



VAT on Cross-Border Digital Services

Enforcement by the Netherlands Tax and Customs Administration

2018



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Executive summary

The internet has made it possible for consumers to buy goods and services at the click of a button from both domestic and foreign providers. As the volume of online turnover increases, so does the importance of the tax authorities' effective enforcement of compliance with the associated VAT obligations. The President of Germany's Bundesrechnungshof concluded from an audit of e-commerce that the internet was a huge 'tax haven' (Bundesrechnungshof, 2016).

The EU introduced a mini one-stop shop system in early 2015 to make it easier for companies to comply with their VAT obligations. The system is currently available for digital services only, such as online newspapers, films, games and voicemail services. As from 2021, however, it will also be used for goods transactions and other services. The system will then cover all kinds of cross-border e-commerce and its significance for the levying of VAT will be accordingly higher, as will the importance of effective enforcement and timely measures to resolve enforcement problems. We have therefore audited the extent to which the Dutch Tax and Customs Administration has enforced compliance with VAT obligations in respect of cross-border digital services since 2015.

We conclude from our audit that there are weaknesses in the current enforcement of compliance with VAT obligations in respect of cross-border digital services and measures must be taken to strengthen it.

One-stop shop for VAT returns: MOSS

VAT on digital services has been charged in the EU member state of the consumer since 2015. To facilitate this the mini one-stop shop system (MOSS) was introduced at the beginning of 2015.

The system is not compulsory but it enables companies to account for the VAT due on the digital services they provide in all EU countries by means of a single return submitted to the tax authority of just one of the member states. The allocation of responsibilities in the MOSS system makes the member states dependent upon each other. For enforcement purposes, the member state entitled to the VAT receipts is at a disadvantage to the member state in which the provider is registered. All member states must therefore work together if the system is to be successful.

The MOSS system makes a distinction between member states of identification (MSID) and member states of consumption (MSCON):





- the Netherlands is a member state of identification for digital service providers that register in MOSS in the Netherlands in order to account for the VAT due in the EU member states in which they provide their services. The Tax and Customs Administration receives the VAT returns and VAT payments, and transfers the VAT due to the other EU member states;
- the Netherlands is a member state of consumption if the buyers¹ of the digital services are located in the Netherlands and VAT is due in the Netherlands. In these cases, the Tax and Customs Administration receives the VAT due from the EU member states in which the service providers are registered in MOSS.

As a member state of identification, the Netherlands transferred VAT to an amount of € 351 million to other EU member states via MOSS in 2017. As a member state of consumption, it received VAT to an amount of €149 million from other EU member states in 2017.

The Netherlands as a member state of identification (MSID)

In its role as a member state of identification, the Netherlands currently does not check the completeness and accuracy of the returns it receives via MOSS of the VAT due to other member states. The other member states must carry out such checks in their role as member states of consumption. EU regulations lay down that the member states must work together to ensure the correct amount of VAT is collected, even if the VAT is due to other member states. However, how member states of identification and member states of consumption cooperate with each other to enforce VAT obligations has not yet been further worked out.

We conclude that the Tax and Customs Administration takes only limited enforcement action when the Netherlands is a member state of identification. In so far as the Administration can assist in the enforcement of VAT obligations in other EU member states, it does so to only a limited extent, partly because it receives few requests for assistance.

The Netherlands as a member state of consumption (MSCON)

To prevent the loss of VAT, the Tax and Customs Administration must know which companies provide digital services to consumers in the Netherlands. Digital services, however, are difficult to trace. The Administration does not yet search the internet to identify providers of digital services and it has little if any access to contra information (such as information on the payments for digital services).



The Administration does not carry out risk analyses of the completeness and accuracy of the VAT returns submitted in MOSS, nor does it have a risk analysis model. Management information to support enforcement and monitoring is largely absent and there is only limited exchange of alerts with foreign tax authorities. Initiatives have been taken at EU level to promote cooperation among member states on joint investigations, but the structure and design of the investigations have not yet been worked out in concrete terms. The Administration, moreover, has run up a backlog matching VAT returns and VAT payments in MOSS. As a result, practice has shown that the Administration is running the risk of issuing alerts too late when companies do not comply with their VAT obligations. The backlog is also preventing the Administration from carrying out structured enforcement activities. To date, it has not made any requests to other member states for assistance to collect VAT.

The Tax and Customs Administration performs an important task to prevent the loss of VAT for the Netherlands as a member state of consumption. We conclude that its enforcement activities are frustrated in practice by its limited ability to detect undeclared turnover and limitations in the IT system it has introduced for MOSS.

MOSS as an IT project and information system at the Tax and Customs Administration

The design of the MOSS information system determines in part the Administration's ability to enforce compliance with VAT obligations. Our findings on this point are as follows:

- to save time and costs, the Administration has opted for a minimalist IT design that includes only 'good paths'. This means: a) the Administration must process all deviations manually, and b) the system does not generate management information and is not fit for financial accounting purposes.
- MOSS currently does not provide for risk analysis. Furthermore, its compatibility with the Administration's preferred IT architecture is poor.
- both delays and budget overruns were incurred during the development and implementation of the MOSS system.

With regard to the MOSS information system we conclude that it currently provides little if any support for the enforcement of VAT obligations in the Netherlands as a member state of consumption. The Tax and Customs Administration intends to strengthen the MOSS system but we conclude that it still has a long way to go. Sweeping changes are expected in the VAT system in 2021. As explained elsewhere in this report, the changes will trigger a considerable increase in the scope and use of the one-stop shop system.





Recommendations

Enforcement of compliance with VAT obligations in respect of cross-border digital services must be strengthened. To this end, we make the following recommendations to the State Secretary for Finance.

Recommendation 1: Ensure that the enforcement and monitoring of VAT obligations in respect of cross-border digital services is effectively structured for the Netherlands in its role as a member state of consumption. Of particular importance are:

- the use of internet searches to detect companies that provide digital services to consumers in the Netherlands that do not comply with their VAT obligations, and the use of information provided by payment services as contra information (with due regard for the removal of legal obstacles);
- the exchange of alerts with the tax authorities of other EU member states;
- risk analyses of VAT returns using a dedicated risk analysis model;
- the matching and assessment of VAT returns and VAT payments, including follow-up action to levy and collect VAT where appropriate.

Recommendation 2: Continue the initiatives taken by the Tax and Customs Administration to add to the minimalist functionality of the MOSS system in order to make it robust and fit to handle the sharp increase in the volume of returns projected in 2021. Ensure that the system is compatible in due course with the Administration's IT design principles. MOSS's functionality must be improved particularly in the following areas:

- automated support for enforcement and monitoring when matching VAT returns and VAT payments, risk analysis, alerts of deviations and follow-up action;
- the production of administrative and management information and the creation of a solid platform for financial accounting.

Recommendation 3: Take initiatives (through the Netherlands' input at EU level) to strengthen international cooperation with foreign tax authorities in order to enforce compliance with VAT obligations in respect of cross-border digital services. This can be achieved by:

- introducing clear protocols for mutual assistance between member states of consumption and member states of identification to apply checks and enforcement instruments;
- using such instruments as joint audits to bring the enforcement burden of the member states into line with their enforcement interests and abilities.





Response of the State Secretary for Finance and Afterword

We are pleased that the State Secretary for Finance will adopt our conclusions and recommendations and we trust that he will act in accordance with them.



1 Introduction

1.1 VAT and digital services

The internet has made it possible for consumers to buy goods and services at the click of a button from both domestic and foreign providers. This audit looks at one specific aspect of economic transactions conducted over the internet: the VAT obligations in respect of digital services provided to consumers.

Digital services consist of:

- *telecommunication services* (e.g. telephony, SMS text messaging, access to the internet and voicemail);
- *broadcasting services* (e.g. radio and television programmes offered via the internet); and
- *electronic services* (e.g. online music, films and series, online newspapers, books and magazines, online traffic information, online data storage, online games).²

In the European Union, the VAT due on such digital services has been levied in the country in which the consumer is located or registered since 2015.³

The area inside the blue box in figure 1 shows which areas of e-commerce we considered in our audit.



Digital services, including telecommunication, broadcasting and electronic services, are a special category of e-commerce

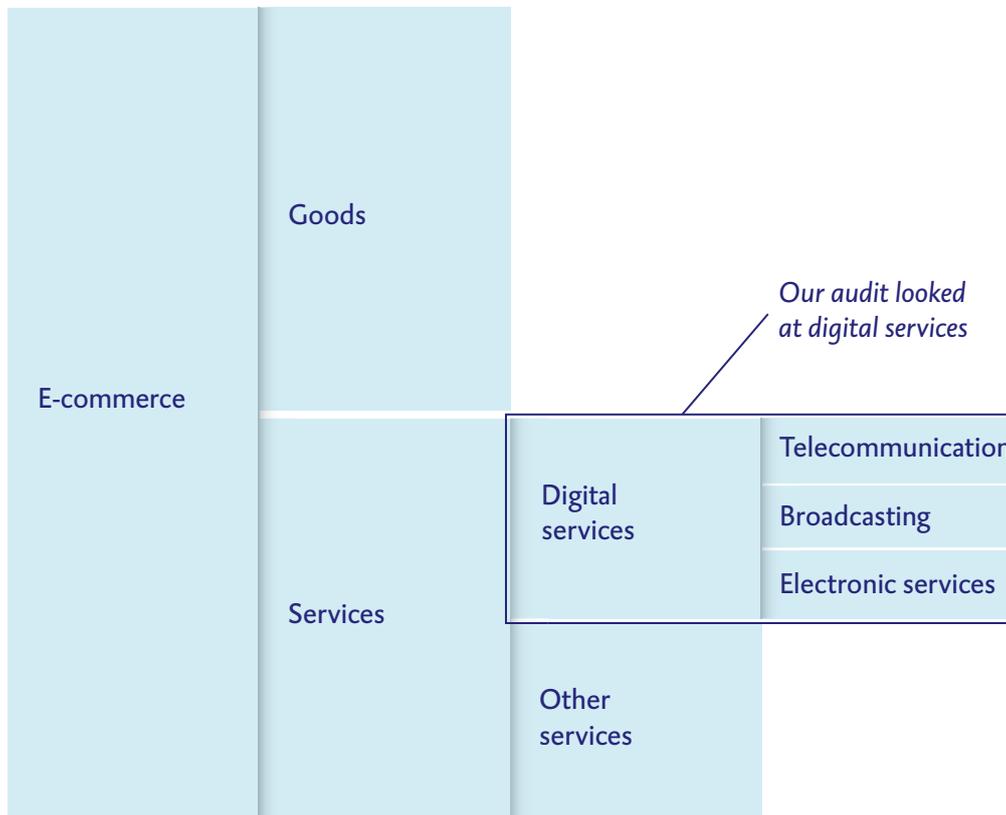


Figure 1 E-commerce categories

E-commerce and digital services harbour specific risks for the levying and collection of VAT that rarely if ever arise in traditional retail transactions. The transactions are initiated online and delivery, moreover, is virtual. The services provided are therefore less visible to the tax authorities and the enforcement of VAT obligations is a considerable challenge.

1.1.1 One-stop shop in the EU: MOSS

The mini one-stop shop system (MOSS) was introduced at the beginning of 2015 for the providers of digital services to declare VAT in the EU.⁴ Companies are not obliged to use this system but it does have benefits. It enables them to submit a single VAT return to the tax authority in one EU member state in respect of all the digital services they provide throughout the EU. If a digital service provider does not register in MOSS it must register or VAT (and apply for a VAT number) separately in all the member states in which it is active.⁵





MOSS makes a distinction between member states of identification (MSID) and member states of consumption (MSCON).

MSID

The Netherlands is a member state of identification (MSID) for digital service providers that register to MOSS in the Netherlands in order to account for the VAT due in other member states. The companies need not be established in the Netherlands: companies established outside the EU can also register to MOSS in the Netherlands.

Companies established in the Netherlands that provide digital services elsewhere in the EU and wish to submit their VAT returns via MOSS must register with the Dutch Tax and Customs Administration. The Netherlands is then their member state of identification. They cannot opt to register in another EU member state.

Companies established in the Netherlands that provide digital services to consumers in the Netherlands cannot use the MOSS system. They must submit standard, domestic VAT returns. The Tax and Customs Administration does not keep separate statistics of these returns, nor does it keep statistics of non-resident digital service providers that opt not to use MOSS but prefer a standard VAT registration in the Netherlands. No data is therefore available on the VAT due on their transactions.

Companies established outside the EU are free to choose the member state in which they wish to register to the MOSS system. If they choose the Netherlands, the Netherlands is their member state of identification. Unlike Dutch companies, they can submit their VAT returns for digital services provided to consumers in the Netherlands via MOSS. For this part of their services, the Netherlands is both the member state of identification (MSID) and the member state of consumption (MSCON).

Companies that have registered to MOSS must declare their turnover and the VAT due in other member states every quarter.⁶ They must submit the return in the member state of identification and pay the total VAT due to the tax authority of that member state. Via the MOSS system, the member state of identification sends information on the registered companies, the VAT returns and VAT payments to the member states of consumption and transfers the associated VAT it received from the service providers to them.

On the introduction of MOSS, the EU member states agreed that retention fees could be withheld from the VAT transferred to the member states of consumption during the first





four years as from 2015. In 2015 and 2016, the Netherlands therefore retained 30% of the VAT. The amount retained in 2017 and 2018 was 15%. Retention fees will no longer be withheld as from 2019 (European Commission, 2013a).⁷ This agreement related only to VAT due from companies established in the EU.

Figure 2 shows the VAT flows when the Netherlands is the member state of identification.

As an MSID, the Netherlands transfers VAT to other EU member states

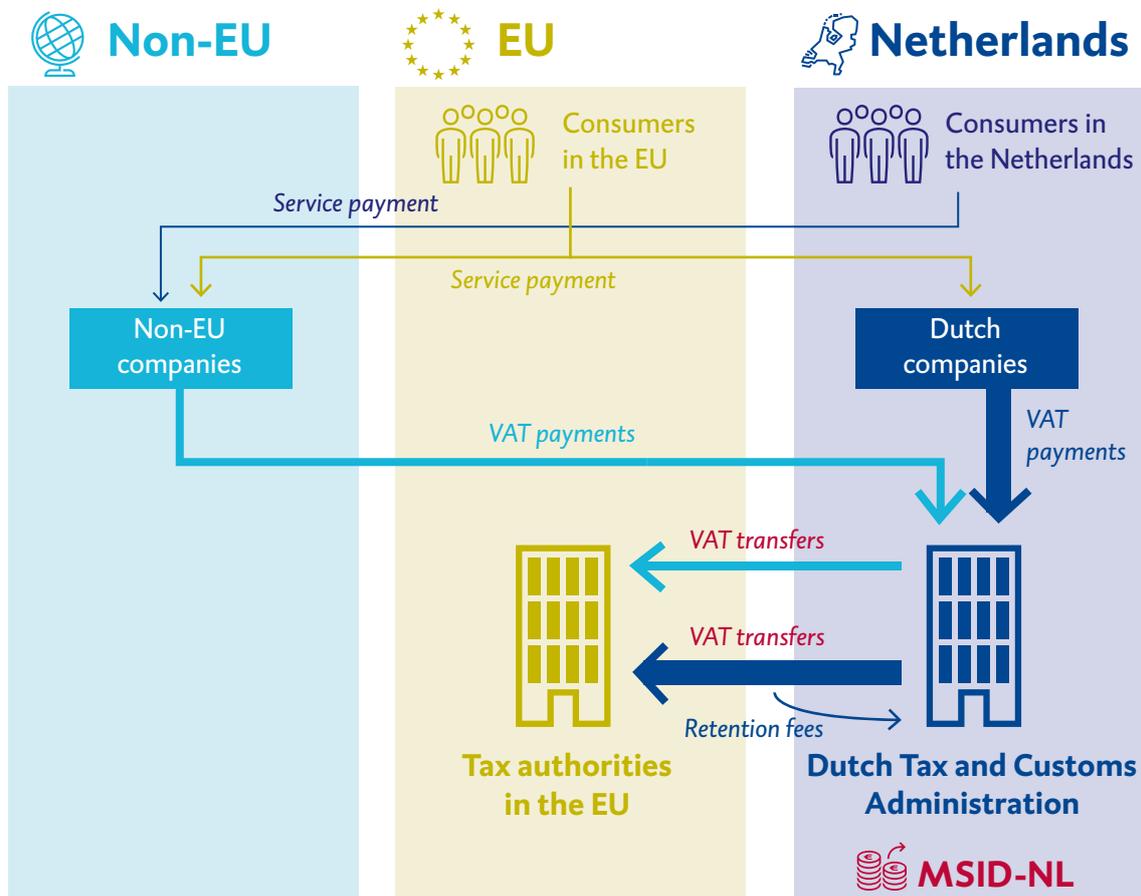


Figure 2 VAT payments when the Netherlands is the member state of identification

The figure shows that the Netherlands is an MSID for companies established in the Netherlands and companies established outside the EU that have opted to register to MOSS in the Netherlands. These companies submit VAT returns via the MOSS system in respect of the digital services they provide to consumers in EU member states other than





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the Netherlands. The Dutch Tax and Customs Administration receives the VAT and transfers it, net of retention fees, to the other EU member states. Figure 2 also shows that VAT is not retained from VAT payable by companies established outside the EU.

MSCON

The Netherlands is the member state of consumption (MSCON) if the buyers of the digital services are located in the Netherlands, VAT is due in the Netherlands and the digital service providers (both EU and non-EU companies) are registered to MOSS in another EU member state. As the member state of consumption, the Netherlands receives information about the registered companies, their VAT returns, VAT payments and VAT remittances (net of retention fees) from the member state of identification. The enforcement of VAT obligations is particularly important to the Netherlands as a member state of consumption, because poor enforcement in that capacity leads to the loss of VAT receipts.

Figure 3 shows the VAT flows when the Netherlands is a member state of consumption.





As an MSCON, the Netherlands receives VAT from other EU members

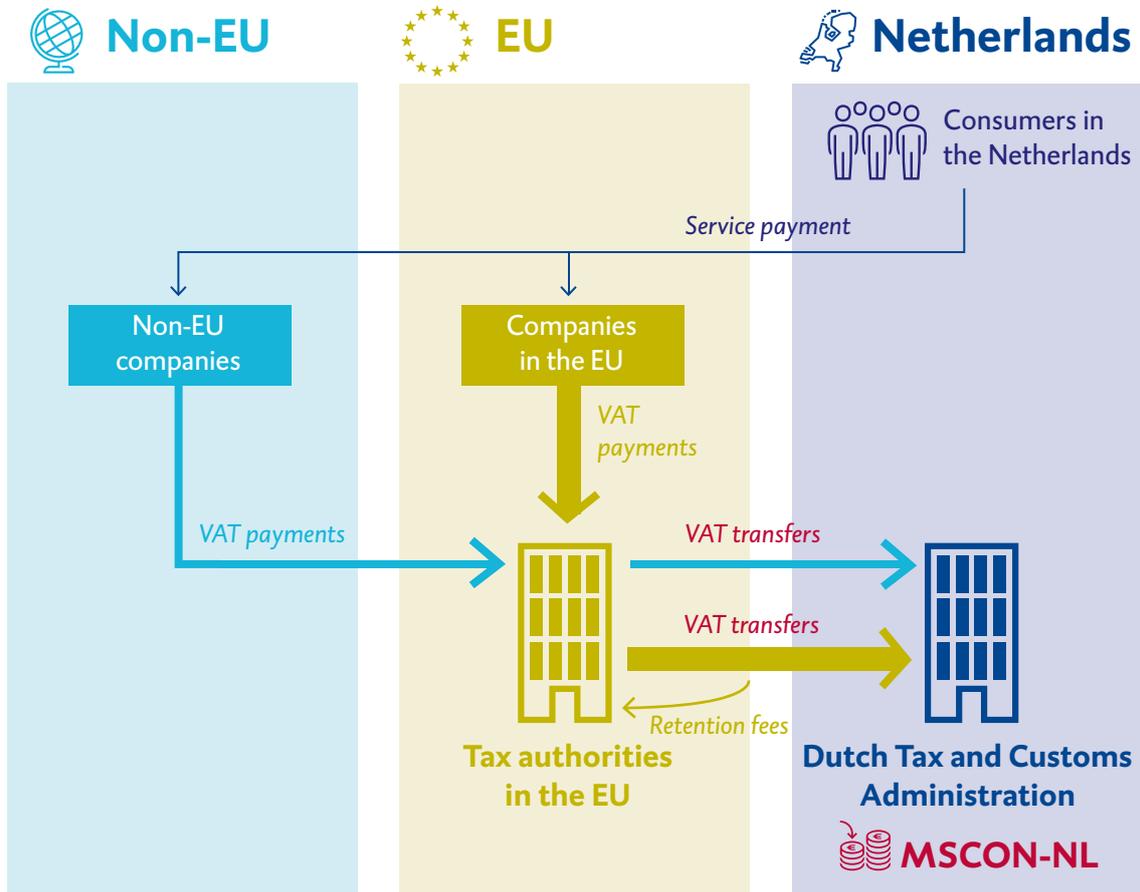


Figure 3 VAT payments when the Netherlands is the member state of consumption

The figure shows that as a member state of consumption the Netherlands receives the VAT due on digital services provided to consumers in the Netherlands. Companies registered to MOSS in another EU member state submit returns to declare the VAT due on the digital services they provide to consumers in other EU member states, such as the Netherlands. The tax authorities of the other member states transfer the VAT due to the Netherlands net of retention fees. Here, too, the retention fees are not withheld from VAT paid by companies established outside the EU.

1.1.2 New EU regulations in 2019 and 2021

The VAT system for digital services described above entered into force in 2015. The European Commission published its Digital Single Market Strategy in May 2015 (European





Commission, 2015). The strategy's goal was (and is) to create a frictionless single market for e-commerce (both goods and services). As part of this strategy, the European Commission presented its Action Plan on VAT on 1 December 2016. It contains proposals for future VAT and e-commerce regulations (European Commission, 2016).⁸ Several amendments to simplify EU directives and reduce the administrative burden were subsequently approved on 5 December 2017 (European Commission, 2017). These measures will enter into force on 1 January 2019; others will follow on 1 January 2021. The amendments and their impact on the enforcement of VAT obligations are considered below.

Changes relating to digital services in 2019

A turnover threshold of €10,000 (excluding VAT) will be introduced on 1 January 2019 to determine the 'place of service' (i.e. the place where the service is taxed). If the turnover realised on cross-border digital services in the other member states in a calendar year is less than this threshold, the place of service is the service provider's member state of establishment. The service provider is nonetheless free to declare and remit VAT via the MOSS system in its consumers' country of residence. If it does so, however, it must declare all its turnover via the system. The changes coming into force on 1 January 2019 include a further simplification for smaller companies. Companies with an annual turnover in the EU of €100,000 or less can suffice with one instead of two documents to prove the place of service. Furthermore, as from the same date service providers may use the invoicing rules that apply in the member state of identification for the invoices they raise in all member states. The rules on non-EU companies' registration to MOSS will also be relaxed.

Changes coming into force in 2021

The following measures will come into force on 1 January 2021:⁹

- the scope of MOSS will be widened; the system will no longer apply only to cross-border digital services but also to the cross-border digital sale of goods (distance selling) and to the cross-border provision of *non-digital services*. For these economic transactions, too, a company will have to register in only one EU member state. A substantial increase is accordingly expected in the volume of turnover and VAT declared via the MOSS system. Distance selling from outside the EU will be subject to a maximum value of €150 per transaction;¹⁰
- the rules on the turnover threshold for VAT returns will be simplified. A uniform turnover threshold of €10,000 will be introduced for companies established in the EU that sell goods over the internet or provide digital services to consumers in other EU member states. Below this threshold, the place of delivery will be the member state in which the company is established unless it voluntarily elects to register to MOSS.





This simplifies matters for smaller companies because they will be free to submit standard, domestic VAT returns in their home countries;

- a number of other administrative simplifications will be introduced for companies. The requirement to raise invoices for intracommunity distance selling, for example, will be scrapped, the return and payment terms for MOSS will be extended from 20 to 30 days, and corrections to previous MOSS returns can be included in a subsequent MOSS return.

Consequences for the enforcement of VAT obligations

The forthcoming changes will have consequences for the enforcement of VAT obligations. The need for effective enforcement will be greater, mainly because the wider scope of MOSS will significantly increase the financial importance of the system.

1.2 Audit framework

Our audit goal was to determine the extent to which the Tax and Customs Administration had enforced compliance with VAT obligations in respect of cross-border digital services since 2015, in particular when companies use the MOSS system. More specifically, we asked whether the Administration had enforced compliance with VAT obligations by digital service providers in order to ensure that companies:

1. registered for taxation (either in the Netherlands or in MOSS to submit returns in another EU member state);
2. submitted timely, correct and complete VAT returns; and
3. paid the VAT due on time and in full.

Further details on the audit framework are provided in appendix 2.

1.3 Audit by EU supreme audit institutions

The Netherlands Court of Audit works alongside the supreme audit institutions of other EU member states in the EU VAT Working Group. Some of them have carried out comparable audits in the field of VAT. Where possible, we have compared our findings and included the outcomes in the relevant chapters of this report.

1.4 Structure of this report

Chapters 2 and 3 of this report look at the Netherlands in its capacity as a member state of identification (MSID) and as a member state of consumption (MSCON) respectively.





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Chapter 4 looks specifically at MOSS as an ICT project and information system and chapter 5 presents our audit conclusions and recommendations. Chapter 6 closes the report with the response of the State Secretary for Finance and our afterword.





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2 The Netherlands as member state of identification (MSID)

This chapter considers the role of the Netherlands as a member state of identification (MSID). As explained in chapter 1 (section 1.1.1), the Dutch Tax and Customs Administration fulfils this function for digital service providers that register to the MOSS system in the Netherlands to fulfil their VAT obligations in other EU member states.

The tax authority in a member state of identification receives VAT returns and payments for other EU member states and transfers the VAT due to these member states of consumption. The Dutch Tax and Customs Administration provided us with data on the VAT returns and associated VAT payments received via the MOSS system for the years 2015, 2016 and 2017, as shown in figure 4.





The growing financial importance of MOSS to MSID-NL



Figure 4 MOSS/MSID-NL: Number of companies submitting VAT returns and total VAT declared in the period 2015-2017

Source: Central Administration Office, Tax and Customs Administration

Figure 4 shows that the amount of VAT accounted for via MOSS increased sharply between 2015 and 2017. It almost doubled. Our analysis of the underlying data found that a small number of large companies were responsible for a substantial proportion of the total amount. Most of the companies accounted for only a modest proportion of the total. Information from the Tax and Customs Administration revealed that as a member state of identification, the Netherlands received VAT returns chiefly in respect of services provided to consumers in the United Kingdom, Germany, France, Sweden and Denmark. These countries together accounted for about 75% of the total amount of VAT declared in 2015, 2016 and 2017.





Figure 5 shows the VAT that the Tax and Customs Administration transferred to other EU member states between 2015 and 2017 from the Netherlands in its capacity as a member state of identification and the retention fees for those years (see section 1.1.1).

Increase in transfers made by MSID-NL to other EU member states

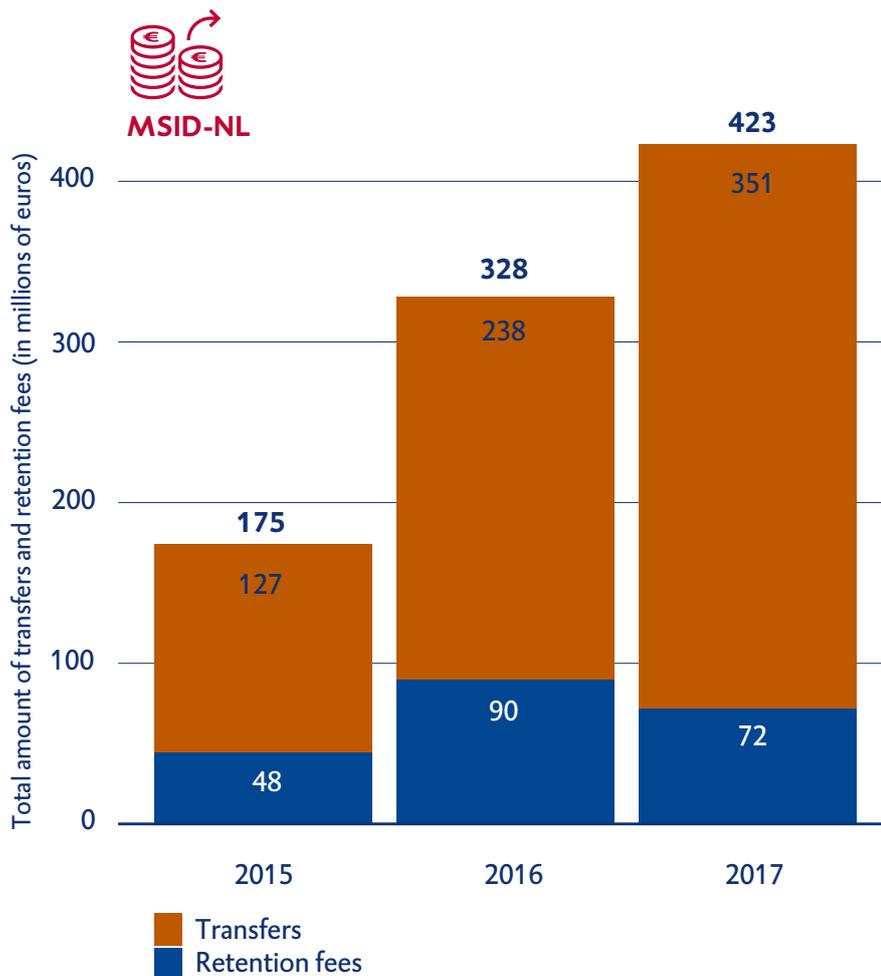


Figure 5 MOSS/MSID-NL: VAT transferred by the Netherlands to other EU member states in the period 2015–2017 and associated retention fees

Source: Central Administration Office, Tax and Customs Administration

The amount of the transfers shown in figure 5 differs from the total amount of VAT declared via MOSS as shown in figure 4 because the VAT is transferred to other EU member states after the reporting period and may therefore be recognised in a subsequent year. Account





must also be taken of the retention fees (amounts withheld in accordance with the EU agreements considered in section 1.1.1: 30% in 2015 and 2016; 15% in 2017).

The remainder of this chapter looks at the enforcement of VAT obligations in the Netherlands as a member state of identification. It successively considers VAT registration (section 2.1), VAT returns (section 2.2) and VAT payments (section 2.3).

2.1 Enforcement of duty to register for VAT

Companies established in the Netherlands that provide cross-border digital services to consumers in other EU member states can opt for either standard, domestic VAT registration in those member states or for a MOSS registration in the Netherlands. Companies established outside the EU that provide digital services in the Netherlands can opt to register to MOSS in another member state. There is therefore no 'duty to register for MOSS' because companies are free to opt for MOSS or not.

Where the Netherlands is the member state of identification, whether or not digital service providers established in the Netherlands comply with their VAT obligations in other EU member states does not affect the VAT revenue in the Netherlands. This does not mean that a member state of identification does not play a part in the enforcement of VAT obligations. The EU regulation on administrative cooperation and combatting fraud in the field of value added tax (Regulation (EU) no. 904/2010) lays down that EU member states must cooperate with each other to ensure that VAT is correctly assessed. The member states must therefore not only monitor the correct assessment of tax owed in their own territories but must also help other member states to correctly assess the tax due on activities carried out in their territories but owed to other member states.¹¹

The regulation also lays down that EU member states can make a reasoned request to have a specific administrative enquiry carried out in a member state of identification.¹² Tax authorities can also forward information without a prior request by the tax authority of another member state if, for example, there are grounds to believe that a breach of VAT legislation has been committed or there is a risk of tax loss in the other member state.¹³ However, cooperation between member states of identification and member states of consumption has not yet been worked out sufficiently to enforce VAT obligations.

Our audit found that the Dutch Tax and Customs Administration receives only sporadic requests for international cooperation in the field of MOSS. On the initiative of the Dutch



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tax inspector, only one enquiry has been carried out at a company established in the Netherlands that involved MOSS registration and VAT obligations. The other EU member states were asked whether they wanted to participate in the enquiry as member states of consumption (MSCON).

2.2 Enforcement of timely, correct and complete VAT returns

Requirements

Companies registered to MOSS must declare their turnover and the VAT due on it every quarter, stating the EU member states in which they provided digital services and the applicable VAT rates. The member state of identification forwards this information to the member states of consumption. The MOSS system in the member state of identification issues a first reminder if the return is not submitted on a timely basis. If the obligation to submit a return is repeatedly breached the company may be excluded from the MOSS system. This cleans up the MOSS system but it does not solve the compliance problems. The tax authorities in the member states of consumption must then ensure that the company registers for VAT in accordance with standard, domestic rules.

The MOSS system requires member states of consumption to take further action if VAT returns are not submitted on time. Regulation (EU) no. 904/2010 requires the member state of identification to forward information by electronic means to the member states of consumption so that each payment can be linked to the relevant quarterly return.¹⁴

Enforcement of compliance

No checks are made in the Netherlands of the completeness and accuracy of the VAT declared in MOSS returns in respect of digital services provided in other EU member states. In principle, power of taxation in the EU lies with the member state of consumption. It is up to the member state of consumption to raise additional assessments and impose fines if companies do not comply with their VAT obligations. It is difficult, however, for a member state of consumption to monitor VAT obligations when the companies concerned are established in another member state.

This problem has already been highlighted in an international context. The National Audit Office of Lithuania audited the introduction of MOSS in 2015 (National Audit Office of Lithuania, 2015). Its audit report highlighted the problem that member states of identification as a rule do not check the VAT due to member states of consumption and member states of consumption have only limited power to carry out checks.





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Where the Netherlands is the member state of identification, the Dutch Tax and Customs Administration can, on request, assist a member state of consumption to check MOSS returns. According to the Administration, it has done so on several occasions since 2015. If a company is established outside the EU, however, the enforcement instruments available to the member state of identification add little to those available to the member state of consumption. As the company is not established in a member state of identification, there is no straightforward means to check its accounts. In such cases, the limited enforcement powers mean the member state of consumption is less inclined to request assistance from a member state of identification.

2.3 Enforcement of timely and complete VAT payments

Requirements

Companies registered to MOSS must pay VAT to the member state of identification. The member state of identification then transfers the amount paid in euros to designated bank accounts in the member states of consumption.¹⁵

If a registered company does not pay the VAT on time and in full, the MOSS system in the member state of identification issues a first reminder to the company.

The member state of identification transfers the VAT it receives to the member states of consumption net of retention fees (see section 1.1.1).¹⁶ If a company does not settle the total tax due, the member state of identification transfers the VAT to the member states of consumption on a pro rata basis.¹⁷ All member states of consumption then have a claim on the company concerned for the shortfall.

Enforcement of compliance

The member states of consumption themselves must check the timely and complete payment of VAT and its collection.¹⁸ Should a company fail to pay the total tax due, it must then make full payment directly to the member states of consumption. The member state of identification does not withhold retention fees in such cases.





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3 The Netherlands as member state of consumption (MSCON)

This chapter looks at the role of the Netherlands as a member state of consumption (MSCON). As explained in chapter 1 (section 1.1.1), in this scenario, the Dutch Tax and Customs Administration receives payments from other EU member states for the VAT due in respect of digital services provided to consumers in the Netherlands.

The Administration provided us with data from the MOSS system on the VAT returns submitted for cross-border digital services provided to consumers in the Netherlands and the associated VAT payable for the years 2015, 2016 and 2017, as shown in figure 6.





The increased financial importance of MOSS to MSCON-NL

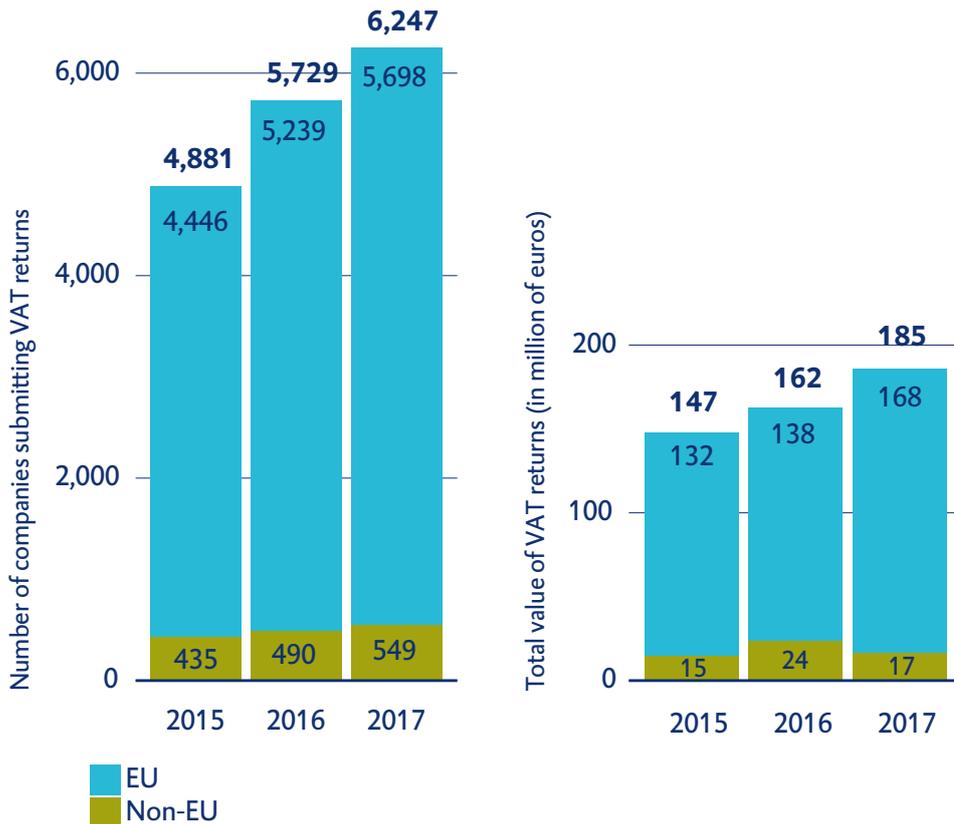


Figure 6 MOSS/MSCON-NL: Number of companies that submitted VAT returns and the total value of VAT returns in the period 2015–2017

Source: Central Administration Office, Tax and Customs Administration

Figure 6 shows the increase in the number of companies that submitted VAT returns via MOSS in respect of digital services provided to consumers in the Netherlands. The amount of VAT received by the Netherlands in its capacity as a member state of consumption also increased between 2015 and 2017. Our analysis of the MOSS data revealed that the Netherlands received VAT payments chiefly from Ireland, the United Kingdom, Luxembourg and Sweden. Several large digital service providers accounted for a substantial proportion of the VAT declared.





Figure 7 shows the VAT revenue received by the Dutch Tax and Customs Administration from other EU member states in the period 2015–2017.

Increase in VAT received from other EU member states by MSCON-NL

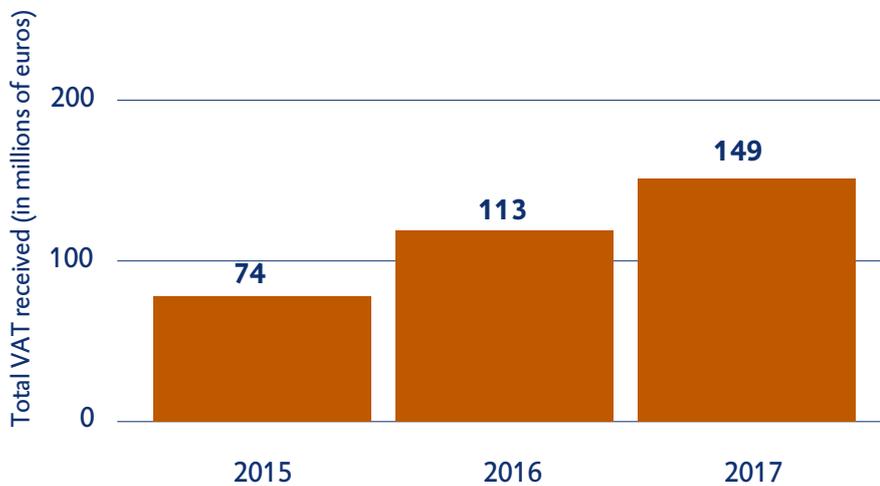


Figure 7 MOSS/MSCON-NL: VAT received from other EU member states (2015–2017)

Source: Central Administration Office, Tax and Customs Administration

The receipts shown in figure 7 differ from the total VAT declared via MOSS shown in figure 6 because the EU member states transfer the VAT after the reporting period and it can accordingly be recognised in the following accounting period. Furthermore, retention fees (under EU agreements: 30% in 2015 and 2016; 15% in 2017) create a difference between the VAT declared and the VAT received.

The following sections of this chapter consider how the Netherlands enforces compliance with VAT obligations as a member state of consumption. They successively look at: registration for VAT (section 3.1), VAT returns (section 3.2) and VAT payments (section 3.3). We make a distinction between enforcement by the Tax and Customs Administration in the Netherlands and enforcement in cooperation with foreign tax authorities.



3.1 Enforcement of the duty to register for VAT

As a member state of consumption, it is in the Netherlands' interests that companies that provide digital services to consumers in the Netherlands register for VAT. They can register directly in the Netherlands or via the MOSS system in another EU member state.

As digital services are provided virtually, they are less visible to the Tax and Customs Administration than tangible goods. This increases the risk of the Administration not being aware of service providers that do not declare VAT. The German supreme audit institution reported in 2014 (Bundesrechnungshof, 2014) that a large number of companies from outside the EU had provided internet-based services to consumers in Germany in 2013¹⁹ without declaring the VAT on them. The president of the Bundesrechnungshof compared the situation to that of a huge 'tax haven' (Bundesrechnungshof, 2016).

The Tax and Customs Administration can establish that a company has a duty to register for VAT in the following circumstances:

- when the company offers digital services to consumers in the Netherlands over the internet;
- when the company receives payment from consumers in the Netherlands for digital services;
- when a foreign tax authorities issues an alert.

Enforcement by the Tax and Customs Administration in the Netherlands

To detect the loss of VAT, the Tax and Customs Administration must be aware of the providers that offer digital services to consumers in the Netherlands. Detecting providers that are not registered for VAT (either in accordance with standard, domestic regulations or via the MOSS system) is hampered by:

- privacy rules requiring reasonable grounds for internet-based searches (searches may not be phishing expeditions);
- providers operating anonymously on the internet to prevent identification for VAT purposes. An example of this is a seller of e-books that does not provide company details on its website.

The Tax and Customs Administration's Enforcement and Intelligence Expertise Centre (EHI) has on occasion searched the internet to detect unregistered providers.²⁰ Such searches are labour intensive and are subject to privacy restrictions. Between 2015 and



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2017, the EHI was not specifically requested to carry out searches with regard to MOSS (Tax and Customs Administration/Enforcement and Intelligence Expertise Centre, 2017a).

The Tax and Customs Administration has little if any access to contra information to check the VAT returns of digital service providers. Current legislation does not give it automatic access to data on the payments made by the buyers of digital services (Tax and Customs Administration/Enforcement and Intelligence Expertise Centre, 2017a). According to the Administration, the tax authorities in the United Kingdom and Finland do have access to such payment data.

Enforcement in cooperation with foreign tax authorities

Alerts issued by foreign tax authorities are another means for the Tax and Customs Administration to identify unregistered non-resident companies that provide digital services to consumers in the Netherlands. Information can be received spontaneously or in response to specific requests.

The Tax and Customs Administration can receive alerts in other ways, too:

- in an EU context, under Regulation (EU) no. 904/2010 Eurofisc²¹ can share targeted information and experience of *modi operandi* in the field of intracommunity VAT fraud. For the topic of e-commerce a separate Working Field 5 was set up in April 2016 to exchange operational alerts on internet-based trade in goods and services. In the period to the end of 2017, Working Field 5 shared alerts, albeit to a limited extent, on cross-border transactions in goods that were possibly supplied to consumers in the Netherlands. At the end of 2017, moreover, Eurofisc drew up a list of companies that probably supplied goods within the EU (including, potentially, the Netherlands) without declaring VAT. These cases do not relate to the provision of cross-border digital services. Eurofisc's list was forwarded to the Tax and Customs Administration's Non-Resident Office for it to determine which alerts were significant for further investigation;
- the Tax and Customs Administration can take part in multilateral investigations of companies that should be registered for VAT. The VAT Fraud Coordination Point (CPB) of the Fiscal Information and Investigation Service (FIOD) can also take part in these multilateral investigations. Several multilateral investigations of digital service providers took place in the period to the end of 2017. When we closed the implementation phase of our audit in May 2018, one major multilateral investigation prompted by an exchange of information between tax authorities in EU member states was still in progress. This investigation is considered in more detail in section 3.3.





We conclude from the above that in recent years the Dutch Tax and Customs Administration has made only limited use of the opportunities to exchange alerts with other tax authorities in order to enforce compliance with VAT obligations in MOSS.

Enforcement of timely, correct and complete VAT returns

In the MOSS system, the member state of identification has primary responsibility for monitoring the timely submission of VAT returns by companies established outside the Netherlands. The member state of identification must send a first reminder to companies that do not submit their MOSS returns on time. The member states of consumption must then take action against companies that fail to submit their VAT returns.

Enforcement by the Tax and Customs Administration in the Netherlands

Other member states provide the Dutch Tax and Customs Administration with information on the MOSS returns submitted by companies that provide digital services to consumers in the Netherlands. In principle, VAT returns are submitted every quarter but the Administration also receives additional information and corrections on a monthly basis. The information relates to the turnover, the VAT rate applied and the amount of VAT.

The Tax and Customs Administration does not carry out risk analyses of the timeliness, completeness and accuracy of the VAT returns received via MOSS from other EU member states. It does not have a risk analysis model with principles and criteria for these returns. A risk analysis model could take account of the size and nature of the digital services and of fluctuations in turnover over time.

According to the Tax and Customs Administration, several factors could mitigate the risks inherent in submitting VAT returns using the MOSS system rather than the standard, domestic system:

- in the Administration's opinion, companies established outside the EU that register to MOSS wish to fulfil their VAT obligations voluntarily and correctly. Companies that do not wish to fulfil their obligations will tend not to register in order to conceal their activities. This was also the case with the VOES system,²² which can be regarded as a predecessor of MOSS. Furthermore, it is difficult if not impossible for the Administration to enforce companies established outside the EU to fulfil their VAT obligations;
- the MOSS system is a means for registered companies to submit VAT returns and pay the VAT due. They cannot use it to recover input VAT. Input VAT must be recovered via a different system that has its own safeguards. The Administration therefore looks upon MOSS as a 'payment system'.



These considerations do not mean that companies will not submit partial and/or incorrect returns via MOSS (Tax and Customs Administration/Enforcement and Intelligence Expertise Centre, 2017a). The Administration's MOSS system offers only limited support for monitoring and enforcement activities and generates no management, accounting or administrative information. The system is designed to process correct returns without deviations (the 'good path'). All deviations that require further analysis (the 'wrong path') have to be processed manually. As the system does not generate standardised and structured output statements, information can be obtained only by means of queries.

Enforcement in cooperation with foreign tax authorities

Cooperation with foreign tax authorities can help the Tax and Customs Administration gain an insight into compliance with VAT obligations. As a member state of consumption, the Netherlands can take the initiative to check the MOSS returns submitted by companies registered in other EU member states that provide digital services to consumers in the Netherlands. However, as the Dutch MOSS system generates only very limited information, the Administration had not done so by the beginning of 2018.

Roles of member states of identification and member states of consumption

The roles of member states of identification and member states of consumption in investigations of compliance with VAT obligations are currently not precisely defined (see section 2.1). The European Commission's Directorate-General for Taxation and Customs Union made a series of recommendations concerning MOSS audits in 2013 (European Commission, 2013b), but the member states themselves decide whether or not they adopt them, and not all have done so. One of the recommendations is to have the first contacts between a member state of consumption with a company established in another member state to be made via the tax authority in the member state of identification in accordance with the procedures customary in that member state. The exchange of information on audits carried out by the member states' tax authorities should be subject to agreements between the two tax authorities and the company in question.

If the tax authority of a member state of consumption requests assistance from a member state of identification to investigate a particular EU company, the tax authorities of all member states of consumption are usually allowed to participate. Owing to this ability to participate as a member state of consumption, the Netherlands sometimes receives requests from member states of identification asking whether they should also investigate turnover in the Netherlands. According to the Tax and Customs Administration, the member state of consumption will very probably accept the request to be on the safe side.





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However, this creates the risk of the member state of identification carrying out an investigation with a very limited chance of success since it is very unlikely that VAT is due in all participating member states. This increases the audit burden for the member state of identification.

At EU level, it has been recognised for some time that there is a need to make further agreements on the cooperation between EU member states' tax authorities in the areas of e-commerce and MOSS. In November 2017, this led to a proposal by the European Commission to amend Regulation (EU) no. 904/2010 regarding cooperation in administrative VAT enquiries (European Commission, 2017). The Council of Ministers adopted the proposal on 22 June 2018. The amendments mean that two or more member states can agree to carry out joint administrative enquiries in which civil servants from a requesting member state take part in investigations on the territory of the requested member state. This makes it possible to carry out joint enquiries of cross-border transactions. The new rules provide greater clarity on the formal frameworks for joint enquiries by EU member states but concrete details on the potential substance and structure of the enquiries are still lacking. Such details would clarify how cooperation among the member states could support the enforcement of VAT obligations.

The amended regulation also includes further rules for situations in which there are indications or evidence of VAT avoidance or VAT fraud. In these scenarios, the member state in which a taxpayer is established must carry out an enquiry if at least two other EU member states consider that one is necessary. If the requested member states wish, the requesting member state must actively take part in the enquiry. A joint enquiry is led by the requested member state (and in accordance with its laws). Civil servants from the requesting member state have access to the same buildings and documents and the same rights to question taxpayers as the civil servants from the requested member state.

Under the current rules, an enquiry into non-resident digital service providers' compliance with their VAT obligations can also be prompted by an EU member state taking the initiative to launch a multilateral investigation (see also section 3.1). In 2017, for example, a company established in the United Kingdom was subject to a multilateral investigation. It was thought that the company might not have declared part of its turnover and, in so far as it had submitted a return, had not settled it in full. This case is considered in more detail in section 3.3 below.





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3.3 Enforcement of timely and complete payment of VAT

As a member state of consumption, the Netherlands receives VAT payments from other EU member states, net of retention fees where applicable (see also section 2.3). It is responsible for checking that the payments are made on time and in full.

Enforcement by the Tax and Customs Administration in the Netherlands

The Dutch MOSS system did not provide any support for checks of the timelines and completeness of VAT payments between 2015 and 2017. It was not until the first quarter of 2018 that the Tax and Customs Administration was able to start matching²³ VAT returns and VAT payments, in respect of the first quarter of 2015. Matching returns and payments is predominantly manual work. Owing to the backlog in matching MOSS returns and payments, the Administration's Non-Resident Office has still not started working on the structured enforcement and monitoring of compliance with VAT obligations. To do so, it needs specific information on the status of payments.

The need to match VAT returns and VAT payments correctly is illustrated by the multilateral investigation referred to in sections 3.1 and 3.2. This audit was started in the second half of 2017 based on information provided by Her Majesty's Revenue and Customs (HMRC) in the United Kingdom (see box). The Netherlands was a member state of consumption in this case.

Case study: multilateral audit of a company in the United Kingdom (2017)

The Dutch Tax and Customs Administration initiated several investigations in 2017 of VAT returns submitted via MOSS by a company established in the United Kingdom. The audits found that the company had declared more than € 20 million in its VAT returns in previous years that it had not remitted. They also found signs that a considerable proportion of the turnover realised in the Netherlands had not been declared, and the Administration had suffered a further VAT loss of nearly € 20 million.

If the matching process had been more efficient, the Administration would have detected this practice and taken appropriate action at an earlier stage. Only when the Administration has completed matching the MOSS returns and payments will it be clear whether similar cases have occurred elsewhere, and if so how important they are.

Enforcement in cooperation with foreign tax authorities

The Tax and Customs Administration can request the tax authorities of other EU member states to assist in the collection of the VAT due in the MOSS system. In principle, there is a threshold of € 1,500. In view of the backlog matching MOSS returns and payments, the





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Administration has not yet requested assistance from other EU member states to collect outstanding VAT payments. As we noted in section 3.2, it is difficult for the Administration to enforce compliance with tax obligations by a company that is not established in the EU. Requesting assistance from a member state of identification is of little help because that member state cannot act in the country of establishment. Collecting outstanding VAT is thus virtually impossible. Outside the EU, the Netherlands has concluded only two treaties to provide mutual assistance in the collection of taxes (with Norway and Switzerland).





4 MOSS as an ICT project and information system of the Tax and Customs Administration

The Tax and Customs Administration's enforcement of compliance with VAT obligations in respect of cross-border digital services is determined largely by the functionality and operation of the Dutch MOSS system. This chapter therefore looks at the development and implementation of the MOSS system in place in the Netherlands.

The EU has specified criteria and standards for the MOSS system. EU member states themselves are responsible for implementing IT systems that satisfy the specifications. They are free to make their own implementation choices so that MOSS is as compatible with their other ICT systems and functionalities as possible.

The following processes can be identified in the MOSS system developed in the Netherlands²⁴:

- *assessment*: processing VAT returns submitted by companies and raising additional assessments and fines where applicable;
- *collection*: processing payments made by companies;
- *transfer*: transferring payments to other member states.

The Dutch MOSS system is made up of a series of processes. The 'assessment' process comprises a one-stop shop system (ESS) to register the returns submitted by companies. Payments are entered in the European Services Collection system (IED). There is also a European Value Added Tax Logistics system (LEO) to support the logistics. Unless stated otherwise, references in this report to the MOSS system as an ICT system refer to all the component systems that perform the MOSS functions.

4.1 Problems with the ICT system

From an ICT angle, there are several problems with the Dutch MOSS system. Some of them are due to the design and organisation of the MOSS system and others to setbacks in the system development and implementation process. They are considered below.

Design and organisation of the MOSS system

- For the development of the Dutch MOSS system the Tax and Customs Administration initially opted to have the ICT system support only a minimal number of functions and



processes ('plateau 1'). The system processed the main flows of correct returns and payments (in a 'good path'). Other functions and processes, including error handling, have to be performed manually (Tax and Customs Administration, 2017). This 'minimalist' design means the system cannot generate management information and is not fit for financial accounting purposes. In effect, information can be retrieved from the MOSS system only by means of targeted queries. The system is also a poor basis for functional management and production control (Software Improvement Group, 2018).

- The underlying European Services Collection system (IED) does not produce contra information to check the Administration's accounts. The Group Control & Analysis Unit (UCA) therefore made a series of its own queries to check statuses. Owing to the poor auditability, the UCA has not yet approved the system as a basis for financial accounting.
- It was decided to divide the MOSS system into domains that complement the Administration's organisation. However, there were no safeguards on its coherence and compatibility with the Administration's preferred IT architecture (Tax and Customs Administration, 2017). There are also weaknesses in updating process descriptions and in other areas of system documentation.
- The system's initial functionality included few if any functions that supported the monitoring of VAT returns. No allowance had been made, for example, for risk analysis. As a result, the Non-Resident Office in Heerlen could up to the start of 2018 not check the reconciliation of VAT returns submitted by companies that provided digital services to consumers in the Netherlands and the associated payments (see chapter 3).
- Following MOSS's launch, the Administration intended to make the transition from a minimalist design to a comprehensive design in a subsequent phase ('plateau 2') in order to guarantee the accuracy, timeliness and completeness of the process (Tax and Customs Administration, 2017). To date, however, this comprehensive design has not been completed. Further system changes will also be necessary on account of changes in EU regulations (see section 1.1.2).

System development and implementation process

The MOSS ICT project suffered setbacks and budget overruns. Delays in the delivery of the intended infrastructure had knock-on effects for the test and implementation work. Interim measures had to be taken and the system was given only temporary functionality. The Tax and Customs Administration, moreover, had underestimated the complexity of the EU specifications. Table 1 presents key data on the planning and cost of the MOSS project.





Table 1 Key data on the lead time and cost of the MOSS ICT project

	End date	Project costs (in millions of euros)
Initial estimate (start date: 01-06-2013)	01-06-2015	8.59
Current estimate	31-03-2017	26.26
Actual		26.26

Source: Central Government Operational Management Annual Report 2017 (House of Representatives, 2018)

In the *Central Government Operational Management Annual Report 2017*, which was published in May 2018, the project’s end date was estimated at 31 March 2017. This date relates to the completion of the first ‘plateau’. It is not the date on which the MOSS system’s overall development will be completed. The development of plateau 2 began on 1 April 2017. It includes improvements in process management and monitoring. Changes must also be made in anticipation of changes in EU VAT regulations and the updating of the VAT systems. When the *Central Government Operational Management Annual Report 2017* was published it was not known when further changes to MOSS would be completed or how much they would cost.

4.2 Further development of the MOSS system

The Tax and Customs Administration commissioned an independent review of the use, re-use and adaptability of the MOSS applications in 2017-2018, in part with a view to the projected increase in the volume of transactions. The findings can be summarised as follows (Software Improvement Group, 2018).

- The processing performed by the current MOSS applications is unreliable and unnecessarily slow. This problem will intensify as the volume of transactions increases.
- The current applications do not satisfy the defined initial architecture and the reference architecture for transaction processing. Such compatibility is not possible without large-scale redesign and reconstruction.
- One positive finding of the review is that a redesign would make the MOSS applications operationally stable relatively quickly and would facilitate the upscaling required for the regulatory changes.

In the light of the review’s findings, the independent consultancy recommended that MOSS be redesigned in order to strengthen its operational stability rather than, for the time being, to increase its compatibility with the Administration’s IT design principles (IT architecture). According to the consultancy, this scenario requires the smallest investment,





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runs the least risk and is the most likely to succeed and be ready by 2021. Compatibility with the Administration’s preferred architecture should be reconsidered when the MOSS applications are operationally stable and there are assurances on the system’s adaptability in anticipation of 2021.

Further to the independent advice and an internal analysis of the current status, the Administration’s MOSS Project Board decided in June 2018 to redesign MOSS in order to make the system more robust, partly in preparation for the expected increase in the volume of transactions in 2021. In the wider context of the VAT chain, an engagement was awarded to prepare all the extra functionalities in the system necessary for 2021. The additional functionalities will allow for changes in the distance selling regulations that will also affect Customs, as discussed in section 1.1.2.





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5 Conclusions and recommendations

This chapter presents our conclusions and recommendations in the same sequence as the previous chapters in this report. They relate to the role of the Netherlands as a member state of identification, its role as a member state of consumption and MOSS as an ICT project and information system of the Tax and Customs Administration (section 5.1). We then present concrete recommendations to explain how we think improvements can be made (section 5.2).

5.1 Our conclusions

5.1.1 The Netherlands as a member state of identification (MSID)

If companies established in the Netherlands that have chosen it as their member state of identification (MSID) do not comply with their VAT obligations in respect of cross-border digital services correctly, this does not affect the Netherlands' VAT receipts. This does not mean, however, that the Dutch Tax and Customs Administration does not have an enforcement task in these cases. Regulation (EU) no. 904/2010 requires EU member states to work with each other to ensure VAT is assessed correctly. At the moment, however, cooperation between member states of identification and member states of consumption has not been worked out with regard to the enforcement of VAT obligations. As a member state of identification, the Netherlands currently does not check the completeness or accuracy of the MOSS returns submitted to it in respect of the VAT due to other EU member states. The other EU member states must carry out such checks as member states of consumption and raise additional assessments and fines and collect the taxes due.

We conclude that the Tax and Customs Administration takes only limited enforcement action when the Netherlands is a member state of identification. In so far as the Administration can assist in the enforcement of VAT obligations in other EU member states, it does so to only a limited extent, partly because it receives few requests for assistance.

5.1.2 The Netherlands as a member state of consumption (MSCON)

To prevent the loss of VAT, the Tax and Customs Administration must know what digital services are provided to consumers in the Netherlands. The Administration must establish whether digital service providers are registered for VAT (under standard, domestic law or in MOSS). Digital services, however, are inherently difficult to trace. The Administration currently does not carry out internet searches to monitor them. Furthermore, it has access





to little if any contra information. Under current legislation, it does not have standard access to data on payments for digital services, which would simplify its task.

The Tax and Customs Administration does not carry out risk analyses of the completeness and accuracy of VAT returns submitted to it via MOSS, nor does it have a risk analysis model to do so. Management information to support enforcement and monitoring is largely absent. There is only a limited exchange of alerts with foreign tax authorities. The Administration, moreover, has run up a backlog matching VAT returns and VAT payments in MOSS. In consequence, its Non-Resident Office is unable to carry out structured enforcement activities. To date, the Administration has not requested assistance from other countries to collect VAT.

The Administration performs an important task to prevent the loss of VAT for the Netherlands as a member state of consumption. We conclude that enforcement is made more difficult by the limited ability to detect undeclared turnover and the limitations of the ICT system in place at the Administration for MOSS.

5.1.3 MOSS as an ICT project and information system of the Tax and Customs Administration

Our audit of the Tax and Customs Administration's ICT project and information system for MOSS found that:

- to save time and money, the Administration had opted for a minimalist design that included only 'good paths' in the system. As a result: a) the Administration must process all deviations manually, and b) the system does not generate management information and is not fit for financial accounting purposes;
- MOSS currently does not have a risk analysis functionality and is not fully compatible with the Administration's preferred IT architecture;
- the development and implementation of the MOSS system encountered both delays and budget overruns.

With regard to the MOSS information system, we conclude that it currently provides little if any support for the enforcement of VAT obligations for the Netherlands in its capacity as a member state of consumption. The Administration is taking measures to turn MOSS into a more robust system but we conclude that it still has a long way to go. In this respect it is important that the sweeping changes foreseen in the tax system in 2021 will lead to a significant increase in the use of the one-stop shop system.





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5.2 Our recommendations

The enforcement of compliance with VAT obligations in respect of cross-border digital services must be strengthened. This is necessary for three reasons:

- the Tax and Customs Administration's enforcement and monitoring of VAT obligations are not yet organised to facilitate the Netherlands' role as a member state of consumption. Improvements must be made regarding the detection of undeclared turnover, the performance of risk analyses of VAT returns and the matching of VAT returns and VAT payments;
- the current MOSS system does not yet have full functionality and does not generate administrative or management information. The system is not fit for financial accounting purposes and must be made more robust, partly with a view to the projected increase in the use of the system;
- protocols are still not in place to facilitate cooperation between member states of consumption and member states of identification.

The above considerations bring us to the following concrete recommendations for the State Secretary for Finance.

Recommendation 1: Where the Netherlands is a member state of consumption, introduce a structured system for the enforcement and monitoring of VAT obligations in respect of cross-border digital services. The following elements are particularly important:

- internet-based searches to detect the non-fulfilment of VAT obligations in respect of digital services provided to consumers in the Netherlands, and the use of information from payment services as contra information (requiring the removal of legal obstacles where appropriate);
- the exchange of alerts with the tax authorities of other EU member states;
- risk analyses of VAT returns using a dedicated risk analysis model;
- the matching and assessment of VAT returns and VAT payments, including follow-up measures to levy and collect VAT where necessary.

Recommendation 2: Continue the Administration's initiatives to add to the minimal functionality of the MOSS system in order to create a fully functional system that can also handle the projected increase in the volume of VAT returns after 2021. Ensure that the system is compatible, in due course, with the Administration's IT design principles. MOSS's functionality must be increased particularly in the following areas:





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- automated support of enforcement and monitoring in order to match VAT returns and VAT payments, to carry out risk analyses, to identify deviations and to take remedial action;
- the generation of administrative and management information and the creation of a solid basis for financial accounting.

Recommendation 3: Take initiatives at EU level to improve international cooperation with foreign tax authorities to enforce VAT obligations in respect of cross-border digital services.

For example:

- introduce protocols for mutual assistance between member states of consumption and member states of identification to apply control and enforcement instruments;
- use instruments such as joint audits to help bring the member states' enforcement burdens into line with their enforcement interests and possibilities.





6 Response and afterword

We received the State Secretary for Finance's response to our draft report on 8 November 2018. It is presented in full in section 6.1 below, followed by our afterword in section 6.2. The State Secretary's letter can also be found on our website at www.rekenkamer.nl.

6.1 Response of the State Secretary for Finance

"You forwarded your report, 'VAT on Cross-Border Digital Services, Enforcement by the Netherlands Tax and Customs Administration', by letter of 11 October 2018. I would like to take this opportunity to present my response.

General

Before turning to the Court of Audit's conclusions and recommendations, I would first like to sketch a general outline of how VAT is assessed on cross-border digital services. The Tax and Customs Administration has been implementing the legal requirements of the EU regulation on the assessment of VAT on cross-border digital services and the associated mini one-stop shop system (MOSS) since 2015. It has done so partly by means of IT systems and partly by means of manual processing. The business processes currently in place are implemented in full (some manually) as a chain of actions. They range from the registration of companies and the submission of VAT returns in MOSS to the transfer of payments on behalf of the Dutch participants and the receipt of VAT from other EU member states. Relative to what the Administration is used to in other mass processes, only a comparatively small number of companies are currently participating in the MOSS system and its current design is therefore practicable. In the past three years, the Dutch Tax and Customs Administration has received a total of nearly €1 billion and transferred it to other EU member states, net of statutory retention fees. As a member state of consumption, the Netherlands has received more than €0.3 billion from other EU member states in the past three years.

A technical study of the MOSS system was carried out in early 2018, partly in anticipation of the system's greater scope as from 2021. Measures were consequently taken to make the MOSS system more stable and robust and thus prepare the automated transaction system suitable for the timely, reliable and correct transition from MOSS to a one-stop shop (OSS) in 2021. Significantly more companies are expected to participate in the OSS system. The measures also address the findings made by the ADR in the past three years. The following timeline has been proposed for the IT functionality:





- 2019: (M)OSS operationally stable, data in order, providing the requisite functionalities, including financial accounting;
- 2020: (M)OSS operationally robust as regards volume and performance, in any event providing the requisite functionality for the EU VAT e-commerce rules in 2021;
- 2021: further development and refinement of the entire OSS functionality; the i-OSS (import OSS) will be developed in collaboration with Customs.

An engagement was also awarded in early 2018 to develop and implement an enforcement strategy for the current MOSS system, including the changes planned for 2019 as part of the 2019 Tax Plan. The horizon for the enforcement strategy extends to 2021 on account of the projected implementation date of the EU VAT e-commerce rules. The strategy is currently being worked out. It rests on the three pillars named in the 2017 enforcement letter (proactive, preventive and reactive). The enforcement strategy also determines the wishes and requirements for the MOSS IT system. At Benelux level, furthermore, a joint enforcement strategy has been introduced and a MOSS supervision matrix has been developed. Finally, a project has been launched to develop the enforcement strategy in anticipation of the EU VAT e-commerce rules (OSS and i-OSS) effective as of 2021. This project is being carried out in cooperation with Customs.

All these actions match and help implement the recommendations made by the Court of Audit.

I agree with the Court of Audit's view that e-commerce, which includes cross-border digital services, is making up an ever larger proportion of the economy and is thus of growing importance to tax receipts. The specific characteristics of e-commerce, however, make it more difficult to enforce tax obligations in this sector. I therefore also agree with the report's conclusions regarding the enforcement of obligations in respect of cross-border digital services. It is my ambition to achieve an optimal level of enforcement of compliance with tax obligations in the field of e-commerce. I also announced this ambition in the Fiscal Policy Agenda submitted to the House of Representatives in February 2018. This, by the way, is not merely a national matter. The Court of Audit correctly notes that a comprehensive package of enforcement activities requires cooperation within the EU and even globally. It is against this background that I consider each of the three recommendations.

Improving the Netherlands' enforcement position as a member state of consumption

I accept the Court of Audit's recommendation on this point. It should be noted that changes will be made to the assessment of VAT on distance selling within the EU and from third





countries to the EU in 2021. As described in the report, the Tax and Customs Administration is currently considering a separate project to identify the functions necessary to enforce the new regulations robustly. The project will draw on experience with the current system in place for cross-border digital services. The implementation bill will be sent to the House of Representatives in 2019. Implementation of the regulations will take account of the recommendations and where necessary they will be considered in the implementation section of the bill.

Further development of the functionality of MOSS for cross-border digital services

I understand the Court of Audit's concerns regarding MOSS's functionality and I accept the recommendations. As noted above, measures were taken in early 2018 to improve financial accounting and other functions in the current MOSS IT system. The changes planned for 2021 require an increase in MOSS's functionality, as described by the Court of Audit. Functionality is also being actively addressed by the MOSS project managers within the Tax and Customs Administration and will be included in the preparations for the changes that will come into force in 2021. The internal engagements awarded to the development organisation will be put to the Administration's senior management for approval before the end of 2018. Concrete preparations are already being made to implement the project plan.

International cooperation

The introduction of MOSS in 2015 deepened administrative cooperation within the EU by means of legal agreements on each member state's role in the registration, the submission of returns and the payment of VAT in respect of cross-border digital services. The Netherlands is in favour of such cooperation agreements with a view to the effective assessment of VAT and the reduction of the administrative burden on businesses. Its initiative to use transaction network analysis (TNA), for example, will be rolled out within the EU as from the beginning of 2019. TNA is a sophisticated means to combine information from the various member states in order to improve insight into the companies involved in VAT fraud. The EU recently reached political agreement on amendments to the Regulation on administrative cooperation (EU 904/2010) in order to strengthen the legal grounds for joint investigations of VAT fraud. The Netherlands will continue to promote cooperation at EU level and thus raise the standard of cross-border enforcement activities. In this respect, the Netherlands also supports initiatives by the European Commission to issue further guidelines and identify best practices."





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6.2 Afterword

We are pleased that the State Secretary for Finance will adopt our conclusions and recommendations and we trust that he will act in accordance with them.





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Appendix 1 Abbreviations

ADR	Government Audit Service
CPB	VAT Fraud Coordination Point
EHI	Enforcement and Intelligence Expertise Centre
EU	European Union
FIOD	Fiscal Information and Investigation Service
ICT	Information and Communication Technology
IED	European Services Collection
ISC	Internet Service Centre
IT	Information Technology
LEO	European Value Added Tax Logistics system
MLC	Multilateral Audit
MOSS	Mini One-Stop Shop
MSCON	Member State of Consumption
MSID	Member State of Identification
NETP	Non-Established Taxable Person
NL	Netherlands
OSS	One-Stop Shop
UCA	Group Control & Analysis Unit
VAT	Value Added Tax
VOES	VAT on Electronic Services





Appendix 2 Audit accountability

Audit structure

Problem definition/audit questions

Our audit investigated the Tax and Customs Administration's enforcement of compliance with VAT obligations in respect of cross-border digital services since 2015, and in particular the performance of the MOSS system in place in the Netherlands. More specifically we looked at the Administration's enforcement of digital service providers' compliance with VAT obligations with regard to their:

1. registration for tax (either in the Netherlands or in MOSS to declare VAT due to other EU member states);
2. submission of timely, accurate and complete VAT returns; and
3. payment of taxes in full and on time.

Terminology

Unless otherwise stated, our use of tax terms agrees with the definitions applied by the Tax and Customs Administration and those used in European and national laws and regulations. To avoid confusion between the terms 'electronic services' and 'electronically supplied services', both of which occur in the EU VAT directive, we use the term 'digital services' throughout this report to refer to the services that are relevant to the MOSS system.

Standards

Our standard for the enforcement of the duty to register for VAT is that the Tax and Customs Administration must take measures to prevent companies that are not registered for VAT from providing digital services to consumers in the Netherlands. Such measures can include: internet searches and the use of fiscal intelligence and/or information from foreign tax authorities.

Our first standard for the timely, accurate and complete submission of VAT returns is that the Administration must check the timeliness of the VAT returns submitted by registered service providers and take action if returns are not submitted on time. Our second standard is that the Administration must sample and carry out risk analyses of the returns submitted to it and subsequently check them and/or request further information from the tax authorities in other countries. Our standards for the timely and complete payment of the VAT due are that the Administration must:





- determine whether service providers pay the VAT due in accordance with their returns for each period (after correction if applicable);
- correctly transfer the VAT payable to other EU member states (after withholding any retention fees);
- check that the tax authorities of other member states correctly transfer the VAT payable to the Netherlands;
- take action if payment is incomplete or late.

Audit activities

To answer the audit questions, we studied relevant policy documents and held interviews with officials from the Tax and Customs Administration and the Ministry of Finance. The interviewees included members of the Administration's Enforcement and Intelligence Expertise Centre (including the Internet Service Centre), the Non-Resident Office, the Central Administration Office, the ICT Centre, the MOSS Project Board, the Directorate-General for the Tax and Customs Administration (Implementation Policy Cluster and Fiscal Affairs Cluster), the Fiscal Information and Investigation Service and the Government Audit Service (ADR).

To obtain quantitative data on the MOSS returns (in both the MSID and the MCON scenario), we carried out data analyses of information collected by the Tax and Customs Administration (Group Control & Analysis Unit) by means of system queries. We did not check the accuracy of the queries themselves. We concentrated the analyses on information contained in the returns submitted between the first quarter of 2015 and the fourth quarter of 2017.

Audit by EU supreme audit institutions

The Netherlands Court of Audit works with the supreme audit institutions of other member states as a member of the EU VAT Working Group. To answer our audit questions we compared our findings where possible with those of other EU supreme audit institutions that had carried out similar audits in this field or are currently doing so.





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Appendix 4 Notes

1. The buyers (i.e. consumers) are not registered taxpayers.
2. Turnover Tax Act 1968, article 6h.
3. Since 2015, the 'place of service' has been determined by the country in which the consumer is located.
4. In some documents, the Tax and Customs Administration refers to the system as M1SS. For clarity's sake, we use the abbreviation MOSS in this report.
5. Special provisions apply to companies that have permanent establishments in one or more member states. Our audit did not consider those special provisions.
6. MOSS makes a distinction between returns and reports. A company that has the Netherlands as its member state of identification can *report* its turnover in other EU member states via MOSS. A company from another member state that provides digital services to consumers in the Netherlands (i.e. the Netherlands is the member state of consumption) submits a *return* in MOSS. For the sake of simplicity, we use the term 'return' throughout this report.
7. The retention fee regulation came about chiefly to recompense member states that would receive less VAT on account of the new system in the first four years of its entry into force. To mitigate the administrative burden it was decided to abolish the retention fee in 2019.
8. These are proposals to amend the following EU directive and regulations: the VAT Directive 2006/112, the VAT Implementation Regulation 282/2011 and the regulation on administrative cooperation and combatting VAT fraud (EU 904/2010).
9. In accordance with Regulation (EU) no. 2017/2454 amending Regulation (EU) no. 904/2010.
10. In the case of distance selling of goods worth more than €150, a normal return must be submitted in respect of import duties.
11. European Union (2010), consideration 7.
12. European Union (2010), article 7, (4).
13. European Union (2010), article 13, (1b) and (1c).
14. European Union (2010), article 40.
15. Member States that have required the tax return to be made in a national currency other than euro, shall convert the amounts into euro using the exchange rate valid for the last date of the reporting period. The exchange shall be done following the exchange rates published by the European Central Bank for that day, or, if there is no publication on that day, on the next day of publication.





16. As noted in chapter 1, the EU member states agreed that a retention fee would be withheld from transfers made by a member state of identification to member states of consumption between 2015 and 2018 (30% in 2015 and 2016, and 15% in 2017 and 2018). Retention fees will not be withheld as from 2019. Retention fees are not withheld from VAT payments subject to the non-EU regulation.
17. European Union (2010), article 41 (2).
18. Other EU member states can provide assistance on the grounds of Council Directive no. 2010/24/EU of 16 March 2010. See also chapter 3.
19. MOSS had not been introduced then but non-EU companies used a system that can be considered its predecessor: VAT on Electronic Services (VOES), which was introduced in July 2003 (European Union, 2002).
20. The searches are carried out by the Internet Service Centre (ISC), a specialised unit of the EHI (Tax and Customs Administration/Limburg, 2011).
21. Eurofisc is a platform to exchange information between EU member state in order to promote and facilitate multilateral cooperation to combat VAT fraud.
22. VOES: VAT on Electronic Services. This system was introduced in July 2003 (European Union, 2002) and was in use until MOSS entered into force in 2015 MOSS. See also section 3.1.
23. Matching involves the reconciliation of VAT returns and VAT payments.
24. Another MOSS-related accounting process keeps records of financial flows in the SAP system.

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