

1. How are electronic gaming services treated for VAT purposes?

In accordance with Directive 2006/112/EC, all forms of betting, lotteries and gambling services are VAT exempt. The Directive however allows Member States to impose such conditions and limitations on this exemption as they deem fit. This has resulted in the development of a patterned approach whereby electronic betting and gaming services defined in various ways across the Member States are treated differently for VAT purposes in the different Member States.

In Malta, the VAT Act lays down that all forms of gambling are exempt without credit (Schedule V Part II of the VAT Act, Cap. 406 of the Laws of Malta). Owing to the changes which have been introduced via the VAT 2015 package (explained below), operators of gaming services established in Malta will, with effect from 1 January 2015, have to consider the application of VAT rules of the countries where their services are being consumed.

2. How will the VAT 2015 package affect electronic/remote gaming?

The new rule established by article 5 of Council Directive 2008/8/EC (which amends article 58 of Directive 2006/112/EC), and which entered into force on 1 January 2015 through Council Implementing Regulation (EU) No 1042/2013, has shifted the B2C *place of supply* rule applicable to electronic services until 31 December 2014, to the *place of consumption* of the services (being the place where that non-taxable customer is established, has his permanent address or usually resides). A non-exhaustive list of electronically supplied services is found in Council Implementing Regulation (EU) No 282/2011. An interpretation of the list includes the supply of betting, lotteries and other gambling services through electronic means.

Thus, providers of betting, lotteries and other gambling services via electronic means now have to consider the VAT rules applying to such services in each of the Member States where they provide services, in accordance with the *place of consumption* rule. The laws of the states where the services are consumed shall determine the VAT treatment of those services.

It is the obligation of every operator to ensure compliance of any VAT obligations arising in the states where their services are being consumed. Where they are liable to pay VAT, operators must register in the relevant jurisdiction and submit returns accordingly, directly or through MOSS (see below).

The 2015 VAT package has also introduced an optional mechanism in an effort to reduce the administrative burdens which have been placed upon operators. The **Mini One Stop Shop (MOSS)** scheme allows operators supplying electronic services to register for VAT purposes only in their Member State of choice (the 'Member State of Identification'). The operators will be able to submit returns and make payments with regard to VAT obligations in all Member States via a web portal (the MOSS) in the Member State of Identification, which shall then pass on the same to the authorities of the relevant Member States.

3. How did Malta implement these changes?

Malta has recognised that gambling services fall under the definition of ‘electronically supplied services’ and therefore the new *point of consumption* rules have started to apply from January 2015.

Thus, subject to the guidance which has been issued by the VAT Department (www.vat.gov.mt), with regard to the interpretation of different types of games which are not classified as an electronically supplied service, and subject to any further guidance which may be issued, all gambling and betting services supplied electronically shall be considered to fall under the definition of ‘electronically supplied services’.

Where an operator has been made subject to VAT in a state where its services are being consumed following an application of the new rules of *point of consumption*, it may reclaim the input tax paid in Malta by virtue of article 22 (4)(c) of the VAT Act which can be made following a registration under Article 10 of the VAT Act. Further details on this matter may be sought from the VAT Department.

The VAT Department has also set up the MOSS Scheme in Malta through which operators registered here may file their VAT returns and make their VAT payments for every state of consumption via the MOSS mechanism operated in Malta.

4. What are my options to comply?

The MOSS scheme is an option available to operators supplying services to consumers in multiple jurisdictions with the objective of reducing the additional administrative burdens introduced by the new *point of consumption* rules. In order to comply with the VAT obligations arising in each Member State without registering for the MOSS scheme in Malta or in any other state, operators must register for VAT purposes in every Member State of consumption and thereafter submit returns and make any payments due directly to the relevant state.

5. What is the meaning of ‘electronically supplied services’?

Article 7 of EC Regulation 282/2011 defines “electronically Supplied Services” as “*services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology*”. Please refer to the document published by the VAT Department for further details at the link [HERE](#).

6. Where shall I direct any queries?

Any queries with regard to the interpretation of the VAT Act and Directive 2006/112/EC, VAT registration, and the rules concerning MOSS registration or its operation must be directed to the VAT Department: Department: vat@gov.mt or moss.mfin@gov.mt as relevant.

All other related queries may be directed to the MGA: info.mga@mga.org.mt.