

TAX PLANNING INTERNATIONAL INDIRECT TAXES

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European Union

B2C 2015 VAT changes: What do they mean for you?

In a little over 18 months, businesses anywhere in the world that sell e-services to essentially final consumers within the European Union (EU) will experience a dramatic change in VAT. The catalyst is an amendment to the VAT Directive, which harmonises the VAT treatment of many e-services supplied by businesses to consumers (B2C) within the EU.

Beginning January 1, 2015 this legislation will change the place of supply and the country of taxation of e-services (telecoms, broadcasting and “electronically supplied services”) supplied to final customers (B2C), from the country in which the supplier is established to the country in which the consumer is resident. Since many e-services suppliers are located in jurisdictions with favourable VAT rates, the legislation will mean a sharp increase in the prices charged to consumers or a cut in suppliers’ profit margins. VAT rates across the EU currently range from 15 percent (in Luxembourg) to 27 percent (in Hungary), with the range being even greater where reduced rates of VAT apply.

For European legislators, the move makes perfect sense and is long overdue. The relatively slow reaction of legislators to the burgeoning international market in e-services has resulted in an anomaly between the treatment of EU and non-EU companies that provide e-services to final consumers located in the EU.

The new legislation is intended to create a level playing field for all e-services suppliers selling to European final consumers, i.e. supplies to a private individual, certain charities and public bodies – B2C). However, there are a number of contentious areas, many of which will only be ironed out as the legislation comes into effect.

What are e-services?

The current definitions are found in the EU Implementing Regulation 282/2011 and in the EU VAT Directive 2006/112/EC. Services in three broad categories are within the scope of this legislation:

- Telecommunications, including fixed or mobile telephone services for voice or data, and VoIP services.
- Broadcasting, meaning radio or television programmes provided over a TV network or the internet.
- Electronic services, i.e. paid-for services that are delivered over the internet or other electronic network, in a way that is essentially automated and which cannot be delivered without IT. This category includes access to and downloading of screensavers, ringtones, music, films, online games, e-books, and online information including traffic, news and weather reports, and subscriptions to digital newspapers or magazines. Software upgrades meet the definition, as do website hosting, banner blocking

software, automated firewall installation, remote systems administration and online data warehousing.

Where is the customer?

The biggest challenge for businesses affected by the changes in the legislation will be determining, and proving, where each customer is based as it is their location that determines the place of taxation. The draft legislation outlines the evidence to be used to determine a customer’s location for VAT purposes. These are separated into two categories:

- Irrebuttable presumptions that can be taken as evidence on their own, including broadcasting, telecoms and e-services supplied to a telephone box or kiosk, Wi-Fi hotspot, internet cafe, restaurant, and similar locations, or through a prepaid SIM card.
- Rebuttable presumptions, which can be taken as evidence of a customer’s location provided two pieces of evidence concur and that there is no contradictory proof that the customer is resident elsewhere.

There will, of course, inevitably be cases where there is contradictory evidence about a customer’s location. The guidance released so far reminds us that the general rule should be that priority is given to the place of actual consumption to determine the place of taxation.

Compliance risks

The legislation presents considerable compliance challenges for businesses: In theory, the changes mean that a business could be obliged to file VAT returns in every EU country in which they have a customer. This would be an administrative nightmare. The EC is, as a result, planning to extend a special arrangement that is currently in place for non-EU suppliers. Under the simplified arrangement (sometimes referred to as the “mini one-stop shop” (MOSS) mechanism), suppliers of e-services can elect to register with the VAT authority of their “country of identification”, file a single VAT return and pay the tax due for all countries where they do not have a physical presence. The tax authority of the state of identification will then be responsible for distributing the VAT due to each jurisdiction in which the customers are located. For many businesses, this could alleviate the burden of multiple VAT registrations, filings and payments.

Commercial considerations

This is by no means a narrow VAT issue – there are many additional effects that businesses will need to consider. Pricing will need to be reassessed as a variety of VAT rates will apply to European customers dependent upon their location. Any agreements with third parties that are driven off consumer price will also need to be re-examined.

A further concern is that the suppliers’ need to ascertain the location of their customers could erode hard-won customer loyalty and the data protection implications of collecting customer information will also have to be addressed.

What next?

Businesses that will be affected by the changes in the legislation should already be well into the planning stage. There are a number of vital questions that need to be addressed, as quickly as possible:

- Are all the departments within your business that will be affected aware of the legislation?
- What evidence will you use for determining customer location?
- Will your pricing structure and billing procedures need to change?

- How should IT and other systems be adapted?

- What is the best approach to compliance?

What is clear is that no business can afford to wait for the implementation date. Preparation, and awareness, is key.

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