

INFORMATION - United Kingdom

Use and Enjoyment - VAT Directive 2006/112/EC - Article 59a

In the UK, there are use and enjoyment rules applicable to telecommunications and broadcasting services when provided to non-taxable persons. Accordingly:

- where the place of supply is the UK, but the effective use and enjoyment of the services takes place outside the EU, these services are outside the scope of UK VAT; and
- where the place of supply is outside the EU, but the services are used and enjoyed in the UK, these services will be subject to UK VAT.

Reference to the above may be found in Schedule 4A para. (8) of the UK VAT Act, see also the UK tax authorities' VAT Notice 741A, section 13.

Time of supply / chargeability - Deferment and Cash Accounting Scheme - VAT Directive 2006/112/EC - Article 66

In the UK, for transactions where no VAT invoice is issued, VAT is normally chargeable on the date the supply physically takes place (the date when the service is carried out and all the work - except invoicing - is finished). However if an invoice is issued, or a payment is received, before this date, VAT is chargeable on that date to the extent of the invoice or payment received.

Where a VAT invoice is issued within 14 days after the supply takes place (or for a period longer than 14 days, as may be agreed upon with HMRC), VAT is normally chargeable on the date of the invoice. Suppliers of broadcasting, telecommunications and electronic services declaring UK VAT through MOSS cannot use the UK's cash accounting scheme for these declarations.

Reference to the above may be found in Section 6 para. (3), (4) and (5) of the UK VAT Act.

Time of supply / chargeability - Continuous supplies - VAT Directive 2006/112/EC - Article 64(2)

In the UK, continuous supplies of services are generally regarded as taking place at the earlier of receipt of payment or issue of a VAT invoice. There is no general provision imposing a tax point after a set interval.

However, in the situation where the person making the supply and the person receiving the supply are connected (i.e. if the parties are "relatives" or if both parties are under common ownership of a controlling entity), a tax point will be imposed twelve months after the supply initially commenced, if there has neither been a payment received by the supplier nor a VAT invoice issued. In case an invoice is issued or a payment is performed within six months of the end of the twelve month period, this would trigger the tax point.

"Relative" means brother, sister, ancestor or lineal descendant.

Reference to the special provision stated above may be found in SI 1995/2518 regulation 94B. Reference to the general tax point rules for the continuous supply of services may be found in SI 1995/2518 regulation 90(1).

Re-valuation of services at open market value - VAT Directive 2006/112/EC - Article 80

In the UK, where a supply is made to a non-VAT registered customer who is deemed to be connected with the supplier (i.e. if the parties are "relatives" or if both parties are under common ownership by a controlling entity), the total monetary value of the supply is less than its open market value and the recipient is not able to fully deduct VAT on the supply, the UK tax authorities may direct that the value of the supply shall be taken to be its open market value.

The UK Tax Authorities have a time limit of three years from the time of the supply in which to impose the market value on the relevant transaction.

"Relative" means brother, sister, ancestor or lineal descendant.

Reference to the above may be found in s 19(5); Schedule 3B para 18A (non-union Scheme) and Schedule 3BA para 18 (union scheme); and Schedule 6 para 1 (1)-(3)(5) of the UK VAT Act.

Bad Debt relief - VAT Directive 2006/112/EC - Article 90

Bad debt relief is available in the UK. A claim can be made if there is an outstanding VAT amount due to the supplier after six months from the date of the supply of services. Claims must be made within four years and six months following the later of:

- 1) the date on which the consideration that has been written off as a bad debt became due and payable;
- 2) the date of the supply of the services.

Reference to the conditions for making a BDR claim can be found in Section 36 para (1), (2) and (3); Schedule 3B para 16L and Schedule 3BA para 32 of the UK VAT Act.

Reference to the time limit for making a BDR claim may be found in regulation 165A para (1) of the SI 1995/2518 regulation. In relation to MOSS declarations, any claim for BDR must be made by submitting an amended MOSS return for the period in which the original supply was declared.

Application of reduced VAT rates - VAT Directive 2006/112/EC - Article 98

In the UK, no reduced VAT rates apply with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Standard VAT Rate - VAT Directive 2006/112/EC - Article 96-97

In the UK the standard VAT rate is 20%.

Release from payment of insignificant amounts of VAT - VAT Directive 2006/112/EC - Article 212

The UK has not implemented rules under its domestic legislation whereby taxable persons are released from the payment of the VAT where the amount due is insignificant.

Invoicing Obligations - Obligation to issue an invoice - VAT Directive 2006/112/EC - Articles 217-249

In the UK, there is no obligation to issue a VAT invoice with respect the supply of telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Content of an invoice - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Time limit for issuing an invoice - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Summary invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Invoicing Obligations - Batch of electronic invoices - VAT Directive 2006/112/EC - Articles 217-249

Not applicable given that there is no obligation to issue a VAT invoice in relation to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Additional obligations deemed necessary for collecting VAT and preventing evasion (anti-avoidance measures) - VAT Directive 2006/112/EC - Article 273

The UK has not implemented any rules or anti-avoidance measures that may directly impact telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Stand-still scheme - Derogations for States which were members of the Community on 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

No provisions are applicable under a Stand-still Scheme in the UK VAT legislation or subject to common practice in the UK that may be relevant for telecommunications, broadcasting and electronic services provided to non-VAT taxable persons.

Stand-still scheme - Derogations for States which acceded to the Community after 1 January 1978 - VAT Directive 2006/112/EC - Articles 370-391

N/A

VAT treatment of vouchers

There are specific rules on vouchers in the UK legislation. These rules apply to both electronic vouchers and telecommunications credits.

Vouchers are defined in the UK legislation as "a token, stamp or voucher (whether in physical or electronic form) that represents a right to receive goods or services to the value of an amount stated on it or recorded in it".

The UK VAT legislation makes a distinction between Single Purpose Vouchers and Multi-Purpose Vouchers.

A single purpose voucher ("SPV") is a voucher that carries the right to receive only one type of goods or services which are all subject to a single rate of VAT.

A multi-purpose voucher ("MPV") carries the right to be redeemed against all services offered by the supplier, regardless of the VAT rate which applies.

For SPVs: VAT becomes due upon sale of the voucher and in accordance with the VAT rules applicable to the underlying transaction to which the voucher relates.

For MPVs: VAT becomes due upon redemption, the issuer being liable for VAT on the amount received for the voucher.

Reference to the above may be found in Schedule 10A of the UK VAT Act.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (E-learning activities)

According to UK legislation the supply of education by an eligible body (i.e., school, university or college) is an exempt supply with no right to input VAT deduction. E-learning services are in principle taxable in the UK, unless made by an eligible body, school, university or college.

Eligible bodies are (inter alia):

- Schools;
- Universities;
- Other further educational institutions designated in legislation;
- Local authorities, government departments and non-profit-making bodies that carry out duties of an essentially public nature similar to those carried out by a local authority or Government Department;
- non-profit-making organisations that meet certain conditions; or
- commercial providers of tuition in English as a foreign language.

Reference to the above may be found in Schedule 9 Group 6 of the UK VAT Act. Further information can be found in Notice 701/30 'Education and Vocational Training'.

Services provided by a person

Education, training, or a similar service delivered live by a person over the internet or an electronic network (such as a webinar) is not covered by the 2015 rule changes but could still fall within the above exemption if the relevant conditions are met.

Services provided through automated learning

Automated learning that does not involve any, or only minimal, human involvement is considered to be a digital service. The exemption for education could apply provided that the relevant conditions are met.

Educational examination services

The place of supply for educational examination services, for example, marking or assessing completed examination papers, will depend on whether or not the service requires or involves any human intervention. For example, where a student is required to complete and submit an online examination paper which is automatically checked and scored by computer, this is a digital service. However, if the service involves the completed examination paper being marked by an assessor, it won't be a 'digital service' covered by the new rules. The place of taxation will be the place where the service is performed.

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (Gambling activities)

Generally, "game of chance" services, whether facilitated online or in store, are exempt supplies for VAT purposes with no right to input VAT deduction. A game of chance is generally understood in the UK as either a game of:

- pure chance, such as dice or roulette, where the result cannot be influenced by the player, or
- chance and skill combined, such as whist or rubber bridge, where the player either cannot eliminate chance or can only do so by exercising superlative skill.

Reference to the above may be found in Schedule 9 Group 4 of the UK VAT Act. Further information can be found in Notice 701/29 'Betting, gaming and lotteries'. [Please note there may be a liability to register for Remote Gaming Duty - see Notice 455A for further details.]

Bonus points/credits granted as part of e-gambling activities are not a supply for VAT purposes so no VAT is due on these amounts (although gaming duties may apply depending on the type of product).

Exemptions - VAT Directive 2006/112/EC - Articles 132 & 135 (General)

There is potential for the supply of electronic services provided to non-VAT taxable persons to fall under a UK exemption in the following scenarios:

- 1) Insurance - supplies of insurance or services of an insurance intermediary which are related to an insurance transaction meeting certain conditions may be exempt in the UK.
- 2) Financial Services - services in relation to any dealings with money, securities, or credit or intermediary services in relation to any such transaction may be exempt in the UK.

Reference to the above may be found in Schedule 9 Groups 2 and 5 of the UK VAT Act and further information can be found in Notice 701/49 'Finance'.

VAT registration process

To register for the VAT MOSS scheme, businesses must use the electronic portal set up by Her Majesty's Revenue and Customs (HMRC). Businesses established in the UK must be registered for VAT in the UK before they can register for the VAT MOSS scheme.

All businesses registering for MOSS will need to provide the following information:

- 1) Details of any previous MOSS or VoeS registrations
- 2) Website addresses
- 3) Contact name, telephone number and e-mail address

Businesses applying for the Union scheme will also need to provide details of any fixed establishments in other Member States and details of any non-established taxable person VAT registrations they have in other Member States. Businesses must state if they are part of a VAT Group.

Businesses applying for the non-Union scheme will need to obtain a UK Government Gateway ID before registering for MOSS. This can be done via www.gateway.gov.uk. When registering for MOSS they will need to provide the details of their business (name, address, type of business, etc.) in addition to the information listed above.

Support for MOSS registered businesses

Special arrangements apply to small UK-based suppliers of digital services (micro businesses).

Where the business makes taxable supplies of digital services to consumers in other EU member states and its UK taxable turnover is below the UK VAT registration threshold (~~£83,000~~ £85,000 in a 12 month period as at April 2017), the business can use the VAT MOSS to account for the VAT due in other EU member states but it is not required to account for VAT on sales to its UK consumers (until it exceeds the UK VAT registration threshold).

UK micro businesses (below the UK VAT registration threshold and registered for the VAT MOSS) may use best judgment and base their 'customer location' VAT and accounting decisions on a single piece of information, such as the billing address provided by the customer or information provided to them by their payment service provider. Where activities are not carried out in the course of furtherance of a business (e.g. a hobby activity carried out on an occasional or minimal basis) the UK does not treat this as a business activity for VAT purposes and such supplies are treated as outside the scope of VAT.

Access to web-portal and contact details of the local VAT Authorities

The HMRC MOSS registration service opened on 20 October 2014 (link to portal below) and can be back-dated in certain situations. Provided the business notifies HMRC and submits its MOSS registration application by the 10th day of the month following its first digital service sale, the registration will be back-dated to the date of the first cross-border digital services sale.

For example, if the business sold its first cross-border digital service on 8 January 2015, it had until 10 February 2015 to submit its MOSS registration application to HMRC.

<https://online.hmrc.gov.uk/registration/options?GAURI=https%3A%2F%2Fonline.hmrc.gov.uk%2Fhome>

General Contact:

e-mail: vat2015.contact@hmrc.gsi.gov.uk

Further contact details for VAT general queries are available here:

<https://www.gov.uk/government/organisations/hm-revenue-customs/contact/vat-enquiries>

Appointment of a VAT Agent

Agents are not allowed to register a business for MOSS via the UK website portal. Businesses can allow an agent to act for them after the business has registered for MOSS.

Penalties for non-compliance (Failure to register and late registration)

For late registration a penalty is calculated as a percentage of the VAT due for the "relevant period". The "relevant period" begins on the date on which the business is required to be registered and ends on the date on which the UK VAT authorities became fully aware of this liability.

The penalty rate that applies is:

- 1) 100% (with respect to deliberate and concealed acts)
- 2) 70% (with respect to deliberate but not concealed acts)
- 3) 30% (any other case)

However, measures exist for the reduction of such penalties if the business discloses the failure to register to the UK VAT authorities. The degree of mitigation of the penalties depends on the quality of the disclosure.

Reference to the above may be found in Schedule 41, Finance Act 2008.

More detailed information may be found on HMRC's website using the following link: <https://www.gov.uk/vat-returns/surcharges-and-penalties>

Penalties for non-compliance (Non-payment and late payment of VAT)

Currently, a business will 'default' where either a VAT return is submitted late or a payment of VAT is made late. Following the first default, the UK tax authorities will issue a written warning known as a Surcharge Liability Notice which specifies a period of 12 months from the last day of the VAT period under default. This is known as the 'surcharge period'.

A further default during this surcharge period has two consequences:

- 1) A surcharge assessment may be calculated at 2% for the first default, 5% for the second default and at higher rates for subsequent defaults.
- 2) The UK tax authorities will issue a Surcharge liability Notice Extension extending the existing surcharge period to 12 months from the most recent default.

Reference to the above may be found in Sections 59-81 and Schedule 3B paragraphs 16E-G and Schedule 3BA paragraphs 25 - 27 of the UK VAT Act.

More detailed information may be found on HMRC's website using the following link: <https://www.gov.uk/vat-returns/surcharges-and-penalties>

Penalties for non-compliance (Non-submission and late submission of VAT returns)

Currently, a business will 'default' where either a VAT return is submitted late or a payment of VAT is made late. Following the first default, the UK tax authorities will issue a written warning known as a Surcharge Liability Notice which specifies a period of 12 months from the last day of the VAT period under default. This is known as the 'surcharge period'.

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Reference to the above may be found in Sections 59-81 and Schedule 3B paragraphs 16E-G and Schedule 3BA paragraphs 25 - 27 of the UK VAT Act.

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Exclusion from the MOSS regime for non-compliance

Where a business consistently fails to comply with the rules for the MOSS scheme, HMRC may exclude it from using the scheme. If this happens, the business will be sent a message through the online service and it won't be able to use the scheme anywhere in the EU for up to 2 years. This means that it will have to register for VAT in each of the EU member states where it makes digital supplies to consumers. It will also have to make VAT Returns and VAT payments to each of those member states every quarter.

Penalties for non-compliance (Incomplete and incorrect VAT returns)

A penalty regime applies to inaccuracies on VAT returns. The penalty rate depends on the behaviour giving rise to the error (rather than the size of the error) and may range from 30% (for 'careless' errors) to 100% (for 'deliberate and concealed' acts) of the VAT due.

However, provisions exist for the reduction of such penalties if the business makes an unprompted disclosure to the UK tax authorities. The degree of mitigation also depends on the 'quality' of the disclosure. Where a business makes an error on a VAT return despite taking "reasonable care", it will not be liable to a penalty.

Reference to the above may be found in Schedule 24, Finance Act 2007.

Penalties for non-compliance (Non-compliance with invoicing and accounting obligations)

According to section 69 (2) of the UK VAT Act there is a penalty for the failure to preserve records, equating to an amount of GBP 500. If records are disposed or concealed following the issue of an Information Notice requiring the production of records, this is a criminal offence that can result in up to 2 years imprisonment.