Summary

Legal basis

Changes to the EU VAT rules referring to the place of supply of telecommunications, broadcasting and electronic services will enter into force on January 1, 2015. Starting with this date, these services supplied by a business to a final consumer (B2C) will be taxable in the country where the customer is established or has his permanent address or usual residence (hereinafter "Member State of consumption") regardless of where the taxable person supplying these services is established (Article 58 of the VAT Directive 2008/8/EC of 12 February 2008 amending the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax).

The transposition into the national legislation on the provisions of the article 5 of the Directive 2008/8/EC was approved by the Emergency Ordinance no. 8 of February 26 2014 amending the Tax Code.

The specific EU regulations:

Council Directive 2008/8/EC – place of supply of services (see Article 5)

Council Implementing Regulation (EU) No 1042/2013 – place of supply of services

Council Implementing Regulation (EU) No 967/2012

Commission Implementing Regulation (EU) No 815/2012

M1SS Scope

To support the businesses supplying telecommunications, broadcasting and electronic services in more countries, a new special scheme known as the **Mini One Stop Shop (M1SS)** will come into operation on January 1, 2015.

The M1SS scheme will allow companies to register, submit returns and pay the relevant VAT due to the Member States of Consumption through the web portal of the Member State of Identification (typically the Member State in which the business has its business establishment). The simplification consists in the opportunity of the business not to register in all the Member States where it is liable to pay VAT, but to benefit of the electronic services through the web portal of the Member State of Identification. Also, the business will be taxed at the VAT rate applicable in the consumer's Member State.

Use of the M1SS will be optional and it will be available both to businesses with establishments in the EU (the EU scheme) and to those established outside the EU (the non-EU scheme). The current VAT on E-Services scheme (VOES) which applies to non-EU businesses supplying e-services in the EU will be replaced by the M1SS.

Further information is available in the *M1SS Scheme Briefing*, and in the *Guide to the Mini One Stop Shop* available on the website of the European Commission. See also the Explanatory Notes published by the European Commission relating to the new EU legislation (Council Implementing Regulation (EU) No 1042/2013) in order to assist tax administrations and businesses in preparing for these changes referring to the place of supply.

In addition, recommendations on the coordination of audit of the MOSS are in the process of being produced, with the intention that those recommendations of relevance to businesses will be published on the DGTAXUD website.

Further information on the M1SS implementation, including the procedure regarding the special scheme will be published on the NAFA website.

Annexed document

<u>*M1SS Scheme Briefing*</u>

- **Definition of "digital services" covering telecommunications, broadcasting and electronic services**

Art 24(2) of the VAT Directive:

'Telecommunications services' shall mean services relating to the transmission, emission or reception of signals, words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception, with the inclusion of the provision of accessto global information networks.

Art 6b(1) of the VAT Implementing Regulation

Broadcasting services shall include services consisting of audio and audio-visual content, such as radio or television programmes which are provided to the general public via communications networks by and under the editorial responsibility of a media service provider, for simultaneous listening or viewing, on the basis of a programme schedule.

Art 7(1) of the VAT Implementing Regulation

'Electronically supplied services' as referred to in Directive 2006/112/EC shall include 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.

- **Determine place of supply**

The measures that are being included in the Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 (the VAT Implementing Regulation) are clarifying how the rules on the place of supply for telecommunications, broadcasting and electronic services, as laid down by the VAT Directive, should be understood and applied in practice.

Explanatory Notes to the CIR No 1042/2013 are clarifying the rules for determining the place of supply (determine the customer's residence, application and rebuttal of presumption etc.).

- **M1SS processes**

Registration

The business may register in the scheme starting with ***October 1, 2014***, using a digital certificate, in accordance with the Government Ordinance no. 40 of June 18, 2014.

- ✓ The EU scheme

The Member State of Identification will be the Member State in which the taxable person has established its business. If it has not established its business in the EU, it will be the Member State in which it has a fixed establishment. If it has more than one fixed establishment in the EU, the taxable person is entitled to choose one of those Member States to be the Member State of Identification.

The taxable person is bound to that decision for the calendar year in which it makes that decision, plus the two following calendar years.

The taxable person will be identified for the M1SS with the same individual VAT identification number with which it is identified for its domestic VAT returns.

- ✓ The non-EU scheme

The taxable person (who has neither a business establishment, nor a fixed establishment, nor is otherwise obliged to register, in the EU) can choose any Member State to be the Member State of identification. That Member State will allocate an individual VAT identification number to the taxable person.

Deregistration/exclusion

A taxable person can leave either scheme voluntarily (deregistration), or it can be excluded from the scheme by the Member State of Identification.

A taxable person shall be excluded/deregistered from the scheme for the following reasons:

- It notifies that it no longer supplies telecommunications, broadcasting or electronic services;
- It may be assumed that its activities under the special schemes have ceased
    - where it has made no supplies under the special scheme for 8 consecutive calendar quarters;
- It no longer meets the conditions necessary for using the scheme (for example, a taxable person using the non-EU Scheme is subsequently required to register in a Member State);
- It persistently fails to comply with the rules relating to the scheme – this is defined as being so in at least the following cases:
    - Reminders to render a return have been sent to the taxable person for three immediately preceding calendar quarters, and the VAT return has not been submitted for each return within 10 days of the reminder;
    - Reminders to make a payment have been sent to the taxable person for three immediately preceding calendar quarters, and the full amount has not been paid within

10 days of receiving these reminders, unless the outstanding amount for each return is less than €100;

- Where the taxable person has failed to make its records electronically available to the Member State of Identification or Member State of Consumption within one month of a subsequent reminder by the Member State of Identification.

The quarantine periods are presented in the M1SS Guide.

VAT Return

The return is submitted within 20 days of the end of the calendar quarter return period.

The four reporting periods will be as follows:

Quarter	Fiscal Period	VAT Return submission date	Reminder Message date
1	January – March	April 20	April 30
2	June - April	July 20	July 30
3	July - September	October 20	October 30
4	October - December	January 20	January 30

The return submission dates for each of these periods are 20th April, 20th July, 20th October and 20th January respectively.

If there are not made any digital supplies to any EU consumers in a quarter, it will be submitted a 'nil return'.

The return currency will be LEI, as the payment of the due VAT.

If the business does not send the return in due time, the member State of Identification will send a reminder electronically on the 10th day following the day on which the payment was due, respectively on the 30th day from the end of the respective quarter.

The Member State of Identification splits the M1SS VAT return by Member State of Consumption, and forwards the details to the various Member States of Consumption and Establishment.

The Member State of Identification generates a unique reference number for each M1SS VAT return, and informs the taxable person of this number. This number is important, as the taxable person <u>must make a reference to it</u> when it makes the corresponding payment.

The Mini One Stop Shop cannot be used in the Member State of Establishment. Declaration must here be made through the domestic VAT return.

Correcting a return

Adjustments to returns must be made by submitting a correction to the original return. Amendments could be made up to 3 years after the end of the relevant period (Reg 967/2012, Article 61 para 2), but the rules of the Member State of Consumption will prevail. Thus, if Member States of Consumption will allow longer periods for submission of returns, these will be done outside of the M1SS scheme, contacting directly the Member States of Consumption.

Payment

The due dates for the VAT payment are similar to the return. It is mandatory to quote on the payment file the unique reference number of that return.

It should de noted that the payment is considered as being made when it reaches the bank account of the MSI. The information on the M1SS bank details will be made available in due time.

If the business either fail to make a payment, or do not pay the full amount, the MSI will send a reminder electronically on the 10th day following the day on which the payment was due, respectively on the 30th day from the end of the respective quarter.

Once the Member State of Identification has sent the reminder, any further steps to recover the VAT shall be taken by the Member State of Consumption. From that point on, any further payment for the respective quarter must be made to the Member State of Consumption (so the reminder/payment notice must contain instruction of how this payment is to be made) and not to the Member State of Identification. The Member State of Identification shall not accept money for that Member State of Consumption for that quarter from that taxable person.

The currency of the payment will be LEI for Romania.

Aspects as a) reimbursement of overpayment, and b) interest and penalties will be treated according to the Member State of Consumption national legislation in force.

Miscellaneous:

- **Retention period**

For MOSS VAT returns from January 1, 2015, to December 31, 2016, the MSI retains 30% of VAT payments to be transmitted under the Union Scheme to other EU member states. From January 1, 2017, to December 31, 2018, that figure drops to 15% before falling to 0% on January 1, 2019.

- **Records**

The records which should be kept by the taxable person are laid out in Council Regulation 967/2012 (Article 63c). This includes general information such as the Member State of Consumption of the supply, the type of supply, the date of the supply and the VAT payable, but also more specific information, such as details of any payments on account and information used to determine the place where the customer is established, has his permanent address or usually resides.

These records must be kept for 10 years from the end of the year in which the transaction was made regardless of whether they have stopped using the scheme or not.

These records have to be made electronically available, on request, to the Member State of Identification or Consumption without delay. It should be borne in mind that a failure to make these records available within a month of receiving a reminder from the Member State of Identification will be regarded as persistent failure to comply with the rules relating to the scheme and will result in exclusion from the scheme.