 2 studies different policy options to address these issues.

As mentioned, policy options 4, 5 and 6 studied in Lot 2 are directly related to the findings of Lot 3 as they introduce a single electronic registration and payment mechanism (cf. “Single Electronic Mechanism” or “SEM” explained under “1.1.1. Background”) applying to intra-EU supplies of goods and services and to the import of all goods under the customs threshold of EUR 150. This mechanism can be seen as a broadened MOSS as it is structured as the existing MOSS, but has a wider scope

³⁰ EUROPEAN PARLIAMENT, European Parliament resolution of 13 October 2011 on the future of VAT, 2011/2082(INI), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2011-0436>, consulted on 11 July 2016.

³¹ COUNCIL OF THE EUROPEAN UNION, council conclusions on the future of VAT, 3167tj Economic and financial affairs Council meeting, 15 May 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/130257.pdf, consulted on 11 July 2016.

³² EUROPEAN COMMISSION, Europe 2020 Strategy, <http://ec.europa.eu/digital-agenda/en/our-goals>, consulted on 26 July 2016.

as it does not only concern TBE supplies. The evaluation of the MOSS in Lot 3 will therefore directly affect Lot 2 of the study.

1.1.3. Structure of this report

This report is structured as follows:

- Section 1.2 outlines the various methodological tools used to inform this report;
- Section 2 provides a qualitative assessment of the 2015 place of supply rules from a Member State perspective (2.2), as well as from a business perspective (2.3);
- Section 3 provides a qualitative assessment of the MOSS both from a Member State perspective (3.2) and a business perspective (3.3), including an analysis of the uptake of the MOSS;
- Section 4 provides an assessment of administrative cooperation, auditing and the auditing guidelines;
- Section 5 provides a quantitative analysis of the implementation of the place of supply rules and the MOSS both from a Member State and business perspective;
- The annexes provide a list of references (annex 1) and present in depth the various methodological tools used to collect and analyse data, including:
 - The questionnaire for all 28 tax authorities (annex 7 and 8);
 - The questionnaire for businesses (annex 9 and 10);
 - The Standard Cost Model (annex 3);
 - The Fiscalis discussion paper (annex 4);
 - The workshop discussion paper (annex 11)
 - The Analytical framework (annex 2);
- Finally, the annexes also provide a summary of the Fiscalis input (annex 5), a technical note on article 9a VAT Implementing Regulation 282/2011 (annex 6) and a segmentation of MOSS revenues (annex 12).

1.2. Methodology

1.2.1. Evaluation: intervention logic and analytical framework

This study aims to evaluate the implementation of the 2015 place of supply rules and the MOSS. Furthermore, it intends to identify best practices and room for possible improvements, which is paramount in further building the business case for a broadened One Stop Shop mechanism (or 'SEM') and a general implementation of the destination principle.

This report is the result of two separate assessments, carried out in two different points in time. The first assessment ("stage 1") covered the initial stage of implementation of the new place of supply rules and the MOSS, and, more specifically the first two quarters of 2015. The purpose of this assessment was to provide an initial evaluation of these rules.

Such an evaluation was necessary, but not sufficient. Indeed, at that point in time, the implementation of the MOSS was only recent and the full impacts could not be assessed. A second assessment was

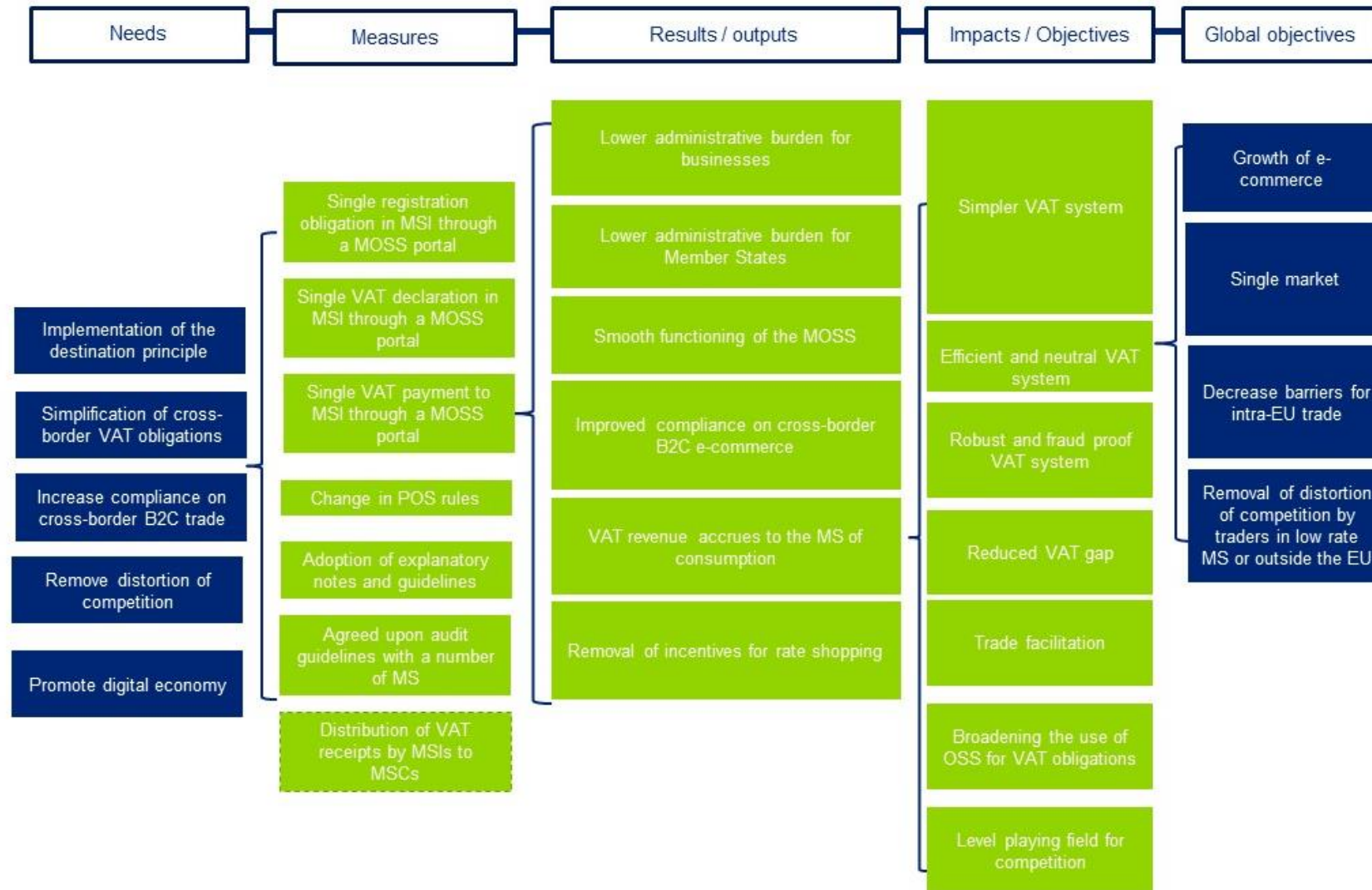
made one year later, covering also the last two quarters of 2015 and the first two quarters of 2016 (“stage 2”), to follow up the further implementation of these rules and to have an overview of the evolution over time of this implementation. The second assessment was still relatively early though after the implementation process.

As a result, this report provides a description of the findings of both stages, as well as a description of the evolution of these findings.

In the evaluation theory,³³ in order to evaluate a public intervention, the evaluator has first to define the logic of the intervention. Figure 1 presents our understanding of the intervention logic for the place of supply and the MOSS. This intervention logic provides the basis for our assessment. The six tasks of Lot 3, as described below, should then result in the necessary qualitative and quantitative data to prepare the evaluation within this intervention logic.

³³ http://ec.europa.eu/smart-regulation/evaluation/index_en.htm, consulted on 1 June 2015.

Figure 1 – Intervention Logic



As with any other public intervention, the 2015 place of supply rule changes and the implementation of the MOSS aim to fulfil existing or coming needs and problems in society and therefore support the achievement of global EU objectives. In the green boxes, we present the measures related to the 2015 place of supply and the MOSS, then the expected results and contributions to impacts.

Drawing and agreeing the intervention logic is crucial when it comes to the evaluation of a public intervention. Indeed, in order to evaluate the extent of the achievement of the objectives of the place of supply rules and the MOSS (*i.e.* their effectiveness), one first has to define them clearly.

The effectiveness and efficiency are the main evaluation criteria to be assessed in this Lot 3 of the study. While effectiveness relates to the measurement of the achievement of the objectives, the efficiency relates to the achievement of these objectives at the lower costs. Given that the new place of supply rules and the MOSS have been in place only since 2015, the assessment of the effectiveness will solely consider early results and outputs rather than the achievement of global objectives.

In order to present clearly the different dimensions of the place of supply rule and the MOSS, we structured and conducted the evaluation by using an analytical framework based on the evaluation objectives and questions identified in the task specifications and our understanding of the services to be delivered. The analytical framework maps the following elements by evaluation criteria:

- Evaluation questions and sub-questions allowing a more focused approach to the evaluation criteria and main question/issue compared to the items of the specifications;
- Judgment criteria allowing to formulate a judgment on the questions and issues;
- Qualitative and quantitative key criteria/indicators that are used to feed a judgment on the questions and issues;
- The method used to address the question/issue and collect the necessary information and the key sources of data and other input.

The use of a structured analytical framework allows the evaluation team to conduct robust, logical and solid evaluation work and to elaborate substantive conclusions and recommendations based on the evaluation findings.

Attached to this report, in annex 2, we present our analytical framework that we have developed for this evaluation for TAXUD.

In what follows, we present a table containing the evaluation questions as developed for that analytical framework, together with a reference to the relevant parts of this report per evaluation question.

Table 2 – Evaluation questions and references to answers in report

Evaluation question	Place in report
<p>1. To what extent have the Union- and non-Union schemes been adopted by businesses in Q1 and Q2 of 2015?</p>	<ul style="list-style-type: none"> ➤ 5.2 Quantitative analysis of the implementation of the MOSS: MOSS uptake ➤ 3.2.3 Initial experience with MOSS application – experience with MOSS registrations
<p>2. How does the non-Union scheme compare to the 2003 VoES scheme?</p>	<ul style="list-style-type: none"> ➤ 5.2.2 VoES scheme – MSI view ➤ 5.2.3 The non-Union scheme – MSI view
<p>3. Has the implementation of the new POS rules and MOSS and the related rules been smooth and efficient?</p>	<ul style="list-style-type: none"> ➤ 2.2.2 Legislative implementation of place of supply changes ➤ 2.2.3 Communication on place of supply changes and MOSS ➤ 2.3.2 Awareness and communication ➤ 4. Administrative cooperation, audit and audit guidelines ➤ 5.1.2 Business impact: cost impact
<p>4. Does the MOSS tackle the needs expressed by the stakeholders and target groups in a satisfactory way and does the relevant legislation and guidance address the concerns around the modified POS rules?</p>	<ul style="list-style-type: none"> ➤ 2.3.3 Ranking of issues ➤ 2.3.4 Different VAT rules in Member States ➤ 2.3.5 Customer identification ➤ 2.3.6 Problems relating to other legislation ➤ 2.3.7 Classification of TBE services ➤ 2.3.8 Role of intermediaries in the supply of TBE services ➤ 2.3.9 Reduced market access for SMEs ➤ 2.3.10 Other potential issues ➤ 3.3.3 Issues with MOSS and recommendations for improvement
<p>5. What has been the impact of the new place of supply rules?</p>	<ul style="list-style-type: none"> ➤ 5. Quantitative analysis of the implementation of the MOSS and the place of supply rules
<p>6. Are the place of supply rules not too burdensome for businesses?</p>	<ul style="list-style-type: none"> ➤ 2.3.11 Business impact: financial impact and changes on business model ➤ 2.3.11 Business impact: cost impact (qualitative assessment) ➤ 5.1.2 Business impact: cost impact

The approach adopted for the study rests on the use of complementary sources of primary and secondary data, including relevant reports and studies, available data sets, interviews with stakeholders (including tax administrations in a eight Member States, businesses from selected eight Member States, other Member States and third countries, business representative organisations, etc.) and other primary data from stakeholders (e.g. via questionnaires to Member States). It also rests on a participative approach, including stakeholders' consultation via an online survey to micro-businesses, the Fiscalis stakeholder seminar and a smaller additional workshop.

The combination of primary and secondary data from a number of different sources provides a comprehensive view of the stakeholders' perspectives and opinions on the 2015 place of supply rules and the MOSS. Their elaboration and comparison using the evaluation framework described and the combination of qualitative and quantitative analysis provide a comprehensive overview of the effects of the policy intervention.

Limitations of the approach and of the related results derive from the sample used for the analysis, which included a limited number of businesses and Member States, as it was not intended to be statistically representative (due to the time and resources available for the assignment). In addition, the analysis of the implementation of the 2015 place of supply rules and the related simplification measures (including the MOSS) only covered the first six months since the new rules entered into force (Q1 and Q2 2015 or "stage 1"). The follow-up exercise was carried out in the first half of 2016 (covering the period up to mid 2016, i.e. "stage 2"). Therefore, it was not possible to analyse fully some aspects of the implementation of such framework, as a part of the effects of the new rules will not have been felt yet (audit and administrative cooperation are probably the most evident example, where a very limited number of businesses has received requests for information).

1.2.2. Literature review

A literature review was conducted in both stages of the study, not only to strengthen our overall understanding of the context and identifying the theoretical background of the MOSS, but also to follow up on further experiences with the place of supply rules and the MOSS.

This review included research into the international context of the taxation at destination, especially regarding the remotely supplied e-services, such as the work of the OECD, starting from the 1998 Ottawa conference to the final adoption of the comprehensive International VAT/GST Guidelines in November 2015, which contain recommendations for vendor registration based taxation of remotely supplied B2C services by the use of simplified registration and compliance systems.

A review was done also of relevant national legislations and guidance, identifying other documents and sources to set the playing field in which the evaluation was carried out.

Over the last two years, the changes to the place of supply rules and MOSS have been the subject of much discussion at both academic and political level. Whereas articles were descriptive before the entering into force of the new rules, right after the implementation, many articles in this regard tried to provide an overview of advantages and disadvantages on the new place of supply rules and the accompanying MOSS.

Furthermore, we have identified a series of relevant studies to gain more insight on the MOSS and the new 2015 place of supply rules and the background of such policy changes (*i.e.* determining the need for policy intervention, such as evidence on VAT foregone due to the pre 2015 rules).

We refer to annex 1 for an overview of the literature identified as being particularly relevant to gain the necessary expertise for Lot 3 of the study.

1.2.3. Interviews

Interviews with Member States' tax authorities

To gather the necessary input from Member States, in the first stage of the study, we conducted interviews with tax authorities in 8 selected Member States.

The United Kingdom, Ireland, Luxembourg and Denmark were selected because they have a strong e-Commerce sector, resulting in a high number of VAT registrations.³⁴

Germany, France, Italy and Poland were selected as these Member States represent a large share of the EU's GDP and have important domestic markets. In the case of Germany and the United Kingdom, they have both important domestic markets and the presence of a strong e-Commerce sector.

The interviews provided a large part of the data on:

- The impact of the 2015 place of supply rules;
- The implementation of the MOSS;
- Auditing, the auditing guidelines and administrative cooperation.

The questions were based on the analytical framework to ensure we would obtain relevant information to evaluate the implementation of the 2015 place of supply rules and the MOSS, and identify best practices and room for possible improvements. As explained, this framework is based on the logic of intervention, to ensure the relevant criteria are used for an evaluation, and ensuring necessary information and data will be sought during the interviews.

Additionally, we inserted some questions into the questionnaire to seek confirmation of, for example, the MOSS data received from the Commission. In addition, some additional questions relating to the policy options to be examined as part of Lot 2 activities were inserted. These questions focused on the legal, administrative and likely economic impacts that national administrations could identify and possibly estimate.

In annex 7 we set out the questions we asked the Member States' tax authorities.

Interviews with businesses

To gather the necessary insight on businesses' experiences with both the 2015 place of supply rules and the MOSS, we conducted interviews in the 8 selected Member States in the scope of the study and 6 interviews in 4 other Member States, *i.e.* Sweden, Malta, the Netherlands and Belgium.

This enabled us to ask incisive questions and focus on the key issues and challenges faced after the implementation of these place of supply rules and the MOSS.

Furthermore, the data gathered touched upon issues contributing to the success of the MOSS (such as the administrative cooperation, audit practices etc.) or posing barriers to it, in addition to any other

³⁴ The latter was also confirmed by the high number of registrations by businesses for the Union scheme.

issues raised by the desk research and the examination of the intervention logic, necessary to deepen our understanding of the relevance, effectiveness and efficiency of the MOSS.

For stage 1 of the study, these interviews were carried out in person, insofar as possible due to organisational limitations, in order to reduce the burden for businesses to provide data for the study and optimise the amount and quality of data provided. Face-to-face interviews were crucial to the data gathering process, as the direct interaction allowed a better view of the scope and objective of the exercise, and to the businesses to have a better understanding and thus provide better information.

In each of the Member States identified, we identified the relevant contact person(s) with the support of umbrella organisations (such as e-Commerce Europe, EMOTA, etc.), the Deloitte national member firms and the Commission. We contacted the relevant business representatives beforehand, in order to agree on the day and timing of the interview, the additional representative(s) to be present, and to answer any preliminary question they might have had. The questions were provided beforehand, for better preparation for the interview. In annex 8 we set out the questions we asked the businesses.

Additionally, In order to gather the necessary data for stage 2 of the assessment on the place of supply rules and MOSS implementation, the project team drafted a new questionnaire for businesses. This questionnaire served as an interview guide for phone interviews with businesses. This questionnaire focused on the shortcomings already identified, the cost implications of using the MOSS, to follow-up on these matters and business attitudes in respect of the new rules. Additionally, they sought to identify potential new issues, i.e. their experience with audits.

We contacted all businesses interviewed during stage 1 of the study by way of phone interviews to go through these questionnaires and to solicit any other feedback in relation to the implementation of the new regulations. Additionally, we interviewed additional businesses and a business association in the stage 2 of the study, which we did not interview in stage 1.

The following table provides an overview of the number of businesses per Member State we interviewed. In total, we conducted 48 interviews, encompassing at least 97 legal persons.

Table 3 – overview interviews per Member State

Member state	Number of interviews
Belgium	3
Denmark	5
France	7
Germany	5
Ireland	5
Italy	3
Luxembourg	5
Malta	1
Netherlands	1
Poland	2
United Kingdom	10
Sweden	1

More specifically, we conducted:

- 39 interviews with business. Of these 39 businesses, 27 are registered in the MOSS (either via the Union scheme or the non-Union scheme). 5 businesses were already registered for the VoES before 2015.



- 8 interviews with associations;
- 1 interview with a tax advisory firm.

The business sample for interviews and surveys was determined in order to have a representative panel across business sectors, and covers SMEs and large businesses. More specifically, we

interviewed 30 large companies, 1 medium-sized business, 4 small businesses and 4 microbusinesses. To ensure SMEs were represented sufficiently, we conducted an additional interview with a microbusiness organisation and set up an online survey for microbusinesses (cf. below under “1.2.5 survey to microbusinesses”).

The selected businesses are active in a large variety of sectors, including telecommunications, multimedia, entertainment, gaming, advertising, social media and gambling.

Of the interviewed businesses, 10% supply telecommunication services, 3% provide broadcasting services and 77% provide electronically supplied services. The other 10% include payment providers, a supplier of goods (that intends supplying electronic services in the future) and a supplier of electronic services that is not registered for the MOSS.

In terms of the representation of the sample, it is relevant that in combining the interviews and the survey, SMEs have over 60% representation in the sample.

Additionally, information was collected on the application of article 9a of Council Implementing Regulation (EU) No 282/2011 and the pieces of information used to locate the customer from the Member Firms of the Deloitte Network. These were processed in the relevant parts of the report.

1.2.4. Questionnaires

For part one of the study, a questionnaire was sent to the 20 Member States not interviewed for the purposes of the following tasks:

- Analysis of the MOSS implementation approach and experience;
- Impact of the 2015 place of supply rules for Member States, particularly from the perspective of budgetary impact and level of control/administration.

These questionnaires provided a large part of the data needed for these tasks, more specifically on:

- The impact of the 2015 place of supply rules;
- The implementation of the MOSS;
- Auditing and administrative cooperation;
- The audit guidelines.

The aim was to analyse the impact of the 2015 place of supply rules in these Member States, on different levels, such as audit costs, IT costs for the development of the platform, feedback on the operation of the MOSS received from local businesses, experiences in the field of administrative cooperation, etc.

1.2.5. Survey to microbusinesses

In order to gather additional primary data from microbusinesses using the MOSS (especially outside the UK), we conducted a web-based survey which focused on the issues of most concern highlighted by organisations representing small business. The survey (available in English) was hosted on an online platform and was distributed to microbusinesses with the assistance of a representative association. The web-based survey was launched on 20th October 2015 for one week and it received a total of 62 responses from businesses based in 5 countries (EU and non-EU). The results of the

survey were used in the qualitative assessment of the microbusiness angle of the impact of the 2015 place of supply changes and the MOSS.

1.2.6. Standard Cost Model

One of the objectives of the study is to identify and quantify the costs of doing business in other Member States for businesses making B2C supplies in e-Commerce transactions. To this purpose, and in accordance with the ToR, we applied the Standard Cost Model (SCM) methodology, which is a widely used tool to estimate the administrative burden for businesses to comply with legal requirements translated into Information Obligations (IOs).

As for Lot 1, we have identified the key IOs businesses engaged in cross-border B2C e-Commerce have to comply with based on the current legislation and collected data on the time and costs real businesses incur. The IOs used for this exercise were the same already used under Lot 1.

Our objective was to identify and quantify the costs a 'typical' business engaged in cross-border B2C e-Commerce transactions in TBE services has to face to comply with the current VAT-related requirements.

The exercise took into account the changes to the VAT Directive for TBE cross-border services which entered into force on 1 January 2015, referred to as 'the 2015 place of supply rules'. Therefore, we carried out estimates on the administrative burden on businesses before ('pre 2015 place of supply rules') and after the legislative changes ('post 2015 place of supply rules'); in the second case, we repeated the exercise for businesses using the MOSS to report cross-border sales, and those not using it.

The 'typical' EU business results from the characteristics of a number of real businesses engaged in cross-border B2C e-Commerce in TBE services in EU Member States. The results per country were averaged to calculate the time needed by the 'typical' EU business to comply with VAT related requirements. In addition, we included in the exercise also non-EU businesses selling TBE services across the EU.

Overall, 27 EU businesses (from seven Member States) and non-EU businesses were able to provide information on time and costs spent on several IOs. The following countries and enterprises were included:

- Denmark: 3 business;
- France: 3 businesses;
- Germany: 3 businesses;
- Ireland: 5 businesses;
- Italy: 1 business;
- Luxembourg: 4 businesses;
- United Kingdom: 7 businesses.
- Non-EU: Switzerland (1 business)

The sample includes a representative panel of business of different sizes, i.e. microbusinesses, small, medium and large businesses, all active in the TBE services sector. The sample included mainly large businesses however.

As for Lot 1, additional data and information came from external available sources. A key input for the model is the hourly earnings/wage rates. We used the hourly earnings elaborated by the Eurostat.³⁵ We used the average hourly rates for the category ISCO 2, as management accountants are the category of personnel responsible for VAT-related procedures in businesses. Management accountants are classified under the code 2411 in the International Standard Classification of Occupations elaborated by the ILO.

Other key parameters for the analysis were the number of businesses engaged in cross-border B2C e-Commerce (obtained as part of the study), and the number of Member States a 'typical' EU business is registered to (estimated via primary data collection and expert judgement).

1.2.7. Fiscalis stakeholder seminar

General information

In September 2015, the European Commission together with Irish Revenue organised a Fiscalis seminar carrying the title "Modernising VAT for cross-border e-Commerce" in Dublin (Ireland). This seminar was envisaged in the terms of reference for the study as an opportunity to test initial findings for stage 1 of the project, generated from the interviews and other research that was conducted up to then, with both tax authorities and businesses, as well as to obtain additional rich qualitative data.

To this end, we participated in the interactive workshops for which discussion papers were drafted beforehand.

The objectives of the seminar were:

- ✔ To provide input to the Commission Study on "VAT aspects of cross-border e-Commerce – Options for modernisation";
- ✔ To discuss future developments for the modernisation of cross-border e-Commerce;
- ✔ To provide an overview of the operation of the MOSS and the 2015 place of supply rules to date, including the experience of the Commission, Member States and the business community;
- ✔ To collect detailed comments and other relevant information from all stakeholders;
- ✔ To ensure that the representatives of Member States and business have the opportunity to openly discuss the operation of the MOSS and the 2015 place of supply rules to date as well as future options on VAT aspects of cross-border e-Commerce;
- ✔ To help to develop options for a possible future proposal on VAT and cross-border e-Commerce using the input collected during the seminar;
- ✔ The expected outcome of the seminar is the collection of practical input from Member States and all other stakeholders which will be used by the Commission services to develop options for a possible future proposal on VAT and cross-border e-Commerce.

³⁵ See: <http://ec.europa.eu/eurostat/web/products-datasets/-/earn ses hourly>. The most recent figures date back to 2010, but given the economic crisis, figures are considered still quite accurate by the Commission's services consulted on the topic. Updated hourly earnings should be elaborated by Eurostat by the end of 2015.

33 businesses, 7 business organisations, 1 microbusiness organisation and 62 tax authority representatives from all 28 Member States and two non-EU countries, being Norway and Australia, were present. Additionally, 5 e-Commerce associations, 11 tax advisors and 5 people representing postal operators attended the seminar and participated in the working groups.

Set-up of the Fiscalis seminar

The Fiscalis seminar was held over three days. The first day, the participants were informed on the conference goals. Additionally, a presentation was given on the VAT policy of the European Commission, the implementation of the MOSS and the MOSS from both a business and tax authority perspective.

The second day, a break-out into working groups for discussion was organised. These working groups consisted of a mix of businesses, business representatives and tax authority representatives ensuring a broad mix of viewpoints was included in the discussion. There were three separate work group sessions to discuss three different topics: the place of supply changes, the operation of the MOSS and the future policy options.

A discussion document (see annex 4) was distributed before the conference to ensure a full understanding by the participants. The discussion document also included some questions to lead the discussion to assist with the ex-post analysis of the 2015 changes and the future policy options.

1.2.8. Stakeholder workshop

General information

Taken into account the success of the Fiscalis seminar in Dublin, Deloitte organised a new interactive workshop in June 2016 to gather stakeholder input for stage 2 of the study. More specifically, this workshop aimed at gathering further experiences as regards:

- ✘ Cost implications as a result of using the MOSS;
- ✘ Problems faced by business;
- ✘ A potential change of business attitudes in respect of (not) utilising the 2015 scheme.

Set-up of the workshop

Around 25 people from businesses, business organisations and tax advisors with experience with the MOSS and 2015 place of supply rules attended the workshop.

The most important part of the workshop was a breakout into two smaller groups to discuss the most important issues identified during stage 1 of the study in relation to the place of supply rules, the MOSS and audits. To this end, a workshop discussion paper was distributed (see annex 4) beforehand and all topics were briefly explained before starting the breakout session.

The below figures provide an overview of the most important topics covered per theme.

The Mini One Stop Shop

- Corrections and refunds
- Currency exchange
- Technical issues and recommendations

Audits

- Audits performed
- Recommendations for the way forward

2015 place of supply rules

- Identification customer location
- Definition electronically supplied services
- Article 9a VAT Implementing Regulation

2 Assessment of the 2015 place of supply rules

2.1. Introduction

In the European Union, B2C cross-border TBE services are always subject to VAT in the Member State of residence of the customer since 2015. This rule has been applied in the EU since 2003 on B2C electronic services when these were supplied by non-EU suppliers to B2C customers in the EU.

The extension to all B2C cross-border TBE services is the last phase of the VAT package, which was adopted in 2008.³⁶

The previous and current 2015 rules can be summarised as follows:

Table 4 – overview place of supply changes

		CUSTOMER	
		EU	non-EU
SUPPLIER	EU	<ul style="list-style-type: none"> • Pre 2015: where the supplier is established • 2015: where the customer is established 	Where the customer is established
	non-EU	Where the customer is established	Outside scope of EU VAT

This change means that VAT law of the jurisdiction of consumption applies to suppliers not established in this jurisdiction. The most significant and visible change is that the VAT accrues to this jurisdiction as well. The rules (including the obligation to register for VAT) apply from a first relevant transaction. Businesses may continue to benefit from the domestic VAT registration thresholds regarding their other (domestic) supplies. Businesses not established in the Member State of Consumption may not however benefit from the VAT registration threshold in that country as this applies only to the domestic businesses.

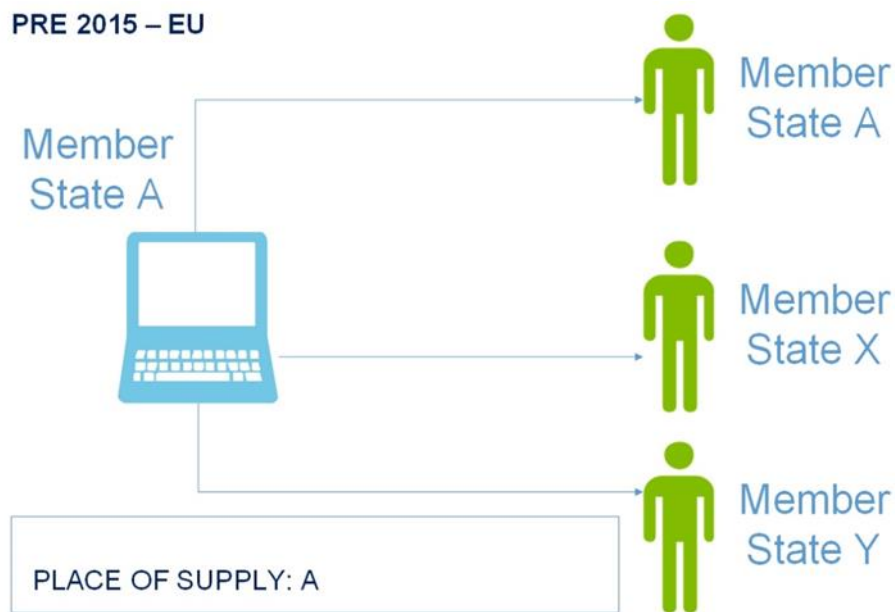
The following example illustrates the impact of the new place of supply rules:

Before 2015, if a business, established within the EU in country A and providing B2C TBE services, supplied services to customers in country A, country X and country Y, the place of supply was always in country A. Therefore, the business only had to file a VAT return in country A, the applicable VAT rate was the one of country A and VAT would accrue to country A.

This can be shown on the following diagram.

³⁶ Directive 2008/08/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply rules was implemented on 1 January 2010. This directive formed part of the EC VAT Package and resulted in substantial changes to the place of supply of services rules.

Figure 2 – Pre 2015 place of supply rules

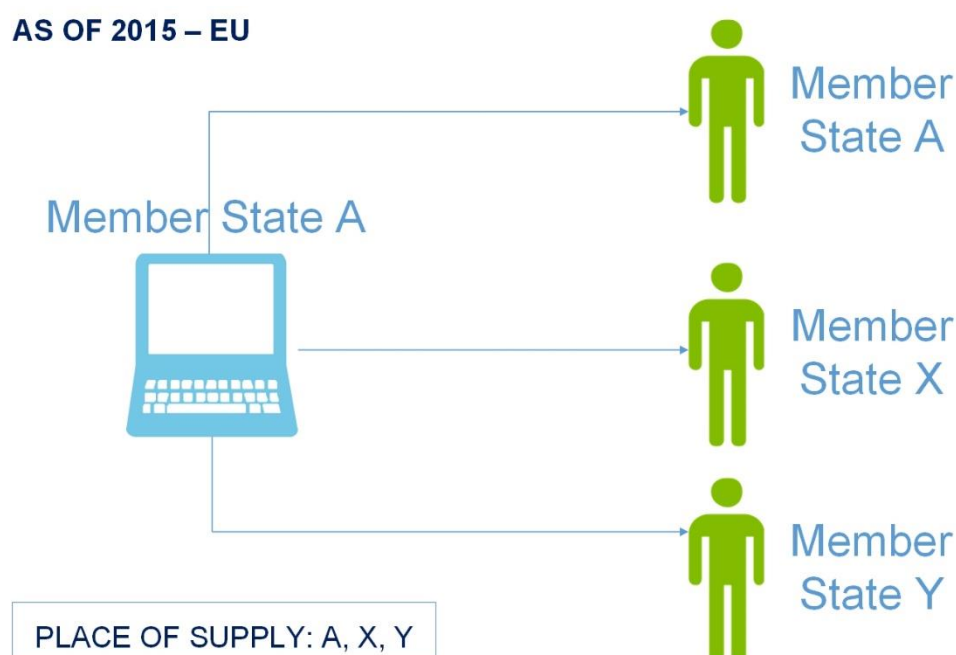


If that business remained under the threshold for VAT registration in Member State A that company was not subject to VAT for any of these transactions.

As of 2015, if the same business supplies TBE services to its customers in country A, country X and country Y, the place of supply is the place where the customer is located, thus respectively country A, country X and country Y. Consequently, the supplier must register in country A, country X and country Y for VAT purposes, the VAT rate is the one applicable in the country of the customer and VAT accrues to those countries (apart from a revenue sharing part).

This can be shown on the following diagram.

Figure 3 – Place of supply rules as of 2015



Concerning VAT thresholds, it is important to note that the Member State-specific VAT registration thresholds in principle do not apply to businesses that are not established in the relevant Member State. As a consequence, if the business in our example is a small business that is not obliged to register for VAT in country A because it does not exceed the threshold, this business will be obliged to both register and account for VAT in the Member States X and Y, or register for MOSS in country A. The business will not have to register for VAT in respect of its supplies to its customers in country A.

The new place of supply rules for B2C TBE services eliminate the incentive for enterprises to establish themselves in countries with lower VAT rates, which safeguards free market competition and, hence, enhances the establishment of an internal market. It also ensures that VAT accrues to the Member State of Consumption, in line with the destination principle.

However, the modification of the place of supply rules led to some concerns as the change also entailed an increased complexity for businesses, amongst others because these businesses needed to account for VAT in the EU Member States of Consumption.³⁷ Where, prior to 1 January 2015, such businesses only had to deal with the Member State where they were established, they are now confronted with up to 28 different sets of VAT rules and have to define the location of their customer based in the EU.

This chapter provides an assessment of the 2015 place of supply rules from both the perspective of Member States, as well as from the perspective of businesses.

³⁷ The consequential VAT administrative burden of having to potentially file 28 returns was reduced by the introduction of the Mini One Stop Shop, allowing suppliers of cross-border B2C TBE services to account for the VAT due on those supplies via a web portal in the Member State in which they are identified.

2.2. Member State perspective

2.2.1. Introduction

Scope

This section of the assessment of the 2015 place of supply rules looks at the experience from the perspective of the Member States.

The assessment includes an overview of the Member States' experience with the legislative implementation process, impact on Member States (including budgetary and regulatory impact) and the experience in the application of the new rules.

Methodology

For the assessment of the place of supply impact from the Member States' perspective, we carried out a quantitative and qualitative analysis based on data gathered from the tax authorities of the Member States.

For the information and data gathering, we composed an appropriate set of quantitative and qualitative questions based on the analytical framework, which was used in a questionnaire. The questionnaire was used in summer 2015 as a basis for the interviews with selected eight fieldwork tax authorities and sent for written input to the remaining 20 tax authorities in non-fieldwork Member States. The initial findings were discussed and elaborated on at the Fiscalis seminar in Dublin in September 2015.

An updated questionnaire was sent to all 28 Member States a year later in summer 2016 in order to collect further input on their experiences for stage 2 of the study (covering 2015 and first half of 2016) (20 responses received).

2.2.2. Legislative implementation of place of supply changes

National legislative changes and administrative guidance

The implementation date for the VAT Directive provisions related to 2015 place of supply changes and MOSS was 1 January 2015. Therefore, all the Member States were obliged to make the necessary changes in their national VAT legislation on time for the new rules to come into force on 1 January.

The assessment of the adoption of national legislation confirmed that 27 Member States adopted their national legislation regarding the place of supply rules and MOSS on time, namely before 1 January 2015. Only one Member State was late due to some administrative provisions and last minute need for an additional legislative document. However, even for the latter, all the modifications were duly published and implemented by the end of April 2015.

Since then almost no further legislative changes have been implemented. Only three Member States noted some limited later changes, including one standard VAT rate change and one change in the MOSS registration procedure (i.e. Denmark introducing a special MOSS VAT number for SMEs not registered for VAT). A large majority of the Member States have accompanied their new national rules with different forms of administrative guidelines (decrees, circulars, leaflets, user guides etc.). At the

time of first information collection (summer 2015), just one Member State noted that it was still working on administrative guidelines, to be published shortly. At the 2016 update, one Member State reported issuance of new comprehensive MOSS guidelines in May 2016, which are based on Commission's explanatory notes and address locally identified interpretation issues. Two other Member States noted limited additional guidance on specific topics.

Nearly all Member States have made relevant information available on their tax authority and/or ministry of finance websites, usually having a dedicated part for the new place of supply and MOSS rules and guidance.

Regarding the effectiveness and completeness of the guidance provided by the Member States, the businesses have noted that it differs significantly between the Member States. A number of issues have been raised where additional guidance may still be needed at either the EU or national level. Further analysis on this has been provided in the following section on business perspective.

Changes to VAT regulations and administrative practices

In addition to the application of the VAT rate of the Member State of Consumption as a result of the place of supply changes, the non-resident businesses had to also start applying the administrative VAT rules and legislation, such as invoicing, auditing, chargeability etc.) of that Member State.

The study assessed whether the Member States changed their existing VAT regulations and practices in preparation for such extended application to foreign businesses.

The vast majority of the Member States responded that they did not implement any modification in their VAT regulations or administrative practices due to the place of supply changes. Only three countries mentioned some limited changes, to further align the national rules with the EU legislation and guidance. Stage 2 of the assessment identified two cases of later regulatory changes, one on MOSS registration details and another on VAT refund procedure for non-EU MOSS registered businesses.

In addition, the Fiscalis seminar and direct discussions with tax authorities gave an indication that some tax authorities have made changes in their practical approach. For example, new methods are used by the Member States of consumption to identify the non-resident suppliers of TBE services (e.g. web crawl). It was also noted at the Fiscalis seminar that the tax authorities are concerned about challenges in finding and communicating with the non-resident businesses whom they may need to audit.

Support by the European Commission

The Commission commenced intensive preparations for the changes to the 2015 place of supply rules in 2010. In carrying out these preparations, the Commission worked together in a collaborative fashion with Member States, businesses and other stakeholders through working groups, consultations and specific stakeholder workshops in order to support the implementation and application of the new rules.

The Commission's preparatory work contained the following aspects:³⁸

- ✘ **Legislative framework** – proposing two Council Implementing Regulations, both adopted by Council and one Commission Implementing Regulation;
- ✘ **Guidance for Member States and businesses** – preparing explanatory notes on the place of supply rules and the MOSS guidelines;
- ✘ **Communication** – participation in a number of seminars within the EU, as well as outside (including seminars in the USA and making a keynote presentation at the Global VAT Forum in Japan), setting up a dedicated web portal with all the relevant information on the 2015 changes and MOSS;
- ✘ **MOSS IT implementation** – working very closely with Member States to ensure that the national web portals are fully functional and ready on time, preparing functional and technical specifications with the Standing Committee on Information Technology (SCIT) which were agreed at the Standing Committee on Administrative Cooperation (SCAC), monitoring closely the national implementation and proposing fall back solutions for Member States struggling with getting the full system up and running on time;
- ✘ **Coordination of audits** – coordination of the preparation of audit guidelines and promotion of their implementation by the Member States.

As one of the key actions from the above list, the explanatory notes on the place of supply changes³⁹ were published (developed in close cooperation with stakeholders), aiming to provide a better understanding of the EU VAT legislation to both tax authorities and businesses. Importantly, the relevant legislation, explanatory notes, other guidance and supporting information have been made available on a dedicated Commission webpage.⁴⁰

The vast majority of Member States noted in their responses as well as at the Fiscalis seminar that they were very satisfied with the support offered by the European Commission regarding the legislative changes. Some of them specifically mentioned that the explanatory notes have been a valuable support. A single remark was made that the support to the Member States could have been better in the early phases of the preparation for the implementation and that the balance between the support to Member States and to taxpayers seemed sometimes more tilted towards the taxpayer interests.

The significant role of the explanatory notes is further strengthened by the fact that nearly all the Member States (26 out of 28) have linked their new national rules or administrative guidelines with the Commission's guidance. In addition, all but one Member States indicated that their website provides (or will provide) a link to the Commission web page with information on the application of the new place of supply rules and MOSS.

³⁸ Report of the Commission Expert Group on Taxation of the Digital Economy, 28 May 2014, Annex 6.

³⁹ Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, 3 April 2014.

⁴⁰ http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#new_rules, consulted on 22 July 2016.

2.2.3. Communication on place of supply changes and MOSS

In order to improve the awareness of taxpayers of the new rules, most Member States have undertaken different types of actions to promote the legislative and system changes.

Almost all Member States indicated that they undertook actions through the media advising on the MOSS and 2015 place of supply rules. The predominant communication actions used were the publication of articles, press releases and specific notices on the website of the ministries of finance or the tax administration. Two Member States mentioned using social media to communicate the 2015 rules, such as the use of the Facebook page of the tax administration or the tax agency's YouTube channel.

Some Member States organised seminars and conferences, including several seminars arranged in cooperation with the European Commission. A few Member States also sent letters or emails to potentially impacted taxpayers.

Other activities mentioned included internal training courses, providing information to 'identified potential users', providing brochures, presenting the 2015 place of supply rules on seminars of external organisations and a presentation through television or radio.

As a conclusion from the tax authority perspective, many of them noted at the Fiscalis seminar that they had a good dialogue with business throughout the implementation process.

Despite this general confidence among tax authorities in having done well in communicating the changes, the 2015 assessment amongst businesses identified still a significant lack of awareness of the new rules, especially amongst the smallest businesses impacted by the changes.

As an indication of a reason for this, just one country provided a response to the question whether they specifically targeted micro-businesses in their communication. The approach used was by contacting editors of online publications and bloggers specialising in advising SMEs and start-ups. Additionally, they dedicated a specific part for microbusinesses in their Q&A sections online, provided interviews to local and national newspapers, appeared on national and local radio and covered issues typical for microbusinesses. Other Member States may have used similar means more generally. It may however be beneficial for future initiatives considering a specific approach for micro-businesses, who due to their limited resources may not be able to identify the parts of the general communication relevant to them (especially if they are usually exempted from most of the tax obligations or apply a simplified regime).

In contrast, almost every Member State seems to have undertaken actions to communicate the changes to the tax advisors and practitioners. However, this was often in response to initiatives from the advisors (e.g. by providing explanations and responding to enquiries), but also by organising or attending seminars or workshops and providing presentations.

The 2016 survey enquired about any ongoing communication activities, including the ones specifically targeted towards microbusinesses. Member States responded that they have comprehensive information available at the tax authority's website and consider this sufficient. No ongoing campaigns were identified.

2.2.4. Impact of the place of supply changes

Budgetary impact

The implementation of the place of supply changes caused a one-off and ongoing budgetary impact to the Member States. The study assessed the estimated and actual costs of legislative and technical implementation of the changes, ongoing operating costs, as well as the potential and realised revenue impact. This impact is covered in more detail in Chapter 5 on Quantitative analysis of the implementation of place of supply changes and MOSS.

Information requests from businesses and the issues raised

In relation to the implementation process and wider impact of the changes, there was assessment of the extent to which the place of supply changes triggered additional requests for information from businesses and of the main issues raised by businesses.

Regarding the number of additional requests for information, a majority of Member States noted that they did not experience a significant increase in requests. Some mentioned that there was an increase around the implementation time before and after 1 January 2015, which then normalised. One tax authority responded that they initiated discussions in the VAT Committee as a result of questions raised by businesses.

The assessment of the business issues mentioned by the Member States and then compared to the business input shows a good level of awareness amongst the tax authorities of the issues businesses experience with the application of the new rules. The issues raised by businesses have been covered in section 2.3 below.

At the update survey, the Member States re-confirmed that they do not receive many information requests (only two considered that they receive many requests), the three main topics mentioned were questions regarding MOSS functioning, definition of TBE services and identification of customer location/place of supply.

Interpretation and application mismatches with other Member States

In mid-2015, the Member States indicated that they had not yet experienced many conflicts in interpretation and application of the new place of supply rules, although some expected further issues to arise when the tax authorities have had more time to apply the rules.

Approximately half of the Member States responded having no known interpretational conflicts with other Member States so far. The Member States that had identified some conflicts mentioned the following topics as being the most controversial: the definition of electronically supplied services, online gambling services, financial services, services supplied by an intermediary, and the liability to pay VAT.

Despite expectation, the 2016 update did not identify any increase in interpretation or application issues. Large majority of responding Member States noted still no conflicts and the few mentioned slightly problematic topics were the same as above.

Topics requiring further guidance

Although Member States mentioned in 2016 update survey not having any conflicting interpretations or applications of 2015 place of supply rules, several of them identified topics where further guidance or clarity would be appreciated, such as specific definition issues with e-services, treatment of intermediaries (differentiation of intermediary service and e-service, role of intermediary) and rules on bad debt relief.

2.2.5. Key findings

- The legislative implementation of the place of the supply changes was timely and generally successful. A large majority of the Member States accompanied their legislation also with administrative guidance.
- There was high appreciation for the role of the Commission in providing further guidance on the interpretation of the rules and supporting the generally aligned application of the rules by involving the Member States in the process of the preparation of the explanatory notes.
- Although limited changes were required to the national regulatory frameworks, there is some evidence on changed administrative practices in Member States, especially in identifying non-resident taxpayers, and tax authorities have indicated concerns about the related compliance control (from the Member State of Consumption perspective).
- The Member States used a wide range of communication channels to promote the new rules, including through broadcasting, social media and other digital channels. Specific groups of businesses (especially micro-businesses), seem not always to have been reached. Member States consider the comprehensive information on the tax authority websites sufficient as an ongoing communication method after the implementation phase.
- Member States did not notice a significant increase in information requests from businesses in relation to the implementation of the 2015 changes, however from the requests received, they have gained a good understanding of what are the main issues businesses face.
- The Member States have also started to identify mismatches in the national interpretation or the application of the rules, mostly relating to the scoping definition issues raised also by businesses, but also regarding the role of intermediaries (e.g. telecom companies and marketplaces). EU level discussions or further guidance may help to reduce such mismatches or find a way to address the consequences.

2.3. Business perspective

2.3.1. Introduction

Scope

The purpose of this part of the report is to provide an assessment of the 2015 place of supply rules from a business perspective. More specifically, it focuses on a qualitative analysis of the administrative burden for businesses to apply the new legislation.

The assessment looks at business awareness of the new legislation, the issues encountered by businesses following from the implementation of the new place of supply rules (such as the obligation to define the customer's location, the confrontation with 28 different sets of VAT rules, etc.). The financial and cost impact on businesses is studied in chapter 5.

Methodology and data strategy

To gather the necessary insight on businesses' experiences with both the 2015 place of supply rules and the MOSS, we conducted interviews in the 8 selected Member States as explained above and 6 interviews in 4 other Member States, *i.e.* Sweden, Malta, the Netherlands and Belgium.

More specifically, we conducted:

- ✔ 39 interviews with businesses. Of these 39 businesses, 27 stated that at least one legal person (of the group, if applicable) is registered in the MOSS (either via the Union scheme or the non-Union scheme). 5 businesses were already registered for the VoES before 2015.
- ✔ 8 interviews with associations;
- ✔ 1 interview with a tax advisory firm.

The business sample includes a representative panel across business sectors. It covers businesses outside the MOSS, (EU) businesses that have opted for the Union-scheme and (non-EU) businesses that opted for the non-Union scheme and covers SMEs and large businesses. For more detail, we refer to the methodology part above (see under *1.2.3 Interviews – interviews with businesses*).

2.3.2. Awareness and communication

Communication activities of the European Commission and the Member States

To ensure companies comply with the 2015 place of supply rules, in first instance, it was important they were informed about these rules. Several communication actions were initiated by the European Commission, Member States and tax advisors or other practitioners.

To raise awareness, the European Commission launched a dedicated webpage on the DG TAXUD webpage⁴¹. Most Member States provided links to this webpage on their own webpages.

Internal statistics from the European Commission showed a peak in the number of pages consulted in the months of December 2014 and January 2015. The highest number of visitors was reported in December 2014 when around 36 000 visitors consulted the Commission's webpage dedicated to MOSS.

The Commission also issued explanatory notes.⁴² The explanatory notes were prepared to provide a better understanding of the new rules for both businesses and tax authorities and were prepared in collaboration with them. They were published in April 2014 as a guidance tool,⁴³ enabling businesses

⁴¹ http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm, consulted on 26 July 2016.

⁴² http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/explanatory_notes_2015_en.pdf, consulted on 26 July 2016.

⁴³ These notes are not legally binding. They serve as a practical and informal guidance about how the legislation concerning the new place of supply rules is to be applied based on views of DG TAXUD.

and tax authorities to prepare and adapt for the 2015 place of supply changes. Additionally, the Commission published a Guide to the VAT mini One Stop Shop⁴⁴ as well as additional guidelines with respect to auditing under MOSS⁴⁵ and IT information with respect to a suggested standard audit file for MOSS. These documents, and in particular the explanatory notes, were greatly appreciated by practitioners, although companies sometimes indicated they were too technical for non-practitioners to read (see further in the report for observations in this respect).

The Commission also set up a separate online webpage where businesses can find information on the key rules applicable in each Member State.⁴⁶ The dedicated webpage is a webpage where the most important information with regard to the 2015 place of supply rules as well as the MOSS can be consulted by business, in order to facilitate compliance with and access to the relevant rules. The information on selected national VAT rules was published in two files in March 2015. It concerns (i) an overview of the relevant legislation in all 28 Member States; and (ii) an accompanying document. The dedicated webpage is currently being updated by a contractor every quarter.

In addition, the Commission organised, (co-)hosted or made presentations at thirteen separate events⁴⁷ related to the new rules to raise awareness and to provide stakeholders with information on these legislative changes. These events were not only held in several Member States of the EU, but also e.g. in the USA and Japan. The explanatory notes were translated into all EU languages as well as Japanese, Russian and Chinese.

Regarding the support offered by Member States, it should be noted that most of the Member States have undertaken different type of actions to promote the legislative and system changes. For more detailed information, we refer to “Communication on place of supply changes and MOSS” as described under the assessment from a Member State perspective.

General awareness and support

All interviewed businesses were aware of the new 2015 place of supply rules before 2015. A small majority learned about the new rules only in 2013 or 2014, but almost half of the respondents indicated they were aware of the 2015 place of supply rules for several years already, mostly since 2008 or 2009.⁴⁸

Most of the companies interviewed were informed of the changes by fiscal advisors (such as accounting, consulting or law firms). Other ways business learned about the changes through the media, debates, and meetings at the EU-level, through tax authority's conferences or through other conferences, seminars or events. The following diagram shows to what extent companies learned about the new rules through different sources.

⁴⁴ http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/one-stop-shop-guidelines_en.pdf, consulted on 19 July 2016.

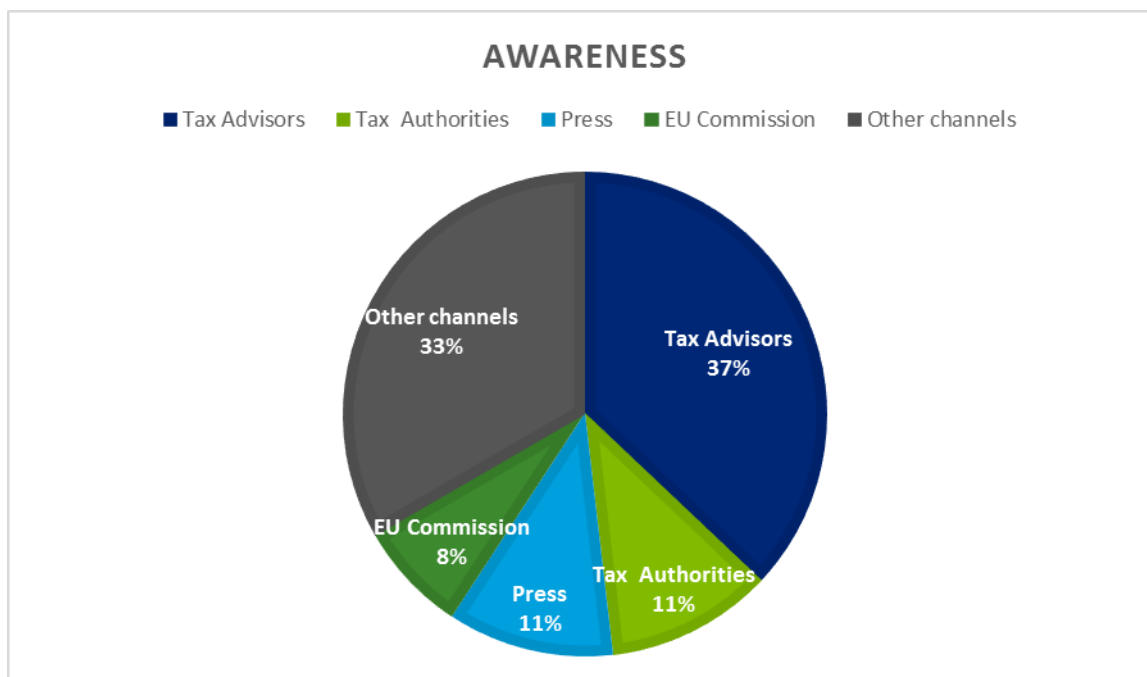
⁴⁵ http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/one-stop_add_guidelines_en.pdf, consulted on 19 July 2016.

⁴⁶ http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/moss_report.xlsm, consulted on 26 July 2016.

⁴⁷ On their webpage, the European Commission also provides references to other events relating to the place of supply changes. For more specifically, see http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#events, consulted on 26 July 2016.

⁴⁸ Note that the modification of the place of supply rules was part of the VAT package adopted in 2008. More specifically directive 2008/8/EC amended the VAT Directive.

Figure 4 – Channels of awareness communication⁴⁹



While the business sample indicates a high level of awareness, there have been indications that a relatively large number of small and microbusinesses active in the TBE sector were not aware until late 2014 of the 2015 place of supply changes. This was brought to our attention by a microbusiness organisation and it appeared also from a limited survey, which was conducted by this microbusiness organisation.

Overall, the change in the place of supply rules was endorsed by businesses, since they considered that it provides businesses with a level playing field in the Member State of Consumption. Indeed, businesses, even the larger ones sometimes established prior to 2015 in a jurisdiction with a lower VAT rate, considered it was important to be on an equal fiscal footing with other businesses. From the sample of businesses, a level playing field was on average ranked as a 6 on a scale of 10 (with 10 being the most important).

Appreciation of EC communications

Most of the respondents were aware of the aforementioned communication activities. However, as was the case for the Member State communication activities, an interest group defending the interests of microbusinesses claimed that there was a high probability that microbusinesses and small businesses were not aware of these communication activities until late 2014/beginning of 2015.

Overall, business respondents were satisfied with the EU communications. In particular, the explanatory notes were indicated as very helpful to understand the background of the changes and to define a practical approach. There was also appreciation from certain larger businesses on the level of involvement the European Commission had sought from them in the drafting of the legislation and

⁴⁹ Source: business interviews conducted by Deloitte, cf. *supra* under "2.3.1 Introduction – methodology and data strategy".

the elaboration of the explanatory notes, as well as for the information, which was distributed during this process through tax advisory firms.

The fact that not all Member State consider the explanatory notes to be binding is seen as negative by businesses, as this makes it more complex for businesses. Another comment was made with respect to the quite technical nature of the EC communications, as it is difficult to read the guidelines and explanatory notes for non-VAT experts. A suggestion was made by some respondents to have a simplified, easier to read guide published, enabling businesses, particularly those who do not have in-depth VAT expertise to understand the changes better.

Appreciation of Member State communications

Not all respondents were satisfied with the guidance offered by their Member State. More specifically, some businesses indicated this guidance was insufficient or of poor quality. Additionally, some Member States were considerably late in issuing guidelines.

The comments received on the availability and timeliness of guidelines on a Member State level seem to indicate that there might have been lower awareness about such guidelines than the awareness for the work done at EU Commission level.

An online survey conducted by a microbusiness organisation amongst small businesses and microbusinesses also revealed that there was much less awareness of communications and support provided by Member States amongst this group of businesses. This may also be explained by the fact that such organisations usually do not have the resources to inform themselves of the new rules or are usually also not a member of a trade association representing their interests. A microbusiness indicated that there was absolutely no information in the media when the legislation was implemented or well understandable explanations on the practical consequences of the changes.

As for businesses established in non-EU countries, these felt that no communication activities by Member States were targeted towards them.

2.3.3. Ranking of issues

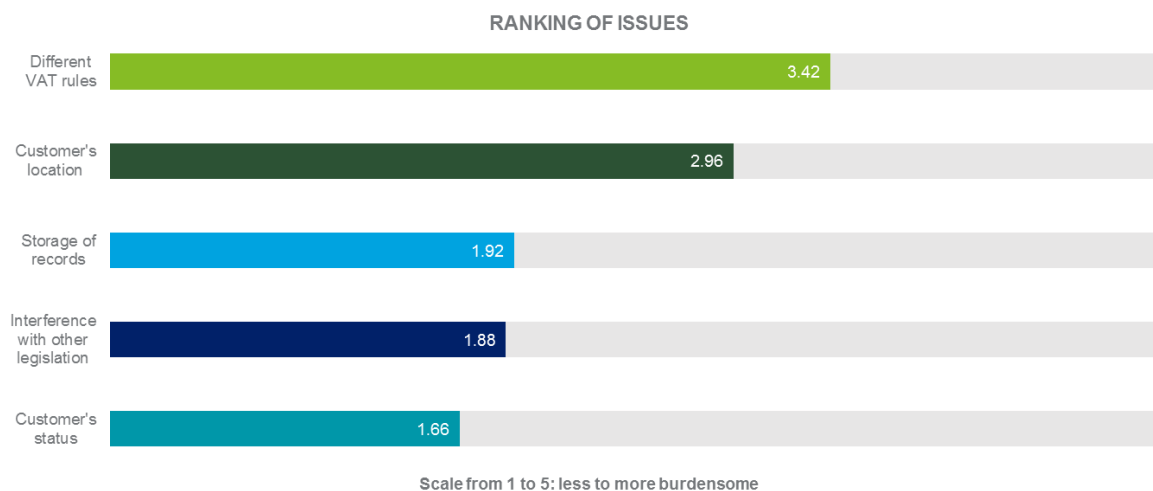
We asked businesses to rank the following issues from more to less burdensome: (i) problems with different VAT rules in all Member States; (ii) identification of customer's taxable status; (iii) identification of the customer's location; (iv) storing invoices and transactional data; and (v) problems linked with the application of the new rules and other legislation, such as for example the interference with data protection rules.⁵⁰

Businesses indicated that the confrontation with a different set of VAT rules in all Member States is the most burdensome. This is followed by the identification of the customer's location. Third comes the storage of invoices and transactional data. In the fourth place, businesses indicate the issues linked with the application on the new rules and other legislation. The identification of the customer's

⁵⁰ The main point of conflict between VAT rules and other legislation concerns the discrepancy between on the one hand, data protection rules and, on the other hand, the obligation to collect and store tax relevant personal information of the customer. More information is available below under "2.3.5 Other difficulties encountered - Problems relating to other legislations conflicting or interfering with VAT law".

taxable status only comes last, probably because many businesses rely on the presumption of article 18 of the Implementing Regulation.

Figure 5 – Ranking of issues⁵¹



Below, we comment on these different issues.⁵²

Additionally, the evaluation performed during stage 2 of the study revealed some additional issues. These will also be elaborated upon below.

2.3.4. Different VAT rules in Member States

The changes to the place of supply rules not only entailed that business had to charge VAT in the country of residence of the customer and register locally or through the MOSS. These are merely consequences of the fact that by virtue of the place of supply rules, the legislation of the country of residence of the customer is applicable. The consequences are, however, far greater than merely the applicable VAT rate. The rules imply that suppliers must comply with the VAT legislation of the Member States where their non-taxable customers are resident.

Being up to date with the local VAT legislation of those Member States constitutes a burden for businesses. Logically, as each Member State can determine its own rules, the VAT rules differ throughout the European Union. Indeed, although VAT law is harmonised to a certain extent in the European Union, Member States still have considerable discretion regarding certain provisions, for example concerning invoicing rules (considered very burdensome and not necessary in a business which is not based on cash), VAT rates, tax point rules and bad debt relief.⁵³

Additionally, legislation can change over time, which means that businesses should monitor these rules to ensure they have updated information on local VAT legislation. As a result, the 2015 place of

⁵¹ Source: business interviews conducted by Deloitte, cf. *supra* under “2.3.1 Introduction – methodology and data strategy”.

⁵² All issues are commented upon under 2.3.4 to 2.3.8.

⁵³ A. BAL, EU VAT: New Rules on B2C Supplies of Digital Services from 2015, *Bulletin of European Taxation*, 2014, No. 7.

supply rules entail an increased complexity for businesses as opposed to the situation before 2015 where they merely had to take into account the legislation applicable in the Member States where they are established.

Smaller businesses in particular are uncertain about the application of the VAT rules in all these Member States and are much less equipped and prepared to deal with these rules. From our interviews, it also appeared that there is a considerable lack of awareness regarding the need to monitor and apply the rules of the Member States.

To tackle this, the European Commission has set up a separate online webpage where businesses can find information on the MOSS and the key rules applicable in each Member State⁵⁴ (so-called “MOSS portal”), enabling them to comply with those rules when supplying TBE services in other Member States. This MOSS portal is updated each quarter going forward. Its format and content are being reviewed with a view to simplify and improve access to the information.

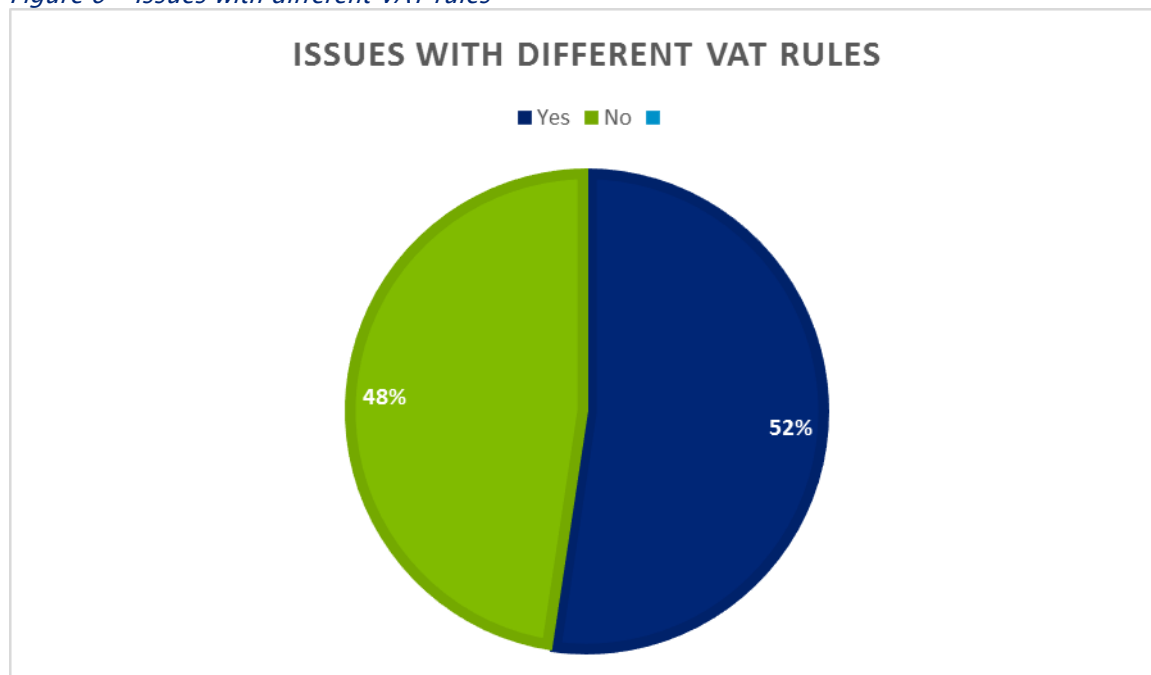
Business experience with foreign VAT law

Nearly half of the companies interviewed indicated they did not experience any problems related to the application of foreign VAT law, even stating that the “*rules are pretty straightforward*” or that these rules are “*easy to find*”.

This may to some extent be caused by the fact that certain businesses interviewed do not have an in-depth understanding of the diversity or complexity of certain VAT rules and that they assume that the VAT regime in the country of their customers is working in the same way as in their own Member State, except for the determination of the VAT rate. Additionally, the businesses interviewed have close to no experience with audits in other Member States.

⁵⁴http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/moss_report.xlsm, consulted on 26 July 2016.

Figure 6 – Issues with different VAT rules⁵⁵



Issues identified with the application of foreign VAT law

Those businesses, which indicated having struggled with issues caused by different VAT rules in the different MSCs, identified the following issues (in order of importance).

Invoicing rules

In the first place, having to deal with different **invoicing obligations** constitutes a major burden for a substantial number of the business respondents. Indeed, this is the key issue that businesses raised related to the non-harmonisation of invoicing rules. There is still an obligation to issue an invoice for B2C TBE services in an important number of countries. On 1 October 2015, as much as 7 Member States still required the issuance of an invoice for TBE supplies. Over the course of the initial application of the new TBE rules, some Member States removed the obligation.⁵⁶

In the Member States where the issuance of an invoice is required, the TBE providers need to ensure that they issue a document to customers, which includes a minimum information standard. On this point, it is noted that the Commission proposed that there should be no obligation for an invoice, and indeed has asked Member States to voluntarily apply this in the absence of legislation.

Considering that invoices for VAT purposes constitute control documents, it is important to note that TBE services usually do not operate in a cash environment. As such, the invoice as a control document does not serve much purpose, as bank statements will provide as much, if not more information.

During the Fiscalis seminar, businesses also strongly opposed invoicing B2C TBE services. The customer acquiring such services has very low interest to obtain an invoice and VAT recovery is not

⁵⁵ Source: business interviews conducted by Deloitte, see below under “2.3.1 Introduction – methodology and data strategy”.

⁵⁶ Denmark, Italy and Lithuania.

possible for these transactions in any case by the recipient. One business, which makes invoices available for its B2C clients, reported that in less than 1% of the cases, the customer actually downloads or consults the invoice. Insofar as B2C invoicing cannot be abolished altogether, businesses suggested a single invoicing format as a way to solve the disparity of rules existing today.

It needs to be noted also that in the specific sector of TBE services, other legislation may sometimes interfere with the services supplied. Even in countries where it is not required to issue an invoice for B2C TBE services, consumer protection law, commercial law or legislation applicable for telecommunications companies may require the supplier to issue an invoice anyhow. It remains to be seen subsequently whether the tax administration therefore requires the supplier to issue a compliant invoice for tax purposes even if strictly speaking he is not required to do so.

In Member States where invoices are required, the rules around the labeling of these invoices may also make the process of issuance very complex. Member States have different rules for example around rounding up or down, what information to mention on the invoice etc. To be compliant, a supplier should inquire into every one of these Member States what the exact rules are. They will certainly not be the same, and in certain cases might even conflict.

The strategies adopted by companies to tackle this issue are manifold. Some chose not to comply at all with the invoicing rules. These would then not invoice altogether or just apply one single standard for all of their invoices (e.g. the invoicing requirements laid down by the MSI). One respondent indicated it had relied on an external advisor to design an 'ideal invoice template', based on the most stringent tax invoicing rules. However, this required the investment of substantial resources. In general, compliance with the MSC invoicing rules requires manual ad hoc adjustments in many cases. It was not possible to come to one single invoicing template.

VAT rates

In general, TBE-services are subject to the standard VAT rate. However, in some countries they can be subject to a reduced rate.⁵⁷ This results from the fact that the VAT Directive allows Member States to freely set their standard VAT rate and to apply one or two reduced VAT rates. In addition, some Member States are able to apply so called 'parking rates' or 'standstill' rates. Sometimes these TBE services were even unduly subjected to a reduced rate, as the CJEU ruled.⁵⁸

Resulting from this option for Member States to have multiple VAT rates, businesses can be confronted with a variety of VAT rates in the different Member States. Indeed, the respondents indicate to struggle with the application of the **different VAT rates** in the customers' Member States.

Additionally, these VAT rates change over time, implying that businesses should monitor these VAT rates, to ensure they apply the correct rate. In this regard, the so-called MOSS portal, which was set up by the Commission with the help of a contractor and Member States, constitutes a useful instrument. It was additionally suggested that the European Commission could set up an automated system to update VAT rates, such as for example a business mailing list to send out notices/e-briefs on VAT rate changes. Since the Commission is considering greater freedom for Member States to set the applicable VAT rates, this issue could become more important. In this regard, it should be noted

⁵⁷ Austria, France, Luxembourg and Poland apply a reduced rate on broadcasting services. France and Italy apply reduced rates to e-books and France additionally applied a reduced rate on electronic newspapers.

⁵⁸ CJEU, Comm. v/ France, C-479/13 ; CJEU, Comm. v/ Luxembourg, C-502/13.

that the European Commission has set up a Tax Information Communication Database (“TIC”), where businesses can also find information on VAT rates in EU countries online.⁵⁹

The information published is supplied by the respective Member States, which means that the European Commission relies on the information provided by Member States. Therefore, it is crucial that Member States update this information on a regular base, in order to ensure its accuracy and completeness.

Another source of information is the so-called MOSS portal run by the European Commission, which includes information relevant for businesses supplying cross-border B2C TBE services⁶⁰. This information is updated by a contractor and confirmed with the Member States on a quarterly basis.

Exemptions: financial services, gaming and betting

Businesses, especially those active in the financial services industry or active in the betting and gaming industry or in educational services, are facing different exemption rules throughout the EU.

By virtue of article 135 (1)(i) VAT Directive, Member States have the possibility to exclude certain forms of gambling and betting from the scope of the general exemption for these types of services. The practical application of this possibility strongly differs in all Member States, and, as such, leads to legal uncertainty for companies active in the gaming and betting sector.

Similar issues were raised for the financial services industry. Here too, article 135(1)(a) to article 135(1)(g) VAT Directive foresees exemptions for specific services, but Member States did not adopt a uniform approach.

Overall lack of harmonization

Finally, and more generally, some businesses feel there is an overall lack of harmonisation of the legislation. This includes the lack of a harmonised categorisation for services⁶¹ and (to a lesser extent) the divergent use and enjoyment rules in the different Member States.

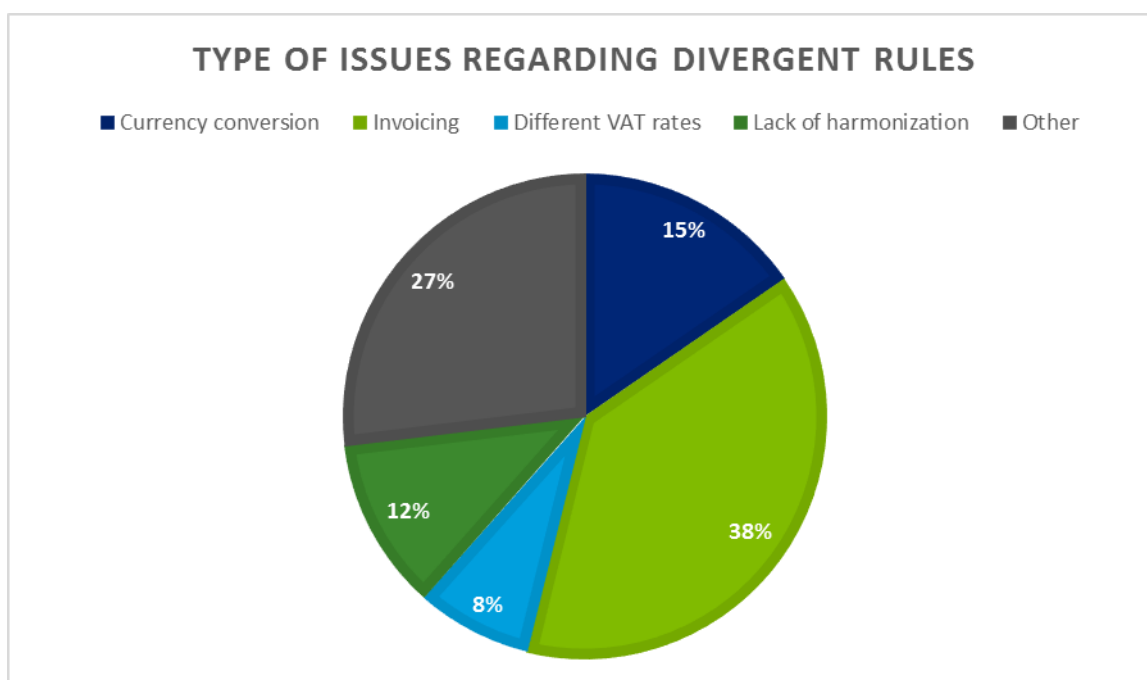
The cost associated with figuring out the specific rules appears to be significant and the current situation causes legal uncertainty.

⁵⁹ http://ec.europa.eu/taxation_customs/tic/index.html?locale=sk, consulted on 26 July 2016.

⁶⁰ http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#infosel consulted on 26 July 2016.

⁶¹ For more information, see “2.3.2 Classification of TBE services”.

Figure 7 – Types of issues regarding divergent VAT rules⁶²



To solve this, at least in part, it was suggested that, as long as home country rules are not applied, or as long as there are no EU common rules, the Member States' VAT rules should be available on a centralised website in several languages, on which businesses can rely. Such a "MOSS portal" is now available through the European Commission's website. More specifically, the Commission published a report containing "information on selected national VAT rules". As explained (cf. '2.3.2 Awareness and communication – Communication activities'), it is currently being updated by a contractor every quarter and its format is currently under review.

2.3.5. Customer location

Identification of customer's location – legal framework

Since 1 January 2015, B2C TBE services are taxed in the country where the customer resides. More specifically, for natural persons, this is where the customer has his 'permanent address' or 'usually resides'.⁶³ Consequently, the supplier has to identify the customer's location.

This is rather complex for digital goods, as their nature excludes a physical monitoring.⁶⁴ Additionally, the parties to such supplies do not meet, which provides the possibility for the customer to remain anonymous.⁶⁵ Therefore, determining the customer's location might result in a high administrative

⁶² Source: business interviews conducted by Deloitte, cf. *supra* under "2.3.1 Introduction – methodology and data strategy".

⁶³ Article 58 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

⁶⁴ Report of the European Parliament "Simplifying and Modernising VAT in the Digital Single Market, <http://www.europarl.europa.eu/document/activities/cont/201209/20120924ATT52130/20120924ATT52130EN.pdf>, consulted on 26 July 2016.

⁶⁵ M. LAMENSCH, The 2015 Rules for Electronically Supplied Services – Compliance Issues, International VAT Monitor, 2015, No. 1.

burden for the supplier. This is even more the case taking into account the nature of these services, which is that of low value, high volume transactions.⁶⁶

Additionally, obtaining reliable information is even more difficult in a digital context, where transactions usually take place in a very short time frame.⁶⁷

To avoid a high administrative burden, articles 24a and 24b, in subsection 3a of Implementing Regulation 282/2011 provide some presumptions to determine the customer's location ----- +where it is extremely difficult to determine where the customer is actually established.⁶⁸

Articles 24a and 24b cover:

- Digital supplies at a physical location of the supplier (e.g. a telephone box, a telephone kiosk, a Wi-Fi hot spot or a hotel lobby);
- Supplies carried out on board of a ship, aircraft or train carrying out a passenger transport operation;
- Digital supplies through a fixed land line;
- Digital supplies via mobile networks;
- Digital supplies using a decoder; and
- Other digital supplies. More specifically, in case none of the situations referred to in article 24a and in points (a), (b) and (c) of article 24b of Regulation 282/2011 is applicable, article 24b (d) of the same regulation foresees the presumption that the customer is established, has his permanent address or usually resides at the place identified as such by the supplier on the basis of two items of non-contradictory evidence as listed in article 24f.

These scenarios are extensively explained, illustrated and commented upon in the Commission's explanatory notes. The explanatory notes also include a useful decision chart to illustrate the interaction between the various presumptions.

Subsection 3b then deals with the rebuttal of presumptions by either the supplier or a tax authority.⁶⁹ More specifically, article 24d inserts the possibility to rebut the aforementioned presumptions based on three items of non-contradictory evidence indicating that the customer is established, has his permanent address or usually resides elsewhere.

Finally, subsection 3c elaborates on the evidence for the identification of the location of the customer and rebuttal of presumptions.⁷⁰ In this regard, article 24f lists the following items:

- The billing address of the customer;

⁶⁶ Cf. Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, p. 54.

⁶⁷ M. LAMENSCH, The 2015 Rules for Electronically Supplied Services – Compliance Issues, International VAT Monitor, 2015, No. 1.

⁶⁸ Cf. Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, p. 54.

⁶⁹ The scope for a tax authority to rebut a presumption is limited to situations where there are indications of misuse or abuse by the supplier.

⁷⁰ Cf. Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, p. 54.

- The Internet Protocol (IP) address of the device used by the customer or any method of geolocation;
- Bank details, such as the location of the bank account used for payment, or the billing address of the customer held by that bank;
- The Mobile Country Code (MCC) of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) card used by the customer;
- The location of the customer's fixed land line through which the service is supplied to him; or
- Other commercially relevant information.

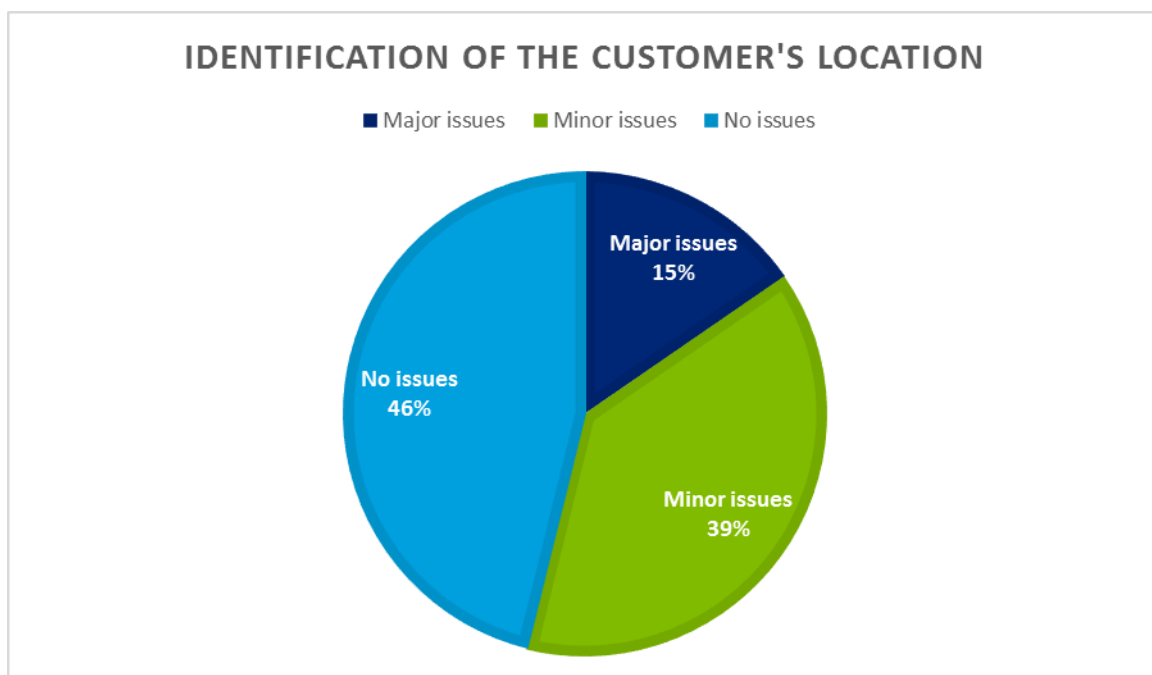
The legislation does not foresee a hierarchy in terms of the pieces of evidence.

Business challenges

Determining the location of customers was ranked by the businesses interviewed as one of the most burdensome issue concerning the 2015 place of supply rules (see below under “2.3.3 Ranking of issues”). More than half of the business respondents indicated that they experience issues with the determination of the location of their customers, whereby 15% indicated that they face major issues in this respect.

Additionally, it is noteworthy that the customer location identification did not get easier for businesses over time. Businesses indicated still more than one year and a half after the implementation to be still struggling with the identification of the customer location. In this regard, many businesses indicated it is impossible to be certain about a customer's location, even for large companies with a strong-developed IT team with access to many customer data.

Figure 8 – Issues determining customer's location ⁷¹



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Those businesses who indicated that they experience no issues concerning the identification of the location of their customers rely amongst others on the legal presumptions put forward in article 24b and following of the Implementing Regulation. These are considered very helpful in determining the location of the customer and, at least some of them, are widely applied.

Most of the businesses we interviewed, however, need to collect two items of non-contradictory evidence. For 46% of the interviewed businesses, obtaining that information and using it in their tax determination is not raising particular difficulties once the systems are implemented.

According to the respondents who collect two pieces of evidence, this results in a match for 90 to up to 99% of the cases. No respondent indicated to be able to achieve a matching of 100%.

To mitigate this situation, businesses adopt different strategies. Some collect a third piece of evidence (e.g. self-certification by the customer), while others give greater weight and priority to certain pieces of evidence. For example, when IP address and billing address are conflicting, the IP address is followed. This might be a risk, taking into account the fact that an IP address can easily be manipulated (see below in this chapter under “*Analysis of the available pieces of evidence in article 24f*”).

Another strategy adopted by businesses is to oblige customers to register as a customer for their website and to use that information as the basis for the customer location identification. On top of that, the supplier will perform random checks over time (so not for every transaction) to verify whether these details match the IP address. A single mismatch will often be disregarded, assuming the customer is abroad for a limited period only (e.g. on holidays).

At the Fiscalis Seminar, the issues in respect of determining the customer location were also often highlighted by the participating businesses. Businesses were of the opinion that obtaining two pieces of non-contradictory evidence is difficult and requesting additional data deters customers from concluding transactions. Therefore, they believe a flexible approach from the tax authorities’ side to evaluate the evidence obtained is necessary.

An online survey conducted by a microbusiness organisation showed that the experience of micro-businesses with the requirement to gather 2 or 3 pieces of non-contradictory evidence is considered to be very burdensome and/or even impossible, amongst others because there are no affordable technological solutions available to them which allow them to identify their clients.

To avoid any adverse consequences in this respect because of the difficulty of identifying the location of its customers, one respondent indicated it applied geo-blocking to customers from other EU Member States than its own Member State, which results in a loss of customers and income and obviously does not benefit the internal market.

Some of the companies facing difficulties to collect the required information indicated that their business flow and volume is not important enough to invest in two forms of proof of the customer location, in which case they only base the location of the customer on one piece of evidence.

It was suggested that small and micro-businesses below the registration threshold for small enterprises should be able to rely on only one piece of evidence. The UK adopted already temporarily such “light touch” in December 2014. The tolerance was due to expire in June 2015 but was

eventually extended indefinitely.⁷² It appears that this tolerance is merely a confirmation of a practice already applied by certain smaller businesses (see below).

Many businesses advocate a reduction of the required pieces of evidence to one piece of evidence for all businesses. It seems that many businesses are in fact already only gathering one piece of evidence. Most of these businesses decided to do so because gathering additional evidence results in high additional costs, whilst the result of the customer identification often remains unchanged by this second piece of evidence. In other words, a cost/benefit analysis performed by businesses mostly resulted in the decision that gathering only one piece of evidence is more beneficial.

An additional consideration is that consumers are often reluctant to share much information. Building in additional steps into the transactional process (e.g. asking for additional information) often even leads to customers failing to complete the purchase. In this regard, one business indicated that asking for only one additional piece of information during the registration procedure led to a significant decrease of completed purchases.

Evidence used by businesses

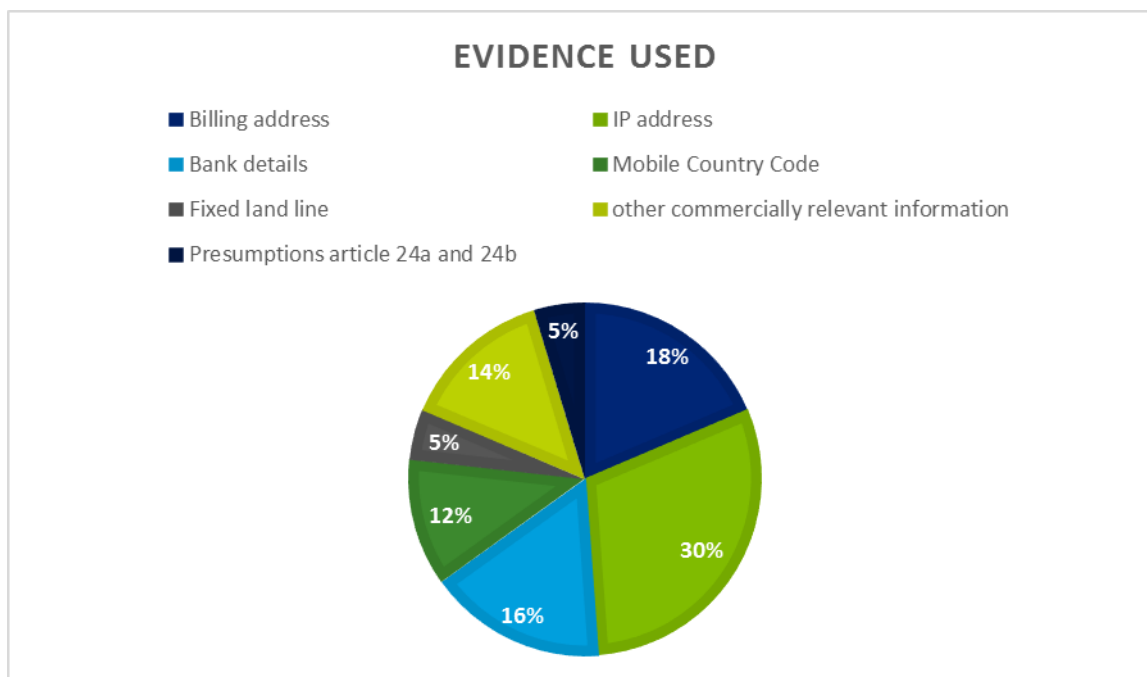
Based on the information from the interviews with the businesses, there was not one single piece of evidence which was predominantly used. Rather, to some extent all kinds of pieces of evidence were used. Each business uses different forms of evidence to determine the customer's location, based on what is most adapted to their business structure and processes.

More than half of the respondents indicated they use the IP address as a piece of evidence, making it the most frequently used piece of evidence. It is followed in descending order of importance by the billing address, the bank details, the mobile country code and the location of the customer's fixed landline.

A substantial part of the businesses interviewed furthermore rely on "other commercially relevant information", as described in article 24f of the Implementing Regulation. Examples of such information are commented on below.

⁷² <http://www.internationaltaxreview.com/Article/3463222/HMRCs-light-touch-approach-for-EU-VAT-extended-indefinitely.html>, consulted on 26 July 2016.

Figure 9 – Evidence used to determine customer's location ⁷³



A minority of the businesses interviewed use the presumptions in article 24a. These presumptions are seen as particularly helpful for telecommunications and broadcasting services. They are however less used for electronic services as they have become less relevant (e.g. absence of internet cafés these days).

Businesses indicated that some of the proxies in article 24a did not prove to be useful. For example, the proxies in relation to the physical presence telephone box, a telephone kiosk or an internet café seem to be outdated.

Additionally, the proxy foreseen in article 24a (2) seems to be redundant and even undesirable in case of B2B situations. This article locates supplies carried out on board of a ship, aircraft or train carrying out a passenger transport operation in the country of departure of the passenger, even if it concerns B2B transactions. As a result, the general rule for B2B transactions (taxation in the Member State of establishment of the recipient) does not apply for these types of supplies. As such, the purpose of article 24a, which is to provide a simplification for businesses, is not achieved. These businesses offering such services also risk having to register for VAT purposes in these different Member States. On the contrary, businesses buying these type of services (for example an employer for its employees), could be faced with the additional burden of having to ask for refunds in the different Member States.

On the contrary, during the Fiscalis seminar, businesses indicated that all of the pieces of evidence which article 24f provides for are very useful. The last category of “other commercially relevant information” provides a certain flexibility for companies to adapt the pieces of evidence collected to their business model.

⁷³ Source: business interviews conducted by Deloitte, cf. *supra* under “2.3.1 Introduction – methodology and data strategy”.

As mentioned above (under “*identification customer’s location – general*”), small enterprises included in the conducted survey indicated they usually used one single piece of evidence. This was usually the customer’s address, which is confirmed by the customer, or self-certification by the customer.

It is interesting to note that one third of the businesses experiencing issues say these occur when customers provide wrong information. It is unclear whether this is due to human errors or the intentionally supplying of wrong information in order to manipulate the place of supply rules.

Analysis of the available pieces of evidence in article 24f

The issues businesses are faced with mainly come from a lack of information available to them in order to verify the customer location in line with the rules set out above. This is due to a number of very different reasons. Below we set out these reasons, structured in the same order as the pieces of evidence listed in the Implementing Regulation in article 24f.

➤ The billing address of the customer

A number of businesses acting in a B2C context do not have an ongoing relationship with their customer, which makes the collection of the correct information challenging.

However, businesses who identify their customers for example for commercial purposes or allow the creation of profiles seem to experience fewer issues with the billing address.

Nonetheless, the customer has no incentive to provide a correct billing address for the purposes of the supply of TBE services. With the supply of goods, this is very different since the billing address is often also the delivery address and the client has an incentive to provide the right address since that is where the goods will be shipped to.

➤ The Internet Protocol (IP) address of the device used by the customer or any method of geolocation

During the business interviews and from what we learned during the Fiscalis Seminar, the IP address was sometimes considered as an unreliable piece of information, despite the fact that it is the most commonly used piece of information.

One third of the respondents of the online survey indicated that they cannot rely on the IP address as they consider that it can be easily manipulated. The ease with which software may allow a customer to modify IP addresses causes concerns with businesses. This does not seem to be driven by tax motivations but by other motivations, such as the availability of different catalogues of entertainment in different countries.

Additionally, it has been flagged that IP addresses in regions bordering other Member States sometimes wrongfully indicate an IP address in another Member States. For example, a client of a Danish business located in an eastern part of Denmark showed up with an IP address of Sweden.

As such, an IP address does not reveal the identity or location of the customer. A supplier wishing to use the IP address as a piece of information, requires additional geolocation software. This software may or not be free of charge.

This finding underlines the conclusion of the Commission and Council that the IP address is not robust enough to determine customer location and needs to be combined with additional evidence.

➤ Bank details such as the location of the bank account used for payment or the billing address of the customer held by that bank

When clients need to electronically transfer money to the supplier of the services, the bank details can easily be obtained. However, since suppliers of TBE services essentially operate in a credit card or online payment provider (e.g. PayPal, Apple Pay and Alipay) environment, they are largely dependent on third parties for this information.

Businesses indicated that the information on the origin of the payments, or let alone the country of issuance of the credit card, was not always communicated to the supplier. When it was communicated, it was not always done in a timely manner.

As a result, this requires potential corrections to be made to previous qualifications based on other pieces of information. This is particularly burdensome for TBE services since they often constitute one-off transactions without the possibility to revert to the client later on.

When discussing this with online payment providers, these indicated they communicate the customer's bank details, and more specifically, the country of the person making the payment. They do this free of charge and this would even be available in an automated manner. Credit card companies also to some extent would provide the countries that issued the credit cards, but again usually after the transaction has taken place.

It is considered that there may be scope here for payment service providers to provide the evidence of customer location to the traders using their services. For credit card providers, the card number is usually linked to a specific address or in the case of 'cash' bought/pre-paid credit cards to a specific country. Other payment service providers indirectly have this information as the customer accounts are topped-up by credit cards or electronic transfers. Therefore, there is no obvious reason why such information cannot be conveyed to the business using these services.

- The Mobile Country Code (MCC) of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) card used by the customer

Not only telecommunication companies, but also other electronic service providers seem to be very keen on using this piece of information and rate it as very reliable. Indeed, in most cases, customers do not possess multiple SIM cards with different country codes (or one single SIM card which can change country codes), which they could use to buy from a country with a lower VAT rate. Additionally, some businesses use SMS verification to verify the customer's mobile number, and, as such, the mobile country code.

No particular issues were flagged with respect to this piece of information.

- The location of the customer's fixed land line through which the service is supplied to him

No particular issues were flagged with respect to this piece of information. This can be explained by the fact that none of the respondents indicated they used this piece of information to locate the customer. It seems to be obsolete for the process of determining the location of the customer. Most probably, this should be explained by the amount of people using fixed landlines that has decreased importantly over the last years.

One can imagine though that this type of information would be predominantly used by telecommunications companies.

- Other commercially relevant information.

The pieces of so-called other commercially relevant information which were used were self-certification or declaration by customers (e.g. a customer confirms on the website that he lives in a

certain Member State), a customer's shopping history (e.g. a person systematically having purchased goods delivered in Denmark can be assumed to be living in Denmark), the language chosen by the customer on the website (e.g. a person selecting the language of the website in Swedish can be assumed to be located in Sweden); the chosen version of the website (e.g. a customer always selects the Italian version of a website) and the e-mail address of the customer.

The list provided for in article 24f seems to cover largely the potential pieces of evidence businesses can obtain in order to locate their customers. At least some of the other commercially relevant information used can be considered however as less reliable to locate the customer.

2.3.6. Storage of Records

Businesses indicated in their responses that storage of records is a relatively significant issue for them (third issue in the ranking of issues). As a result of the 2015 place of supply changes, the suppliers of cross-border B2C TBE services need to apply the storage rules of the Member State of Consumption, to keep information regarding the value and date of the transaction and the customer's name and location. This information then must be presented in the Member State of consumption, when requested.⁷⁴

The record storage periods differ between Member States and range between 6-10 years⁷⁵. Therefore, it is likely that the storage period in the Member State of supplier differs from the one in Member State of consumption. These time period differences increase the administrative burden for businesses whose Member State applicator storage period for less than 10 years. They need to either separate the storage of records in relation to their cross border TBE services (as a minimum regarding Member States with longer storage periods) or increase their storage period for all records to 10 years, to ensure compliance with the rules in other Member States.

2.3.7. Problems relating to other legislations conflicting or interfering with VAT law

Businesses indicated that VAT law would sometimes conflict with other legislation. We saw above that might be the case when invoicing is required based on other legislation (e.g. consumer protection law, commercial law or laws related to telecommunication). On top of this, other legislation described below also interferes sometimes with the requirements of VAT law.

Data protection rules

The main point of conflict between VAT rules and other legislation concerns the discrepancy between on the one hand, data protection rules and, on the other hand, the obligation to collect and store tax relevant personal information of the customer, such as for example IP details and credit card numbers. This issue was raised by almost half of the business respondents.

⁷⁴ P. WILLE, New Rules from 2015 Onwards for Telecommunications, Radio and Television Broadcasting, and Electronically Supplied Services, *International VAT Monitor*, 2015, No. 1.

⁷⁵ Businesses, registered for MOSS, need to store all relevant documentation for 10 years. See further in section 3.3.3

More specifically, businesses need to collect customer information in order to determine the customer's location. In this regard, business respondents noted that data protection rules might conflict with VAT legislation in two ways. First, credit card partners or other contracting parties facilitating the supply (such as for example phone companies) are often not allowed to share personal information of the customer. Therefore, the electronic service provider does not possess this information and cannot present any evidence to the tax authorities in case of an audit.

Second, data protection rules often do not always allow businesses to store the customer's personal information (or only allow doing so under certain conditions). In this regard, businesses indicated they are not allowed to store for example the customer's full IP address and credit card numbers. Additionally, it was indicated that these rules can be even stricter when it comes to minors.

2.3.8. Customer's status

Identification of customer's taxable status (B2B or B2C) – legal framework

Identifying the customer's taxable status is crucial in EU VAT law, as the place of supply rules may differ for taxable and non-taxable persons and the customer's taxable status determines the VAT liability of the supplier in most cross-border situations.

EU VAT law distinguishes between services supplied in a B2B environment and a B2C environment, depending on the status of the customer. If the customer qualifies for the definition as a taxable person in article 9 of the VAT Directive, the transactions should qualify as a B2B transaction. Additionally, supplies to a non-taxable legal person identified for VAT purposes and supplies to a taxable person, which also performs transactions which are out of scope for VAT purposes, shall be regarded as B2B transactions for the application of the place of supply of services rules.⁷⁶

Both TBE services supplied in a B2B and a B2C environment are deemed to be located where the recipient is established, but on different legal grounds.⁷⁷ The difference lies in the liability to pay the VAT, however for B2B purposes, the liability to pay the VAT shifts to the recipient of the services.⁷⁸

In a B2C environment, the supplier remains liable for the payment of the VAT in the relevant Member States of consumption.⁷⁹ The shift in liability is one of the reasons why it is important to be able to make the distinction between B2B and B2C transactions.

Determining the customer's taxable status might however not always be easy for the supplier as business clients are not always willing to cooperate and provide full information about their taxable status.⁸⁰

Therefore, to facilitate the proof of the taxable status of the customer, the legislator provided presumptions in Implementing Regulation 282/2011.⁸¹ Article 18 of this Regulation states that, unless

⁷⁶ Article 43 of the EU VAT Directive.

⁷⁷ For B2B purposes on the basis of article 44 EU VAT Directive and for B2C purposes on the basis of article 58 EU VAT Directive.

⁷⁸ Article 196 VAT Directive states that "VAT shall be payable by any taxable person (...) to whom the services referred to in article 44 are supplied, if the services are supplied by a taxable person not established within the territory of the Member State".

⁷⁹ Article 193 of the EU VAT Directive.

⁸⁰ European Commission (DG Internal Policies), Simplifying and Modernising VAT in the Digital Single Market for e-Commerce, Brussels, European Union, 2012, 40.

⁸¹ Council Implementing Regulation (EU) No 282/2011 of March 2011: laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

he has contradictory information, a service supplier may regard a customer established within the Community as a taxable person:

- a) where the customer has communicated his individual VAT identification number to him and the supplier obtains confirmation of the validity of that identification number and the associated name and address;
- b) where the customer has not yet received an individual VAT identification number, but informs the supplier that he has applied for it and the supplier obtains any other proof which demonstrates that the customer is a taxable person or a non-taxable legal person required to be identified for VAT purposes and carries out a reasonable level of verification of the accuracy of the information provided by the customer, by normal commercial security measures such as those relating to identity and payment checks.

In the absence of these scenarios, the supplier may regard a customer established within the Community as a non-taxable person, unless the supplier would have information to the contrary.

Within the context of TBE services, irrespective of information to the contrary, when the supplier registered in Member State A provides a service to a customer in Member State B, the supplier may regard a customer as a non-taxable person as long as that customer has not communicated his individual VAT identification number to him.

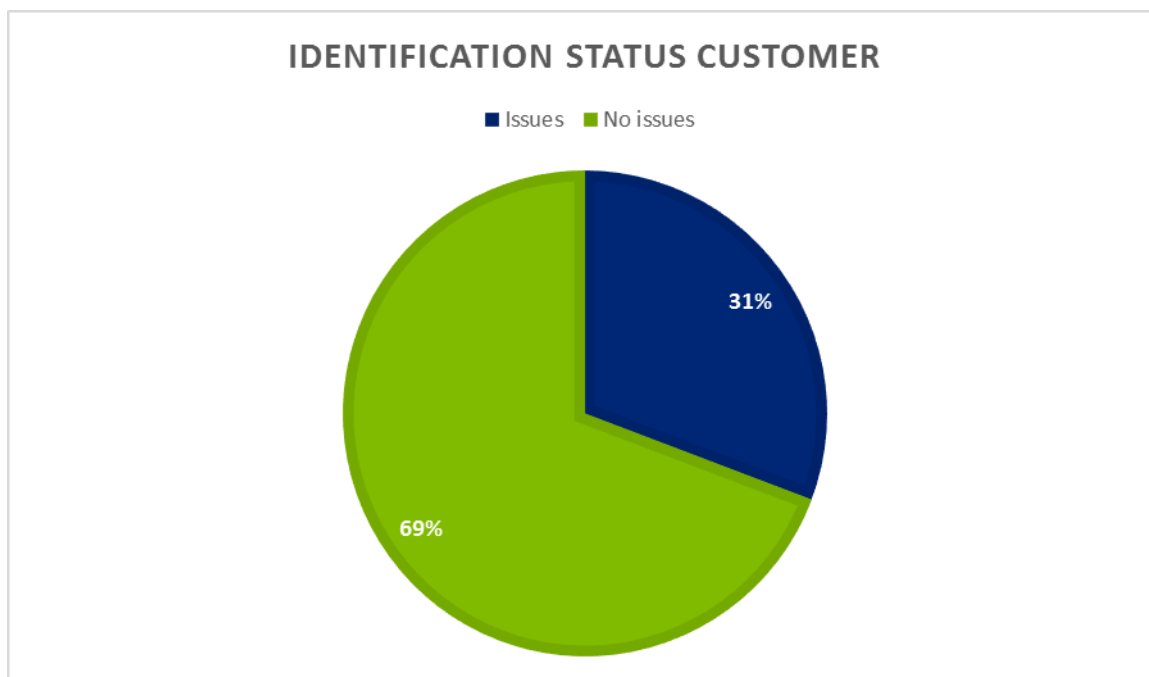
Consequently, the EU place of supply rule for B2B businesses applies where the customer has communicated his VAT identification number, the service is taxable in Member State B and VAT is due on a reverse charge basis by the customer. However, if the customer did not communicate his VAT identification number, or if the supplier receives an invalid VAT number, the B2C place of supply rule applies. In this case, the TBE service is still taxable in Member State B, however the VAT will be charged to the customer at the appropriate rate and paid by the supplier to his/her Member State, which will then transfer the VAT to the Member State of Consumption (Member State B).

Findings

Identifying the customer's taxable status was raised as an issue by only one-third of the respondents. Issues raised concerned the classification of customers which claimed to be business customers but did not provide a VAT number, e.g. because they were benefiting from the small business exemption in their own Member State (particularly for UK customers but also for customers in other Member States with a lower SME threshold).

In addition, some issues were raised with respect to purchases made by governmental organisations (B2G). Such organisations are in principle non-taxable legal persons, but when they dispose of a VAT number, they are considered as taxable persons for the purposes of localising the service. Therefore, their legal status was not always clear for the supplier. When the governmental organisation provided a VAT number, suppliers were often unsure whether to consider the transaction with the governmental organisation as B2B or B2C.

Figure 10 – Issues in determining customer's status⁸²



The majority of businesses base their customer status decision on the use of presumptions and the assumption of article 18 of the VAT Implementing Regulation.

Almost half of the respondents indicated that they presume that their services are for personal use only (which is also sometimes indicated in the terms and conditions when subscribing to a service), and, therefore, their sales always concern B2C supplies. Such presumption is based on the nature of their service and/or is embedded in their terms of business.

For instance, businesses involved in media streaming or the downloading of certain entertainment consider that the transactions with their customers can solely be B2C. It is possible that these businesses are less sensitive to this legal distinction, and consider this distinction today less of an issue.

Businesses also make use of the possibility put forward in article 18 of the Implementing Regulation 282/2011. This provides that when a customer who receives TBE services does not communicate his individual VAT identification number, the supplier may assume that the customer is not a taxable person. When the customer does not provide a VAT number, the transaction is assumed to be a B2C supply. Interestingly, some traders indicated that their recipients did not wish to communicate their VAT number, although it was apparent they were to be considered as B2B customers.

With respect to the verification of the customer status, some businesses indicated issues with the VIES portal⁸³ to check the validity of the VAT number. They flag that the VIES system does not always work for all Member States, it does not provide sufficient detail on the business registered and is sometimes overloaded with requests and thus not accessible.

⁸² Source: business interviews conducted by Deloitte, cf. *supra* under "2.3.1 Introduction – methodology and data strategy".

⁸³ http://ec.europa.eu/taxation_customs/vies/?locale=en, last consulted on 26 July 2016.

In this respect, one of the businesses interviewed, indicated that in case the recipient provides an invalid VAT number, they will, in first instance, still treat the transaction as a B2B transaction. Only when they obtain further information and are sure the transaction is in fact a B2C transaction they will charge the VAT. In such a case, it might happen that VAT is paid one quarter later. In addition, the MOSS rules will require a correction to the previous return and the possible payment of interest and penalties.

In particular, when supplying services to businesses, which can benefit from the small enterprises scheme⁸⁴, the identification of these small enterprises as a business is not always straightforward. Such small enterprises are not always given a VAT number which can be verified in the VIES system as a valid VAT number since they may benefit from a VAT registration threshold. Transactions with such small enterprises are however considered as falling within the scope of B2B transactions. It remains thus up to the supplier to verify the status of its customer based on other documents (e.g. excerpts from the trade register). This proves burdensome and complicated especially in an environment of TBE transactions, which is an instant environment of fast transactions where any additional steps in the transaction process may cause customers to abandon the transaction.

With respect to VIES, it should also be mentioned that it does not show whether a business is identified in MOSS. This could be inconvenient for the customer, as he is unable to verify whether a supplier has identified itself in MOSS, and thus is likely to be paying VAT. Having the possibility to verify whether a supplier is registered in MOSS potentially gives more comfort to a customer buying services online for the first time from a supplier he does not know. Additionally, it is worth mentioning that a private consumer could be held co-l liable for the VAT with respect to TBE supplies.⁸⁵ Therefore, it could be important to have to possibility to verify the registration in MOSS.

No issues were flagged by businesses with respect to verifying the taxable status of the customer when this customer was established outside of the EU. This seems logical, since in these cases, the services are always located in the country of the recipient, irrespective of the taxable status of the recipient. The supplier will have to enquire in the country of the recipient as to what the applicable tax regime is on the supplies. This remains however out of scope of EU VAT law.

2.3.9. Classification of TBE services

Problems in determining correct scope

The definition of an **electronically supplied service** is included in article 7 of Implementing Regulation No 282/2011 and consists of the following elements. It concerns services:

- 1) which are delivered over the Internet or an electronic network;
- 2) the nature of which renders their supply essentially automated;
- 3) involving minimal human intervention; and
- 4) impossible to ensure in the absence of information technology.

This definition is accompanied by different indicative lists that provide examples of services that fall or do not fall within the scope of the category of “electronically supplied services”. More specifically,

⁸⁴ Article 281 and following of the EU VAT Directive.

⁸⁵ Belgium has implemented such a provision in article 51bis, §1bis of the Belgian VAT code since 1 July 2016.

Annex II of the VAT Directive 2006/112/EC, article 7 and Annex I of Implementing Regulation No 282/2011 provide such lists.

These examples provide guidance for those situations explicitly covered by them, whereas for services not covered in the indicative lists, it is required to test their nature and content against the definition mentioned above.

Typical examples are software and changes to, or upgrades of, software, website design, services automatically generated from a computer via the Internet in response to specific data input by the recipient, Internet service packages of information (news, weather or travel reports), webhosting, subscriptions to online newspapers and magazines, downloading or streaming music, playing multiplayer games etc.

Article 24 (2) of the VAT Directive defines **telecommunications services** as “*services relating to the transmission, emission or reception of signals, words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception, with the inclusion of the provision of access to global information networks*”.

Article 6(a)1 of the VAT Implementing Regulation provides a list of examples of ‘telecommunication services’, and covers amongst others videophone services, access to the Internet and telephone services provided through the Internet.

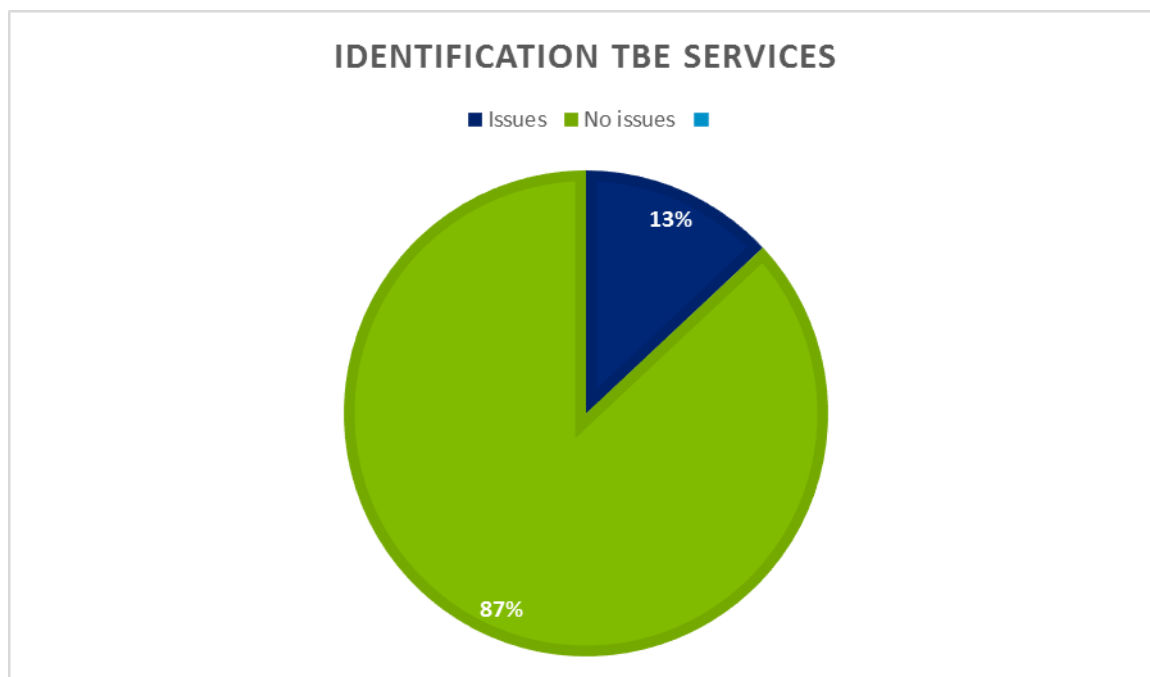
The VAT Directive does not provide any definition of **broadcasting services**, but article 6(b)1 of the VAT Implementing Regulation provides that broadcasting services include “*services consisting of audio and audio-visual content, such as radio or television programmes which are provided to the general public via communications networks by and under the editorial responsibility of a media service provider, for simultaneous listening or viewing, on the basis of a programme schedule.*” Article 6(b)2 explains this covers radio or television programmes transmitted or retransmitted over a radio or television network and radio or television programmes distributed via the Internet or similar electronic network (IP streaming), but only if they are broadcast simultaneous to their being transmitted or retransmitted over a radio or television network.

Finally, article 6(b)3 clarifies that the following services are not covered by that definition, being: telecommunications services; electronically supplied services; the provision of information about particular programmes on demand; the transfer of broadcasting or transmission rights; the leasing of technical equipment or facilities for use to receive a broadcast and; radio or television programmes distributed via the Internet or similar electronic network (IP streaming), unless they are broadcast simultaneous to their being transmitted or retransmitted over a radio or television network.

Findings

The vast majority of companies interviewed did not experience any problems linked with the classification of their services as being inside or outside the definition of TBE services.

Figure 11 – Identification TBE services⁸⁶



The qualification of broadcasting services was raised by a few businesses from this specific sector. The complexity of bundling of supplies⁸⁷ and the qualification of broadcasting services when they are not live were cited.

In an isolated case, a business raised a discrepancy in interpretations given by Member States to the concept of TBE services as a complicating factor in registering for MOSS in certain countries. As mentioned elsewhere in the report, some Member States did not provide any guidance yet, even not in mid-2016, at the end of stage 2 (when the latest data were gathered), *i.e.* because their position was not in conformity with the views set out in the explanatory notes.

In this respect, additional business examples of TBE services in the explanatory notes would have been welcomed, although the evolving nature of electronic services would make it difficult to cover all types of services in an exhaustive way.

Issues as regards the criteria “involving minimal human intervention” and “impossible to ensure in the absence of information technology”

From the above findings, it cannot however be assumed that the qualification of services as TBE services was easy for all businesses active in this domain. From literature, discussions at the level of the VAT Committee and during the workshops held at the Fiscalis Seminar, it was learned that the material scope of the 2015 place of supply rules does pose a certain number of problems.

Not so much the qualification as a telecommunications or broadcasting service proved difficult. Especially the qualification as an electronically supplied service seemed to cause difficulties.

⁸⁶ Source: business interviews conducted by Deloitte, cf. *supra* under “2.3.1 Introduction – methodology and data strategy”.

⁸⁷ Bundled supplies are supplies including both TBE services and non-TBE services or when the supplies include both electronic services and goods. An example are the remote updates of a GPS system. These updates could be part of the original purchase of the GPS or could be qualified as an ESS. In this case, it is key to determine the main supply, since this supply will determine the correct place of supply rules.

In particular the criteria “*impossible to ensure in the absence of information technology*” and “*involving minimal human intervention*” seem to be cumbersome in practise. These criteria determine the scope of the definition of “electronically supplied services”, excluding a wide range of supplies that are currently delivered online.⁸⁸

In the first place, businesses struggle with the criterion “*impossible to ensure in the absence of information technology*”. It is not entirely clear how this requirement should be perceived and there is little literature available on this subject matter.

For example, suppose a business offers advertising services to private individuals, entitling them to advertise their vacation rentals on the business’ website. This could be perceived as the provision of advertising space on a website, which, according to Annex I of Regulation No 282/2011 is an electronically supplied service. However, when analysing the definition put forward in article 7 of the aforementioned Regulation, one of the requirements is that it “*is impossible to ensure in the absence of information technology*”. In this regard, it is obvious that advertising services could also be offered offline, thus in the absence of information technology.

Some literature defends that the “*objective is to confirm that ‘information technology’ has an impact on the substance (i.e. that electronically supplied services are ‘automated’ in their delivery and substance)*”,⁸⁹ without requiring that the provision of the service is essentially reliant on information technology. A similar approach is presented in the VAT Committee working paper⁹⁰. According to this paper, an interpretation that requires that it is impossible for a service to also be provided offline, in order to qualify as an electronic service, is too strict, stating that: “*such an approach (...) leads to limiting the scope of the definition in an arbitrary way which cannot be justified taking into account the wording of the definition and its purpose.*”

Such an approach seems balanced; a too strict interpretation would not be in line with the principles of adopting taxation at destination. The VAT Committee guidelines agree almost unanimously that although services supplied using information technology (online) and in more traditional ways (offline) may have similar features and are comparable, a service supplied online and a service supplied offline cannot be regarded as identical. The VAT Committee almost unanimously agrees in its guidelines that in relation to such comparable services (supplied online and offline), only the services fulfilling all the conditions of the definition of electronically supplied services shall be found to be covered by it.⁹¹

Secondly, the criterion “*involving minimal human intervention*” can be very difficult to apply.⁹² In absence of any human intervention, there is of course no discussion. However, since there is no

⁸⁸ M. LAMENSCH, European Value-Added-Tax in the digital era: A critical analysis and proposal for reform, *IBFD Doctoral series*, December 2015, p. 119.

⁸⁹ M. LAMENSCH, European Value-Added-Tax in the digital era: A critical analysis and proposal for reform, *IBFD Doctoral series*, December 2015, p. 118.

⁹⁰ VAT COMMITTEE, VAT 2015; Scope of the notion of electronically supplied services, working paper no 843, taxud.c.1 (2015)694775, Brussels, 12 February 2015.

⁹¹ VAT COMMITTEE guidelines, 102nd meeting of 30 March 2015, Document D - taxud.c.1 (2015)4128689 – 862, http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/vat_committee/guidelines-vat-committee-meetings_en.pdf, consulted on 26 July 2016.

⁹² In this regard, the VAT Committee published already two working papers to tackle this issue (working paper no. 814,, taxud.c.1 (2014)2806510 and working paper no. 843, taxud.c.1(2015)694775). One paper concerned this criterion within the framework of the treatment of online supplies made by a travel agent to final consumers,⁹² whereas the other concerned the treatment of online supplies made through a platform.

definition or further guidance on this criterion, this proves complicated where there is some human intervention, but the supplier is unsure whether it is minimal.

For example, suppose the above business offers the same advertising services, but combines these services with an online booking system through which private persons can book these vacation rentals. In this case, multiple qualifications are possible, such as for example a service of intermediation, a service connected to immovable property or an advertising service. In the first two cases, the place of supply shall be where the property is located by virtue of article 47 VAT Directive. In the last case, it could qualify as an electronically supplied service. However, the question arises as to whether the booking facilitation could be perceived as a mere feature of the advertising services and what the exact nature is of the booking facilitation. This service might involve more than only “*minimal human intervention*”, making the qualification as an electronic service impossible.

In its guidelines, the VAT Committee unanimously agreed that a service shall still be regarded as requiring only “*minimal human intervention*” in situations where a supplier initially sets up a system needed for the supply, regularly maintains the system or repairs it in cases of problems linked with its functioning.⁹³ For businesses from certain sectors the analysis presented in the VAT Committee’s working papers, is seen as a broad one. Take for example the case of e-games providers. Often, they set up a team to constantly adjust the game by adding more features, content and events. In one of their working papers, the Committee argues this should be perceived as “necessary for enabling the supplier to provide his services in the best way possible and should not influence the decision as to whether there is minimal/more than minimal human intervention” and states further that “where the human activity on the side of the supplier focuses on the whole environment of the system and not on individual requests from customers this should not be seen as trespassing the requirement of minimal human intervention included in the definition of electronically supplied services.”. This criterion is again not always easy for some businesses as for example with online sports betting, there is a human intervention involved in creating the product and its price, both at the outset of the bet and during the game on which is bet.

Another, to a certain extent similar, example provided by the VAT Committee, is the supply of online gambling services, where the supplier of the services offers an activity performed by a person, such as for example the drawing of cards by a croupier. The activity in question is only addressed to the customers of the service provider, but is performed regardless of whether there are actually bets.⁹⁴ In other words: whether customers are online to bet or not, a croupier will be drawing cards live continuously. As such, these services are disconnected from individual supplies to customers. Again, the Committee argues that this kind of arrangement should be seen as an activity comparable to the initial setting up of the system needed for the supply, regular maintenance and repairs, and, as such, as not more than only “minimal human intervention”.⁹⁵ Where there is contact though between the players and the organiser (e.g. live casino where the players can chat and interact with the croupier), it is not considered as an electronically supplied service.

⁹³ VAT COMMITTEE guidelines, 102nd meeting of 30 March 2015, Document D - taxud.c.1 (2015)4128689 – 862, http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/vat_committee/guidelines-vat-committee-meetings_en.pdf, consulted on 26 July 2016.

⁹⁴ VAT COMMITTEE, Working paper No, 896, “VAT 2015: Scope of the notion of electronically supplied services; minimal human intervention (follow-up)”, <https://circabc.europa.eu/sd/a/e263d4ea-78b8-426b-a548-e5d2d73ae4f6/896%20-%20Electronically%20supplied%20services:%20minimal%20human%20intervention.pdf>, consulted on 8 July 2016.

⁹⁵ M. LAMENSCH, European Value-Added-Tax in the digital era: A critical analysis and proposal for reform, *IBFD Doctoral series*, December 2015, p. 118.

As both criteria are not entirely clear, there is a possibility these might be interpreted differently by Member States and businesses, which can result in legal uncertainty.⁹⁶ Therefore, further elaboration on what is meant with these criteria, as well as a commonly developed approach across Member States is recommended.

Additionally, services in the sharing economy (e.g. Airbnb and Uber) or platforms putting service sellers and buyers into touch with each other are especially hard to qualify. Much depends on the contractual relationships between the different parties and the underlying services. These services could potentially also be qualified as publicity services.

Therefore, the high level of comfort of businesses with the question of the classification of their services as TBE services does not exclude potential discussions on this topic in the future.

2.3.10. Role of intermediaries in the supply of TBE-services⁹⁷

Taxation of supplies performed through an intermediary

Article 9a of the VAT Implementing Regulation 282/2011, clarifies the treatment of telecommunications and electronic services⁹⁸ when **supplied through a telecommunications network or via an interface or a portal** such as a marketplace for applications belonging to an intermediary (or a third party intervening in the supply).⁹⁹

More specifically, this article introduces the rebuttable presumption that the intermediary is acting in his own name. This means that the intermediary is deemed to have received and onward supplied those services himself,¹⁰⁰ and, consequently has to account for VAT in the Member State of the customer.¹⁰¹

It entails that the transactions of a supplier passing through such an intermediary to supply TBE-services are considered as B2B transactions, and no longer as B2C transactions. The intermediary himself will be the one supplying B2C transactions to the final customers.

This has the potential to significantly simplify the accounting and reporting for the supplier using such an intermediary in respect of those supplies. It is expected that this measure will greatly enhance the compliance of smaller suppliers of such services. An intermediary may also be much better equipped to handle a multitude of clients and may better set up to determine the capacity and location of the customer.

This presumption may be rebutted under certain conditions. In this case, the electronic service provider will remain the supplier of the services provided. Consequently, he will then have to account

⁹⁶ Multiple gaming and betting associations indicated that this is particularly burdensome in the gaming and betting industry. In this regard, most concerns arise from the criterion "involving minimal human intervention". Indeed, there exist many different categories of online gambling and betting activities, each with different characteristics and different levels of human intervention.

⁹⁷ Additional detail is provided in the technical note in Annex 6.

⁹⁸ Broadcasting services are not covered by this presumption.

⁹⁹ Proposal for a Council Regulation amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services, 12 December 2012, COM(2012) 763 final.

¹⁰⁰ EUROPEAN COMMISSION (DG TAXUD), Guide to the VAT mini One Stop Shop, 23 October 2013.

¹⁰¹ Proposal for a Council Regulation amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services, 12 December 2012, COM(2012) 763 final.

for VAT in the Member State of the customer.¹⁰² The rebuttal of the presumption is however not easy for intermediaries since the conditions to do so are strict.

The explanatory notes provide more background, further guidance and many examples to make it easier for Member States, businesses and other stakeholders to understand this article.¹⁰³ Despite this effort, businesses indicated they still struggle with this provision, due to the different interpretations by Member States. Therefore, further clarification, and a common interpretation by Member States was needed on article 9a VAT Implementing Regulation.

The VAT Committee agreed guidelines on the practical application of article 9a.¹⁰⁴ These guidelines contain the VAT Committee's interpretation of the application of article 9a, covering amongst others the question who is covered by the presumption and who is to be regarded as "taking part in the supply".

In its guidelines, the VAT Committee agreed unanimously that:

- ✘ a supplier in the chain cannot, contrary to the facts and relevant legal requirements, be entitled to decide that he is not taking part in the supply and that therefore he is not covered by article 9a;
- ✘ a clause in a contract excluding a taxable person from a chain of transactions, where this does not reflect economic reality, shall not be sufficient for that taxable person to be regarded as not having taken part in the supply as referred to in article 9a.

Additionally, the VAT Committee agreed almost unanimously that:

- ✘ The rebuttable presumption provided for in article 9a shall apply to all taxable persons taking part in the supply chain;
- ✘ When a taxable person provides services, other than processing of payment in relation to the services covered by article 9a, that taxable person shall be seen as taking part in the supply within the meaning of this provision unless he is only making his networks available for carrying the content or/and for processing payment;
- ✘ Where all the conditions required in Article 9a(1) in order to rebut the presumption provided for in that provision are fulfilled no further obligations can be imposed on the concerned taxable person rebutting this presumption;
- ✘ the facts of the supply must be assessed and the nature of the contractual relations must be examined, in order for a taxpayer or a tax authority to determine whether a taxable person is covered by the presumption in article 9a;

¹⁰² EUROPEAN COMMISSION (DG TAXUD), Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, 3 April 2014.

¹⁰³ EUROPEAN COMMISSION (DG TAXUD), Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, 3 April 2014.

¹⁰⁴ VAT Committee, *Guidelines resulting from the 106th meeting of 14 March 2016*, "VAT 2015: Harmonised application of the presumption (follow-up) (document taxud.c.1(2016)921938, working paper No. 895",

, consulted on 20 September 2016.

- the economic reality shall prevail where contractual arrangements do not describe in a sufficiently clear manner the way in which the taxable person takes part in the supply or there is a contradiction between the contractual arrangements and the economic reality.

In spite of the clear legal provisions, some telecommunication companies have stated that the tax authorities of certain Member States do not accept the rebuttal of the presumption. This is very burdensome, since companies, which cannot or are not allowed to rebut the presumption, need to start collecting information on the final customers. They are however not equipped to do so. They may be held liable but are unable to deal with the requests of the tax authorities.

Additionally, the digital supply chains of such electronically supplied service are often long and it is considered as burdensome to analyse the full extent of the digital supply chain in order to identify who would be the actual provider of the electronically supplied service in order to engage in discussions about the rebuttal of the presumption and the obligations of each intermediary. It potentially requires that intermediaries communicate with each other to identify who is actually the supplier of the services. This has an impact on reporting (and potentially also invoicing, insofar as it is required by the local legislation).

One can distinguish different typologies of companies involved in such a supply chain using intermediaries:

- Businesses supplying their services through intermediaries

For these businesses, the application of article 9a makes sense since they often have little contact with the clients and thus may have more difficulty to correctly assess and collect the VAT. Indeed, some businesses indicated they believe that article 9a may even facilitate compliance.

Intermediaries however engaged little with the suppliers to discuss the rebuttal of the presumption. Contracts with these intermediaries are often not, or only to a limited extent, negotiable. They are often also not clear on who is assuming the fiscal obligations. In this respect, the VAT Committee decided almost unanimously that the economic reality shall prevail where contractual arrangements do not describe in a sufficiently clear manner the way in which the taxable person takes part in the supply, or there is a contradiction between the contractual arrangements and the economic reality.¹⁰⁵

- Intermediaries caught by article 9a (excluding telecommunications companies)

With respect to the typical app stores, electronic marketplaces and websites offering e-services for sale, which all qualify as an intermediary under article 9a, these seem to be fairly happy with the application of article 9a as it seems to confirm a practice, which was already present in the market. Although the compliance cost is high, they are well equipped to deal with the complexity of potentially having clients in 28 different Member States and beyond.

For the less typical platforms (e.g. social networks) which are caught by article 9a, this provision challenged their business models as they are much less set up to deal with a multitude of clients and thus have had to incur expenses in order to be able to comply with their obligations.

¹⁰⁵ VAT Committee, *Guidelines resulting from the 106th meeting of 14 March 2016*, "VAT 2015: Harmonised application of the presumption (follow-up) (document taxud.c.1(2016)921938, working paper No. 895", http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/key_documents/vat_committee/guidelines-vat-committee-meetings_en.pdf, consulted on 20 September 2016.

- Telecommunications companies caught by article 9a

These telecommunications companies allow customers to buy electronically supplied services by adding the price of the service to their mobile bill.

Telecommunications companies often prefer rebutting the presumption but, as stated above, not all Member States allow them to.

Telecommunications companies are often confronted with different approaches as to their intervention in the supply. In some countries, they are considered always to be caught by 9a and are prevented from rebutting, while in other countries this is much less of an issue.¹⁰⁶

Interaction between electronically supplied services and intermediation services

With respect to intermediaries, the question arises whether intermediation services can be qualified as electronically supplied services or not. This is relevant to determine the place of supply of such an intermediation service.

In this regard, the following provisions of the VAT Directive are especially relevant:

- Article 58 VAT Directive entails the new place of supply rule for TBE services, applicable as of 1 January 2015 and provides that TBE services supplied to non-taxable persons should be taxed at the place where the final customer is located;
- Article 7(3)(t) and (u) Implementing Regulation explicitly excludes the following services from the definition of electronically supplied services: tickets to cultural, artistic, sporting, scientific, educational, entertainment or similar events booked online (article 7 (3)(t)) and accommodation, car-hire, restaurant services, passenger transport or similar services booked online (article 7 (3)(u));
- Article 46 VAT Directive provides that intermediation service, supplied to non-taxable persons, should be taxed at the place where the underlying transaction is taxed.

The question arises whether, and if so to what extent, intermediation services should be seen as excluded from the definition of electronically supplied services by virtue of article 7 (3)(t) and (u) of the Implementing Regulation. Additionally, the question arises whether they should be taxed in accordance with article 46 or article 58 of the VAT Directive.

In June 2016, the VAT Committee published a working paper relating to this matter.¹⁰⁷ In its paper, the VAT Committee argues that intermediation services supplied directly to a non-taxable person where an intermediary acts in the name and on behalf of another person should be taxable at the place of supply of the underlying service to which the former service (intermediation) relates. As such, an intermediation service should be taxed at the place where the customer is located in case the underlying service is an electronically supplied service.

¹⁰⁶ See also in this sense VAT COMMITTEE, Working paper No, 896, "VAT 2015: Scope of the notion of electronically supplied services; minimal human intervention (follow-up)", <https://circabc.europa.eu/sd/a/e263d4ea-78b8-426b-a548-e5d2d73ae4f6/896%20-%20Electronically%20supplied%20services;%20minimal%20human%20intervention.pdf>, consulted on 25 July 2016.

¹⁰⁷ VAT COMMITTEE, VAT 2015: Interaction between electronically supplied services and intermediation services and initial discussion on the scope of the concept of intermediation services when taken in a broader context, working paper no 906, taxud.c.1(2016)3297911, Brussels, 6 June 2015.

Nevertheless, the VAT Committee stresses that further clarification is required on what qualifies as an intermediation service. To qualify as an intermediation service, it is important that the supplier *plays “a deliberate role in the arrangements made between the service provider and the customer such that they assess the customer’s needs, a supplier’s suitability, exert an influence over pricing or who makes the underlying supply.”* If, for example, a supplier makes available for consideration a database that allows putting movable and immovable property on sale, and merely provides passive automated facilities for a customer to contact a supplier through its website, this should not be perceived as a service of intermediation. As such, the service could qualify as an electronically supplied service in case all conditions are fulfilled. Nevertheless up to now the VAT Committee have not agreed any guidelines on that issue.

2.3.11. Reduced market access for SMEs

The advantage of the 2015 place of supply rules is that they create a level playing field between businesses (TBE providers) established in different EU Member States, as the VAT rate of the Member State of the customer applies irrespective of the location of the provider. It is considered as the international standard for locating such supplies.

However, concerns have been raised that the new place of supply rules might result in a new type of market distortion. More specifically, the 2015 place of supply rules could result in a competitive disadvantage for SMEs, as it is more difficult for them to comply with the VAT rules of a multitude of Member States.¹⁰⁸

This is expected to create a barrier for SMEs to start selling their services across borders given the extra cost linked to the compliance with the VAT rules for TBE services. Such SMEs may deter from selling those services. When searching for alternatives, they would be dependent on sales platforms, which also claim part of the revenue, effectively decreasing the profitability of these SMEs.

Among the interviewed businesses, very few problems were signalled, which can be explained by the fact that they were predominantly larger businesses. These large businesses account however for the overwhelming part of all cross-border B2C TBE services. A minority, which is also economically less significant, felt that the new 2015 place of supply rules could indeed constitute a competitive disadvantage for SMEs.

Other respondents answered that they believe no such danger exists, although they also pinpointed the existence of a belief of more cases of non-compliance by SMEs with the new VAT rules as compared to the market in general.

The online survey conducted among SMEs and microbusinesses showed that the viewpoint of small businesses is largely that the new VAT rules do pose an obstacle for market access for SMEs in particular.

According to this survey, the 2015 place of supply rules created a new distortion by making it more difficult for small businesses to operate on the European market. According to a microbusiness

¹⁰⁸ See in this regard: M. LAMENSCH, The 2015 Rules for Electronically Supplied Services – Compliance Issues, *International VAT Monitor*, 2015, No. 1; EU VAT ACTION, 2015 EU Digital VAT – Why an exemption for micro businesses is urgently needed, below which their domestic VAT rules would apply, February 2015, <http://euvataction.org/wp-content/uploads/2015/02/EU-VAT-Concerns-EU-Briefing-Feb-23-2015.pdf>, consulted on 31 July 2016.

organisation, a substantial number of small businesses will be dependent on platforms to sell their products. This entails two major disadvantages, as the supplier will have to pay an important commission to the platform (cost element) and the platform will normally not give the supplier access to customer details, resulting in the impossibility to promote their products to customers directly (reduced market access element). Nevertheless, it should be pointed out that many marketplaces offer an efficient and effective means to enable microbusinesses to get their products to consumers, which may not be possible with their own resources.

It is important to note that to facilitate compliance for SMEs, the European Commission published “*Basic information for microbusinesses supplying electronic services*”¹⁰⁹ on its website. The aim of the document is to give a simple explanation of mainly three items, being:

- Does the definition of electronically supplied services apply to your business product?
- Who and where are your customers?
- How to fulfil your VAT obligations?

Additionally, the document provides clear guidance for businesses on where to find additional useful information, amongst others on VAT rates and invoicing rules and other information on national VAT rules on MOSS.

2.3.12. Other potential issues

New online ways of conducting economic or private activity are constantly developing and the issues flowing from this should be further analysed in order to work out a harmonised approach on the EU level. This includes for example the treatment of C2B supplies and the sharing economy.

As regards C2B supplies, it should be noted that the applicable tax status (either taxable or non-taxable) of a supplier is crucial to determine the VAT liability of a taxable service provider. More specifically, the VAT Implementing regulation foresees two different general regimes for B2C and B2B transactions. However, it should be kept in mind that in order to distinguish between B2B and C2B transactions (supplies of goods or services performed by a non-taxable person to a taxable person) reference to general rules on who qualifies as a taxable person has to be made (Article 9 of the VAT Directive). In particular, activities performed by non-taxable persons (C2B) are not covered by VAT.

With respect to the sharing economy, the main issue is that the VAT treatment of services provided by online sharing platforms is not entirely clear. As explained, the question arises whether intermediation services can be qualified as electronically supplied services or not. This is relevant to determine the place of supply of such an intermediation service.

¹⁰⁹ EUROPEAN COMMISSION, *The basic EU VAT rules for electronically supplied services explained for micro businesses*, , last consulted on 29 September 2016.

2.3.13. Business impact: financial impact and changes on business model

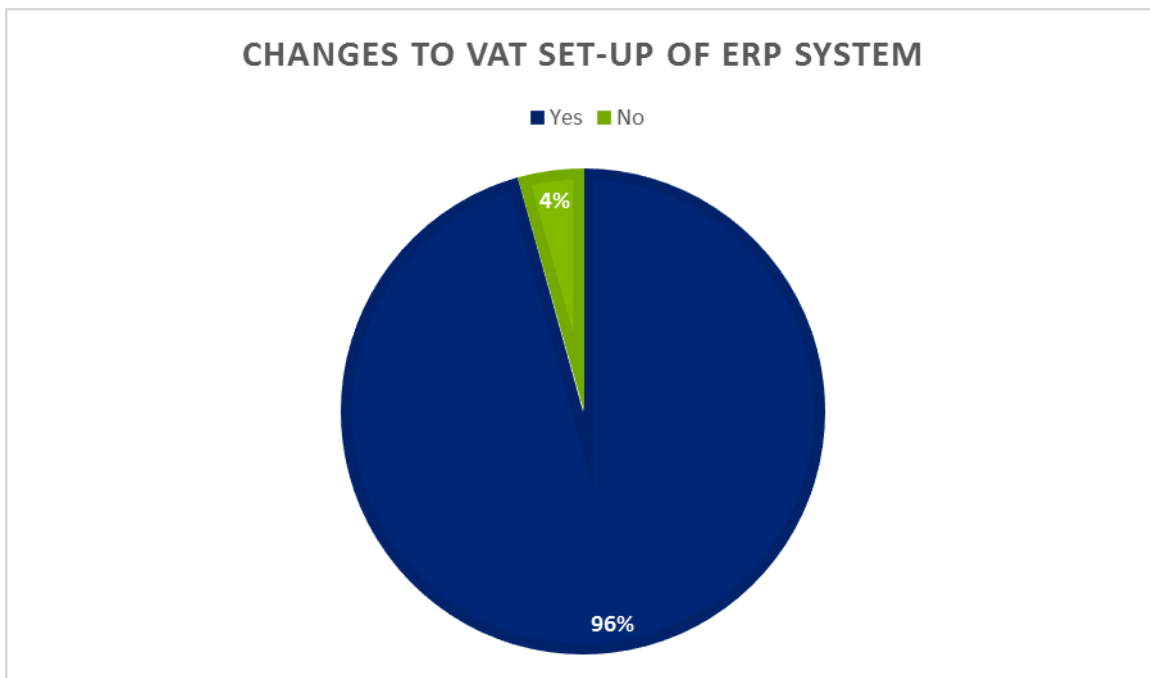
In this chapter, we analyse what the financial impact has been on businesses and whether they changed strategy or business practices as a result of the application of the new rules.

Costs related to adapting systems

The main cost encountered by businesses concerned the changes that needed to be made to the businesses Enterprise Resource Planning (“ERP”) or accounting systems. Nearly all interviewed businesses confirmed there was an impact on the VAT set-up of the ERP system caused by the 2015 place of supply changes. Required changes mentioned concerned amongst others: a change to the logic of billing software, catching additional transactional information, changes to the website and the need to make a separate report for the MOSS return.

In most cases, this was a one-off costs and business did not make any other changes after the initial phase. In addition, the ongoing costs for maintaining their system is rather low. Nevertheless, it should be noted that businesses incur as well costs in following up on the applicable legislation and potentially amending their ERP systems again.

Figure 12 – Changes to VAT set-up of ERP system¹¹⁰



A substantial number of businesses were unable to provide precise information on the cost associated with this, mostly because the resources spent were spread over different departments (tax, finance, IT, accounting and third parties).

¹¹⁰ Source: business interviews conducted by Deloitte, cf. *supra* under “2.3.1 Introduction – methodology and data strategy”.

We noted a substantial difference in the amount spent by several businesses. Big companies seem to have spent substantially more on implementing a new VAT set-up than smaller businesses did. For example, some multinationals indicated to have spent from two to several tens of million euros to implement the new system, whilst some (also large) companies spent less than EUR 20 000 on the IT development costs. The below table shows more detail.

Table 5 –Costs related to VAT set-up of ERP system¹¹¹

Cost type	Average (EUR)	Min	Max	Median	Periodicity
		(EUR)	(EUR)	(EUR)	
Set-up costs	1 980 108	10 000	15 000 000	500 000	one-off

Impact on pricing

Resulting from the 2015 place of supply rules, the VAT rate of the jurisdiction of consumption always applies on suppliers not established in this jurisdiction.

A business established in Luxembourg charged 15% VAT prior to 2015 when supplying B2C TBE services to EU customers, whereas now the same service is subject to VAT at a rate ranging from 17 to 27%, depending on the country of consumption.

If the service is supplied to a customer in Hungary, where a VAT rate of 27% applies, the supplier has to charge an additional 12%.

The same type of business established in Sweden was charging 25% VAT prior to 2015 when supplying B2C TBE services to EU customers, whereas now the same service is subject to VAT at a rate ranging from 17 to 27%, depending on the country of consumption.

If the service is supplied to a customer in France, it would be subject to 20%. The supplier has to charge 5% less than before.

Therefore, businesses are to make a decision on how these VAT rates will impact on their prices. They can charge a single price all taxes included to their customers in all Member States, meaning that they absorb the VAT rates. They then decrease their margins if the rate applied prior to 2015 was lower than the rate applicable after 2015, or they increase it if the rate applied prior to 2015 was higher than the rate applicable after 2015.

Alternatively, businesses may make the price of their services dependent on the location of the customers in order to reflect the different VAT rates. A consideration here would be to avoid that VAT rates impact the price margins. It means that depending on the situation prior to 2015, they need to increase or decrease the prices.

The vast majority of the companies interviewed did not make any changes to their pricing, meaning that their prices are a fixed price and that the new rules have influenced their margin. Some companies indicated that they were obliged by the operator of the platform to apply one single price in all Member States. Such a demand was not made by all platforms. More specifically, one platform

¹¹¹ Source: business interviews conducted by Deloitte, cf. *supra* under “2.3.1 Introduction – methodology and data strategy”.

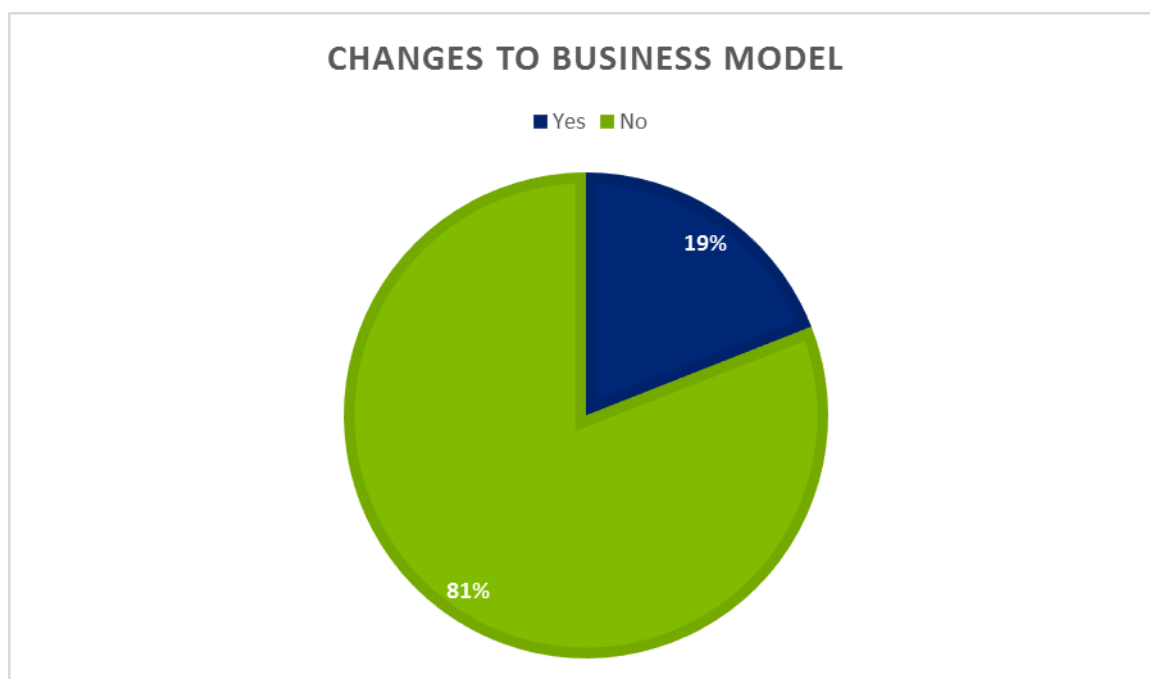
indicated that the developers selling through their website had the choice to increase their sales prices.

Very few businesses indicated that they would change their pricing according to the MSC and pass on the VAT cost to the customer.

Impact on business model

The 2015 place of supply changes did not cause most respondents to make changes to their business model.

Figure 13 – Changes to business model¹¹²



Of the few businesses making changes, one indicated that they would have made this change anyway, for other motivations. The other companies only indicated minor changes that did not fundamentally change the way they operate.

Amongst others, the following changes were mentioned:

- Creation of new products;
- Redrafting of contracts with content providers;
- Introduction of self-certification of customers (see also above with respect to the determination of the customer);
- Renewing the website; and

¹¹² Source: business interviews conducted by Deloitte, cf. *supra* under "2.3.1 Introduction – methodology and data strategy".

- A change of the terms and conditions to explain how VAT is levied and how the customer's location is identified.

In this regard, an interviewed multinational indicated that tax does not constitute a driver for business models. On the contrary, they believe that the business model drives tax. This statement seems to hold also when analysing our findings. It seems that the place of supply rules as such did not cause any changes in business models of businesses. As we will see below however, with respect to the MOSS, some companies did change their contract flows in order to mitigate certain issues expected with the MOSS and with respect to the place of establishment, some businesses chose to move Member States.

2.3.14. Key findings

- The change in the place of supply rules as of 2015 had an important impact on businesses. Shifting away from taxation in the MSI to taxation in the MSC entailed that many companies had to rethink their processes.
- The change in the place of supply rules was quite widely endorsed since the principle of taxation in the country of consumption is considered as fair. It was also considered that it provides a level playing field for businesses supplying services in these countries.
- The obvious downside of these rules is that a business needs to understand the applicable legislation in the MSCs. This goes beyond merely verifying the applicable VAT rate. It can obviously entail that the business needs to register in the MSC (and even much more). Chapter 3 explains how the MOSS mitigated this additional administrative burden.
- Businesses ranked the fact that they are confronted with potentially 28 different sets of rules as their main issue. Smaller businesses fear the application of the VAT rules in all Member States and are much less equipped and prepared to deal with these rules. The Commission has mitigated this to a certain extent by the setup of the so-called MOSS portal, which informs businesses on a number of key VAT rules in the MSCs.
- The European Commission and some Member States made considerable efforts to inform relevant companies of the new place of supply rules. This process was initiated well before 2015 and encompassed different elements such as the organisation of conferences with relevant businesses to inform them of the new rules, but also provide additional guidance in Implementing Regulations and the Explanatory Notes. Businesses were always heavily involved in this process. However, the communication efforts seem to have reached mainly large businesses and much less smaller businesses.
- In terms of locating the customers (second highest ranked issue), the proxies foreseen in the Implementing Regulation were seen as very helpful for businesses using them. The majority of the businesses interviewed however had to rely on two pieces of information to locate their customers. No business ever hit a 100% matching ratio for these two pieces of information. Since the collection of these two pieces proved burdensome, some companies chose to only collect one piece of information.
- The third issue in ranking list was storage of invoices, where obligation to apply the record storage periods of the Member States of Consumption (ranging from 6-10 years), may considerably increase the complexity and administrative burden for businesses supplying for Member States with shorter storage periods.

- Regarding conflicts with other legislation, the following areas of potential conflict were mentioned by businesses: data protection, consumer protection law, commercial law or laws related to telecommunication. In terms of the customer's status, some issues are signalled with the identification of the capacity of the customer as B2B or B2C. These were mainly linked to the status of SMEs, which trade under the local threshold for the small enterprises scheme.
- In terms of the application of article 9a of the Implementing Regulation, it was considered as a helpful instrument for smaller companies to be able to deal with their obligations. Its application greatly simplified compliance for these smaller companies.
- Although for most companies the qualification of their services as an ESS was fairly straightforward, experience has learned that the qualification is not easy to make. Especially since the form to a great extent determines the application, and not so much the substance, this has caused confusion.
- The financial impact for businesses to deal with the changes solely linked to the set-up of their ERP systems was also estimated. The average cost reached almost 2 million EUR. The median cost was 500.000 EUR. Large companies incurred high costs to be compliant. Some companies also had to undergo a negative financial impact due to the fact they now had to charge higher VAT rates and were not able to pass the cost on to their clients. The entire administrative burden is studied in Chapter 5.
- Even though it is still early to say, a preliminary conclusion can be that SMEs are affected by the new place of supply rules in a more important way than larger companies are.
- Businesses also flagged difficulties in being able to identify in the relevant Member States whether the provided services are either taxed or exempt. National rules tend to differ on this point. Again, the so-called "MOSS portal"¹¹³ is expected to mitigate this issue..
- Other issues identified by businesses concern mostly the application of the national rules of the Member State of Consumption, such as requirements for invoicing (which are considered disproportionately burdensome and non-applicable) and currency conversion mismatches;

¹¹³ For more information, see under "2.3.4 Different VAT rules in Member States" the European Commission has set up a separate online webpage where businesses can find information on the MOSS and the key rules applicable in each Member State (so-called "MOSS portal"), enabling them to comply with those rules when supplying TBE services in other Member States.

3 Assessment of the MOSS

3.1. Introduction

In line with the international trend towards moving to a destination based value added tax, the European Union also favours such a destination-based system of taxation. However, such a system is not simple to implement, especially as regards to B2C supplies, as businesses could be confronted with a high administrative burden, *inter alia* resulting from the obligation to potentially register in 28 EU Member states and to file 28 VAT returns.

At the international level, the OECD International VAT/GST Guidelines for B2C supplies of services and intangibles recommend vendor registration as the most efficient method for VAT collection on cross-border B2C services.¹¹⁴ Indeed, the liability to collect the VAT would remain with the supplier. However, the use of a simplified registration and compliance regime is recommended when implementing a vendor registration based collection system, in order to ensure proportionality and avoid excessive administrative burdens on businesses. The Mini One Stop Shop (the 'MOSS') system provided inspiration for the development of the guidance on the elements of such simplification regimes.

Within the context of the 2015 place of supply rules, the introduction of a MOSS reduces the consequential administrative burdens on businesses by allowing suppliers of cross-border B2C TBE services to account for the VAT due on those supplies via a web portal in the Member State in which they are established or identified. In this regard, such a 'One Stop Shop' is a crucial instrument in facilitating access to the single market, in particular for small and medium-sized enterprises.¹¹⁵

The Commission was actively involved throughout the implementation process of the MOSS. They prepared the MOSS guidelines (involving the Member States and business stakeholders), which contain comprehensive guidance on the MOSS registration, declaration and payment processes as well as information on the related application of the rules of Member States of consumption regarding, amongst others, record keeping and bad debt relief.¹¹⁶ The MOSS guidelines were translated to all official EU languages, as well as into Japanese, Chinese and Russian. In addition, the Commission has set up the MOSS web portal in order to provide businesses the access to EU legislation and guidance on the 2015 place of supply rules and MOSS, as well as provide country reports with the relevant national VAT rules.¹¹⁷ The new MOSS system was introduced and promoted at the Commission's communication events, covered in Chapter 2. The 2011 Commission Communication envisages a more general implementation of the destination principle by broadening the scope of the MOSS. Over time, such system could be extended to all intra-EU and third country online sales of tangible goods and services, if the MOSS proves to be an effective mechanism for reducing the administrative burden for businesses.

¹¹⁴ OECD, International VAT/GST Guidelines, Paris, November 2015, Chapter 3, part C.3.2, page 49.

¹¹⁵ See a.o. Report from the Commission to the Council on article 6 of Council Directive 2008/8/EC, COM (2014)380.

¹¹⁶ EUROPEAN COMMISSION, Guide to the VAT mini One Stop Shop, Brussels 23 October 2013. http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/one-stop-shop-guidelines_en.pdf, consulted on 15 December 2015.

¹¹⁷ http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#new_rules, consulted on 15 December 2015.

Therefore, a thorough evaluation of this scheme is paramount in further building the business case for a possible broadening of the scope, and, consequently, for a more general implementation of the destination principle.

This is the key aim of this part of the study: it provides a qualitative assessment on the implementation and application of the MOSS, examining the experiences of Member States and businesses, as these experiences allow us to gain insight on the reasons why businesses either are opting or are not opting for the MOSS.

Mapping the problems, identified based on the input collected from the Member States and businesses, show whether there is any room for improvement for the MOSS, and, as mentioned, provides more insight on the reasons for businesses to opt or not opt for the MOSS.

3.2. Member State perspective

3.2.1. Introduction

Scope

This section of the report provides a qualitative assessment of the Member State perspective of the implementation and application of the MOSS electronic portal, the experience with MOSS registrations and revenue sharing and suggestions for further improvements in MOSS. A quantitative analysis of the uptake of MOSS is provided in section 5.2 below.

Methodology

For the assessment of the Member States' experience with the MOSS portal, we carried out a quantitative and qualitative analysis based on the data gathered from the tax authorities of the Member States.

Based on the analytical framework, we composed a set of questions for the questionnaires and interviews with the national tax authorities. The information for this section was then gathered through the interviews with eight selected tax authorities and by the responses to the questionnaires from the remaining 20 tax authorities. The initial findings were discussed and elaborated on at the Fiscalis seminar in Dublin in September 2015. An update survey sent to 28 tax authorities in the summer of 2016 provided further input to the study.

3.2.2. Functioning of the MOSS as electronic portal

Launch and the functioning of the MOSS portal

Based on the Commission Implementing Regulation on MOSS¹¹⁸, all the Member States had to develop a national MOSS web portal (electronic interface), based on the common functional and technical specifications agreed at the EU level. The main functionalities of the MOSS portal are the

¹¹⁸ Commission Implementing Regulation No 815/2012 of 13 September 2012.

registration of a business for the use of MOSS, the submission and handling of the MOSS VAT return, VAT return information and the payment process.

According to the Implementing Regulation, the Member States were required to launch the full national MOSS portal from 1 January 2015. However, they had to make the MOSS registration functionality available already from 1 October 2014¹¹⁹, in order to avoid a situation of a large number of businesses registering for MOSS in the beginning of January 2015. Most of the Member States met these deadlines, even though some had slight delays. To complement the EU legislation on MOSS, the Commission prepared in cooperation with Member States a practical guide aimed to provide a better understanding of EU legislation relating to the MOSS, as well as of its functional and technical specifications. The document was adopted by the Commission's Standing Committee on Administrative Cooperation (SCAC)¹²⁰.

Implementation and operating costs

The assessment carried out on the costs of implementation of the 2015 place of supply changes reflected mostly the costs of changes to the tax authority's IT systems and processes, relating to the implementation of the national MOSS portal for registrations and declarations. It also concerned the adjustments to the linked system for administrative cooperation between Member States (for revenue sharing and exchange of information). The total average cost per Member State amounted to EUR 2.2 million. However, the costs for each Member State differed significantly, influenced for example by the choice between the use of outsourcing or in-house development. Some Member States noted also that they used the opportunity to carry out more general system updates and changes and found it therefore difficult to separate the cost of changes relating specifically to 2015 changes and MOSS. The collected data on costs may therefore include some expenditure, which does not necessarily relate directly to the changes required for the MOSS implementation. The update survey provided additional information on the ongoing costs of MOSS, which differ significantly between the Member States. Further quantitative information on MOSS implementation and operating costs is provided in section 5.1.1. of the study.

Experience with the MOSS IT system

The vast majority of the Member States agreed (both in 2015 survey and in 2016 update) that the system is working considerably well and that they have not encountered major technical difficulties with the IT system or in interaction with the systems in other Member States. This opinion seems also to be shared by the businesses, which generally find that the national web portals provide the services and support they need to comply with their tax obligations.

However, the Member States made some remarks, relating to the incidents and problems that arose during the first months of the application of the MOSS IT system, which may be useful as a part of a system assessment. For some of the issues, it was not clear when they would be corrected. For other issues reported as 'open items', it was not always clear whether the issue was still unsolved or whether there was just a delay in a sign off by some Member States. Furthermore, one Member State reported that it had a significant number of issues in relation to interaction with other Member States (as a MSC), which it had also reported through the EU issue register. As an example, it had problems

¹¹⁹ Council Regulation No 967/2012 of 9 October 2012.

¹²⁰ Guide to the VAT mini One Stop Shop, European Commission, 23 October 2013.

with getting sufficient taxpayer data, allegedly due to system issues in a MSI. The Member State hoped to solve the issues through the EU process for technical cooperation.

During the 2016 update, the main IT related issue mentioned by the Member States was the fact that some Member States had still not implemented some functionalities of the MOSS, such as the reimbursement process. The experience with practical interaction with the other Member States in MOSS is generally positive, less than a quarter of respondents mentioned having some issues.

Support by the European Commission

The Member States' tax authorities were generally satisfied with the support received from the Commission with regard to the implementation of the MOSS portal. Amongst others, the Commission and the contractors made on-site visits to all Member States, with additional visits made when required. It is relevant to mention also that the Commission made a fall-back application available to two Member States, where the roll-out of the system was delayed (in one Member State this concerned the registration module during the 1st quarter 2015; in another one the modules concerning the application of the non-Union scheme until 2017).

A few Member States noted that the Commission introduced some technical changes at a very late stage and they found it challenging to implement them on time. Furthermore, it was mentioned that the decision process (via the IT issues platform) of the Commission for solving any issues (especially if just misunderstandings) was considered to be too burdensome and too slow to enable quick solutions. A Member State noted that testing of the Member States' MOSS systems could have started earlier and more comprehensive test cases and check modules were needed.

The Commission organised an IT Workshop for Member States MOSS IT Project Managers in Athens in October 2015 to discuss incidents and problems relating to the implementation of the MOSS and possible evolutions of the system enhancing its functioning in the mid-term. Following this Workshop and the ensuing meeting of the 37th SCIT¹²¹ sub-committee in November 2015, many of the questions on the incidents and problems have been resolved.

Furthermore, it has been agreed to put in place a 'governance procedure' for agreeing and implementing changes to the MOSS system, based on international standards (ITIL) and to group amendments to the MOSS in periodic releases (in principle bi-annual).

The Member States are satisfied also with the Commission's ongoing support on MOSS. Only one Member State suggested that the Commission ought to be stricter in forcing the full implementation of MOSS functionalities. Some Member States mentioned however that some further EU level guidance would be welcome on specific MOSS related issues, such as reimbursement process (including time limits and practical minimum thresholds) or rules on what can be amended and time limits for such amendments.

¹²¹ The Standing Committee on IT, which is a sub-committee of the SCAC (Standing Committee on Administrative Cooperation) established by Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.

3.2.3. Initial experience with MOSS application

Experience with MOSS registrations

According to the quantitative data on MOSS registrations, provided above, about 14 000 businesses were registered for MOSS in May 2016. This section provides some additional qualitative analysis on the tax authorities' experience with MOSS registrations.

Expected MOSS registrations

As part of the 2015 place of supply and MOSS changes all Member States had to prepare their systems and staff/processes for MOSS registration of businesses supplying cross-border B2C TBE services and choosing to use MOSS for the VAT declaration of their cross-border supplies.

In addition to the registration for MOSS of the existing VAT registered taxpayers, the tax authorities had to prepare for the registration of a significant number of new taxpayers, who may have been trading before below the national VAT registration threshold, as the 2015 place of supply rules do not include a threshold for cross-border TBE supplies.

However, the number of new registrations would be smaller in the Member States with low or no VAT registration threshold, as such, businesses were already registered for VAT.

Based on the assessment, only half of the Member States had estimated a number of MOSS registrations. The main challenge was the lack of reliable relevant data on the suppliers trading cross-border, as the relevant supplies were previously declared together with domestic supplies. This was confirmed by the limited response received from Member States on comparative revenue data from the earlier tax years. An additional challenge was to estimate which proportion of the potentially impacted traders would choose to register for MOSS, rather than change their business model, register directly in the Member State of Consumption or, most likely, choose to trade through a platform, which would take over their cross-border VAT liabilities.

A number of Member States did attempt to estimate the maximum number of potential MOSS registrations, e.g. for the MOSS portal capacity purposes. A few tax authorities mentioned that their estimation was based on the businesses having a NACE-code matching with the scope of the MOSS. In fact this would have potentially also covered businesses who sell electronic goods. Some Member States went a step further and included the taxable persons who did not provide that kind of services at the time of estimation, but who potentially could.

Therefore, it could be concluded that in general the Member States were not in a good position to estimate a realistic number of MOSS registrations and had in many cases built a system (as well as prepared other resources/staff) with spare capacity.

Discrepancy between expected and actual MOSS registrations

A comparison of the estimated registrations against the actual MOSS registrations up to October 2015 (over 11.000 registrations across the EU¹²²) seems to confirm the above conclusion of planned spare capacity (due to the lack of better basis), as in case of half of the registration estimations the difference is 3-12 times. In three cases the estimation was up to three times smaller, however as the absolute numbers were relatively small, it did not hopefully cause too much strain to the tax authority. Based on the above, it is surprising to note that there were some Member States whose estimation was close to the actual numbers, in one case with less than 5% difference (as of October 2015¹²³).

According to the information provided by the Member States on possible reasons for lower MOSS registration numbers, some mentioned also the lack of awareness of the new rules, which may still be significant especially amongst the smallest businesses. Other explanations were also mentioned, such as the impact of economic crisis, the additional burden for the businesses, extra bank charges and the fact that some companies may prefer to wait and see.

Based on the above, the difference between the estimated and actual MOSS registrations does not in itself necessarily indicate a high level of non-compliance. However, the listed potential reasons for not registering, especially the lack of awareness (confirmed also by business respondents), is a sign that the tax authorities may find ways to improve compliance by better-targeted communication and other means.

Reasons for not registering for MOSS

The use of MOSS is optional for businesses, however the alternative ways of trading compliantly seem to be either more burdensome (registering directly in multiple MSCs), damaging the growth of business (for example through geo-blocking) or costly (trading through platforms, which take over their VAT liabilities¹²⁴).

Member States were asked to cite any reasons they have heard from businesses explaining why they may not choose to register for the MOSS and it is notable that about half of the countries did not mention any reasons. However, the list of reasons cited by the ones who did respond, confirms the information collected directly from businesses.

Member States cited the following reasons not to take up the MOSS (yet):

- The MOSS scheme is too complicated;
- The MOSS scheme is too costly, especially for small and micro businesses. This cost is caused for example by complicated rules for identifying the customer location or for issuing invoices in accordance to different national rules, the cost and complexity of adapting the bookkeeping system to the MOSS system (different periods and tax rates);
- Businesses have concerns about the risk of multiple simultaneous MOSS audits;
- Businesses fear the application of 28 sets of rules for penalty regimes;
- Businesses fear the possibility to be excluded from the MOSS system in case of late returns or late payments;

¹²² Almost 14 000 registrations in May 2016.

¹²³ The number at the beginning of December 2015 may have been even closer to the estimation.

¹²⁴ Based on the presumption in article 9a of the Council Implementing Regulation 282/2011.

- Businesses fear the fact that all Member States have access to their returns and payments information.

According to the business input, trading through platforms as an alternative to MOSS is used widely by small businesses, as despite the cost of using such a platform, they find the burden of the place of supply determination and MOSS compliance even higher. Although this reason was mentioned by the Member States, it appeared that almost none of them were (at the time of assessment) able to provide estimations on the number of businesses trading through platforms or as platforms. However, several mentioned that they are in discussions with larger platforms in order to get data on this topic. Just one tax administration assumed that less than 10% of the businesses should be caught by these specific rules with respect to 9a of the Implementing Regulation.

It was noted that some businesses (likely to be mostly larger ones) might prefer direct registrations in order to maintain a local relationship with the tax authority and to be able to deduct input VAT. They may also have current business models and systems, which support traditional registrations. Another significant reason for direct registrations is having mixed supplies of goods and services.

As mentioned above, the Member States noted that a considerable level of lack of awareness is still expected to be a reason for not registering for MOSS, especially amongst the smallest businesses. Despite numerous communication efforts, this lack of awareness is likely higher with non-EU companies. It is also likely that another reason for not registering is also deliberate non-compliance (usually together with other reasons)¹²⁵, however it is still early to estimate the level of it, considering that the lack of awareness continues to be an issue.

In the 2015 survey, some reasons which were indicated concerned a temporary situation or decision not to register for MOSS (wait and see, concerns and lack of certainty on how the regime will work (e.g. on audits) and general lack of awareness, which may be addressed by better communication). The number of new registrations in the second half of 2015 and up to May 2016 seems to support that. However, some reasons are linked to the current business models and informed decisions, which may be made for longer term and change only if the MOSS system is changed (e.g. by including threshold for limited cross-border trade, including input VAT deductions or widening the scope to goods).

It is important to note that the revenue impact of the potential additional MOSS registrations would in any case likely be minimal, as it is expected that these would be mainly very small companies. Based on the quantitative analysis 13% of currently MOSS registered businesses are responsible for 99% of the revenues declared through MOSS. Moreover, the most significant businesses are already registered.

MOSS registration issues: late registrations, refusals, repeals and de-registrations

The assessment looked also into the initial experience of the Member States in the MOSS registration process regarding the issues with late registrations, refusals, repeals and de-registrations.

Receiving late registration applications was recorded as an issue by a number of Member States. In fact, the majority of issues with MOSS applications by businesses seemed to relate to late registration. It is probably explainable by the fact that MOSS is a new system and it may have taken

¹²⁵ This would especially hold with respect to businesses not established in the EU.

for businesses longer than they expected to get ready for its application or to acknowledge that the new rules affect them. The main issue mentioned by the Member States on the interviews in relation to the late registrations was that the current EU legislative framework does not allow registering the business for MOSS retroactively. As the alternative (registering retroactively in all Member States of consumption for a past period of a couple of months and subsequently deregistering) is quite unrealistic, the actual consequence may have often been non-compliance (e.g. declaring the sales in future returns or declaring the sales as domestic supplies), unless a tax authority was able to find a pragmatic way of registering retroactively.

Regarding the refusals of registration applications, according to the collected data, about 6% of the MOSS registration applications for the EU scheme (629 in total at the time of assessment) were refused by the Member States, of which five Member States registered over 50 refusals. The two main reasons for refusals were that the business activities were not in the scope of MOSS and that the registration requests were incomplete or the data provided was not correct. Other less frequent reasons were that the requests were submitted by mistake (*i.e.* the business intended to register for national VAT but chose a wrong application) and that the place of business establishment was in another Member State.

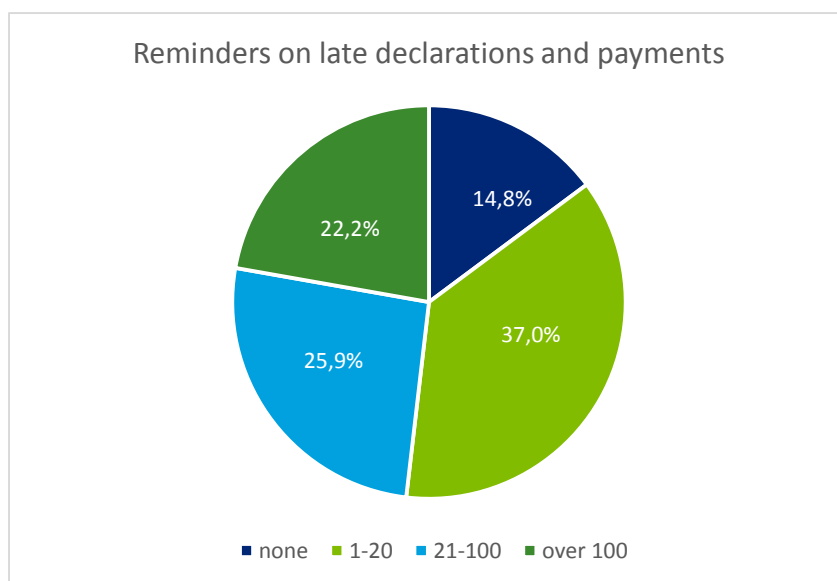
Regarding the refusals of non-EU MOSS scheme registration applications, it appears that only one Member State had to refuse registration requests and the reason was a technical issue (which has now been solved). EU companies were by mistake applying for non-EU MOSS due to an erroneous link to a wrong application website.

The Member States' experience with repeals and deregistration from MOSS is still limited, as the scheme at the time of the assessment had been in force less than a year at the time of making this first assessment. Altogether Member States have repealed only 14 registrations and 203 businesses have been deregistered. In nearly all cases, the reason was that the business was registered by mistake and did not provide services, which are in the scope of MOSS. The other reasons mentioned were that business chose to de-register (e.g. as they decided to trade via platform instead) or closed down and stopped trading.

Experience with MOSS declarations and payments

The Member States' initial experience with MOSS declarations and payments seems to be good. In total only 1608 late declaration and payment reminders had been issued by Member States at the time of assessment (Q1+Q2 2015). Over half of the Member States had not issued any or less than 20 reminders, whilst just six Member States noted that they had issued over 100 reminders (Q1+Q2). The distribution of the number of reminders between Member States has been provided in below diagram.

Figure 14 – Reminders on late declarations and payments¹²⁶



3.2.4. Revenue sharing

According to Article 46(3) of the Council Regulation on administrative cooperation¹²⁷, the Member States of identification are entitled to retain 30% of the VAT collected through the MOSS system to be transferred to the Member States of consumption. The percentage of the retained amount will decrease to 15% from 1 January 2017 and to 0% from 1 January 2019.

When the Member States were asked in 2015 whether they consider such revenue sharing system appropriate, the large majority of Member States agreed and a third of the Member States disagreed. In 2016 however only a third of respondents considered it appropriate and would like to retain it after 2018, a few additional ones accepted its appropriateness for the transitional phase. Further, about half of the Member States thought that it enhances the effectiveness of MOSS, half of the countries disagreed. A similar response was received in 2016.

Some supporting countries noted that they consider revenue sharing is appropriate and enhances compliance as it compensates the Member State of Identification for the costs of MOSS implementation and administrative or compliance management. However several countries on both agreeing and disagreeing sides noted that it is appropriate only in the short term as an initial incentive for cooperation and a political compromise, but it does not necessarily enhance the effectiveness of MOSS in the longer term and should not be extended.

The main argument of the Member States disagreeing with the appropriateness of such revenue sharing was that it complicates the system (especially regarding reimbursements). It was also noted that it is prone to mistakes, it affects the fiscal sovereignty of the Member State of Consumption and does not reflect the economic reality (*i.e.* not related to the administrative cost). An alternative basis for the revenue sharing relating more to the actual administrative burden was suggested by one

¹²⁶ Source: business interviews conducted by Deloitte, cf. *supra* under "2.3.1 Introduction – methodology and data strategy".

¹²⁷ Council Regulation No 904/2010 of 7 October 2010.

Member State, such calculation would be based on the number of transactions processed by the Member State of Identification, instead of the value of these transactions (amount of VAT).

In mid-2015, a couple of countries did not respond directly, but noted that it is too early to decide whether the revenue sharing is appropriate and effective. One of these supported the measure in the 2016 feedback. The appropriateness was considered to depend also on the political objectives attributed to such measure.

Regarding the appropriate level of revenue sharing, unsurprisingly the countries which do not consider the system appropriate suggested the right level to be 0%. Nearly half of the Member States did not indicate a level, but responded that they are flexible on the exact level or commented that the right level would depend on several factors, such as whether it is time limited or not, what are the objectives of revenue sharing or how it is calculated (e.g. a suggestion was made to share only the revenue collected through audits). Only six Member States chose the level of revenue sharing, four of these supported the current share of 30%, one selected 20% and one 10%.

As a conclusion, the majority of the Member States are of the view that the currently applied revenue retention mechanism is complex and does not enhance the effectiveness of the MOSS in the longer term, although there is a group of Member States who do consider the measure necessary on continuous basis. As this is a sunset provision, the question would arise only for the future design of a revenue sharing mechanism.

3.2.5. Suggested simplifications of MOSS

Operational simplifications

The tax administrations of the Member States were asked through the survey (including an update in 2016), interviews and at the Fiscalis seminar to provide their input regarding any aspects of the MOSS system that could be simplified from an operational point of view.

In this regard, some of them preferred not to make any comments saying that it is still too soon or considered that the MOSS system is fine as it is and they do not see, at least for the moment, any improvements that could be made. Nevertheless, a large majority of administrations suggested simplifications on different operational aspects of MOSS:

☑ MOSS registrations

It should be possible to backdate the MOSS registration to the commencement of the TBE activities, if the application of registration is submitted during the same quarter as activities started. This was specifically suggested by one Member State, however others mentioned also issues (for both sides) around the late registrations.

☑ Non-EU traders not established in the EU, but with a VAT registration in a Member State should be allowed to use the non-union scheme, suggested by a number of Member States

☑ A fixed establishment could be allowed to register independently in the MOSS, was suggested by one Member State

☑ MOSS declarations (a combination of suggestions by single Member States)

The portal control process is not clear enough and checking the VAT rates is too complicated. All MOSS portals could refer to a central service (e.g. TIC) to retrieve the valid VAT rates

applicable in each Member State in order to ensure that the correct VAT rates are included in the MOSS returns or at least show the possible tax rates and not allow to enter any numbers. In addition, the format of inclusion of VAT rates should be fixed and explained to the taxpayer (e.g. 25, 25% or 0.25).

The Member State of Identification could validate the incoming data online so that the Member States of consumption does not have to write to the traders to clarify mistakes.

Some system warnings should be implemented uniformly in the declaration filling process by all Member States of identification, such as 'invalid MSC VAT rate'; 'invalid VAT Amount for the rate'; 'Total Amount differs from the sum of transactions'; 'There are two or more lines with the same VAT rate'.

- ✔ Correction of MOSS returns (suggested by a number of Member States and reconfirmed in 2016 update);
- ✔ The corrections/adjustments of MOSS declarations, e.g. in case of repayments or credit notes, should be simplified or at least a maximum number of corrections to a return should be set. Regarding credit notes, it should be allowed to adjust the return of the quarter when the credit note was issued;
- ✔ Payment and reimbursement process (suggestions by single Member States);
- ✔ Corrections to MOSS returns should also have numbered versions and the taxpayer payments should refer to MOSS returns and not to specific versions of returns; The role of Member States of identification could be strengthened (e.g. via bilateral agreements) as regard the management of faulty payers;
- ✔ The Member State of Identification could always take care of transferring money (including late payments).
- ✔ When a reimbursement is issued by a Member State of Consumption, the reimbursement information should include the amount paid directly by the taxpayer to the Member State of Consumption. Further clarity and simplification to reimbursement process was mentioned by a number of Member States in the 2016 update.
- ✔ Simplification is needed for the calculation of late payment interests by the Member State of Consumption.

This is notably needed in case the Member State of Consumption receives a late payment in small payments on different days, as it is complex and the Member State does not have enough data to calculate it appropriately.

- ✔ Currency exchange (suggested by a couple of Member States);

Rules for currency exchange ought to be simplified as they create a high administrative burden;

- ✔ De minimis threshold for transfers and payments (single suggestions);

A de minimis threshold should be implemented for transferring money to other Member States.

A threshold could apply in case of over-payments and adjustments by the Member State of Consumption, so that over-payment less than a certain amount does not need to be immediately paid back to the taxpayer.

- ✘ Revenue sharing/retention (mixed suggestions, see relevant analysis above);

The revenue retention should be handled outside the system, which would be simpler. However the Member States which are not in favour of the revenue sharing mechanism, considered that the abrogation of this system would make the whole system even simpler.

- ✘ Cessations and exclusions (single suggestion);

The difference between cessation and exclusion of the MOSS regime should be clearer (e.g. by the introduction of different codes to each ground).

Other simplifications

With reference to the non-operational aspects of the MOSS system that could be simplified, the following suggestions were made:

- ✘ Small and micro-businesses;

Concerning small and micro-businesses, several Member States suggested introducing a specific simplification measure (e.g. by setting a threshold). In some cases, the administrative burden is clearly disproportionate when compared to the amount of VAT collected. In some cases businesses had to file a return and pay an amount of EUR 2). A simplification measure or threshold would greatly reduce the compliance burden for these smaller businesses.

- ✘ MOSS scope (combination of suggestions by a number of Member States);

The scope of MOSS should be better defined and e-services classified (e.g. in explanatory notes or implementing regulation) and further clarification is needed on the articles 9a and 24 of the Council Regulation 1042/2013.

- ✘ VAT rates (single suggestion);

It would be useful to apply a standard VAT rate for all MOSS services.

- ✘ Invoicing (a combination of suggestions by a number of Member States);

Under the current rules, Member States can require businesses to issue an invoice with respect to cross-border B2C TBE supplies. Since the invoice constitutes a control document in B2B transactions, it has much less use for a B2C transaction. In a number of cases, Member States do require the issuance of an invoice. It would be simpler, if Member States had no right to request an invoice to be issued for B2C services, or at least if an invoice could be based on the Member State of Identification rules (which makes it easier to comply). Comments were also received from some Member States that it would be harmful to harmonize the invoicing requirements in the European Union (as they fear harmonization to the level of the highest common denominator).

- ✘ Sanctions (a single suggestion);

More harmonisation on the MOSS related sanctions would simplify the system, e.g. at least by defining in a common way the behaviours subject to sanctions.

- ✘ Audit (a single suggestion);

A minimum level of activity could be defined to start an audit. In addition, incentives could be provided to the Member State of Identification to start the procedure and to the Member State of Consumption for supporting the Member State of Identification in the practical aspects of the audit.

3.2.6. Key findings

As a result of the assessment on the implementation and application of the MOSS, we have drawn the following key findings:

- ✔ It can be confidently concluded that the launch of MOSS has been successful and that the MOSS functions well. There is some evidence of ‘teething’ problems, such as the issues around registrations and related communications to function effectively. However, these concerns do not seem significant and ought to be easily addressed;
- ✔ Most Member States were very satisfied with the support of the European Commission during the implementation process (and on ongoing basis), although some Member States indicated that some changes to the IT technical specifications for the setup of the MOSS portal were received quite late;
- ✔ The average IT cost for a Member State for implementing the MOSS portal was about EUR 2.2 million, with very large variations across countries;
- ✔ The current number of over 14 000 MOSS registrations¹²⁸ is lower than initially expected, but the main issue on this may be with the estimations, rather than with actual registrations. As businesses do have alternative ways to comply with the new place of supply rules, it should not be concluded that the MOSS registration numbers are necessarily indicating an issue with the MOSS system;
- ✔ The main problems identified in relation to MOSS and its application are in fact linked to its design and scope or more precisely the limitations of it, such as the application to TBE services only, without a threshold and the exclusion of the input VAT deductions, or the revenue sharing mechanism which received very mixed reaction from the Member States;
- ✔ Although addressing the design and scope limitations would need a wider political and VAT policy agreement, the assessment identified also a list of mostly operational issues which may be easier to address and agree on, such as the MOSS return correction procedure, the review of the currency exchange principles, a de minimis for transfers or other simplifications on payments and reimbursement processes.

¹²⁸ Numbers from end Q2 2016. In December 2015, almost 12 000 registrations were counted. Prior to that, in October there were around 11 000 MOSS registrations.

3.3. Business perspective

3.3.1. General business feedback

Scope

The purpose of this part of the report is to provide an assessment of the MOSS from a business perspective. More specifically, it provides an assessment of the implementation of the MOSS as a simplification measure that facilitates the reporting and payment of VAT following the implementation of the 2015 place of supply rules. Best practices, as well as areas with room for improvement, have been identified. This report also identifies the cost implications for businesses using the MOSS, the practical application issues and the reasons for businesses not to take up the MOSS.

Methodology

For this, relevant data were collected from 48 interviews in 8 selected MSs as explained above. The United Kingdom, Ireland, Luxembourg and Denmark were selected because they have a strong e-Commerce sector, resulting in a high number of VAT registrations.¹²⁹ Additionally, we conducted 6 interviews in 4 other Member States, *i.e.* Sweden, Malta, the Netherlands and Belgium.

Germany, France, Italy and Poland as these Member States represent a large share of the EU's GDP. Hence, they have important internal markets and are important MSCs.

As explained, we conducted:

- 39 interviews with business. Of these 39 businesses, 27 are registered in the MOSS (either via the Union scheme or the non-Union scheme). 5 businesses were already registered for the VoES before 2015.
- 8 interviews with associations;
- 1 interview with a tax advisory firm.

The business sample was determined in a way it assures a representative panel across business sectors and covers both SMEs and large businesses. The selection of Member States and businesses was confirmed with the EU Commission.

Additionally, businesses were invited at the Fiscalis seminar (see above under “1.2.7 Fiscalis stakeholder seminar”) and a stakeholder workshop (see above under “1.2.8 Stakeholder workshop”) to discuss and elaborate on our initial findings.

3.3.2. General business feedback

As a result of the modified place of supply rules, businesses providing B2C TBE services have to register for VAT and file returns in all MSCs where their customers reside. The MOSS facilitates compliance with the consequences of the modified place of supply rules, as it allows the concerned businesses to register and account for the VAT due on those supplies via a web portal in the Member State in which they are established or identified.

¹²⁹ The latter was also confirmed by the high number of registrations by businesses for the non-Union scheme.

General feedback on MOSS

In general, businesses provided positive feedback on the MOSS. They are of the opinion that the MOSS is an indispensable tool for businesses to comply with the consequences of the modified place of supply rules for B2C TBE services. The fact of having only one registration, one return and one payment and a reporting process managed in their own language is perceived as very positive. Indeed, the most significant advantage for businesses is that they do not have to register locally in all MSCs and that they file only one (simple) quarterly MOSS return for these countries. As shown in Chapter 5, the administrative burden for businesses greatly decreased thanks to the MOSS.

In this regard, it was also indicated that it is an advantage that the MOSS return only has to be filed every three months. Additionally, businesses see it as an advantage that, as long as they are not being audited or do not receive any other requests for information, they are generally only confronted with the language of their MSI.

Experience with MOSS

Regarding the implementation of the place of supply changes and MOSS, businesses commented that they encountered difficulties in resourcing the IT development and in delivering robust solutions within the required timeframe. In this regard, businesses would have preferred further technical assistance.

However, businesses noted that there have been minimal difficulties with the MOSS after the challenging and costly implementation of necessary system changes.

Almost all respondents confirmed that they did not experience any difficulties when registering for the MOSS. Only a few issues were raised. For example, one Member State required businesses to obtain a security ID and security key, but those were only available in December 2014. Another business indicated that a Member State required them to physically come to the tax authority in the MSI for the registration. Some minor technical issues were also raised, such as for example issues with passwords.

The large majority of businesses confirmed that the MOSS is very easy to use. It functions well as a reporting tool. Some smaller businesses indicated they were not given sufficient technical support from the tax authorities.

All respondents to the survey indicated they are in support of the extension of the MOSS to all tangible goods and other than TBE services. One respondent however added that it would be necessary to consider a threshold.

There seems to be some uncertainty for businesses regarding whether they can report their supplies through the MOSS. This is mainly due to insufficient knowledge of the rules, and seems to be more present with smaller and micro companies, although there are also a number of issues with the qualification of TBE services.

3.3.3. Issues with MOSS and recommendations for improvement

Despite the strongly positive general feedback on the MOSS and its advantages as well as good initial experience with registrations and declarations in MOSS, many businesses pointed at specific issues or elements, which could be improved to make the MOSS even more effective as a

simplification measure. We provide below an overview of the main issues, raised during the business interviews and the Fiscalis seminar, ending with a list of recommendations made by businesses.

Corrections and refunds

The current MOSS mechanism requires companies to make adjustments, for example in case of credit notes or bad debt relief, by correcting the initial return. Indeed, article 61 Implementing Regulation 282/2011 as amended by Council Regulation No 967/2012¹³⁰ foresees that *“changes to the figures contained in a VAT return shall, after its submission, be made only by means of amendments to that return and not by adjustments to a subsequent return.”*

The Commission’s MOSS guidelines add that *“the Member State of identification will then forward this correction to the Member State(s) of consumption concerned. Any additional payment due to the Member State(s) of consumption shall be paid by the taxable person to the Member State of identification for distribution.”* Changes to a VAT MOSS return can be made up to 3 years and 20 days after the end of the relevant period.

Thus, for example, if a business grants a rebate to a customer or annuls a transaction, the VAT should be corrected in the return in which the original supply was reported. As such, the VAT return for that quarter should be resubmitted. This implies that businesses should, for each correction / credit note, identify the period in which the accompanying MOSS return was submitted and resubmit that return, often entailing costs to retrieve and extract the necessary information from a company’s ERP system. Since corrections can be made up to 3 years and 20 days, this means that a company theoretically will always have 12 open returns. Taking into account the fact that many e-services providers often sell many transactions for only a small amount, this is even more cumbersome.

The following practical examples were flagged:

- An e-services provider sells a yearly subscription to a customer who decides to terminate the contract after 10 months and the business decides to refund the customer for the remaining months.
- One business mentioned they left the MOSS and had switched to individual registrations. Afterwards, they corrected the returns but so far, they are still trying to get a refund.
- If a company was registered for MOSS, but it turns out that the supplies should not have been qualified as electronic supplies, and, consequently, the company decides to de-register for the MOSS, that company should correct all these previous returns and ask a refund for all the quarters filed.

Additionally, In case a correction leads to a refund position, businesses indicated it takes a lot of time for them to get refunded. For example, one company asked for a refund more than a year ago and only a quarter of the Member States involved paid back the amount due. On top of that, the 30% retention fee for the Member State of Identification complicates the situation as the Member States of Consumption can only pay back 70% of the amount. On top of this, the MSI only wishes to repay the

¹³⁰ Article 61 VAT Implementing Regulation 282/2011 as regards the special schemes for non- established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons, as amended by Council Regulation (EU) No 967/2012 of 9 October 2012.

business when all MSCs have refunded the business. As a result, the current way of dealing with corrections and refunds in the MOSS result in cash-flow issues for businesses.

In practice, a number of businesses indicated that the complexity of this rule often leads to non-application in practice. Many businesses affirmed that they correct a later MOSS return, submitted for a quarter when the correction or rebate and the resulting reimbursement is made.

In this regard, some businesses indicated that they expect tax authorities to adopt a fairly lenient and pragmatic approach regarding the corrections as long as the VAT is eventually paid correctly.

Given the challenges businesses experience in performing corrections, the following two recommendations were made for any future MOSS expansions:

- ✘ Insert a threshold under which corrections should not have to be made in an earlier return; or
- ✘ Include corrections in the current return and report the balance; or
- ✘ Include a box in the MOSS return to report credit notes (potentially per country).

The second recommendation is the most convenient and, as such, the preferred option for businesses.

Retroactive registration and spontaneous disclosure

Currently, it is not possible to retroactively register for the MOSS, which might result in a highly disproportionate administrative burden and thus in reality a level of non-compliance.

According to the existing MOSS legislation, a business which has failed to register for MOSS in time, or a business that decides later to register for MOSS and was liable for the payment of VAT in the MSCs, would theoretically need to apply for a (temporary) VAT registration in all MSCs for a brief period which has already passed. Provided the MSC allows them to register (which may not be the case), they would need to then immediately de-register after disclosure of the non-reported transactions in order to be able to register for MOSS. Due to the impracticality and high administrative burden (for both sides) of such process, it is likely that business may choose instead to take a risk and declare the TBE supplies for the period concerned in their future returns or as their domestic supplies.

This issue was raised by the businesses present at the Fiscalis seminar. Therefore, they recommend a more flexible approach for the MOSS registration, enabling businesses to register retroactively, albeit potentially under the obligation to pay a penalty.

No input VAT deduction

Article 368 and 369j of Directive 2006/112/EC¹³¹ exclude the possibility to recover input VAT through the MOSS return for respectively non-EU businesses and EU businesses that opted for the MOSS. These businesses need to follow the usual process. This means that non-EU businesses should ask

¹³¹ Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax.

a refund of the input VAT via the procedure of Directive 86/560/EC¹³² (or “13th VAT Directive”) and EU businesses should use the procedure set out in Directive 2008/9/EC¹³³.

During the interviews, this was indicated as one of the major shortcomings of the current MOSS. This was confirmed at the Fiscalis seminar in Dublin. Therefore, businesses recommend the consideration of the inclusion of the input VAT deductions in the MOSS, especially in the light of the future extension of the MOSS.

Registration for the non-Union scheme

The non-Union scheme can only be used by a taxable person who makes supplies of TBE services to non-taxable persons within the EU and who meets each of the following criteria:

- (a) The business of the taxable person is established outside the EU and;
- (b) The taxable person has no fixed establishment and is not VAT registered in any EU Member State.

The issue concerns the requirement that the taxable person registering for the non-Union scheme cannot be VAT registered in any EU Member State. This is not a requirement for businesses established in the EU, who can still opt for the Union-scheme, even when they are already registered for VAT in the Member State where their customer is located or elsewhere e.g. because of an occasional activity.

As a result of this rule, non-EU businesses cannot apply for either of the MOSS schemes if they have already a VAT registration in the EU. In such case, they would be obliged to either become established in the EU and join the Union scheme or register directly in all MSCs, which creates a disproportionate administrative burden for such group of businesses.

During the business interviews, as well as during the Fiscalis seminar, it was strongly recommended to provide non-EU traders the possibility to register for MOSS even if they are registered in an EU Member State for VAT purposes.

Additionally, in practice, there seems to be a lot of confusion amongst the EU businesses regarding this requirement, as during the interviews, as well as at the Fiscalis seminar, respondents seemed to think that this requirement applies also to EU businesses.

Exchange rates

In principle, the MOSS return has to be filled in euro. However, Member States that have not adopted the euro may require the return to be made out in their national currency. In case the supplies have been made in other currencies, the supplier should use the exchange rate, published by the ECB, applying on the last date of the tax period.¹³⁴

¹³² Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in Community territory.

¹³³ Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State.

¹³⁴ Article 366 and 369h Council Directive 2006/112 of 28 November 2006 on the common system of value added tax.

Although the abovementioned common currency conversion rule enhances legal certainty, currency conversion remains an issue for business for multiple reasons. In the first place, this rate is different from what business use in their day-to-day business and software systems, which are often transaction based. The financial accounts of businesses are based on how the transactions are recorded.

Once every three months, these will then have to be revised for the MOSS return, which results in a high probability that there will be a mismatch, and, as such, unexpected gains or losses. Businesses indicated that this currency conversion rule is not practical and insufficiently flexible.

Additionally, these rules deviate from other currency conversion rules in the VAT Directive.¹³⁵ This results among others in a higher administrative burden for the businesses' bookkeeping, as the bookkeeping for the national return will differ from the MOSS return.

Indeed, both during the interviews and the Fiscalis seminar, businesses indicated to experience some issues with currency conversion. Tax authorities also recognised this as an issue. Over time, assuming quite stable currency rates, both sides (business and Member States), should win and lose and thus it could be a non-issue. .

Storage of Records

Suppliers of B2C TBE services that opted for the MOSS, have to store records of all transactions affecting their VAT liability for ten years. For example, they have to keep information regarding the value and date of the transaction and the customer's name and location. This information then must be presented in the Member State of Consumption, when requested.

All companies that provided an answer to the question how they stored invoices and transactional data indicated that they do this electronically. Some store this information additionally on paper.

A majority of respondents noted that the 10 years requirement for storage should not pose a problem. Only a minority of companies expressed concerns on their capacity to comply with this rule.

For example, it was indicated that it would be challenging to store the volume of data, despite being stored electronically. In line with this, concerns were expressed about maintaining IP addresses for such a long period –and especially tracking these back. Up to now, businesses indicated that they store the location of the customer, but not necessarily the IP address.

Finally, concerns were expressed that such a requirement entails keeping alive old software or systems if a new system or data formats were to be implemented, which may imply significant additional costs.

Non-harmonised MSC rules

Quite a number of companies are satisfied with the MOSS *as such*, but regret that it is a mere reporting mechanism. Indeed, although the MOSS mitigates the administrative burden by enabling businesses to register in one MSI and file only one MOSS return, businesses are still confronted with the different sets of VAT rules, for example as concerns the VAT rates and the invoicing rules, of the

¹³⁵ For imports, the applicable exchange rate depends on the customs legislation (article 91 of the VAT Directive). For other supplies there is more flexibility.

Member States where their customers belong. In other words, the MOSS only partly mitigates the administrative burden caused by the 2015 place of supply rules. Therefore, businesses recommend simplifying the rules in MOSS by applying either home country rules or EU common rules.

In this regard, Lot 2 of this study provides an assessment of the policy option to apply the 'home country' rules or implement a common set of EU rules for the proposed Single Electronic Mechanism. The rules may include provisions on invoicing, chargeability, exemptions (cf. above under "2.3.5. *Other difficulties encountered – different VAT rules in Member States- Issues identified with the application of foreign VAT law – Exemptions: financial services, gaming and betting*"), evidence, cash accounting, bad debt relief, audit and penalties. The VAT rates and exemptions of the MSC would continue to apply.

Recommendations for operational improvements

Recommendations for more effective systems implementation

Given the challenges businesses experienced in implementing the IT changes necessary for filing MOSS returns, several recommendations were made for any future MOSS expansions:

- More technical assistance to businesses, especially to the smallest ones;
- Insertion of a MOSS testing environment in the tax authority's website of the Member States; and
- Foreseeing more timely information on technical specifications to adapt their IT systems.

Recommendations to facilitate the use of MOSS

Additionally, during the business interviews and at the Fiscalis seminar, further ad hoc recommendations were captured from businesses to facilitate the operational application of the MOSS:

- Send warnings to businesses for the MOSS return deadline;
- The period to file a MOSS return (20th day after the taxable quarter) is very short, as business often receive the necessary information from third parties by about the 10th of the month. Therefore, the deadline for submission could be extended¹³⁶;
- Uploading MOSS files should be possible for a wider range of formats;
- Provide VAT rate information in the portal to file a return in a readily usable (and machine readable) format;
- Provide businesses with a confirmation of payment and filing of the MOSS return;
- Introduce minimal tolerance amounts for minor discrepancies between assessable amounts notified to MSCs by MSI;
- A balance statement should be made available to businesses;
- Combine the local VAT return with the MOSS return;

¹³⁶ E.g. Switzerland allows for filing and paying until 60 days after the end of the quarter.

- ❑ Make it possible to offset a payment against a repayment on the national VAT return;
- ❑ Have the change of registration details automatically forwarded to MSCs, making it easier for them to contact the businesses in case of an audit;
- ❑ Publish the new rules and VAT changes at earliest possible opportunity; and
- ❑ Introduce one website/MOSS portal for all 28 Member States.

3.3.4. Key findings

- ❑ The general feedback from business is that the MOSS was a necessary tool to mitigate the increased administrative burden on businesses following the new place of supply rules introduced in 2015.
- ❑ This is confirmed by the measurements of the administrative burden. The average business active in B2C cross-border TBE-services using MOSS incurs a yearly cost of about EUR 2 200, whereas a business not using the MOSS incurs a yearly cost of about EUR 41 500. A business using MOSS incurs a substantially lower administrative burden.¹³⁷
- ❑ The initial experiences with MOSS in terms of getting registered and reporting are also on the business side very positive (although Member States indicated that there was a learning curve). Most of the MOSS portals in the Member States are easy to register and report to.
- ❑ The system is however not without its flaws and on the business side, much could be simplified. It was often repeated that the requirement to correct the original VAT return if a credit note is issued after filing the return is very burdensome.
- ❑ The impossibility to retroactively register is also a rule, which needs amendment. To a lesser extent, the currency conversion rules and the absence of input VAT deduction are seen as issues.

¹³⁷ For more detail: see 5.1.2. “Business impact: cost impact” under “Administrative burden post 2015 place of supply rules for businesses using the MOSS” and “Administrative burden post 2015 place of supply rules for businesses not using the MOSS”.

4 Administrative cooperation, audit and audit guidelines

4.1. Introduction

Since 2015, TBE supplies are taxed in the Member State where the customer has its residence, being the so-called “Member State of Consumption”, also abbreviated as “MSC”.

Consequently, businesses providing TBE supplies had to register in all MSCs for VAT purposes. However, by virtue of the MOSS, these businesses should only register for VAT purposes in their “Member State of Identification” or “MSI”. This MSI serves as a single contact point for the VAT identification, the submitting of VAT returns and paying the VAT due in all MSCs.

For EU based businesses, the MSI is the Member State in the territory of which the taxable person has established his business or, if he has not established his business in the EU, where he has a fixed establishment. Businesses that are not established, nor have a fixed establishment within the EU, can choose an MSI.

Although the MOSS lowers the compliance burden, it remains a reporting mechanism. Indeed, a business can still receive information requests from 28 different Member States, even in different languages. Since VAT audit rules (e.g. bookkeeping methods, prescription rules) are not harmonised within the European Union, this could be particularly burdensome for businesses. Additionally, they risk double taxation in case national tax authorities disagree on certain items.

Also from a tax authority’s perspective, a lack of coordination might result in higher auditing costs, which may not be based on risk, are therefore inefficient and may divert resources.

In order to improve the coordination of audits between Member states, the European Commission published its so-called “audit guidelines”. These contain some recommendations for national tax authorities on how best to contact businesses as part of an audit and the method businesses should use to provide information required by an audit. Unfortunately, not all Member States agreed to apply them.

This report provides a qualitative analysis of administrative cooperation, auditing and the audit guidelines in the field of telecommunication, broadcasting and electronic services.

4.2. Member State perspective

4.2.1. Introduction

Scope

This section of the report provides a qualitative assessment of the Member State perspective of the compliance issues in relation to the 2015 place of supply rules and MOSS, the initial experience in administrative cooperation between Member States and with third countries, as well as their initial experience in implementation and application of the MOSS audit guidelines in relation to the place of supply changes or MOSS.

Methodology

For the assessment of the Member States' experience with compliance, administrative cooperation and audits of the 2015 place of supply changes and MOSS, we carried out a quantitative and qualitative analysis based on the data gathered from the tax authorities of the Member States.

Based on the analytical framework, we composed a set of questions for the questionnaires. The information for this section was then gathered through the interviews with eight selected tax authorities and by the use of a questionnaire regarding the remaining 20 tax authorities. The initial findings were discussed and elaborated on at the Fiscalis seminar in Dublin in September 2015. An update survey was carried out with all 28 tax authorities during the second stage of the study.

4.2.2. Compliance with the 2015 place of supply changes

Level of compliance

According to our analysis, approximately 15% of businesses out of the 83 000 EU businesses impacted by the 2015 place of supply changes use MOSS to declare their cross-border services¹³⁸. MOSS is however an optional measure and there are other ways to comply with the new rules, such as registering for VAT directly in the Member State of destination or trading through a platform. Therefore, the take up of MOSS does not imply directly a level of non-compliance, although non-compliant businesses are likely to be amongst the ones trading outside the MOSS. A general description of the nature and types of non-compliance and approaches for measuring compliance, such as the VAT gap analysis, is covered in the Chapter 4 of the Lot 1 report of the study.

Estimating the level of non-compliance on the application of the 2015 place of supply changes is considered highly challenging by the Member States, none of which has been able to provide an estimation. Based on our discussions with some Member States, one of the reasons may be the lack of reliable data on the baseline, that is on the number of businesses supplying TBE services cross-border and the total amount of cross-border TBE services, especially inbound.

Based on the study analysis, approximately 70 000 EU businesses supply cross border B2C TBE services outside the MOSS. According to the expert analysis, approximately 30% of these businesses (i.e. ca 21 000) may be non-compliant. It is even harder to estimate the level of non-compliance amongst the non-EU businesses supplying TBE services to EU customers. If we were to assume that 10% of non-EU suppliers have registered for non-EU MOSS (likely to be mostly the larger ones), the number of non-compliant businesses would be ca 9 700.¹³⁹ Due to the lack of data, it is not possible to make any informed estimations.

In order to calculate the potential VAT loss due to non-compliance, it would be necessary to estimate the proportion of relevant sales carried out by the non-compliant businesses. The experts, as well as some tax authority officials, assume that the non-compliant businesses are likely to be mostly amongst the small and micro businesses. Taking into account the data on segmentation of VAT revenues in MOSS (i.e. number of returns and VAT declared on the return, where 99% of VAT revenue is declared by 13 % of businesses) and assuming that similar segmentation may apply also

¹³⁸ See below Chapter 5.1.2. section on Take up of MOSS

¹³⁹ Base on the non-Union MOSS registration number of 1079 registrations by the end of Q2 2016

to supplies outside the MOSS, it would indicate that the VAT loss should not exceed 1%. Based on the 2015 MOSS data and an expert assessment that approximately 70% of the value of the relevant services within the EU are declared through MOSS, it would give us the approximate VAT loss of EUR 38,5 million. Of course the concentration of supplies outside MOSS, as well as the actual level of non-compliance, may differ, especially regarding the non-EU suppliers, but it seems plausible that the VAT loss is not significant.

Monitoring compliance – key risks

Despite the above high level analysis on the level of compliance and likely negligible VAT loss, it would still be necessary for a tax authority to carry out reasonable risk assessments and have in place appropriate compliance measures. As a minimum, a reasonable compliance strategy is important as a deterrent, to avoid any increase in non-compliance, especially wider than the TBE services, where the concentration of supplies may be different, e.g. on e-commerce in goods. A good level of compliance can only be expected, if the businesses have a confidence that most of their competitors are also paying VAT, creating a level playing field.

The key risks on non-compliance amongst the (smallest) EU businesses are likely to be still the lack of knowledge and understanding the 2015 place of supply rules. In many cases this may be due to the lack of clarity on what is considered a business activity in case of irregular, small volume and value sales by an individual. A share of non-compliance may also be caused by the high compliance burden for microbusinesses, which used to trade below the domestic registration threshold, and have knowingly decided to not comply with the new rules (at least for the time being). In the mentioned cases the businesses would not pay any VAT on their cross-border B2C TBE services. There may be also a small proportion of businesses, which are already registered for VAT domestically, but consider additional rules too burdensome and instead continue treating the supplies as domestic, paying VAT to their own Member State.

The key risks on non-compliance amongst the non-EU businesses differ from the key risks within the EU. Although the main risk is even more likely to be the lack of knowledge of the EU VAT rules, there is a more significant risk that a proportion of not-so-small or medium size suppliers (or larger businesses with limited supplies to the EU) decide not to comply, relying on the challenges for the EU tax authorities to identify them or to enforce the compliance.

Compliance measures applied by the Member States

In relation to 2015 place of supply and MOSS compliance measures, as a general approach, many Member States adopted an educating approach (and a 'light touch' regarding enforcement) for the first stage, giving time for businesses to get used to the changed rules. Accordingly, a number of Member States noted in their survey responses that although they have a compliance programme in place, it is a general compliance plan and not one specific for TBE supplies and/or the MOSS.

Such a general approach, especially as a Member State of Identification, would be to just follow the regular compliance control procedures and ask the business for more specific data when audited. However, some Member States did mention also some specific actions they take to improve compliance, especially as a Member State of Consumption, such as the use of an additional software application and third party information for crosschecking. One Member state indicated that they have set up a specific internal service to control Internet activities. If discrepancies are found, they will first contact the businesses concerned.

Consistent with the above, the assessment showed that the Member States do not seem to have a specific approach to ensure the compliance with the customer location identification criteria for the place of supply rules by suppliers established in their country (as a MSI). The Member States indicated again that this would be checked as part of an audit, when an actual risk would appear.

Improving compliance

The key for improvements in compliance is a clear and targeted national compliance strategy, which may become increasingly important if the 2015 place of supply rules are extended to the cross border supplies of goods.

In addition to national compliance strategy, the success depends on strengthened administrative cooperation with other Member States (on information exchange as well as on auditing) and significantly also with third countries.

The VAT Action plan¹⁴⁰ and its addition '20 measures to tackle the VAT gap'¹⁴¹ contain the Commission's plans on how to improve the compliance over the short and medium term by enhancing administrative cooperation, collectively improving the performance of EU tax administrations and improving voluntary compliance, with a specific reference to ensuring effective taxation of e-commerce. Regarding voluntary compliance, the emphasis is on closer cooperation between tax administrations and businesses.

A closer look to administrative cooperation and audit measures applied to control the application of 2015 place of supply rules and MOSS, has been provided in the sections below.

4.2.3. Administrative cooperation on 2015 place of supply changes and MOSS

The Council Regulation on administrative cooperation¹⁴² contains a separate section (Chapter XI, section 2) with provisions concerning the administrative cooperation procedures applicable to MOSS, which need to be applied and followed by the Member States when for example setting up an automatic exchange of information or requesting and responding to requests on exchange of information. An assessment was carried out to explore the initial administrative cooperation experiences of the Member States in relation to the 2015 place of supply changes and MOSS.

An overview is also given of the Commission's recent plans regarding improvements to the administrative cooperation between the Member States as well as with third countries, including also a reference to the existing administrative cooperation tools with third countries.

Initial experiences in administrative cooperation between Member States

When asked about the changes to administrative procedures in order to be ready for administrative cooperation on the place of supply rules and MOSS post 2015, nearly all Member States responded

¹⁴⁰ Communication from the Commission on an Action plan on VAT, COM(2016)148, 7 April 2016 http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/action_plan/com_2016_148_en.pdf , consulted on 21 September 2016.

¹⁴¹ http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/tax_cooperation/vat_gap/2016-03_20_measures_en.pdf , consulted on 21 September 2016

¹⁴² Council Implementing Regulation 904/2010 of 7 October 2010.

that they did not have to modify any national procedures. Just some limited modifications were mentioned. One Member State mentioned that they had to modify some procedures related to the transfer of information, as they experienced errors regarding data transmission. Another Member State modified internal administrative management procedures, especially regarding the relationship between the offices inside the tax agencies. One Member State noted during the second stage of the study that they still need to release a new regulation, which will have an effect on the procedure regarding administrative cooperation.

Regarding requesting administrative cooperation from other Member States under the new rules, nearly 75% of the Member States responded that they have not yet requested any cooperation on TBE services or MOSS. We received the same response ratio during the second stage of the study. A few Member States had requested cooperation, however in nearly all cases the requests were related to technical issues or to MOSS payments and VAT rates used in MOSS returns. During the first stage, one Member State noted that despite sending reminders, they did not receive responses to their requests from several Member States.

The Member States, which have already provided administrative cooperation (at first stage a quarter, at second stage less than half of respondents), commented that they had been contacted to ask taxable persons to submit a corrective VAT return or received questions concerning the VAT return submission in the MOSS system (reflecting the requests mentioned above).

Difficulties with administrative cooperation and the way forward

In assessing the experienced or expected difficulties in administrative cooperation between the Member States on place of supply changes and MOSS, a majority of Member States responded that they have not yet faced any difficulties, many due to the lack of experience. A Member State noted that they consider the administrative cooperation procedures appropriate and covering properly the MOSS or the TBE framework.

Some Member States did however mention that they have already experienced some difficulties. For example, several Member States noted that wrong channels or mailboxes had been used, such as technical requests sent via the regular administrative channels and not via the ITSM portal, or a request sent to the wrong CCN mailbox and not reaching the designated MOSS coordinator.

Despite the current lack of experience, a number of Member States expect some difficulties in administrative cooperation in the (near) future. A Member State noted a concern that the required administrative cooperation related to MOSS will create a too high burden on their resources.

In order to anticipate the expected difficulties, but also to prepare for any future extension of MOSS, the Commission has suggested a range of actions to improve the administrative cooperation between the Member States.¹⁴³ The Council of ministers (ECOFIN) has supported these measures and emphasized the importance of efficient administrative cooperation in tackling VAT fraud.¹⁴⁴

The plans include a measure to move from the existing cooperation models based on Member States exchanging information to new models of sharing and jointly analysing information and acting together

¹⁴³ Commission's Action Plan on VAT and 20 measures to tackle VAT fraud

¹⁴⁴ Council conclusions on the VAT action plan and on VAT fraud, 25 May 2016 <http://www.consilium.europa.eu/en/press/press-releases/2016/05/25-conclusions-vat-action-plan/> , consulted on 21 September 2016

(the pilot on Transaction Network Analysis), in order to benefit from a risk management capacity at EU level, enabling Member States to identify and dismantle fraudulent networks rapidly and more efficiently. This includes also a strengthened and more efficient use of Eurofisc network in tackling VAT fraud, including giving competent authorities direct access to the relevant information held in other Member States' databases.

Administrative cooperation with third countries

The 2015 place of supply rules extended the obligation of non-EU suppliers to pay VAT in the EU on their services to EU final consumers from e-services to telecommunication and broadcasting. By the end of Q2 2016 only 1 079 non-EU businesses had registered for the non-EU MOSS, mostly the larger ones. It is likely that the concentration on the supplies of TBE services from outside the EU is similar to the one inside the EU, so the largest 10-15% of suppliers are responsible for near 95-99% of the total value of supplies. However, it is still important to strengthen the administrative cooperation with third countries to improve the compliance and provide certainty and a level playing field for businesses. The issue becomes even more important when the MOSS is extended to the import of goods.

Several Member States noted that they expect significant difficulties in attempted cooperation with third countries. One Member State also asked specifically more EU level guidance on how to engage with third countries.

Indeed, there are few existing tools used for administrative cooperation with third countries, such as the multilateral OECD/Council of Europe **Convention on Mutual Administrative Assistance in Tax Matters**¹⁴⁵, the bilateral Tax Information Exchange Agreements (TIEAs) based on the **Model Agreement on Exchange of Information on Tax Matters**¹⁴⁶ and the bilateral tax treaties against double or not taxation based on the **OECD Model Tax Convention (MTC)**¹⁴⁷. However, even though they could in principle apply to indirect taxes, they are basically conceived, implemented and used for direct taxes.

Therefore, in order to ensure a level playing field necessary for the functioning of the internal market, the Commission's Action plan on VAT contains also a reference to better cooperation with international organisations and non-EU countries specific for VAT, particularly to ensure effective taxation of e-commerce. The Commission is already carrying out negotiations with some countries, such as Norway, for an agreement on closer administrative cooperation on VAT.

¹⁴⁵ <http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm> , consulted on 22 September 2016. Developed jointly by the OECD and the Council of Europe, the Convention was opened to non-Members for signature in June 2011 (in amended form) and has been signed already by 104 countries. The Convention is intended to have a very wide scope and cover all taxes, including VAT and other general consumption taxes. The Convention provides for many forms of administrative cooperation between the parties in the assessment and collection of taxes, in particular with a view of combating tax evasion and avoidance.

¹⁴⁶ <http://www.oecd.org/ctp/exchange-of-tax-information/Model-Protocol-TIEA.pdf> consulted on 22 September 2016. The TIEAs provide for exchange of information of request (as well as on other forms) and tax examinations abroad. They are mostly used for direct taxes, but can also cover other taxes such as VAT.

¹⁴⁷ <http://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-2015-full-version-9789264239081-en.htm> consulted on 22 September 2016

4.2.4. Audit guidelines on MOSS and initial auditing experience

MOSS audit guidelines

In addition to the Guide to the VAT MOSS, the Standing Committee on Administrative Cooperation (SCAC) has prepared a set of four specific guidelines for businesses and Member States on MOSS audit.¹⁴⁸

The guidelines include the reference to the Member States who have committed to applying the specific guideline and agreed on their commitment to be presented in the guidelines document. Therefore the fact that a Member State is not referred to in the guideline does not necessarily mean that they do not apply it.

The four MOSS audit guidelines are the following:

- ✘ Initial contact with taxable persons should, where possible, be routed through the MSI. Once initial contact is made, a case by case approach is advisable as in some circumstances direct contact between the MSC and business could be necessary;
- ✘ MSI should use their normal national procedures when contacting taxable persons registered for the EU scheme in the MSI. They should use e-mail for an initial contact with non-EU scheme users registered in the MSI;
- ✘ Where there is contact from the MSC, this should be initiated via the taxable person's contact e-mail address (for both EU and non-EU businesses). As this is an electronic system and the main contact information is the taxable person's email address, this should be used to initiate contact if the taxable person is not established in the Member State making contact;
- ✘ The best method for the exchange of information should be agreed between the taxable person and the tax authority and should depend on what electronic means is available to both.

Endorsement and implementation of the MOSS audit guidelines

During the assessment, a vast majority of the Member States confirmed that they adhere to all four principles put forward in the audit guidelines. Only one Member States has not agreed to any of the four guidelines on the ground that they consider the MOSS audit to be an exclusive competence of the Member State (of consumption).

There are Member States who do not adhere to some of the guidelines. Reasons put forward by Member States for not following the first guideline (routing initial contact always through the MSI) are that it is too time consuming, that this imposes a high administrative burden on the Member State of Identification or that they prefer direct contact with the taxpayer. One Member State indicated to prefer sending a soft notice to the business at the same time when sending a note to the MSI. If there were no response from the business, they would ask the Member State of Identification to start the audit.

¹⁴⁸ Information for businesses signing up for the Mini One Stop Shop, Additional Guidelines – Auditing under the MOSS. http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/one-stop_add_guidelines_en.pdf, consulted on 26 July 2016.

All (but one) Member States adhere to the second and third guideline.

Two Member States noted that they do not adhere to the fourth guideline (exchange of information with electronic means). A reason noted by one of them was that there are several factors hindering the introduction of the standard audit file for MOSS (SAF-MOSS).

Regarding the implementation and application of the MOSS audit guidelines, the large majority of Member States indicated that they have not performed any MOSS audit so far and therefore it is too soon to assess the extent to which the audit guidelines are applied in practice. Some countries indicated they already take these guidelines into account (at least to a certain extent), e.g. by developing national guidelines in line with the audit guidelines, by adapting their standard audit file for tax (or “SAF-T”) analyser to be able to read SAF-MOSS files (i.e. standard audit files for MOSS) and so on. The second stage survey did not identify any further Member State experience on this.

The vast majority of the Member States did not make any changes to their existing internal procedures or legal framework because of the MOSS audit guidelines. Many of the countries indicated that such a change was simply not necessary, but several noted that they are still considering whether any changes are needed.

Initial experience and expectations regarding MOSS audits

As mentioned above, so far the Member States have almost no experience yet with MOSS audits and therefore it is too early to assess to what extent the MOSS audits are to be coordinated with other tax authorities. The second stage of the study confirmed that the situation is still generally the same, although there is slightly more experience with requests of information, which are sometimes routed through the Member State of Identification. Two Member States have indicated that they will apply the relevant articles in Regulation 904/2010¹⁴⁹ and one country noted that they will make use of the procedure within the Central Liaison Office (or “CLO”) VAT information exchange.

Regarding performed MOSS audits, during the first stage of the study only one Member State indicated it had performed an audit under the MOSS. A year later at the second stage four member States had some audit experience, of which two as a Member State of Identification and two as a Member State of Consumption, but none of these was carried out jointly. Just one audit related to additional VAT liability.

Regarding the reasons of other Member States why no audits have been carry out yet, the main one continues to be that it is still too soon. Some Member States still noted the continuation of the initially agreed supporting ‘light touch’ approach, letting the changes to embed in before starting the audits.

The Member States noted in their responses also some other reasons:

- ☑ There are no indications that a business is involved in VAT fraud or has applied for the reimbursement of a significant amount of VAT paid;
- ☑ The level of risk is not big as the volume of transactions is small in that particular MSC;
- ☑ There is only a low number of registered traders;
- ☑ They have not received a request from a Member State to do so; and

¹⁴⁹ Council Implementing Regulation 904/2010 of 7 October 2010.

- They have other priorities (for now).

Only one Member State has indicated it has already experienced difficulties concerning MOSS auditing. More specifically, it struggled to identify non-established companies providing TBE services to customers in their country, which seems to be a wider issue than specifically audit related. In a related matter, some further guidance was considered to be helpful on how best to contact suppliers of TBE services in non-EU countries or on cooperation with the tax authorities in these countries.¹⁵⁰

Most Member States do expect difficulties with MOSS audits in the near future. Many Member States interviewed expect language issues and other communication problems, following from the fact that three parties are involved (MSI, MSC and taxpayer). It was also noted that audits could be very time-consuming due to the involvement of the Member State of Identification. Some Member States also have concerns about a lack of means to force businesses to comply in other Member States. This concern is even stronger with respecting enforcing businesses from third countries to comply with VAT laws in the Member States.

Almost all Member States use a risk based approach to determine their audits, albeit not always exclusively or systematically risk based and in nearly all cases not MOSS specific (although a couple of Member States mentioned that they use the origin of the supplier as a risk indicator). One Member State was concerned that in MOSS audits it would be difficult to carry out a risk analysis to select the cases for audit as the available data is limited and there is still not much knowledge on potential avoidance schemes in MOSS.

Regarding preparations for future MOSS audits, such as having a MOSS audit plan, nearly all of the Member States indicated that they did not have a MOSS specific national audit plan in place. The Member States did not determine the number of audits they intended to perform in 2015 or plan to carry out in 2016 on MOSS and/or TBE services, mostly due to their risk based approach. Some Member States noted specifically that they would not yet perform such an audit, unless there is a risk alert, and one of those countries mentioned that they prefer a more supportive approach at least in the first year. Only one Member State indicated a specific number of planned audits in 2015 and in 2016, being in both years about five audits.

Feedback on the proposed Single Audit Mechanism

In the Digital Single Market Strategy for Europe¹⁵¹ the Commission planned to making legislative proposals in 2016 to reduce the administrative burden on businesses arising from different VAT regimes (in relation to digital cross-border supplies), including allowing for home country controls and a single audit of cross-border businesses for VAT purposes.

As part of the assessment on MOSS audits, the tax authorities of the Member States were asked to share their opinion regarding the proposal for a single audit mechanism.

In this regard, during the first stage of the study the majority of the Member States were positive about the proposal noting that it has the potential to provide effective simplification, although they noted as

¹⁵⁰ In this respect, work has been conducted on administrative cooperation by the OECD and the Council of Europe, resulting in the Convention on Mutual Administrative Assistance in Tax Matters. Articles 26 and 27 of the OECD Model Income Tax Treaty can also serve as a legal basis for the exchange of information and recovery assistance.

¹⁵¹ Communication from the Commission A Digital Single Market Strategy for Europe COM(2015)192, 6 May 2015.

well that it would need to be discussed in details to address all the key aspects, including the necessary EU and national legislative changes. The second stage survey results were significantly more mixed, only a quarter of Member States took a clearly positive approach and a quarter were against such measure.

Both times a number of tax authorities (also around a quarter of respondents in 2016) preferred not to provide an opinion, noting that it would be premature at this stage and that the proposal needs to be first analysed in detail.

The remaining Member States had mixed views, seeing both advantages and disadvantages. Some mentioned that a single audit might be a good solution for language problems, but it was also noted that such process is likely to impose an additional burden to the tax auditors (e.g. to include a MOSS related e-audit to their regular (perhaps more paper based) audit processes).

It seemed that from a practical perspective, many Member States agree that the Single Audit Mechanism could be an efficient tool to control services within MOSS. However, importantly it was noted that it would run counter to a longstanding principle that the Member State where the VAT is due has the sole right and responsibility for the audit. Indeed, the Member States, which did not support the single audit idea, noted that the Member State of Consumption should retain the possibility to audit directly or to participate in the audit. However, some of them agreed that a coordination of the audit by the Member State of Identification would probably be useful.

In addition to introducing a significant change in current audit principles, a lack of trust between tax authorities was mentioned as one of the significant obstacles hindering an implementation of a Single Audit Mechanism. For this reason, some suggested to start out with a form of multilateral audit on the larger suppliers of TBE services, as well as turning the audit guidelines into a legally binding set of rules.

As a conclusion, according to the Member States, such a Single Audit Mechanism could potentially be an effective tool. However, there are inherent risks involved and a lot depends on how the rules are designed. The Member States considered though that such mechanism would take a long time to agree on and to implement, and indicated the need to develop a stronger trust between tax authorities in supporting each other's and common tax interests.

Other approaches to improve auditing

As the Member States are cautious about the potential of a Single Audit Mechanism, the Commission is already looking for alternative measures to improve cooperation on audit. In the VAT Action Plan¹⁵² the Commission explains their plans to strengthen the Eurofisc network and use it also to start carrying out joint audits. A legislative proposal on joint audits is planned for 2017.

In addition to the developments of legislative framework on joint audits, the existing administrative cooperation framework could be used more efficiently to exchange best practices between Member States on auditing e-businesses and using electronic means for auditing. The businesses would appreciate a simple, aligned and coherent approach between Member States to auditing the cross border TBE services.

¹⁵² Communication on an action plan on VAT, towards a single EU VAT area – time to decide, COM(2016)148, 7 April 2016.

4.2.5. Key findings

The key findings from the assessment of the initial experiences in compliance with the 2015 place of supply rules, administrative cooperation and MOSS audit are as follows:

- ✘ The compliance, cooperation and auditing experiences with the 2015 place of supply rules are still very limited and therefore it is too early to draw any clear conclusions;
- ✘ The compliance of suppliers, especially non-resident suppliers, is a concern for Member States, but there is not yet enough data to estimate the level of compliance. It is however expected that the larger suppliers are generally compliant and the non-compliance is more likely amongst the smallest businesses, partly due to the perceived high administrative burden. Considering the high level of concentration in TBE supplies (in MOSS 13% of suppliers paying 99% of VAT), the VAT loss due to non-compliance is therefore likely to be limited;
- ✘ Co-operation between the Member States on the interaction and the functioning of the MOSS portal has increased since the implementation of the 2015 rules. Many Member States treat the new rules from the compliance and control perspective as part of 'business as usual' and have not found it necessary to introduce any specific control measures, although attempts are made to gain more information on the non-established traders selling TBE services to the customers in a Member State;
- ✘ It is important to note that Member States appear to expect difficulties in administrative cooperation in the near future. It may therefore be useful to continue monitoring their experiences and arrange discussions to pre-empt the difficulties and find solutions to the identified potential issues. The VAT Action plan actions towards strengthening cooperation between Member States on VAT compliance and tackling tax avoidance and fraud will provide a good way forward;
- ✘ The administrative cooperation with third countries is the main area needing improvements. The existing multilateral conventions and bilateral treaties for administrative cooperation in tax area provide a good basis for direct tax purposes, but would need to be used more efficiently in VAT matters. In order to remedy the current shortcoming, the Commission is intending to strengthen administrative cooperation with international organisations and third countries in order to improve compliance through bilateral agreements with the most relevant third countries. For this it will look for a mandate from Council;
- ✘ Although the MOSS auditing experience is still very limited, it is positive to note that a large majority of Member States have endorsed the MOSS audit guidelines and are getting ready for further cooperation on audit and other information exchange;
- ✘ A single audit mechanism is seen as one of the ways forward, however the Member States see some inherent risks and challenges in it and in any case expect it to take a long time and significant effort. As alternative, the VAT Action plan suggests developing further the legislative framework on joint audits. Meanwhile, the full application of audit guidelines and effective cooperation on audits, would be desirable.

4.3. Business perspective

4.3.1. Introduction

Scope

The purpose of this part of the report is to provide a qualitative analysis of administrative cooperation, auditing and the audit guidelines in the field of TBE B2C services from the business perspective.

More specifically, it provides an analysis of (i) companies' awareness of the MOSS audit guidelines; (ii) compliance of audit procedures with the audit guidelines; and (iii) the views of businesses on the audit process.

Methodology

For this, relevant data were collected from 48 interviews with businesses, business associations and 1 tax advisory firm in the 8 selected MSs as explained above. Additionally, we interviewed 6 businesses and/or businesses associations in the following for Member States: Malta, Belgium, Sweden and the Netherlands.

As explained, this assessment was carried out in two different stages, with the expectation to gather especially more input on audits and requests for information in stage 2.

4.3.2. Assessment of the administrative cooperation and audit

Experience with information requests and audits

So far, after more than one and a half year of its implementation, one of the respondents has been subject to an audit regarding the 2015 place of supply rules. Additionally, one company was asked informally about its MOSS transactions in a rather general manner. The audit was conducted by a Member State that did not endorse the audit guidelines, and, as such, the request was not routed through the MSI. The audit focused rather on processes, including for example questions as regards the customer identification process, and not on individual transactions.

Some companies also received an information request. Depending on the MSC, these requests were routed by an MSC through the MSI, in line with the MOSS audit guidelines, or not. In general, the first experience with the MOSS audit guidelines was positive.

The Member State which did not endorse the audit guidelines (the same Member State that carried out the audit mentioned above), when requesting information as an MSC, did not route its question through the MSI, but went directly to the taxable person and addressed the company in its own language by regular mail.

This low rate of audits confirms the approach adopted by the tax authorities, which generally are of the opinion that it is too soon to perform 2015 place of supply and MOSS audits.

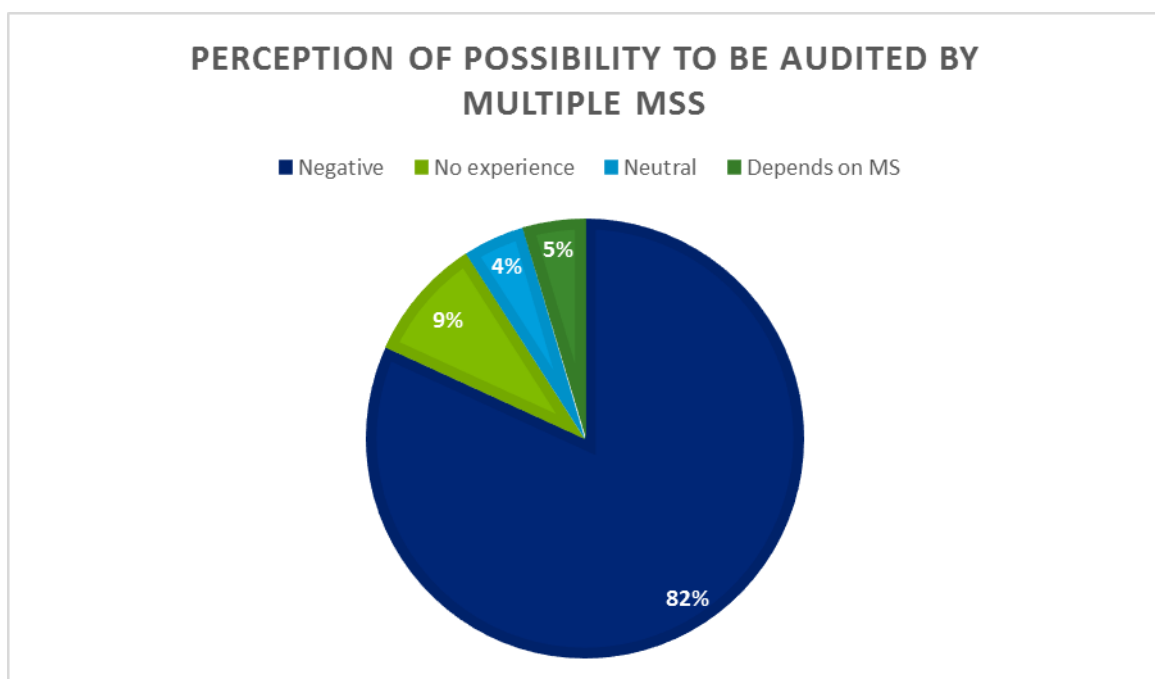
Nevertheless, some businesses rightfully indicated that some proper audits would give a better view on the performance of the MOSS: as long as no audits are carried out, business might have a false sense that everything is going well. So far, businesses are putting a lot of effort in complying with all the rules, but the question remains whether they actually fully comply.

Perception of possibility to being audited by multiple Member States and the awareness of the audit guidelines

The vast majority of responding businesses perceive the possibility to be audited (or receiving information requests) by multiple MSCs as (strongly) negative. Not only do they fear a high administrative burden, due to among others a lack of awareness of the process, but most of them also expect significant language issues.

Additionally, one company explained that one of the main reasons to deregister for the MOSS is the fear to put the company under too much scrutiny, in that sense that they fear the MOSS makes them more visible and would provide tax authorities with too much customer data, which they would not be able to manage and control.

Figure 15 – Perception of possibility to be audited by multiple Member States¹⁵³



The respondents indicate a preference of being audited by the MSI for the following reasons:

- ☒ Correspondence with the MSI is easier for language reasons;
- ☒ Businesses are closer to the fiscal administration of their MSI;
- ☒ The MSI can ensure a more coordinated approach;
- ☒ A single point of contact is easier for businesses.

A few companies commented that they think it is too soon to formulate an opinion on this matter. Just one large business stated that this entails no big difference for them, as they are used to being audited in several Member States.

¹⁵³ Source: business interviews conducted by Deloitte, cf. *supra* under "2.3.1 Introduction – methodology and data strategy".

Concerning the audit guidelines, it is remarkable that nearly half of the companies interviewed were not aware of the audit guidelines. Nearly all respondents who were aware, evaluated these guidelines positively. They believe that the guidelines are a step in the right direction as these envisage a more coordinated approach for the MOSS audits.

It was, however, also pointed out that these guidelines are not sufficient, as they are non-binding 'gentlemen's agreements' and don't therefore provide sufficient legal certainty.

No guidance on the practical aspects of audits

One of the main concerns for businesses is that there is no guidance for future audits. They have no view on what exactly will be audited and how. Businesses indicated they expect that tax authorities might not be apt to process their data. Indeed, tax authorities performing an audit need a sound understanding of e-Commerce. In contrast to what tax authorities are used to for classical business models, they will not get a clear compiled folder of documents, but a vast database, which is especially cumbersome in case tax authorities want to carry out a financial audit, rather than a systems audit.

To mitigate this, it was suggested to set up a collaboration between businesses and tax authorities to discuss best practises to perform an audit. In a second phase, this could then be shared with other businesses and tax authorities.

Recommendations

During the Fiscalis seminar, businesses provided the following recommendations for facilitation of the audit under the MOSS:

- ❑ Legislation for the audits and a pilot audit;
- ❑ Create a special MOSS audit team formed by Member States;
- ❑ Exchange of best practices and development of guidelines around these;
- ❑ Audits should be done by a single Member State (preferably the MSI); and
- ❑ The process should be audited, rather than the transactions.

4.3.3. Key findings

The initial experiences of the businesses are the following:

- ❑ Businesses have so far virtually no experience with MOSS audits, although a few have received information requests from Member States of consumption. The first experience with the audit guidelines were positive.
- ❑ Despite the lack of direct experience, the businesses have a negative perception of a potential audit by the multiple Member States of consumption (potentially simultaneously). Their main concerns are linked to the lack of awareness of the process, the expected high administrative burden, but also language issues. Businesses have therefore a strong preference for an audit conducted by the Member State of Identification.
- ❑ Businesses are generally not aware of the MOSS audit guidelines and, when aware, are concerned that the guidelines are not binding for the Member States and therefore may still not be followed.

5 Quantitative analysis of the implementation of the place of supply rules and MOSS

5.1. Quantitative analysis of the implementation of the place of supply rules

5.1.1. Member State perspective: budgetary impact of the place of supply changes

As part of the preparation for the necessary legislative and system changes, Member States had to estimate the costs of the legislative and technical implementation of the changes, the ongoing operating costs as well as the potential revenue impact, to be taken into account in tax department's funding requests and tax revenue planning process.

For the purposes of the assessment, Member States were asked to provide data on the implementation and operating costs, as well as estimated MOSS registrations and revenue impact, which was then compared against the real registrations and declared supplies.

This section provides a brief qualitative analysis of the Member States' budgetary impact. A more detailed overview and assessment of the collected quantitative data is presented below in Chapter 5.2. on the uptake of the MOSS.

Implementation and operating costs

The assessment carried out on the costs of implementation reflected mostly the costs of changes to the IT systems and processes, relating to the implementation of the national MOSS portal for registrations and declarations, as well as adjustments to the linked system for administrative cooperation between Member States (for revenue sharing and exchange of information). The average implementation cost for the EU tax authorities was of about EUR 2.5 million, with large variations across Member States.

Such large variations can depend on several factors, including the size of the country. In addition, Member States had different approaches to the development of the national MOSS portals. Some of them implemented portals with minimal functionalities, while others prepared their IT systems already for a possible extension of the MOSS (for instance to goods), allowing for a larger processing capacity. In addition, in some Member States the implementation of the MOSS portal required (or provided the opportunity for) the adjustment of other IT systems.

The set-up costs presented above include both in-house developments and external fees. The majority of Member States had the IT development carried out by external contractors, whose work was supported by the internal IT and legal staff.

Member States started to work on the requirements to implement the national MOSS portals in 2013, carrying out the large part of the development and test work in 2014.

Member States commented also on the maintenance costs, overall considering them lower (sometimes notably lower) than the development and setting-up costs. Maintenance costs are estimated at approximately EUR 500 000 per year (on average), with large variations across Member States.

Member States acknowledged that they incurred overhead costs to implement the national MOSS portals, but were not able to quantify them. Such costs include organisational costs, business process re-engineering, training, etc. Literature on IT transformation¹⁵⁴ suggests to apply a 1:3 rule of thumb while quantifying the overhead costs for transformative IT project, *i.e.* for every EUR spent on IT, 3 EUR are spent on overhead. Literature on e-Government projects¹⁵⁵ suggests that such proportion could increase up to 1:5 in large e-Government projects. Therefore, the average overhead costs for the implementation of the national MOSS portals can be estimated as ranging from EUR 3 million to EUR 5 million EUR on average, depending on which rule of thumb is applied.

Revenue impact

The impact of the place of supply changes on the Member States' tax revenue is a combination of several factors, the two main ones being the loss of tax revenue on cross-border supplies of B2C TBE services by local businesses (MSI impact) and the gain of tax revenue from foreign businesses (including previously non-registered businesses) supplying to the customers located in the Member State (MSC impact).

The net revenue impact (loss or gain) will depend on whether the country has more cross-border consumption or sales. However, the overall VAT revenue across the EU is expected to slightly increase due to the taxation of supplies previously untaxed as the supplier was below the local VAT (registration) threshold. Another revenue influencing factor is the level of non-compliance, as well as the nature, *i.e.* a number of businesses may declare VAT, but to their own Member State, rather than to the Member State of Consumption as required.

Interestingly, nearly all Member States which provided data on expected revenue impact (12 Member States in total) expected the impact to be positive. Only one Member State had estimated a negative revenue impact. Based on the MOSS data (Q1 and Q2 2015), most Member States have a net gain and only a limited number of Member States experiences a net loss. The total VAT revenue declared via MOSS in 2015 is EUR 3 billion for both the Union and the Non-Union Scheme. The detailed numbers are set out below in section 5.2 of the report.

Regarding expected future changes on revenue, more than a third of the Member States do not expect any changes in the future with respect to revenue collected from B2C TBE services and the same proportion of Member States expect some increase in the revenue collected. No Member State expected a reduction in revenue, however some Member States preferred not to respond, noting that it is hard to make any such assumptions.

5.1.2. Business impact: cost impact

This section focuses on the identification and quantification of the administrative burden placed on businesses engaged in cross-border e-Commerce of TBE services. The analysis includes the administrative burden for businesses providing cross-border TBE services before and after the 2015 place of supply rules entered into force (in this case, both using and not using the MOSS).

¹⁵⁴ Rand Overhead, General and Administrative costs, available at: https://www.rand.org/content/dam/rand/pubs/monograph_reports/MR1325/MR1325.ch9.pdf, consulted on 26 July 2016.

¹⁵⁵ Kettani D., Moulin B. (2015), e-Government for Good Governance in Developing Countries, International Development Research Centre.

The approach and methodology adopted for the SCM analysis, together with the list of relevant Information Obligations (IOs) identified and used for the analysis, as well as the key assumptions made for the analysis were described in detail in the Final Report for Lot 1.¹⁵⁶ For the exercise in the report at hand, we used the same approach and methodology, the same list of IOs and the same main assumptions, as they apply in most of the cases, as well as to support comparability of results.

The following key parameters were adopted for the analysis:¹⁵⁷

- ✘ Number of businesses supplying TBE services: the total number of businesses in TBE services is estimated at 83 686;
- ✘ Number of businesses registered to the MOSS: data provided by Member States on MOSS registrations in Q1 and Q2 of 2015 revealed that 10 604 EU businesses registered to the MOSS¹⁵⁸;
- ✘ Number of Member States in which TBE businesses trade cross-border: it is assumed that the average firm trading TBE services cross-border registered to the MOSS trades in five Member States, while those TBE businesses not registered to the MOSS are assumed to trade cross-border in eight Member States on average.

Finally, we present the IT costs related to the set-up and maintenance of IT systems complying with the new regulations, and to the additional costs businesses incurred with the 2015 Place of supply rules, such as training costs.

Administrative burden pre 2015 place of supply rules

Before the 2015 place of supply rules entered into force, businesses offering TBE services cross-border applied the origin principle, therefore B2C cross-border transactions were treated as domestic supplies.

The analysis of the administrative burden for businesses before the place of supply rules entered into force revealed that businesses did not process cross-border supplies differently from domestic ones for VAT and accounting purposes, as the law did not request it.

Therefore, it was not possible to identify the specific administrative burden linked to the cross-border aspects of such supplies, which businesses interviewed considered as 'marginal'.

Administrative burden post 2015 place of supply rules for businesses using the MOSS

According to our estimates, the overall costs that businesses faced when engaging in cross-border B2C e-Commerce of TBE services using the MOSS under the 2015 place of supply rules amount to about **EUR 23 million**, or about **EUR 2 172** per business per year, or about (on average) **EUR 434** for each Member State to which a business has cross-border sales.¹⁵⁹

¹⁵⁶ Please see section 4.4.1 of the Final Report for Lot 1. A more detailed description of the methodology and assumptions used, as well more detailed results, are presented in annex 3.

¹⁵⁷ See annex 3 for a detailed explanation.

¹⁵⁸ The data, which was used, was up to date until the beginning of October 2015. As mentioned above, statistics from May 2016 show an increased number in the registrations. For the purposes however of the calculations in this chapter, the statistics from October 2015 were used.

¹⁵⁹ An average of five Member States was used, based on the sample of businesses and on expert assessment.

These results apply to the 10 604 EU businesses currently registered to the MOSS. The analysis showed that non-EU businesses opting for the non-EU MOSS scheme incur costs comparable to those of EU businesses.

Consistently with the objectives of the assignment, the costs reported above only concern the administrative costs directly related to the use of the MOSS (therefore, VAT-related obligations related to domestic legislation are not considered). In fact, these estimations only include the administrative costs for the cross-border share of businesses' revenues (under the 2015 place of supply rules and with the use of the MOSS).

When considering the breakdown of such costs, three IOs emerged as relevant to identify and quantify the administrative costs directly related to the use of the MOSS, namely:

- IO1: MOSS registration;
- IO6b: VAT declaration/returns - MOSS return;
- IO8b: VAT payment regarding MOSS.

MOSS registration (IO1) accounts for about 1.22% of total compliance costs. While in general businesses agree that registering to the MOSS portal does not present major issues, still some of them have decided to outsource entirely or partially the related activities. Interestingly, some businesses provide as part of their business model ad-hoc services to deal with MOSS-related obligations on behalf of their customers. The business interviews reveal that, if carried out in-house, MOSS registration require about 1.16 days FTE per business. Firms that partially outsource activities reported somewhat smaller internal costs (0.19 FTE). Costs for businesses using external advisors increase with respect to businesses carrying out this task internally, but the increase is rather limited. Furthermore, the average market fees for such advisory fees are notably lower than those required for a 'traditional' VAT registration, even a domestic one. The average external fee for MOSS registration has been estimated of EUR 300, against an average fee for (domestic) traditional VAT registration of about EUR 1200. The majority of the internal staff time is allocated to gathering information and preparing the related documentation.

Submission of VAT returns via the MOSS (IO6b) still represents by far the most burdensome IO, accounting for approximately 98% of the total administrative costs related to the use of the MOSS. Similar to the MOSS registration, the submission of VAT returns/declarations via the MOSS is carried out by businesses either in-house or with the support of external advisors. The interviews and the following analysis show that, if carried out in-house, MOSS declarations/returns require about 2 days FTE per business per return, or about 8.2 days per business per year. With the use of external advisors, the staff costs reduce to 0.4 FTE per business per return, or about 1.5 days per business per year. The majority of the internal staff time is allocated to gathering information and preparing the consolidated data for each applicable VAT rate per Member State. Overall, businesses do not consider the MOSS return/declaration as a complex or particularly burdensome task. However, some of the businesses interviewed would appreciate an improvement in the MOSS functionality, allowing a direct dialogue between the business accounting system and the MOSS, to input data directly.

Payment of VAT return/declarations via the MOSS (IO8b) accounts for about 0.7% of total compliance costs for MOSS-related IOs, and amount to (on average) about 7 minutes per payment per entity (on average across the sample), or about 0.09 days per business per year. Businesses explained how they spend 5-10 minutes to check the data on cross-border sales included in the VAT

declaration/returned compiled via the MOSS before 'pushing the button' and authorising the electronic payment.

Our analysis suggests that the MOSS presents economies of scale for businesses, deriving from the fact that businesses have to file only one VAT return (and carry out one payment) for each reporting period, irrespective of the number of Member States businesses they have supplied cross-border TBE services. The decreasing marginal costs for the VAT return and payment are thus inversely related with the number of Member States the VAT return is filed for (*i.e.* decreasing costs with the increase on the number of Member States). According to our analysis, such economies of scale translate into a reduction of the costs per company per Member State from 92% when the VAT return is filed for three Member States, up to 95% when it is filed for 27 Member States.

The 2015 place of supply rules required businesses to act on their IT systems (including their ERP systems) to comply with the new legislative framework. The costs related to the setting-up and the maintenance of the adapted IT systems are described separately.

Administrative burden post 2015 place of supply rules for businesses not using the MOSS

According to our estimates, the overall costs that businesses faced when engaging in cross-border B2C e-Commerce of TBE services under the 2015 place of supply rules (but not using the MOSS) amount to about **EUR 1 414 billion**, or theoretically about **EUR 41 626** per business per year, or about (on average) **EUR 5 203** per business per each Member State they sale cross-border.¹⁶⁰ These figures refer to about 34 000 businesses, which are estimated to be eligible for the MOSS but decided not to register for it.¹⁶¹

The different administrative burden estimated for businesses engaged in cross-border B2C e-Commerce and for businesses supplying TBE services (EUR 8 000 per company per Member State vs. EUR 5 203 per company per Member State) can be explained by the different composition of the samples of businesses used to carry out the estimates. The sample of businesses used to estimate the administrative burden of businesses supplying TBE services cross-border included a larger share of small enterprises with respect to the other sample (SMEs were estimated to sustain an administrative costs per company per Member State of about EUR 5 200)¹⁶². The figures above, complemented by those presented earlier on the administrative costs directly linked to MOSS-related obligations, provide an estimate of the overall administrative costs of the 2015 place of supply rules for businesses, which amounts to approximately **EUR 1 437 billion**.

Based on the results of the interviews, the following IOs emerged as the most burdensome (similarly to the results from Lot 1):

- IO1 – VAT registration; and
- IO6a – VAT returns/declarations

Under the 2015 place of supply rules, **VAT registration** is required in all Member States of Consumption (*i.e.* in all those EU Member States TBE businesses have customers). This obligation is

¹⁶⁰ An average of eight VAT registration was used, based on the businesses in the sample and on expert assessment.

¹⁶¹ See following sub-section for more details.

¹⁶² See the Final Report for Lot 1.

perceived as particularly burdensome by businesses, as they have to deal with large differences in the procedures and timing necessary for registration across Member States. Common issues include the difficulty in identifying the national requirements and the relevant institutions for each VAT-registration in each market, language, non-transparent administrative processes in some Member States, large variations in administrative requirements, processes and timing for the task across Member States. It is quite common for businesses in such situation to externalise these tasks and to use external advisors, especially for large enterprises.

Data from the interviews and the subsequent analysis show that the average time required for VAT registration (when carried out in-house) is of approximately 1.63 FTE days per business. If businesses use external advisors, the amount of internal resources is reduced 0.56 FTE, but the overall costs increase significantly, even considering advisory fees at the lower market end.

VAT declaration and return (IO6a) represents by far the most burdensome and expensive recurring requirement of those listed, as it represents more than 95% of the total compliance costs for businesses under the 2015 place of supply rules (not using the MOSS). As with VAT registrations, businesses often choose to outsource at least part of the related activities, as a way to cope with the different requirements and frequencies across Member States.

The business interviews reveal that, if carried out in-house, VAT returns require about 2.56 days FTE per business per return. Firms that partially outsource activities reported somewhat higher numbers for their internal costs (0.75 FTE), most likely because larger firms or firms with more complex issues were more likely to consider outsourcing. The majority of the time is allocated to gathering information, preparing the VAT return and reconciling data from different accounts. The frequency with which this obligation must be met (monthly/bi-monthly/quarterly) affects the related costs, as does the amount of the information requested and the accompanying documentation. Eligibility requirements for less frequent returns vary across countries, and in general depend on threshold levels. Businesses (especially larger ones) have to comply with large differences across Member States in the process of preparation and submission of VAT returns, such as differences in formats, language, methods for correction and submission, as well as with differences in the timing for submission (even with similar frequencies). In addition, Member States have different requirements for invoicing, which lead to additional burdens not required under EU legislation. A frequent example mentioned by our sample of businesses is that of several Member States request also the issuance of invoices for cross-border B2C supplies of TBE-services.

The 2015 place of supply rules introduced a set of VAT-related obligations for businesses that apply since the first transactions. Such obligations include VAT registrations and submission and payment of VAT declarations/returns, which have been identified as particularly burdensome (see Lot 1 for a detailed description of VAT-related obligations in relation to distance selling thresholds). Indeed, the notable increase in the administrative burden for businesses trading cross-border under the 2015 place of supply rules was anticipated, so that simplifying measures such as the MOSS were designed and introduced to mitigate such predicted adverse effects.

The comparison of the administrative costs for businesses using and not using the MOSS under the 2015 place of supply rules seems to confirm the effectiveness of the simplification measures accompanying the new rules. MOSS-related administrative costs are estimated of about EUR 2 172 per business per year, against EUR 41 626 per business per year for businesses not using the MOSS. Similarly, the average yearly costs per business per Member State for businesses using the MOSS differ from the costs for non-MOSS businesses by a factor of 10 (EUR 434 vs EUR 5 203).

The simplification measures were designed to support businesses with limited cross-border trade (or mainly trading in TBE services and thus had no need for multiple VAT registrations pre-2015), as enterprises with extensive cross-border trade in goods (or trade in services requiring local presence), usually larger businesses, were often already registered in several Member States for many reasons, and therefore more likely to stay outside of the MOSS and comply with 2015 place of supply rules by registering for VAT directly in the Member States of Consumption of their customers (if not registered already).

Businesses (and especially large businesses) have several reasons for deciding not to use the MOSS and comply with VAT-related obligations through direct VAT registrations. The most common include: already have multiple local establishments and registrations; no input tax deduction in MOSS; maintenance of local relationship and knowledge of local rules etc. This is covered in more detail in section 3.3 of the report.

Take-up of the MOSS

The total number of businesses in TBE services is estimated at 83 686. This figure was calculated as a percentage of the total number of businesses engaged in B2C cross-border e-Commerce calculated under Lot 1 (557 908). The percentage applied was 15%, which is in line with the share of e-Commerce revenues from TBE services (estimated under Lot 1). In order to estimate such figure, we considered the broad definition of TBE services, which encompasses telecommunication and broadcasting businesses, businesses providing digital services, cloud computing services, etc.

The number of businesses registered to the MOSS was provided by Member States. As of December 2015, 11 094 traders were registered in the EU scheme and 795 in the non-EU scheme.

In using the MOSS numbers for the purposes of the SCM, due care should be taken. Based on the provisions laid down in article 9a of the Implementing Regulation, they may hide a larger number of registrations since this article provides for a rebuttable presumption that organizers of telecommunications networks, interfaces or portals are deemed to be taking part in the supply and are supplying the services themselves. It is however unknown to what extent the number of registrations is potentially reduced by the application of this provision. Registrations hidden behind article 9a do not incur any costs, since their services are only supplied to the intermediary as such, and thus constitute B2B supplies. For more extensive comments in this respect, we refer to our comments with respect to the uptake of the MOSS in section 5.2.1.

The number of businesses trading TBE services cross-border but outside of the MOSS system was estimated at about 72 000, (*i.e.* the total number of businesses in TBE services minus the total number of TBE businesses registered to the MOSS (EU scheme)).

Overall, it is our estimate that about 15% of businesses supplying cross-border B2C TBE-services are registered for the MOSS.

According to expert assessment, about 70% of the value of TBE services is processed via the MOSS.

The analysis presented in this section assumed that about half of the TBE businesses outside of the MOSS comply with the 2015 place of supply regulations (the remaining half being non-compliant or 'hiding' behind large platforms). Under this scenario, only these businesses (among those not registered to the MOSS) incur administrative costs.

A different scenario where all non-MOSS businesses are compliant (and thus incur administrative costs) is presented in annex 3.

IT set-up and maintenance costs

As described above, to comply with some of the IOs included in our analysis businesses rely on IT systems. This is particularly important for the following IOs:

- IO2 - Identification of customer status – B2B or B2C;
- IO3 - Identification of Member State of Consumption;
- IO4 - Identification of correct VAT rate;
- IO5 - Invoicing, incl. charging VAT;
- IO9 – storage of invoices and transactional records.

The need to identify the Member State of Consumption for each transaction (IO3) in order to apply the correct VAT rate (IO4) was a major change for many of the businesses interviewed, which required major adaptations of their business procedures and of their IT systems.

Out of the businesses interviewed, 20 commented on the one-off and maintenance costs necessary to adapt to the new legislative framework, mostly large enterprises and for the majority using the MOSS. Businesses were often able to quantify the costs related to the implementation of IT changes to comply with the new legislative framework, but not to distinguish between those directly related to the 2015 place of supply rules and those directly linked to the use of the MOSS.

The table below provides an overview of the costs identified for the development and implementation of the IT developments related to the place of supply 1015 rules and MOSS.

Table 6 – Overview of IT set-up costs related to 2015 place of supply rules

IT cost type	Average (EUR)	Min (EUR)	Max (EUR)	Median (EUR)	Periodicity	Notes /comments
One-off	1 172 154	8 000	10 000 000	100 000	One-off	Figures include internal costs and external fees (incl. software)

Source: Deloitte analysis based on interviews with businesses from eight Member States

Based on the answers received, the average cost for setting-up the IT systems amount to about EUR 1.172 million. However, there is a very large variations across businesses, as the costs identified vary from EUR 8 000 to EUR 10 000 000. As most of the data were provided by large businesses, the relatively high average costs (as well as some of the higher values reported) are most likely related to the size of the businesses. Indeed, some of the businesses provided aggregated data for the entire group (thus including group companies). Such aggregated figures could explain the high variations across countries and some of the highest figures.

A small minority of businesses did not incur any relevant costs for the development of their systems, as their ERP systems were adapted quite easily, or because their systems already had geo-blocking or localization functionalities, due to licensing systems.

The set-up costs presented above include both in-house developments and external fees. On average, half of the businesses providing information on their IT costs carried out the IT changes in-

house, while half had external support. The external support included not only IT developments, but also legal advice on the exact obligations related to the new legislative framework, on issues such as which information to collect to have the two pieces of evidence to identify the Member State of Consumption, audit guidelines, etc. Other external costs included specific software and licences.

Businesses started to work on the IT requirements related to the new rules in 2014 (a small minority already in 2013). The process lasted several months, from 4 to 9 on average, mobilising a large part of the businesses' IT resources and part of the legal staff. Some of the businesses interviewed commented that they received guidelines from Member States relatively late in the process, which translated in higher uncertainty and higher costs.

Businesses commented also on the maintenance costs, overall considering them lower (sometimes notably lower) than the development and setting-up costs, but often not being able to quantify them. In general, maintenance costs related to the specific IT elements of the 2015 place of supply rules and MOSS (when in use) seem to be considered already part of the 'business as usual' scenario.

Training costs

The application of the 2015 place of supply rules and related measures such as the MOSS required that the staff working in the VAT (or finance) department, as well as part of the IT staff, had to be trained on the new rules to be able to comply with the new obligations.

Ten of the businesses interviewed commented on the trainings they organised in view of the entry into force of the 2015 place of supply rules and of the MOSS (for those businesses using it), mostly large enterprises.

Overall, businesses organised trainings with their legal and VAT (or finance) departments to understand and disseminate knowledge about the new rules and their implications, over relatively short periods (from 1-2 days to about 2 months). Such trainings were either internal ones (organised by the business staff for other internal departments) or external ones (organised by external advisors for the internal staff).

The trainings concerned mostly the 2015 place of supply rules and their implications for the businesses' procedures (such as new data and procedures to compile and submit VAT returns), while ad-hoc trainings on the MOSS were less frequent. The slight majority of the businesses that replied to this question organised the training sessions internally, while the rest used external advisors.

Businesses quantified the external costs related to such trainings at EUR 3 000 – EUR 5 000 on average, without including the internal selection process for the training providers. As for the internal costs, they were also quantified at approximately 20 FTE personnel days, including both design and delivery.

Overall, businesses considered the organisations of trainings in view of the entry into force of the 2015 place of supply rules not particularly complex or burdensome.

5.2. Quantitative analysis of the implementation of the MOSS: MOSS uptake

The MOSS was implemented on 1 January 2015 and was intended to simplify the reporting of VAT in Member States where businesses are not established. As of 2015, this reporting is required insofar as these businesses have B2C consumers of TBE-services located in these Member States.

When taxable persons established in the EU opt for MOSS, they are required to register for MOSS in the Member State where they are established. That Member State is the MSI. These businesses are reporting through the “Union Scheme” or the “Union MOSS”.

When taxable persons not established in the EU opt for MOSS, they can choose any Member State as an MSI. These businesses are reporting through the “non-Union Scheme” or the “non-Union MOSS”.

Prior to 1 January 2015, a system similar to the non-Union MOSS existed, which was designated as the VAT on Electronic Services system or “VoES”.¹⁶³ It was introduced on 1 July 2003.

Therefore, it is interesting to compare the previously applicable VoES system with the currently applicable non-Union scheme to detect any evolution. It needs to be noted though that the VoES system was merely applicable to the electronically supplied services, whereas in the non-Union MOSS applicable as of 1 January 2015 all TBE-services can be reported.

We will provide quantitative data on the VoES system and the first six quarters as of 2015 for the Union and non-Union MOSS. It is important to note that the numbers provided may still be subject to modification in the future as any corrections made by business can evolve slightly and are merely a photo of a certain situation. Due to the limitations of the system with respect to corrections, even in a few years, these numbers may be modified.

5.2.1. The Union Scheme – MSI view

By nature, the Union Scheme is not comparable to any system prior to 2015, since the place of supply rules prior to 2015 for EU businesses supplying B2C TBE services localised the services in the EU Member State of establishment of the supplier. Hence, there was no use for such a system, since a supplier of TBE-services prior to 2015 only needed to charge the VAT of the Member State in which he was established when the recipients were established in the EU.

This is contrary to the situation of non-EU suppliers of TBE-services, which already needed to charge the VAT of the MSC where their client was established.

Number of registrations

The number of registrations at the end of Q2 2016 amounted to 12 899.

This number is below the sum of the individual expectations of the Member States. In evaluating the difference though, due care needs to be taken. We refer to our section below on the Member State perspective of the MOSS and the number of registrations.

Additionally we refer as well to our comments on the application of article 9a of the Implementing Regulation in section 2.3.10 above and in Annex 6 below. Logically, an intermediary caught by the presumption of article 9a should hide an important number of suppliers who, in absence of this provision, should have registered in MOSS.

The total number of potential registrations in MOSS should have been around 70 000.

¹⁶³ Council Directive 2002/38/EC of 7 May 2002 amending temporarily Directive 77/388/EC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services.

Geographical distribution of registrations

Under the Union MOSS, the registration is dependent on the place where a business is effectively established, rather than on a choice of the business. The registrant businesses are predominantly based in Germany and the United Kingdom, who account for 43% of all registrations. At a distance, in descending order of importance, are the Netherlands, Austria, Sweden and France. The first 6 countries represent slightly above two thirds of all registrations in the Union Scheme.

Table 7 – Geographical distribution of registrations (end Q2 2016)

Country	Number of registrations	Share in # registrations (in %)
Germany	2 943	23
United Kingdom	2 578	20
Netherlands	1155	9
Austria	730	6
Sweden	642	5
France	578	4
Other Member States	4 273	33

VAT Revenue reported

Total VAT revenue reported in 2015 through the Union scheme amounted to EUR 2 692 million. The total VAT reported in Q1 and Q2 2016 amounted to EUR 1 350 million.

Geographical distribution of revenue per MSI

The VAT revenues reported in the Union Scheme are concentrated mainly in a limited number of Member States, as shown below. This is even more the case in the non-Union Scheme.

As for Q1 2015, the top 8 MSIs account for about 97% of all gross revenue reported through the Union Scheme.

Table 8 – Top Union Scheme MSIs in Q1 2015 and Q2 2016

Top Union Scheme MSIs (in descending order of importance) in Q1 2015	Share in revenue reported (in %, in Q1 2015)	Share in revenue reported (in %, in Q2 2016)
Luxembourg	58	44
Ireland	15	20
Netherlands	8	10

United Kingdom	6	9
Germany	4	5
France	3	4
Malta	2	2
Cyprus	1	1

In Q2 2016, the top 8 MSIs still accounted for 95% of all gross revenue reported through the Union Scheme. The share of Luxembourg in the gross revenue reported had dropped to 44% however and the shares of Ireland had increased to 20%. The shares of the United Kingdom and the Netherlands had also slightly increased.

The concentration of revenues in the MSI is not in direct correlation with the number of registrations. For instance, Germany has the highest number of registrations but only occupies the 5th place in terms of revenue reported through it.

A likely explanation could be that in certain countries (like Germany), there are much more SMEs operating than in others (like the United Kingdom).

The drop in the revenues reported through Luxembourg also indicates that businesses, which have previously established themselves in Luxembourg, now have located back to their original jurisdictions.

5.2.2. VoES scheme – MSI view

The 2003 VoES scheme was applicable since 1 July 2003. Our data however only encompasses the last three years before 2015.

Registrations

According to the available information, the number of registrations amounted to 575 at the end of 2014. The UK alone accounted for more than half of these registrations. The top 7 registration countries accounted for more than 97% of the registrations.

Table 9 – Top VoES registrations countries (in descending order of importance)

Country	Share in # registrations (in %)
United Kingdom	54
Netherlands	21
Germany	8
Malta	5

Ireland	5
Italy	2
France	2

The number of registrations fluctuated between 1 July 2003 and 31 December 2014. Due to the enlargement of the European Union, some businesses found themselves inside countries, which became a Member State and thus no longer needed to report through the VoES report. It was also noted in some countries that the number of registrations went up in the period before 2015, likely due to increased awareness of the rules.

Additionally, it was noted that although there were 575 registrations, a number of them did not submit any returns and thus did not pay any VAT.

Revenues

In terms of revenues, it can be noted that based on the information we received the VAT collected through the VoES increased significantly between 2012 and 2014.

Figure 16 – VoES revenues 2012–2014



The reason for this increase is likely not related to an increase in the sales of such services to European customers, but in higher compliance of non-EU businesses. This is likely due to an increased awareness with non-EU businesses prior to 2015 due to the extensive communication activities of the European Commission and Member States. Additionally, since a number of OECD countries moved towards a similar system as the one adopted by the EU on 1 January 2015, on an international level there may have been more attention for compliance of non-established traders.

5.2.3. The non-Union Scheme – MSI view

In terms of the non-Union Scheme applicable as of 1 January 2015, its main characteristics are similar to that of the VoES, *i.e.* an electronic portal for reporting certain services by a non-established

trader. The main difference in terms of scope is that the non-Union Scheme also allows for reporting of telecommunications and broadcasting services, whereas the previous system only allowed for reporting of electronic services. In terms of the actual set-up of the non-Union Scheme, it requires also nil returns to be filed, as opposed to the VoES.

Number of registrations

In terms of the number of registrations, based on information available in October 2015, they were slightly below 700 individual businesses registered. By end Q2 2016, they had increased to 1 079 registrations.

The number of registrations through the non-Union Scheme in 2015 is significantly higher than the number of VoES registrations. Important to note however is that there was in principle no automatic transition foreseen of the VoES registrations to the non-Union Scheme. This means that a number of the inactive VoES registrations have been deleted.

This number is however below the sum of the individual expectations of the Member State. An explanation for the lower than expected number of registrations is article 9a of the Implementing Regulation 282/2011.¹⁶⁴ This article provides that when ESS are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications, the taxable person taking part in the supply shall be presumed to be acting in his own name but on behalf of the provider of those services. In other words, it means that the organiser of the network, the interface or the marketplace will be deemed to be the one supplying the services, which are offered over the network, interface or marketplace it organises. Under certain strict conditions, this presumption can be rebutted.

This entails that these telecommunications networks, interfaces and marketplaces for applications may hide a large number of potentially smaller businesses. In absence of this provision, these businesses would have had to register directly in the MOSS, if they had chosen to opt for the MOSS. From the business interviews we conducted, some of these marketplaces for applications or interfaces estimated the number of traders hidden by 9a from a few ten thousand to two hundred thousand. Specific numbers were not quoted though, since this information is commercially very important. The presumption seems to be very rarely rebutted by marketplaces.

Geographical distribution of registrations

Non-EU businesses can freely choose the Member State in which they wish to register. The registrations are predominantly in the United Kingdom, although Ireland and the Netherlands can also claim a large part of the registrations, and Germany and Spain to a lesser extent. The higher number of registrations in English speaking countries can be explained by the fact that ESS businesses are for the major part to be found in the USA, and reflects the efforts of the European Commission to communicate with US business in 2014 on their EU VAT obligations for B2C supplies of ESS.

¹⁶⁴ Council Implementing Regulation 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

Table 10 – Top non-Union Scheme registrations countries (in descending order of importance) – end Q2 2016

Country	Number of registrations	Share in # registrations (in %)
United Kingdom	616	57
Ireland	166	15
Germany	78	7
The Netherlands	75	7
Spain	27	3
Other Member States	117	11

Revenue reported

In terms of the revenue reported through the non-Union Scheme, total revenue reported in Q1 2015 amounted to EUR 95.5 million. For Q2 2015 we only disposed of partial numbers, which amounted to EUR 36.3 million, with a few key countries missing (UK, Germany and Cyprus). Although we do not dispose of specific figures for all Member States, by using the information available to us, the total gross VAT revenue reported in Q2 2015 amounts to more or less EUR 65.5 million.¹⁶⁵

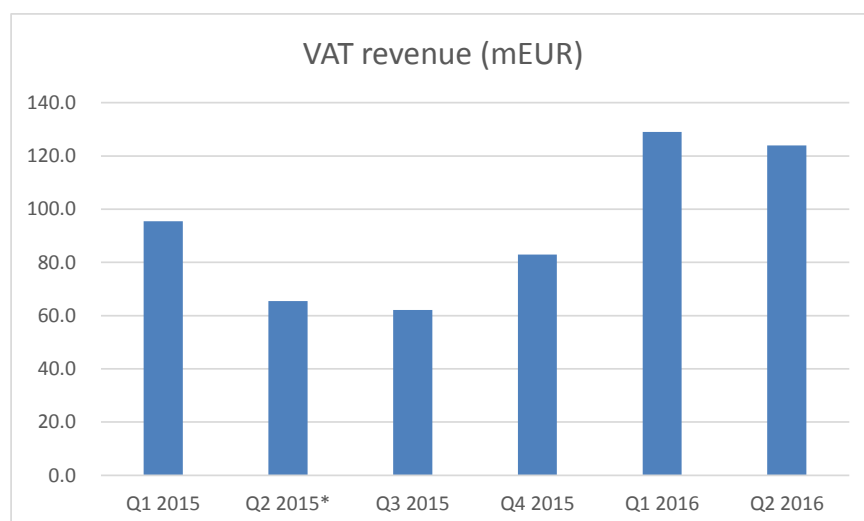
The drop in numbers is significant and is almost exclusively due to a drop in revenue reported in Ireland, which is very likely caused by a reorganisation of an important internet business that going forward makes use of EU based subsidiaries whereas before it made use of the MOSS. The drop in revenue is confirmed in Q3 2015 where VAT revenues reported through the Non-Union scheme totalled EUR 62,1 million. By the end of 2015, in Q4 2015 it had picket up again and ended at around EUR 83 million. In the entire year 2015, around EUR 306 million was reported through the Non-Union scheme.

Compared to the revenues reported through the VoES in 2014 of EUR 137.9 million, these results indicate that revenue has more than doubled.

For the first two quarters of 2016 higher revenue was again reported now reaching EUR 129 million in Q1 2016 and EUR 124 million in Q2 2016. If this trend continues, an extrapolation of these numbers would lead us to EUR 482million reported for the entire calendar year 2016. This represents a 350% increase compared to the VOES receipts in 2014 and is a clear indicator that the communication strategy employed by the Commission and Member States has been successful.

¹⁶⁵ This number still does not include Germany. Given however the very low relevance of Germany in the non-Union Scheme, the absence of information for Germany should not make a big difference.

Figure 17 – Evolution of non-Union scheme VAT revenue in 2015–16



* without Germany

Geographical distribution of revenues

It is interesting to note that 12 Member States in Q1 2015 did not report any revenue as an MSI. That number remained unchanged in Q2 2015. The number dropped slightly with 8-9 Member States still not reporting any revenue as an MSI in the Non-Union scheme for Q2 2016.

In terms of the most important Member State acting as MSIs, the two MSIs who have the majority of the registrations (Ireland and the UK) were also responsible for almost 93% of all revenue reported through the non-Union Scheme in Q1 2015. In Q2 2015, even though revenue reported through Ireland dropped, these same Member States were still responsible for about 89% of all revenue reported. The Netherlands and Denmark are distant third and fourth. Looking at the evolution over time, in Q2 2016, the share of revenues reported through the United Kingdom and Ireland still accounted for 87% of all revenue reported. However, the United Kingdom is now by far the biggest contributor of revenue reported through MOSS, reporting more than 10 times as much as Ireland, and accounting on its own for almost 79% of all revenue reported through the Non-Union Scheme.

5.2.4. MOSS revenue distribution

To better understand the nature of the businesses reporting through MOSS and especially the burden which the changed place of supply rules place on businesses, we analysed further into detail how much VAT they reported in the MOSS.

For this purposes we have looked at MOSS revenue distribution mixing both the Union and the non-Union scheme, examining different possible thresholds, *i.e.* EUR 5, 25, 50, 250, 500, 1.500 and 5.000. This exercise is also relevant for Lot 2, where we analyse what the effect would be of applying a revenue or turnover threshold for traders below which they would not be required to report any VAT in the MSCs where they have recipients.

We received detailed information *per quarter* from 24 out of the 28 Member States, including some key MSI's such as Luxembourg and Ireland. Of the important MSI's, no information was received for the United Kingdom and Germany.

Based on the information received, in all countries analysed, a small number of large businesses account for the majority of the revenues collected under the Union MOSS. In both Q1 and Q2 2015 around 13% of the registrations accounted for VAT amounts reported higher than EUR 5 000. These registrations accounted for more than 99% of all gross VAT revenues declared.

- Therefore, 87% of the registrations account for less than 1% of the revenue reported. In some Member States the proportions are slightly different.

We did not receive the same detail of the numbers for Greece, but also there the picture is broadly the same.

Table 11 – MOSS revenue distribution

Quarter	# >5k traders ¹⁶⁶	Total traders	# >5k traders vs total traders ¹⁶⁷	Proportion >5k traders vs total traders ¹⁶⁷	Revenue declared by >5k traders ¹⁶⁸	Total revenue declared	Proportion revenue declared by >5k traders vs total revenue declared ¹⁶⁹
Q1 2015	629	4712	13%	EUR 649 M	EUR 651 M	>99%	
Q2 2015	708	5474	13%	EUR 644 M	EUR 646 M	>99%	

The distribution of the VAT reported below EUR 5 000 is also fairly the same in Q1 2015 and Q2 2015.

Table 12 below displays the distribution of VAT revenues per annual turnover category, extrapolating the date provided by 25 Member States for Q1 and Q2 2015 to the 28 Member States and the full year 2015.

To extrapolate from Q1 and Q2 to the full year 2015, the provided numbers were doubled.

To extrapolate from 25 to 28 Member states, two different methods were used. First, to calculate the total VAT revenues, the extrapolation was performed based on the share of the 25 Member States for which we disposed of information in the revenue reported in Q1 2015 as an MSI in both the Union MOSS and the non-Union MOSS. Secondly, to calculate the number of traders registered per annual turnover category, the extrapolation was performed based on the share in registrations.¹⁷⁰

¹⁶⁶ Number of traders who report VAT exceeding EUR 5 000.

¹⁶⁷ The proportion of the number of traders who report VAT exceeding EUR 5 000 versus the total number of traders.

¹⁶⁸ Revenue declared by traders who reported VAT exceeding EUR 5 000.

¹⁶⁹ The proportion of the revenue declared by traders who report VAT exceeding EUR 5 000 versus the total revenue declared.

¹⁷⁰ This method takes into account that microbusiness are over-represented in the United Kingdom. Basing the extrapolation either on revenues or the number of registrations only, would have resulted in a distorted overview.

Table 12 – MOSS revenue distribution per turnover category¹⁷¹

Annual turnover category	Total revenues (EUR)	Total revenues cumulative (EUR)	No. of Traders	Average VAT per trader (EUR)	Average turnover per trader	Value of transaction (EUR) excl VAT
≤ 1000	97 811	97 811	4 419	22	111	489 056
1001-5000	485 449	583 260	1 552	313	1 564	2 427 245
5001-10000	530 177	1 113 437	606	876	4 378	2 650 885
10001-30000	1 835 528	2 948 965	831	2 208	11 041	9 177 640
30001-100000	5 141 881	8 090 846	682	7 537	37 683	25 709 405
> 100000	2 942 973 074	2 951 063 920	1 244	2 366 210	11 831 048	14 714 865 370
Total	2 951 063 921		9 334			14 755 319 603

Source: Deloitte analysis

While referring to a limited period, the distribution of MOSS VAT returns by amount of VAT declared is quite similar across countries. Data provided show clearly that the large majority of MOSS VAT returns are submitted by businesses having a small turnover. On the contrary, more than 99% of the VAT revenue processed via the MOSS is declared by about 13% of the businesses registered.

5.2.5. MSC view

A key objective of the 2015 place of supply changes is that VAT would accrue to the Member State where the customer is established, as opposed to the former rules whereby the VAT was charged by the provider in his own Member State of establishment, and that VAT remained there. Within the MOSS, the VAT declaration and payment is still done by the supplier in his own Member State, however this VAT is transferred to the Member State of Consumption (the so-called MSC), based upon the customer location determined by the supplier.

The MOSS system therefore operates as a redistribution mechanism from the MSIs to the MSCs. Based on the figures reported for 2015, the total amounts collected by the MSIs for 2015 amount to EUR 3 billion. As explained in the section of the Member State perspective of the MOSS below, MSIs can withhold in a first stage 30%¹⁷² of the receipts reported through the Union Scheme (which is later decreased to 15%¹⁷³ and subsequently to 0%).¹⁷⁴

¹⁷¹ The turnover categories have been determined based on the amounts of VAT declared in the return per year, assuming a VAT rate of 20% applies (see data in the Table in Annex 9).

¹⁷² Until 31 December 2016.

¹⁷³ Between 1 January 2017 and 31 December 2018.

¹⁷⁴ As of 1 January 2019.

The transfers that are made under the MOSS regime allow determining which MSCs are benefiting most from the changed place of supply rules since 2015. This list is defined largely by the size of the economy/population and by the purchase power of the inhabitants. Based upon the data for Q2 2016, the most relevant MSCs for both the Union Scheme and the Non-Union Scheme have been provided below.

Table 13 – Top 5 MSCs Q2 2016

Top 5 MSCs Union Scheme	Top 5 MSC's Non-Union Scheme
United Kingdom	Germany
Germany	France
France	United Kingdom
Italy	Sweden
The Netherlands	Italy

These MSCs are in absolute terms the biggest receivers of VAT, which accrues to their Member State.

Most Member States expected to gain significantly from the modified place of supply rules. Of the 10 Member States who provided us with an estimation, it appears that most Member States **underestimated their net gain**. For example, the UK expected to achieve a net gain of EUR 300 million. According to our estimations, the UK is likely to receive about 30% more than what it expected. On the other hand, the Netherlands, who expected a net gain of EUR 20 million, may on balance not have a net gain.

Not unexpectedly, the biggest net loser is Luxembourg. Based on press articles, the expected VAT loss following the 2015 place of supply rules was estimated at EUR 800 to 1 000 million. Based on the numbers for Q1 2015, the loss of gross VAT revenues for Luxembourg on an annual basis is expected to amount to EUR 1 400 million. With the revenue sharing mechanism however, Luxembourg is entitled to keep 30% of the revenue reported through MOSS, which reduces its losses to a certain extent. Its share however in the revenue reported through MOSS is declining.

The gross VAT amount transferred by Luxembourg to other MSCs is significantly higher than the VAT income on e-Commerce in 2014 published by the Luxembourg tax administration, which amounted to EUR 1 076 million.¹⁷⁵ This is among others explained by the difference in VAT rates, where the average MSC has a 21% VAT rate compared to the 2014 Luxembourg VAT rate of 15%.

In terms of estimated losses, only one Member State, *i.e.* Cyprus, indicated that they expect a loss of EUR 50 million. Based on the figures for Q1 2015, that estimation is likely to be far too high, as its losses should be limited to only 20% of that amount.

¹⁷⁵ Le Gouvernement du Grand-Duché de Luxembourg, Administration de l'enregistrement et des domaines, « *rapport d'activité 2014 et objectifs 2015* » <http://www.aed.public.lu>, consulted on 30 October 2015, p. 12. It can be assumed that these revenues mainly concern TBE-services.

5.3. Key findings

Implementation costs and administrative burden for businesses

- ❑ The analysis of the administrative burden for businesses after the implementation of the 2015 place of supply rules covered both businesses registered to the MOSS and businesses not using such simplification option.
- ❑ Businesses had to implement changes to their ERP and IT systems more generally in all cases, independently on whether they decided to register for the MOSS or not. Such costs were estimated at EUR 1.2 million on average, with large variations across businesses (from EUR 8 000 to EUR 10 million), depending on several factors, such as size of the business, the number of changes to be implemented, whether the changes were implemented in-house etc.
- ❑ It is too early to have a clear view of the maintenance costs for the ERP and IT systems under the new rules. However, businesses estimated them to be (notably) lower than the set-up and implementation costs. In general, maintenance costs related to the specific IT elements of the 2015 place of supply rules and MOSS (when in use) seem to be considered already as part of the 'business as usual' scenario.
- ❑ Costs before the 2015 place of supply rules for cross-border sales were negligible, as cross-border sales were treated for VAT purposes like domestic sales.

Businesses using the MOSS

- ❑ According to our estimates, the overall costs that businesses faced when engaging in cross-border B2C e-Commerce of TBE services using the MOSS under the 2015 place of supply rules amount to about EUR 23 million, or about EUR 2 172 per business per year, or about (on average) EUR 434 for each Member State to which a business has cross-border sales. As anticipated, this represents an increase in the administrative burden for businesses, due to the change in the legislative framework (implementation of the destination principle), counter-balanced by simplification measures such as the MOSS. The MOSS also allows economies of scale, as the cost of filing a VAT return via the MOSS decreases with the number of Member States the VAT return is filed for (up to 95% reduction for 27 Member States).
- ❑ MOSS registration accounts for about 1.22% of total compliance costs. While in general businesses agree that registering for the MOSS portal does not present major issues, still some of them have decided to outsource entirely or partially the related activities.
- ❑ Submission of VAT returns through the MOSS still represents by far the most burdensome task, accounting for approximately 98% of the total administrative costs related to the use of the MOSS. The submission of VAT returns/declarations via the MOSS is carried out by businesses either in-house or with the support of external advisors.
- ❑ Overall, businesses do not consider the MOSS return/declaration as a complex or particularly burdensome task. However, some of the businesses interviewed would appreciate an improvement in the MOSS functionality, allowing a direct dialogue between the business accounting system and the MOSS, to input data directly.

Businesses not using the MOSS

- ✔ The notable increase in the administrative burden for businesses trading cross-border under the 2015 place of supply rules was anticipated, so that simplifying measures such as the MOSS were designed and introduced to mitigate such predicted adverse effects.
- ✔ We have assumed that the administrative burden for companies involved in supplying cross-border TBE-services prior to 2015 is zero, since the place of supply rules localized these TBE-services in the Member State of establishment of the supplier when this supplier was established in the EU. Therefore, these services are covered by the domestic VAT obligations of the business.
- ✔ According to our estimates, the overall costs that businesses faced when engaging in cross-border B2C e-Commerce of TBE services under the 2015 place of supply rules (but not using the MOSS) amount to about EUR 1.4 billion, or about EUR 41 626 per business per year, or about (on average) EUR 5 203 per business per each Member State they sell to cross-border.
- ✔ The availability of the MOSS allowed businesses that adopted it to achieve a notable reduction of the administrative burden. According to our estimates, the overall administrative burden derived from the implementation of the place of supply rules is 95% lower than what it would have been without such simplification measure (*i.e.* the MOSS allowed businesses using it to save about EUR 500 million in administrative costs).
- ✔ Businesses (and especially large businesses) have several reasons for deciding not to use the MOSS and comply with VAT-related obligations through direct VAT registrations. The most common include: already have multiple local establishments and registrations; no input tax deduction in MOSS; maintenance of local relationship and knowledge of local rules etc.
- ✔ VAT registration is required in all Member States of Consumption (*i.e.* in all those EU Member States where businesses supplying TBE services have customers). This obligation is perceived as particularly burdensome by businesses, as they have to deal with large differences in the procedures and timing necessary for registration across Member States. Common issues include the difficulty in identifying the national requirements and the relevant institutions for each VAT registration in each market, language, non-transparent administrative processes in some Member States, large variations in administrative requirements, processes and timing for the task across Member States. It is quite common for businesses in such situation to outsource these tasks and to use external advisors, especially for large enterprises.
- ✔ Submitting the VAT return represents by far the most burdensome and expensive requirement of those listed, as it represents more than 95% of the total compliance costs for businesses under the 2015 place of supply rules (not using the MOSS). Businesses often choose to outsource at least part of the related activities, as a way to cope with the different requirements and frequencies across Member States.
- ✔ The majority of the time is allocated to gathering information, preparing the VAT return and reconciling data from different accounts. The frequency with which this obligation must be met (monthly/bi-monthly/quarterly) affects the related costs, as does the amount of the information requested and the accompanying documentation

Take-up of the MOSS

- ✔ The total number of businesses in TBE services was estimated at 83 686. This figure was calculated as a percentage of the total number of businesses engaged in B2C cross-border e-Commerce calculated under Lot 1 (557 908). The percentage applied was 15%, which is in line with the share of e-Commerce revenues from TBE services (estimated under Lot 1), and was crosschecked and complemented by Eurostat data on businesses per sector of economic activities and per size.
- ✔ The number of businesses registered to the MOSS was provided by Member States, and amounts to 10.604 in the EU scheme and slightly below 700 in the non-EU scheme as of June 2015 (*i.e.* data cover Q1 and Q2 2015). The take-up of MOSS increased over the year, and reached 12 899 businesses registered in the EU scheme and 1 079 in the non-EU scheme in May 2016.
- ✔ Consequently, the number of businesses trading TBE services cross-border but outside of the MOSS system were estimated by subtracting from the total number of TBE businesses those registered in the MOSS (EU scheme), *i.e.* 73 082. However, not all businesses engaged in cross-border e-Commerce for TBE services will be consequentially directly registered in other Member States. In fact, a significant part of those businesses not using the MOSS are either complying through article 9a provisions (especially smaller businesses), or are non-compliant. Overall, it is our estimate that about 15% of businesses eligible for MOSS are registered for it. About 70% of the value of TBE services would be processed via the MOSS.

MOSS implementation costs for Member States

- ✔ The average IT cost for a Member State for implementing the MOSS portal was of about EUR 2.2 million, with very large variations across countries. While it is early to have precise estimates of the maintenance costs for national MOSS portals, they have been estimated of about EUR 500 000 on average per Member State, once again with very large variations across countries.

VAT revenue impact for Member States

- ✔ The net revenue impact (loss or gain) from the new set of rules depends on whether each Member State has more cross-border consumption or sales. However, the overall VAT revenue across the EU is expected to slightly increase due to the taxation of supplies previously untaxed as the supplier was below the national VAT registration threshold. Another relevant factor is the level of non-compliance, as well as the nature, *i.e.* a number of businesses may declare VAT, but to their own Member State, rather than to the Member State of Consumption as required.
- ✔ Nearly all Member States expected the net revenue impact of the new rules to be positive (with a few exceptions). Indeed, based on the data for 2015, most Member States have a net gain and only a limited number of Member States experiences a net loss.
- ✔ Concerning the Union scheme, the gross VAT revenue reported for 2015 amounted to EUR 2 692 million. The gross VAT revenue reported through the Union scheme for the first two quarters of 2016 totalled EUR 1 350 million. An extrapolation leads us to an estimate of around EUR 2 775 million for the entire calendar year 2016.

- ❑ Concerning the non-Union scheme, the gross VAT revenue reported for 2015 amounted to EUR 306 million. The gross VAT revenue reported through the Union scheme for the first two quarters of 2016 totalled EUR 253 million. An extrapolation leads us to an estimate of around EUR 482 million for the entire calendar year 2016.
- ❑ Compared to the revenues reported through the VoES in 2014 of about EUR 140 million, in 2015 the revenues more than doubled. The intensive communication efforts of the Commission outside of the EU have certainly helped awareness for non-EU businesses to comply with their obligations and such efforts certainly deserve to be continued.
- ❑ The total VAT revenue declared via MOSS in 2015 reached about EUR 3 billion. An estimate for 2016 is that it would reach EUR 3,26 billion.
- ❑ Based on the information received, in all countries analysed, a small number of large businesses account for the large majority of the revenues collected under the Union MOSS. Data collected from Member States show that more than 95% of the VAT revenue processed via the MOSS is declared by about 12% of the businesses registered (with some small differences across Member States).

6 Conclusions and recommendations

6.1. Introduction

The objective of the Lot 3 part of the study on the VAT aspects of e-Commerce was to evaluate the implementation of the 2015 place of supply rules and the MOSS after six months of functioning (Q1 and Q2 2015, i.e. “stage 1”) and again after 18 months (up to Q2 2016, i.e. “stage 2”), and identify best practices and room for possible improvements.

The findings of this assessment will be taken into account to consider policy options for a legislative initiative by the Commission in 2016.

The main methodological tools used in carrying out this part of the study were desk research, stakeholder consultation (surveys, interviews and workshops) and application of analysis tools (Standard Cost Model, henceforth “SCM”).

This chapter provides the conclusions of Lot 3 of the study. This chapter also makes recommendations for immediate term and for future expansion. The structure of the conclusions follows the structure of the report. It is therefore split into four parts:

- ☒ The 2015 place of supply rules;
- ☒ The MOSS;
- ☒ Administrative cooperation and audit; and
- ☒ Quantitative assessment of the place of supply changes and MOSS.

A similar structure is adopted for the recommendations, which present recommendations for immediate improvements and for future expansion.

6.2. Conclusions from the analysis

Whenever relevant, the section provides conclusions separately on the Member States’ and the businesses’ perspectives.

6.2.1. Assessment of the 2015 place of supply rules

The 2015 place of supply changes moved the taxation of the intra-EU cross-border business-to-consumer telecom, broadcasting and electronically supplied services to the Member State of Consumption. This was a significant step in applying the OECD Ottawa principles and taxing based on the destination principle. The new rules are limited to the selection of services where the problems with distortions of competition were the most present.

The study assessed the impact of the place of supply changes on the Member States and businesses, aiming to evaluate the effectiveness of the implementation and identify best practices, any issues and room for improvement.

Member States’ perspective

The main conclusions of the assessment of the impact of the new place of supply changes on the Member States are the following:

- ✔ The legislative implementation of place of the supply changes was timely and generally successful. A large majority of the Member States accompany their legislation also with administrative guidance;
- ✔ There was high appreciation for the role of the Commission in providing further guidance on the interpretation of the rules and involving the Member States in the process of preparing the explanatory notes;
- ✔ Although only limited changes were made to national regulatory frameworks, there is some evidence on changed administrative practices in Member States, especially in identifying the non-resident taxpayers, and tax authorities have indicated concerns about the related compliance control (from the Member state of consumption perspective);
- ✔ The Member States used a wide range of communication channels to promote the new rules, including through broadcasting, social media and other digital channels. However, there may be some scope for improvements regarding tailoring the communication for specific groups of businesses (especially micro-businesses). Member States consider the comprehensive information on the tax authority's websites sufficient as an ongoing communication method after the implementation phase;
- ✔ The Member States did not notice a significant increase in information requests from businesses in relation to the implementation of 2015 changes. However, from the requests received, they have gained a good understanding of what the main issues are which businesses face;
- ✔ The Member States have also started to identify mismatches in the national interpretation or the application of the rules, mostly relating to the scoping definition issues raised also by businesses, but also regarding the role of intermediaries (e.g. telecom businesses and marketplaces). EU level discussions or further guidance may help to reduce such mismatches or find a way to address the consequences.

Businesses' perspective

The main conclusions from the assessment of the impact of the 2015 place of supply rules on businesses are the following:

- ✔ The 2015 change in place of supply rules had an important impact on businesses and many had to adapt their cross-border sales and related processes. The changes in the place of supply rules were however still widely endorsed since the principle of taxation in the country of consumption is considered as fair and providing a level playing field for businesses;
- ✔ Regarding the downsides of the new rules, businesses ranked the fact that they are confronted with potentially 28 different sets of national rules as their main issue. Smaller businesses fear the application of the VAT rules in all EU Member States and are much less equipped and prepared to deal with these rules, although the study identified also a considerable lack of awareness regarding the need to monitor and apply the rules of other Member States. The Commission's MOSS web portal, informing businesses on a number of key national VAT rules, is used by businesses and considered helpful, but there is room for improvements;

- Businesses found the communication activities on both EU and national level helpful. However, the awareness on the new rules was significantly lower amongst the smallest businesses. Regarding the Commission's explanatory notes, these are considered very helpful, but quite technical (especially for small businesses) and unfortunate that not all Member States follow or endorse these. The effectiveness of national guidance was considered to differ depending on the country. In some countries, it is not sufficiently comprehensive and was published quite late. Additional national guidance targeted to the smallest businesses would be welcomed;
- Businesses do not have many issues with identifying the customer status (B2B or B2C), as their systems rely mostly on assumptions (e.g. checking the VAT registration number or assuming B2C due to the nature of the supply). The main issues relate to the small business customers who are not registered for VAT. Again, the prevailing approach in case of uncertainty is to rely on assumptions and correct the transaction post sales, when challenged by the customer;
- In terms of locating the customers, the proxies foreseen in the Implementing Regulation were seen as very helpful for businesses and are widely applied. The majority of the businesses interviewed however rely on two pieces of information to locate their customers.¹⁷⁶ No business hits a 100% matching ratio for these two pieces of information, in which case a (self-created) hierarchy of evidence is often applied. Since even the collection of two pieces of evidence proved burdensome (and risks reducing trade), especially for smallest businesses, some businesses chose to rely on one piece of information;
- Article 9a of the Implementing Regulation presumes that certain intermediaries are acting in their own name but on behalf of a third party (i.e. as undisclosed agents according to the terminology used in some Member States) entailing that the tax obligation lies with the intermediary (unless rebutted). This presumption was considered a helpful instrument for smaller businesses, greatly simplifying their tax obligations, but businesses and intermediaries indicated to be struggling with this provision, mostly due to the different interpretations by Member States. The adoption of guidelines by the VAT Committee has the potential of reducing this issue, as it provides businesses with further guidance.
- Intermediaries (app stores and marketplaces) have mixed reactions to the presumption put forward in article 9a of the Implementing Regulation, depending on their business model. For some of the intermediaries, Article 9a was merely a confirmation of a practice already applied;
- Although for most businesses the qualification of their services as an electronically supplied service was fairly straightforward, some businesses are struggling with it. One of the causes is that the form largely determines the application, rather than substance, which may cause confusion. Indeed the supply of such a service in an electronic way, affects the localization of the supply and not so much the nature of the service. This also impacts intermediation service providers which deal with a great number of uncertainties;

¹⁷⁶ The evidence required can be the 1) the billing address of the customer, 2) the IP address of the device used by the customer or any other method of geolocation 3) bank details of the customer, 4) the mobile country code stored on the SIM card of the customer, 5) the location of the customer's fixed land line, and 6) other commercially relevant information (article 24f of Council Implementing Regulation 282/2011 of 15 March 2011).

- Businesses also flagged difficulties in being able to identify in the relevant Member States whether the provided services are either taxed or exempt. National rules tend to differ on this point. However, The Commission has mitigated this to a certain extent by the setup of the so-called MOSS portal¹⁷⁷, which informs businesses on a number of key VAT rules in the MSCs;
- Other issues identified by businesses concern mostly the application of the national rules of the Member State of Consumption, such as requirements for invoicing (which are considered disproportionately burdensome and non-applicable) and currency conversion mismatches;
- A general preliminary conclusion is that SMEs, especially microbusinesses, are impacted by the new place of supply rules more significantly than larger businesses. Further consideration on ways to simplify the application of rules by these businesses would be useful, such as for example requiring a lower standard on collection of evidence or foreseeing a threshold.

6.2.2. Assessment of the MOSS

The place of supply rules as they entered into force as of 1 January 2015 entail that the supply of TBE-services is always located in the Member State of the recipient (whether they are supplied by a supplier established in the EU or outside). The consequence of this change is that the applicable VAT rate is the one of the Member State of the recipient (the Member State of Consumption).

In order to be able to report these transactions, a supplier should register in each Member State and report its transactions through a periodical VAT return. This would obviously create a significant administrative burden for these businesses. The MOSS mitigates this administrative burden by allowing the EU supplier to report its B2C sales to the EU consumers through an electronic portal in its Member State of Identification. Non-EU suppliers can choose in which EU Member State they register.

The study assesses to what extent the MOSS is an effective tool to mitigate the compliance burden for businesses supplying B2C TBE services to consumers outside of their Member State of Identification. It identifies best practices, issues and room for improvement. The assessment is however limited to the first two quarters of 2015.

This assessment is important in the light of the Commission's Digital Single Market Strategy and its 2011 Commission Communication, which envisage a broadening of the MOSS to include other supplies as well (such as B2C supplies of goods). Over time, such a system could be extended to all intra-EU and third country online sales of tangible goods and services. The current MOSS system will serve as a test case not only for the European Union, but also for the OECD and more globally, since such a principle has been endorsed as a global standard on VAT.¹⁷⁸ These intentions have been reiterated in the Commission's VAT action plan.¹⁷⁹

¹⁷⁷ For more information, see under "2.3.4 Different VAT rules in Member States" the European Commission has set up a separate online webpage where businesses can find information on the MOSS and the key rules applicable in each Member State (so-called "MOSS portal"), enabling them to comply with those rules when supplying TBE services in other Member States.

¹⁷⁸ OECD, *International VAT/GST Guidelines*, 2015, <http://www.oecd.org/tax/consumption/international-vat-gst-guidelines.pdf>, consulted on 26 July 2016, 48-54.

¹⁷⁹ Commission Communication of 7 April 2016 on an action plan on VAT, COM(2016)148 final http://ec.europa.eu/taxation_customs/taxation/vat/action_plan/index_en.htm, consulted on 3 May 2016.

Member States' perspective

The main conclusions from the assessment of the MOSS from a Member State perspective were the following:

- It can be confidently concluded that the launch of MOSS has been successful and that the MOSS functions well. There is some evidence of 'teething' problems, such as the issues around registrations and related communications, to function effectively. These issues are currently being worked on between the Member States with the help of the Commission and a contractor. These concerns do not seem significant and ought to be easily addressed in the short term;
- Most Member States were very satisfied with the support of the European Commission during the implementation process (and on ongoing basis), although some Member States indicated that some changes to the IT technical specifications for the setup of the MOSS portal were received quite late;
- The average IT cost for a Member State for implementing the MOSS portal was about EUR 2.2 million, with very large variations across countries;
- The current number of over 14 000 MOSS registrations at end Q2 2016 in both the Union and the Non-Union scheme¹⁸⁰ is a lower result than initially expected, but the main issue on this may be with the estimations, rather than with actual registrations. As businesses do have alternative ways to comply with the new place of supply rules, it should not be concluded that the MOSS registration numbers are necessarily indicating an issue with the MOSS system;
- The main problems identified in relation to MOSS and its application are in fact linked to its design and scope or more precisely the limitations of it, such as the application to TBE services only, without a threshold and the exclusion of the input VAT deductions, or the revenue sharing mechanism which received very mixed reaction from the Member States;
- Although addressing the design and scope limitations would need a wider political and VAT policy agreement, the assessment identified also a list of mostly operational issues which may be easier to address and agree on, such as the MOSS return correction procedure, the review of the currency exchange principles, a de minimis for transfers of funds between Member States or other simplifications on payments and reimbursement processes.

Businesses' perspective

The main conclusions on the assessment of the MOSS from a businesses' perspective were the following:

- The general feedback from business is that the MOSS was a necessary tool to mitigate the increased administrative burden on businesses following the new place of supply rules introduced in 2015. This is confirmed by the evaluation of the related administrative burden. However, for small and micro-businesses even this lower administrative burden seems

¹⁸⁰ Almost 12 000 at the beginning of December 2015 and 11 000 before that.

difficult to overcome. The lower frequency of the MOSS returns (only quarterly, as opposed to monthly for some returns) mitigates this to some extent;

- ✔ Overall, it can be confidently concluded that the launch of MOSS has been successful and that the MOSS functions well as a reporting tool, mitigating the administrative burden for businesses supplying B2C TBE services;
- ✔ The initial experiences with MOSS in terms of registration and reporting are very positive (although Member States indicated that there was a learning curve). For example, smallest businesses noted that they did not receive enough technical assistance from the tax authorities;
- ✔ The lack of possibility to register retroactively was however considered an aspect which needs amending. It constitutes a high barrier for businesses wishing to spontaneously disclose their operations;
- ✔ In addition, the fact that non-EU suppliers cannot use MOSS if they already have a local VAT registration is considered as very inconvenient and costly. It is likely to cause problems with compliance;
- ✔ There seem to be also some uncertainty for businesses regarding whether they can report their supplies through the MOSS. This is mainly due to insufficient knowledge of the rules, and seems to be again more present with predominantly smaller and micro businesses;
- ✔ Regarding the application, the MOSS is generally considered easy to use and it is seen very convenient to be able to file only one single VAT return and make one single payment. The system is however not without its flaws and there are elements which could be simplified;
- ✔ On a practical level, the absence of notifications when the deadline for filing the MOSS return approaches is deplored. Also, there is some concern in respect of the absence of warnings when the deadline passed or when the return is filed. Often Member States do not provide also a balance statement for businesses reporting through MOSS. Such a statement was considered useful by businesses;
- ✔ Many businesses mentioned that the requirement to correct the original VAT return if a credit note is issued after filing the return is very burdensome. It means that potentially a business filing a current MOSS return may need to re-file also all the previous returns;
- ✔ To a lesser extent, the currency conversion rules are also seen as an issue. Since the currency exchange rate is set by law, it is not possible for suppliers to derogate from it. It means that at the end of a quarter, a business using a different currency may be confronted with substantial currency conversion losses or gains;
- ✔ The 10 year storage period for transactional data was considered to cause less issues, but this may be due to the fact that businesses are not yet conscious about their obligations in the near future, when the volume of stored transactions will grow;
- ✔ Regarding more far reaching comments and ideas, the businesses noted that the fact that both a local VAT return and a MOSS return need to be filed still increases the compliance burden and the two could perhaps be combined. In addition, a possibility to offset a MOSS payment against a refund on the national VAT return would reduce the business burdens;

- Furthermore, the lack of possibility to recover input VAT through the MOSS is seen as inconvenience, since businesses need to make use of the separate refund procedure foreseen for EU or non-EU businesses when trying to recover their VAT.

6.2.3. Assessment of compliance, administrative cooperation and audit

The 2015 place of supply changes oblige the businesses providing cross-border TBE services to declare and pay VAT to the Member State of their customer. Although the MOSS lowers the compliance burden relating to the new place of supply rules, it remains merely a reporting mechanism.

Indeed, a business can still receive information requests from 28 different Member States, even in different languages. Since VAT audit rules (e.g. bookkeeping methods, prescription rules) are not harmonized within the European Union, this could be particularly burdensome for businesses. Additionally, they risk double taxation in case where national tax authorities disagree on certain items.

Also from a tax authority's perspective, a lack of coordination might result in higher auditing costs.

Therefore, in order to improve the coordination of audits between Member states, the European Commission published so-called "MOSS audit guidelines".¹⁸¹ These contain some recommendations for national tax authorities on how best to contact businesses as part of an audit and the method businesses should use to provide information required by an audit. Unfortunately, not all Member States have agreed to apply them.

The report provides a qualitative analysis of compliance, administrative cooperation and auditing in the field of telecommunication, broadcasting and electronic services and the conclusions of this assessment have been provided below.

Member States' perspective

The main conclusions from the initial assessment of the compliance, administrative cooperation, auditing and implementation of the MOSS audit guidelines are the following:

- The compliance, cooperation and auditing experiences with the 2015 place of supply rules are still very limited and therefore it is too early to draw any clear conclusions;
- The compliance of suppliers, especially non-resident suppliers, is a concern for Member States, but there is not yet enough data to estimate the level of compliance. It is however expected that the larger suppliers are generally compliant and the non-compliance is more likely amongst the smallest businesses, partly due to the perceived high administrative burden. Considering the high level of concentration in TBE supplies (in MOSS 13% of

¹⁸¹ EUROPEAN COMMISSION, Information for businesses signing up for the Mini One Stop Shop, Additional guidelines – auditing under the MOSS. http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/one-stop_add_guidelines_en.pdf, consulted on 26 July 2016.

suppliers paying 99% of VAT), the VAT loss due to non-compliance is therefore likely to be limited.

- ✘ Co-operation between the Member States on the interaction and the functioning of the MOSS portal has increased since the implementation of the 2015 rules. However, it is important to note that Member States appear to expect difficulties in administrative cooperation in the near future. It may therefore be useful to continue monitoring their experiences and arrange discussions to pre-empt the difficulties and find solutions to the identified potential issues. The VAT Action plan actions towards strengthening cooperation between Member States on VAT compliance and tackling tax avoidance and fraud will provide a good way forward.;
- ✘ The administrative cooperation with third countries is the main area needing improvements. The existing multilateral conventions and bilateral treaties for administrative cooperation in tax area provide a good basis, but would need to be used more efficiently, especially in VAT matters. The Commission is also intending to strengthen administrative cooperation with international organisations and third countries in order to improve compliance.
- ✘ Although the MOSS auditing experience is still very limited, it is positive to note that a large majority of Member States have endorsed the MOSS audit guidelines and are getting ready for further cooperation on audit and other information exchange;
- ✘ A single audit mechanism is seen as one of the ways forward, however the Member States see some inherent risks and challenges in it and in any case expect it to take a long time and significant effort. As alternative, the VAT Action plan suggests developing further the legislative framework on joint audits. Meanwhile, the full application of audit guidelines and effective cooperation on audits, would be desirable.

Businesses' perspective

The initial experiences of the businesses are the following:

- ✘ Businesses have so far little experience with MOSS audits. A few have received information requests from Member States of consumption and the first experience has been positive, as the audit guidelines were followed and requests came through the Member States of identification;
- ✘ Despite the lack of direct experience, the businesses have a negative perception of a potential audit by the multiple Member States of consumption (potentially simultaneously). Their main concerns are linked to the lack of awareness of the process, expected high administrative burden, but also language issues. Businesses have therefore a strong preference for the audit by the Member State of Identification;
- ✘ Businesses are generally not aware of the MOSS audit guidelines and, when aware, are concerned that the guidelines are not binding for the Member States and therefore may still not be followed.

6.2.4. Quantitative assessment of the place of supply changes and MOSS

One of the objectives of the study is to identify and quantify the costs of doing business in other Member States for businesses making B2C supplies in e-Commerce transactions. To this purpose, we applied the Standard Cost Model (SCM) methodology, which is a widely used tool to estimate the administrative burden for businesses to comply with legal requirements translated into Information Obligations (IOs).

Our objective was to identify and quantify the costs a ‘typical’ business engaged in cross-border B2C e-commerce transactions in TBE services has to face to comply with the current VAT-related requirements.

The key elements of the analysis include the costs quantified and the take-up of the MOSS (in the first two quarters of 2015), as well as the impacts on VAT compliance and related VAT revenues for Member States.

Implementation costs and administrative burden for businesses

The analysis of the administrative burden included the costs before 2015, and the costs after 2015 both for businesses registered to the MOSS and for businesses not using such simplification option. The main results of the analysis are the following:

- Businesses had to implement changes to their ERP and IT systems more generally in all cases, independently on whether they decided to register for the MOSS or not. Such costs were estimated at EUR 1.2 million on average, with large variations across businesses (from EUR 8 000 to EUR 10 million), depending on a large number of factors, such as size of the business, the number of changes to be implemented, whether the changes were implemented in-house etc.
- It is too early to have a clear view of the maintenance costs for the ERP and IT systems under the new rules. However, businesses estimated them to be (notably) lower than the set-up and implementation costs. In general, maintenance costs related to the specific IT elements of the 2015 place of supply rules and MOSS (when in use) seem to be considered already as part of the ‘business as usual’ scenario;
- Costs before the 2015 place of supply rules for cross-border sales were negligible, as cross-border sales were treated for VAT purposes like domestic sales.

Businesses using the MOSS

- According to our estimates, the overall costs that businesses faced when engaging in cross-border B2C e-Commerce of TBE services using the MOSS under the 2015 place of supply rules amount to about EUR 23 million, or about EUR 2 172 per business per year, or about (on average) EUR 434 for each Member State to which a business has cross-border sales. As anticipated, this represents an increase in the administrative burden for businesses, due to the change in the legislative framework (implementation of the destination principle), counter-balanced by simplification measures such as the MOSS.

- ❑ MOSS registration accounts for about 1.22% of total compliance costs. While in general businesses agree that registering for the MOSS portal does not present major issues, still some of them have decided to outsource entirely or partially the related activities.
- ❑ Submission of VAT returns through the MOSS still represents by far the most burdensome task, accounting for approximately 98% of the total administrative costs related to the use of the MOSS. The submission of VAT returns/declarations via the MOSS is carried out by businesses either in-house or with the support of external advisors.
- ❑ Overall, businesses do not consider the MOSS return/declaration as a complex or particularly burdensome task. However, some of the businesses interviewed would appreciate an improvement in the MOSS functionality, allowing a direct dialogue between the business accounting system and the MOSS, to input data directly.

Businesses not using the MOSS

- ❑ The notable increase in the administrative burden for businesses trading cross-border under the 2015 place of supply rules was anticipated, so that simplifying measures such as the MOSS were designed and introduced to mitigate such predicted adverse effects.
- ❑ According to our estimates, the overall costs that businesses faced when engaging in cross-border B2C e-Commerce of TBE services under the 2015 place of supply rules (but not using the MOSS) amount to about EUR 1.4 billion, or about EUR 41 626 per business per year, or about (on average) EUR 5 203 per business per each Member State they sell to cross-border.
- ❑ Businesses (and especially large businesses) have several reasons for deciding not to use the MOSS and comply with VAT related obligations through direct VAT registrations. The most common include: already have multiple local establishments and registrations; no input tax deduction in MOSS; maintenance of local relationship and knowledge of local rules etc.
- ❑ VAT registration is required in all Member States of Consumption (i.e. in all those EU Member States where businesses supplying TBE services have customers). This obligation is perceived as particularly burdensome by businesses, as they have to deal with large differences in the procedures and timing necessary for registration across Member States. Common issues include the difficulty in identifying the national requirements and the relevant institutions for each VAT registration in each market, language, non-transparent administrative processes in some Member States, large variations in administrative requirements, processes and timing for the task across Member States. It is quite common for businesses in such situation to outsource these tasks and to use external advisors, especially for large enterprises.
- ❑ Submitting the VAT return represents by far the most burdensome and expensive requirement of those listed, as it represents more than 95% of the total compliance costs for businesses under the 2015 place of supply rules (not using the MOSS). Businesses often choose to outsource at least part of the related activities, as a way to cope with the different requirements and frequencies across Member States.
- ❑ The majority of the time is allocated to gathering information, preparing the VAT return and reconciling data from different sources. The frequency with which this obligation must be met

(monthly/bi-monthly/quarterly) affects the related costs, as does the amount of the information requested and the accompanying documentation

Take-up of the MOSS

- ✘ The total number of businesses in TBE services was estimated at 83 686. This figure was calculated as a percentage of the total number of businesses engaged in B2C cross-border e-Commerce calculated under Lot 1 (557 908). The percentage applied was 15%, which is in line with the share of e-Commerce revenues from TBE services (estimated under Lot 1), and was crosschecked and complemented by Eurostat data on businesses per sector of economic activities and per size.
- ✘ The number of businesses registered to the MOSS was provided by Member States, and amounts to 10.604 in the Union scheme and slightly below 700 in the non-Union scheme as of June 2015 (i.e. data cover Q1 and Q2 2015). This number increased to 12 899 in the Union Scheme and 1 079 in the Non-Union Scheme. Overall, it is our estimate that about 15% of businesses who supply TBE services cross-border are registered in MOSS. It is estimated that a further 40% of business have direct registrations with a large proportion of the other companies supplying through an intermediary. Due to the concentration of the supply of TBE services, non-compliance in terms of VAT revenues is not estimated to be significant. . About 70% of the value of TBE services is processed via the MOSS.

VAT revenue impact for Member States

- ✘ The net revenue impact (loss or gain) from the new set of rules depends on whether each Member State has more cross-border consumption or sales. However, the overall VAT revenue across the EU is expected to slightly increase due to the taxation of supplies previously untaxed as the supplier was below the national VAT registration threshold. Another relevant factor is the level of non-compliance, as well as the nature, i.e. a number of businesses may declare VAT, but to their own Member State, rather than to the Member State of Consumption as required.
- ✘ Nearly all Member States expected the net revenue impact of the new rules to be positive (with a few exceptions). Indeed, based on t MOSS data for 2015, most Member States have a net gain and only a limited number of Member States experiences a net loss.
- ✘ Concerning the Union scheme, the gross VAT revenue reported for 2015 amounted to EUR 2 692 million. The gross VAT revenue reported through the Union scheme for the first two quarters of 2016 totalled EUR 1 350 million. An extrapolation leads us to an estimate of around EUR 2 775 million for the entire calendar year 2016.
- ✘ Concerning the non-Union scheme, the gross VAT revenue reported for 2015 amounted to EUR 306 million. The gross VAT revenue reported through the Union scheme for the first two quarters of 2016 totalled EUR 253 million. An extrapolation leads us to an estimate of around EUR 482 million for the entire calendar year 2016.
- ✘ Compared to the revenues reported through the VoES in 2014 of about EUR 140 million, in 2015 the revenues more than doubled. The intensive communication efforts of the Commission outside of the EU have certainly helped awareness for non-EU businesses to comply with their obligations and such efforts certainly deserve to be continued.

- The total VAT revenue declared via MOSS in 2015 reached about EUR 3 billion. An estimate for 2016 is that it would reach EUR 3.26 billion.
- Based on the information received, in all countries analysed, a small number of large businesses account for the large majority of the revenues collected under the Union MOSS. In both Q1 and Q2 2015 around 13% of the registrations reported VAT amounts higher than 5.000 EUR. These registrations accounted for more than 99% of all gross VAT revenues declared. Therefore, on average 87% of the registrations account for less than 1% of the revenue reported (with some small differences across Member States).

6.3. Recommendations for improvement

This section presents recommendations for immediate improvements (*i.e.* recommendations that can be implemented easily in a short period within the existing legislative framework) and recommendations for future improvements (*i.e.* recommendations that need longer time, legislative changes and/or more effort to be implemented).

Whenever relevant, we present the recommendations at EU level (*i.e.* recommendations to be implemented at central level by the Commission and European institutions) and at Member States level (*i.e.* recommendations to be implemented by the Member States).

6.3.1. Recommendations on the 2015 place of supply rules

Based on the conclusions from the assessment of the 2015 place of supply rules, the recommendations for improvements in the current application of the 2015 place of supply changes are the following outlined below.

Recommendations for immediate improvement

Based on the key findings and conclusions on the 2015 place of supply rules, the recommendations for immediate improvement are the following:

EU level

- Provide more clarity in the Explanatory notes regarding the scope of the new rules in order to encourage further alignment in national practices, specifically in relation to the services where mismatches are most likely, such as electronically supplied services, gaming, educational services and financial services. Further elements on considering the notion of minimal human intervention would also be welcomed.
- Discuss the national implementation of the rules for intermediaries (Article 9a of the Implementing Regulation) to reduce the mismatches and clarify or expand the explanatory notes if necessary, to provide further alignment in national rules and more clarity and certainty for businesses.
- Explore options for addressing the consequences of mismatches in national place of supply rules, such as more effective use of cross-border rulings.

- Continue developing the Commission's MOSS web portal to improve business access to and awareness of the relevant national rules, including the identified mismatches in scoping or other country specific implementations.

Member State level

- Improve guidance for and communication with small and micro-businesses to support them regarding the understanding of the scope of the 2015 place of supply rules and the use of evidence that will be needed to determine the location of the customer.
- Provide more and clearer guidance on the rules for intermediaries (e.g. requirements for rebuttal) and trading through intermediaries (e.g. calculation of the taxable turnover).

Recommendations for future expansion

In relation to the aim for further expansion of the rules to supplies of goods and other services and related EU and national legislative and administrative changes, the recommendations based on the lessons learned are the following:

EU level

- Include specific simplification measures for small and micro businesses or businesses with limited cross-border trade, e.g. a threshold or use of one piece of evidence.
- Remove the right to require an invoice on cross border B2C supplies.
- Continue with the inclusive approach on the preparation of the future changes and related guidance, aiming for a high level of alignment in the national implementation of the changes.
- Although politically difficult, a strong request from businesses is that VAT rules concerning rates (one single VAT rate?), invoicing, sanctions and audit be (more) harmonised.

Member States' level

- Involve businesses in the implementation process from early on for better awareness and preventive management of the potential impact on the administrative burden on businesses, especially on the small and micro-businesses.
- In the communication strategy on upcoming changes, consider using a tailored approach for the small and micro businesses.
- Prepare comprehensive national guidance on legislative and administrative changes, preferably in cooperation with businesses, and publish it as early as possible.

6.3.2. Recommendations on the MOSS

Recommendations for immediate improvement

Based on the key findings and conclusions on the implementation of the MOSS, the recommendations for immediate improvement are the following:

EU level

- All the EU level recommendations require a change of the law and have therefore been included in the below section on future expansion.

Member States' level

- Consider being lenient on spontaneous disclosures as the current system sets a very high entry bar for businesses wishing to comply.
- Send warnings or notifications for businesses when the deadline for filing the MOSS return approaches. Make a balance statement available to businesses reporting through MOSS.
- Provide more technical assistance on compliance especially for the smallest businesses.
- Provide a national testing environment for businesses reporting through MOSS.
- More flexibility on uploading formats for reporting through MOSS.
- The portals could be fed with prepopulated information such as VAT rates (these could possibly come from TIC). The information relating to MSCs should also be published as soon as possible.
- Remove the invoicing requirements on the supplies covered by the new rules to reduce administrative burden on businesses.
- Consider possibilities to combine the local VAT return with the MOSS return.
- Enable the offset of a MOSS payment against an input VAT refund on the national VAT return.

Recommendations for future expansion

In relation to the aim for further expansion of the rules to supplies of goods and other services and related EU and national legislative and administrative changes, as well as the extension of MOSS to these supplies, the recommendations based on the lessons learned mentioned below.

EU level

- Consider the extension of the deadline to file the MOSS return.
- Enable correcting VAT in the current return instead of having to correct the original return, especially in case of the credit notes.
- Reduce the requirement to store transactional data for 10 years.

- ❑ Remove the impossibility for non-EU suppliers to register for MOSS when they are already VAT registered in one of the EU Member States.
- ❑ Harmonise the national MOSS portals (or set up an EU portal), in order to avoid the problems of interoperability of the systems.
- ❑ Introduce more flexible currency exchange rules, such as allowing businesses to apply the same rates they use for their regular business activities.
- ❑ Any future revenue sharing mechanism should be outside the MOSS system and rather be based on net VAT receipts in a given year.
- ❑ Continue with the inclusive approach, involving all relevant stakeholders (all Member States and businesses), on preparation of the future IT changes and related guidance, aiming for high level of alignment in the national implementation of the changes.
- ❑ Regular communication efforts are advised since there will likely remain uncertainty about the applicable regime.
- ❑ Member States should have sufficient time for implementation of IT changes. Any specs on further changes that would be made to the IT set up of the MOSS portal (or similar), should be communicated well in advance.

Member States' level

- ❑ Involve businesses in the implementation process from early on for better awareness and preventive management of the potential impact on the administrative burden on businesses, especially on the small and micro-businesses. A use of the early testing environment is recommended.
- ❑ In the communication strategy on upcoming changes, consider using a tailored approach for the small and micro businesses.
- ❑ Prepare comprehensive national guidance on administrative changes, preferably in cooperation with businesses, and publish it as early as possible.
- ❑ Regular communication efforts are advised since there will likely remain uncertainty about the applicable regime.

6.3.3. Recommendations on the administrative cooperation and audit

Based on the assessment, the recommendations for improvements in the current application of the administrative cooperation and audit in relation to the 2015 place of supply changes are the following.

Recommendations for immediate improvement

EU level

- Continue monitoring the administrative cooperation between the Member States and arrange discussions to pre-empt the difficulties and find solutions to the identified potential issues, such as clarity in contact points and procedures.
- Strengthen the administrative cooperation between the Member States as planned in the VAT Action plan.
- Continue promoting the application of the audit guidelines and arrange discussions between the Member States to encourage and improve cooperation on MOSS audits.
- Continue and widen discussions with non-EU countries on administrative cooperation on VAT matters.
- Create an EU MOSS audit team formed by the Member States, which may have a coordinating and advising function.

Member States' level

- Provide comprehensive guidance to businesses on the national approach to MOSS audits, to provide clarity and certainty and help businesses to comply.
- On a bilateral level, or through the Council of Europe/OECD continue to develop a legal framework for administrative cooperation with third countries.

Recommendations for future expansion

In relation to the aim for further expansion, the recommendations based on the lessons learned are as follows.

EU level

- Consider possibilities of making the audit guidelines laws, e.g. in the form of an implementing regulation.
- Continue designing new audit models, such as the Single Audit Mechanism or joint audits, to simplify the cross-border auditing and reduce the related compliance cost for businesses.

Member States' level

- Change the approach to audits by starting to audit processes rather than transactions.

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Annex 2: Analytical Framework

Evaluation question	Points from ToR	Judgement criteria	Indicators	Sources
1. To what extent have the Union- and non-Union schemes been adopted by businesses in Q1 and Q2 of 2015?	<i>Provide an analysis of the number of traders registering for both the union and non-Union schemes, including volume of trades, the value of the trades and VAT revenues for Q1 and Q2 2015. The analysis will be broken down by Member State.</i>	1.1 What is the take-up level of the union and non-Union scheme in Q1 and Q2 of 2015?	<ul style="list-style-type: none"> Number of traders registered (union and non-Union): VAT revenues (Union and non-Union) broken down by MS compared to potential VAT revenues 	Data from MOSS (Scope: 28 Member States) via the European Commission No breakdown per VAT rate will be available Comparison (if possible) with data from lot 1
		1.2 – Is the adoption of the Union and non-Union schemes in line with expectations?	<ul style="list-style-type: none"> Value of transactions (Union and non-Union) Number of transactions (Union and non-Union) 	Data from companies, desk research (Scope: 28 Member States)
			<ul style="list-style-type: none"> Expected number of registrations (prior to MOSS becoming operational) in Q1 and Q2 of 2015 Expected number of registrations in the future (Q3 and Q4 of 2015 and Q1 and Q2 2016) 	Surveys to Member States tax authorities (scope: 20 Member States) Interviews/questionnaires to Member States tax authorities (scope: 8 selected Member States) Surveys to Member States tax authorities (scope: 20 Member States)

Evaluation question	Points from ToR	Judgement criteria	Indicators	Sources
				<p>Interviews/questionnaires to Member States tax (scope: authorities 8 selected Member States)</p>
<p>2. How does the non-Union scheme compare to the 2003 VoES scheme?</p>	<p><i>Make an assessment of the non-Union scheme based on Q1 and Q2 2015 compared to the 2003 scheme taking the 2013 and 2014 data in respect of number of traders, volume of trades, the value of trades and VAT revenues. The assessment will be broken down by Member State.</i></p>	<p>2.1 – What was the level of take-up of the 2003 VoES scheme compared to the non-Union scheme?</p>	<ul style="list-style-type: none"> • Stakeholders' opinions on reasons for discrepancies (e.g. lack of awareness/information, delays in availabilities, malfunctioning IT systems, etc.) • Number of traders registered for 2003 VoES scheme • Number of traders registered for non-Union scheme • Gross VAT revenues (both 2003 VoES scheme and current non-Union scheme) • (if possible) value of transactions (both 2003 VoES scheme and current non-Union scheme) 	<p>Surveys to Member States tax authorities (scope: 20 Member States)</p> <p>Interviews/questionnaires to Member States tax (scope: authorities 8 selected Member States)</p> <p>Data from MOSS (Scope: EU 28) completed by MS authorities (interviews/questionnaires), data from companies and desk research</p>

Evaluation question	Points from ToR	Judgement criteria	Indicators	Sources
<p style="text-align: right;"><i>Note: the available data will not be fully comparable, since the 2003 scheme only applied to electronic services, not to all TBE services.</i></p>				
<p>2.2 – Is the current level of adoption of the non-Union scheme compared to the 2003 in line with expectations?</p>				
<p>2.3 – What could be the reason(s) for a large difference with respect to expectations (if any)</p>			<p>Stakeholders' opinions on reasons for discrepancies (e.g. lack of awareness/information, delays in availabilities, etc.)</p>	<p>Surveys to Member States tax authorities (scope: 20 Member States)</p> <p>Interviews/questionnaires to Member States tax authorities (scope: 8 selected Member States)</p>
<p>3. Has the implementation of the new place of</p>	<p>3.1 Timely and complete implementation of MOSS-related obligations by</p>	<p>• Effectiveness of the IT systems in place</p> <p>• Adequacy of the resources</p>	<p>Interviews/questionnaires to Member States tax authorities (scope: 8</p>	<p>Interviews/questionnaires to Member States tax authorities (scope: 8 selected Member States)</p>

Evaluation question	Points from ToR	Judgement criteria	Indicators	Sources
supply rules and MOSS and the related rules been smooth and efficient?		Member States.	<p>the Member States put into implementation and communication</p> <ul style="list-style-type: none"> • Relevance of communications actions implemented. Future communication activities planned (if any). • Stakeholders' opinions on effectiveness of communication 	selected Member States)
			<ul style="list-style-type: none"> • Effectiveness of the IT systems in place • Adequacy of the resources the Member States put into implementation and communication • Actual reaching of the target audience • Unsatisfied need for further communication and awareness raising 	<p>Interviews with Member States businesses using the MOSS</p> <p>(Scope: 8 Member States selected)</p>
	<i>Provide qualitative analysis of auditing and administrative cooperation.</i>	3.2 Extent to which auditing and administrative cooperation have been impacted under the new	<ul style="list-style-type: none"> • Degree of implementation of the audit guidelines by Member States 	<p>Interviews/questionnaires to Member States tax authorities</p> <p>(Scope: 8 Member States</p>

Evaluation question	Points from ToR	Judgement criteria	Indicators	Sources
			<p>national rules and selected) practices requested</p> <ul style="list-style-type: none"> • Effective use by Member States of the guidelines and its effectiveness 	
	<p><i>Assess the cost implications for business as a result of using the MOSS – will require sampling of 40 businesses (5 per Member State) covering SMEs and large business and across business sectors</i></p>	<p>3.5 – Costs implications for businesses using the MOSS</p>	<p>Costs for each admin requirement (SCM) in the following three situations:</p> <p>Situation ante 2015</p> <p>Situation post 2015 for businesses using the MOSS</p> <p>Situation post 2015 for businesses not using the MOSS</p>	<p>Interviews with Member States businesses using the MOSS</p> <p>(Scope: 8 Member States selected)</p> <p>Interviews with Member States businesses not using the MOSS but supplying TBE services</p> <p>(Scope: 8 Member States selected)</p>

Evaluation question	Points from ToR	Judgement criteria	Indicators	Sources
<p>4. Does the MOSS tackle the needs expressed by the stakeholders and target groups in a satisfactory way and does the relevant legislation and guidance address the concerns around the modified place of supply rules?</p>	<p><i>Identify problems faced by business which have used the MOSS, particularly in respect of the different requirements in each Member State</i></p>	<p>4.1 – Has the applicable Implementing Regulation and issued guidance mitigated any issues which could have arisen from the modification in the 2015 place of supply rules and applicable MOSS scheme?</p>	<p>Problems encountered by businesses with respect to the new 2015 place of supply rules and MOSS.</p>	<p>Interviews with Member States businesses supplying TBE services (Scope: 8 Member States selected)</p>
			<p>What are the issues faced by businesses using the MOSS stemming from the different requirements in national legislations?</p>	<p>Interviews with Member States businesses supplying TBE services (Scope: 8 Member States selected)</p>
	<p><i>Pinpoint reasons why business may not take up the MOSS e.g. wait and see, lack of confidence in the systems, waiting for a broader One Stop Shop including goods</i></p>	<p>4.2 – Why do businesses supplying TBE services not take up the MOSS?</p>	<p>Are there issues reducing the adoption of MOSS? Which ones?</p>	<p>Interviews with Member States businesses supplying TBE services (Scope: 8 Member States selected) Workshops at the Fiscalis seminar</p>
			<p>Are there additional provisions that could be adopted to reduce the admin costs or increase the take up of the</p>	<p>Interviews with Member States businesses using the MOSS (Scope: 8 Member States</p>

Evaluation question	Points from ToR	Judgement criteria	Indicators	Sources
			MOSS?	selected) Workshops at the Fiscalis seminar
			Has there been a decrease in the number of 'regular' VAT registrations? <i>(indirect effect of the new, simpler system)</i>	MS tax authorities (questionnaires/interviews) (Scope: 28 Member States)
5. What has been the impact of the new place of supply rules?	<i>Prepare an assessment of the impact on Member States of the new place of supply rules. This analysis will be broken down by Member State and include a budgetary impact/estimate for the period 2014/2015 i.e. pre and post the changes</i>	5.1 – Effect on revenues and expenses for Member States	VAT revenue from TBE services in 2015 and 2016 (up until Q2) VAT revenue from TBE services in 2013 and 2014 Any other impacts (besides revenue) of the new place of supply rules (like IT costs for development of the portal, audit costs, etc.)	Data from MOSS (Scope: 28 Member States) via the European Commission Surveys to Member States tax authorities (scope: 20 Member States) Questionnaires to Member States tax authorities (scope: 8 selected Member States)
6. Are the place of supply rules not too burdensome	<i>Prepare an assessment on the administrative burdens faced by business as a result of the new place of</i>	6.1 – Bearable administrative burden on businesses despite to the	For companies using the MOSS: same data from question above on SCM for using MOSS, additionally	Interviews with Member States businesses supplying TBE services

Evaluation question	Points from ToR	Judgement criteria	Indicators	Sources
for businesses?	<i>supply rules. This assessment will use the sample of 40 business identified above</i>	new place of supply rules	<p>experiences with its use, as well as identifying burdens caused by the changed place of supply rules (e.g. different invoicing requirements, rates, etc.)</p> <hr/> <p>Administrative requirements before and after 2015 place of supply changes</p> <p>Time/costs for each admin requirement (SCM)</p>	<p>(Scope: 8 Member States selected)</p> <hr/> <p>Interviews with Member States businesses supplying TBE services and not using the MOSS</p> <p>(Scope: 8 Member States selected)</p>

Annex 3: Standard Cost Model

The quantification of the burden for businesses is an important component of the study. In keeping with the European Commission's Guidelines and Terms of Reference, this study uses the Standard Costs Model (SCM) methodology.

The SCM was developed by the Dutch ministry of Finance and is used to measure the administrative burden imposed on businesses and/or citizens through the need to comply with regulation. The SCM identifies Information Obligations (IOs), or tasks associated with regulation which require the delivery of information to public authorities or third parties. The IOs can be further subdivided into Data Requirements (DRs). The SCM provides a simplified and consistent method to measure the impact of regulation. It is used across several Member States and is part of the EU's tool kit for assessing administrative costs imposed by EU legislation¹⁸².

Standard Cost Model:

Administrative burden = Time*Price*Quantity (amount x frequency)

Time: The time spent by the citizen or the employee in the enterprises to comply with an IO

Price: The standard cost to apply to the time spent according to the level of the employee who performs the IO (Information Obligation).

Quantity: The number of IOs to perform per year and their frequency (e.g. monthly, yearly)

Objectives, scope and sources for the exercise

A key objective of this study is to identify and quantify the costs of doing business for companies supplying B2C e-Commerce goods and services to other Member States. In particular, one of the key objectives of Lot 3 of the assignment is to identify and quantify the costs of doing business for companies supplying TBE services, by comparing their situation before and after the entry into force of the 2015 place of supply rules (and of the MOSS). In order to do this, the key IOs these companies have to comply with on the basis of the current legislation have been identified, and data on the time and costs they incur was collected through interviews.

Information from these interviews was merged to create a 'typical' EU business engaged in cross-border B2C e-Commerce of TBE services. This was done by averaging the costs of each IO across businesses interviewed in each Member State, and then averaging these figures across Member States. The formula below denotes this process mathematically:

$$Average\ cost = \frac{1}{N} \sum_N (Time_N * Wage_N)$$

Where N is the number of businesses in the sample per each Member State (and then the number of Member States).

Data and assumptions

¹⁸² See Impact Assessment Guidelines, annex 10: Assessing administrative costs imposed by EU legislation, p.46

Data for the exercise came from a variety of sources:

- ✔ Real data from business interviews;
- ✔ Commission's official guidelines and standardised data (for hourly costs);
- ✔ Expert assessments;
- ✔ Third party sources.

IOs

Data on IOs came from interviews with real businesses engaged in cross-border B2C e-Commerce in eight Member States. These Member States were selected among the members of the Fiscalis group on compliance that agreed to participate. Businesses were identified and contacted using a variety of channels, such as the Deloitte network, business representative organisations (both at EU and national level), and chambers of commerce. The following countries and enterprises were included:

- ✔ Denmark: 3 business;
- ✔ France: 3 businesses;
- ✔ Germany: 3 businesses;
- ✔ Ireland: 5 businesses;
- ✔ Italy: 1 business;
- ✔ Luxembourg: 4 businesses;
- ✔ United Kingdom: 7 businesses.
- ✔ Non-EU: Switzerland (1 business)

The sample included micro (2), small (2), medium (1) and large (16) businesses, all active in the TBE services sector.

It should be noted that the sample cannot be considered statistically representative of the variety of businesses engaged in B2C cross-border e-Commerce, nor statistical representativeness is requested by the SCM methodology.

Other

Eurostat provides data on hourly earnings¹⁸³. Specifically, hourly rates for the category ISCO 2, *i.e.* for management accounts, were used, as they make up the personnel responsible for VAT-related procedures in businesses. Management accountants are classified under the code 2411 in the International Standard Classification of Occupations elaborated by the ILO.

Data on the number of businesses engaged in cross-border B2C e-Commerce was obtained from Eurostat and Enterprise and Industry 2013 SBA Fact Sheets, as well as from the national MOSS portals provided by Member States.

A key element of the model is the number of Member States in which a 'typical' EU business supplying TBE services has sales. Information from the business interviews proved quite

¹⁸³ See: http://ec.europa.eu/eurostat/web/products-datasets/-/earn_ses_hourly. The most recent figures date back to 2010, but given the economic crisis, figures are considered still quite accurate by the Commission's services consulted on the topic. Updated hourly earnings should be elaborated by Eurostat by the end of 2015,

heterogeneous. On average, the large majority of businesses declared to have sales in at least five Member States, with many of them having sales in 15 or more Member States. On the contrary, the number of VAT registrations was very low for the large majority of businesses (as a consequence of the pre-2015 legislative framework), with a small number of businesses having a very high number of VAT registrations (from 7 to up to 27) in other Member States even before the new legislative framework.

Therefore, the number of Member States a 'typical' EU business supplying TBE services has sales and VAT registrations was estimated using a combination of information from the business interviews and expert assessments. Input was given by Deloitte tax experts based on their direct experience on supporting businesses with VAT registrations in other Member States and other VAT obligations, as well as chambers of commerce and the businesses associations, based on the experiences reported by their members.

The experts agreed that some of the largest the largest companies had VAT registrations in many of the Member States even before the new legislative framework entered into force, and would be likely to maintain the same structure after the entry into force of the 2015 place of supply rules. The experts also agreed that businesses supplying TBE services are likely to have sales in five Member States on average (both before and after the new legislative framework). They confirmed that those businesses not registering to the MOSS are likely to have a large number of VAT registrations in Member States, which was quantified as eight.

Data on standard wage rates were obtained from a combination of information from business interviews and the European Commission.

The results from the SCM were crosschecked using expert judgement findings from existing literature, including recent studies carried out for the European Commission, DG TAXUD, on VAT-related topics¹⁸⁴. It should be noted, however, that figures from existing studies are not necessarily directly comparable, as other studies may be measuring different things and using different approaches.

Information Obligations (IOs) used for the analysis

The table below provides the overview of the IOs used in the SCM. The relevant IOs were identified through the current literature and interviews with Deloitte's tax practitioners. In addition, the list of IOs was checked by both national tax and customs authorities and the businesses interviewed.

¹⁸⁴ The full list of references used is provided in Annex A

Table 14 – Information Obligations used in the Standard Cost Model

IO #	Type of obligation	Description	Comments/notes
IO1	VAT registration	IO1 consists of the one-off registration for VAT purposes in another Member State than the Member State where the business is established. This includes all tasks necessary to complete the registration such as communication with the relevant authorities and the provision of evidence of taxable activities. By contrast, the waiting time is not included in the calculation.	
IO2	Identification of customer status – B2B or B2C	IO2 consists of the identification for each transaction of the status of the customer, <i>i.e.</i> whether the customer is a business or a consumer.	Part of the ‘business as usual’ operations – no specific costs attached
IO3	Identification of Member State of consumption	IO3 consists of the identification for each transaction of the Member State of consumption.	Part of the ‘business as usual’ operations – no specific costs attached
IO4	Identification of correct VAT rate	IO4 consists of the identification for each transaction of the correct VAT rate that applies to the transaction.	Part of the ‘business as usual’ operations – no specific costs attached
IO5	Invoicing (incl. charging VAT)	IO5 consists of the invoicing for each transaction in accordance with either the business’ home country rules or the rules of the Member State of consumption.	Part of the ‘business as usual’ operations – no specific costs attached
IO6a	VAT declaration /returns Re domestic VAT	IO6a consists of the periodical submission of the domestic VAT return.	
IO6b	VAT declaration /returns Re MOSS	IO6b consists of the quarterly submission of the MOSS VAT return in the business’ Member State of identification.	
IO7	Import declaration (incl. VAT)	IO7 applies to the import of goods. It consists of the submission for each transaction of the import declaration.	Does not apply to businesses in our exercise - dropped
IO8a	VAT payment Re domestic return	IO8a consists of the periodic (generally monthly) payment of the VAT related to the business’ domestic VAT return.	
IO8b	VAT payment Re MOSS	IO8b consists of the quarterly payment of the VAT related to the business’ MOSS VAT return.	
IO8c	VAT payment Re import	IO8a consists of the periodic payment of the VAT related to the business’ imports of goods	Does not apply to businesses in our exercise – dropped

IO #	Type of obligation	Description	Comments/notes
IO9	Storage of invoices	IO9 consists of the storage of invoices in accordance with the obligation to store invoices for 10 years. It also includes the cooperation with audits and inspection by the relevant public authorities.	
IO10	Storage of import declarations	IO10 consists of the storage of import declarations in accordance with the obligation to store them for 10 years. It also includes the cooperation with audits and inspection by the relevant public authorities.	Does not apply to businesses in our exercise – dropped
IO11	Changes or cancelling of VAT registration	IO11 consists of the one-off cancellation or change of registration for VAT purposes in another Member State than the Member State where the business is established. This includes all tasks necessary to complete the cancellation or change such as communication with the relevant authorities. By contrast, the waiting time is not included in the calculation.	

Source: Deloitte analysis based on VAT Directive 2006/112/EC

The interviews with businesses highlighted that IO1, IO6a and IO8a are responsible for the large part of the costs businesses incur to comply with VAT-related requirements.

Detailed results per IO

The following sections provide a more detailed overview of the results obtained per each relevant IO.

Analysis before the 2015 Place of Supply rules

IO1 – VAT registration

Data from business interviews regarding this IO show that in many cases businesses recur to advisors and tax consultants to help them comply with the requirements. Time needed to comply with the IO and related costs differ depending on whether businesses decide to use advisors or not. Therefore, the analysis of this IO was split into two parts, analysing the costs for in-house processing and for use of advisors¹⁸⁵.

In-house time

Average time (minutes)	Standard deviation	Median	Min	Max
520	855.96	60	10	2400

Outsourcing time

Average time (minutes)	Standard deviation	Median	Min	Max
120	1420.75	60	9	2400

¹⁸⁵ The same approach was adopted by the PwC study “Study on the feasibility and impact of a common EU standard VAT return”, available at: http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm.

In the case of businesses with advisory costs, the formula presented earlier was modified as follows:

$$Average\ cost = \frac{1}{N} \sum_N (Time_N * Wage_N + Consultancy)$$

The analysis of IO1 required additional assumptions regarding:

- The share of businesses that use external advisors;
- The amount of advisory fees; and
- The frequency with which businesses apply for VAT registration in other Member States.

The share of businesses that use external advisors was assumed to be 50%. This figure is based on insights from the business interviews, as well as expert’s assessments by Deloitte tax practitioners and business associations.

The amount off advisory fees was assumed to be EUR 1 200 per registration per business was used; this figure is at the lower end of the spectrum identified. This figure was estimated based on the inputs provided by the businesses interviewed and by experts consulted, and crosschecked with existing literature.

Finally, the frequency with which businesses apply for VAT registration in other Member States was assumed 10 years on average. This figure is at the lower end of the observed spectrum. It is based on the observation that generally companies register for VAT in a Member State only once, and this action therefore represents a one-off cost. The figure represents the average lifespan of a business. It was verified by the experts consulted.

IO6a – VAT declaration /returns Re domestic VAT

As for IO1, data for IO6a show that businesses may decide to use advisory services to comply with the requirements. Therefore, the time and related costs were analysed separately, using the corresponding formulas presented earlier.

In-house time

Average time (minutes)	Standard deviation	Median	Min	Max
810	1396.25	180	0	4980

Outsourcing time

Average time (minutes)	Standard deviation	Median	Min	Max
120	775.10	1893	150	2000

For IO6a, the same equal partition between businesses using and not using advisory services was adopted. The calculation of the average consultancy fee for the ‘typical’ EU business engaged in B2C e-Commerce of TBE services followed the same procedure as for IO1, and the estimation was of EUR 800. As far as the frequency of IO6a is concerned, considering that the domestic declarations/returns are most often per month but still as for some large countries it is on quarterly basis, we have calculated an average frequency of 8 times per year.

IO8a – VAT payment Re domestic return

For IO8a, the same frequency as the submission of domestic VAT declarations/returns was assumed.

Average time (minutes)	Standard deviation	Median	Min	Max
10	17.88	3	2	60

IO11 – Changes or cancelling of VAT registration

Data from business interviews show that this IO is quite rare in the life of businesses. Within our sample, none of the businesses reported to have ever cancelled a VAT registration, and only 2 have modified their VAT registration.

In-house time

Average time (minutes)	Standard deviation	Median	Min	Max
42	25.93	60	5	60

Outsourcing time

Only one business reported to have outsourced the activities for changing its VAT registration. Costs were incurred only for the advisory fee, while no internal costs were reported.

Similar considerations concerning frequency were adopted as for IO1 (*i.e.* a 10-year frequency). The estimation of the average fee followed the same procedure. It was quantified as EUR 1 000 per registration/cancellation per entity, as there is a general consensus that the costs are lower than for a VAT registration. In order to account for the lower frequency of this procedure in the life of a business, we also assumed (in accordance with experts) that 50% of EU businesses engaged in cross-border B2C e-Commerce will change or cancel their VAT registration.

Analysis after the 2015 Place of Supply rules – Businesses registered to the MOSS

IO1 – VAT registration regarding MOSS

Data from business interviews regarding this IO show that in many cases businesses recur to advisors and tax consultants to help them comply with the requirements. Time needed to comply with the IO and related costs differ depending on whether businesses decide to use advisors or not. Therefore, the analysis of this IO was split into two parts, analysing the costs for in-house processing and for use of advisors¹⁸⁶.

In-house time

Average time (minutes)	Standard deviation	Median	Min	Max
370.00	620.21	120	5	2400

Outsourcing time

Average time (minutes)	Standard deviation	Median	Min	Max
60	634.36	120	5	498

In the case of businesses with advisory costs, we used the same formula presented earlier.

Assumptions regarding the share of businesses using external advisors were the same presented earlier.

¹⁸⁶ The same approach was adopted by the PwC study “Study on the feasibility and impact of a common EU standard VAT return”, available at: http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm.

The amount off advisory fees was assumed to be EUR 300 per registration per business was used; this figure is at the lower end of the spectrum identified. This figure was estimated based on the inputs provided by the businesses interviewed and by experts consulted.

Finally, the frequency with which businesses apply for VAT registration in other Member States was assumed to be 10 years on average. This figure is at the lower end of the observed spectrum. It is based on the observation that generally companies register for VAT in a Member State only once, and this action therefore represents a one-off cost. The figure represents the average lifespan of a business. It was verified by the experts consulted.

IO6b – VAT declaration /returns Re MOSS

As MOSS was introduced in January 1st, 2015, this IO represents a new task for businesses.

In-house time

Average time (minutes)	Standard deviation	Median	Min	Max
656.38	792.69	240	340	2490

Outsourcing time

Average time (minutes)	Standard deviation	Median	Min	Max
120	195.92	369	50	520

The costs reported are lower than those for ‘normal’ VAT returns are, and no advisory costs are reported. While quite partial, this data can be a first indication of the actual simplification brought by the MOSS system, and of the potential simplification that a similar measure for goods could help achieving.

The most recent estimation about the number of businesses registered in MOSS is 10 000.

IO8b – VAT payment Re MOSS

This IO is quite new for businesses, which have started to submit VAT return using the MOSS only recently.

Average time (minutes)	Standard deviation	Median	Min	Max
7	3.87	5	3	15

Analysis after the 2015 Place of Supply rules – Businesses not registered to the MOSS

IO1 – VAT registration

Data from business interviews regarding this IO show that in many cases businesses recur to advisors and tax consultants to help them comply with the requirements. Time needed to comply with the IO and related costs differ depending on whether businesses decide to use advisors or not. Therefore, the analysis of this IO was split into two parts, analysing the costs for in-house processing and for use of advisors¹⁸⁷.

¹⁸⁷ The same approach was adopted by the PwC study “Study on the feasibility and impact of a common EU standard VAT return”, available at: http://ec.europa.eu/taxation_customs/common/publications/studies/index_en.htm.

In-house time

Average time (minutes)	Standard deviation	Median	Min	Max
.520.00	855.96	60	10	2400

Outsourcing time

Average time (minutes)	Standard deviation	Median	Min	Max
180	1535.34	780	30	4160

In the case of businesses with advisory costs, we used the same formula presented earlier.

Assumptions regarding the share of businesses using external advisors were the same presented earlier.

The amount off advisory fees was assumed to be EUR 2 000 per registration per business was used; this figure is at the lower end of the spectrum identified. This figure was estimated based on the inputs provided by the businesses interviewed and by experts consulted.

Finally, the frequency with which businesses apply for VAT registration in other Member States was assumed to be 10 years on average. This figure is at the lower end of the observed spectrum. It is based on the observation that generally companies register for VAT in a Member State only once, and this action therefore represents a one-off cost. The figure represents the average lifespan of a business. It was verified by the experts consulted.

IO6a – VAT declaration /returns Re domestic VAT

As for IO1, data for IO6a show that businesses may decide to use advisory services to comply with the requirements. Therefore, the time and related costs were analysed separately, using the corresponding formulas presented earlier.

In-house time

Average time (minutes)	Standard deviation	Median	Min	Max
820.00	1469.67	270	30	4980

Outsourcing time

Average time (minutes)	Standard deviation	Median	Min	Max
20	497.73	240	10	1440

For IO6a, the same equal partition between businesses using and not using advisory services was adopted. The calculation of the average consultancy fee for the 'typical' EU business engaged in B2C e-Commerce followed the same procedure as for IO1, and the estimation was of EUR 800. As far as the frequency of IO6a is concerned, considering that the domestic declarations/returns are most often per month but still as for some large countries it is on quarterly basis, we have calculated an average frequency of 8 times per year.

IO8a – VAT payment Re domestic return

For IO8a, the same frequency as the submission of domestic VAT declarations/returns was assumed.

Average time (minutes)	Standard deviation	Median	Min	Max
10	17.88	3	2	60

IO11 – Changes or cancelling of VAT registration

Data from business interviews show that this IO is quite rare in the life of businesses. Within our sample, none of the businesses reported to have ever cancelled a VAT registration, and only 2 have modified their VAT registration.

In-house time

Average time (minutes)	Standard deviation	Median	Min	Max
41.67	25.93	60	5	60

Outsourcing time

Only one business reported to have outsourced the activities for changing its VAT registration. Costs were incurred only for the advisory fee, while no internal costs were reported.

Similar considerations concerning frequency were adopted as for IO1 (*i.e.* a 10-year frequency). The estimation of the average fee followed the same procedure. It was quantified as EUR 1 000 per registration/cancellation per entity, as there is a general consensus that the costs are lower than for a VAT registration. In order to account for the lower frequency of this procedure in the life of a business, we also assumed (in accordance with experts) that 50% of EU businesses engaged in cross-border B2C e-Commerce will change or cancel their VAT registration.

Annex 4: Fiscalis Discussion Paper

DOCUMENT FOR DISCUSSION IN THE WORK GROUPS

PART 1: OPERATION OF THE 2015 PLACE OF SUPPLY RULES

Introduction

E-commerce is a large and growing business and a key part in the digital economy, emerging as a fundamental economic driver. In order for the EU28 to reap the full potential, a number of issues need to be addressed, not least the obstacles that the current VAT system presents to cross-border sales of both physical and digital e-Commerce products.

Since 2015, cross-border business to consumer (B2C) supplies of telecom, broadcasting and e-services (TBE) are always subject to VAT in the Member State of the residence of the customer. The 2015 place of supply changes, which are based on the taxation at destination principle, are one of the first steps in the way to modernise the EU VAT system in order for it to take into account the development of the digital economy.

The main objectives of these changes is to remove distortions and provide a level playing field between the suppliers established in different Member States and to ensure the allocation of VAT to the Member State where the consumption takes place.

The 2015 Place of Supply changes entail that the VAT law of the Member State of Consumption will apply on suppliers which are not established in this country. The rules (including the obligation to register for VAT) apply from a first relevant transaction; however the businesses may continue to benefit from the domestic VAT registration thresholds regarding their other (domestic) supplies. The businesses not established in the Member State of Consumption may not however benefit from the VAT registration threshold in that country as this applies only to the domestic businesses.

In order to prepare for a potential consolidation of the application of destination principle also to the remaining B2C supplies, including the supplies of goods which are currently below the distance selling threshold, it is important to thoroughly evaluate the implementation and operation of the 2015 place of supply changes.

The assessment aims to identify the main advantages and disadvantages of the Place of Supply changes, as well as analyse the impact of the changes and main practical challenges experienced by the businesses and tax authorities due to the changes. For example, we have already identified challenges with clarifying the exact scope of e-services, defining the status and location of the customer, collecting the necessary evidence, 10 years record keeping requirement and the complexity and burden of following the rules of the Member State of destination. In one Member State in particular, the lack of a threshold has also been raised as an issue by small start-up businesses trading cross border.

Questions to be addressed by the work group:

While some questions are targeted at business representatives, Member State representatives should consider the issues raised by business in their Member State.

- 1.1. How effective was the implementation of the 2015 Place of Supply rules? What were the main challenges for business and for Member States authorities?
- 1.2. What are the main advantages and disadvantages of the 2015 Place of Supply rules? In particular have the new Place of Supply rules delivered on the objective of removal of distortion of competition regarding the TBE services?
- 1.3. Were you satisfied with the support provided by the European Commission? Were you satisfied with the engagement with the Commission prior to the coming into effect of the rules? Do you use the information provided on the Commission website?
- 1.4. Were you (Business) satisfied with the support provided by the Member State authorities? Do you feel that they did enough in advance of implementing the 2015 place of supply rules? If not, please specify what measures you feel that they could have done.
- 1.5. Have the new rules increased the burdens on business? Please provide examples.
- 1.6. Have you experienced problems on a technical/IT level in applying 2015 place of supply rules? If yes, please specify.
- 1.7. Please provide examples of best practices in simplifying the rules or reducing the administrative burdens related to new place of supply changes.
- 1.8. Have business faced difficulties in determining the residence of the customer? If yes, please specify.
- 1.9. When searching for 2 pieces of evidence, what types of evidence are the most useful ones for businesses in practice? What commercially relevant information is used?
- 1.10. Should adaptations be made to the implementing rules/guidance notes (without discussing MOSS at this stage)?

PART 2: OPERATION OF THE MINI ONE STOP SHOP

Introduction

The modification of the Place of Supply rules from 2015 triggered an increased complexity for businesses as they need to account for VAT in the EU Member States of consumption. However, the consequential VAT administrative burden of having to potentially file 28 VAT returns was reduced by the introduction of the mini One Stop Shop (MOSS), allowing suppliers of cross-border B2C telecommunications, broadcasting and electronic (TBE) services to account for the VAT due on those supplies via a web portal in the Member State in which they are identified. The non-EU suppliers of electronic services have applied a similar system already from 2003, being extended in 2015 also to telecom and broadcasting services.

The aim of such a single electronic registration and payment system is therefore to reduce the costs of reporting and administrative burdens of businesses in application of the VAT rules of the country where they are not established. The implementation of a single electronic system is seen by many Member States and by business as a major milestone. Its smooth functioning should pave the way for a potential future extension to a more general use of this concept (e.g. to the B2C supplies of goods). Therefore it is essential to assess the implementation and operation of the single electronic mechanism in order to identify the best practices and room for possible improvements.

The aim of the discussion in the work groups is to identify the main advantages and disadvantages of the MOSS in comparison to applying place of supply changes without MOSS, as well as analyse the practical experiences in applying MOSS and identify any best practices, key shortcomings and barriers for taking up MOSS. For example, we have identified that some businesses decided not to apply MOSS as they are already registered in many Member States and application of MOSS in addition to many local declarations was considered complex and burdensome. In addition, claiming VAT refunds separately outside MOSS or complexity of dealing with credit notes and other adjustments and corrections have been mentioned as shortcomings. The absence of home country audits or divergent invoicing rules has also been criticised.

Specific questions to be addressed by the work group:

While some questions are targeted at business representatives, Member State representatives should consider the issues raised by business in their Member State.

- 2.1. Was the implementation of the MOSS efficient and effective (both from tax authority and business perspective)? If not what problems did you experience? Please focus on the MOSS, rather than the effect of the Place of Supply changes, which are discussed separately.
- 2.2. Were you (Member States) satisfied with the support provided by the European Commission, particularly in respect of the IT element of the proposal?
- 2.3. Were you (Business) satisfied with the support provided by the Member State authorities in relation to the operation of MOSS? Do you feel they did enough in advance of implementing MOSS? If not, please specify what measures you feel that they could have done.
- 2.4. In your view what are the main advantages and disadvantages (including cost implications) of the MOSS in comparison to the application of destination rule without a single electronic mechanism?

- 2.5. What are the main reasons why businesses may not take up the MOSS?
- 2.6. What is your experience in applying the MOSS (or managing the MOSS for tax authorities) (e.g. the use of the portal, link with business systems)? Please bring examples of best practices in the application of the MOSS (including the portal design features, guidance and support).
- 2.7. Are the MOSS audit guidelines applied in your country? Please comment on the relevance of the audit guidelines and the administrative cooperation between Member States more generally.
- 2.8. Should the MOSS legislation be adapted and if so, how?

PART 3: POLICY OPTIONS FOR MODERNISATION OF VAT ASPECTS ON CROSS-BORDER E-COMMERCE

Introduction

The 2011 Commission Communication on the Future of VAT¹⁸⁸ seeks to deliver a simple, efficient, neutral and robust VAT system which is fit for the single market. The same objective is further strengthened in the recent Digital Single Market Strategy for Europe¹⁸⁹ (DSM strategy) which aims to reduce VAT related burdens and obstacles when selling across borders in order to maximise the growth potential of our European Digital Economy. In terms of neutrality of the tax, the Commission is working to provide a level playing field for EU businesses and ensure that VAT revenues accrue to the Member State of the consumer. The issues around the treatment of small consignments and other internet sales (current distance selling rules) are to be tackled in this context.

The Commission remains convinced that, in a VAT system based on taxation at destination, an electronic registration and payment system is a crucial instrument to facilitate access to the single market, in particular for SMEs. The 2011 Communication and the DSM strategy envisage extending the single electronic system to tangible goods ordered online both within and outside the EU.

The Commission services are exploring a number of policy options to ensure the level playing field and reduce administrative burdens on cross-border e-commerce:

Status Quo
Option 1: Status Quo - 2015 Place of Supply Rules, MOSS, current distance sales thresholds for goods, no threshold for intra-EU supplies of services, VAT exemption for the importation of small consignments into the EU (EUR 10/22 with option to exclude mail-order/e-commerce supplies), no simplification for B2C imports of goods above the small consignments exemption and below the customs exemption of EUR 150
Policy changes
Option 2: Removal of small consignment exemption and distance selling thresholds
Option 3: Option 2 but with the introduction a common VAT exemption threshold for EU sales of both goods and services– which would come in addition to the existing domestic thresholds (up to EUR 114 000);
Option 4: Option 3 plus a Single Electronic Mechanism applying to intra-EU supplies of goods and services and to the import of all goods under the customs threshold of 150 EUR ,

¹⁸⁸ http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/communications/com_2011_851_en.pdf.

¹⁸⁹ http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf.

Option 5: Option 4 plus amendments to the Single Electronic Mechanism (home country legislation and home country control, subject to applying rate/exemptions of the Member State of Consumption);

Option 6: Option 4 plus fully harmonised EU rules for Single Electronic Mechanism, subject to applying the rates/exemption of the Member State of Consumption.

Regarding import, there would be a choice for economic operators of three optional alternative customs simplifications for B2C imports under the customs threshold of EUR 150:

- vendor registration and collection with reporting through the single electronic mechanism;
- third party collection (postal operator/courier, marketplace, etc.) with reporting through the single electronic mechanism;
- simplified standard customs procedure *without* reporting through the single electronic mechanism when reporting an import at the standard VAT rate.

Specific questions to be addressed by the work group:

- 3.1 Can you list the pros and cons of each option? Please take into account to what extent they will impact your operations as a business or as a Member State.
- 3.2 Do you have any other ideas or options which should be considered?
- 3.3 What is an appropriate cross-border threshold amount which will not introduce more distortions but at the same time offer relief to small start-up business?
- 3.4 Do you agree that the cross-border threshold should be harmonised across the EU and apply to both goods and services?

Annex 5: Fiscalis input

Place of supply rules

General Opinion

Both Member States and businesses had an overall positive opinion on the implementation of the Place of Supply rules. The most recurring comments when asked about the effectiveness and challenges were the following:

	Viewpoints
MS	<ul style="list-style-type: none"> • Normal implementation – no undue problems • Good dialogue between MS and business, including specific taxpayer services – advice and guidelines • The Commission offered good support and communication: <ul style="list-style-type: none"> ○ Their website was helpful but it needs to capture up to date information so the necessary changes to the systems can be done. It should have information on VAT rates and reach everyone – so avoid very technical language and maybe create a mailing list so business get the updated information as quickly as possible ○ Explanatory Notes – helpful (mostly) and used as guidance in many (but not all) MS but additional guidelines are not always consistent with the explanatory notes. Binding explanatory notes would create legal certainty, if this were possible to achieve.
Businesses	<ul style="list-style-type: none"> • Generally well explained, although the rules are complex which leads to the question as to whether smaller businesses understood the message; • Difficulties in resourcing IT development and delivering robust solutions in required timeframe; • Determining customer location remains difficult. Obtaining 2 pieces of non-contradictory evidence is difficult and requesting additional data deters customers; • The scope is not very clear: <ul style="list-style-type: none"> ○ How to determine whether a supply is an e-service? ○ What does minimum human intervention mean exactly? ○ And why differentiate e-service from all services? • MS's engagement varied from one country to another
Common	<ul style="list-style-type: none"> • Too early to judge

Pros and Cons

	Viewpoints
Advantages	<ul style="list-style-type: none"> • It has leveled the playing field
Disadvantages	<ul style="list-style-type: none"> • High cost of implementation and compliance, with a possible commercial loss due to pricing because of different VAT rates; • Increased complexity when the 28 MS are involved – they have different interpretations of the rules (e.g. Article 9a) and they are required to know rules in other MS, such as: <ul style="list-style-type: none"> ○ When do exemptions apply? ○ What are the different rates? • Businesses are contrary to the need for invoicing for B2C as there is little customer interest & no VAT recovery; • Uncertainty on the auditing approach: <ul style="list-style-type: none"> ○ Companies are opposed to being audited by several countries vs. one

	Viewpoints
	<ul style="list-style-type: none"> ○ MS might be confronted with difficulties to find and communicate with these foreign companies they are supposed to audit ○ VAT cooperation between EU and non-EU countries doesn't always exist which would complicate things further ● The data retention period is considered excessive by business (especially for small businesses as they rely heavily on big data companies), but not by all MS; ● Foreign Exchange rules: last day of the quarter conversion can cause significant losses; ● The new rules have increased distortion between EU companies and third countries, and small businesses against big ones; ● Suppliers chose to supply through market places instead of directly to end customer (article 9a); ● Domestic VAT recovery in some MS – less output tax to offset against input tax. ● The possibility of being open to penalties and interest from all over EU can rack up numbers pretty quickly

Suggestions on what could be improved

	Viewpoints
General	<ul style="list-style-type: none"> ● Maybe try to harmonize invoicing rules amongst MS or use e-payment records instead of invoices or don't require invoice for B2C transactions ● Clarify the complex areas such as audits and the interpretation of article 9a, and simplify terminology/technical language ● Find a way to deal with inconsistencies between national guidelines and explanatory notes ● Pursue non-compliant companies to avoid a new type of distortion ● Clarify tax base (for gambling for example), the definition of electronic service activities and how to deal with the telecom carriers (who pays the tax) ● Shorten the record retention (ten years is too much) ● Enable businesses who are below the registration threshold to rely only on one piece of evidence ● Use a flexible approach to evaluating evidence obtained ● In practice the pieces of evidence that are the most useful for businesses are: <ul style="list-style-type: none"> ○ Billing address ○ Delivery address ○ Credit card / payment data ○ Language or country self-certification ○ IP address used by some participants, but not always considered reliable geolocation tool due to mobile e-Commerce and ease of manipulation ○ Phone number for fixed lines ○ Depends on type of business

MOSS

General Opinion

Both Member States and businesses had an overall positive opinion on the MOSS. The most recurring comments when asked about the effectiveness and challenges were the following:

	Viewpoints
MS	<ul style="list-style-type: none"> ● Commission timeline for building the system led to problems for MS to finalize it and consequently some were behind schedule. ● High cost of implementation and maintenance, difficult to get budget and buy in for

	<p>potentially smaller taxpayer population but positive budget impact for most administrations</p> <ul style="list-style-type: none"> • MSC have problems with the format they receive the information of VAT rates (written by companies as 0,25 %, 25 % etc.) which leads to extra administrative work • There are problems with wrong VATs being applied • The payment process needs improvement as there are problems of bank fees for the payment (for taxpayer) • There is a problem with the exclusion mechanism that should be reviewed • Consider fixed establishment independently: difficult to understand for companies • The smaller operators are unaware of this new process: need to go to the traders association, accountants, advisers , small book keeping • MS were generally satisfied with the Commission's support and communication although they believe that clearer instructions could be of use as the decision making process is missing
Businesses	<ul style="list-style-type: none"> • Difficulties in resourcing IT development and delivering robust solutions in required timeframe; • Businesses would like to have a testing environment in every MS as there have been some problems with the testing of the IT-system, especially the testing tool so more testing is needed; • Rules still left a lot of open questions which MS were not able to answer; • Businesses need more time to adapt their IT systems and more information needed on technical specifications to business in order for them to modify their systems.

Pros and Cons

	Viewpoints
Advantages	<ul style="list-style-type: none"> • The MOSS makes it simpler and enables more compliance to the place of supply rules and businesses believe that without it, it would be impossible to comply at all; • The fact of having one registration, one return, one payment and all in your own language is positive.
Disadvantages	<ul style="list-style-type: none"> • It represents long ongoing costs • Credit notes and bad debt relief reported in the original return instead of when the credit note is issued • Leads to a loss of single point of contact and administration, and implies a need for knowledge on local compliance in the 28 states • Retroactive registration is not possible • No input VAT deduction is possible • No correction of returns after three years through MSI. • In some countries multiple tax rates exist for the same products • It is not possible claim a refund through the system • The threshold problems are not dealt with enough • Audits with administrative cooperation between Member States take a long time and not always result in the necessary replies or information. • Companies are excluded from using the MOSS if they are already registered for VAT in a country • There is uncertainty on how non-EU traders with VAT registration in EU will be affected • The VAT Grouping is unclear • MOSS does not contemplate input VAT, so it still needs to be recovered in parallel • It can lead to trust issues between MS, such as MSCs having concerns about the quality of audits made by MSI. • If there is missing registration information in some MS (bank account, addresses) it can lead to problems for other MS

Suggestions on what could be improved

	Viewpoints
General	<ul style="list-style-type: none"> • There is a need for clearer rules when VAT return is submitted • Keeping suppliers exempt while registering them for MOSS • Need for more flexibility for the MOSS registration/deregistration: timeline too strict when starting to supply services, should be able to register retroactively. Perhaps with penalty but not needing to register in all MSC. • There should be legislation for the audits and a pilot audit • Maybe create a special MOSS audit team formed by MS • Businesses believe that audits should be done by a single MS (preferably the MSI) and they should audit the process instead of the transactions • If MOSS is extended in the future, IT systems should be able to have the MOSS built in (for both MS and companies) and business would like their servers to be connected with the tax authority's server • Businesses think that uploading of files should be available for a wider range of formats • There should be a warning before VAT return deadline • Have the balance statement sent/available to companies • Non EU traders with registration to be allowed in the MOSS • Consider deductions in MOSS • Credit notes should be recorded in the VAT return when issued • Protection of customer data – tax legislation is not in conformity with civil law (data protection rules). • Have the possibility for exempted taxpayers registered in the MOSS to request VAT refund (problem of VAT number) • Traders should be allowed the option to register for MOSS even if they are already established in a MS • Need to introduce minimal tolerance amount for minor discrepancies between assessable amounts notified to MSCs by MSI • Immaterial underpayments (say under €1) • Have the change of Registration details forwarded to MSCs • Publicize the rules and VAT changes at earliest possible opportunity and give VAT rate information in readily usable format

Future options

The future options presented to the attendees were evaluated as follows:

Option	Viewpoints
1	<p>Advantages:</p> <ul style="list-style-type: none"> • No additional costs as process unchanged <p>Disadvantages:</p> <ul style="list-style-type: none"> • Not adequate. Problems with Distance-Selling, thresholds... • Threshold for EU distance selling almost impossible to monitor and enforce at present. Some traders register in other MS in advance, as the threshold is impractical. • No level playing field in goods supplies <i>i.e.</i> non-EU suppliers do not apply VAT. • Under-declaration of small consignment values – too resource intensive to control. No risk to vendor. • If minimum Registration Threshold introduced, it would also be difficult to monitor/enforce by MS. • Obligation to Register may deter traders from dealing with smaller markets/countries • Problems on inherent distance sales rules as certain businesses sidestep their obligations

Option	Viewpoints
	<ul style="list-style-type: none"> • Import exemption threshold creating distortion • Different rates for goods in various member states in relation to distance sales <p>Other observations:</p>
2	<p>Advantages:</p> <ul style="list-style-type: none"> • Increase of revenue for tax administrations • Removal of Distance Selling Threshold (level playing field) <p>Disadvantages:</p> <ul style="list-style-type: none"> • Administrative burden and cost of compliance (cost of managing mechanism and reporting cost) will increase • Small companies will have higher costs and could see their business affected • Cross-border selling too burdensome without threshold <p>Other observations:</p> <ul style="list-style-type: none"> • The MS would prefer harmonization or, in some cases, removal of thresholds • Difficult to manage volumes/low value consignment reliefs • Option is not practical
3	<p>Advantages:</p> <ul style="list-style-type: none"> • One rule, easy communication, avoids confusion (versus difficult management if every country has their own) • Thresholds are good for small businesses (and less work for administrations) • Cross-border selling too burdensome without threshold <p>Disadvantages:</p> <ul style="list-style-type: none"> • How would common exemption threshold be calculated? • How could value of cross-border sales be monitored by home country of trader? • How can tax administration in MSC determine that the threshold is exceeded? • Increase cost from monitoring the threshold • Loss of VAT revenues in some countries • Does not deal with non-EU suppliers which leads to distortion of competition • Trader may be exempt in home country but input entitlements from sales to other MS. • Compliance/Audit extremely complex as effectively a dual VAT system • Business will not do business in other MS anymore • How to audit/control if a company is always beneath a threshold <p>Other observations:</p> <ul style="list-style-type: none"> • Mixed feelings from MS on thresholds (mainly on rates): <ul style="list-style-type: none"> ○ Most MS not in favour of threshold if also SEM ○ Some MS in favour of low threshold ○ Others in favour of something similar to the distance selling ○ Create a threshold for all activities inside the same country • Have MSI rules apply under the level (rather than exemption) and over threshold MSC rules apply • Business in favour, MS against
4	<p>Advantages:</p> <ul style="list-style-type: none"> • Expands MOSS to all EU services • Expands MOSS to Non-EU Goods • SEM introduces stronger reporting mechanism, transparency & audit trail for compliance

Option	Viewpoints
	<ul style="list-style-type: none"> • Business only has to deal with one set of rules, easier to comply <p>Disadvantages:</p> <p>Other observations:</p> <ul style="list-style-type: none"> • Alternative: Have a single mechanism without having thresholds • Need more time to evaluate • MS not in favour, businesses yes
5	<p>Advantages:</p> <ul style="list-style-type: none"> • Easier for business to deal with MSI and to apply rules of MSI <p>Disadvantages:</p> <ul style="list-style-type: none"> • Conflicts between procedural law and application of directive could arise for some sectors e.g. gaming industry • Constitutional problems for one member state to accept that audits on its tax are conducted by MSI • MSC point of view: if only MSI rule is applicable danger to register in the “best” MSI • Is the MSI interested in collecting the revenue of the MSC? • Trader may be exempt in home country but input entitlements from sales to other MS. • Compliance/Audit extremely complex as effectively a dual VAT system • Does responsibility for payment of VAT on non-EU Goods move to Vendor? Impractical? <p>Other observations:</p> <ul style="list-style-type: none"> • We have to wait and learn lessons from MOSS • Some MS are not in favour of home country control • Home country legislation and controls are supported by businesses • More cooperation among MS is needed • More harmonization needed as if harmonised rules exist then home country legislation is less important • Chosen as best option as number 6 is unfeasible
6	<p>Advantages:</p> <ul style="list-style-type: none"> • Some simplification and clarification of rules and administration for Businesses • Continue relationships with MSI • Success of MOSS depends on the harmonisation of EU rules but could be difficult to achieve and may also be unnecessary <p>Disadvantages:</p> <ul style="list-style-type: none"> • Application of Rules of MS 1 becomes responsibility of MS 2. Politically untenable. • Interpretation still varies amongst MS <p>Other observations:</p> <ul style="list-style-type: none"> • e-commerce is part of the economy so there is no need for specific rules for this kind of activity
Other	<ul style="list-style-type: none"> • Could SEM be extended to higher value imports (B2C)? • Could SEM be extended to B2B as well? • Business would like to see input tax included. Risk for Tax administrations • Harmonised VAT rates for all cross border supplies (unlikely to be agreed!) • VAT Rate certainty (TIC/automated retrieval) • Improved/expanded web portal • Allow 1 piece of information (Payment providers – aggregate level?)

Option	Viewpoints
	<ul style="list-style-type: none"> • Commission newsflashes? Auto-sign up and VAT rate alerts? • No VAT invoicing for B2C supplies • Allow corrections to be made in current returns • All 3rd countries businesses able to use MOSS • Business/administration cooperation in development of policy and law in future. • Why not include all Services in all Options – not just e-services? • Place of Supply always at point of consumption • removal of all thresholds but need of a 'BOSS' = Big One Stop shop (another name for Single electronic mechanism) apply to goods and services (always optional) with some simplification and some harmonization: <ul style="list-style-type: none"> ○ Simplify the procedure: one piece of evidence to determine the place of supply (business claim), should allow easy registration/deregistration ○ Harmonize the cross border threshold: zero or very very low - same threshold for goods and services ○ Harmonization on invoicing: no invoice for B2C commerce or standard electronic statement (transaction details) ○ Audit: responsibility of each MS: idea of a specialized audit team between all MS ○ Customs rules have to align with VAT rules

Annex 6: Technical note on article 9a VAT Implementing Regulation 282/2011

This note forms part of Lot 3 of the Study on VAT Aspects of cross-border e-Commerce - Options for modernisation and provides an assessment of article 9a of the VAT Implementing Regulation 282/2011 from both a Member State perspective and a business perspective. Additionally, it formulates short-term and long-term recommendations.

1. Introduction and need for a separate technical note

The technical note presents an assessment of article 9a of the VAT Implementing Regulation 282/2011 (hereafter: “article 9a”). In particular, the assessment includes an overview of the Member States’ and businesses’ experiences with the implementation and application of this article. This article clarifies the treatment of telecommunications and electronic services when supplied through an intermediary, *i.e.* a telecommunications network, an interface or a portal (such as app stores).

Such intermediaries are becoming more and more important in today’s social and economic life as “*they enable customers to find online information and businesses to exploit the advantages of e-commerce*”.¹⁹⁰ As such, an appropriate legal framework, amongst other for VAT purposes, is crucial.

In line with this, the technical note at hand assesses the effectiveness of the measure foreseen in article 9a. This is necessary in order to evaluate the current legal framework and to potentially feed into a legislative proposal for VAT purposes within the framework of the Digital Single Market Strategy for Europe, which “*pursues a connected digital single market, thereby creating hundreds of thousands of new jobs (...) and a vibrant knowledge-based society.*”

This note starts with a brief section on the used methodology. It then provides a description of the relevant legal framework, followed by the description of the experiences of businesses and tax authorities with the application of this article. Finally, it presents both short- and long-term recommendations for the European and national legislator.

2. Methodology

To obtain the necessary data and information from the tax authorities for Lot 3 of the study, we designed an appropriate set of quantitative and qualitative questions based on the analytical framework, which was used in a questionnaire.

The questionnaire was used as a basis for the interviews with selected eight fieldwork tax authorities and sent for written input to the remaining 20 tax authorities in non-fieldwork Member States.

To gather the necessary insight on businesses’ experiences, we conducted 48 interviews with businesses in the 8 MSs (the 4 MSIs and 4 MSCs) in the scope of the study and 3 interviews in 2 other Member States, *i.e.* Sweden and Belgium. These 48 interviews in fact encompass at least 97 different legal persons or group companies, of whom 40 are registered for the Union scheme and 7 are registered for the non-Union scheme. 5 businesses were already registered for the VoES before 2015. They also encompass interviews with 6 associations and 1 tax advisory firm.

¹⁹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, A Digital Single Market Strategy for Europe, COM (2015) 192 final, Brussels, 6 May 2015, 11-12.

Additionally, the Deloitte study team contacted the Deloitte member firms in all 28 Member States to obtain further information as regards their client experiences concerning article 9a.

The Deloitte study team also performed a literature review and has quoted relevant literature below where appropriate.

3. Legal framework of article 9a Implementing Regulation 282/2011

a. Certain intermediaries are presumed to be acting as undisclosed agents

Intermediaries and the need for clarification of their specific role

Private individuals often purchase services not directly from the service supplier but through an intermediary. This intermediary can be a platform or a telecommunications network. Purchases made through a platform include for example purchases of apps from app stores (e.g. Apple App Store and Google Play Store). As regards purchases made through a telecommunications network, this could be accessing and downloading music or games. These services are then charged on your mobile phone bill. The role of the mobile phone business will need to be defined since it will require a fee for its intervention as a payment facilitator.¹⁹¹ In such cases, it is crucial to determine who is liable to pay the VAT for the supply, either the content provider or the mobile phone business.

These are rather simple examples. However, in reality, the number of parties involved can vary and “digital supply chains” are often very long and can even stretch across borders.¹⁹² As a result, it can be difficult to determine the VAT liability for such supplies, causing legal uncertainty for the parties involved.

How the presumption that intermediaries act as undisclosed agents is part of the solution

The European legislator responded to these concerns as article 9a inserts a presumption to determine who in the chain is to be regarded as the supplier of the telecommunication services and electronically supplied services, and, consequently, is liable to pay the VAT.

The presumption applies when these services are supplied through an intermediary. This can be for example a telecommunications network, or an interface or a portal such as a marketplace for applications.

As a result of the application of article 9a, the intermediary is deemed to have purchased and onward supplied those services himself, and, consequently has to account for VAT in the Member State of the customer. Article 9a introduces the rebuttable presumption that the intermediary who takes part in the supply, is acting in his own name.

This entails that the transactions of a supplier using such an intermediary to supply TBE-services, are considered as B2B transactions, and no longer as B2C transactions. The intermediary will be the one supplying (cross-border) B2C services to the final customers.

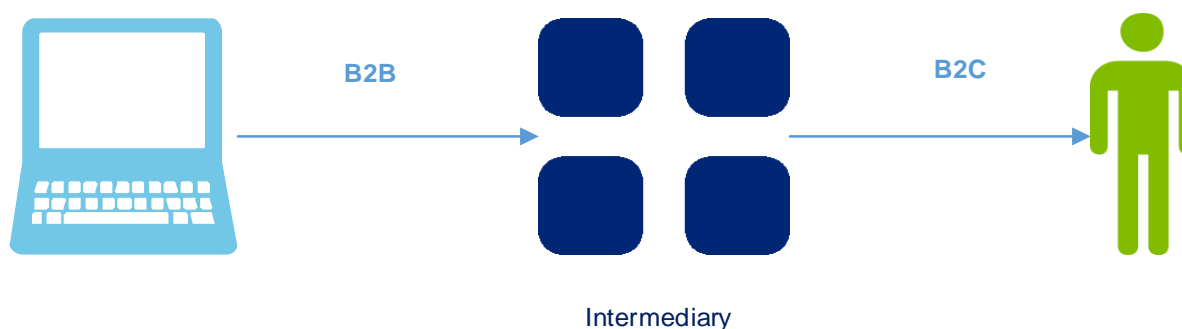
¹⁹¹ DIRECTORATE GENERAL FOR INTERNAL POLICIES (POLICY DEPARTMENT A – ECONOMIC AND SCIENTIFIC POLICY), Simplifying and Modernising VAT in the Digital Single Market for e-Commerce, Brussels, European Union, 2012, 39.

¹⁹² Explanatory notes, p.22

By way of this provision, the burden to identify the customer's location and to apply potentially 28 sets of different VAT rules (depending on in how many different countries the customers are located), will thus be shifted to the intermediary. This makes sense since the intermediary has a closer contact with the client and could therefore potentially more easily determine the capacity and location of the customer and deal with the VAT consequences.

As a result, this provision has the potential to significantly simplify the accounting and reporting requirements for the supplier using an intermediary in respect of those supplies. Consequently, it is expected that this measure will greatly enhance the compliance of smaller suppliers of such services.

The following diagram shows the VAT situation in case the presumption of article 9a applies.



This presumption does not cover broadcasting services. This results from the narrow definition of 'broadcasting services' in article 6b of the Implementing Regulation 282/2011, which requires that the supplier has 'editorial responsibility' to be covered by the notion 'broadcasting services'. If the presumption of article 9a would be applicable to broadcasting services, the intermediary would become the service provider in any case, as the conditions for rebutting the presumption could never be fulfilled.¹⁹³

The explanatory notes provide additional guidance and clarification to assess whether the intermediary is deemed to be taking part in the supply. In principle, both the legal and economic reality should be examined, but in case of conflicts, the latter prevails.¹⁹⁴

Additionally, the explanatory notes provide a non-exhaustive list of indicators that a taxable person is taking part in a supply, such as for example the fact that the taxable person is responsible for the actual delivery or is able to control or exert influence over the pricing.¹⁹⁵

b. Rebuttal of this presumption

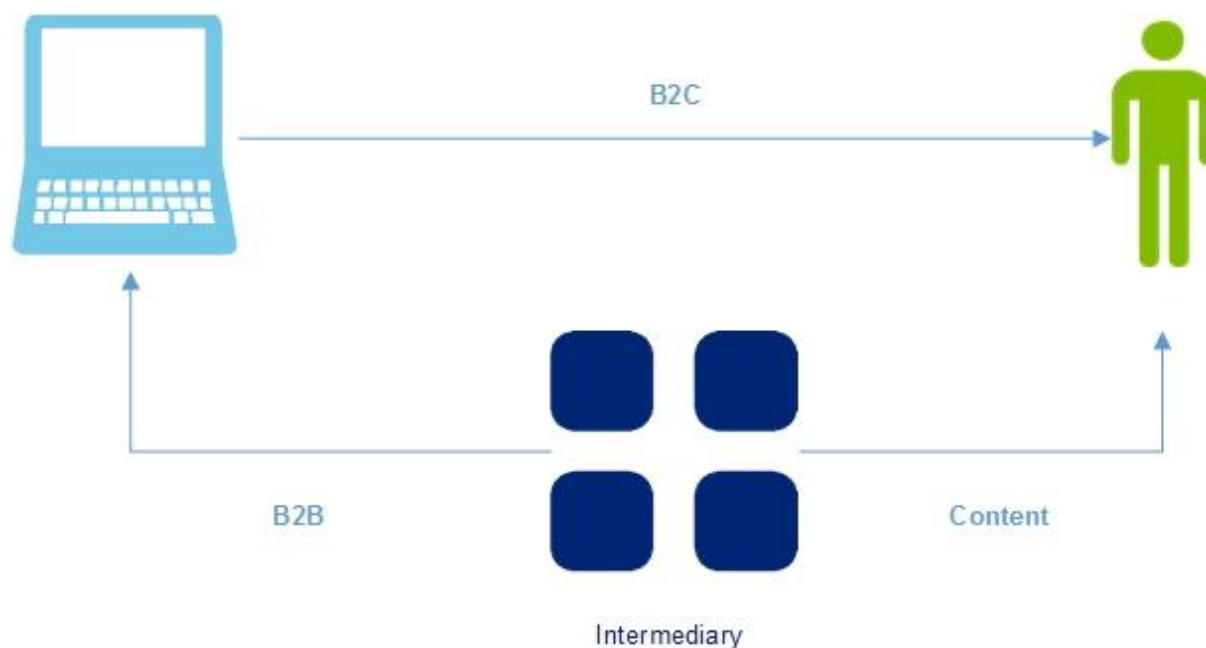
If certain conditions are fulfilled, the presumption of article 9a can be rebutted. The supplier of the electronic services or telecommunication services, or another intermediary higher up the chain, will then again be considered as supplying the service himself to the final customer. The intermediary is then usually supplying its intermediation services to the service provider.

¹⁹³ EUROPEAN COMMISSION (DG TAXUD), Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, 3 April 2014, 43-44.

¹⁹⁴ EUROPEAN COMMISSION (DG TAXUD), Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, 3 April 2014, 27-28.

¹⁹⁵ EUROPEAN COMMISSION (DG TAXUD), Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, 3 April 2014, 28.

The following diagram shows the legal situation in case the presumption of article 9a is rebutted.



In order to rebut the presumption, the following conditions should be simultaneously met.

In the first place, the provider of the service should be explicitly indicated as the supplier by the intermediary. This means that:

- a) The invoice issued or made available by each taxable person taking part in the supply of the electronically supplied services must identify such services and the supplier thereof; *and*
- b) The bill or receipt issued or made available to the customer must identify the electronically supplied services and the supplier thereof; *and*
- c) The taxable person taking part in the supply does not authorise the charge to the customer; *and*
- d) The taxable person taking part in the supply does not authorise delivery; *and*
- e) The taxable person taking part in the supply does not set the general terms and conditions of the supply.

Second, this should be reflected in the contractual arrangements between the intermediary and the electronic service provider. The explanatory notes provide further guidance on the interpretation of these conditions.

4. Experience of the different taxable persons involved in these transactions

Interfaces or portals and businesses supplying through such intermediaries need to work together to comply with the VAT rules. Obviously, since they are on opposite ends, they are faced with different issues. Telecommunications companies are also often involved in the “digital supply chain” because of their direct and easy contact with a large network of clients. They seem to experience different issues than other intermediaries.

Therefore, we will distinguish between their respective inputs. Additionally, we will provide an assessment from a Member State perspective.

Businesses supplying their services through intermediaries

Merits of article 9a

This presumption makes sense as electronic service providers or aggregators relying on intermediaries to market their products, often do not have any contact with final customers, making it difficult for them to correctly assess and collect VAT.¹⁹⁶

Some businesses indicated they believe article 9a facilitates compliance. Indeed, as explained, a business supplying through a third party falling inside the scope of article 9a, will only be confronted with that party and not all the private customers buying the product through the platform. As a result, the business does not need to identify the location of each of these customers and comply with the different sets of VAT legislation in all these Member States. Instead, it is up to the intermediary falling under article 9a to comply with the place of supply rules in order to among others localize the buyers of the service.

Indeed, compliance costs are expected to be reduced because of article 9a. Intermediaries caught by article 9a, especially the bigger ones, are often much better equipped to comply with the relevant place of supply rules. Unfortunately, this also comes at a cost for the suppliers using the platforms, which affects their margin¹⁹⁷. On the other hand, the platforms offer an opportunity for the suppliers to market their services to a very broad public.

Points of improvement

The explanatory notes¹⁹⁸ provide more background, further guidance and many examples to make it easier for Member States, businesses and other stakeholders to understand article 9a.

Despite this effort, businesses indicated that they still struggle with this provision, due to the **different interpretations by the Member States**. The explanatory notes are not legally binding for the Member States, although some Member States have integrated them in their administrative guidance. This is even more cumbersome for small businesses, which often have less means to finance an external advisor.

Therefore, as indicated by businesses in our interviews and at the Fiscalis seminar in Dublin and by academia, further clarification, and a common interpretation and endorsement by all Member States is needed on article 9a of the VAT Implementing Regulation¹⁹⁹.

¹⁹⁶ M. LAMENSCH, *European Value-added-tax in the digital era: a critical analysis and proposals for reform*, IBFD Doctoral series, December 2015, p. 195.

¹⁹⁷ In this regard, the Commission's communication on a Digital Single Market Strategy for Europe states that: *"Although their impact depends on the types of platform concerned and their market power, some platforms can control access to online markets and can exercise significant influence over how various players in the market are remunerated. This has led to a number of concerns over the growing market power of some platforms. These include a lack of transparency as to how they use the information they acquire, their strong bargaining power compared to that of their clients, which may be reflected in their terms and conditions (particularly for SMEs), promotion of their own services to the disadvantage of competitors, and non-transparent pricing policies, or restrictions on pricing and sale conditions."*

¹⁹⁸ EUROPEAN COMMISSION (DG TAXUD), Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, 3 April 2014.

¹⁹⁹ LAMENSCH stated in her PhD thesis that *"the explanatory notes offer a rather disputable interpretation"*. M. LAMENSCH, *European Value-added-tax in the digital era: a critical analysis and proposals for reform*, p. 195 (not published).

Businesses supplying electronic services through interfaces or platforms indicated that these intermediaries engaged very little with them because of the application of article 9a since 1 January 2015.

The more “classical” intermediaries²⁰⁰ did not engage in many discussions with the suppliers of electronic services to discuss the possibility for the intermediary to rebut the presumption. The terms and conditions of these intermediaries are often not or only to a limited extent negotiable for suppliers using the intermediaries.

Furthermore, businesses indicated that when they are dealing with smaller online platform owners, the contracts are usually not very clear, or not in line with reality,²⁰¹ resulting in doubts on who is actually supplying (and invoicing, if this is an obligation in the relevant Member State) the service to the end customer. In such case, there is often a need to adjust the contract in order to reflect what is being supplied and who is supplying the services. Such confusion may lead to burdensome discussions with tax authorities and retrospective regularizations of transactions.

Another shortcoming mentioned, is that businesses (including aggregators) fear the **possibility of being held liable by tax authorities in case the intermediary does not pay** the VAT due, in spite of the liability of this intermediary.

Such businesses fear that the tax administration might seek payment of VAT from businesses higher up the chain, in case the platform would fail to comply with its obligations. The relevant legislation does not provide any guidance on how a business or aggregator using such an intermediary can prove that the intermediary has complied with its obligations. When the intermediary is not established in the European Union, businesses fear that the risk that they will be held liable for the payment of VAT is even higher.

Additionally, there is a **risk of non-taxation or double taxation**. Non-taxation occurs where neither the content owner, nor the platform owner believe to be liable for VAT since (i) the content owner considers the owner of the online platform is liable to pay the VAT and (ii) the platform owner is convinced the presumption of article 9a was rebutted, and, therefore, the content owner is liable for VAT. Therefore, VAT is charged to the customer, but is not paid to the Member States. This could result in legal uncertainty and penalties being imposed by the tax authorities. However, a different understanding of the service provided might also lead to double taxation, in case both parties believe they are liable to pay the VAT (see also the problem as regards carrier billing under “Telecommunications companies caught by article 9a”).²⁰²

Businesses also flagged that such a set-up sometimes creates difficulties in recording the transactions since sales to a client would be done for e.g. EUR 10, but a revenue should only be recorded of EUR 7 since a commission of EUR 3 is granted to the platform. The requirements to

²⁰⁰ What we understand as “classical intermediaries” are intermediaries whose core business it is to bring together suppliers and customers on the internet. We distinguish them from non-classical intermediaries whose core businesses is different (e.g. they are a social network) but whose business additionally evolved into an activity similar to that of a classical intermediary.

²⁰¹ For example, there were cases where the contract stated that the platform owner (intermediary) was only authorising the usage of its platform in order for the content owner to sell the content, but in reality the platform owner controlled the delivery of the content, the charges made to the customer and set out the general conditions of the supply.

²⁰² See in this regard H.M. GRAMBECK, “B2C Supplies of Electronic Services from 1 January 2015 from a German Perspective”, *International VAT Monitor* 2013, 220.

record transactions in bookkeeping depend very much on local GAAP rules and potentially mismatch with the VAT treatment.

Finally, businesses indicated it is very hard to rebut the presumption of article 9a, especially for small or midsized businesses. Additionally, the set-up of the relationship between an intermediary and another business often depends on the business set-up of both companies. Therefore, they would prefer the abolishment of the presumption of article 9a and, as such, let companies decide contractually on the legal set-up of their relationship, including the responsibilities and obligations of both parties.

Intermediaries caught by article 9a (excluding telecommunications companies)

In case the presumption of article 9a applies, the intermediary will be the one supplying B2C services to the final customers, whilst the supplier will only be confronted with the intermediary. The supplier will invoice the intermediary and this relationship qualifies as a B2B supply. Instead of a multitude of clients, the supplier only has one single client, which is the platform/intermediary.

By way of this provision, the burden to manage the customers lies with the intermediary. It is left up to the intermediary to identify the customer's location and to apply potentially 28 sets of different VAT rules (depending on in how many different countries the customers are located).

The intermediary is usually a large business, which is well equipped to handle a large number of clients, having usually set up powerful automated processes. Even though the compliance cost for these intermediaries is high, it can be assumed that it is more efficient to place the compliance burden on these intermediaries.

For the more "classical" platforms, bringing clients and suppliers together is the service, which a platform renders, and what constitutes their core business. In other words, it is very well placed to comply with VAT obligations for the account of its suppliers.

Overall, article 9a seemed for a number of such platforms to confirm an already existing practice prior to 2015. These platforms often already acted as undisclosed agents in practice, even though the applying terms and conditions were not always clear on this.

For less "classical" platforms, which were not initially set up as a platform (e.g. were meant just for social networking), the presumption challenged their business models as they are not necessarily set up to act as a platform and thus comply with the VAT rules.

Intermediaries also experience difficulties with the VAT **treatment of vouchers (and especially multi-purpose vouchers, or "MPV's")** sold through these platforms. The absence of a clear European legal framework and consequential national differences in VAT treatment of vouchers makes these transactions complex in a cross-border situation.

Some countries adhere to the Commission proposal, which entails a difference in treatment between a Single Purpose Voucher (taxed at the moment of issuance) and an MPV (taxed at the moment of redemption)²⁰³. The sale of MPVs in such a context breaks the link between the sale of the MPV and

²⁰³ COM (2012)206 Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax, as regards the treatment of vouchers, [http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/legislation_proposed/com\(2012\)206_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/legislation_proposed/com(2012)206_en.pdf), consulted on 11 December 2015.

the actual supply of services, since the business with whom the MPV can be redeemed will often already receive the money the client used to purchase the MPV, whereas the MPV has not been used yet. This adds complexity to the reporting of these supplies and often platforms cannot handle accounting for VAT at the moment of redemption of the MPV.

Finally, the interviewed intermediaries indicated that the **digital supply chains of such electronically supplied services are often** long and, consequently, it is considered as burdensome to analyse the full extent of the digital supply chain in order to identify who would be the actual provider of the service in order to engage in discussions about the rebuttal of the presumption.

When considering any reform to article 9a in the context of the new legislative proposal, there should be consultation with intermediaries and marketplaces, as it will be important to also consider the fact that platforms often operate between two private persons. It is often unclear whether to consider these private persons as taxable persons and whether they need to register for VAT purposes. A platform can potentially play a role in assuming the tax obligations for the account of the private sellers, but this would entail a very big impact on the set-up of these intermediaries.

Telecommunications companies caught by article 9a

Telecommunications companies often allow customers to buy electronically supplied services by adding the price of the service to their mobile bill (cf. also example above). The question then arises in what capacity the telecommunications companies are intervening in the supply.

Telecommunications companies often try to rebut the presumption of article 9a. They indicated though that the application of article 9a to their specific situation and, more importantly, its rebutting, is causing major problems.

In spite of the clear legal provisions and explanatory notes, some telecommunication companies have stated that certain tax authorities **do not accept the rebuttal of the presumption** (or more precisely the guidance given in the explanatory notes on how to rebut the presumption). Germany for example, applies a specific rule to services enjoyed through a telephone connection, which makes the telephone operator liable for the payment of VAT. The interaction of this provision with the provisions of article 9a makes the practical implementation complicated²⁰⁴.

Telecommunications companies are therefore confronted with two **different approaches as regards to carrier billing**.²⁰⁵ In some countries, telecommunications companies are considered like disclosed agents, whereas other countries consider that they fall in the scope of article 9a and thus need to be treated as undisclosed agents.

In the first case, the telecommunications company does not carry liability for VAT purposes, but the service supplier does. The telecommunications company is merely receiving the consideration from the client, in order to remit it to the service supplier. In the second case, the telecommunications company should pay the VAT due.

²⁰⁴ H.M. GRAMBECK, "B2C Supplies of Electronic Services from 1 January 2015 from a German Perspective", *International VAT Monitor* 2013, 215-221.

²⁰⁵ See in this regard H.M. GRAMBECK, "B2C Supplies of Electronic Services from 1 January 2015 from a German Perspective", *International VAT Monitor* 2013, 215-221.

The co-existence of these two approaches makes it very complex and entails a risk of double taxation, as there is a chance that both the content provider and the telecom operator will pay VAT on the electronic service provided.

The current situation is therefore potentially very burdensome and causes legal uncertainty since businesses, which cannot or are not allowed to rebut the presumption need to start collecting information on the final customers for which they are not equipped to do so.

They may be held liable for VAT, but are unable to deal with the requests of the tax authorities due to the lack of information, and have not set up their internal systems to handle these requests. When being subject to an audit a few years down the line, retrieving historical data on the transactions will prove very burdensome.

Member State perspective

During the interviews, through the questionnaires and during the Fiscalis seminar, some tax authorities indicated awareness of the fact that businesses experience difficulties in applying article 9a. More specifically, they indicated to have received (often multiple) requests of information concerning the application of article 9a and the effect of the application of the presumption on a supply chain for different business models.

In this regard, although the explanatory notes provide extensive guidance in the application of article 9a, tax authorities pointed out that businesses communicated to them that they experience difficulties in understanding this guidance.

Regarding the concerns of the tax authorities as regards to the article 9a, the main one is that although they acknowledge the significant simplification effect of the article 9a presumption, it makes it harder to collect information on (or verify) businesses trading cross-border. It is especially hard for a tax authority of the Member State of Consumption to know whether a business selling e-services to customers in their country, but is not MOSS registered, is non-compliant or trades through a platform, which may cause unnecessary information requests, increasing burdens for both sides.

Most likely, when tax authorities will have more experience with audits of the platforms or suppliers trading through platforms, more issues will arise.

5. Conclusions and recommendations

The objective of article 9a to shift the liability for VAT to the intermediary appears to be desirable as it has the potential to significantly decrease compliance costs for the content supplier as the latter will only be confronted with the intermediary (as long as he does not supply electronic services directly to customers). Indeed, none of the respondents indicated that the presumption of article 9a is undesirable. On the contrary, some of them indicated that article 9a has the potential to increase compliance by small businesses.

Additionally, platforms are often better equipped to identify the customer's location as it receives the data from the customer. As such, it does not seem to place a disproportionate burden on "classical" platforms since it reflects their business models.

Nevertheless, for article 9a to reap its full potential, some elements could be improved. Therefore, some short- and long-term recommendations are presented below.

- Clear and binding legal framework

It is clear that in practise there exists legal uncertainty as regards the application of this article, which entails a risk of double taxation or non-taxation. The situation of legal uncertainty is aggravated by the fact that not all Member States endorse and apply the explanatory notes. As an example, some Member States do not accept the rebuttal of the presumption.

Therefore, and for article 9a Implementing Regulation to reach its full effectiveness, there is a need for further clarification, and a common and binding interpretation by Member States on article 9a of the VAT Implementing Regulation.

We recommend to discuss the national application of the rules for intermediaries (Article 9a of the Implementing Regulation) to reduce the mismatches and clarify or expand the explanatory notes if necessary, to provide further alignment in national rules and more clarity and certainty for businesses.

➤ Simple, easy to read guidelines at both EU and national level

The existing explanatory notes have been indicated to be too complex. Indeed, comments were made with respect to its technical nature, making it difficult to read for non-VAT experts. Therefore, we recommend publishing a simplified, easier to read guide, enabling businesses, particularly those who do not have in-depth VAT expertise, to understand the changes better.

Businesses have asked also clearer guidance at the national level on the rules for intermediaries (e.g. requirements for rebuttal) and trading through intermediaries (e.g. calculation of the taxable turnover), linked to the domestic legislation, clarifying the specifics of the national application, which should reflect the EU guidance.

Annex 7: Questionnaire for all 28 national tax administrations

DG TAXUD

VAT aspects of cross-border e-Commerce – Options for modernisation

Evaluation of the implementation of the 2015 place of supply rules and the Mini One Stop Shop, and identification of best practices and room for possible improvements

1. Introduction

Since 2015, cross-border TBE services are always subject to VAT in the MS of residence of the customer. It is the latest phase of the VAT package adopted on 2008 and which entered into force as of 2010 in different phases.

As concerning electronic services, this rule was applied in the EU since 2003 on electronic services when non-EU suppliers supply these.

This change entails that VAT law of the jurisdiction of consumption will apply on suppliers not established in this jurisdiction. The most significant and visible change is that the VAT accrues to this jurisdiction as well.

The modification of the place of supply rules triggered an increased complexity for businesses as these businesses needed to account for VAT in the EU Member States of Consumption. However, the consequential VAT administrative burden of having to potentially file 28 returns was reduced by the introduction of the Mini One Stop Shop, allowing suppliers of cross-border B2C TBE services to account for the VAT due on those supplies via a web portal in the Member State in which they are identified.

In this regard, the MOSS is a crucial instrument in facilitating access to the single market, in particular for small and medium-sized enterprises. The 2011 Commission Communication envisages a broadening of the MOSS over time if the MOSS proves to be an effective mechanism for reducing the administrative burden for businesses. A consultation in this matter had already been executed in 2004²⁰⁶ and this intended action was reiterated as part of the Digital Single Market strategy²⁰⁷. Therefore, a thorough evaluation of this scheme is paramount in further building the business case for a possible broadened One Stop Shop.

²⁰⁶ http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/rep_one_stop_en.pdf, consultation on 28 May 2015.

²⁰⁷ Commission Communication of 6 May 2015 on a Digital Single Market Strategy for Europe, COM(2015)192 final, http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf, consulted on 1 June 2015.

As part of the study on e-Commerce in Europe, Deloitte was invited by the European Commission to assess the MOSS over six quarters starting from 1 January 2015, also comparing it to the 2003 VoES scheme in respect of the non-EU suppliers.

These questionnaires are part of the evaluation exercise and contribute to the evaluation as well as providing relevant inputs to the policy-making process.

The output of the questionnaires should result in an analysis of the MOSS implementation in 4 Member States of Identification and 4 Member States of Consumption, including a qualitative analysis of auditing and administrative cooperation, as well as an analysis of the implementation of the audit guidelines. Furthermore, the answer to this questionnaire should provide the necessary data on all positive and negative effects experience by the Member States in the operation of the MOSS, to prepare an assessment of the impact on Member States of the new place of supply rules.

2. Methodological note

These questionnaires, or interviews where applicable, will be a primary source of data as proposed in the data collection methodology of this evaluation, with the objective to complement data gathered through desk research. The survey will allow gathering qualitative and quantitative data for the evaluation of the implementation of the MOSS and the impact on Member States of the new place of supply rules.

3. Contact details of the person(s) completing the questionnaire

<i>Type of information</i>	<i>Details</i>
Country	
Name of organisation	
Name of respondent	
Title / role in the organisation	
Email address	
Telephone number	
Other respondents present during the interview	

4. Questions with regard to the new place of supply rules

This part of the interview should result in the necessary output in order to prepare an assessment of the impact on Member States of the new Place of Supply rules.

<u>Question</u>		<u>Answer</u>
<i>Legislative changes</i>		
1.	When was the legal framework for the changed place of supply rules and MOSS adopted?	
2.	Was this accompanied by the issuance of administrative guidance? Please elaborate?	
3.	Did you link it with the Commission's guidance?	
4.	Were you satisfied with the support offered by the European Commission in this regard?	

<i>Budgetary impact of the 2015 place of supply changes – VAT composition</i>	
<i>Prior to 2015</i>	
5.	Do you have an estimate of the total VAT ²⁰⁸ revenue from TBE services in 2012, 2013 and 2014? ²⁰⁸

²⁰⁸ This is the sum of the data asked for in questions 6 to 8.

6.	Do you have an estimate of how much VAT revenue was generated from local TBE supplies in 2012, 2013 and 2014?	
7.	Do you have an estimate of how much of the VAT revenue from TBE services came from suppliers established in your country and supplied to customers in other EU MS in 2012, 2013 and 2014?	
8.	Do you have an estimate of how much of the VAT revenue originated from TBE supplies by non-EU suppliers to customers in your country in 2012, 2013 and 2014 (VoES and local registrations)?	
9.	How much revenue was reported through the 2003 VoES scheme in 2012, 2013 and 2014?	
10.	How many companies registered in your Member State for the previously applicable 2003 VoES scheme?	
11.	How many enterprises benefitting from the small enterprise scheme registered in your Member State for the previously applicable 2003 VoES scheme?	
Post 2015		
12.	Do you have an estimate of the total VAT revenue from TBE services in 2015 (cf. right column of the above table)?	
13.	Do you have an estimate of how much VAT revenue has been generated from local TBE supplies in 2015 so far and an expectation of the VAT revenue for 2015?	
14.	What was the VAT revenue from TBE services reported through the MOSS in 2015 so far as an MSC ²⁰⁹ in the Union Scheme (Q1+Q2 only) and what is the expectation of the VAT revenue for 2015?	<i>Prepopulated if necessary</i>
15.	What was the VAT revenue before revenue sharing (gross number) for TBE services reported through the MOSS in 2015 so far as an MSI ²¹⁰ in the Union Scheme (Q1+Q2 only) and what is the expectation of the VAT revenue for 2015?	<i>Prepopulated if necessary</i>
16.	What was the VAT revenue from TBE services reported through the MOSS in 2015 so far as an MSC ²¹¹ in the non-Union Scheme (Q1+Q2 only) and what is the expectation of the VAT revenue for 2015?	<i>Prepopulated if necessary</i>

²⁰⁹ These are the VAT receipts declared in the MOSS of other Member States where the place of supply is your Member State.

²¹⁰ These are the VAT receipts declared in the MOSS in your Member State where the place of supply is other Member States. Provide total figures declared, without deducting any retention amounts.

²¹¹ These are the VAT receipts declared in the MOSS of other Member States where the place of supply is your Member State.

17.	What was the VAT revenue for TBE services reported through the MOSS in Q1 and Q2 2015 as an MSI ²¹² in the non-Union Scheme and what is the expectation of the VAT revenue for 2015?	<i>Prepopulated if necessary</i>
18.	What was the revenue to your Member State as a result of the revenue sharing arrangements in the Union Scheme (Q1 and Q2 only) and what is the expectation of the VAT revenue for 2015?	
19.	What was the estimated net gain/loss resulting from the 2015 place of supply changes for your country for 2015?	
20.	How many companies have registered for the MOSS in your country to date (how many in the Union scheme, how many in the non-Union scheme)?	<u>Union scheme:</u> <i>Prepopulated if possible</i>
		<u>Non-Union scheme:</u> <i>Prepopulated if possible</i>
21.	How many enterprises benefiting from the small enterprise scheme have registered for the MOSS in your country to date (how many in the Union scheme, how many in the non-Union scheme)?	<u>Union scheme:</u> <i>Prepopulated if possible</i>
		<u>Non-Union scheme:</u> <i>Prepopulated if possible</i>
22.	Do you have an estimate of businesses that are caught by the presumption in article 9a of the Council Implementing Regulation 282/2011?	
23.	What were the initial expectations of the total number of registrants? Can you divide it between Union and non-Union Scheme?	
24.	What were the initial expectations of the total number of registrants benefitting from the small enterprise scheme? Can you divide it between Union and non-Union Scheme?	
25.	In case of a discrepancy between initial expectations and actual registrations, what could be the possible explanation(s)? Are there any specific explanations for SMEs?	<i>General:</i>
		<i>SMEs:</i>
26.	Do you expect any changes in the future with respect to revenue collected from B2C TBE services?	

²¹² These are the VAT receipts declared in the MOSS in your Member State where the place of supply is other Member States. Provide total figures declared, without deducting any retention amounts.

27.	Do you have an estimate of the cost of implementing the 2015 changes and MOSS for the tax administration? Please distinguish between one-off costs (e.g. IT implementation costs) and ongoing costs (e.g. staff costs and maintenance of the IT system).	One-off costs:
		Ongoing costs:

<i>Other impacts resulting from the 2015 Place of supply changes</i>		
28.	To what extent did the 2015 place of supply changes trigger additional requests for information from businesses, for example with respect to the definition of TBE supplies, the application of the new rules or other potential issues?	
29.	Did you encounter any conflicts in the interpretation of the definition of TBE supplies and/or the application of the new rules between your MS and other Member States?	
30.	Did you implement any modification in your MS's VAT regulations or administrative practice (e.g. invoicing requirements, etc.) focused on or also covering TBE suppliers?	
31.	Did you experience any other impact resulting from the 2015 place of supply changes?	
32.	What are the issues that business has raised with you in respect of the application of the new rules? Please elaborate?	

5. Questions with regard to the implementation of the Mini One Stop Shop

This part of the questionnaire should result in the necessary input in order to provide for a qualitative analysis of auditing, administrative cooperation and the implementation of the audit guidelines.

The MOSS will also have an effect on administrative cooperation amongst Member States in the area of taxpayer audit and control. Up to now, the Member State where the VAT is due had complete control of the registration of the taxable person, the VAT returns and the audit of the returns and collection of the amount of VAT due on its territory. While the Member States remain the competent authority for audits concerning the amount of VAT due to their national Treasury, with the MOSS, they will have to cooperate and be dependent on the cooperation with the MSI in helping ensure that the correct amount of tax is declared and paid. It is also important to remember that, in the MOSS, Member States can be both a Member State of Identification (MSI) and a Member State of Consumption (MSC).

<u>Question</u>	<u>Answer</u>
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	<u>Question</u>	<u>Answer</u>
<i>Functioning of the MOSS as electronic portal</i>		
30.	When did the MOSS portal go live?	
31.	Is the IT system working for the businesses and in interaction with the other EU Member States?	
32.	How many registration requests were refused? What were the primary reasons for refusal? Please list them.	
33.	How many registrations were repealed due to non-compliance by traders?	
34.	How many issues were identified with regard to late/incomplete registration / declaration / payments?	
35.	How many companies deregistered from the MOSS?	
36.	To how many MOSS businesses did you send reminders for the declaration and / or payment of VAT?	
37.	What is your experience with the practical interaction with the other Member States?	
38.	Are there any aspects of the MOSS system that could be simplified from an operational point of view?	
39.	Were you satisfied with the Commission support on MOSS portal implementation?	

	<u>Question</u>	<u>Answer</u>
<i>Auditing and auditing guidelines – general info</i>		
<i>Prepopulated by Deloitte, please confirm</i>		
40.	Did your country agree to apply the following recommendations of the MOSS audit guidelines?	
	Initial contact with taxable persons should, where possible, be routed through the MSI. Once initial contact is made, a case-by-case approach is advisable as in some circumstances direct contact between the MSC and business could be necessary.	YES/NO

	<u>Question</u>	<u>Answer</u>
	MSI should use their normal national procedures when contacting taxable persons registered for the EU scheme in the MSI. They should use e-mail for an initial contact with non-EU scheme users registered in the MSI.	YES/NO
	Where there is contact from the MSC, this should be initiated via the taxable person's contact e-mail address (for both EU and non-EU businesses). As this is an electronic system and the main contact information is the taxable person's email address, this should be used to initiate contact if the taxable person is not established in the Member State making contact.	YES/NO
	<p>The best method for the exchange of information should be agreed between taxable person and the tax authority and should depend on what electronic means is available to both.</p> <p>One possibility is to use a standard audit file for MOSS (SAF-MOSS), in xml format. Member States will accept the SAF-MOSS format (in XML) if a business chooses to use it to supply the requested information.</p>	YES/NO

<i>Auditing and auditing guidelines</i>		
41.	If your Member State did not agree, what was the motivation not to endorse the audit guidelines?	
	Initial contact with taxable persons should, where possible, be routed through the MSI. Once initial contact is made, a case-by-case approach is advisable as in some circumstances direct contact between the MSC and business could be necessary.	
	MSI should use their normal national procedures when contacting taxable persons registered for the EU scheme in the MSI. They should use e-mail for an initial contact with non-EU scheme users registered in the MSI.	
	Where there is contact from the MSC, this should be initiated via the taxable person's contact e-mail address (for both EU and non-EU businesses). As this is an electronic system and the main contact information is the taxable person's email address, this should be used to initiate contact if the taxable person is not established in the Member State making contact.	
	The best method for the exchange of information should be agreed	

	<u>Question</u>	<u>Answer</u>
	<p>between taxable person and the tax authority and should depend on what electronic means is available to both.</p> <p>One possibility is to use a standard audit file for MOSS (SAF-MOSS), in xml format. Member States will accept the SAF-MOSS format (in XML) if a business chooses to use it to supply the requested information.</p>	
42.	If your country agreed to apply the audit guidelines, to what extent are they already applied in practice in your country?	
43.	Did your country adapt its internal procedures as a result from the MOSS guidelines? Did your country make any changes to the legal framework as a result of the application of the audit guidelines?	
44.	To what extent are audits coordinated with other tax authorities? Do you have a different approach as an MSI or as an MSC?	
45.	Has your country performed any audits under the MOSS, or more generally, on TBE services?	
	If yes: as a MSI or MSC? What was your experience?	
	If no: why not?	
46.	Have you experienced or do you expect any difficulties concerning auditing within the framework of the MOSS or TBE services, such as the qualification of ESS or language barriers in other EU MS? If yes, which?	
47.	Is there a national audit plan in place?	
48.	Do you use a risk-based approach to determine audits?	
49.	How many audits do you intend to perform in 2015 on MOSS/TBE services?	
50.	How do you intend to ensure the compliance with the identification criteria for the place of supply rules by suppliers established in your Member State?	
51.	Do you have a compliance programme in place to ensure that TBE suppliers active in your Member State are remitting VAT	

	<u>Question</u>	<u>Answer</u>
	correctly through either MOSS or directly (outside MOSS)?	

<i>Administrative cooperation</i>		
52.	Has your country requested any cooperation under the MOSS or for TBE services? If yes, please provide more information (e.g. countries, frequency,...)	
53.	Has your country provided any administrative cooperation under the MOSS or for TBE services?	
54.	Did your country modify any procedures as an effect of administrative cooperation?	
55.	Have you experienced or do you expect any difficulties concerning administrative cooperation within the framework of the MOSS or for TBE services?	
<i>Miscellaneous</i>		
56.	What is your opinion on the proposal for a single audit mechanism (home country/MSI controls including a single audit of cross-border businesses for VAT purposes)?	
57.	Are there any other aspects of MOSS that could be simplified?	
58.	Can you cite any reasons businesses have communicated not to take up the MOSS?	

<i>Communication activities on the MOSS/2015 place of supply – Information and awareness raising</i>		
59.	Has your Member State undertaken any action through the media advising of the possibility to use the MOSS and the 2015 Place of Supply Rules? If yes, please describe? Which actions have specifically targeted microbusinesses?	
60.	Has your Member State undertaken action to communicate with advisors/practitioners in respect of the 2015 changes?	
61.	Does the website of the tax administration or Ministry of Finance Website have a dedicated part on this topic?	
62.	Does the website provide a link to the Commission web page with information on the	

	application of MOSS (http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm)?	
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<i>Revenue sharing</i>		
63.	Is the revenue sharing system appropriate?	
64.	Do you believe the revenue sharing enhances the effectiveness of MOSS?	
65.	What would be the appropriate level of revenue sharing? 10%/20%/30%? Why?	

Annex 8: Updated questionnaire for all 28 national tax administrations

DG TAXUD

VAT aspects of cross-border e-Commerce – Options for modernisation

Updated evaluation of the implementation of the 2015 place of supply rules and the Mini One Stop Shop, and identification of best practices and room for possible improvements

1. Introduction

Since January 2015, cross-border business-to–customer (B2C) telecom, broadcasting and e-services (TBE services) are subject to VAT in the Member State of residence of the customer. The consequential VAT administrative burden of having to potentially file 28 returns was reduced by the introduction of the Mini One Stop Shop (MOSS), which allows suppliers of cross-border B2C TBE services to account for the VAT due on those supplies via a web portal in the Member State in which they are identified.

In this regard, the MOSS is a crucial instrument in facilitating access to the single market, in particular for small and medium-sized enterprises. The 2011 Commission Communication envisages a broadening of the MOSS over time if the MOSS proves to be an effective mechanism for reducing the administrative burden for businesses. A consultation in this matter was executed in 2004²¹³ and this intended action was further reiterated as part of the Digital Single Market strategy²¹⁴ and the VAT Action Plan²¹⁵.

Therefore, a thorough evaluation of this scheme is paramount in further building the business case for a possible broadened One Stop Shop.

As part of the study on e-Commerce in Europe, Deloitte was invited by the European Commission to assess the MOSS over six quarters starting from 1 January 2015, also comparing it to the 2003 VoES scheme in respect of the non-EU suppliers. An evaluation exercise was carried out for this assessment in 2015, which included sending questionnaires to all 28 Member States and carrying out interviews with selected eight Member States.

²¹³ http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/rep_one_stop_en.pdf , consultation on 28 May 2015.

²¹⁴ Commission Communication of 6 May 2015 on a Digital Single Market Strategy for Europe, COM(2015)192 final http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf , consulted on 1 June 2015.

²¹⁵ Commission Communication of 7 April 2016 on an action plan on VAT, COM(2016)148 final http://ec.europa.eu/taxation_customs/taxation/vat/action_plan/index_en.htm , consulted on 3 May 2016.

As the first assessment could cover only six first months of the implementation of MOSS, it was considered necessary to carry out a follow up assessment in order to provide an update on the implementation of place of supply changes and MOSS.

These questionnaires are part of the re-evaluation exercise and contribute to the overall evaluation as well as providing relevant inputs to the policy-making process.

The output of the questionnaires is used in an update analysis of the MOSS implementation, including a qualitative analysis of auditing and administrative cooperation, as well as an analysis of the implementation of the audit guidelines. Furthermore, the answers to this questionnaire should provide updates on positive and negative effects experienced by the Member States in the operation of the MOSS, forming part of the assessment of the impact on Member States of the new place of supply rules.

2. Methodological note

These questionnaires, or interviews where applicable, will be a primary source of data as proposed in the data collection methodology of this evaluation, with the objective to complement data gathered through the first evaluation carried out in 2015. The survey will allow gathering qualitative and quantitative data for the evaluation of the implementation of the MOSS and the impact on Member States of the new place of supply rules.

3. Contact details of the person(s) completing the questionnaire

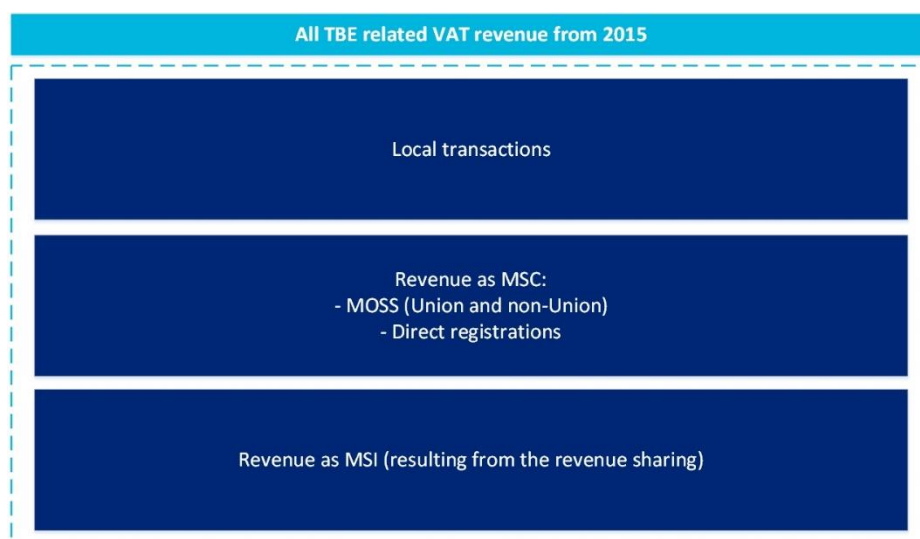
<i>Type of information</i>	<i>Details</i>
Country	
Name of organisation	
Name of respondent	
Title / role in the organisation	
Email address	
Telephone number	
Other respondents present during the interview	

4. Questions with regard to the new place of supply rules

This part of the interview should result in the necessary output in order to prepare an assessment of the impact on Member States of the new Place of Supply rules.

	<u>Question</u>	<u>Answer</u>
<u>Legislative changes</u>		
1.	Have there been any further legislative changes since the implementation of place of supply rules and MOSS?	
2.	Have there been any significant changes in related administrative guidance or issuance of any additional guidance? Please elaborate.	
33	Have there been any further modifications to your VAT regulations or administrative practice (e.g. invoicing requirements, TBE supply definition)?	

Budgetary impact of the 2015 place of supply changes – VAT composition



34.	What was the total VAT revenue from TBE services in 2015 (the total of local transactions, revenue as MSC and revenue as MSI) and what is the estimate for 2016?	
35.	Do you have an estimate of how much VAT revenue was generated from local TBE supplies in 2015 and an expectation of the VAT revenue for 2016?	
36.	What was the VAT revenue from TBE services reported through the MOSS in 2015 as an MSC ²¹⁶ in the Union Scheme and what is the expected VAT revenue for 2016?	
37.	What was the VAT revenue before revenue sharing (gross number declared through MOSS) for TBE services reported through the MOSS in 2015 as an MSI ²¹⁷ in the Union Scheme and what is the expected VAT revenue for 2016?	
38.	What was the VAT revenue from TBE services reported through the MOSS in 2015 as an MSC ²¹⁸ in the non-Union Scheme (Q1+Q2 only) and what is the expected VAT revenue for 2016?	

²¹⁶ These are the VAT receipts declared in the MOSS of other Member States where the place of supply is your Member State.

²¹⁷ These are the VAT receipts declared in the MOSS in your Member State where the place of supply is other Member States. Provide total figures declared, without deducting any retention amounts.

²¹⁸ These are the VAT receipts declared in the MOSS of other Member States where the place of supply is your Member State.

39.	What was the VAT revenue for TBE services reported through the MOSS in 2015 as an MSI ²¹⁹ in the non-Union Scheme and what is the expected VAT revenue for 2016?	
40.	What was the revenue to your Member State as a result of the revenue sharing arrangements in the Union Scheme in 2015 and 2016 (Q1 and Q2) and what is the expected revenue for 2016?	
41.	What was the net gain/loss resulting from the 2015 place of supply changes for your country for 2015 and what is the estimation for 2016?	
42.	Do you expect any changes (e.g. trends in industry or changes in VAT collection & compliance control) in the future which may have significant impact on VAT revenue collected from B2C TBE services?	
43.	Do you have an estimate of the ongoing cost of implementing the 2015 changes and MOSS for the tax administration (e.g. staff costs and maintenance of the IT system)?	

Other impacts resulting from the 2015 place of supply changes

44.	Do you receive many requests for information from businesses, for example with respect to the definition of TBE supplies, the application of the place of supply rules or other potential issues? Please elaborate what are the main issues that business has raised with you.	
45.	Have you encountered any conflicts in the interpretation of the definition of TBE supplies and/or the application of the new rules between your Member State and other Member States? Please elaborate.	
46.	Have you identified any areas or relevant topics, which require further guidance (at EU or national level)?	

²¹⁹ These are the VAT receipts declared in the MOSS in your Member State where the place of supply is other Member States. Provide total figures declared, without deducting any retention amounts.

5. Questions with regard to the implementation of the Mini One Stop Shop

This part of the questionnaire focusses on collecting input for a qualitative analysis of auditing, administrative cooperation and the implementation of the audit guidelines.

	<u>Question</u>	<u>Answer</u>
<i>Functioning of the MOSS as electronic portal</i>		
17.	Have you encountered any problems with the IT system for businesses and in interaction with the other Member States? If yes, please elaborate.	
18.	How many businesses have registered for the MOSS in your country to date (how many in the Union scheme, how many in the non-Union scheme)?	<u>Union scheme:</u>
		<u>Non-Union scheme:</u>
19.	Do you have an estimate of businesses that are caught by the presumption in article 9a of the Council Implementing Regulation 282/2011?	
20.	How many registration requests have been refused? What are the primary reasons for refusal? Please list them.	
21.	How many businesses have deregistered from the MOSS?	
22.	How many registrations have been repealed due to non-compliance by businesses?	
23.	How many issues have been identified with regard to late/incomplete registration / declaration / payments?	
24.	How many corrective MOSS returns did you receive for 2015? Please add breakdown per quarter, if possible	<u>As MSI:</u>
		<u>As MSC:</u>
25.	How many reimbursements to businesses were generated in 2015? Please provide breakdown per quarter if possible	<u>As MSI:</u>
		<u>As MSC:</u>
26.	What is your experience with the practical interaction with the other Member States?	

	<u>Question</u>	<u>Answer</u>
27.	Are there any aspects of the MOSS system that could be simplified from an operational point of view?	
28.	Are you satisfied with the ongoing Commission support on MOSS portal administration?	

	<u>Question</u>	<u>Answer</u>
<i>Auditing and auditing guidelines</i>		
<div style="display: flex; flex-wrap: wrap; justify-content: space-around;"> <div style="border: 2px solid #00AEEF; border-radius: 20px; padding: 10px; width: 45%; margin-bottom: 10px;"> <p style="text-align: center;">GUIDELINE 1</p> <p>Initial contact with taxable persons should, where possible, be routed through the MSI. Once initial contact is made, a case-by-case approach is advisable as in some circumstances direct contact between the MSC and business could be necessary.</p> </div> <div style="border: 2px solid #00AEEF; border-radius: 20px; padding: 10px; width: 45%; margin-bottom: 10px;"> <p style="text-align: center;">GUIDELINE 2</p> <p>MSI should use their normal national procedures when contacting taxable persons registered for the EU scheme in the MSI. They should use e-mail for an initial contact with non-EU scheme users registered in the MSI.</p> </div> <div style="border: 2px solid #00AEEF; border-radius: 20px; padding: 10px; width: 45%; margin-bottom: 10px;"> <p style="text-align: center;">GUIDELINE 3</p> <p>Where there is contact from the MSC, this should be initiated via the taxable person’s contact e-mail address (for both EU and non-EU businesses). As this is an electronic system and the main contact information is the taxable person’s email address, this should be used to initiate contact if the taxable person is not established in the Member State making contact.</p> </div> <div style="border: 2px solid #00AEEF; border-radius: 20px; padding: 10px; width: 45%;"> <p style="text-align: center;">GUIDELINE 4</p> <p>The best method for the exchange of information should be agreed between taxable person and the tax authority and should depend on what electronic means is available to both.</p> </div> </div>		
<i>Auditing and auditing guidelines</i>		
29.	If your Member State did not agree to apply the audit guidelines, what was the motivation not to endorse the audit guidelines? Do you expect your position to change in near future? Please elaborate.	
30.	If your Member State agreed to apply the audit guidelines, to what extent are they already applied in practice in your Member State?	

	<u>Question</u>	<u>Answer</u>
31.	Regarding Guideline 4 on exchange of information, please describe what is the most common method used for information exchange in practice?	
32.	Did your Member State adapt its internal procedures as a result from the MOSS guidelines? Did your Member State make any changes to the legal framework as a result of the application of the audit guidelines?	
33.	To what extent are audits coordinated with tax authorities in other Member States? Do you have a different approach as an MSI or as an MSC?	
34.	Has your country performed any audits under the MOSS, or more generally, on TBE services?	
	If yes: as a MSI or MSC? Did you assess additional VAT liability or just formal errors?	
	If yes and as MSI: did you carry out any audits on request of MSC or jointly with MSC? Please elaborate	
	If no: why not?	
35.	Have you experienced or do you expect any difficulties concerning auditing within the framework of the MOSS or TBE services, such as the qualification of TBE service or language barriers in other Member States? If yes, which?	
36.	Is there a national audit plan in place?	
37.	Do you use a risk-based approach to determine audits? If yes, is the origin of the supplier one of the risk indicators?	
38.	How many audits do you intend to perform in 2016 on MOSS/TBE services?	
39.	Do you have a compliance programme in place to ensure that TBE suppliers active in your Member State are remitting VAT correctly through either MOSS or directly (outside MOSS)?	

Administrative cooperation

	<u>Question</u>	<u>Answer</u>
40.	Has your Member State requested any cooperation under the MOSS or for TBE services? If yes, please provide more information (e.g. countries, frequency)	
41.	Has your Member State provided any administrative cooperation under the MOSS or for TBE services?	
42.	Has your Member State modified any procedures as an effect of administrative cooperation?	
43.	Have you experienced any difficulties concerning administrative cooperation within the framework of the MOSS or for TBE services?	
<i>Miscellaneous</i>		
44.	What is your opinion on the proposal for a single audit mechanism (home country/MSI controls including a single audit of cross-border businesses for VAT purposes)?	
45.	Are there any other aspects of MOSS that could be simplified?	
46.	Can you cite any reasons businesses have communicated not to take up the MOSS?	

<i>Communication activities on the MOSS/2015 place of supply – Information and awareness raising</i>		
47.	Does your Member State undertake any regular or ongoing action through the media advising businesses of the possibility to use the MOSS and the 2015 Place of Supply Rules? If yes, please describe?	
48.	Which media actions have specifically targeted microbusinesses?	

<i>Revenue sharing</i>		
49.	Is the revenue sharing system appropriate? Please elaborate.	
47.	Has the revenue sharing enhanced the effectiveness of MOSS? Please elaborate.	
48.	Should the revenue sharing system be changed? If yes then how?	

Annex 9: Questionnaire for businesses

DG TAXUD

VAT aspects of cross-border e-Commerce – Options for modernisation

Evaluation of the implementation of the 2015 place of supply rules and the Mini One Stop Shop, and identification of best practices and room for possible improvements

1. Introduction

Since 2015, cross-border TBE services are always subject to VAT in the MS of residence of the customer. It is the latest phase of the VAT package adopted on 2008 and which entered into force as of 2010 in different phases.

As concerning electronic services, this rule was applied in the EU since 2003 on electronic services when these are supplied by non-EU suppliers.

This change entails that VAT law of the jurisdiction of consumption will apply on suppliers not established in this jurisdiction. The most significant and visible change is that the VAT accrues to this jurisdiction as well.

The modification of the place of supply rules triggered an increased complexity for businesses as these businesses needed to account for VAT in the EU Member States of Consumption. However, the consequential VAT administrative burden of having to potentially file 28 returns was reduced by the introduction of the Mini One Stop Shop, allowing suppliers of cross-border B2C TBE services to account for the VAT due on those supplies via a web portal in the Member State in which they are identified.

In this regard, the MOSS is a crucial instrument in facilitating access to the single market, in particular for small and medium-sized enterprises. The 2011 Commission Communication envisages a broadening of the MOSS over time if the MOSS proves to be an effective mechanism for reducing the administrative burden for businesses. A consultation in this matter had already been executed in 2004²²⁰ and this intended action was reiterated as part of the Digital Single Market strategy²²¹. Therefore, a thorough evaluation of this scheme is paramount in further building the business case for a possible broadened One Stop Shop.

²²⁰ http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/rep_one_stop_en.pdf, consultation on 28 May 2015.

²²¹ Commission Communication of 6 May 2015 on a Digital Single Market Strategy for Europe, COM(2015)192 final http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf, consulted on 1 June 2015.

As part of the study on e-Commerce in Europe, Deloitte was invited by the European Commission to assess the MOSS over six quarters starting from 1 January 2015, also comparing it to the 2003 VoES scheme in respect of the non-EU suppliers.

The present interviews are part of the evaluation exercise and provides the possibility to contribute to the evaluation and to provide relevant inputs to the policy-making process.

The output of the interviews should result in an analysis of the MOSS implementation in 4 Member States of Identification and 4 Member States of Consumption, including a qualitative analysis of auditing and administrative cooperation and an analysis of the implementation of the audit guidelines. Furthermore, this interview should provide the necessary data to prepare an assessment of the impact on Member States of the new place of supply rules.

The information gathered will remain confidential at all times. Companies providing information will not be identified individually and composite data will be used in the published report.

2. Methodological note

These interviews will be primary source of data as proposed in the data collection methodology of this evaluation, with the objective to complement data gathered through desk research. The survey will allow the team to gather qualitative (and possibly quantitative) data for the evaluation of the MOSS and the implementation of the new place of supply rules.

3. Contact details of the person(s) completing the questionnaire (in case of questions)

<i>Type of information</i>	<i>Details</i>
Is your company registered for MOSS? If not, please elaborate why you decided not to register.	
Country of registration as MSI.	
Countries where VAT is reported as MSC so far	
Name of organisation	
Name of respondent	
Title / role in the organisation	
Email address	
Telephone number	

<i>Type of information</i>	<i>Details</i>
Other respondents present during the interview	

4. General questions about the business

	<i>Type of information</i>	<i>Details</i>
1.	Main field of business (economic sector)	
2.	Which type of B2C TBE supplies does your company supply?	
3.	Where is your company's main establishment?	
4.	Total turnover of your company in 2014	
5.	Which countries does your company provide B2C TBE services to?	
6.	Does your company have a fixed establishment from which it supplies B2C TBE services? To which countries does this branch provide these services to?	
7.	What was the number of employees in your company in 2014 (or the latest year available)?	
8.	Please estimate the turnover related to B2C TBE services in 2014 or the latest year available.	
9.	Do you have an estimate of the amount of TBE transactions your company performs? What is the average value per transactions?	

5. Quantitative data concerning e-Commerce

This part of the interview aims to get and/or confirm quantitative data, enabling us to prepare an analysis of MOSS penetration patterns to get an overview of the uptake of the Union and non-Union schemes.

	<u>Question</u>	<u>Answer</u>
<i>Volume and value of trades</i>		
10.	Was your company already registered in VoES?	
11.	What is the number of B2C TBE transactions your company performed in 2012, 2013 and 2014?	
12.	What is the average value of B2C TBE transactions your company performed in 2012, 2013 and 2014?	
13.	What is the number of B2C TBE transactions your company performed in Q1 and Q2 2015?	
14.	What is the expected number of B2C TBE transactions your company will perform in 2015?	
15.	What is the average value of B2C TBE transactions your company performed in Q1 and Q2 2015?	

6. Questions with regard to the new place of supply rules

This part of the interview should result in the necessary output in order to prepare an assessment of the administrative burdens faced by business as a result of the new place of supply rules.

	<u>Question</u>	<u>Answer</u>
<i>General questions on the 2015 place of supply changes</i>		
16.	Are you aware of the new 2015 place of supply rules?	
17.	When and how did you learn about it?	
18.	Has your Member State provided guidelines? Please elaborate.	
19.	Are you aware of the Commission's communication activities on the new rules (ex: dedicated webpage, explanatory notes, and information on the key rules applicable in each Member State)?	
20.	In general, how are the 2015 place of supply changes perceived in your company?	
21.	In general, what are the advantages of the 2015 place of supply changes for your company?	
22.	In general, what are the disadvantages of the 2015 place of supply changes for your company?	

	Do you consider that a place of supply rules provided a level playing field for your business i.e. as the same VAT rate now applies in the place of consumption regardless of where the supplier is established?	
	How important is a level playing field for your business? Rank it from 1 to 10 - 10 being the most important.	

<i>Practical issues in applying the new Place of supply Rules</i>		
23.	Was there any impact on the VAT set-up of the ERP system of your company caused by the 2015 place of supply changes? What was the cost associated with this?	One-off costs: Ongoing costs:
24.	Did your company make any changes to its business model resulting from the 2015 place of supply rules, such as the set-up of new entities with VAT registration in certain MSCs, geoblocking certain Member States, appeal to external parties acting as intermediaries towards the B2C clients, etc.?	
25.	Did your company change its pricing resulting from these new place of supply rules (e.g. standard price for all MS, country differentiated pricing to reflect variances in VAT rates, general price increases or decreases)?	
26.	Are there any other changes your company introduced, due to the 2015 place of supply changes?	

<i>Specific issues identified in practice/literature</i>		
<i>Please provide comments on your experience with the following issues identified</i>		
27.	Did you experience any problems linked with the correct identification of TBE services? If yes, please describe them.	
28.	Did you experience any problems with different rules in all Member States, such as: <ul style="list-style-type: none"> • Different VAT rates • Exemptions (ex: gambling, financial services) • Invoicing and pricing • Compliance • Tax point rules (also possible issues with regard to vouchers and pre-credit payment) • Currency conversion • Use and Enjoyment Rule 	
29.	Did you experience any problems with identification of customer's taxable status? Please specify.	

30.	Did you experience any problems with identification of customer's location? Please specify.	
31.	How are you storing invoices and transactional data? Do you foresee any technical problems linked with the 10 years requirements? If yes, please specify. What are rules applicable in your Member State?	
32.	What are your compliance costs in relation to: <ul style="list-style-type: none"> • Identification of customer and its location • Price information • Harmonisation of rules related to invoicing/auditing? 	
33.	Reduced market competition and access (for SME's) ²²²	
34.	Did your company experience any problems linked with the application on the new rules and other legislations (e.g. data protection rules, consumer protection law, etc.)?	

Ranking of issues

Please provide in the last column a ranking of the aforementioned issues from more to less burdensome.

If necessary, please provide additional comments in the 2nd last column

35.	Problems with different rules in all Member States, such as: <ul style="list-style-type: none"> • Different VAT rates • Exemptions (ex: gambling, financial services) • Invoicing • Compliance • Tax point rules (also possible issues with regard to vouchers and pre-credit payment) • Currency conversion • Use and Enjoyment Rule 		
36.	Identification of customer's taxable status		
37.	Identification of customer's location		
38.	Storing invoices and transactional data		
39.	Problems linked with the application on the new rules and other legislations (e.g. data protection rules, consumer protection law, etc.)?		

²²² As it is more difficult to be compliant for an SME.

<i>Identifying the place of your customer under the new Place of supply Rules</i>		
40.	Please describe the evidence that can be used to identify the place of the customer.	
41.	What evidence do you use to identify the place of the customer?	
42.	If you use 'other commercially relevant information' to determine the place of the customer, can you please elaborate on the type of evidence used e.g. a declaration by the customer etc.	
43.	Are you aware of any 3 rd party solutions to assist business in identifying the place of the customer? If yes, do you utilise such systems?	
44.	Have you experienced any technical/IT problems linked with gathering two non-contradictory pieces of evidence? If yes, please specify. ²²³	

7. Questions with regard to the mini One Stop Shop

This part of the interview should result in the necessary output in order to identify problems faced by business, which have used the MOSS, particularly in respect of the different requirements in each Member State.

Therefore, if your business did not opt for the MOSS, this part of the questionnaire is not relevant.

	<u>Question</u>	<u>Answer</u>
<i>General perception of the mini One Stop Shop</i>		
45.	In general, how is the MOSS perceived in your company?	
46.	What is your experience from using the MOSS? Is it easy/difficult to use?	
47.	In general, what are the advantages of the MOSS for your company?	

²²³ For example, when a non-taxable person buys an online service from a hotel lobby (cf. article 24**bis**) in Spain, its invoicing address is in the UK and his bank details indicate this person resides in France (cf. article 24**septies**).

	<u>Question</u>	<u>Answer</u>
48.	In general, what are the disadvantages of the MOSS for your company? Do you see any reasons why businesses would not take up the MOSS?	

	<u>Question</u>	<u>Answer</u>
<i>Shortcomings of the current MOSS</i>		
<i>Please provide comments on your experience with the following issues identified</i>		
49.	Did you experience any difficulties in registering for the MOSS?	
50.	Did your company experience any shortcomings of the current MOSS in place (e.g. no possibility to recover input VAT)?	
51.	Is the fact that a company can only register for the MOSS if it has no establishment and is neither registered nor otherwise obliged to register an issue? (only for non-EU companies)	
52.	Did you experience any IT issues in connecting to your MSI MOSS portal and filing the reporting?	
53.	Should the scope of the MOSS be extended to tangible goods and other services?	
54.	Do you have recommendations to facilitate the use of the MOSS?	
55.	If you assume the role of an intermediary reporting turnover through MOSS or if one of your contracting parties is, how did you set up the relationship with your contracting parties (i.e. invoicing, contracts, etc.).	

	<u>Question</u>	<u>Answer</u>
56.	In case if you are using an agent or intermediary for your MOSS liabilities, have you experienced any difficulties in setting up and using this relationship? Please comment also in case if you are an agent or intermediary.	
57.	Is the fact that corrections need to be made to the original MOSS return and cannot be done in later returns an issue?	
58.	Did your company encounter any other shortcomings with regard to the current MOSS?	

<i>Audit and other types of queries through the MOSS</i>		
59.	Has your company been subject to an audit or any other types of information requests relating to B2C TBE services already?	
	If audited, did the audit take place in accordance with the MOSS guidelines?	
60.	How is the possibility of being audited by (or receiving information requests from) multiple MSCs perceived?	
61.	Are you aware of the MOSS audit guidelines? How are they perceived by your company?	

8. Questions concerning administrative requirements

Before the 2015 place of supply changes

1. With respect to TBE services, does the list below correctly reflect the administrative requirements related to VAT derived from the VAT Directive that you had to comply with before the 2015 place of supply changes?
2. How long (minutes/hours) did it take to carry out each of these administrative tasks before the 2015 place of supply changes? Was there any specific additional cost (in euros) for each of these administrative tasks?

<i>Administrative task</i>	<i>Frequency</i>	<i>Where in process flow?</i>	<i>Comments</i>	<i>Time and/or cost²²⁴</i>
VAT registration	One-off	Before or right after the taxable transaction	Includes also communication and provision of evidence of taxable activities	
Identification of customer status – B2B or B2C	Transactional/ One-off	Before sales, as impacts the final price		
Identification of MS of consumption ²²⁵	Transactional/ One-off	Before sales, as impacts the final price	For services MS of customer (but exceptions).	
Identification of correct VAT rate	Transactional/ One-off	Before sales, as impacts the final price	VAT rate in MSC - standard, reduced rate or exemption	
Invoicing (incl. charging VAT)	Transactional	After/on the time of sales	following home country rules or MSC rules; also simplified invoicing or no invoice	
VAT declaration/returns	Periodic	After sales		
- domestic VAT return	Monthly/bi-monthly/quarterly/annual		Including domestic input VAT recovery	
VAT payment		After VAT return		
- Re domestic return	Monthly/quarterly/annual			
Storage of invoices	Ongoing			
Changes or cancelling of VAT registration	One-off			

²²⁴ This includes IT costs, such as new software or adapting existing software, or outsourced costs.

²²⁵ For customers established outside of the European Union.

<i>Administrative task</i>	<i>Frequency</i>	<i>Where in process flow?</i>	<i>Comments</i>	<i>Time and/or cost²²⁴</i>
Access to information on the rules applicable in other Member States	One-off/ Recurrent			
Staff training costs	One-off/ Recurrent			

After the 2015 place of supply changes

1. With respect to TBE services, does the list below correctly reflect the administrative requirements related to VAT derived from the VAT Directive that you have to comply with after the 2015 place of supply changes?
2. How long (minutes/hours) does it take to carry out each of these administrative tasks since the 2015 place of supply changes? Is there any specific additional cost (in euros) for each of these administrative tasks?

<i>Administrative task</i>	<i>Frequency</i>	<i>Where in process flow?</i>	<i>Comments</i>	<i>Time and/or cost²²⁶</i>
VAT registration (incl. for MOSS)	One-off	Before or right after the taxable transaction	Includes also communication and provision of evidence of taxable activities	
Identification of customer status – B2B or B2C	Transactional/ One-off	Before sales, as impacts the final price		
Identification of MS of consumption	Transactional/ One-off	Before sales, as impacts the final price	For services MS of customer (but exceptions).	
Identification of correct VAT rate	Transactional/ One-off	Before sales, as impacts the final price	VAT rate in MSC - standard, reduced rate or exemption	
Invoicing (incl. charging VAT)	Transactional	After/on the time of sales	following home country rules or MSC rules; also simplified invoicing or no invoice	
VAT declaration/returns	Periodic	After sales		
- domestic VAT return	Monthly/bi-monthly/quarterly/annual		Including domestic input VAT recovery	
- MOSS return	quarterly		Purely e-Commerce related return	
VAT payment		After VAT return		
- Re domestic return	Monthly/quarterly/annual			
- Re MOSS	Quarterly			
Storage of invoices	Ongoing			

²²⁶ This includes IT costs, such as new software or adapting existing software, or outsourced costs.

<i>Administrative task</i>	<i>Frequency</i>	<i>Where in process flow?</i>	<i>Comments</i>	<i>Time and/or cost²²⁶</i>
Changes or cancelling of VAT registration	One-off			
Access to information on the rules applicable in other Member States	One-off/ Recurrent			
Staff training costs	One-off/ Recurrent			

Annex 10: Updated questionnaire for businesses

DG TAXUD

VAT aspects of cross-border e-Commerce – Options for modernisation

Phase 2 of the Evaluation of the implementation of the 2015 place of supply rules and the Mini One Stop Shop, and identification of best practices and room for possible improvements

1. Introduction

Since 1 January 2015, all cross-border B2C TBE services are subject to VAT in the Member State of the residence of the customer.²²⁷ As concerning electronic services, this rule was applied in the EU since 2003 on electronic services when these are supplied by non-EU suppliers.

This change entailed that VAT law of the jurisdiction of consumption will apply on suppliers not established in this jurisdiction. The most significant and visible change is that the VAT accrues to this jurisdiction as well.

The modification of the place of supply rules triggered an increased complexity for businesses as these businesses needed to account for VAT in the EU Member States of Consumption. However, the consequential VAT administrative burden of having to potentially file 28 returns was reduced by the introduction of the Mini One Stop Shop, allowing suppliers of cross-border B2C TBE services to account for the VAT due on those supplies via a web portal in the Member State in which they are identified.

The MOSS allows businesses supplying these digital services to final consumers in the EU to register for VAT once with their home Member State tax authorities, rather than registering for VAT in every EU Member State to which the business supplies. The implementation of the **MOSS is seen as a major milestone** by the European Commission and by many EU Member States, since it enables them to collect tax on each other's behalf.

²²⁷ Therefore, businesses will be confronted with the applicable VAT rules in the Member State(s) where their customer(s) is (are) located. To facilitate compliance with different sets of VAT rules, the European Commission published information on selected national VAT rules in all 28 Member States. Information can be found on http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/moss_report.xlsm.

In 2015, Deloitte conducted a study on the initial findings on the implementation and application of the new place of supply rules and the MOSS.

The study provides evidence that the initial experience from the 2015 place of supply rules and MOSS is generally positive and that these new rules indeed constitute a good basis for further expansion. The results of the study have not been published yet.

In 2015, the MOSS system has already led to the collection of about EUR 3 billion of revenues and approximately 12 000 MOSS VAT registrations. Given the support expressed for the scheme, including by businesses, the European Commission is considering options for the **wider implementation of this concept**, with the objective of reducing the administrative burden associated with the VAT treatment of cross-border e-Commerce.

To formulate adequate recommendations for potential improvements to be taken into account in any future reform, Deloitte is carrying out an **updated evaluation** of the MOSS. This evaluation covers questions such as: *Have there been many MOSS audits and/or request for information? Did MOSS revenues and the amount of MOSS registrations go up or down? Did companies decide to leave the MOSS and why? How could the MOSS be improved?*

This questionnaire will be a primary source of data as proposed in the data collection methodology of this update evaluation. The survey will allow the team to gather qualitative data for the evaluation of the MOSS and the implementation of the new place of supply rules.

For businesses who have participated in the previous survey of Phase 1, please note that some of the questions are the same as those discussed previously. In that case, we would like you to indicate whether any changes occurred compared to the situation when filling out the previous questionnaire.

The Deloitte Study Team wishes to thank for your time and effort.

Should you have any questions, do not hesitate to reach out to us.

Best regards,

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2. Contact details of the person(s) completing the questionnaire

<i>Type of information</i>	<i>Details</i>
Name of organisation	
Name of respondent	
Title / role in the organisation	
Email address	
Telephone number	
Other respondents present during the interview	
<p>Is/was your company registered for MOSS? If not, please elaborate why you decided not to register. Did your company made any changes to its registrations?</p>	<p>A) My business was registered for MOSS and is still registered; B) My business was registered for MOSS, but is no longer registered; C) My business was not registered and still did not register; D) My business was not registered for MOSS, but registered in the meantime. E) My business is a platform under article 9a. F) My business is a platform compliant via article 9a.</p> <p>Further explanation:</p>
<p>What is your current country of registration (if any)? Did you change your country of registration as MSI compared to the entry into force on 1 January 2015?</p>	
Countries where VAT is reported as MSC so far	

General questions about the business

	<i>Type of information</i>	<i>Details</i>
16.	Main field of business (economic sector)	
17.	Which type of B2C TBE supplies does your company supply?	
18.	Where is your company's main establishment?	
19.	Total turnover of your company in 2015	
20.	Which countries does your company provide B2C TBE services to?	
21.	Does your company have a fixed establishment from which it supplies B2C TBE services? To which countries does this branch provide these services to?	
22.	What was the number of employees in your company in 2015 (or the latest year available)?	
23.	Please estimate the turnover related to B2C TBE services in 2015 or the latest year available.	
24.	Do you have an estimate of the amount of TBE transactions your company performs? What is the average value per transactions?	

3. Questions with regard to the new place of supply rules

	<u>Question</u>	<u>Answer</u>
<i>General questions on the 2015 place of supply changes</i>		
10.	In general, what are the advantages of the 2015 place of supply changes for your company?	
11.	In general, what are the disadvantages of the 2015 place of supply changes for your company?	
	Do you consider that the new place of supply rules provided a level playing field for your business i.e. as the same VAT rate now applies in the place of consumption regardless of where the supplier is established?	
	How important is a level playing field for your business? Rank it from 1 to 10 - 10 being the most important.	

<i>Practical issues in applying the new Place of supply Rules</i>		
12.	Did your company make any changes to its business model resulting from the 2015 place of supply rules, such as the set-up of new entities with VAT registration in certain MSCs, geoblocking certain Member States, appeal to external parties acting as intermediaries towards the B2C clients, etc.?	
13.	Did your company change its pricing resulting from these new place of supply rules (e.g. standard price for all MS, country differentiated pricing to reflect variances in VAT rates, general price increases or decreases)?	
14.	Are there any other changes your company introduced, due to the 2015 place of supply changes?	

<u>Specific issues identified in practice/literature</u>	
<i>Please provide comments on your experience with the following issues identified</i>	
15.	<p>Article 9a²²⁸ introduces the rebuttable presumption that an intermediary is acting in his own name. This means that the intermediary is deemed to have received and onward supplied those services himself and, consequently has to account for VAT in the Member State of the customer.</p> <ol style="list-style-type: none"> 1) Should article 9a be observed as a way to facilitate compliance for smaller businesses? 2) Should article 9a be observed making smaller businesses dependent on intermediaries to perform e-Commerce activities? 3) Is the article sufficiently clear?
16.	<p>Did you experience any problems with different rules in all Member States, such as:</p> <ul style="list-style-type: none"> • Different VAT rates • Exemptions (ex: gambling, financial services) • Invoicing and pricing • Compliance • Tax point rules (also possible issues with regard to vouchers and pre-credit payment) • Currency conversion • Use and Enjoyment Rule
17.	<p>Did you experience any problems with the identification of customer's taxable status? Please specify.</p>
18.	<p>How are you storing invoices and transactional data?</p> <p>Do you foresee any technical problems linked with the 10 years requirements? If yes, please specify.</p>

²²⁸ Article 9a (1) VAT Implementing Regulation 282/2011 provides that: "For the application of Article 28 of Directive 2006/112/EC, where electronically supplied services are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications, a taxable person taking part in that supply shall be presumed to be acting in his own name but on behalf of the provider of those services unless that provider is explicitly indicated as the supplier by that taxable person and that is reflected in the contractual arrangements between the parties. In order to regard the provider of electronically supplied services as being explicitly indicated as the supplier of those services by the taxable person, the following conditions shall be met: (a) the invoice issued or made available by each taxable person taking part in the supply of the electronically supplied services must identify such services and the supplier thereof; (b) the bill or receipt issued or made available to the customer must identify the electronically supplied services and the supplier thereof. For the purposes of this paragraph, a taxable person who, with regard to a supply of electronically supplied services, authorises the charge to the customer or the delivery of the services, or sets the general terms and conditions of the supply, shall not be permitted to explicitly indicate another person as the supplier of those services."

	What are the rules applicable in your Member State?	
19.	Could the 2015 place of supply rules lead to reduced market competition and access for SMEs, due to the fact that it is more difficult for SMEs to comply with the different sets of VAT rules in all 28 Member States?	
20.	Did your company experience any problems linked with the application on the new rules and other legislations (e.g. data protection rules, consumer protection law, etc.)?	

<i>Identifying the place of your customer under the new Place of supply Rules</i>		
21.	Please describe the evidence that you use to identify the place of the customer.	
22.	If you use 'other commercially relevant information' to determine the place of the customer, can you please elaborate on the type of evidence used e.g. a declaration by the customer etc.	
23.	Do you make use of any third party solutions to assist you in identifying the place of your customers?	
24.	Have you experienced any technical/IT problems linked with gathering two non-contradictory pieces of evidence? If yes, please specify. ²²⁹	
25.	Should there be a possibility for smaller businesses to rely on only one piece of evidence?	
26.	If you use any of the following pieces of evidence, could you provide some further information on how this technically works and if you consider it as a reliable form of evidence? a) Billing address b) Bank details c) Fixed land line d) IP address e) Mobile Country Code f) Presumptions article 24a and 24b ²³⁰	

²²⁹ For example, when a non-taxable person buys an online service from a hotel lobby (cf. article 24bis) in Spain, its invoicing address is in the UK and his bank details indicate this person resides in France (cf. article 24septies).

²³⁰ Articles 24a and 24b provide presumptions for the following situations: digital supplies at a physical location of the supplier (e.g. a telephone box, a telephone kiosk, a Wi-Fi hot spot or a hotel lobby); digital supplies through a fixed land line; digital supplies via mobile networks; digital supplies using a decoder; and other digital supplies (more specifically, in case none of the situations referred to in article 24a and in points (a), (b) and (c) of article 24b of Regulation 282/2011 is applicable, article 24b (d) of the same regulation foresees the presumption that the customer is established, has his permanent address or usually resides at the place identified as such by the supplier on the basis of two items of non-contradictory evidence as listed in article 24f).

4. Questions with regard to the mini One Stop Shop

This part of the interview should result in the necessary output in order to identify problems faced by business, which have used the MOSS, particularly in respect of the different requirements in each Member State.

Therefore, if your business did not opt for the MOSS, this part of the questionnaire is not relevant.

	<u>Question</u>	<u>Answer</u>
<i>General perception of the mini One Stop Shop</i>		
27.	In general, how is the MOSS perceived in your company?	
28.	What is your experience from using the MOSS? Is it easy/difficult to use?	
29.	In general, what are the advantages of the MOSS for your company?	
30.	In general, what are the disadvantages of the MOSS for your company? Do you see any reasons why businesses would not take up the MOSS?	

	<u>Question</u>	<u>Answer</u>
<i>Shortcomings of the current MOSS</i>		
<i>Please provide comments on your experience with the following issues identified</i>		
31.	Did your company experience any shortcomings of the current MOSS in place (e.g. no possibility to recover input VAT)?	
32.	Did you experience any IT issues in connecting to your MSI MOSS portal and filing the reporting?	
33.	Should the scope of the MOSS be extended to tangible goods and other services?	

	<u>Question</u>	<u>Answer</u>
34.	Do you have recommendations to facilitate the use of the MOSS?	
35.	Is the fact that corrections need to be made to the original MOSS return and cannot be done in later returns an issue?	
36.	In case corrections were made, what was the minimum/maximum/average refund time?	
37.	What is your experience with the average refund time for individual Member States (are some Member States faster/slower)?	
38.	Did your company encounter any other shortcomings with regard to the current MOSS?	
39.	What is your opinion on the following suggested simplifications for the MOSS? 1) Possibility to retroactively register for the MOSS 2) Facilitate the correction of MOSS returns; 3) Simplified currency conversion rules 4) Input VAT deduction	
40.	Do you have any other suggestions for operational improvements?	

<i>Audit and other types of queries through the MOSS</i>		
41.	a) Has your company been subject to an audit or any other types of information requests relating to B2C TBE services already?	
	b) Are you aware of the MOSS audit guidelines? How are they perceived by your company?	
	c) If audited, did the audit take place in accordance with the MOSS guidelines?	

	<u>Question</u>	<u>Answer</u>
	d) Was the audit carried out a system's audit or a financial audit?	
	e) Did the audit lead to a reassessment?	
	f) Was it a multilateral audit and in which language was the audit performed? Which country/countries performed the audit: the MSI or MSC?	
	g) How long did the audit take place?	
	h) What was the tax authorities' attitude towards non-compliance? Were they rather lenient or very strict?	
42.	How is the possibility of being audited by (or receiving information requests from) multiple MSCs perceived?	

Annex 11: Workshop discussion paper

Discussion paper workshop 29 June 2016

Contents

- ✘ Introduction and objective of the workshop
- ✘ The Mini One Stop Shop
- ✘ Audit and administrative cooperation
- ✘ The 2015 Place of Supply Rules

1. Introduction and objective of the workshop

1.1. Introduction

Since 1 January 2015, all cross-border B2C telecom broadcasting and electronic services (“TBE services”), previously taxed in the Member State of the establishment of the supplier (for EU suppliers), are subject to VAT in the Member State of the residence of the customer.

Together with this change, the Mini One Stop Shop (or “MOSS”) was introduced. The MOSS allows businesses supplying these TBE services to final consumers in the EU to register for VAT once with their home Member State tax authorities, rather than registering for VAT in every EU Member State to which the business supplies.

The implementation of the **MOSS is seen as a major milestone** by the European Commission and by many EU Member States, since it enables them to collect tax on each other’s behalf. The MOSS system has already led to the collection of more than EUR 3 billion of revenues in 2015 and to about 14 000 MOSS VAT registrations.

Given the support expressed for the scheme, including by businesses, the European Commission is considering options for the **wider implementation of this concept**, with the objective of reducing the administrative burden associated with the VAT treatment of cross-border e-Commerce.

In 2015, Deloitte conducted a study on the initial findings on the implementation and application of the new place of supply rules and the MOSS. The study provides evidence that the initial experience from the 2015 place of supply rules and MOSS is generally positive and that these new rules form indeed a good basis for further expansion.

To formulate adequate recommendations for potential improvements to be taken into account in any future reform, **Deloitte is carrying out an updated evaluation of the new place of supply rules and MOSS**. This evaluation covers questions such as: Have there been many MOSS audits and/or request for information? Have the MOSS revenues and the number of MOSS registrations gone up or down? Have any companies decided to leave the MOSS and why? How could the MOSS be improved?

1.2. Objective of the workshop

The objective of the workshop is:

- To discuss issues identified during the first evaluation carried out by Deloitte in order to make a clear assessment of these issues;
- To identify and discuss potential solutions; and
- To set an order of priority of problems and solutions to improve the current state, with a focus on the Mini One Stop Shop.

These issues relate to three main topics:

- The Mini One Stop Shop;

- Audit and administrative cooperation, and
- The 2015 Place of Supply Rules

Deloitte will use the outputs of the workshop to feed into the assessment on the Mini One Stop Shop and the 2015 place of supply rules, part of the study “VAT aspects of cross-border e-Commerce – Options for modernisation”.

The participants will find in the document background information that will help them to prepare the discussion for the debates.

2. The Mini One Stop Shop

2.1 Corrections and refunds

Description of the topic

The current MOSS mechanism requires companies to make adjustments, for example in case of credit notes or bad debt relief, by correcting the initial return.²³¹ The Commission’s “Guide to the mini One Stop Shop” add that “the Member State of identification will then forward this correction to the Member State(s) of consumption concerned. Any additional payment due to the Member State(s) of consumption shall be paid by the taxable person to the Member State of identification for distribution. If the amendment results in a reimbursement from the Member State(s) of consumption, this will be paid directly to the taxable person by that Member State(s).”

Thus, for example, if a business grants a rebate to a customer or annuls a transaction, the VAT should be corrected in the return in which the original supply was reported. As such, the VAT return for that quarter should be resubmitted. This implies that businesses should, for each correction / credit note, identify the period in which the accompanying MOSS return was submitted and resubmit that return.

In practice, a number of businesses indicated that the complexity of this rule would most likely lead to non-application in practice. Many businesses affirmed that they would correct a later MOSS return, submitted for a quarter when the correction or rebate and the resulting reimbursement is made.

Questions for discussion

Please consider the following questions in this regard:

- 1) Is the fact that corrections need to be made to the original MOSS return and cannot be done in later returns an issue?
- 2) In case corrections were made, what was the minimum/maximum/average refund time?
- 3) What is your experience with the average refund time for individual Member States (are some Member States faster/slower)?

²³¹ Article 61 Implementing Regulation 282/2011 as amended by Council Regulation No 967/2012 foresees that “changes to the figures contained in a VAT return shall, after its submission, be made only by means of amendments to that return and not by adjustments to a subsequent return.”

2.2. Currency exchange

Description of the topic

In principle, the MOSS return has to be filled in euro. However, Member States that have not adopted the euro may require the return to be made out in their national currency. In case the supplies have been made in other currencies, the supplier should use the exchange rate, published by the ECB, applying on the last date of the quarter.

Although the abovementioned common currency conversion rule enhances legal certainty, currency conversion remains an issue for business for multiple reasons. In the first place, this rate is different from what business use in their day-to-day business and software systems, which are often transaction based. The financial accounts of businesses are based on how the transactions are recorded.

Once every three months, the amounts will then have to be converted into the currency to be used for the MOSS return, which results in a high probability that there will be a mismatch, and, as such, unexpected gains or losses. Businesses indicated that this currency conversion rule is not practical and insufficiently flexible.

Additionally, these rules deviate from other currency conversion rules in the VAT Directive. This results among others in a higher administrative burden for the businesses' bookkeeping, as the bookkeeping for the national return will differ from the MOSS return.

Questions for discussion

Please consider the following questions in this regard:

- 1) Do the currency conversion rules pose a problem?
- 2) If yes, what are the possible solutions?

2.3. Technical issues and recommendations for operational improvement

Please consider the following questions in this regard:

- 1) What is your opinion on the following suggested simplifications for the MOSS?
 - a. Possibility to retroactively register for the MOSS;
 - b. Facilitate the correction of MOSS returns;
 - c. Simplified currency conversion rules;
 - d. Input VAT deduction; or
 - e. Other.
- 2) Did you encounter any other technical issues in the application of the MOSS?
- 3) Do you have any other recommendations for operational improvement for the MOSS?

Finally, please list the three most important improvements required to MOSS in the order of priority.

3. Audit and administrative cooperation

3.1 Description of the topic

Since 2015, TBE supplies are taxed in the Member State where the customer has its residence, being the so-called “Member State of Consumption”, also abbreviated as “MSC”.

Consequently, in principle, businesses providing TBE supplies had to register in all MSCs for VAT purposes. However, by virtue of the MOSS, these businesses should only register for VAT purposes in their “Member State of Identification” or “MSI”. This MSI serves as a single contact point for VAT identification, submitting VAT returns and paying the VAT due in all MSCs.

For EU based businesses, the “Member State of Identification” is the Member State in the territory of which the taxable person has established his business or, if he has not established his business in the EU, where he has a fixed establishment. Businesses that are not established, nor have a fixed establishment within the EU, can designate their own Member State of Identification.

Although the MOSS lowers the compliance burden, it remains a reporting mechanism. Indeed, a business can still receive information requests from 28 different Member States, even in different languages. Since VAT audit rules (e.g. bookkeeping methods, statute of limitations) are not harmonised within the European Union, this could be particularly burdensome for businesses. Additionally, they risk double taxation in case national tax authorities disagree on certain items.

Also from a tax authority’s perspective, a lack of coordination might result in higher auditing costs, which may not be based on risk, are therefore inefficient and may divert resources.

In order to improve the coordination of audits between Member states, the European Commission published its so-called “audit guidelines”. These contain some recommendations for national tax authorities on how best to contact businesses as part of an audit and the method businesses should use to provide information required by an audit. Unfortunately, not all Member States agreed to apply them.

3.2 Questions for discussion

Please consider the following questions in this regard:

- 1) Are you aware of companies subject to an audit or any other types of information requests relating to B2C TBE services already? If yes, are you aware of the approach, including:
 - a. Was the audit carried out a system's audit or a financial audit?
 - b. Did the audit lead to a reassessment?
 - c. Was it a multilateral audit and in which language was the audit performed? Which country/countries performed the audit: the MSI or MSC?
 - d. How long did the audit take?
 - e. What was the tax authorities’ attitude towards non-compliance? Were they rather lenient or very strict?
- 2) What is the best way forward to deal with audits by multiple Member States’ tax authorities?

4. The 2015 Place of Supply Rules

4.1. Identification of customer location

Description of the topic

As mentioned above, since 1 January 2015, B2C TBE services are taxed in the country where the customer resides. More specifically, for natural persons, this is where the customer has his 'permanent address' or 'usually resides'.²³² Consequently, the supplier has to identify the customer's location.

This is rather complex for electronically supplied services, as their nature excludes a physical monitoring.²³³ Additionally, the parties to such supplies do not meet, which provides the possibility for the customer to remain anonymous.²³⁴ Therefore, determining the customer's location might result in a high administrative burden for the supplier. This is even more the case taking into account the nature of these services, which is that of low value, high volume transactions.²³⁵

Additionally, obtaining reliable information is even more difficult in a digital context, where transactions usually take place in a very short time frame.²³⁶

To avoid a high administrative burden, articles 24a and 24b Implementing Regulation 282/2011 provide some presumptions to determine the customer's location for cases where it is extremely difficult to determine where the customer is actually established.²³⁷

- Articles 24a and 24b cover:
 - digital supplies at a physical location of the supplier (e.g. a telephone box, a telephone kiosk, a Wi-Fi hot spot or a hotel lobby);
 - digital supplies through a fixed land line:
 - digital supplies via mobile networks;
 - digital supplies using a decoder; and
 - other digital supplies. More specifically, in case none of the situations referred to in article 24a and in points (a), (b) and (c) of article 24b of Regulation 282/2011 is applicable, article 24b (d) of the same regulation foresees the presumption that the customer is established, has his

²³² Article 58 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

²³³ Report of the European Parliament "Simplifying and Modernising VAT in the Digital Single Market, <http://www.europarl.europa.eu/document/activities/cont/201209/20120924ATT52130/20120924ATT52130EN.pdf>, consulted on 20 October 2015.

²³⁴ M. LAMENSCH, The 2015 Rules for Electronically Supplied Services – Compliance Issues, International VAT Monitor, 2015, No. 1.

²³⁵ Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, p. 54.

²³⁶ M. LAMENSCH, The 2015 Rules for Electronically Supplied Services – Compliance Issues, International VAT Monitor, 2015, No. 1.

²³⁷ Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, p. 54.

permanent address or usually resides at the place identified as such by the supplier on the basis of two items of non-contradictory evidence as listed in article 24f.

These scenarios are extensively explained, illustrated and commented upon in the Commission's explanatory notes. The explanatory notes also include a useful decision chart to illustrate the interaction between the various presumptions.

Article 24d then deals with the rebuttal of presumptions by either the supplier or a tax authority.²³⁸ More specifically, this article inserts the possibility to rebut the aforementioned presumptions on the basis of three items of non-contradictory evidence indicating that the customer is established, has his permanent address or usually resides elsewhere.

Finally, article 24f elaborates on the evidence for the identification of the location and the rebuttal of the presumptions.²³⁹ More specifically, this article lists the following items:

- the billing address of the customer;
- the Internet Protocol (IP) address of the device used by the customer or any method of geolocation;
- bank details, such as the location of the bank account used for payment, or the billing address of the customer held by that bank;
- the Mobile Country Code (MCC) of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) card used by the customer;
- the location of the customer's fixed land line through which the service is supplied to him; or
- other commercially relevant information.

Questions for discussion

Please consider the following questions in this regard:

- a) Have you experienced any technical/IT problems linked with gathering two non-contradictory pieces of evidence? If yes, please specify
- b) What kind of simplification measures, still allowing to identify the location of the customer in a sufficiently reliable manner, should be available for smaller business?

4.2. Definition of electronically supplied service

Description of the topic

The definition of an electronically supplied service is included in article 7 of Implementing Regulation No 282/2011 and consists of the following elements. It concerns services:

- which are delivered over the Internet or an electronic network;

²³⁸ The scope for a tax authority to rebut a presumption is limited to situations where there are indications of misuse or abuse by the supplier.

²³⁹ Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015, p. 54.

- the nature of which renders their supply essentially automated;
- involving minimal human intervention, and
- impossible to ensure in the absence of information technology.

This definition is accompanied by different indicative lists that provide examples of services that fall or do not fall within the scope of the category of “electronically supplied services”. More specifically, Annex II of the VAT Directive 2006/112/EC, article 7 and Annex I of Implementing Regulation No 282/2011 provide such lists.

These examples provide guidance for those situations explicitly covered by them, whereas for services not covered in the indicative lists it is required to test their nature and content against the definition mentioned above.

Typical examples are software and changes to, or upgrades of, software, website design, services automatically generated from a computer via the Internet in response to specific data input by the recipient, Internet service packages of information (news, weather or travel reports), webhosting, subscriptions to online newspapers and magazines, downloading or streaming music, playing multiplayer games etc.

During stage 1 of the study, i.a. from literature, discussions at the level of the VAT Committee and during the workshops held at a Fiscalis Seminar, it was learned that the material scope of the 2015 place of supply rules does pose a certain number of problems.

In the first place, it is not entirely clear how the criterion from the definition: “impossible to ensure in the absence of information technology” should be perceived and there is little literature available on this subject matter.

Some literature defends the “objective is to confirm that ‘information technology’ has an impact on the substance (i.e. that electronically supplied services are ‘automated’ in their delivery and substance)”,²⁴⁰ without requiring that the provision of the service is essentially reliant on information technology. A similar approach is adopted by the VAT Committee in a working paper.²⁴¹ According to this paper, an interpretation that requires that it is impossible for a service to also be provided offline, in order to qualify as an electronic service, is too strict, stating that: “such an approach (...) leads to limiting the scope of the definition in an arbitrary way which cannot be justified taking into account the wording of the definition and its purpose.”

Such an approach seems balanced; a too strict interpretation would not be in line with the principles of adopting a taxation at the destination. The VAT Committee also considers almost unanimously that although services supplied using information technology (online) and in more traditional ways (offline) may have similar features and are comparable, a service supplied online and a service supplied offline cannot be regarded as identical. The VAT Committee almost unanimously agrees that in

²⁴⁰ LAMENSCH, M., European Value-Added-Tax in the digital era: A critical analysis and proposal for reform, 118 (not yet published).

²⁴¹ VAT COMMITTEE, VAT 2015; Scope of the notion of electronically supplied services, working paper no 843, taxud.c.1(2015)694775, Brussels, 12 February 2015.

relation to such comparable services (supplied online and offline), only the services fulfilling all the conditions of the definition of electronically supplied services shall be found to be covered by it.²⁴²

Questions for discussion

Please consider the following questions in this regard:

- 1) What kind of practical problems linked with the application of the definition of electronically supplied services you experience?
- 2) What kind of solutions you would suggest in relation to the identified problems?

4.3. Article 9a VAT Implementing Regulation 282/2011

Description of the topic

Private individuals often purchase services not directly from the service supplier but through an intermediary. This intermediary can be a platform or a telecommunications network. Purchases made through a platform include for example purchases of apps from app stores (e.g. Apple App Store and Google Play Store). As regards purchases made through a telecommunications network, this could be accessing and downloading music or games. These services are then charged on your mobile phone bill. In such cases, it is crucial to determine who is liable to pay the VAT for the supply, either the content provider or the mobile phone business.

The European legislator responded to these concerns as article 9a inserts a presumption to determine who in the chain is to be regarded as the supplier of the telecommunication services and electronically supplied services, and, consequently, is liable to pay the VAT.

The presumption applies when these services are supplied through an intermediary. This can be for example a telecommunications network, or an interface or a portal such as a marketplace for applications.

As a result of the application of article 9a, the intermediary is deemed to have purchased and onward supplied those services himself, and, consequently has to account for VAT in the Member State of the customer.

This entails that the transactions of a supplier using such an intermediary to supply TBE-services, are considered as B2B transactions, and no longer as B2C transactions. The intermediary will be the one supplying (cross-border) B2C services to the final customers.

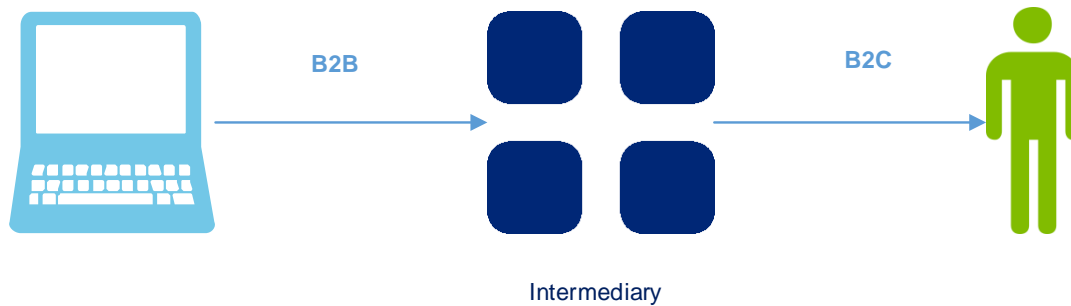
By way of this provision, the burden to identify the customer's location and to apply potentially 28 sets of different VAT rules (depending on in how many different countries the customers are located), will thus be shifted to the intermediary which is very often much bigger entity in comparison with the initial supplier of electronically supplied services. This makes sense since the intermediary has a closer

²⁴² Vat Committee guidelines, 102nd meeting of 30 March 2015, taxud.c.1(2015)4128689 – 862, http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/vat_committee/guidelines-vat-committee-meetings_en.pdf, consulted on 28 January 2016.

contact with the client and could therefore potentially more easily determine the capacity and location of the customer and deal with the VAT consequences.

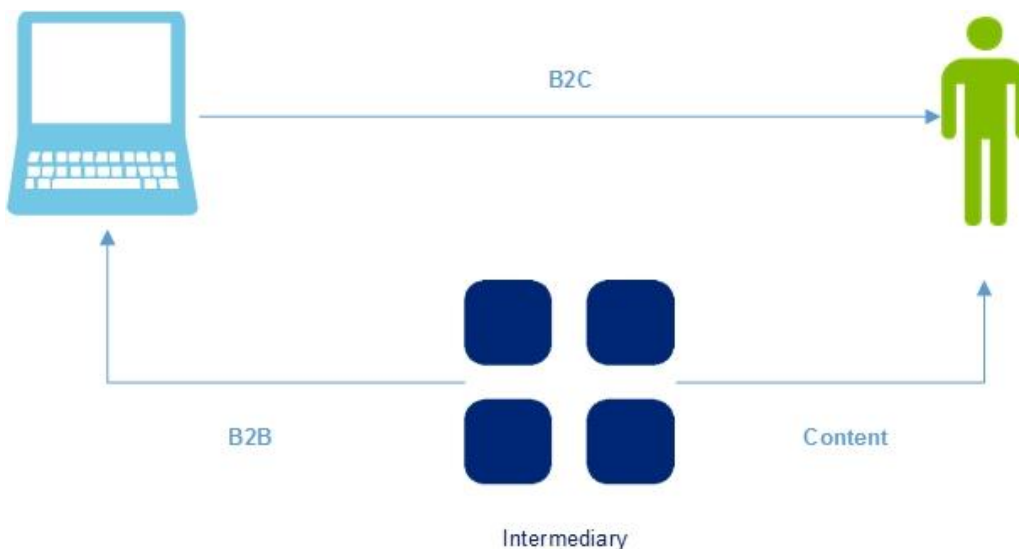
As a result, this provision has the potential to significantly simplify the accounting and reporting requirements for the supplier using an intermediary in respect of those supplies. Therefore, it is expected that this measure will greatly enhance the compliance of smaller suppliers of such services. However, for the intermediary it may increase administrative burden and responsibilities.

The following diagram shows the VAT situation in case the presumption of article 9a applies.



If certain conditions are fulfilled, the presumption of article 9a can be rebutted. The supplier of the electronic services or telecommunication services, or another intermediary higher up the chain, will then again be considered as supplying the service himself to the final customer. The intermediary is then usually supplying its intermediation services to the service provider.

The following diagram shows the legal situation in case the presumption of article 9a is rebutted.



Questions for discussion

Please consider the following questions in this regard:

- What kind of practical problems linked with the application of Article 9a are or can be experienced by smaller businesses? Please list them and describe.
- What kind of practical problems linked with the application of Article 9a are or can be experienced by the intermediaries? Please list them and describe.

Annex 12: Segmentation of MOSS revenues in 2015

Amount of VAT declared in 2015 in returns:	Total VAT revenue (EUR) in 2015 Extrapolation based on share in revenues	No. of declarations Extrapolation based on share in revenues	No. Of declarations Extrapolation based on share in #registrations	Average VAT per declaration (EUR)	Total value of transaction (EUR)
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