

Japan Tax Update

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PwC Japan Tax Newsletter

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New Rules VAT Package Applicable as of 1 January 2010

The EU, which currently consists of 27 member states, has common rules to all the member states as for value added tax (VAT) as set forth in EU System Directive, EU Eighth Directive and EU 13th Directive.

In 1993, VAT taxation rules changed fundamentally and the customs border was abolished in EU. Now a similarly big revision is about to be performed for the VAT rule on intra-Community supply of services. Last December, a bill was submitted to make significant changes regarding the rules on place of supply of services supplied to businesses/entrepreneurs (B2B) and to customers (B2C), cross-border VAT refunds and the administrative cooperation and the exchange of information between EU Member States. That is the so-called 'VAT package'. Following the agreement of European Council on the framework of these new regulations, Committee of Ministers passed the bill on 20 February 2008.

The final adoption of the VAT package will certainly bring about a revolution for businesses engaged in cross-border trade. Companies will have to rethink the planning of their service flow as well as their compliance and reporting obligations.

Now that cross-border supply of goods and services is more and more active in 27 Member States of EU, one of the most substantial issues on VAT taxation is how to determine 'place of supply' for each transaction. Especially as for services, for the time being, as a general rule the supply is taxable where the supplier is established. However, there are a broad range of special rules for specific types of services, so rules on place of supply are quite complex.

The primary aim of the adopted changes is to levy VAT at the actual place of consumption of the services. This should reduce international tax planning using wide differences of tax rates between EU Member States. A precondition for the changes was that they should not lead to an additional administrative burden on businesses. It can be questioned whether that condition is met. The reverse charge mechanism will be applicable to a majority of the B2B services, which avoids having to deal with the burdensome VAT reclaims on the basis of the Eight and Thirteenth Directives. Businesses are however confronted with a new listing obligation for all cross-border services.

Essentially, the new B2B rules are the mirror image of the current rules. As a 'general rule' after the revision, B2B services will be taxable where the customer of the services is established, whereas for B2C services the general rule remains the same (i.e. taxable where the supplier is established). A number of exceptions to this rule exist (e.g. cultural services, catering services and services connected to immovable property).

Due to the applicability of the so-called 'effective use and enjoyment rules' to a wider range of services, the place of supply of services can be shifted to the country of consumption even more often.

In this Newsletter the place of supply rules for cross-border services are outlined. Most changes will be applicable per 1 January 2010. The schedules attached aim to provide you with a practical overview of the upcoming changes in this respect.

The new 'general rules' as of 2010

As of 1 January 2010 two new 'general rules' enter into force. The general rule for taxation of B2B services becomes the place where the customer is established, whereas for B2C services the general rule remains that these are taxable where the supplier is established.

For so-called 'general rule' services this implies the following:

- if these services are supplied to a VAT taxable person established in another EU Member State, the services are taxable in the country of the recipient;
- if these services are supplied to a customer established outside the EU, the services are taxable in the country of the recipient;
- if these services are supplied to a non-VAT taxable entity that is established in another EU Member State, the services are taxable in the country of the supplier of the services;
- if certain services are supplied to a non-VAT taxable entity that is established outside the EU, the services are taxable in the country of the recipient.

A number of fictions are included in the general rules above for reasons of simplification. The general rule for B2B services also applies to services supplied to taxable persons who also carry out activities which are outside the scope of VAT. Also nontaxable legal persons who are identified for VAT purposes (have a VAT identification number) are considered VAT taxable for purchasing services. To a certain extent this could give rise to VAT planning.

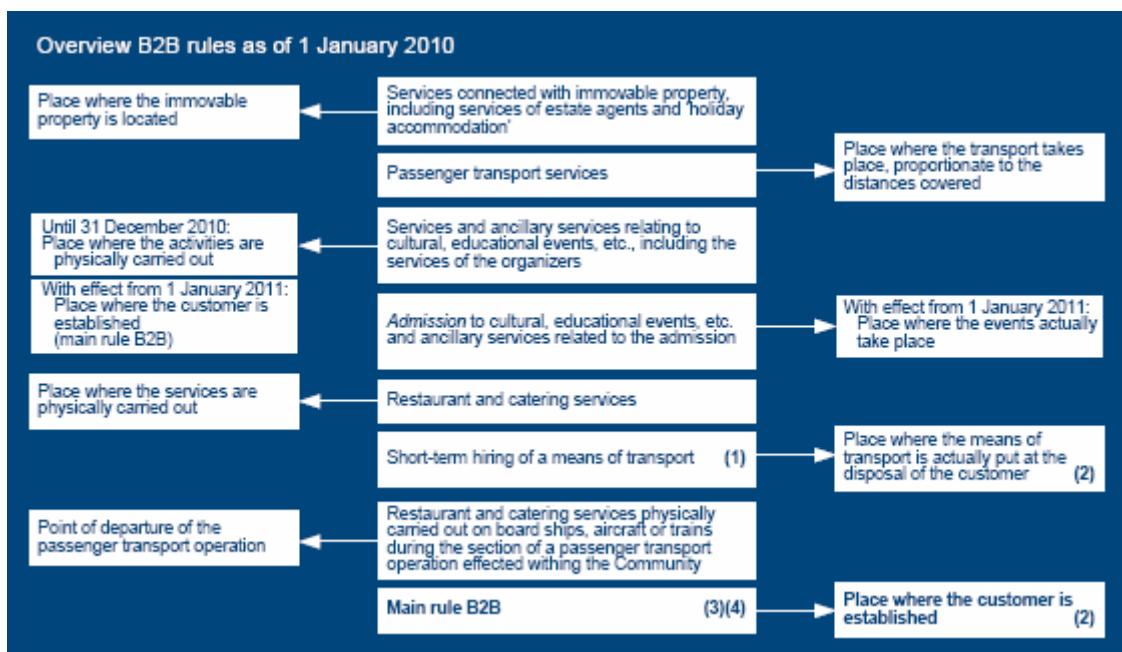
A number of exceptions to both 'general rules' (B2B and B2C) exists. At the same time, a number of existing exceptions are cancelled. It is relevant to understand that Member States can decide to tax certain services, which under the new rules are taxable in another country, in case those services are effectively used and enjoyed in that Member State. Because Member States are free to decide whether or not and into what extent to implement the 'effective use and enjoyment'-rules, the place of supply rules will vary between the countries within the EU. Businesses will be required to have knowledge of the specific rules that are applicable in the Member States of their customers.

Changes after 2010

On 1 January 2011, 1 January 2013 and 1 January 2015 some additional adjustments will become effective. These are mainly connected to the admission to cultural, scientific and sports events and the ancillary services related to those events, the hiring of means of transport and pleasure boats, telecommunication services, radio and television broadcasting services as well as electronically supplied services. For questions or more detailed information, please do not hesitate to contact us.



1. Member States need not apply the tax to that part of the intra-Community transport of goods to non-taxable persons corresponding to journeys made over waters which do not form part of the Community.
2. 'Short-term hiring of a means of transport' means the continuous possession or use of the means of transport throughout a period of not more than thirty days (ninety days for vessels).
3. If a Member State implements the effective use and enjoyment rules, the place of supply is where the effective use and enjoyment of the services takes place.
4. Until 31 December 2014, the application of the effective use and enjoyment rules is mandatory in situations where, on the basis of the normal place of supply rules, the place of supply of the service is outside the EU.
5. Until 31 December 2014, the effective use and enjoyment rules cannot be applied to electronically supplied services to customers outside the EU.
6. With effect from 1 January 2015, the implementation of the effective use and enjoyment rules is optional for all electronically supplied services that are regarded to take place outside the EU on the basis of the normal place of supply rules.
7. For EU and non-EU suppliers, the mini-one-stop-shop regime will apply.



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2. If a Member State implements the effective use and enjoyment rules, the place of supply is where the effective use and enjoyment of the services takes place.
3. The following services are, amongst other services, subject to the new main rule for B2B services (list is not exhaustive):
 - a) Valuations of and work on movable tangible property
 - b) Ancillary transport activities such as loading, unloading, handling and similar activities
 - c) Transport of goods
 - d) Services by intermediaries
 - e) "Intellectual services" that currently fall under art. 56(1) VAT Directive
 - f) Services that currently fall under the main rule of art. 43 VAT Directive
4. The reverse charge mechanism applies. For services to which the reverse charge mechanism applies, there is a requirement to file an EC Sales listing.

The above information is based on the Newsletter entitled "Place of supply, New rules VAT Package applicable as of 1 January 2010" published by PricewaterhouseCoopers.

For more information, please consult your international tax representative or contact any of the following members listed below:

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