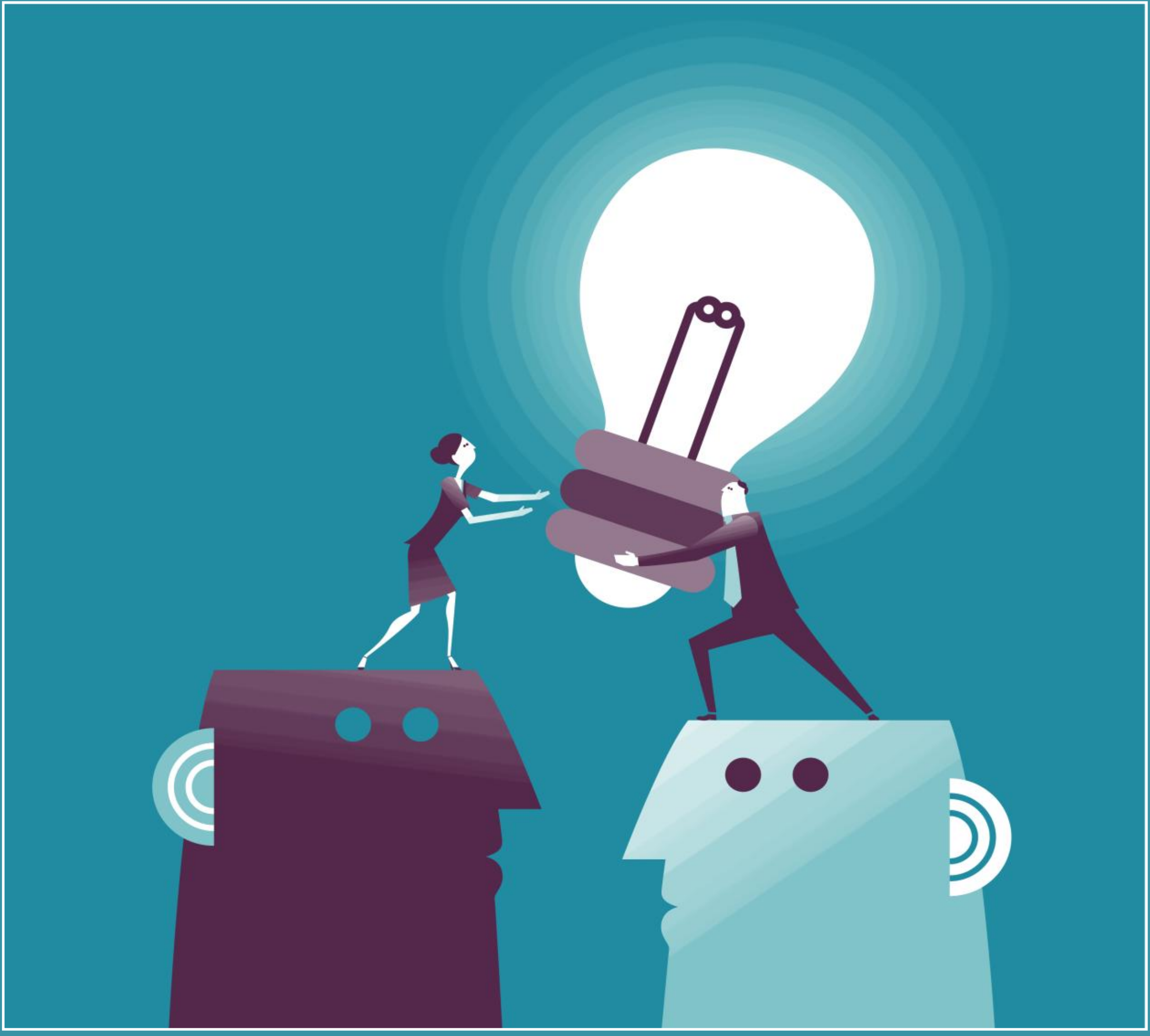
Approachable Accountants
Chartered Accountants & Chartered Tax Advisers

A Guide to VAT MOSS for small e-traders



January 2015

A GUIDE TO VAT MOSS FOR SMALL E-TRADERS

CAVEAT

This guide aims to help small traders understand how to comply with the changes to the VAT laws from 1 January 2015. It complements and is designed to be read together with existing HMRC guidance. We have summarised some aspects in the interests of simplicity. Although we have taken every effort to ensure the content of this guide is correct and up-to-date at the time of writing, requirements may yet develop or be reinterpreted.

You should take account of HMRC's guidance and consider the need to seek further/current professional advice before relying on this guide. Approachable Accountants takes no responsibility for any action taken or refrained from as a result of any of the content of this guide.

ABOUT APPROACHABLE ACCOUNTANTS

We are a firm of Chartered Accountants and Chartered Tax Advisers. We help our clients to achieve financial security and peace of mind while doing business in an ethical way. We specialise in helping owner managed businesses and personal tax clients across the UK and beyond.

For more information please see www.approachableaccountants.co.uk.

CONTACT US

hello@approachableaccountants.co.uk
www.approachableaccountants.co.uk
Tel: 07880 602226
Twitter @HelpWithTax

Registered office
Lund Farm
Easingwold
York
YO61 3PA

Contents

INTRODUCTION

New rules require even the smallest sellers of e-services to consumers in other EU member states to account for EU VAT from 1 January 2015. Many businesses trading below the UK VAT registration threshold will need to account for VAT for the first time.

Under the new rules, businesses selling e-services to consumers must account for VAT at the rate applying to the product or service in the state where the customer is. This change presents significant practical difficulties for businesses. Some of those affected are very small and will find the administration burden onerous if not prohibitive.

HMRC has issued some useful guidance on the change, which it updated on 29 December. HMRC's guidance focusses on the technical and administrative aspects of the requirements, but businesses will also need to consider practical issues.

This guide aims to complement HMRC's guidance by focussing on practical steps for businesses to consider. A link to HMRC's guidance is provided later in this document.

BACKGROUND

From 1 January 2015, any business selling any digital services (e.g. downloads) from the UK to non-business customers in other EU states must account for VAT at the rate applying in the country of the customer. Previously VAT was accounted for according to the country of the supplier, which meant that UK-based businesses operating below the UK VAT registration threshold did not have to worry about VAT at all.

The change has been made to address the problem of (mainly large) businesses seeking to minimise their VAT liabilities by setting up in lower-VAT states whilst supplying customers residing in higher-VAT states.

VAT applies across the EU but rates, registration thresholds, and the type of services attracting a lower rate or VAT exemption[1] vary between countries. Most states have rates between 20 and 25%, with the outliers being France (6% on e-books), Luxembourg (3% on e-books, standard rate 15%) and Hungary (27%). Annexes 1 and 2 show the standard- and e-book VAT rates for each state.

[1] Services attracting a lower rate or exemption in some countries include, for example, books, e-books, water or theatre tickets

WHO THE CHANGE AFFECTS

The change affects businesses of any size selling digital services such as downloadable music, apps, e-books, training material, etc[2] to non-business customers based in other EU states. It is particularly significant for UK-based businesses that were not previously VAT registered.

Businesses selling through a third party such as Amazon may not be affected, if the third party will take care of the requirements (normally by acting as an undisclosed agent) – it is important to check.

There is no change for businesses selling:

- only physical goods
- only to business customers or
- only within the UK or outside of the EU.

HMRC has confirmed that businesses trading below the UK VAT threshold will not need to account for UK VAT, just EU. Businesses should be confident in relying on what HMRC say, notwithstanding questions over whether this is strictly permissible in law.

KEY OPTIONS FOR BUSINESSES FROM 1 JANUARY

From 1 January, many small businesses will need to become VAT registered and account for VAT on sales to consumers in EU states. The usual registration thresholds in those states do not apply to ‘foreign’ traders (i.e. UK-based, in this context). Businesses will have the choice between the options shown in Table a.

[2] Digital services have minimal human intervention and also include broadcasting, video on demand, gaming, anti-virus software, automated learning or online auctions and sending paid-for information by email. Webinars delivered in person over the internet are not digital services, due to the human intervention.

Table a: Key options for businesses affected by the changes	
Option	**Comment**
a) Ceasing to make sales to consumers in other EU states, and so escape the requirements	Practical if sales to other EU states are not, and not planned to be, significant
b) Selling only through a third party who will take care of the requirements as agent	Simple for some businesses but possible drawbacks, e.g. cost / reliance issues
c) Registering for VAT in each country to which they make any consumer sales, and complying with the filing requirements of each country	Potentially very onerous – not recommended in general
d) Registering with HMRC and filing under the EU Mini One Stop Shop ("MOSS") for sales to all other EU states	Much simpler than c for almost all. Recommended if you will continue to sell direct to consumers in other EU states.

MOSS (option d) enables businesses to make one registration and one quarterly return, and to pay all EU VAT due to HMRC. HMRC pay the VAT over to other member states.

Businesses will need to make some changes to collect information about their sales so they can comply with the new rules.

The rest of this guide explains some of the practical difficulties and how businesses might cope.

PRACTICAL ISSUES AND POTENTIAL SOLUTIONS

If businesses want to continue to sell direct to consumers in other EU states, they will need to address the issues shown in Table b, which also shows the source of the issue. Potential solutions are described below the table, for each issue.

Table b: Practical issues	
Practical issue	**Source of issue**
1. Consider whether to increase prices	Practical issue, stemming from the fact that businesses will now have to pay over VAT on sales to consumers, which will be a real cost if sales prices are not increased.
2. Confirm whether a customer is in business and collect evidence if so	Required by law
Where a customer is not in business:	
3. Identify the customer's state of residence	Required by law
4. Obtain two pieces of evidence of the customer's residence	Required by law
5. Identify sales by price, product, date and customer's residence	Required in practice, to comply with the new requirements
6. Account for VAT at the relevant rate for the product / state	Required by law

Potential solutions are described below.

1. Consider whether to increase prices

Businesses should review pricing to take account of VAT that must now be paid. We strongly suggest setting one price per product, regardless of territory, as to differentiate might lead to problems as a result of customers attempting to arbitrage.

In reviewing pricing, businesses should consider current and forecast sales by territory, including the UK, and should take account of the VAT that will be payable.

Example 1: John's music business

John sells music downloads from his website. Last year he sold 10,000 units at £1 each, of which 8,000 were to the UK, 1,000 to France and 1,000 to Germany.

John works out the VAT and extra admin cost as shown in the table. He allows for an extra admin cost including help from his accountant of £50 per quarter or £200 per year.

State	Units	VAT %	VAT due	Net income
UK	8,000	NA	Nil	£8,000.00
France	1,000	20%	£166.67	£833.33
Germany	1,000	19%	£159.67	£840.33
Total income from sales			£326.34	£9,673.63
Less: other costs				(£200.00)
Total income after extra costs				£9,473.63

On last year's sales, John estimates his net income allowing for the new costs would be 5.3% lower at £9,473.63. As his music is becoming more popular in Europe, he decides to increase prices by 9% now to guard him against the extra cost of those sales. He decides to increase his prices to £1.09 per unit. He thinks customers will be happy to pay.

2. *Confirm whether a customer is in business and collect evidence if so*

The new requirements do not apply to business customers but you need some evidence that a customer is in business in order to ignore the requirements.

HMRC's guidance is helpful on this point. Businesses may need to set up a new field in the order process for customers to enter their VAT registration number ("VRN") and decide how they will collect alternative evidence that a customer is in business (such as a website address). We suggest checking a small sample of other evidence for customers who do not supply a VRN (e.g. to look at the website / alternative evidence to ensure it looks reasonable). Such checks are probably best targeted at the business customers that are most significant to your business, e.g. the biggest. You are not obliged to treat a customer as a business customer if they cannot supply a VRN.

If in doubt, you should treat a customer as a private consumer.

3. Identify the customer's state of residence ("place of supply" in HMRC's guidance)

Businesses need to identify where each customer is resident so they can account for VAT at the rate applying in the relevant state.

The easiest way of identifying where a customer is resident might be:

- Automatically, such as by using the IP address; or
- By asking customers at the time of ordering (say, using a drop down box[3]).

Businesses should consider carefully whether they consider it reasonable to rely on what customers say, bearing in mind their order process. So long as one price is used for all sales and it is easy for customers to choose their country, we think it should be reasonable to rely on a customer's word, as there should be no incentive for them to lie.

4. Obtain two pieces of evidence of the customer's residence

HMRC's guidance allows a business to presume a customer's residence based on the channel used to supply the product or service in some cases (e.g. using the country where a SIM card is registered if a supply is to a mobile phone). Where this applies, businesses do not need to obtain further evidence as to the customer's residence.

Most businesses will need to collect two pieces of evidence of a customer's residence. In most cases, we do not think it should be too hard to collect two pieces of evidence. HMRC guidance lists acceptable evidence including, for example, the customer's billing address, IP address or bank details.

So long as one price is used across all states[4], we would expect the two sources of evidence to be consistent in the vast majority of cases. Businesses should consider whether it is reasonable for them to assume consistency unless there are indications to the contrary, or to make checks on a sample basis only. Where consistency checks can be automated easily, that is an obvious course to take. Another possibility is to ask the customer to confirm consistency, e.g. to confirm at the time of ordering that their payment method is registered to their home address (where payment details and home address are the two pieces of evidence). If a customer cannot confirm consistency, the order process should be halted and more details checked.

[3] This could be a new field in the order process and sales database

[4] If different prices apply in different states, it would provide an incentive for some customers to try and order from a state other than their state of residence, to gain a price advantage. This would increase the risk that sources of evidence as to residency will be inconsistent.

If wholesale checks are not automated, businesses should consider the need to perform at least a sample of manual checks. They should set a sample size taking account of the risks of inconsistency and consider aiming checks at those customers who are most significant to the business, or where there may be a reason to be suspicious (e.g. if a customer has moved address recently or frequently).

5. Identify sales by product, date and by residence of the customer

The existing sales database will likely already record date, product and price. It will need to also record the country of the customer's residence. The price must be in sterling, translated at the European Central Banks's exchange rate at the quarter end.

6. Account for VAT at the rate applying to that product / state

Quarterly, sales must be compiled by country and the correct rate of VAT applied for the product. Most digital services are chargeable at the standard rate of VAT in each state; in some states, there is a lower rate such as for e-books. Businesses should consider as soon as possible, the rate that applies to each product or service in the countries to which they usually sell. As new products are developed or exports made to new countries, further checks can be made.

A table of EU VAT rates is available online to work out the VAT due for sales in each state; a MOSS VAT return is completed online.

In most cases it should be simple to work out which rate of VAT applies to a particular product or service, or businesses can seek advice such as from HMRC or a VAT specialist.

It will also be important to keep abreast of changes to VAT rates. These are infrequent and can be identified on HMRC's website.

OTHER ISSUES

As always, businesses must monitor their turnover as they approach the UK VAT registration threshold (£81,000 for 2014/15) and register on time.

As explained above, HMRC has confirmed that providing the UK turnover of a business remains below the above threshold, a business wishing to use the MOSS does not need to account for VAT on UK sales.

VAT rates change from time to time. You can keep informed about this through HMRC's website.

The requirements to keep customer data may bring some businesses within the requirements of the Data Protection Act for the first time. In this case, they must include a statement about data protection in their terms of business and must register with the Information Commissioners Office ("ICO"), which registration is renewable annually for a small fee (currently £35). The ICO website is easy to use and contains some useful information.

YOUR OBLIGATIONS

You must take reasonable care to comply with the changes. You should consider the need to seek advice from your accountant. You need to meet the requirements e.g. for collecting required information from 1 January and to make your first VAT/MOSS returns for the quarter to 31 March and pay any EU VAT due, by 20 April.

NEXT STEPS

Suggested next steps for businesses are to:

- Decide whether you wish to continue selling direct to customers in other EU states
- Review your pricing, taking account of VAT and any other extra costs from 1 January
- Find out if you can rely on a third party, where you do not sell direct
- Make changes to capture extra information from your customers at the time of sale
- Consider how you will prepare and file returns and keep abreast of changes such as to VAT rates
- Contact your accountant to discuss how you will comply, if you are unsure
- Contact us if you would like more help as described below
- Register for VAT (link below) and for MOSS, or ask your accountant for help
- Arrange to retain your records for at least 10 years

FURTHER INFORMATION

It is essential that businesses read HMRC's guidance.

- HMRC's VAT Guidance for businesses supplying digital services to private consumers https://www.gov.uk/government/publications/vat-supplying-digital-services-to-private-consumers/vat-businesses-supplying-digital-services-to-private-consumers
- EC's online VAT rate checker http://ec.europa.eu/taxation_customs/tic/public/vatRates/vatrates.html
- Wikipedia on EU VAT Rates – http://en.wikipedia.org/wiki/European_Union_value_added_tax
- To register for UK VAT online – https://online.hmrc.gov.uk/registration/newbusiness/business-allowed
- ECB exchange rates – https://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html
- The Information Commissioner's Office - https://ico.org.uk/

FURTHER HELP

We would be interested to hear from businesses who would like help in:

- registering for MOSS
- determining and applying the correct VAT rates
- filing VAT and MOSS returns; and
- keeping abreast of changes such as to VAT rates.

If there were sufficient demand, we could help with these aspects in return for a charge. The level of any charge would depend on demand.

Please contact us if you would like further information.

CONTACT US

hello@approachableaccountants.co.uk

www.approachableaccountants.co.uk

Tel: 07880 602226

Twitter @HelpWithTax

ANNEX 1 – LIST OF VAT RATES IN EU MEMBER STATES

Source: EC report, 1 July 2014
http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf

I. LIST OF VAT RATES APPLIED IN THE MEMBER STATES

Member States	Code	Super Reduced Rate	Reduced Rate	Standard Rate	Parking Rate
Belgium	BE	-	6 / 12	21	12
Bulgaria	BG	-	9	20	-
Czech Republic	CZ	-	15	21	-
Denmark	DK	-	-	25	-
Germany	DE	-	7	19	-
Estonia	EE	-	9	20	-
Greece	EL	-	6,5 / 13	23	-
Spain	ES	4	10	21	-
France	FR	2,1	5,5 / 10	20	-
Croatia	HR	-	5 / 13	25	-
Ireland	IE	4,8	9 / 13,5	23	13,5
Italy	IT	4	10	22	-
Cyprus	CY	-	5 / 9	19	-
Latvia	LV	-	12	21	-
Lithuania	LT	-	5 / 9	21	-
Luxembourg	LU	3	6 / 12	15	12
Hungary	HU	-	5 / 18	27	-
Malta	MT	-	5 / 7	18	-
Netherlands	NL	-	6	21	-
Austria	AT	-	10	20	12
Poland	PL		5 / 8	23	-
Portugal	PT	-	6 / 13	23	13
Romania	RO		5 / 9	24	-
Slovenia	SI	-	9,5	22	-
Slovakia	SK	-	10	20	-
Finland	FI	-	10 / 14	24	-
Sweden	SE	-	6 / 12	25	-
United Kingdom	UK	-	5	20	-

N.B.:Exemptions with a refund of tax paid at preceding stages (zero rates) are not included above (see section V)

ANNEX 2: EU VAT RATES – TABLE EXTRACT SHOWING RATE FOR E-BOOKS

Source: EC report, 1 July 2014
http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_en.pdf

VI. VAT RATES GENERALLY APPLIED IN THE MEMBER STATES TO CERTAIN PRODUCTS OR SERVICES

0 = zero rate (exemption with refund of tax paid at preceding stage); [ex] = exemption; [m] = taxation on the margin; [-] =out of scope

GOODS and SERVICES	**BE**	**BG**	**CZ**	**DK**	**DE**	**EE**	**EL**	**ES**	**FR**	**HR**	**IE**	**IT**	**CY**	**LV**	**LT**	**LU**	**HU**	**MT**	**NL**	**AT**	**PL**	**PT**	**RO**	**SI**	**SK**	**FI**	**SE**	**UK**
Taxation of works of art, collector's items and antiques																												
Works of art, collector's items and antiques	21 [m]	20	21 [m]	25[46]	19 [m]	20	23	21	20 [m]	25 [m]	13,5[47] 23	22	19 [m]	21	21	17	27 [m]	5	21	20 [m]	23	23	24	22 [m]	20 [m]	24 [m]	25	20
Rate on importation (Article 103 of the Directive 2006/112/EC)	6	20	15	25[46]	7[47] 19	20	13	10	5,5	25	13,5	10[48]	5[49]	21	21	8	27	5	6	10	8	6 23[50]	24	9,5	20	10 24	12	5
Supplies by creators and occasional sales (Article 103(2) of the Directive 2006/112/EC)	6	20	21	25[46]	7[47] 19	20	13	10	10	N/A	13,5	10[49]	N/A	21	21	8	27 [-][51]	5	6	10	8	6	24	9,5	20	10	12	20
E-books (supply of the digitised content of books over the internet or an electronic network)	21	20	21	25	19	20	23	21	5,5	25	23	4	19	21	21	3	27	18	21	20	23	23	24	22	20	24	25	20