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Supreme Audit Office

B u n d e s
rechnungshof

REPORT

ON THE COORDINATED AUDIT

carried out by NKÚ and BRH on VAT
under the mini one-stop shop scheme



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1. Preface

For many years already, the Supreme Audit Institutions (SAIs) of the Czech Republic (Nejvyšší kontrolní úřad, NKÚ) and the Federal Republic of Germany (Bundesrechnungshof, BRH) have successfully cooperated in the field of VAT and have also carried out two coordinated audits. In the present report, the two SAIs address the topic of e-commerce and VAT for the first time, thus taking up current economic developments.

The internet is a multi-billion marketplace for which high growth rates are projected. It is therefore important to sustainably ensure tax revenue collection from sales over the internet. Trading on the internet includes both goods and services. Since 1 January 2015, the place of supply of specified services to private consumers¹ within the EU has been the place where they are consumed.

The change of the place of supply has been accompanied by the implementation of a new taxation system, the mini one-stop shop (MOSS). All member states had the duty to implement the relevant EU directive by 1 January 2015 and to set up the new taxation system.² Therefore, BRH and NKÚ decided to carry out a coordinated audit to scrutinise implementation by the two member states.

The member states have meanwhile decided to extend the new taxation system to all goods and services effective from 1 January 2021. Therefore, audit findings on the MOSS system developed by SAIs are of critical importance in order to address weaknesses, but also to help the member states' tax authorities to avoid repeating them when implementing the extended MOSS, the one-stop shop (OSS).

The third coordinated audit of the SAIs of the Czech Republic and Germany once again shows that the two institutions consider VAT issues a top priority.

1 In detail, this includes telecommunication services, radio and television broadcasting services and electronically supplied services to private consumers (subsequently referred to as digital services).

2 Council Directive 2008/8/EC of 12 February 2008.

» 2. Introduction

In the Czech Republic, the audit is recorded as **file** 17/12 and in Germany as VIII 2 - 2016 - 0405.

The **audit subject** was the taxation of digital services supplied by EU companies to private consumers in the European Union.

The audit covered the **period** from 1 January 2015 to 30 June 2017.

The **audit objective** was to study

- how the tax authorities of the two countries have complied with their EU obligation to implement MOSS;
- emerging difficulties in implementation; and
- the extent to which the MOSS system is suitable for ensuring VAT revenue collection.

Both SAIs summarised their findings in national reports and jointly drafted the present report on that basis.

3. Executive summary of the findings of the coordinated audit

As from 1 January 2015, new taxation rules apply to companies providing digital services to private consumers in the European Union. Accordingly, such services are subject to taxation in the consumer's country of residence (member state of consumption). As a consequence, companies would have to register for taxation in every member state where they provide digital services. In order to reduce such administrative burden for service providers a new, non-compulsory taxation system (MOSS) has been implemented. Companies may submit their VAT return covering all digital services to consumers in other EU member states in the country where these companies are established (member state of identification) and pay the VAT due.

BRH and NKÚ audited the MOSS system and looked into the legal bases and practical implementation in terms of organisation and procedures.

The audit revealed the following weaknesses:

- **Eligibility to register for MOSS not adequately checked**

The MOSS system can be applied only for specific digital services and for turnover in those member states where the company neither resides nor has a fixed establishment. While the Czech tax authorities examined which kind of services the company provides, their German counterparts only checked formal aspects (cf. 6.1.1 to 6.1.3). Without relevant data provided by the company, none of the two tax authorities could reliably identify the existence of fixed establishments in other member states (cf. 6.1.4).

- **No reminders sent by member states of consumption in case of outstanding tax returns**

Being member states of consumption, tax authorities of the two member states did not send reminders in case of outstanding tax returns. This was due to the fact that in MOSS it is very cumbersome for the member state of consumption to verify whether companies fulfilled their duty to submit a tax return (cf. 6.2.3 to 6.2.5).

- **Provision of records on turnover under MOSS not clearly defined**

Requesting records from the companies and analysing them accordingly is cumbersome for the member state of consumption. Therefore, tax authorities of the two member states requested such records in isolated cases only in order to verify indications made in the tax returns by the companies. In addition, there are no EU provisions in place as to record-keeping and provision of documents (cf. 6.3).

- **Outstanding taxes not recovered**

Being member states of consumption, tax authorities of the two member states did not send reminders in case of outstanding taxes as matching payments to the respective tax returns was difficult. In addition, there were only few requests for recovery addressed to the member state of identification as recovery is governed by a threshold of at least €1,500 and many companies declared turnover below that threshold. MOSS does not provide for the member state of identification to recover outstanding taxes for the member states of consumption unless on the basis of a request for recovery. Each member state of consumption is to send reminders and requests for recovery itself although outstanding taxes may arise from a tax return submitted in the member state of identification (cf. 6.4.3 and 6.4.4).

- **Tax returns checked under formal aspects only**

Only in isolated cases tax authorities of the two member states checked whether data stated in the tax returns were accurate. There were only few cases of field inspections at the companies' premises. While the German tax administration carried out investigations only as member state of consumption, the Czech tax authorities investigated as member state of identification in one case. In addition, in two cases the Czech authorities were informed about proposed inspections to be carried out by another member state of identification (cf. 6.5.1). The Czech tax administration as member state of identification also checked formal aspects of tax returns submitted and requested the companies for corrections in case of need (cf. 6.2.1).

- **Risks of tax losses not identified**

Both in the Czech Republic and in Germany companies need to declare their turnover under MOSS twice: in a special tax return in the MOSS system and in the domestic tax return containing also all other turnover. These returns were not compared systematically as different authorities were responsible for processing the returns in the two member states and data were not linked accordingly. On the basis of domestic tax returns, the two tax authorities cannot identify whether and to what extent these include turnover under MOSS. However, according to NKÚ, such information is crucial as companies in the member state of identification are entitled to claim refund of input tax as to this turnover. Data stated in the special tax return for turnover under MOSS provide only little information to the member state of consumption. Therefore, the automated risk management of the two tax authorities identified few cases only (cf. 6.6).

- **No systematic search for unknown tax cases**

Tax authorities of the two member states failed to systematically look for unknown tax cases. They assumed that the companies complied with their tax obligations and duly registered in the system, submitted tax returns and paid the VAT due. However, audit findings developed so far proved that such assumptions were not realistic in case of e-commerce (cf. 6.7).

Therefore, the two SAIs hold that reducing the companies' administrative burden must not go at the expense of tax revenues. The two SAIs make the following recommendations:

- Considerations to make the MOSS system more effective in practice should be made at EU level. On the basis of their audit findings the SAIs hold that the member state of identification should be much more involved in the taxation procedure.
- Companies registered to MOSS need to be more controlled. Irrespective of how member states of identification and member states of consumption will cooperate in future, more tax inspections should be carried out. The member states must aim at correctly assessing VAT due throughout the European Union.
- Tax authorities of EU member states should enhance cooperation and coordination in order to identify companies not complying with their VAT obligations.

The SAIs' recommendations may be helpful to remedy structural shortcomings of the MOSS system. This is of specific importance in view of the system's greater scope (OSS) as from 1 January 2021.

In addition, NKÚ recommends assigning more competences to the member state of identification across all procedural steps and thus help reduce the administrative burden both for companies and tax authorities.

4. General information » on the system

On 1 January 2015, the MOSS system was implemented in the European Union. Under that system, companies may declare in their member state of identification all digital services supplied to private consumers in other EU member states and pay the VAT due. This is subject to the condition that the companies neither reside nor have fixed establishments in the member state in which they carry out said transactions.³

Irrespective of their MOSS registration, companies are registered in the member state of identification where they have to declare all turnovers under the general taxation system.

In accordance with the EU rules, from 2015 to 2018, the member state of identification was entitled to retain a specified percentage of the VAT paid (retention fee for covering administrative cost). For 2015 and 2016, the applicable rate was 30 per cent each, and for 2017 and 2018, 15 per cent each.⁴ This did not affect companies that always had to pay the full amount of VAT due. As from 1 January 2019, such retention fees were abolished.

On 5 December 2017, the Council of the European Union adopted new provisions⁵ designed to simplify the VAT system for online companies. As from 1 January 2021, the applicable provisions of the MOSS system are to be extended to cross-border supplies of goods and services to private consumers in the European Union (OSS system). Companies with small turnover shall be exempt from these provisions.

Details on the MOSS system are stipulated in various directives and regulations (see Annex).

3 As at 30 June 2017, approx. 500 companies were registered in the Czech Republic and approx. 2,800 in Germany.

4 Article 46 para. 3 of Council Regulation (EU) No 904/2010 of 7 October 2010.

5 Council Directive (EU) 2017/2455, Council Regulation (EU) 2017/2454 and Implementing Regulation (EU) 2017/2459 – all of 5 December 2017.

5. Organisational structure of the MOSS system



Under the MOSS system, each member state can have the following functions: It can either be a member state of identification, i.e. it is responsible for registering, receiving the returns and remitting the payments of the companies residing in that member state or it can be a member state of consumption and receives the registration and return details and the payments from other member states.

5.1 Czech Republic

For VAT management under the MOSS system, responsibility lies with the tax office for the South Moravian region or its territorial branch for Brno I. This applies irrespective of whether the Czech Republic is member state of consumption or member state of identification. Investigations under the MOSS system, however, are carried out by the tax office responsible for domestic VAT of the respective company.

The General Financial Directorate is responsible for guidance and oversight. In its capacity as MOSS coordinator, it shares information between the Czech Republic and the other member states.

The local tax office where the company resides or has been established remains responsible for domestic VAT.

In the Czech Republic, the MOSS system was integrated into the ADIS⁶ system as a new application module. A special feature of this module enables all tax officers to determine whether a company is registered to MOSS. However, this feature is not connected to the other applications of the ADIS system. Thus, if the tax officer e.g. processes a tax return under the general taxation system or does checks in the ADIS system, s/he will not be automatically alerted to the company's MOSS registration. The tax officer responsible for domestic VAT only has access to the details of the VAT returns submitted under the general taxation system and receives details from the tax returns under the MOSS system only upon request. Conversely, the tax officer responsible for the MOSS system receives details from the tax return under the general taxation system also only upon request.

⁶ Automated tax information system used by the Czech tax administration.

5.2. Germany

Where Germany is member state of identification, the responsible authority is the Federal Central Tax Office. Companies residing in Germany have to register to MOSS on the Office's website. The Office stores the relevant details in a database. In addition, the Office communicates return and payment details of domestic companies to the other member states.

Irrespective of the registration in MOSS, the German local tax offices are in charge of recording all of the companies' turnovers. The local tax offices are not alerted to the participation in the MOSS system of any of the companies within their remit. There is no interface through which local tax offices may request relevant information from the Federal Central Tax Office. Conversely, there is no arrangement in place for automated alerts to the local tax offices by the Federal Central Tax Office about registration of domestic companies. Tax offices in need of information have to contact the Federal Central Tax Office by e-mail in each individual case.

Where Germany is member state of consumption, responsibility lies with the central tax offices⁷ e.g. the Chemnitz South tax office for Czech companies. While the Federal Central Tax Office receives the registration, return and payment details of foreign companies, the respective central tax office is responsible for further processing these data. The central tax offices are responsible for the foreign MOSS companies' taxation, i.e. for assessing and collecting taxes due and for carrying out enforcement procedures and investigations.

5.3. Major differences

In Germany, several tax authorities are responsible for managing VAT in the MOSS system: Where Germany is the member state of identification, responsibility lies with the Federal Central Tax Office. Where Germany is the member state of consumption, responsibility lies with the central tax offices. In the Czech Republic, the tax office for the South Moravian region is in both cases responsible for managing VAT under the MOSS system.

In Germany, tax offices having local responsibility under the general taxation system do not have any information about the MOSS registration of companies. There is no automated information exchange between the tax offices and the Federal Central Tax Office in place. In the Czech Republic, local tax offices can find out whether companies are registered in the MOSS system via an interface with the tax office of the South Moravian region. Thus, an automated information exchange as to registration details between the competent offices and authorities is possible.

According to the two SAIs, this information exchange is important. Only if the tax authorities are aware of a company's registration in the MOSS system, they may check whether the company has accurately declared its turnover under the general taxation system.

⁷ Central tax offices are selected tax offices responsible for ensuring that VAT revenues are collected from companies established in other countries. Each of these tax offices has been assigned responsibility for particular countries.

6. Monitoring of VAT management in the MOSS system



6.1 Registration procedure

6.1.1 Czech Republic

Companies electronically submit their registration application for the MOSS system via the tax portal of the Czech tax administration to the tax office for the South Moravian region.

Before forwarding the application, the ADIS system automatically checks whether the company is registered to MOSS in another member state or whether there are reasons not to register the company.⁸

In addition to that, the tax officer checks the following:

- Are residence data in the Czech Republic and data on establishments in other member states accurate?
- Are data on the person authorised to represent the company in accordance with the details stated in the commercial register?
- Is there a valid delegation authorization or delegated agreement in place and are the details on the person/company granting delegation accurate?
- Are details on the date the first service is provided accurate?
- What kind of service is being provided?

The ADIS system automatically checks four times a year whether there are reasons for deregistering companies from the MOSS system. In the period under review, the tax office for the South Moravian region deregistered 55 companies ex officio.

Registration details of foreign companies that are registered to MOSS in their member state are recorded in the Czech national database for the MOSS system. The database search function offers different filter criteria. The member states do not exchange any modifications in the registration details of companies (e.g. in case of a new address). Therefore, the Czech tax administration implemented a system to retrieve updated registration details, e.g. when return details from another member state are received for the first time or when taxes are to be refunded (e.g. verification of bank details).

⁸ For example, if in repeated cases, the company did not comply with the rules of the MOSS system in the past.

6.1.2 Germany

Where a German company registers to MOSS with the Federal Central Tax Office, the registration is processed electronically. The system checks formal aspects only, e.g.

- whether a company has been registered under the indicated VAT identification number; or
- whether the company in question has already been registered in the database for MOSS companies.

However, the system does not check

- whether the company actually carries out or could carry out transactions that are covered by the MOSS system; and
- whether the type of business permits transactions under MOSS at all.

The Federal Central Tax Office intervenes manually only where erroneous information led to the disruption of the electronic procedure. The Federal Central Tax Office does not carry out any substantive investigations.

Where foreign companies register to MOSS in their member state, the latter, being the member state of identification, is required to check the details and send them to the Federal Central Tax Office. The Office communicates the data to the competent central tax office (cf. 5.2). Where the company resides in the Czech Republic, the Federal Central Tax Office communicates the details to the Chemnitz South tax office. Before the company is registered and has been assigned a tax number for MOSS, the tax office merely checks whether the foreign VAT identification number has already been recorded for tax purposes in Germany.

6.1.3 Verification of the nature of the services

A basic condition for participating in the MOSS system is that companies provide or could provide telecommunication services, radio and television broadcasting services or other electronic services to consumers. However, the EU rules do not call for the provision of relevant data at the time of registration.⁹ Therefore, tax authorities need to explicitly request such information whenever they wish to assess admissibility of an application for registration.

In the Czech Republic, the tax officer deregistered approximately 7 per cent of the companies because no services had been declared in MOSS for at least eight consecutive calendar quarters. Furthermore, there was at least one company that had declared digital services since its registration for MOSS even though these services were not subject to the MOSS system. In doing so, the company unduly paid VAT amounting to approximately €21,000 to other EU member states rather than to the Czech Republic. The tax office for the South Moravian region has chosen to actively review the intended nature of services provided already during the registration process. The office also retroactively checks what services are supplied by companies that are registered but not yet reviewed.

Also the Federal Central Tax Office deregistered companies that did not declare any services in MOSS for at least eight consecutive calendar quarters. However, the Federal Central Tax Office did not check the nature of the services.

⁹ Commission Implementing Regulation (EU) No 815/2012 of 13 September 2012, Annex I.

6.1.4 Verification of the existence of establishments

Digital services to private consumers in member states in which the service provider resides or has a fixed establishment may not be declared under MOSS. The companies have to declare turnover in the domestic VAT return of the member state where they have an establishment. Information about establishments is therefore obligatory for registration. If companies do not provide relevant data, both the German and the Czech tax authorities cannot reliably check whether the information given is in line with actual facts. Currently, no database is in place which links information about companies' establishments in other member states. Databases run in the individual member states and at EU level are not appropriate to effectively provide evidence on the existence of an establishment in the member state of consumption.

6.1.5 Conclusions and recommendations

Lacking information or non-verification of the nature of the service may cause tax losses in the member state of identification. This is especially true in those cases where companies provide services for which the change of the place of supply into the member state of consumption is not intended and which therefore would need to be declared and taxed in the member state of identification.

For this reason, the SAIs consider it necessary that member states do not only check formal registration aspects. They should also record details on the kind of services supplied since the member states of consumption lack the required information. Furthermore, the member states should apply a uniform approach in the registration process.

Lacking information on fixed establishments bears the risk of companies wrongly declaring turnover in MOSS instead of declaring turnover in the domestic VAT return in the member state of the fixed establishment. From a fiscal perspective, there is no shortfall, but the MOSS system is not applied properly. In addition, the incorrect allocation impacted on the amount retained for covering administrative cost: More turnover in the member state of identification resulted in a higher tax due and thus in a higher taxable amount for the retention fee. On the other hand, this meant for the member state of consumption that it collected less tax than it would have been entitled to if legal provisions had been applied properly.

BRH holds that it would be helpful to implement an EU-wide register to check whether companies have fixed establishments in other member states. Should it not be possible to implement such a register, other ways need to be explored to ensure reliable checks and an appropriate use of the MOSS system.

NKÚ, however, holds that abolishing the retention fee for covering administrative cost has rendered the EU provisions on fixed establishments obsolete, since the member state of the establishment receives the respective amount of VAT under the MOSS system.

6.2 VAT return

Tax period under the MOSS system is the calendar quarter. Companies are obliged to submit VAT returns to the tax authority in their member state of identification within 20 days of the end of the period covered by the return. The data are stored in the respective member state and they are available for retrieval by the other member states. Member states in which companies provided services to private consumers according to the VAT return receive the respective turnover details (tax return reference number, taxable amounts and VAT amounts).

6.2.1 Submitting the VAT return in the Czech Republic

Czech companies electronically submit VAT returns to the tax office for the South Moravian region via the tax portal of the Czech tax administration. The ADIS system automatically starts to formally check the data stated. Furthermore, the system checks whether the sender is entitled to submit the respective VAT return. If an inconsistency is found in the VAT return submitted, the tax officer will inform the company via phone or e-mail. Even though this approach is not based on legal provisions, it avoids unnecessary costs which would arise in case tax offices in the member state of consumption would have to communicate with the companies.

All VAT returns from other member states are forwarded via the General Financial Directorate to the tax office for the South Moravian region. When the data is loaded into ADIS, the system automatically starts a formal check. If a VAT return contains a wrong VAT rate, a miscalculated tax or a combination of the two, the tax office will inform the foreign company via e-mail.

6.2.2 Submitting the VAT return in Germany

German companies electronically submit their tax return to the Federal Central Tax Office. Without prior check, these data are automatically forwarded to the other member states as XML data set. The Federal Central Tax Office also receives the data of MOSS companies registered in other member states and forwards them to the competent central tax offices. At these offices, the data are filed with the tax numbers and are available for further processing.

BRH found that, in general, the central tax offices accepted the returns received from other member states without checking them. Substantive tax inspections were not carried out. According to the justification provided by the tax offices, the MOSS returns did not contain enough information to select cases that merited further investigation. In addition, there was a lack of staff.

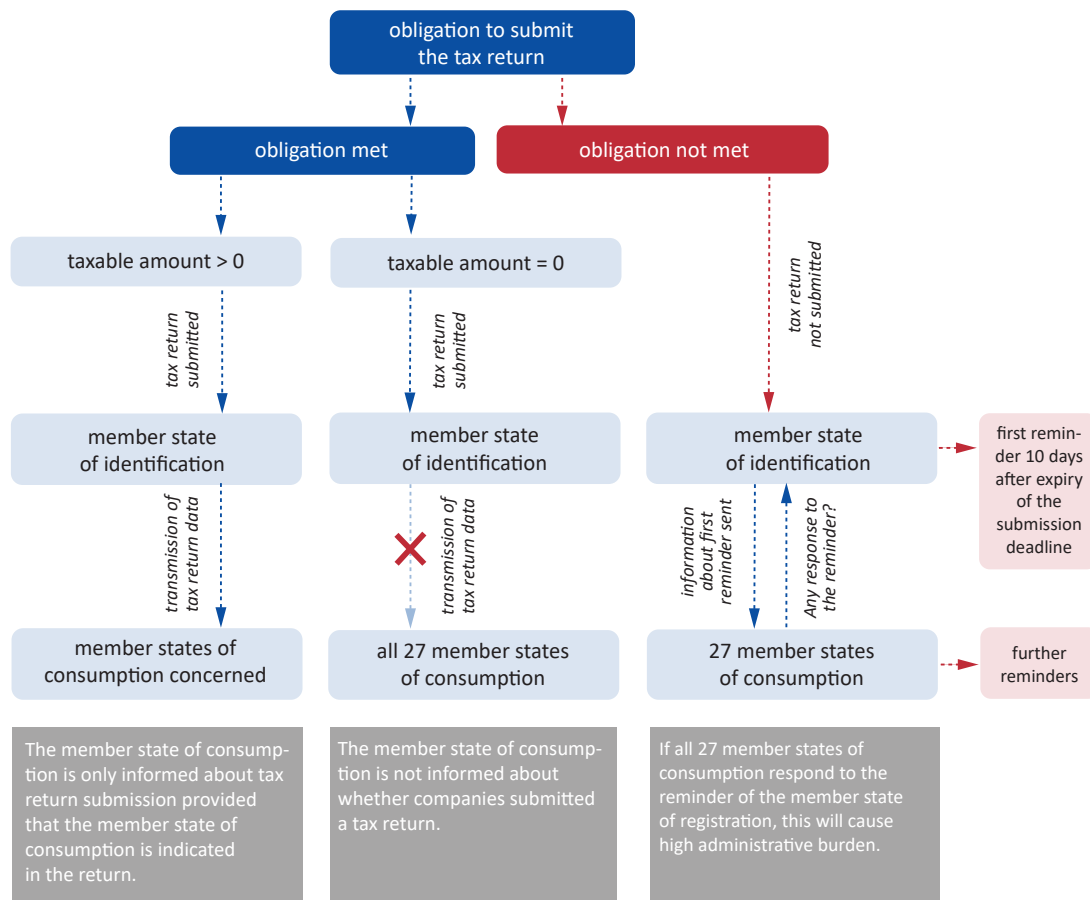
6.2.3 Lacking VAT return

Companies are required to submit VAT returns to the member state of identification within 20 days of the end of each calendar quarter, also if there was no turnover under MOSS at all in this period.

Monitoring of tax return submission is subject to EU legislation¹⁰ and provides for different scenarios as illustrated below.

¹⁰ Article 60a sentences 1-3 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011, current version.

Figure 1 – Monitoring of tax return submission



According to applicable EU legislation the member state of identification is to issue the first reminder only. The member state of consumption is responsible for issuing subsequent reminders and taking further steps to determine and collect VAT. If the member state of identification needs to issue a reminder for submitting the VAT return for three consecutive quarters without the company submitting the return within ten days of the reminder, the company will be excluded from the MOSS system. EU law does not provide for further penalties. In contrast, tax authorities in Germany and the Czech Republic have various means to enforce submission of the return under the general taxation system.

In the period under review, the tax office for the South Moravian region issued 449 reminders to submit the VAT return. In approximately 80 per cent of the cases, the companies responded to the reminders.

6.2.4 Nil return or no turnover in individual member states

Irrespective of whether or not companies have made turnover under MOSS in a quarter of a year, they are required to submit a return:

- If companies did not make any turnover under MOSS in any member state within a quarter, they would submit a nil VAT return in their member state of identification. The other member states do not receive this information but have to actively request it in the respective member state of identification.

- If companies did not make any turnover under MOSS in individual member states within a quarter, these member states would not be included in the return. The member state of identification does not inform them about the companies not having declared any turnover in these member states within the quarter. They have to actively request the return details in the member state of identification to learn why data for companies are lacking.

If there are no return details stated for foreign companies for a quarter, tax offices neither in Germany nor in the Czech Republic will know

- whether the companies have submitted a nil return;
- whether the companies have not supplied any services in Germany or the Czech Republic and thus have not provided any details on the two member states in their VAT return; or
- whether the companies have not yet submitted VAT returns despite reminders to this effect of the member state of identification.

The authorities of the two member states have thus not issued any reminders to submit a VAT return. Moreover, the tax authorities in the Czech Republic presume a VAT amount of zero euros if return details are not submitted.

6.2.5 Conclusions and recommendations

The allocation of responsibilities between the member state of identification and the member state of consumption as to monitoring tax return submission proves cumbersome in practice. Both Germany and the Czech Republic as a member state of consumption need considerable time and effort to determine why information on the companies' transactions is lacking. In order to avoid unjustified reminders, they would need to ask the member state of identification in each individual case as to whether the company has submitted a return and request the return details. This approach is not appropriate for a mass procedure. Furthermore, it would be possible that a company receives reminders from several member states since theoretically each member state could be a member state of consumption. In practice, this arrangement leads to potential member states of consumption not issuing reminders for lacking return details.

The SAIs of the Czech Republic and Germany hold that the member state of identification should be solely responsible for monitoring return submission and for checking the plausibility of the data provided. The member state of identification should contact companies to clarify any errors identified. This would reduce the administrative burden for the member state of consumption. Furthermore, this would result in enforcing tax return submission under the MOSS system by the same instruments as those applied under the general taxation system.

Moreover, all member states of consumption should be informed in each quarter about what turnover companies have declared (this might also be zero) and whether they have submitted a VAT return.

6.3 Record-keeping requirements

6.3.1 Lacking EU legislation

Pursuant to Article 369k of the Directive on the common system of value added tax, companies are required to keep records of turnover covered by MOSS. The records must be made available electronically on request to the member state of identification and to the member state of consumption. Those records must be sufficiently detailed to enable the tax authorities of the member state of consumption to verify that the VAT return is correct. Details to be included

in the records are stipulated in the VAT Implementing Regulation.¹¹ However, no provisions have been made so far as to how data are to be recorded and in which form these data are to be made available upon request. In addition, there are further open questions:

- Does the member state of consumption request the data from the tax authorities of the member state of identification or does it contact the companies directly?
- Are companies required to submit their complete records covering all member states or is it sufficient to submit only those records covering the member state requesting?
- Are companies required to submit their records in the language of the member state of consumption?

The SAIs found that tax authorities of the two member states requested such records in isolated cases only in order to verify data provided by the companies.

6.3.2 Conclusions and recommendations

Data recorded on individual transactions are an important source of information for the tax authorities to check details stated in the tax returns. This applies for checks whether turnover is covered by MOSS or whether the correct tax amount for each member state has been declared. However, the SAIs found that such checks were hardly carried out. One reason is that requesting records and analysing them accordingly is cumbersome for the member state of consumption. This is not only due to language barriers but also due to lacking binding provisions as to how records are to be kept and to be made available. This bears the risk that tax authorities of the member state of consumption cannot check records submitted by foreign companies as those data were transmitted in a format the tax authorities cannot use. Thus, tax bases cannot be verified and VAT cannot be assessed correctly.

In order to ensure cross-border verification of transactions covered by MOSS, the two SAIs recommend adopting uniform and binding EU regulations as to format and provision of records. Binding regulations are particularly important as long as the allocation of responsibilities among the member state of identification and the member state of consumption will remain unchanged.

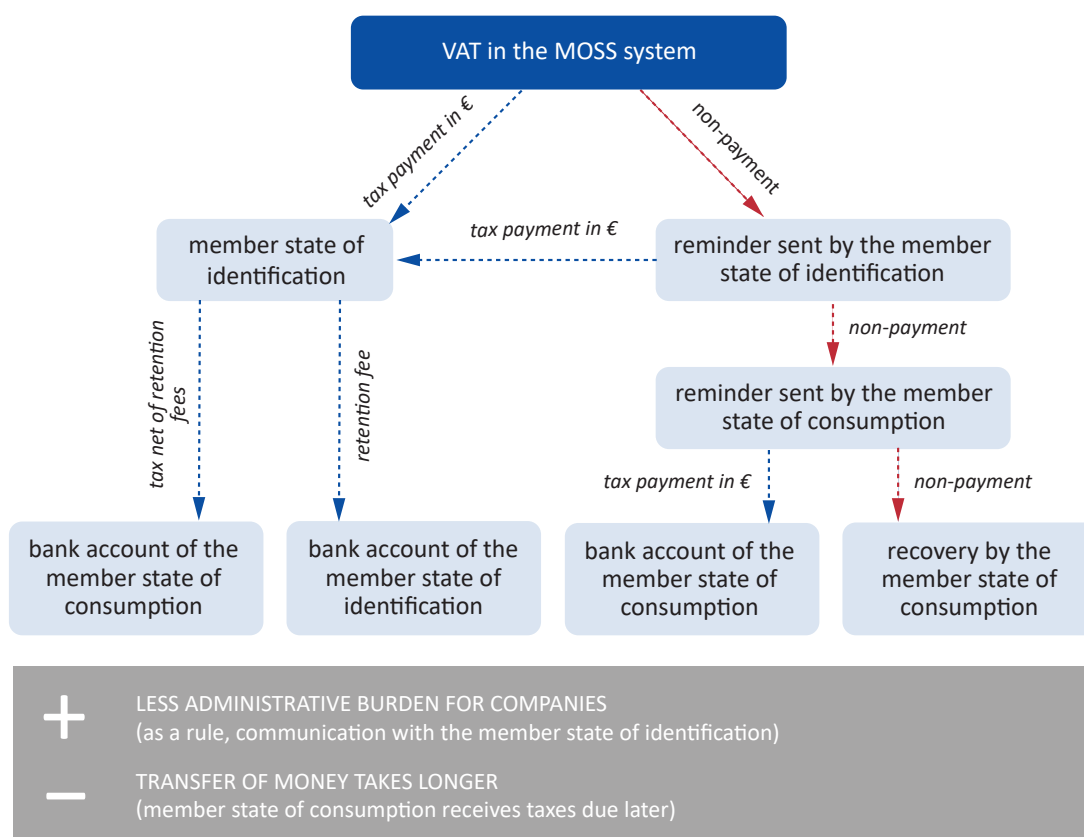
6.4. Tax payment and tax collection

The VAT due needs to be paid in the member state of identification upon submission of the return, which means at the latest after expiry of the submission deadline.¹² The reminder procedure is carried out by the member state of registration and the member states of consumption as illustrated in Figure 2 below.

¹¹ Article 63c para. 1 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011, current version.

¹² Article 369i Council Directive on the common system of value added tax.

Figure 2 – Tax collection in MOSS



If companies fail to pay VAT even after having been reminded by the member state of identification, the member state of consumption will be responsible for subsequent reminders and recovery according to its rules and procedures. The member state of consumption is obliged to inform the member state of identification that it issued reminders for the VAT overdue. If the member state of consumption collected tax revenue in response to these reminders, the member state of identification would not be entitled to retain a proportionate part of the retention fee.¹³

6.4.1 Payments and reminders in the Czech Republic

The tax office for the South Moravian region does not only receive payments and forward them to the member states of consumption but also informs domestic taxpayers via phone or e-mail if they do not pay VAT when it is due.

If the Czech Republic is the member state of consumption, the competent tax office will remind the companies in a number of ways and request them to pay their tax arrears. However, except for three cases, the tax office did not comply with EU legal provisions on the reminder procedure¹⁴ because it did not inform the member state of identification accordingly. The internal rules of the tax office stipulated that tax due up to a total amount of €1,500 was not to be recovered in line with these provisions.

The Czech Republic did not issue reminders if a member state of identification did not match payments of its companies to the respective VAT returns. That is why VAT revenue received amounting to €2.8 million could not be recorded and not be included in the Czech budget. The Czech Republic is still expecting the problem to be solved in the member states of identification.

¹³ Article 62 para. 1 and Article 63b of Council Implementing Regulation No 282/2011, current version.

¹⁴ Article 63a of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011.

Conversely, the Czech Republic as member state of identification was only informed by three member states – in a total of 18 cases – that these states took over the reminder procedure as member states of consumption.

6.4.2 Payments and reminders in Germany

In Germany, the Federal Central Tax Office distributes taxes paid by domestic companies to the respective member states of consumption. The Office also receives payments made by foreign companies and transfers these payments to the central tax offices. In the period under review, these tax offices have not yet used automated reminders. This was mainly due to technical difficulties. As a result, tax offices did, for example, not have payment details and payments at the same time.¹⁵ The tax offices were unable to match payments transferred with taxable companies. As a result, tax arrears were reported even though the company had paid tax due. Difficulties also occurred when companies submitted two returns at the same day and the tax offices did not pay attention to process the most recent return. Due to the cumbersome and time-consuming procedure, the offices did not contact the member state of identification. As a result, the Chemnitz South tax office issued unjustified reminders to Czech companies.

6.4.3 Recovery in the Czech Republic and in Germany

If reminders of the member state of consumption are without success, a request may be made according to the recovery directive.¹⁶ Pursuant to Article 18 of the directive, a member state is, however, not obliged to grant assistance if the amount of the respective claim is less than €1,500. In the course of their audit, the two SAIs found that a large number of MOSS companies had declared considerably lower amounts. This threshold was only exceeded in individual cases even when adding several quarters. As a result, tax offices did not make requests for recovery in many cases. Even in case of larger arrears, tax offices made only little use of requests for recovery. In contrast, in the Czech Republic and in Germany considerably lower arrears are recovered under the general taxation system.

6.4.4 Conclusions and recommendations

Due to the applicable place of supply rules, the member state of consumption has the right of taxation. Thus, the member state is also entitled to receive revenues collected from the MOSS system. Applicable EU regulations therefore allocate all responsibilities for assessing and collecting VAT to the member state of consumption. However, enforcing its power of taxation proves cumbersome in practice: On the one hand technical problems impeded an efficient reminder procedure and on the other hand recovery requests were not made since the amounts in question were too low. This is shown by the fact that the member states of consumption used reminder procedures – as stipulated by EU provisions – in very few cases only. As a result, member states waived part of their claims which led to tax losses.

The two SAIs thus suggest reconsidering the allocation of responsibilities among the member states of identification and consumption and studying at EU level whether to also allocate the responsibility for collecting VAT to the member state of identification. In doing so, unjustified reminders could be avoided since the member state of identification has all and any information on the companies established there. Without much effort, the member state of identification could check the actual amount of arrears. Another advantage would be that the member state of identification could also issue reminders in the case of low arrears and thus turnover under MOSS and turnover under the general taxation system would be treated equally.

¹⁵ In some cases, the time lag was several months.

¹⁶ Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

The applicable threshold of €1,500 for cross-border requests for recovery does not reflect the realities of the digital market where many small companies with low turnovers operate. This leads to a tax collection gap. Reducing the threshold would be an option to close the gap. However, this would involve much more effort for both the member states of identification and consumption. This effort could be avoided if the member state of identification would be responsible for collecting VAT.

6.5. Investigation

Investigation or inspection in this context means the procedure of the tax authorities to check whether the companies declared their turnover in a complete and accurate manner and whether they reported and paid the proper amount of VAT due (tax inspection).

When BRH and NKÚ carried out the audit, there were no binding provisions in place as to cooperation between member states when investigating MOSS turnover. In the meantime, the Council of the European Union adopted proposals to amend the Administrative Cooperation Regulation. As to the investigation of MOSS turnover by the member states, the regulation provides for new administrative cooperation instruments. For example, the member states of identification and of consumption may carry out administrative enquiries jointly without the member state of consumption losing its power of investigation. This requires that the tax authorities of at least two member states of consumption request the member state of identification to conduct an administrative enquiry. Provided that the request is reasoned as stipulated by the Administrative Cooperation Regulation, the member state of identification shall not refuse to undertake this enquiry.¹⁷

6.5.1 Czech Republic

Where the Czech Republic was the member state of consumption, the tax office for the South Moravian region did neither carry out a tax inspection for companies registered in other member states nor did it request another member state to do so. In two cases, the General Financial Directorate was informed about a proposed inspection in a member state of identification. The foreign tax authority asked the General Financial Directorate whether it should investigate the services supplied in the Czech Republic.

As member state of identification, the tax office for the South Moravian region requested the local tax office in one case to check turnover declared in MOSS. The tax office found that the services supplied were not subject to MOSS and that they should have been taxed under the general taxation system applying domestic VAT. However, at the time when NKÚ carried out the audit, no domestic VAT was assessed. The reason was that the tax investigator focused on other circumstances relevant to assessing domestic VAT whereby the results of the review of the VAT returns submitted under the MOSS system should be taken into account. After completion of the review of MOSS turnover in the Czech Republic, the company submitted corrected VAT returns to the member states of consumption concerned. Based on these returns, the member states refunded the VAT paid without being aware of the findings of the Czech tax administration.

6.5.2 Germany

When Germany was the member state of consumption, central tax offices carried out only few tax inspections at foreign companies registered to MOSS. Even in cases where a member state of identification informed about the exclusion of a company from the MOSS system, the central tax offices did not systematically check whether the company in question continued to carry out transactions in Germany and thus would have to be registered under the general taxation

¹⁷ Article 7 para. 4a of Council Regulation (EU) No 904/2010 of 7 October 2010, current version.

system. The reason for that was that the documents required for the verification of turnover declared were usually only available in the member state of identification and obtaining them was time-consuming. Tax investigators needed to contact the companies in writing or the member state of identification to request the information. In the period under review, Germany was informed by the Czech Republic about one planned investigation. The Czech authorities offered to also check turnover declared in MOSS for Germany.

When Germany was the member state of identification the Federal Central Tax Office did not carry out any tax inspections at companies established in Germany and registered to MOSS.

6.5.3 Conclusions and recommendations

The change of the place of taxation for digital services and the associated implementation of the MOSS system led to a major change in the relationship among member states. In the past, the member state entitled to collect VAT also was responsible for administrative matters and had all relevant information on the companies. Thus, the member state was able to conduct tax inspections. In MOSS, responsibility for investigation lies with the member state of consumption and administrative responsibility lies with the member state of identification. As a result, the member state of identification has all information but little interest in collecting VAT revenues to which it is not entitled. The member state of consumption has no information but a major interest in tax inspections. Such constellation gives rise to many questions e.g.:

- Do companies have to expect and accept that tax inspectors from (possibly) all other member states carry out tax inspections on their premises?
- How to overcome language problems?
- In case that the member state of identification carries out investigations, is it also the member state of identification that bears the responsibility and the costs for possible damages caused by erroneous tax assessment based on its investigation?

The two SAIs hold that the following considerations should be taken into account to further develop the MOSS system:

- The member state of identification should assume more responsibility when investigating companies registered in MOSS. This includes how the taxable amounts are allocated among the member states of consumption. More responsibility would be beneficial due to the following facts:
 - All information on the company including accounting records is available at the member state of identification.
 - The process can be handled in the language of the company.
- In case that investigation results in the member state of identification are to be used to assess tax in the member states of consumption, the member state of identification should request the member states of consumption to permit investigation. So far, there have not been any relevant EU provisions in place.
- In EU law there is no specific rule in place providing for a postponement of the deadline set for tax assessment in cases where a member state of consumption steps in an investigation conducted by another member state at a company registered in MOSS. In particular, it remains unclear whether the new provision of Article 7 para. 4a, Administrative Cooperation Regulation (cf. 6.5.) is applicable in such cases.
- Companies may submit a corrected tax return to the member state of identification within three years after expiry of the submission deadline. MOSS turnover previously declared may be withdrawn by the companies and tax already paid may be requested for refund. Companies

do not have to justify their corrected return. Tax refund is incumbent on the member states of consumption. They have the duty to inform the member state of identification about such refund electronically. However, they are not obliged to discuss the refund with the member state of identification. This may cause tax losses as the member state of consumption refunds VAT in MOSS while taxation of such turnover in the member state of identification or other member states of consumption is not ensured.

The two SAIs hold that so far the tax authorities have insufficiently checked the companies registered in MOSS. The two SAIs consider it imperative to enhance tax control and to increase the number of tax inspections. The new administrative cooperation instruments increase responsibility of the member state of identification and may support the investigation function of the member state of consumption. However, the two SAIs wish to make the point that an increase in the number of tax inspections carried out is contingent upon the member states' willingness to cooperate with each other. NKÚ holds that the new instruments will only be little used due to language problems and a lack of human resources.

6.6. Risk management

The term risk management refers to a systematic analysis to assess risks of a tax shortfall due to faulty or lacking data in the VAT returns.

6.6.1 Turnover in MOSS declared in the general tax return in the member state of identification

In Germany and in the Czech Republic, companies are required to declare their turnover in MOSS twice:

1. in a special VAT return (MOSS return) to the authority responsible for the MOSS system;
2. in the domestic VAT return, along with all other turnover, this return is to be submitted to the local tax office.

Both in the Czech Republic and in Germany, turnover under MOSS are included in a single box for all non-taxable turnovers of the companies. Therefore, tax authorities cannot see from the domestic tax return whether and to what extent turnover under MOSS are included. In addition, it is difficult for the tax authorities to detect differences between data of domestic VAT returns and those of MOSS returns.

In a sample of 104 companies, NKÚ found that at least 36 per cent of companies had a higher taxable amount under the MOSS system than in the domestic VAT return in one or several tax assessment periods. This suggests that the companies often wrongfully declared these services in the domestic returns.

In the two member states, data from the domestic VAT returns cannot be automatically and systematically compared with data from the returns in MOSS because the returns are not linked to each other and differing authorities are responsible for their processing.

6.6.2 Turnover in MOSS declared in the special return in the member state of consumption

For tax assessment, the special return for turnover in MOSS merely contains three indicators: the VAT rate in the member state of consumption, the taxable amount and the VAT amount payable. For that reason, the risk management systems of the two member states issued alerts only to a very limited extent.

The Czech tax administration has not implemented any risk profiles for processing VAT returns received from other member states under the MOSS system.

In Germany, some central tax offices developed a type of manual risk management. They compared turnover figures of individual quarters and considered major fluctuations to be an indication of a specific risk.

6.6.3 Conclusions and recommendations

Turnover declared in the MOSS returns are not subject to any risk management. Due to the fact that all non-taxable transactions are summarised in one figure in the domestic tax return, tax authorities of the two member states cannot implement risk profiles to detect deviations between turnover in MOSS declared in the domestic tax return and that declared in the MOSS system. As a result, the tax authorities have limited possibilities only to review whether companies have properly declared their turnover and also accurately stated the revenues from turnover in their tax returns. Therefore, tax losses cannot be ruled out.

Turnover in MOSS of a domestic company are part of the economic activity of the company. Thus, they should not be considered separately from other turnover and should be included in the risk management system. The two SAIs recommend enabling to match data stated in the domestic tax return against that indicated in the MOSS return (e.g. by introducing a separate box for MOSS transactions in the domestic tax return). This indicator would permit tax offices to specifically check turnover in MOSS.

According to NKÚ there is another reason why data matching between the two returns is needed: If a company claims refund of input tax for turnover in MOSS under the general taxation system, the tax authority should know the amount of turnover in MOSS in order to be able to verify input tax deduction.

The two tax authorities have only little information about foreign companies registered in MOSS. Therefore, BRH and NKÚ cannot understand why data available were used for plausibility checks only. The two SAIs consider it necessary to enhance automated risk management used for taxation of foreign companies registered in MOSS and to define risk parameters (e.g. major fluctuations in turnover).

6.7. Detecting unknown tax cases

6.7.1 Situation in the Czech Republic

As to VAT management, the tax administration of the Czech Republic neither analysed the trends in e-commerce nor had it analytical data on this field available. Furthermore, the tax administration failed to implement a system to identify e-commerce companies.

Participation in the MOSS system is voluntary. This was the justification given by the Czech tax administration for not looking for potential MOSS companies. If companies decide not to participate in the MOSS system, they have the duty to register at the tax office of the Moravian-Silesian region as non-established companies because of their turnover in MOSS. This tax office also did not have any strategy to detect non-established companies making turnover in MOSS with the place of supply being in the Czech Republic.

In order to support and facilitate cooperation of EU member states in combating VAT fraud, the system for international exchange of information in high-risk areas of VAT (EUROFISC) was implemented. The Czech Republic is a member of EUROFISC working field 5 (e-commerce). This working field is to determine modalities of the future exchange of information.

6.7.2 Situation in Germany

Neither the Federal Central Tax Office nor the central tax offices performed a systematic search for unidentified MOSS tax cases. The two authorities accepted the data declared to them and assumed that the companies complied with their VAT obligations. According to the findings generated by BRH in previous audits, there is no reason why the tax authorities should assume that internet-based sales are always fully declared. In several cases, respective audit findings of BRH have been subject of parliamentary deliberations. These findings contributed towards raising awareness of the tax administration which now stronger focuses on e-commerce.

In addition to national efforts, Germany is also involved in developing solutions at EU level. The German tax authorities have an observer role in the EUROFISC working field 5.

6.7.3 Conclusions and recommendations

For more than ten years, digital services supplied in the European Union by companies from a third country have been subject to taxation in the member state of consumption. Since 2015, this principle has also been applied to digital services provided by EU companies. However, international cooperation in identifying e-commerce companies has so far been negligible. There are no common EU rules, procedures and search strategies in place.

However, e-commerce will continue to increase and companies will provide their services not only to consumers in one member state. That is why the two SAIs believe that it is important for all EU member states to agree on a coordinated approach in detecting digital service providers and to develop the technical and legal conditions required accordingly. Member states should also consider which information may be helpful for them. Based on the findings of the Czech tax administration in the EUROFISC working field 5, NKÚ holds that the tax administration should be authorised to request data from payment service providers.

But irrespective of that, the two SAIs advocate close cooperation among the member states to share approaches and results when searching unknown companies.

7. Final comments

NKÚ and BRH accomplished the objectives set for this coordinated audit. The two SAIs gained detailed insight into VAT management under the MOSS system in their countries. They found organisational and procedural differences at their tax authorities regarding the MOSS system. Also, in their national reports they identified structural shortcomings possibly impairing effective VAT management under the MOSS system and resulting in VAT not being assessed and collected properly. The coordinated audit revealed that this applies to both member states.

BRH and NKÚ are concerned about the structural shortcomings of the MOSS system in view of potential tax losses and the extension of the system in 2021. The number of companies using the system is likely to increase significantly with the planned inclusion of all services and cross-border supplies to consumers. The two SAIs expect the turnover volume to increase accordingly. Therefore, BRH and NKÚ make joint recommendations – based on their national reports – as to how the MOSS system may be improved.

Successful implementation of these recommendations will depend on the member states' willingness to subordinate national interests in favour of European tax revenues. The two SAIs hold it desirable that all member states would be committed to assess and collect taxes as if it were their own tax revenues.

Annex

Legal Bases

- Chapter 6 section 3 of the common system of value added tax Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, (OJ L 347, 11 December 2006, p. 1, amended OJ L 335 2007, p. 60, OJ L 336 2017, p. 60)
- Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services (OJ L 44, 20 February 2008, p. 11)
- Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12 October 2010, p. 1), also referred to as Administrative Cooperation Regulation
- Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (revised version) (OJ L 77, 23 March 2011, p. 1), also referred to as VAT Implementing Regulation
- Commission Implementing Regulation (EU) No 815/2012 of 13 September 2012 laying down detailed rules for the application of Council Regulation (EU) No 904/2010, as regards special schemes for non-established taxable persons supplying telecommunications, broadcasting or electronic services to non-taxable persons (OJ L 249, 14 September 2012, p. 3)
- Council Regulation (EU) No 967/2012 of 9 October 2012 amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons (OJ L 290, 20 October 2012, p. 1)
- Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services (OJ L 284, 26 October 2013, p. 1)
- Council Regulation (EU) No 2018/1541 of 2 October 2018 amending Regulations (EU) No 904/2010 and (EU) 2017/2454 as regards measures to strengthen administrative cooperation in the field of value added tax (OJ L 259, 16 October, p. 1)

- New provisions on implementing the OSS system:
 - Council Regulation (EU) 2017/2454 of 5 December 2017 amending Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 348, 29 December 2017, p. 1)
 - Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29 December 2017, p. 7)
 - Council Implementing Regulation (EU) 2017/2459 of 5 December 2017 amending Implementing Regulation (EU) No 282/2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 348, 29 December 2017, p. 32)



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