

# TAX update

02/19

THE VAT E-COMMERCE PACKAGE

  
KINANIS  
LAW FIRM

## A. INTRODUCTION

The VAT E-commerce Package adopted by the Council on the 5<sup>th</sup> of December 2017 includes several changes that will be gradually implemented, some changes will be effective as from the 1<sup>st</sup> of January 2019 and the rest as from the 1<sup>st</sup> of January 2021.

This update refers to the changes that come into force as from the 1<sup>st</sup> of January 2019 based on the EU Council Directive 2017/2455, EU Council Regulation 2017/2454 and EU Council Implementing Regulation 2017/2459, which are the following:

1. The introduction of a threshold up to which the place of supply of telecommunications, broadcasting and electronically supplied services ('TBE services') is considered to be the place where the supplier is situated.
2. One piece of evidence is sufficient to determine the place of supply of transactions of the supplier with total supplies below the threshold of EUR 100,000.
3. A supplier using the MOSS will only have to respect the invoicing rules of the Member State in which he is identified for the MOSS.
4. The Mini One Stop Shop (MOSS) Regime is broadened so as to enable Non-EU suppliers supplying TBE services to individuals within EU, to use the Non-EU MOSS scheme even if they are registered for VAT in the EU.

The purpose of these changes is to reduce the burden for small and medium-sized companies (SMEs) supplying such services to customers within EU both in terms of numerous registrations and compliance with the reporting and invoicing rules of different EU Member States (EUMS).

## B. CURRENT PRACTICE

As from 01.01.2015 until 31.12.2018, the place of supply of TBE services supplied by a taxable person (the supplier) established in a Member State to a non-taxable person (the customer) in another Member State was in the Member State where the customer is established, has his permanent address or usually resides.

Consequently, a supplier of TBE services used to impose VAT to the customer at the applicable VAT rate of the customer's Member State. In order for the supplier to be able to declare and pay this VAT to the tax authorities in that Member State, he had to:

1. Either register for VAT in each of the EUMS of the customers or
2. Register for the MOSS in his own Member State.

That was very burdensome and costly for micro-businesses, which only occasionally used to supply TBE services to customers in other EUMS.

## C. THE NEW PRACTICE

### 1. Introduction of the EUR 10,000 threshold

As from 01.01.2019, an annual EUR 10,000 turnover threshold is introduced, up to which the place of supply of relevant supplies of cross-border TBE services remains in the Member State where the supplier is established, has his permanent address or usually resides.

The application of this threshold is subject to the following conditions:

- a) The supplier is established, has his permanent address or usually resides in only one Member State;
- b) He supplies TBE services to customers who are established, have their permanent address or usually reside in another Member State;
- c) The total value of TBE services supplied to other EUMS does not exceed EUR 10,000 (exclusive of VAT) in the current **and** in the preceding calendar year.

#### 1.1 Option to apply the general place of supply rule - taxation in the member state of the customer

In case the supplier wishes to apply the general place of supply rule (taxation in the Member State of the customer), he can do so and will be bound by this decision for two calendar years. As soon as the threshold of EUR 10,000 is exceeded, the general rule (Member State of the customer) applies without exception.

#### 1.2 Persons already registered with MOSS

A taxable person who is already using the MOSS and whose total value of TBE services in other EUMS is below or equal to the threshold can deregister from MOSS as of 1 January 2019 (voluntary deregistration).

A quarantine period of two calendar quarters will apply during which the taxable person will not be able to register for MOSS.

### 2. EUR 100,000 threshold - one piece of evidence

A taxable person (the supplier) established in one Member State supplying TBE services to a non-taxable person (the customer) in another Member State must, for the majority of situations, keep two items of non-contradictory evidence to identify the Member State of the customer, which is the Member State where the supply is subject to VAT (the place of supply).

This requirement is particularly onerous for SMEs supplying TBE services to customers in other EUMS.

As from 01.01.2019, one piece of evidence is sufficient to determine the place of supply of transactions of the supplier with total supplies below the threshold of EUR 100,000.

The application of this threshold is subject to the following conditions:

1. The total value (exclusive of VAT) of TBE services provided by the supplier from his business establishment or a fixed establishment located in a MS to customers who are established, have their permanent address or usually reside in other EUMS does not exceed EUR 100,000 or the equivalent in national currency, in the current and in the preceding calendar year;
2. The item of evidence is provided by a person involved in the supply of the services other than the supplier or the customer;
3. The item of evidence is listed below:
  - a) Through his fixed land line, it shall be presumed that the customer is established, has his permanent address or usually resides at the place of installation of the fixed land line;
  - b) Through mobile networks, it shall be presumed that the place where the customer is established, has his permanent address or usually resides is the country identified by the mobile country code of the SIM card used when receiving those services;
  - c) Services for which the use of a decoder or similar device or a viewing card is needed and a fixed land line is not used, it shall be presumed that the customer is established, has his permanent address or usually resides at the place where that decoder or similar device is located, or if that place is not known, at the place to which the viewing card is sent with a view to being used there.

As soon as the threshold is exceeded during a calendar year, the normal rules apply, meaning that again two pieces of evidence are required.

### 3. Invoicing Rules

Invoices for TBE services to non-taxable persons are to be issued according to the invoicing rules of the MS where the supply is deemed to arise. For TBE services, this is generally where the customer is situated unless, as from 01.01.2019 the supplier has not exceeded the threshold of EUR 10,000 where the place of supply is considered to be at the place where the supplier is situated.

A supplier using the MOSS, as from 01.01.2019, will only have to respect the invoicing rules of the Member State in which he is identified for the MOSS, instead of the rules of each Member State where his customers are located.

#### 4. Non-union MOSS Scheme - eligibility

Up until 31.12.2018, a taxable person who was not established within the EU but who was registered or was obliged to register for VAT purposes in one of the EUMS could not use the MOSS (neither the non-Union scheme nor the Union scheme).

As from 01.01.2019, such a taxable person will be allowed to use the Non-Union scheme, which is the MOSS regime for taxable persons not established in the EU supplying TBE services to customers in the EU.

#### D. CONCLUSION

The new simpler rules for businesses selling cross border services online introduced to the EU VAT Law, are expected to reduce the burden for SMEs established in a Member State supplying such services to customers in other EUMS.

With the effected changes, it is easier for online businesses, especially SMEs to access other markets and unlock e-commerce in Europe as less time, red tape procedures and costs are now required.

#### E. HOW KINANIS LLC CAN ASSIST

Kinanis LLC is in a position to assist you with the provision of the following services:

- Ongoing advice on the provisions of the Cyprus and EU VAT Law
- VAT Registration and subsequent VAT reporting
- MOSS registration and subsequent VAT reporting
- MOSS Deregistration
- Assistance in claiming back refundable input VAT
- VAT deregistration

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## Our Firm

**Kinanis LLC**, a law and consulting firm, is one of the leading and largest business law firms in Cyprus and advises for over 35 years the international investor and private clients on all aspects of law, tax and accounting.

Kinanis LLC absorbed the business of its shareholders which are in the legal and consulting profession since 1983, with local and international dimensions.

Experience and practice over the years brought forward the need for transformation from a traditional law firm to a more innovative multidisciplinary firm providing a full range of services combining law and accounting with the extensive expertise in corporate and tax advice to ensure that our clients will obtain the best possible spherical advice adopting the principle as to the services offered “All in one place”, so that the client will find a quick, correct and efficient solution to its daily legal, accounting and tax issues in a trustworthy environment.

This combination of legal, accounting and tax services through our well qualified personnel and our involvement and participation in international transactions over the years, have established our firm as one of the key players in the field. Our involvement in international financial transactions has also provided us with the extensive expertise in representing groups, corporations, funds as well as the private client.

The firm is staffed with around 80 young, energetic and ambitious professionals, including lawyers, accountants and administrators who provide prompt, efficient and high quality services and who are capable of meeting the current demanding challenges of the local and international business environment.

We always look to give solutions in a simple and as possible quick way focusing on the needs of each client trying to anticipate the issues before becoming a problem.

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