

Value added tax (VAT): place of supply of services

2003/0329(CNS) - 26/06/2014 - Follow-up document

In accordance with the requirements of Council Directive 2008/8/EC, the Commission presents a report on the feasibility of supplying telecommunications services at the place of consumption.

To recall, Council Directive 2008/8/EC amending Directive 2006/112/EC as regards the place of supply of services recognised that the place of taxation for all supplies of services should, in principle, be the place where actual consumption takes place. The Directive provides that, as of 1 January 2015, all telecommunications, broadcasting and electronic services provided to a non-taxable person will be taxable at the place where the customer is established, has his/her permanent address or usually resides. This reflects the principle of taxation at the place of consumption.

The Commission is required to report on the feasibility of applying efficiently this rule and on the question whether that rule still corresponds to the general policy at that time concerning the place of supply of services.

The report focuses on the action taken to ensure the proper and efficient implementation of the new rules as of 1 January 2015.

It notes that telecommunications services supplied to non-taxable persons, EU and non-EU suppliers will have had to register for VAT purposes and comply with the relevant obligations of the Member State where the customer is established, has his/her permanent address or usually resides.

However, in order to relieve economic operators of the obligation to register for VAT purposes in every Member State in which they supply such services to non-taxable persons, the legislation provides that taxable persons can make use of **a special scheme allowing them to be identified for VAT purposes in one Member State only** instead of having to register in every Member State of consumption.

Mini one-stop shop (MOSS): the special scheme relies on an electronic interface (the MOSS), the development of which represents a crucial milestone but also a significant challenge that has required the Commission, Member States and business representatives to work in close cooperation. The timely implementation and efficient functioning of the system is of crucial importance for suppliers engaging in activities in Member States in which they are not established.

To achieve this objective, the Commission has taken action to help ensure that the electronic interface is developed in a uniform manner in all Member States. The report outlines the workshops organized under the Fiscalis 2013 programme as well as the guide to MOSS for stakeholders and the IT implementation of the MOSS.

Audit of the MOSS: EU legislation on the MOSS provides for controls and audits to be carried out by the Member State of consumption. Such audits may involve up to 27 different foreign administrations (in the case of EU companies, or 28 in the case of non-EU companies) auditing the same company without any coordination, leading to information requests in multiple languages. Not only could this place disproportionate administrative burden on the e-business industry, but it could also jeopardise the efficiency of the audits themselves. A Fiscalis Project Group report **recommended that the Member**

State of identification, i.e. the Member State in which the business is established or which it has chosen as a main contact authority, will **take on audit and control functions** on behalf of the Member States of consumption.

However, although a very large majority of Member States strongly supported this work at a HighLevel Working Party in the Council, not all Member States have agreed to implement the recommendations.

Communication and awareness-raising: the Commission has also **set up an EU web portal**, the objective of which is to facilitate the activity of businesses operating in different Member States by providing them with a summary database, allowing them easily to obtain information on applicable compliance obligations in the EU and thereby to reduce compliance costs.

The Commission considers that it has taken the necessary action to ensure that there is a sound legal framework in place, together with practical and detailed guidance for businesses and Member States. It has also supported and monitored Member States' efforts to prepare for the technical implementation of the electronic interface so as to allow proper functioning of the MOSS.

The report also **confirms the consistency of the new rules** with the general policy on the place of supply of services.

The Commission calls on Member States to:

- take all relevant actions to set up the necessary IT infrastructure in due time;
- fully implement the audit guidelines;
- refrain from the option provided for Member States in Article 221 of the VAT Directive to require an invoice on B2C supplies covered by the new place of supply rules, which can be burdensome for operators trading in different Member States.

Lastly, the Commission notes that many businesses **fear that different VAT administrations will present them with tax demands for the same service**, with no procedure or mechanism to resolve disputes between Member States. The Commission shares this concern as to the **absence of such a procedure or mechanism**. The current legislative framework provides no formal means of addressing such situations and the Commission has been given no power to solve double taxation issues.

The Commission considers it necessary that a mechanism to resolve double taxation situations be put in place at European level. Given the reluctance of Member States in the past to support such initiatives, it **urges Member States to establish an easily accessible contact point** and to communicate details to the Commission services so that a comprehensive list can be published on its website. This would be a first port of call in the search for solutions to cases of double taxation due to divergent assessments by national tax administrations.