

# **- Assessment of the application by Member States of European Union VAT provisions with particular relevance to the Mini One Stop Shop (MOSS) -**

## **BACKGROUND**

The information available in the attached report relates to the Mini One Stop Shop Scheme ("MOSS") that was introduced with effect from 1 January 2015 for businesses established both within and outside the European Union providing telecommunications, broadcasting or electronic services to private individuals (final consumers) located within the European Union.

The information relates predominantly to the rules in the EU VAT Directive (Directive 2006/112/EC), the implementation of which into the domestic legislation of the Member States is optional. The information also relates to the rules in the EU VAT Directive that must be implemented in the domestic legislation of Member States but the interpretation of which may differ from one Member State to another.

## **SCOPE**

In this summary overview you will find a list of the countries and topics covered by the scope of the attached report, a summary table on the implementation of use and enjoyment rules, VAT rates and B2C invoicing obligations across Member States, as well as definitions of some VAT concepts.

In the attached report you will find more detailed information in two interactive spreadsheets offering a search function either per country or per topic. In order to have access to all the available data and be able to use the search function, make sure that all the features of the document are enabled on your computer.

## **DISCLAIMER**

The information set out in this summary overview and in the attached report are those of the author(s), and do not necessarily reflect the official opinion of the European Commission. The Commission does not guarantee the accuracy of the data included in this study. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein.

**Please note that the information included in this report is high level and for indicative purposes only. It should be carefully considered and only relied upon in connection with all the relevant factual elements at stake and on a case by case basis.**

Any information that may be of relevance for businesses using the MOSS that is not directly or expressly included in this report should be obtained by reference to Directive 2006/112/EC or the rules under which it is implemented in the domestic legislation of the relevant Member State.

In all cases, we strongly recommend MOSS users to contact the relevant tax authority to seek confirmation on the valid VAT treatment applicable.

## TOPICS COVERED BY THE SCOPE OF THE REPORT

|  |                  |
|--|------------------|
| - Use and Enjoyment.....   | Article 59a      |
| - Chargeability - Deferment and Cash Accounting Schemes.....                   | Article 66       |
| - Chargeability - Continuous supplies.....                                     | Article 64(2)    |
| - Re-valuation of services.....  | Article 80       |
| - Bad Debt Relief.....   | Article 90       |
| - Standard VAT rates.....  | Articles 96-97   |
| - Reduced VAT rates.....   | Article 98       |
| - Release from payment of insignificant amounts of VAT.....                    | Article 212      |
| - Invoicing Obligations - Obligation to issue an invoice.....                  | Articles 217-249 |
| - Invoicing Obligations - Content of an invoice.....                           | Articles 217-249 |
| - Invoicing Obligations - Time limit for issuing an invoice.....               | Articles 217-249 |
| - Invoicing Obligations - Summary Invoices.....                                | Articles 217-249 |
| - Invoicing Obligations - Electronic invoices.....                             | Articles 217-249 |
| - Invoicing Obligations - Batch of electronic invoices.....                    | Articles 217-249 |
| - Anti-avoidance measures.....   | Article 273      |
| - Stand-still scheme - Members on 1 January 1978.....                          | Articles 370-391 |
| - Stand-still scheme - Members after 1 January 1978.....                       | Articles 370-391 |
| - VAT Treatment of vouchers.....   |                  |
| - Exemptions (E-learning activities).....                                      | Articles 132-135 |
| - Exemptions (Gambling activities).....  | Articles 132-135 |
| - Exemptions (General).....  | Articles 132-135 |
| - MOSS Registration Process.....   |                  |
| - Access to web-portals and contact details of the local VAT authorities.....  |                  |
| - Appointment of a VAT Agent.....  | Article 204      |
| - Penalties for non-compliance (failure to register or late registration)..... |                  |
| - Penalties for non-compliance (non or late payment of VAT).....               |                  |
| - Penalties for non-compliance (non or late submission of VAT returns)....     |                  |
| - Penalties for non-compliance (incomplete or incorrect VAT returns).....      |                  |
| - Penalties for non-compliance (invoicing and accounting obligations).....     |                  |

## COUNTRIES IN SCOPE OF THE REPORT

|                  |           |               |            |
|------------------|-----------|---------------|------------|
| - Austria        | - Estonia | - Italy       | - Portugal |
| - Belgium        | - Finland | - Latvia      | - Romania  |
| - Bulgaria       | - France  | - Lithuania   | - Slovakia |
| - Croatia        | - Germany | - Luxembourg  | - Slovenia |
| - Cyprus         | - Greece  | - Malta       | - Spain    |
| - Czech Republic | - Hungary | - Netherlands | - Sweden   |
| - Denmark        | - Ireland | - Poland      | - UK       |

## SUMMARY INFORMATION

The information below summarises the rules applicable in all Member States with respect to use and enjoyment provisions, VAT rates applicable to telecommunications, broadcasting and electronic services and the obligation to issue an invoice with respect to supplies to private individuals (B2C invoice).

Please note that the information is summarised and must be considered in light of the more detailed information that is available in the attached report.

| <b>Member State</b>   | <b>Use and Enjoyment</b> | <b>Reduced VAT rates %</b>   | <b>Standard VAT rates %</b> | <b>Obligation to issue a B2C invoice</b> |
|-----------------------|--------------------------|--|-----------------------------|--|
| <b>Austria</b>        | Yes                      | 10% for services provided by broadcasting companies  | 20% for other services      | No                                       |
| <b>Belgium</b>        | No                       |  | 21%                         | No                                       |
| <b>Bulgaria</b>       | No                       |  | 20%                         | No *                                     |
| <b>Croatia</b>        | No                       |  | 25%                         | Yes                                      |
| <b>Cyprus</b>         | Yes                      |  | 19%                         | Yes                                      |
| <b>Czech Republic</b> | No                       |  | 21%                         | No                                       |
| <b>Denmark</b>        | No                       |  | 25%                         | No                                       |
| <b>Estonia</b>        | No                       |  | 20%                         | No                                       |
| <b>Finland</b>        | No                       |  | 24%                         | No                                       |
| <b>France</b>         | No                       | 10% for television broadcasting and disposal of author's rights<br>5.5% for e-books / audio books<br>2.1% for e-newspapers | 20% for other services      | No **                                    |
| <b>Germany</b>        | Yes                      |  | 19%                         | No                                       |
| <b>Greece</b>         | Yes                      |  | 23% <sup>1</sup>            | No **                                    |
| <b>Hungary</b>        | No                       |  | 27%                         | No*****                                  |
| <b>Ireland</b>        | Yes                      |  | 23%                         | No                                       |
| <b>Italy</b>          | Yes                      | 4% for e-Books, newsletters, periodicals and editorial products  | 22% for other services      | No *                                     |

<sup>1</sup> A standard rate of 16% applies to services supplied by persons established in the departments of Lesbos, Chios, Samos, the Dodecanese and the Cyclades, and on the Aegean islands of Thassos, the Northern Sporades, Samothrace and Skiros, provided these services are executed/materialised within these islands. However, this specific standard rate will be gradually abolished.

|                       |     | conveyed through any physical medium or by electronic means of communication |   |         |
|-----------------------|-----|--|---|---------|
| <b>Latvia</b>         | Yes |  | 21%   | No *    |
| <b>Lithuania</b>      | No  |  | 21%   | Yes *** |
| <b>Luxembourg</b>     | Yes | 3% for broadcasting services   | 17% for other services  | No      |
| <b>Malta</b>          | No  |  | 18%   | No      |
| <b>Netherlands</b>    | No  |  | 21%   | No      |
| <b>Poland</b>         | No  | 8% for broadcasting of radio/TV programmes                                   | 23 % for other services   | No *    |
| <b>Portugal</b>       | Yes |  | 23% in the mainland<br>22% in Madeira<br>18% in the Azores<br><br>Under MOSS, the 23% rate will be applicable, irrespective of mainland or island supplies. | No****  |
| <b>Romania</b>        | No  |  | 20%   | No **   |
| <b>Slovakia</b>       | No  |  | 20%   | No      |
| <b>Slovenia</b>       | Yes |  | 22%   | Yes     |
| <b>Spain</b>          | Yes |  | 21%   | Yes     |
| <b>Sweden</b>         | No  |  | 25%   | No      |
| <b>United Kingdom</b> | Yes |  | 20%   | No      |

(\* ) An invoice must be issued upon request of the customer (in Poland, this option is not applicable to telecommunication services).

(\*\* ) A VAT invoice is not required or is required in specific circumstances and/or an alternative document may be required.

(\*\*\*) Alternatives to an invoice are also accepted.

It should be noted that - at the moment - the amendment to the legislation is in progress. If the change is adopted, then invoices for supplies of telecommunications, broadcasting and electronic services supplied under MOSS will no longer be required.

(\*\*\*\*) In Portugal, a taxable person is required to issue an invoice with respect to telecommunications, broadcasting and electronic services provided to non-VAT taxable persons. However, taxable persons not established in Portugal using the MOSS to declare supplies to non-taxable persons established in Portugal are not required to issue an invoice for those supplies.

(\*\*\*\*\*) In Hungary, as of 1 January 2016, an invoice must be issued upon request of the customer. If not invoice is issued, a receipt must be issued.

## **DEFINITIONS OF TOPICS COVERED BY THE SCOPE OF THE REPORT**

### ***- Use and Enjoyment***

Article 59a of Directive 2006/112/EC allows Member States to consider the place of supply of telecommunications, broadcasting and/or electronic services provided to non-VAT taxable persons (private individuals):

- a) if situated within their territory, as being outside the European Union if the service is effectively used and enjoyed outside the Community; and
- b) if situated outside of the European Union, as being situated within their territory if the service is effectively used and enjoyed in their territory.

The information in the attached report provides details of the use and enjoyment rules applicable in all EU Member States. The information outlines whether and how paragraph a) and/or paragraph b) of Article 59a have been implemented in each Member States' domestic legislation.

A summary of whether each Member State has implemented use and enjoyment provisions in their domestic legislation is also included above.

### ***- Time of supply and Chargeability***

- Deferment of chargeability and cash accounting schemes

Article 66 of Directive 2006/112/EC allows Member States to derogate from the general principles of the VAT Directive regarding the moment when VAT becomes chargeable (i.e. the moment from when the tax authorities become entitled to claim the VAT from a taxpayer) and consider that, with respect to certain transactions or certain categories of taxable persons, VAT (instead of being generally taxable when the service is rendered) becomes chargeable:

- a) no later when an invoice is issued;
- b) no later when payment is received from the customer; or
- c) where an invoice is not issued, or issued late, within a specified time no later than on expiry of the time limit for issuing an invoice imposed by the Member State, or if no such time limit has been imposed, within a specified period from the date of the chargeable event.

The information in the attached report provides details as to whether Member States have implemented those optional rules in their domestic legislation and if yes, what conditions apply.

- Continuous supplies of services

Article 64(2) subparagraph 3g of Directive 2006/112/EC allows Member States to consider that in relation to the continuous supply of services over a period of time, the service may be regarded as being at least completed (i.e. the chargeable event may occur) at intervals of one year.

The information in the attached report provide details as to whether Member States have implemented this optional rule in their domestic legislation and if yes, what conditions apply.

### **- *Re-valuation of services***

Article 80 of Directive 2006/112/EC allows Member States, in certain cases, to take measures to ensure that, in respect of the supply services involving family or other close personal ties, management, ownership, membership, financial or legal ties as defined by the Member State, the price of the service may be deemed to be its open market value.

The information in the attached report provide details as to whether Member States have implemented this optional rule in their domestic legislation and if yes, under what conditions including the Member State's definition of "family or other close personal ties, management, ownership, membership, financial or legal ties".

### **- *Bad debt relief***

Article 90 of Directive 2006/112/EC allows Member States to implement in their local legislation measures whereby a service provider may reduce the value of his taxable turnover with respect to a transaction where the customer has not or has partially paid the price of the service (bad debt relief).

The information in the attached report provide details as to whether Member States have implemented this optional rule in their domestic legislation and if yes, under what conditions.

### **- *Reduced rates***

Article 98 of Directive 2006/112/EC allows Member States to apply either one or two reduced rates which may apply to certain supplies of services. Article 98 (2) of Directive 2006/112/EC excludes electronically supplied services from the scope of reduced rates. Therefore, the standard rate (Articles 96-97) should, in principle, apply to these services.

The information in the attached report provides details of whether a reduced rate may apply in some Member States with respect to telecommunications, broadcasting and electronic services provided to private individuals. A summary of the relevant rates applicable in each Member State is also included above.

### **- *Payment of insignificant amounts of VAT due***

Article 212 of Directive 2006/112/EC allows Member States to release taxpayers from the payment of VAT where the amount due is insignificant.

The information in the attached report provides details of whether each Member State has incorporated such relief in their domestic legislation.

### **- *Invoicing obligations***

Articles 217-249 of Directive 2006/112/EC provide for specific rules in relation to compliance obligations with respect to invoicing.

The information in the attached report details:

- whether each Member State imposes an obligation to issue an invoice with respect to telecommunications, broadcasting and electronic services provided to private individuals (see also summary table above);
- whether the content of such invoice differs from the requirement of Directive 2006/112/EC;
- the time limit for issuing an invoice;
- whether summary invoices are allowed and under what conditions;
- whether electronic invoices can be issued and under what conditions; and
- whether electronic invoices can be issued as a batch and under what conditions.

### ***- Anti-avoidance measures***

Article 273 of Directive 2006/112/EC provides that Member States may impose other obligations which they deem to ensure the correct collection of VAT and to prevent evasion. These obligations are commonly referred to as tax avoidance measures.

The information in the attached report details whether each Member State has implemented an anti-avoidance provision in their domestic legislation that may directly impact businesses providing telecommunications, broadcasting or electronic services to private individuals established within the EU.

### ***- Stand-still Schemes***

Articles 370-391 of Directive 2006/112/EC allow Member States – depending on whether they became a member of the European before or on or after 1 January 1978 – to derogate from some of the provisions of Directive 2006/112/EC (particularly with respect to certain exemptions) and continue to apply provisions that existed under their domestic legislation prior to the accession to the Union.

The information in the attached report provides details of any rules that each Member State applies under these Stand-still schemes.

### ***- VAT treatment of vouchers***

The VAT treatment of vouchers and pre-paid telecommunications credits is yet to be harmonised throughout the European Union.

The information in the attached report provides high-level information regarding the VAT treatment of vouchers and / or transactions involving vouchers in each Member State; in particular as regards:

- what qualifies as a voucher;
- whether a distinction is made between certain types of vouchers; and
- when does VAT become chargeable and who is the person liable for VAT.

Please note that the information contained in the attached report in relation to the VAT treatment of vouchers is for indicative purposes only and should be carefully considered on a case by case basis. We strongly recommend MOSS users to seek advice from the relevant tax authority or their advisor with respect to the VAT treatment applicable.

### ***- Exemptions***



Articles 132-135 of Directive 2006/112/EC provide for certain services to be exempt from VAT. However the scope of those exemptions may vary depending on the interpretation made by Member States of the relevant Article in the directive.

The information in the attached report provides details for each Member State regarding:

- whether an exemption applies with respect to e-learning activities and under what conditions;
- whether an exemption applies with respect to gaming and gambling activities and under what conditions; and
- whether any other exemption is applicable that could have an impact on the provision of telecommunications, broadcasting and electronic services provided to private individuals.

With respect to e-gambling activities, information is provided as to the VAT treatment of bonus points/credits earned as part of these activities and to the extent that those activities do not qualify for a VAT exemption in the country where the supply is, in principle, taxable.

Please note that the information contained in the attached report in relation to exemptions is for indicative purposes only and should be carefully considered on a case by case basis. We strongly recommend MOSS users to seek advice from the relevant tax authority or their advisor with respect to the VAT treatment applicable.

#### ***- MOSS Registration Process***

The information in the attached report provides details as to the MOSS registration process in each Member State, in particular, how to register for the MOSS and what information must be provided to the tax authorities of the Member State of identification.

#### ***- Access to web-portals and contact details of the relevant authorities***

The information provides details as to where the web-portal of the VAT authorities in each Member State can be accessed, providing the relevant link. It also provides details of the contact details of the local VAT authorities in charge of the MOSS.

#### ***- Appointment of VAT agents***

The information in the attached report provides details of whether foreign (in particular non-EU) service providers must or may appoint a VAT representative in the Member State where they are registered for the MOSS.

#### ***- Penalties for non-compliance***

The information in the attached report provides details of the penalty regime of each Member State. In particular, it details the penalty regime applicable with respect to:

- failure to register or late registration;
- non-payment or late payment of VAT;
- non-submission or late submission of VAT returns;
- incomplete or incorrect VAT returns; and

- failure to comply with invoicing or accounting obligations.

The penalties should apply in connection to transactions that are taxable in the relevant Member State in accordance with the place of supply rules as provided for under Directive 2006/11/EC.