



VAT MINI ONE STOP SHOP CHANGES DRAFT LEGISLATION

Issued 8 October 2018

ICAEW welcomes the opportunity to comment on the **consultation on Draft legislation: The Value Added Tax (Special Accounting Schemes) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018 and Draft legislation: The Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018** published by HMRC on 11 September 2018.

This response of 8 October 2018 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

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THE MEASURE

1. The measure is intended to make two changes to the rules for businesses making supplies of digital services to consumers across the EU.
2. Firstly, it introduces a sterling equivalent of a €10,000 (£8,818) annual threshold for total supplies of digital services (those defined as scheme services in paragraph 2 of Schedule 3BA to the VAT Act 1994) to consumers in the other EU member states. This change has the effect that businesses will only be subject to the VAT rules of their home country if their relevant supplies across the whole of the EU in a year, and the preceding year, fall below this threshold. If a business' total taxable turnover is below the UK VAT registration threshold, it will be able to de-register from VAT, provided that the total value of supplies of digital services to customers in other EU member states does not exceed the annual amount of £8,818. Such businesses will be able to continue using the current rules if preferred, with a VAT registration in the EU member state where each customer is located.
3. Secondly, it allows non-EU businesses, which are registered for VAT for other purposes, to use the Mini One Stop Shop (MOSS) scheme to account for VAT on sales of digital services to consumers in EU member states.

OUR CONCERNS

4. We are concerned about the practical effect of the changes, as the timing is unfortunate in relation to Brexit. We appreciate that the draft legislation is designed to implement new EU requirements from 1 January 2019, but these may only apply in the UK until 29 March 2019, depending upon the Brexit negotiations.
5. If a transitional period is not agreed as part of Brexit negotiations, it appears possible that businesses supplying less than €10,000 of digital services to consumers in other EU countries will need to follow three different sets of rules in close succession. Existing MOSS rules apply until 31 December 2018, revised place of supply rules could then apply without MOSS from 1 January to 29 March 2019 (ie, charging UK VAT unless the option is exercised to pay VAT where the customer is located) and then the non-Union MOSS rules apply from 30 March 2019, implying a registration in an EU member state. If possible, this double change within such a short period of time should be avoided.
6. We note that if a business making less than €10,000 of supplies of digital services to consumers in other EU countries wishes to continue to use MOSS and the current place of supply rules after 31 December 2018, it will need to notify HMRC in writing that it wishes to do so. Such businesses may wish to do so, but if the change is only effective until 29 March 2019, how or will HMRC notify these businesses of their new options from 30 March 2019?

SUGGESTED AMENDMENTS

7. **In The Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018**, we suggest the following two amendments are made.
8. Clearly, the sterling equivalent of €10,000 is going to fluctuate. We believe that the amount of £8,818 in Sub-paragraph 3(c) should be changed to a simpler and more memorable rounded amount, such as £9,000. We note that the most recent HMRC monthly exchange rate for October 2018 would produce an amount of £8,872.
9. At paragraph 3(7), we think that “persons belonging to a member State” should be amended to read “persons belonging in a member State.”

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).