

Transposition Note

With effect from 1 Jan 2015 Council Directive 2008/8/EC Article 5 amends Directive 2006/112/EC (PVD) regarding the place of supply of telecommunications, broadcasting and electronically supplied services (BTE) to non-taxable persons and the optional special accounting scheme for suppliers based outside the Member States (the non-Union scheme) and inserts the special scheme for those based within the EU but not in the same member state as their customers (the Union scheme).

Reference should also be made to Council Regulation (EU) No 967/2012 amending Implementing Regulation (EU) No 282/2011, section 2 of Council Regulation (EU) No 904/2010, Commission Implementing Regulation (EU) No 815/2012 and Council Implementing Regulation (EU) No 1042/2013 which contain directly applicable provisions.

The changes to the VAT Act 1994 and subordinate legislation do not go beyond what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Unless otherwise specified the implementation is made by existing provision in or amendment to the VAT Act 1994*

PVD Amended Article	Objective	Implementation*
58 & 59	Moves the place of supply to where the non-taxable person is established, has his permanent address or usually resides	The Value Added Tax (Place of Supply of Services) (Exceptions Relating to Supplies Not Made to Relevant Business Person) Order 2014 (yet to be made) and section 104 of the Finance Act 2014
204(1) 3 rd paragraph	Prevents the use of a tax representative by persons not established in the EU using the special scheme for supplies of BTE services	Sch 3B (Electronic, Telecommunications and Broadcasting services: non-Union scheme) para 19
358	Defines and amends the services covered by the non-Union scheme, the VAT return and the Member State of consumption (MSC)	Sch 3B para 3
358a	Defines a taxable person not established in the Community (NETP) and the Member State of identification (MSI) for the purposes of the non-Union scheme	Sch 3B para 2

359	Obliges Member States to allow a NETP making the BTE supplies to register for the special scheme	Sch 3B para 4 (1)
360	Obliges the NETP to electronically inform the MSI when it starts or ceases making BTE supplies or otherwise ceases to be eligible for the non-Union scheme	Sch 3B para 4(5) and para 7(3)
361	Defines the information the NETP must provide to the MSI on commencement of BTE supplies to non-taxable persons in the Community and obliges them to inform the MSI of any changes in that information.	Sch 3B para 4(3). See also Part 26 of the VAT Regulations 1995, as inserted by the Value Added Tax (Amendment) (No.3). Regulations 2014.
362	Obliges the MSI to allocate a unique identification number to the NETP	Sch 3B para 6
363	Obliges the MSI to remove the NETP from their VAT register where the NETP has ceased (or can be assumed to have ceased) making BTE supplies; where the conditions for the scheme are no longer met or where the NETP has persistently failed to comply with the special scheme rules	Sch 3B para 8(1)
364	Requires the NETP to electronically submit a declaration of BTE supplies (whether or not any have been made) to the MSI on a calendar quarter basis.	Sch 3B para 11 and see Article 4 of Commission Implementing Regulation (EU) No 815/2012.
365	Requires the VAT return to include the NETP's identification number, to identify value, VAT, rate of VAT applied per MSC	See Article 4 of Commission Implementing Regulation (EU) No 815/2012.
366(1)	Permits VAT returns to be denominated in local	Sch 3B para 12

	currencies where the Euro has not been adopted and specifies the date upon which any currency conversion must take place	
367	Requires the NETP to make payment of the VAT due with reference to the relevant return and by the deadline for the submission of the return, payment being made to the bank account specified by the MSI	Sch 3B para 13
368	Forbids deduction of input tax through the special scheme. Any refund of VAT incurred on expenses within the EU must be made through the refund system. Certain restrictions within the refund scheme are disapplied for NETPs using the special scheme	Sch 3B para 10(6) & para 22
369(1)	Requires the NETP to keep sufficient records of their BTE supplies for the MSC to verify the correctness of the return.	Sch 3B para 14
369a	Defines the MSI and the taxable persons eligible to use the Union Scheme, dependent upon where their business is established or, if there is no such establishment, from any fixed establishment located within the EU. If the taxable person has a choice they shall notify the MSI and be bound by that choice of two years.	Sch 3BA (Electronic, telecommunication and broadcasting services: Union scheme) para 4(1)(b) & (c)
369b	Requires Member States to permit a taxable person not established in the MSC to use the Union scheme for BTE supplies non-taxable persons belonging in the EU	Sch 3BA para 5 (1)

369c	Requires the taxable person to notify the MSI when BTE supplies to MSCs start, cease or the activity changes so as to be no longer eligible for the scheme and that such information be submitted electronically	Sch 3BA para 6 See also Part 26 of the VAT Regulations 1995, as inserted by the Value Added Tax (Amendment) (No.3). Regulations 2014.
369d	Requires the scheme user to be registered in the MSI only and that the MSI may use their normal VAT register	Sch 3BA para 3 & 5. See also Part 26 of the VAT Regulations 1995, as inserted by the Value Added Tax (Amendment) (No.3). Regulations 2014.
369e	Requires the MSI to exclude the taxable person from the special scheme where BTE supplies are, or may assumed to be, no longer made, the taxable person is no longer eligible or the scheme conditions are persistently not complied with.	Sch 3BA para 7
369f	Requires the scheme user to electronically submit a VAT return on a calendar quarter basis to the MSI whether or not any BTE supplies have been made. The return must be submitted within 20 days of the quarter end	Sch 3BA para 9; para 10(3)(a)
369g (1 st paragraph)	The VAT return is required to show the identification number; the value, VAT and VAT rate per MSC	Sch 3BA para 10(3)(b) See also Article 4 of Commission Implementing Regulation (EU) No 815/2012.
369g (2 nd paragraph)	Where a taxable person has one or more fixed establishments outside the MSI from which BTE supplies are made, the VAT return must also show the information in the 1 st paragraph for each MS in which there is an establishment, with reference to the local VAT	Sch 3BA para 10(3)(b) See also Article 4 of Commission Implementing Regulation (EU) No 815/2012.

	number and broken down by MSC	
369h	Where the MSI has not adopted the Euro the VAT return can be made out in the local currency. Any conversions required are to be made on the last day of the tax period using the rate published by the ECB	Sch 3BA para 10(2)
369i	Requires the scheme user to make payment of the total VAT due, referring to the relevant VAT return, by the due date for the return and to a bank account specified by the MSI and in the currency specified where the Euro has not been adopted.	Sch3BA para 10(2) & para 11
369j (1 st paragraph)	The scheme user may not deduct VAT incurred in making BTE supplies through the special scheme but may use the special refund scheme.	Sch 3BA para 8(3) See also regulation 8 of the Value Added Tax (Amendment) Regulations 1995, amending Part 20 of the Value Added Tax Regulations 1995.
369j (2 nd paragraph)	If the scheme user is registered in the MSC for other taxable activities he may use the VAT return to recover VAT incurred in making BTE supplies in that MSC.	Sections 24-26 of the VAT Act 1994
369k	The scheme user must keep sufficient records of the BTE supplies made to allow the MSC to verify the figures declared on the VAT return. These records must be kept for a period of 10 years and, upon request, made available electronically to the MSI or MSC.	Sch 3BA para 12 and para 31.