



VAT: place of supply and the introduction of the Mini-One Stop Shop

Who is likely to be affected?

Suppliers of broadcasting, telecommunications and e-services (BTE) to non-business customers.

UK consumers who receive BTE supplies.

Operators of e-service marketplaces that act as intermediaries in the supply of telecoms or e-services.

Non-taxable legal persons, which are currently regarded as belonging where they are legally constituted.

General description of the measure

This measure is the final part of the VAT package of changes agreed unanimously by member states in 2008.

Currently intra-EU supplies of BTE services to non-business customers are subject to VAT in the member state where the supplier belongs. From 1 January 2015 this measure changes the member state where the VAT is due to that where the customer belongs. This will ensure that UK consumers of these services will pay UK VAT no matter where the supplier of those services belongs.

The UK will amend its agency VAT legislation to implement the rules on taxable persons acting in their own name on behalf of another when supplying telecommunication or e-services.

The place of establishment for non-taxable legal persons will become where their central functions are carried out or where they have a relevant establishment, rather than where they are legally constituted.

As the place of supply rule change could increase the administration costs of BTE suppliers, because they are potentially liable to register and to account for VAT in each member state where they have customers, a business simplification IT scheme called the Mini-One Stop Shop (MOSS) will be implemented across the EU from 1 January 2015. The MOSS will give suppliers the option to register in just one member state and to account for the VAT due on supplies of BTE services in respect of all their EU customers in the other member states on a single MOSS VAT Return.

Policy objective

The measure will make business to consumer (B2C) supplies of BTE services taxable where they are consumed, thereby removing an incentive for businesses to locate offshore. This will level the playing field for UK BTE suppliers and is consistent with the Government's aim of fairness in the tax system. The MOSS business simplification scheme is intended to reduce the administrative burdens and costs associated with this rule change and multiple VAT registrations for BTE suppliers, particularly for small and medium enterprises (SMEs).

Background to the measure

The measure was announced at 2013 Budget. Business input has been provided through joint business/HM Revenue & Customs (HMRC) groups.

Detailed proposal

Operative date

The measure will have effect in relation to supplies made on or after 1 January 2015. EU and non-EU businesses will be able to register for the MOSS scheme from October 2014. The current VAT on e-Services (VoES) scheme for non-EU businesses will be replaced by the MOSS on 1 January 2015 and existing VoES users may transfer to the new scheme.

Current law

All references are within the VAT Act 1994 (VATA).

Section 7A(2)(b) details the current general rule for the place of supplies of services to anyone who is not a relevant business person, being the country where the supplier belongs. Section 7A(4) defines who is a relevant business person.

Section 9 details the rules for determining where a person belongs, whether they are the supplier or recipient of a supply of services.

Schedule 4A defines the special rules that apply to the determination of the place of supply of services. Paragraph 15 applies to e-services supplied from outside the EU to a non-business person in the EU.

Section 3A and Schedule 3B provide for the VoES that applies to suppliers belonging outside the EU but making supplies of e-services to a non-business person in the EU.

Section 47(3) relates to supplies of services through agents/intermediaries.

Proposed revisions

Secondary legislation will amend paragraph 15 of Schedule 4A to VATA 1994 which will change the place of supply of BTE services to a person who is not a relevant business person.

Legislation will be introduced in Finance Bill 2014 to amend VATA 1994 for the supplies of telecommunications and e-services through intermediaries; to introduce MOSS for supplies of BTE services; to extend the VoES registration scheme; and to change the place of belonging of a non-taxable legal person.

Summary of impacts

| Exchequer impact (£m) | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|-----------------------|---|------------|---------|---------|---------|
| | | negligible | +70 | +300 | +315 |
| | The Office for Budget Responsibility has included these numbers in its forecast. This measure supports the Exchequer in its commitment to protect revenue. | | | | |
| | The MOSS element of the measure is expected to have a negligible impact on the Exchequer. | | | | |
| Economic impact | This measure should have positive economic impacts by minimising distortions to the location of the economic activity and increasing competition between large and smaller suppliers within the sectors affected. | | | | |

| | |
|--|---|
| <p>Impact on individuals and households</p> | <p>This measure will impact on individuals who buy BTE services from businesses that are established in other member states. From 1 January 2015, UK VAT will be charged on these supplies rather than VAT at the rate for the country in which the business is established.</p> <p>There are no identified compliance costs for those individuals or households impacted.</p> |
| <p>Equalities impacts</p> | <p>The Government has no information about the protected equality groups of any individuals who may be affected but no specific impacts have been identified for any protected equalities group.</p> |
| <p>Impact on business including civil society organisations</p> | <p>The place of supply changes will impact on businesses that supply e-services direct to customers in member states other than the one in which they are established. It may also impact on larger e-service intermediaries.</p> <p>The introduction of MOSS will give affected businesses the opportunity to account for any VAT due in other member states on a single system and thereby mitigate some of the costs imposed by the place of supply rule changes which would otherwise require businesses to register in each member state in which they supply a customer BTE services. It is expected that the vast majority of business affected will choose this option. There will be a one-off cost relating to becoming familiar with and registering for MOSS. There will be an ongoing cost from completing a MOSS return each quarter which we estimate to be approximately £40 per business per year. UK businesses currently unregistered in the UK who choose to register for MOSS here will also have to register for VAT in the UK and so their UK supplies will also become liable to VAT,</p> <p>In addition changes to the way internet marketplaces account for VAT will mean that small businesses that provide e-services through intermediaries should not be significantly impacted, because the intermediary will become responsible for registering and accounting for VAT in other member states.</p> <p>The change to non-taxable legal persons' place of belonging is not expected to have a significant impact, but removes a potential avoidance opportunity.</p> <p>It is estimated that after taking account of mitigating factors (MOSS and the change to the rules governing intermediaries) the place of supply rule changes will affect up to 34,000 businesses, of which about 5,000 are not currently registered for VAT in the UK. For up to 29,000 businesses the ongoing costs are expected to be approximately £40 per business per year, and for 5,000 businesses the ongoing costs are expected to be £220 per business per year. The one-off costs to these businesses are likely to be negligible, but there are likely to be significant ongoing costs. The costs, after mitigation, are shown below.</p> |

| | Cost | Time Period (yrs) |
|--|--|-------------------|
| Compliance Costs | | |
| One-off Costs | Negligible | N/A |
| Average Annual Costs | £1.5m - 2.5m | 5 |
| Total Costs (PV) | £7.0m – 12.0m | N/A |
| Compliance Benefits | | |
| One-off Benefit | N/A | N/A |
| Average Annual Benefit | N/A | N/A |
| Total Benefit (PV) | N/A | N/A |
| Net Benefit (NPV) | -£7.0m - 12.0m | N/A |
| Impact on Administrative Burden (included in Net Benefit) | | |
| Increase | Decrease | Net Impact |
| £1.5m - 2.5m | £0m | £1.5m - 2.5m |
| Operational impact (£m) (HMRC or other) | HMRC will incur one-off costs of developing the MOSS IT system and registering those businesses that choose to use MOSS. HMRC will also incur ongoing costs of administering the system and dealing with taxpayer queries, which will be met from existing resources. | |
| Other impacts | <p><u>Small and micro business assessment:</u> small businesses that provide e-services direct to customers in other member states may incur additional costs, although these are expected to be partially mitigated by MOSS.</p> <p>Businesses currently unregistered in the UK who choose to register for MOSS in the UK will also have to obtain a UK VAT registration and their UK supplies will therefore also become liable to VAT.</p> <p>Other impacts have been considered and none have been identified.</p> | |

Monitoring and evaluation

This measure will be kept under review through communication with affected taxpayer groups. HMRC will also monitor VAT receipts in the sectors affected and the take up of MOSS.

Further advice

If you have any questions about this change, please contact Andy Heywood on 03000 544534 (email:andrew.heywood@hmrc.gsi.gov.uk).

1 VAT: special schemes

Schedule 1 contains provision about the supply of electronic services, broadcasting services and telecommunication services.

2 VAT: place of belonging of certain bodies corporate

- (1) Section 9 of VATA 1994 (place where supplier or recipient of services belongs) is amended as follows.
- (2) In subsection (5), for the words from “belonging” to the end substitute “belonging –
 - (a) in the country in which the person’s usual place of residence is (except in the case of a body corporate);
 - (b) in the case of a body corporate, in the country in which the place where it is established is.”
- (3) For subsection (6) substitute –

“(6) The reference in subsection (5)(b) to the place where a body corporate “is established” is to be read in accordance with Article 13a of Implementing Regulation (EU) No 282/2011 (which is inserted by Council Implementing Regulation (EU) No 1042/2013).”
- (4) The amendments made by this section have effect in relation to supplies made on or after 1 January 2015.

3 Supply of services through agents

- (1) Section 47 of VATA 1994 (agents) is amended as follows.
- (2) In subsection (3), after “services” insert “, other than electronically supplied services and telecommunication services,”.
- (3) After subsection (3) insert –
 - “(4) Where electronically supplied services or telecommunication services are supplied through an agent, the supply is to be treated both as a supply to the agent and as a supply by the agent.
 - (5) For the purposes of subsection (4) “agent” means a person (“A”) who acts in A’s own name but on behalf of another person within the meaning of Article 28 of Council Directive 2006/112/EC on the common system of value added tax.
 - (6) In this section “electronically supplied services” and “telecommunication services” have the same meaning as in Schedule 4A (see paragraph 9(3) and (4) and paragraph 8(2) of that Schedule).”

- (4) The amendments made by this section have effect in relation to supplies made on or after 1 January 2015.

SCHEDULES

SCHEDULE 1

Section 1

SUPPLIES OF ELECTRONIC, BROADCASTING AND TELECOMMUNICATION SERVICES: SPECIAL ACCOUNTING SCHEMES

PART 1

UNION SCHEME

New Union scheme for accounting for VAT on certain supplies

1 After Schedule 3B to VATA 1994 insert –

“SCHEDULE 3BA

ELECTRONIC, TELECOMMUNICATION AND BROADCASTING SERVICES: UNION SCHEME

PART 1

INTRODUCTION

Overview

- 1 In this Schedule –
- (a) Parts 2 and 3 establish a special accounting scheme (called the “Union scheme”) which may be used by certain persons established in the United Kingdom who make supplies of electronically supplied, telecommunication or broadcasting services that are treated as made in other member States;
 - (b) Part 4 is about persons participating in schemes in other member States that correspond to the Union scheme;
 - (c) Part 5 is about appeals;
 - (d) Part 6 contains definitions for the Schedule.

Meaning of “scheme services”

- 2 (1) In this Schedule “scheme services” means electronically supplied services, broadcasting services or telecommunication services.
- (2) In sub-paragraph (1) –
- “broadcasting services” means radio and television broadcasting services;

“electronically supplied services” has the same meaning as in Schedule 4A (see paragraph 9(3) and (4) of that Schedule);
“telecommunication services” has the same meaning as in Schedule 4A (see paragraph 8(2) of that Schedule).

PART 2

REGISTRATION UNDER UNION SCHEME

The register

- 3 Persons registered under the scheme provided for by this Schedule (“the Union scheme”) are to be registered in a single register kept by the Commissioners for the purposes of the scheme.

Persons who may be registered

- 4 (1) A person (“P”) may register under the Union scheme if all the following conditions are met –
- (a) P makes or intends to make one or more qualifying supplies of scheme services in the course of a business that P carries on;
 - (b) either P’s business is established in the United Kingdom or, (if P’s business is not established in any member State) P has a fixed establishment in the United Kingdom;
 - (c) P is not barred from registering by sub-paragraph (3), by Article 369a(2) of Directive 2006/112/EC or by any provision of the Implementing Regulation;
 - (d) P is registered under Schedule 1.
- (2) A supply of scheme services is a “qualifying supply of scheme services” if the following conditions are met.
1. The recipient of the services must belong in a member State other than the United Kingdom and must not be a relevant business person.
 2. P must not have a fixed establishment in the member State in which the recipient belongs.
- (3) A person may not be registered under the Union scheme if the person is a participant in a non-UK special scheme (see paragraph 14).

Becoming registered

- 5 (1) The Commissioners must register under the Union scheme any person who –
- (a) satisfies them that the requirements for registration are met, and
 - (b) makes a request in accordance with this paragraph (a “registration request”).
- (2) A registration request made by a person (“P”) must state –
- (a) P’s name;

- (b) P's postal address;
 - (c) P's electronic addresses (including any websites).
- (3) A registration request made by P must also state –
 - (a) whether or not P has begun to make qualifying supplies of scheme services, and
 - (b) (if applicable) the date on which P began to do so.
- (4) A registration request made by P must also state –
 - (a) whether or not P has previously been identified under a non-UK special scheme, and
 - (b) (if applicable) the date on which the person was first identified under the scheme concerned.
- (5) A registration request –
 - (a) must contain any further information that the Commissioners may by regulations require;
 - (b) must be made by such electronic means, and in such manner, as the Commissioners may direct or may by regulations require.

Notification of changes etc

- 6 (1) A person (“P”) registered under the Union scheme must inform the Commissioners of the date when P first makes qualifying supplies of scheme services (unless P has already given the Commissioners the information mentioned in paragraph 5(3)(b)).
- (2) That information, and any information a person is required to give under Article 57h of the Implementing Regulation (notification of certain changes), must be communicated by such electronic means and in such manner as the Commissioners may direct or may by regulations require.

Cancellation of registration

- 7 The Commissioners must cancel the registration under the Union scheme of a person (“P”) if –
 - (a) P notifies them that P has ceased to make, or no longer intends to make, supplies of scheme services;
 - (b) they otherwise determine that P has ceased to make, or no longer intends to make, supplies of scheme services;
 - (c) P notifies them that P has ceased to satisfy any of the other conditions for registration in paragraph 4(1),
 - (d) they otherwise determine that P has ceased to satisfy any of those conditions, or
 - (e) they determine that P has persistently failed to comply with P's obligations under this Schedule or the Implementing Regulation.

PART 3

UNION SCHEME: LIABILITY, RETURNS, PAYMENT ETC

Liability to pay non-UK VAT to Commissioners

- 8 (1) This paragraph applies where a person –
- (a) makes a qualifying supply of scheme services, and
 - (b) is registered under the Union scheme when the supply is made.
- (2) The person is liable to pay to the Commissioners the gross amount of VAT on the supply.
- (3) The reference in sub-paragraph (2) to the gross amount of VAT on the supply is to what would be the amount of VAT charged on the supply, in accordance with the law of the member State in which the supply is treated as made, if the person were not entitled to deduct VAT pursuant to Article 168 of Directive 2006/112/EC.

Union scheme returns

- 9 (1) A person who is or has been registered under the Union scheme must submit a return (a “Union scheme return”) to the Commissioners for each reporting period.
- (2) Each calendar quarter for the whole or part of which a person is registered under the Union scheme is a “reporting period” in the case of that person.

Union scheme returns: further requirements

- 10 (1) A Union scheme return is to be made out in sterling.
- (2) Any conversion from one currency into another for the purposes of sub-paragraph (1) is to be made using the exchange rates published by the European Central Bank –
- (a) for the last day of the reporting period to which the Union scheme return relates, or
 - (b) if no such rate is published for that day, for the next day for which such a rate is published.
- (3) A Union scheme return –
- (a) must be submitted to the Commissioners within the 20 days after the last day of the reporting period to which it relates;
 - (b) must be submitted by such electronic means, and in such manner, as the Commissioners may direct or may by regulations require.

Payment

- 11 (1) A person who is required to submit a Union scheme return must pay, by the deadline for submitting the return, the amounts required in accordance with paragraph 8 in respect of qualifying

supplies of scheme services made in the reporting period to which the return relates.

- (2) A payment under this paragraph must be made in such manner as the Commissioners may direct or may by regulations require.

Availability of records

- 12 (1) A person who is registered under the Union scheme must make available to the Commissioners, on request, any obligatory records the person is keeping of transactions entered into by the person while registered under the scheme.
- (2) The records must be made available by electronic means.
- (3) In sub-paragraph (1) “obligatory records” means records kept in accordance with an obligation imposed in accordance with Article 369k of Directive 2006/112/EC.

Amounts required to be paid to other member States

- 13 Section 44 of the Commissioners for Revenue and Customs Act 2005 (requirement to pay receipts into the Consolidated Fund) does not apply to any money received for or on account of VAT that is required to be paid to another member State under Article 46 of Council Regulation No 904/2010.

PART 4

PERSONS REGISTERED UNDER NON-UK SPECIAL SCHEMES

Meaning of “non-UK special scheme”

- 14 (1) In this Schedule “non-UK special scheme” means any provision of the law of a member State other than the United Kingdom which implements Section 3 of Chapter 6 of Title XII of Directive 2006/112/EC.
- (2) In relation to a non-UK special scheme, references to the “administering member State” are to the member State under whose law the scheme is established.

Exemption from requirement to register under this Act

- 15 (1) A participant in a non-UK special scheme is not required to be registered under this Act by virtue of making supplies of scheme services in respect of which the person is required to make returns under that scheme.
- (2) Sub-paragraph (1) overrides any contrary provision in this Act.
- (3) Where a person –
- (a) is required to make returns under a non-UK special scheme in respect of supplies of scheme services that are treated as made by that person in the United Kingdom, and
 - (b) is not registered under this Act,

it is to be assumed, in determining whether or not VAT is due under this Act on those supplies, that the person is registered under this Act.

Scheme participant not treated as taxable person in relation to supplies of scheme services

- 16 (1) So far as any provision of, or made under, this Act would otherwise impose an obligation on a person (“P”) in connection with the making by P of relevant supplies, P is to be treated as not being a taxable person for the purposes of that provision.
- (2) In sub-paragraph (1) “relevant supplies” means supplies of scheme services made while P is –
- (a) a participant in a non-UK special scheme, and
 - (b) registered, or required to be registered, under this Act.
- (3) The Commissioners may by regulations specify cases in relation to which sub-paragraph (1) is not to apply.

De-registration

- 17 (1) Sub-paragraph (2) applies where a person (“P”) who is registered under Schedule 1A –
- (a) satisfies the Commissioners that P intends to apply for identification under a non-UK special scheme, and
 - (b) asks the Commissioners to cancel P’s registration under Schedule 1A.
- (2) The Commissioners may cancel P’s registration under Schedule 1A with effect from –
- (a) the day on which the request is made, or
 - (b) a later date agreed between P and the Commissioners.

Interest in certain cases of official error

- 18 (1) Section 78 (interest in certain cases of official error) applies as follows in relation to a case where, due to an error on the part of the Commissioners –
- (a) a person has accounted under a non-UK special scheme for an amount by way of UK VAT that was not UK VAT due from the person, and as a result the Commissioners are liable under section 80(2A) to pay (or repay) an amount to the person, or
 - (b) (in a case not falling within paragraph (a)), a person has paid, in accordance with an obligation under a non-UK special scheme, an amount by way of UK VAT that was not UK VAT due from the person and which the Commissioners are in consequence liable to repay to the person.
- (2) Section 78 has effect as if the condition in section 78(1)(a) were met in relation to that person.

- (3) In the application of section 78 as a result of this paragraph, section 78(12)(b) is read as providing that any reference in that section to a return is to a return required to be made under a non-UK special scheme.
- (4) In this section, and section 78 in its application as a result of this section, “output tax” has the meaning that that expression would have if the reference in section 24(2) to a “taxable person” were to a “person”.

Incorrect returns etc: assessments

- 19 (1) This paragraph applies where a person –
 - (a) has failed to make a relevant non-UK return, or
 - (b) has made a relevant non-UK return which is incomplete or incorrect.
- (2) In this Schedule “non-UK return” means a return required to be made, for any period, under a non-UK special scheme.
- (3) In sub-paragraph (1) “relevant non-UK return” means a non-UK return that is required to be made (wholly or partly) in respect of supplies of scheme services that are treated as made in the United Kingdom.
- (4) Where this paragraph applies –
 - (a) section 73(1) (failure to make returns etc), and
 - (b) section 73(5), (6), (8), (9) and (10) (so far as relating to section 73(1)),have effect as if the requirement to make the relevant non-UK return had been a requirement under this Act, and as if the period referred to in sub-paragraph (2) were a prescribed accounting period.
- (5) References in the following provisions to prescribed accounting periods are to be read accordingly –
 - (a) section 74(1)(a) (interest on VAT recovered or recoverable by assessment);
 - (b) section 76(3), (4) and (5) (assessment of amounts due by way of penalty, interest or surcharge);
 - (c) section 77(1)(a) and (4) (assessment: time limits).

Overpayments: adjustments

- 20 (1) Sub-paragraph (2) applies where a person (“T”) –
 - (a) has made a non-UK return for a tax period relating wholly or partly to supplies of scheme services treated as made in the United Kingdom,
 - (b) has accounted to the tax authorities for the administering member State for VAT in respect of those supplies, and
 - (c) in doing so has brought into account as UK VAT due to those authorities an amount that was not UK VAT due to them.

- (2) If T makes a claim for the tax to be repaid, the Commissioners must repay to T the amount overpaid
- (3) For the purposes of sub-paragraph (2), the Commissioners may treat an amendment of the non-UK return that is submitted to the tax authorities for the administering member State and indicates that an amount of VAT has been overpaid as a claim for repayment of that amount.
- (4) Sub-paragraph (2) does not require any amount to be repaid except so far as that is required by Article 63 of the Implementing Regulation.

Unjust enrichment

- 21 (1) The Commissioners are not required to repay an amount under paragraph 20(2) so far as that would unjustly enrich the person concerned.
- (2) A special rule (about determining what loss or damage a person has suffered for the purposes of sub-paragraph (1)) applies where—
 - (a) the Commissioners would, apart from sub-paragraph (1), be required to repay an amount to a person (“the taxpayer”), and
 - (b) the whole or a part of the amount brought into account as mentioned in paragraph 20(1)(c) has, for practical purposes, been borne by a person other than the taxpayer.
- (3) The special rule applies in relation to loss or damage that has been or may be incurred by the taxpayer as a result of mistaken assumptions made in the taxpayer’s case about the operation of any VAT provisions.
- (4) The special rule is that the loss or damage is to be disregarded, except up to the quantified amount, in determining—
 - (a) whether or to what extent repaying an amount to the taxpayer would enrich the taxpayer;
 - (b) whether or to what extent any enrichment of the taxpayer would be unjust.
- (5) In this paragraph—

“the quantified amount” means the amount (if any) which is shown by the taxpayer to be the amount that would appropriately compensate the taxpayer for loss or damage shown by the taxpayer to have resulted, for any business carried on by the taxpayer, from the making of the mistaken assumptions;

“VAT provisions” means the provisions of—

 - (a) any enactment, subordinate legislation or Community legislation (whether or not still in force) which relates to VAT or to any matter connected with VAT, or
 - (b) any notice published by the Commissioners under or for the purposes of any such enactment or subordinate legislation.

Overpayments: claims

- 22 (1) This paragraph applies where—
- (a) a person (“T”) has made a non-UK return for a tax period,
 - (b) the non-UK return relates wholly or partly to supplies of scheme services treated as made in the United Kingdom,
 - (c) T has accounted to the tax authorities for the administering member State for VAT in respect of those supplies, and
 - (d) in doing so T has brought into account as UK VAT due to those authorities an amount that was not UK VAT due to them.
- (2) Where this paragraph applies—
- (a) the person is taken to have met the conditions in subsection (1)(a) and (b) of section 80 (credit for, or repayment of, overpaid VAT), and
 - (b) the reference in section 80(1) to “that amount” is accordingly taken to be a reference to the amount mentioned in sub-paragraph (1)(d).
- (3) References in section 80 to prescribed accounting periods are read as references to tax periods so far as is necessary for the purposes of sub-paragraph (2).
- (4) No claim under section 80(1) may be made in reliance on this paragraph before the end of the three years beginning with the date on which the person was required to submit a return for the tax period concerned under the non-UK special scheme.
- (5) The Commissioners are not required to repay any amount as a result of this paragraph except so far as that is required by Article 63 of the Implementing Regulation.

Interest on UK VAT recovered or recoverable by assessment

- 23 (1) Sub-paragraph (2) applies in relation to any case where—
- (a) an amount assessed under section 73(1) (failure to make returns etc) in reliance on paragraph 19(4) carries interest under section 74(1), or
 - (b) an amount that could have been assessed under section 73(1) in reliance on paragraph 19(4) carries interest under section 74(2).
- (2) The “reckonable date” for the purposes of section 74(1) and (2) is taken to be the latest date on which the non-UK return in question was required to be made (and paragraphs (a) to (c) of section 74(5) are to be ignored accordingly).

Default surcharge: notice of surcharge period

- 24 (1) A person (“T”) who is required to make a relevant non-UK return for a tax period is regarded for the purposes of this paragraph and paragraph 25 as being in default in respect of that period if either—
- (a) conditions 1A and 2A are met, or

- (b) conditions 1B and 2B are met;
(but see also paragraph 26).
- (2) In sub-paragraph (1) “relevant non-UK return” means a non-UK return that is required to be made (wholly or partly) in respect of supplies of scheme services that are treated as made in the United Kingdom.
- (3) For the purposes of sub-paragraph (1)(a) –
 - (a) condition 1A is that the tax authorities for the administering member State have not received the return by the deadline for submitting it;
 - (b) condition 2A is that those tax authorities have, in accordance with Article 60a of the Implementing Regulation, issued a reminder of the obligation to submit the return.
- (4) For the purposes of sub-paragraph (1)(b) –
 - (a) condition 1B is that, by the deadline for submitting the return, the tax authorities for the administering member State have received the return but have not received the amount of VAT shown on the return as payable by T in respect of the tax period;
 - (b) condition 2B is that those tax authorities have, in accordance with Article 60a of the Implementing Regulation, issued a reminder of the VAT outstanding.
- (5) The Commissioners may serve on a person who is in default in respect of a tax period a notice (a “special surcharge liability notice”) specifying a period –
 - (a) ending on the first anniversary of the last day of that tax period, and
 - (b) beginning on the date of the notice.
- (6) A period specified under sub-paragraph (5) is a “special surcharge period”.
- (7) If a special surcharge liability notice is served in respect of a tax period which ends at or before the end of an existing surcharge period, the surcharge period specified in that notice must be expressed as a continuation of the existing surcharge period (so that the existing period and its extension are regarded as a single surcharge period).

Further default after service of notice

- 25 (1) If a person on whom a special surcharge liability notice has been served –
 - (a) is in default in respect of a tax period ending within the special surcharge period specified in (or extended by) that notice, and
 - (b) has outstanding special scheme VAT for that tax period, the person is to be liable to a surcharge of the amount given by sub-paragraph (2).
- (2) The surcharge is equal to whichever is the greater of –

- (a) £30, and
 - (b) the specified percentage of the person's outstanding special scheme VAT for the tax period.
- (3) The specified percentage depends on whether the tax period is the first, second or third etc in the default period in respect of which the person is in default and has outstanding special scheme VAT, and is—
 - (a) for the first such tax period, 2%;
 - (b) for the second such tax period, 5%;
 - (c) for the third such tax period, 10%;
 - (d) for each such tax period after the third, 15%.
- (4) “Special scheme VAT”, in relation to a person, means VAT that the person is liable to pay to the tax authorities for the administering member State under a non-UK scheme in respect of supplies of scheme services treated as made in the United Kingdom.
- (5) A person has “outstanding special scheme VAT” for a tax period if some or all of the special scheme VAT for which the person is liable in respect of that period has not been paid by the deadline for the person to submit a non-UK return for that period; (and the amount unpaid is referred to in sub-paragraph (2)(b) as “the person's outstanding special scheme VAT” for the tax period).

Default surcharge: exceptions for reasonable excuse etc

- 26 (1) A person who would otherwise have been liable to a surcharge under paragraph 25(1) is not to be liable to the surcharge if the person satisfies the Commissioners or, on appeal, a tribunal that, in the case of a default which is material to the surcharge—
- (a) the non-UK return or, as the case may be, the VAT shown on that return, was despatched at such a time and in such manner that it was reasonable to expect that it would be received by the tax authorities for the administering member State within the appropriate time limit, or
 - (b) there is a reasonable excuse for the return or the VAT not having been so despatched.
- (2) Where sub-paragraph (1) applies to a person—
- (a) the person is treated as not having been in default in respect of the tax period in question, and
 - (b) accordingly, any special surcharge liability notice the service of which depended on that default is regarded as not having been served.
- (3) A default is “material” to a surcharge if—
- (a) it is the default which gives rise to the surcharge, under paragraph 25(1), or
 - (b) it is a default which was taken into account in the service of the special surcharge liability notice on which the surcharge depends and the person concerned has not previously been liable to a surcharge in respect of a tax period ending within the surcharge period specified in or extended by that notice.

- (4) A default is left out of account for the purposes of paragraphs 24(5) and 25(1) if –
 - (a) the conduct by virtue of which the person is in default is also conduct falling within section 69(1) (breaches of regulatory provisions), and
 - (b) by reason of that conduct the person concerned is assessed to a penalty under that section.
- (5) If the Commissioners so direct, a default in respect of a tax period specified in the direction is to be left out of account for the purposes of paragraphs 24(5) and 25(1).
- (6) The Commissioners must consult with the Treasury before making a direction under sub-paragraph (5).
- (7) Section 71(1) (meaning of “reasonable excuse”) applies for the purposes of this paragraph as it applies for the purposes of sections 59 to 70.

Records

- 27 (1) A person who makes relevant scheme supplies must keep records of the transactions which the person enters into for the purposes of, or in connection with, those supplies.
- (2) The records must be sufficiently detailed to enable the Commissioners to determine whether any special scheme return submitted in respect of the supplies is correct.
- (3) “Relevant scheme supplies” means supplies of scheme services that are –
 - (a) made by the person while the person is a participant in a non-UK special scheme, and
 - (b) treated as made in the United Kingdom.
- (4) The records must be made available on request to the Commissioners by electronic means.
- (5) Records must be kept for 10 years beginning with the 1 January following the date on which the transaction was entered into.

Penalties for errors: disclosure

- 28 Where a person corrects a non-UK return in a way that constitutes telling the tax authorities for the administering member State about –
 - (a) an inaccuracy in the return,
 - (b) a supply of false information, or
 - (c) a withholding of information,
 the person is regarded as telling HMRC about that for the purposes of paragraph 9 of Schedule 24 to the Finance Act 2007.

Set-offs

- 29 Where a participant in a non-UK special scheme is liable to pay UK VAT to the tax authorities for the administering member State in

accordance with the scheme, the UK VAT is regarded for the purposes of subsection (6) of section 130 of the Finance Act 2008 (set-off: England, Wales and Northern Ireland) as payable to the Commissioners.

PART 5

APPEALS

- 30 (1) An appeal lies to a tribunal with respect to any of the following—
- (a) a refusal to register a person under the Union scheme;
 - (b) the cancellation of the registration of any person under the Union scheme;
 - (c) a refusal to make a repayment under paragraph 20(2) (overpayments: adjustments), or a decision by the Commissioners as to the amount of the repayment due under that provision.
- (2) Part 5 (appeals), and any order or regulations under that Part, have effect as if an appeal under this paragraph were an appeal which lies to the tribunal under section 83(1) (but not under any particular paragraph of that subsection).
- 31 Where the Commissioners have made an assessment under section 73(1) in reliance on paragraph 19(4)—
- (a) section 83(1)(p)(i): (appeals against assessments under section 73(1) etc) applies as if the relevant non-UK return were a return under this Act, and
 - (b) the references in section 84(3) and (5) to the matters mentioned in section 83(1)(p) are to be read accordingly.

PART 6

INTERPRETATION OF SCHEDULE

- 32 (1) In this Schedule—
- “administering member State”, in relation to a non-UK special scheme, has the meaning given by paragraph 14(2);
 - “the Implementing Regulation” means Implementing Regulation (EU) No 282/2011;
 - “non-UK return” has the meaning given by paragraph 19(2);
 - “non-UK special scheme” has the meaning given by paragraph 14(1);
 - “qualifying supply of scheme services” has the meaning given by paragraph 4(2);
 - “reporting period” is to be read in accordance with paragraph 9(2);
 - “participant”, in relation to a non-UK special scheme, means a person who is identified under that scheme;
 - “scheme services” has the meaning given by paragraph 2;
 - “tax period” means a period for which a person is required to make a return under a non-UK special scheme;

“UK VAT” means VAT in respect of supplies of scheme services treated as made in the United Kingdom;
 “Union scheme” has the meaning given by paragraph 3;
 “Union scheme return” has the meaning given by paragraph 9(1).

- (2) In relation to a non-UK special scheme (or a non-UK return), references in this Schedule to “the tax authorities” are to the tax authorities for the member State under whose law the non-UK special scheme is established.
- (3) References in this Schedule to a supply of scheme services being “treated as made” in the United Kingdom are to its being treated as made in the United Kingdom by paragraph 15 of Schedule 4A.”

Power to amend provisions about the Union scheme

- 2 In section 3A of VATA 1994 (supply of electronic services in member States: special accounting scheme) –
- (a) in subsection (2), after “3B” insert “or 3BA”;
 - (b) in subsection (3), for “Schedule 3B” substitute “Schedules 3B and 3BA”.

PART 2

NON-UNION SCHEME: AMENDMENTS OF SCHEDULE 3B TO VATA 1994

Introduction

- 3 Schedule 3B to VATA 1994 (supply of electronic services in member States: special accounting scheme) is amended in accordance with paragraphs 4 to 24.

Extension of non-Union scheme to broadcasting and telecommunication services

- 4 For paragraph 3 (qualifying supplies) substitute –
- “3 (1) In this Schedule “qualifying supply” means a supply of electronically supplied services, telecommunication services or broadcasting services to a person who –
- (a) belongs in the United Kingdom or another member State, and
 - (b) is not a relevant business person.
- (2) In sub-paragraph (1) –
- “broadcasting services” means radio and television broadcasting services;
 - “electronically supplied services” has the same meaning as in Schedule 4A (see paragraph 9(3) and (4) of that Schedule);
 - “telecommunication services” has the same meaning as in Schedule 4A (see paragraph 8(2) of that Schedule).”

- 5 For the title substitute –

“ELECTRONIC, TELECOMMUNICATION AND BROADCASTING SERVICES: NON-
UNION SCHEME”.*Associated amendments*

- 6 In paragraph 4 (registration request), for sub-paragraph (5) substitute –
“(5) A registration request –
(a) must contain any further information that the Commissioners may by regulations require;
(b) must be made by such electronic means, and in such manner, as the Commissioners may direct or may by regulations require.”
- 7 Omit paragraph 5 (date on which registration takes effect) and the heading before it.
- 8 In paragraph 7 (obligation to notify changes) –
(a) omit sub-paragraphs (1) and (2);
(b) in sub-paragraph (3), for “this paragraph” substitute “Article 57h of Implementing Regulation (EU) No 282/2011”.
- 9 In paragraph 8 (cancellation of registration) –
(a) in sub-paragraph (1)(e), after “this Schedule” insert “or Implementing Regulation (EU) No 282/2011.”;
(b) omit sub-paragraphs (2) and (3).
- 10 Omit paragraph 9 (registration after cancellation for persistent default) and the heading before it.
- 11 In paragraph 10 (liability for VAT) –
(a) in sub-paragraph (3) for “the amount of VAT” substitute “the gross amount of VAT”;
(b) in sub-paragraph (4), for the words from “the amount of VAT” to the end substitute “the gross amount of VAT charged on the supply”;
(c) in sub-paragraph (5) omit paragraph (b) and the “and” before it;
(d) after sub-paragraph (5) insert –
“(6) References in this paragraph to the gross amount of VAT on a supply are to what would be the amount of VAT charged on the supply, in accordance with the law of the member State in which the supply is treated as made (whether that is the United Kingdom or another member State), if the person were not entitled to deduct VAT pursuant to Article 168 of Directive 2006/112/EC.”
- 12 In paragraph 11 (obligation to submit special accounting returns) –
(a) in sub-paragraph (1), for “Controller” substitute “Commissioners”;
(b) omit sub-paragraphs (3) to (7).
- 13 In paragraph 12 (further obligations with respect to special accounting returns) –
(a) in sub-paragraph (1), for the words from “must” to the end substitute “is to be made out in sterling”;
(b) in sub-paragraph (3), for “Controller” substitute “Commissioners”.

- 14 In paragraph 13 (payment of VAT), in sub-paragraph (1), for the words from “at” to “respect of” substitute “by the deadline for submitting the return, pay to the Commissioners the amount of VAT that the person is liable, in accordance with paragraph 10, to pay on qualifying supplies treated as made by the person in”.
- 15 Omit paragraph 16(1) to (4) (understatements and overstatements of UK VAT in a special scheme return).
- 16 After paragraph 18 insert –

“Interest in certain cases of official error

18A (1) Section 78 (interest in certain cases of official error) applies as follows in relation to a case where, due to an error on the part of the Commissioners –

- (a) a person has accounted, under a special scheme, for an amount by way of UK VAT that was not UK VAT due from the person, and as a result the Commissioners are liable under section 80(2A) to pay (or repay) an amount to the person, or
 - (b) (in a case not falling within paragraph (a)), a person has paid, in accordance with an obligation under a special scheme, an amount by way of UK VAT that was not UK VAT due from the person and which the Commissioners are in consequence liable to repay to the person.
- (2) Section 78 has effect as if the condition in section 78(1)(a) were met in relation to that person.
- (3) In the application of section 78 as a result of this paragraph, section 78(12)(b) is read as providing that any reference in that section to a return is to a return required to be made under a special accounting scheme.
- (4) In this section, and section 78 in its application as a result of this section, “output tax” has the meaning that that expression would have if the reference in section 24(2) to a “taxable person” were to a “person”.

Incorrect returns etc: assessments

- 18B (1) This paragraph applies where a person –
- (a) has failed to make a relevant special scheme return, or
 - (b) has made a special scheme return which is incomplete or incorrect.
- (2) In sub-paragraph (1) “relevant special scheme return” means a special scheme return that is required to be made, for any period, wholly or partly in respect of supplies of scheme services that are treated as made in the United Kingdom.
- (3) Where this paragraph applies –
- (a) section 73(1) (failure to make returns etc), and
 - (b) section 73(5), (6), (8), (9) and (10) (so far as relating to section 73(1)),

have effect as if the requirement to make the relevant special scheme return had been a requirement under this Act, and as if the period referred to in sub-paragraph (2) were a prescribed accounting period.

- (4) References in the following provisions to prescribed accounting periods are to be read accordingly –
- (a) section 74(1)(a) (interest on VAT recovered or recoverable by assessment);
 - (b) section 76(3), (4) and (5) (assessment of amounts due by way of penalty, interest or surcharge);
 - (c) section 77(1)(a) and (4) (assessment: time limits).

Overpayments: adjustments

- 18C (1) Sub-paragraph (2) applies where a person (“T”) –
- (a) has made a special scheme return for a tax period relating wholly or partly to supplies of scheme services treated as made in the United Kingdom,
 - (b) has accounted to the tax authorities for the administering member State (whether that is the United Kingdom or another member State) for VAT in respect of those supplies, and
 - (c) in doing so has brought into account as UK VAT due to those authorities an amount that was not UK VAT due to them.
- (2) If T makes a claim for the tax to be repaid, the Commissioners must repay to T the amount overpaid.
- (3) For the purposes of sub-paragraph (2), the Commissioners may treat an amendment of the non-UK return that is submitted to the tax authorities for the administering member State and indicates that an amount of VAT has been overpaid as a claim for repayment of that amount.
- (4) Sub-paragraph (2) does not require any amount to be repaid except so far as that is required by Article 63 of the Implementing Regulation.

Unjust enrichment

- 18D (1) The Commissioners are not required to repay an amount under paragraph 18C(2) so far as that would unjustly enrich the person concerned.
- (2) A special rule (about determining what loss or damage a person has suffered for the purposes of sub-paragraph (1)) applies where –
- (a) the Commissioners would, apart from sub-paragraph (1), be required to repay an amount to a person (“the taxpayer”), and
 - (b) the whole or a part of the amount brought into account as mentioned in paragraph 18C(1)(c) has, for practical purposes, been borne by a person other than the taxpayer.

- (3) The special rule applies in relation to loss or damage that has been or may be incurred by the taxpayer as a result of mistaken assumptions made in the taxpayer's case about the operation of any VAT provisions.
- (4) The special rule is that the loss or damage is to be disregarded, except up to the quantified amount, in determining –
- (a) whether or to what extent repaying an amount to the taxpayer would enrich the taxpayer, or
 - (b) whether or to what extent any enrichment of the taxpayer would be unjust.
- (5) In this paragraph –
- “the quantified amount” means the amount (if any) which is shown by the taxpayer to be the amount that would appropriately compensate the taxpayer for loss or damage shown by the taxpayer to have resulted, for any business carried on by the taxpayer, from the making of the mistaken assumptions;
- “VAT provisions” means the provisions of –
- (a) any enactment, subordinate legislation or Community legislation (whether or not still in force) which relates to VAT or to any matter connected with VAT, or
 - (b) any notice published by the Commissioners under or for the purposes of any such enactment or subordinate legislation.

Overpayments: claims

- 18E (1) This paragraph applies where –
- (a) a person (“T”) has made a special scheme return for a tax period,
 - (b) the special scheme return relates wholly or partly to supplies of scheme services treated as made in the United Kingdom,
 - (c) T has accounted to the tax authorities for the administering member State (whether that is the United Kingdom or another member State) for VAT in respect of those supplies, and
 - (d) in doing so T has brought into account as UK VAT due to those authorities an amount that was not UK VAT due to them.
- (2) Where this paragraph applies –
- (a) the person is taken to have met the conditions in subsection (1)(a) and (b) of section 80 (credit for, or repayment of, overpaid VAT), and
 - (b) the reference in section 80(1) to “that amount” is accordingly taken to be a reference to the amount mentioned in sub-paragraph (1)(d).

- (3) References in section 80 to prescribed accounting periods are read as references to tax periods so far as is necessary for the purposes of sub-paragraph (2).
- (4) No claim under section 80(1) may be made in reliance on this paragraph before the end of the three years beginning with the date on which the person was required to submit a special accounting return or a value added tax return for the tax period concerned.

Interest on UK VAT recovered or recoverable by assessment

- 18F (1) Sub-paragraph (2) applies in relation to any case where –
- (a) an amount assessed under section 73(1) (failure to make returns etc) in reliance on paragraph 18B(4) carries interest under section 74(1), or
 - (b) an amount that could have been assessed under section 73(1) in reliance on paragraph 18B(4) carries interest under section 74(2).
- (2) The “reckonable date” for the purposes of section 74(1) and (2) is taken to be the latest date on which the special scheme return in question was required to be made (and paragraphs (a) to (c) of section 74(5) are to be ignored accordingly).

Default surcharge: notice of surcharge period

- 18G (1) A person (“T”) who is required to make a relevant special scheme return for a tax period is regarded for the purposes of this paragraph and paragraph 18H as being in default in respect of that period if either –
- (a) conditions 1A and 2A are met, or
 - (b) conditions 1B and 2B are met;
- (but see also paragraph 18I).
- (2) In sub-paragraph (1) “relevant special scheme return” means a special scheme return that is required to be made (wholly or partly) in respect of supplies of scheme services that are treated as made in the United Kingdom.
- (3) For the purposes of sub-paragraph (1)(a) –
- (a) condition 1A is that the tax authorities for the administering member State have not received the return by the deadline for submitting it;
 - (b) condition 2A is that those tax authorities for the administering member State have, in accordance with Article 60a of the Implementing Regulation, issued a reminder of the obligation to submit the return.
- (4) For the purposes of sub-paragraph (1)(b) –
- (a) condition 1B is that, by the deadline for submitting the return, the tax authorities for the administering member State have received the return but have not received the amount of VAT shown on the return as payable by T in respect of the tax period;

- (b) condition 2B is that those tax authorities have, in accordance with Article 60a of the Implementing Regulation, issued a reminder of the VAT outstanding.
- (5) The Commissioners may serve on a person who is in default in respect of a tax period a notice (a “special surcharge liability notice”) specifying a period –
 - (a) ending on the first anniversary of the last day of that tax period, and
 - (b) beginning on the date of the notice.
- (6) A period specified under sub-paragraph (5) is a “special surcharge period”.
- (7) If a special surcharge liability notice is served in respect of a tax period which ends at or before the end of an existing surcharge period, the surcharge period specified in that notice must be expressed as a continuation of the existing surcharge period (so that the existing period and its extension are regarded as a single surcharge period).

Further default after service of notice

- 18H (1) If a person on whom a special surcharge liability notice has been served –
- (a) is in default in respect of a tax period ending within the special surcharge period specified in (or extended by) that notice, and
 - (b) has outstanding special scheme VAT for that tax period, the person is to be liable to a surcharge of the amount given by sub-paragraph (2).
- (2) The surcharge is equal to whichever is the greater of –
- (a) £30, and
 - (b) the specified percentage of the person’s outstanding special scheme VAT for the tax period.
- (3) The specified percentage depends on whether the tax period is the first, second or third etc in the default period in respect of which the person is in default and has outstanding special scheme VAT, and is –
- (a) for the first such tax period, 2%;
 - (b) for the second such tax period, 5%;
 - (c) for the third such tax period, 10%;
 - (d) for each such tax period after the third, 15%.
- (4) “Special scheme VAT”, in relation to a person, means VAT that the person is liable to pay to the tax authorities for the administering member State under a special scheme in respect of supplies of scheme services treated as made in the United Kingdom.
- (5) A person has “outstanding special scheme VAT” for a tax period if some or all of the special scheme VAT for which the person is liable in respect of that period has not been paid by the deadline for the person to submit a special scheme return for that period; (and the amount unpaid is referred to in sub-paragraph (2)(b) as

“the person’s outstanding special scheme VAT” for the tax period).

Default surcharge: exceptions for reasonable excuse etc

- 18I (1) A person who would otherwise have been liable to a surcharge under paragraph 18H(1) is not to be liable to the surcharge if the person satisfies the Commissioners or, on appeal, a tribunal that, in the case of a default which is material to the surcharge—
- (a) the special scheme return or, as the case may be, the VAT shown on that return, was despatched at such a time and in such manner that it was reasonable to expect that it would be received by the tax authorities for the administering member State within the appropriate time limit, or
 - (b) there is a reasonable excuse for the return or the VAT not having been so despatched.
- (2) Where sub-paragraph (1) applies to a person—
- (a) the person is treated as not having been in default in respect of the tax period in question, and
 - (b) accordingly, any special surcharge liability notice the service of which depended on that default is regarded as not having been served.
- (3) A default is “material” to a surcharge if—
- (a) it is the default which gives rise to the surcharge, under paragraph 18H(1), or
 - (b) it is a default which was taken into account in the service of the special surcharge liability notice on which the surcharge depends and the person concerned has not previously been liable to a surcharge in respect of a tax period ending within the surcharge period specified in or extended by that notice.
- (4) A default is left out of account for the purposes of paragraphs 18G(5) and 18H(1) if—
- (a) the conduct by virtue of which the person is in default is also conduct falling within section 69(1) (breaches of regulatory provisions), and
 - (b) by reason of that conduct the person concerned is assessed to a penalty under that section.
- (5) If the Commissioners so direct, a default in respect of a tax period specified in the direction is to be left out of account for the purposes of paragraphs 18G(5) and 18H(1).
- (6) The Commissioners must consult with the Treasury before making a direction under sub-paragraph (5).
- (7) Section 71(1) (meaning of “reasonable excuse”) applies for the purposes of this paragraph as it applies for the purposes of sections 59 to 70.

Penalties for errors: disclosure

- 18J Where a person corrects a special scheme return in a way that constitutes telling the tax authorities for the administering member State about –
- (a) an inaccuracy in the return,
 - (b) a supply of false information, or
 - (c) a withholding of information,
- the person is regarded as telling HMRC about that for the purposes of paragraph 9 of Schedule 24 to the Finance Act 2007.

Set-offs

- 18K Where a participant in a special scheme is liable to pay UK VAT to the tax authorities for the administering member State in accordance with the scheme, the UK VAT is regarded for the purposes of subsection (6) of section 130 of the Finance Act 2008 (set-off: England, Wales and Northern Ireland) as payable to the Commissioners.”
- 17 In paragraph 20 (appeals) –
- (a) in sub-paragraph (1), for paragraphs (b) and (c) substitute –
 - “(b) a refusal to make a repayment under paragraph 18C(2) (overpayments: adjustments), or a decision by the Commissioners as to the amount of the repayment due under that provision.”;
 - (b) after sub-paragraph (2) insert –
 - “(3) Where the Commissioners have made an assessment under section 73(1) in reliance on paragraph 18B(3) –
 - (a) section 83(1)(p)(i): (appeals against assessments under section 73(1) etc) applies as if the relevant special scheme return were a return under this Act, and
 - (b) the references in section 84(3) and (5) to the matters mentioned in section 83(1)(p) are to be read accordingly.”
- 18 For paragraph 21 (payments on account of non-UK VAT to other member States) substitute –
- “21 Section 44 of the Commissioners for Revenue and Customs Act 2005 (requirement to pay receipts into the Consolidated Fund) does not apply to any money received for or on account of VAT that is required to be paid to another member State under Article 46 of Council Regulation No 904/2010.”
- 19 In paragraph 23 (interpretation) –
- (a) in sub-paragraph (1), for the definition of “Article 26c” substitute –
 - ““administering member State”, in relation to a special scheme, means the member State under whose law the scheme is established (whether that is the United Kingdom or another member State);”
 - (b) in sub-paragraph (1), for the definition of “the Controller” substitute –

- “the Implementing Regulation” means Implementing Regulation (EU) No 282/2011;”
- (c) in sub-paragraph (1), after the definition of “reporting period” insert –
- ““scheme services” means electronically supplied services, broadcasting services or telecommunication services (and in this definition “electronically supplied services”, “broadcasting services” and “telecommunication services” have the meaning given by paragraph 3(2));”
- (d) in sub-paragraph (1), after the definition of “special accounting return” insert –
- ““special scheme” means –
- (a) the scheme established under this Schedule, or
- (b) any other scheme implementing Section 2 of Title XII of Directive 2006/112/EC;
- “special scheme return” has the meaning given by paragraph 16(6);
- “tax period” means a period for which a person is required to make a return under a non-UK special scheme;
- “UK VAT” has the meaning given by paragraph 16(6);
- “the VAT Directive” has the meaning given by paragraph 2(7);”
- (e) in sub-paragraph (2)(a), for the words from “virtue” to “2002 VAT Directive),” substitute “paragraph 15 of Schedule 4A (place of supply of electronic, telecommunication and broadcasting services),”;
- (f) omit sub-paragraph (3).

Miscellaneous amendments

- 20 In paragraph 2 (persons who may be registered) –
- (a) in sub-paragraph (6) for “Article 26c” substitute “Section 2 of Chapter 6 of Title XII of the VAT Directive”;
- (b) for sub-paragraph (7) substitute –
- “(7) In this Schedule “the VAT Directive” means Directive 2006/112/EC (Title XII of which is amended by Council Directive 2008/8/EC).”
- 21 In paragraph 4 (registration request), in sub-paragraph (2) for “paragraph 9 below” substitute “Article 58b of Implementing Regulation (EU) No 282/2011”.
- 22 In paragraph 15 (Commissioners’ power to request production of records), in sub-paragraph (2)(b), for “Article 26c” substitute “Section 2 of Chapter 6 of Title XII of the VAT Directive”.
- 23 In paragraph 16 (understatement or overstatement of UK VAT in special scheme return) –
- (a) in sub-paragraph (5)(b) for “Article 26c” substitute “Section 2 of Chapter 6 of Title XII of the VAT Directive”;

- (b) in sub-paragraph (6), in the definition of “value added tax return”, for “Article 26c(B)(5) of the 1977 VAT Directive” substitute “Article 364 of the VAT Directive (as substituted by Article 5(11) of Council Directive 2008/8/EC)”.

- 24 In paragraph 18 (de-registration), in paragraph (b), for “Article 26c,” substitute “Section 2 of Chapter 6 of Title XII of the VAT Directive,”.

PART 3

OTHER AMENDMENTS: UNION AND NON-UNION SCHEME

- 25 VATA 1994 is amended in accordance with paragraphs 26 to 28.

- 26 (1) Section 3A (supply of electronic services in member States: special accounting scheme) is amended as follows.

- (2) In subsection (1), after “services” insert “, telecommunication services or broadcasting services”.

- (3) After subsection (1) insert –

“(1A) Schedule 3BA –

- (a) establishes a special accounting scheme for use by persons established in the UK and supplying electronically supplied services, telecommunication services or broadcasting services in other member States, and
 (b) makes provision about corresponding schemes in other member States.”

- (4) For the heading substitute “**Supplies of electronic, telecommunication and broadcasting services: special accounting schemes.**”

- 27 In section 76 (assessment of amounts due by way of penalty, interest of surcharge), in subsection (1)(a), for “or 59A,” substitute “, section 59A, paragraph 18H of Schedule 3B or paragraph 25 of Schedule 3BA,”.

- 28 In section 80 (repayment of overpaid VAT etc), in subsection (7), after “this section” insert “(and paragraphs 18C and 18E of Schedule 3B and paragraphs 20 and 22 of Schedule 3BA)”.

- 29 (1) Paragraph 1 of Schedule 24 to FA 2007 (penalties for errors) is amended as follows.

- (2) In the Table, after the second entry relating to VAT insert –

“VAT

| |
|---------------------------------------|
| Return under a special scheme.” |
|---------------------------------------|

- (3) Before sub-paragraph (5) insert –

“(4A) In this paragraph “return under a special scheme” means either of the following, so far as relating to supplies of services treated as made in the United Kingdom –

- (a) a value added tax return required to be submitted under any provision of the law of a member State other than the

- United Kingdom which implements Article 364 of the VAT Directive (as substituted by Article 5(11) of the Amending Directive);
- (b) a value added tax return required to be submitted under any provision of the law of a member State other than the United Kingdom which implements Article 369f of the VAT Directive (as inserted by Article 5(15) of the Amending Directive).
- (4B) A return under a special scheme is regarded for the purposes of sub-paragraph (1) as given to HMRC when it is submitted to the authority to whom it is required to be submitted under the provision mentioned in paragraph (a) or (as the case requires) (b) of sub-paragraph (4A).
- (4C) In sub-paragraph (4A) –
“the VAT Directive” means Directive 2006/112/EC;
“the Amending Directive” means Council Directive 2008/8/EC.”

PART 4

COMMENCEMENT

- 30 (1) The amendments made by this Schedule have effect in relation to supplies made on or after 1 January 2015 (but see also paragraphs 31 and 32).
- 31 (1) No registration under Schedule 3BA (inserted by paragraph 1) may take effect before 1 January 2015.
- (2) A request for registration under Schedule 3BA that is made before 1 October 2014 is to be treated for the purposes of Article 57d of Implementing Regulation (EU) No 282/2011 (as amended by Council Regulation (EU) No 967/2012 (EU) No 967/2012) (registration to have effect from first day of subsequent quarter) as if it were made on that date.
- 32 (1) No registration under Schedule 3B may take effect in reliance on paragraph 4 before 1 January 2015.
- (2) A request for registration under Schedule 3B that is made before 1 October 2014 in reliance on paragraph 4 is to be treated for the purposes of Article 57d of Implementing Regulation (EU) No 282/2011 (as amended by Council Regulation (EU) No 967/2012 (EU) No 967/2012) as if it were made on that date.

EXPLANATORY NOTE

**VALUE ADDED TAX: PLACE OF BELONGING OF CERTAIN BODIES
CORPORATE**

SUMMARY

1. Clause [2] ensures that legal persons that are not in business are treated as belonging in the place where they are established rather than where they are legally constituted.

BACKGROUND NOTE

2. The VAT Act 1994 currently treats legal persons that are not in business as belonging in the country where they are legally constituted. This provides scope for the use of such entities in certain types of avoidance. The VAT Act 1994 is also inconsistent with the Principal VAT Directive 2006/112/EC. The change will make the place of belonging for the purposes of the VAT Act 1994 the place of establishment.
3. If you have any questions about this change, or comments on the legislation, please contact Daniel Taylor on 03000 585973 (email: daniel.taylor@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

VALUE ADDED TAX: SUPPLY OF SERVICES THROUGH AGENTS

SUMMARY

1. Clause [3] disapplies the UK's derogation from Article 28 of the principal VAT Directive 2006/112/EC for telecommunication and electronically supplied services.

BACKGROUND NOTE

2. The UK legislation currently allows HMRC to treat services supplied through agents acting in their own name as either a supply to and by the agent or a supply by the principal. HMRC's practice is to allow such agents to choose how to treat such supplies. This treatment is allowed because the UK derogates from EU VAT legislation that would otherwise see supplies through agents acting in their own name as though they were made by the agent. In order to ensure the effective taxation of telecommunication and electronically supplied services through internet portals and marketplaces the UK is disapplying its derogation for telecommunication and electronically supplied services.
3. If you have any questions about this change, or comments on the legislation, please contact Daniel Taylor on 03000 585973 (email: daniel.taylor@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

VALUE ADDED TAX: SUPPLIES OF ELECTRONIC, BROADCASTING AND TELECOMMUNICATION SERVICES: SPECIAL ACCOUNTING SCHEMES

SUMMARY

1. Clause [1] and Schedule [1] provides for the implementation of the optional special accounting schemes for persons making supplies of broadcasting, telecommunication or electronically supplied services (BTE) to consumers in the EU.

Details of the Schedule

Part 1

2. Paragraph 1 inserts the new Schedule 3BA into the VAT Act 1994, which contains the provisions establishing the special accounting scheme for persons established in the Member States (MS) supplying BTE services to consumers belonging in other MSs, to be known as the Union scheme.
3. New Schedule 3BA Part 1 gives an overview and explains the meaning of scheme services.
4. New Schedule 3BA Part 2 provides for who may register in the UK to use the Union scheme, how they may apply to register, the obligations to notify any changes to the registration, and when a registration may be cancelled.
5. New Schedule 3BA Part 3 sets out the responsibility of a person registered to use the Union Scheme in the UK to submit returns to the Commissioners for the VAT due in the consumers' MS and to pay the VAT due. It specifies when the return and payment are to be made and the way they are to be submitted. It also places an obligation upon the registered business to produce the relevant business records to the Commissioners in electronic format upon request.
6. New Schedule 3BA Part 4 places obligations upon persons registered for other MS equivalent to the Union Scheme in respect of their UK supplies. It sets out that a person registered for such a scheme is not liable to register in the UK on the basis of the BTE supplies made to UK consumers. It permits the Commissioners to deregister a person who has registered in the UK for such supplies but wishes to use the non-UK scheme provided by another MS. It also sets out the rules for amendments, error corrections, late returns and charges to interest applying to declarations of UK VAT made in a non-UK scheme return.

7. New Schedule 3BA Part 5 sets out the rights of appeal of those persons registered to use the Union Scheme and those declaring UK VAT through a non-UK scheme return.
8. New Schedule 3BA Part 6 details the interpretive provisions.
9. Paragraph 2 amends the VAT Act 1994 section 3A to include new Schedule 3BA and gives the power to amend the new Schedule by Treasury Order.

Part 2

10. Paragraph 3 to 15 amend the special scheme for supplies of electronic services detailed in the VAT Act 1994 Schedule 3B to include supplies of telecommunications and broadcasting services from 1 January 2015. This special scheme will become known as the non-Union scheme and provides an accounting scheme for suppliers of BTE services for those not established within the EU.
11. Paragraph 16 inserts new paragraphs 18A to 18K which contains the provisions for scheme returns that are late or incomplete or need amendment.
12. Paragraphs 17 to 24 include interpretive and consequential amendments to Schedule 3B.

Part 3

13. Paragraphs 25 to 27 amend the VAT Act 1994 section 3A and section 76.
14. Paragraph 28 amends the VAT Act 1994 section 80 by referring to paragraphs 18C and 18E of Schedule 3B and paragraphs 20 and 22 of new Schedule 3BA regarding overpayment adjustments.
15. Paragraph 29 amends the Table in paragraph 1 of Schedule 24 to the Finance Act 2007 by inserting new sub-paragraphs 4A-C to include the special scheme returns into the penalty regime for errors.

Part 4

16. Paragraphs 30 to 32 make provision for commencement of the special schemes and for when persons may begin to register.

BACKGROUND NOTE

17. These schemes, known collectively as the Mini-One Stop Shop or MOSS, are being introduced as part of the final stage of the 2008 European agreement on changes to the VAT place of supply of services rules (known as the VAT Package) and were

announced at Budget 2013. The supply of BTE services to consumers are currently taxable where the supplier is located (save for supplies of e-services made by those outside the EU to consumers in the EU). This will change on 1 January 2015 to where the customer belongs.

18. This rule change may increase administration costs of suppliers of BTE services. To mitigate such costs the MOSS IT system will be implemented across the EU from 1 January 2015. MOSS is formed of two parts: The Union Scheme for those that have an establishment in the EU and the Non Union scheme for those that do not have such an establishment. This Schedule enacts those elements of EU law which are not directly applicable to set up the legal framework for the special schemes.
19. The Union Scheme gives EU BTE suppliers the option to register and to account to the Member State where they are established for the VAT on all their BTE supplies to customers in the other Member States (known as the Union scheme) on one MOSS VAT return. If businesses do not register for MOSS they must register in each Member State in which they supply a customer with BTE services.
20. The Non Union Scheme allows suppliers of BTE services which are not established in the EU to register in one Member State to account for the VAT on all their BTE supplies within the EU on one MOSS VAT return. The VAT on Electronic Services (VoES) scheme currently allows this treatment for non EU suppliers of electronic services; MOSS will extend this to broadcasting and telecommunication services. Those already registered for the VoES scheme, may transfer over to the Non-Union scheme and continue to get the benefit of this simplification measure.
21. If you have any questions about this change, or comments on the legislation, please contact Andy Heywood on 03000 544534 (email: andrew.heywood@hmrc.gsi.gov.uk).

Order made by the Treasury, laid before the House of Commons under section 97(3) of the Value Added Tax Act 1994 for approval by resolution of that House within twenty-eight days beginning with the day on which the Order was made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2014 No. 0000

VALUE ADDED TAX

**The Value Added Tax (Place of Supply of Services) (Exceptions
Relating to Supplies Not Made to Relevant Business Person)
Order 2014**

| | | |
|---|---------|-----|
| <i>Made</i> | - - - - | *** |
| <i>Laid before the House of Commons</i> | | *** |
| <i>Coming into force</i> | - - | *** |

The Treasury, in exercise of the power conferred by section 7A(6)(b) of the Value Added Tax Act 1994(a), make the following Order:

Citation and commencement

1.—(1) This Order may be cited as the Value Added Tax (Place of Supply of Services) (Exceptions Relating to Supplies Not Made to Relevant Business Person) Order 2014.

(2) This Order comes into force on *** and has effect in relation to supplies made on or after 1st January 2015.

Amendment to Part 3 of Schedule 4A to the Value Added Tax Act 1994

2. Part 3 of Schedule 4A to the Value Added Tax Act 1994 (place of supply of services: special rules: exceptions relating to supplies not made to relevant business person)(b) is amended as follows.

3.—(1) For paragraph 15 (electronic services), substitute—

“**15.**—(1) A supply to a person who is not a relevant business person of services to which this paragraph applies is to be treated as made in the country in which the recipient belongs (but see paragraph 8).

(2) This paragraph applies to-

(a) 1994 c.23; section 7A was inserted by section 76 of, and paragraphs 1 and 4 of Part 1 of Schedule 36 to, the Finance Act 2009 (c.10).

(b) Schedule 4A was inserted by section 76 of, and paragraphs 1 and 11 of Part 1 of Schedule 36 to, the Finance Act 2009. It was amended by section 76 of, and paragraphs 1, 15 and 17 of Part 2 of Schedule 36 to, the Finance Act 2009, by S.I. 2010/3017 and by S.I.2012/2787.

- (a) electronically supplied services (as to the meaning of which see paragraph 9(3) and (4)),
- (b) telecommunication services (as to the meaning of which see paragraph 8(2)), and
- (c) radio and television broadcasting services.”.

(2) For the heading before paragraph 15, substitute “Electronically supplied, telecommunication and broadcasting services”.

4. In sub-paragraph (2) of paragraph 16 (other services provided to recipient belonging outside EC)—

- (a) omit paragraphs (i), (j) and (k), and
- (b) insert “and” after paragraph (g).

Date

Name
Name
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which has effect in relation to supplies made on or after 1st January 2015, amends Part 3 of Schedule 4A to the Value Added Tax Act 1994 (place of supply of services: special rules: exceptions relating to supplies not made to relevant business person).

Article 3 substitutes a new paragraph 15 which provides that a supply of services to a person who is not a relevant business person of services to which the paragraph applies is made in the country in which the recipient belongs. The paragraph applies to electronically supplied services, telecommunication services and broadcasting services.

Article 4 amends paragraph 16. Paragraph 16 provides that a supply of services to which that paragraph applies when provided to a person who is not a relevant business person and who belongs in a country which is not a member State (other than the Isle of Man) is to be treated as made in the country in which the recipient belongs.

These amendments are required to implement Articles 58 and 59 of Council Directive 2006/112/EC on the common system of value added tax^(a) as amended with effect from 1st January 2015 by Council Directive 2008/8/EC amending Directive 2006/112/EC as regards the place of supply of services^(b). A Transposition Note explaining how these provisions are transposed into UK law is annexed to the Explanatory Memorandum which is available alongside this Order on the National Archives website <http://www.legislation.gov.uk>.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

(a) OJ No L 347, 11.12.2006, p 1-118.

(b) OJ No L 44, 20.2.2008, p 11-22.

EXPLANATORY MEMORANDUM TO
THE VALUE ADDED TAX (PLACE OF SUPPLY OF SERVICES)(EXCEPTIONS
RELATING TO SUPPLIES NOT MADE TO RELEVANT BUSINESS PERSON) ORDER

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The instrument changes the place of supply rule for VAT purposes for most supplies of broadcasting, telecommunication and electronic (BTE) services when made to a non-business person. Currently the place of supply of such services is where the supplier belongs (save where supplies of electronically supplied services are made by a person outside the EU to a non-business person in the EU which are already made where the customer belongs). The purpose of this change is to ensure, as far as possible, that such supplies are taxed where they are consumed.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 The principal VAT Directive (Council Directive 2006/112/EC; “the PVD”) provides a framework for the common system of VAT. It prescribes rules identifying the place of supply of services. The PVD was amended by Council Directive 2008/8/EC which introduced a range of changes to those rules, known as the “VAT Package”. The changes have taken effect at different stages. This instrument implements Articles 58 and 59 of the PVD, as amended by Directive 2008/8/EC. It is the final part of the VAT Package and takes effect from 1st January 2015.

4.2 The instrument amends Schedule 4A to the VAT Act 1994 (“the Act”) which contains special rules setting out exceptions to the general rule that the place of supply of services to a non-business person is where the supplier belongs. That general rule is set out in section 7A(2)(b) of the Act.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

To be completed at a later date.

7. Policy background

7.1 VAT is a tax on consumption. The aim of the VAT Package series of changes is to modernise the rules on the place of supply of cross-border services so as to ensure, as far as possible, that services are taxed where they are consumed. This instrument is part of the final change required to implement the VAT Package.

7.2 The services covered by this instrument when made to a non-business person are currently taxed where the supplier belongs (with the exception referred to in paragraph 2.1). Such supplies made to non-business persons in the UK by suppliers in member States with a lower rate of VAT than the UK charge less VAT than suppliers in the UK. This change will mean that non-business persons in the UK will be charged the UK rate of VAT for such services wherever the supplier belongs creating a level playing field for UK businesses.

8. Consultation outcome

8.1 Business input has been provided through joint business/HMRC groups.

9. Guidance

9.1 HMRC have publicised the change on their website and will issue detailed guidance well in advance of the change coming into effect on 1 January 2015.

10. Impact

A Tax Information and Impact Note covering this instrument was published on 10 December 2013, as part of the *Overview of Legislation in Draft* document, and is available on the GOV.UK website.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The consequence of the change to the place of supply rule is that those making supplies to non-business persons in other Member States would have to register for VAT in each of those Member States. To minimise the impact of the requirements on firms employing up to 20 people, as for any business, they will be able to register for a “Mini One Stop Shop” scheme (MOSS) in the Member State where they are established and submit one MOSS VAT return for all their intra EU BTE supplies. Separate changes being introduced at the same time will mean electronic marketplaces and App stores will generally be responsible for the VAT on the supply to the consumer, so many small software developers will not be impacted by the change.

11.3 This instrument is part of the VAT package agreed at EU level. HMRC is discussing implementation of the measure with small businesses through a working group.

12. Monitoring & review

12.1 This measure will be kept under review through communication with affected taxpayer groups. HMRC will also monitor VAT receipts in the sectors affected and the take up of MOSS.

13. Contact

Andy Heywood at HM Revenue & Customs Tel: 03000 544534 or email: andrew.heywood@hmrc.gsi.gov.uk can answer any queries regarding the instrument.