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**GROUP ON THE FUTURE OF VAT**

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**Amendments in a late submitted OSS/IOSS VAT return**

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## **1. INTRODUCTION**

In several IT e-commerce workshops, delegates raised a question regarding amendments to a One Stop Shop (OSS) VAT return in a OSS VAT return that is submitted late. The question concerns the possibility to include amendments relating to a tax period after the tax period covered by the late VAT return or whether these amendments should only be allowed in a subsequent return covering a subsequent tax period.

The Commission services seek to find a common interpretation of Articles 365, 369g and 369t of the VAT Directive<sup>1</sup> in respect of the above-mentioned topic.

## **2. SUBJECT MATTER**

In the Mini One Stop Shop (MOSS), the amendments to a MOSS VAT return could only be done by amending that MOSS VAT return itself. In the VAT e-commerce package, the correction mechanism of the (M)OSS VAT return was reviewed and amended in order to allow for the inclusion of amendments to a previous OSS VAT return in a subsequent OSS VAT return, by identifying the relevant Member State of consumption, the tax period and the amount of VAT for which an amendment is required.

Currently in the VAT Directive, the same wording is used for the non-Union, the Union and the Import scheme. The second paragraph of Articles 365, paragraph 4 of Article 369g and paragraph 2 of Article 369t respectively are mentioning that “*Where any amendments to the VAT return are required after its submission, such amendments shall be included **in a subsequent return** within three years of the date on which the initial return was required to be submitted...*”.

This means that any subsequent VAT return can include amendments to a previously submitted VAT return. Therefore, if a trader is submitting a **late** VAT return, the latter could include corrections to a previously submitted OSS VAT return that concerns tax periods **after** the tax period covered by the late VAT return.

For example,

- A trader has not submitted his OSS VAT return for Q4 2022,
- He submits his OSS VAT return for Q1 2023 on time (April 2023),
- In May 2023, he submits his OSS VAT return for Q4 2022.
- This VAT return for Q4 2022, submitted in May 2023, could include amendments to the amounts declared in the OSS VAT return submitted in Q1 2023.

However, the last sentence of paragraph 1 of Article 369g also mentions that “*The VAT return shall also include amendments relating to previous tax periods as provided in paragraph 4 of this Article.*”.

From this, it seems that, **for the Union scheme**, the intention is to allow only for amendments to **previous tax periods** and not previously submitted VAT returns.

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<sup>1</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006).

The above-mentioned amendments in a late VAT return as provided in the example could therefore be seen as not allowed. If so, the late VAT return submitted in May 2023 for Q4 2022 should not include amendments to the OSS VAT return for Q1 2023.

### **3. COMMISSION SERVICES' OPINION**

Considering the similar wording used for the three schemes, the Commission services are of the opinion that the intention is to have the same process for handling amendments made to any of the three schemes.

As currently described in the IT specifications, most Member States have implemented this process allowing for amendments to previously submitted VAT returns, including for tax periods later than the tax period covered by the VAT return. For the process to work, it is however essential to agree on a uniform approach to this issue.

The Commission services see two possible solutions:

- Review Article 369g of the VAT Directive by deleting the last sentence of paragraph 1 in order to fully align the legislation regarding the correction mechanism of the Union scheme to the one of the non-Union and import schemes. This solution has the advantage of avoiding any need for an update of the current IT specifications in place in most of the Member States.
- Align the correction process of the non-Union and import schemes to the Union scheme and therefore allowing only amendments to previous tax periods. This would mean an amendment of the IT specifications and of the national systems in a vast majority of Member States.

### **4. QUESTIONS TO THE DELEGATES**

The delegates are invited to express their preference as regards the above-mentioned suggested solutions.

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