European Union:
VAT on Electronically Supplied Services

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Summary

In January 2015, an important change will take place in EU VAT (Value-Added Tax) rules concerning the determination of the place of supply of certain services. U.S. providers of telecommunication, broadcasting and electronic services to private consumers in the EU will become for charging VAT in the country where their customer is established. This rule will not apply to the supply of such services to other businesses, but will be applicable to direct sales to private customers.

Current rules and new rules

EU Member States had already agreed on these new VAT rules in 2008. However, entry into force was set for 2015, to give stakeholders enough time to prepare for such a fundamental transition. Since then, implementing rules, technical IT specifications, guidelines and explanatory notes for tax administrations and businesses have been set out. Currently, such services are taxed where the business supplier is established.

The new rule only brings changes for suppliers of such services to a consumer (a "non-taxable person") in the country where he is registered, i.e. where he has his permanent address or usually resides.

Further information concerning the new rule is centralized on the European Commission's Directorate-General for Taxation website: http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm

In short, the new rules for 2015:

FROM JANUARY 1, 2015, U.S. BUSINESSES PROVIDING TELECOMMUNICATION, BROADCASTING AND ELECTRONIC SERVICES TO PRIVATE CUSTOMERS WILL NEED TO CHARGE AND ACCOUNT FOR VAT IN THE EU COUNTRY WHERE THE CUSTOMER IS LOCATED.

What is an Electronically Supplied Service[1] or *ESS*?

An 'electronically supplied service' is defined in the following manner:

- *It is delivered over the internet or an electronic network (in other words reliant on the internet or similar network for its provision); and*

- *the nature of the service in question is heavily dependent on information technology for its supply (in other words, the service is essentially automated, involving minimal human intervention and in the absence of information technology, does not have viability).*

U.S. providers of the following types of services through direct sales to private customers/consumers will be affected by the change of rule. Electronically Supplied Services include:

- *digitized products generally, such as software and changes to or upgrades of software;*
- *a service which provides, or supports a business or personal presence on an electronic network (for example website or webpage);*
- *a service automatically generated from a computer, via the Internet or an electronic network, in response to specific data input by the customer;*
- *services, other than those specifically mentioned, which are automated and dependent on the Internet or an electronic network for their provision*

Examples of electronic, broadcasting and telecommunication services

Examples of the types of electronic services concerned by the rule change:
- Downloads of applications "apps"
- Downloads of games
- Web hosting
- Distance learning
- Downloads of music and films
- Downloads of e-books

Examples of broadcasting services:
- Radio and television programs transmitted over a network
- Live broadcasts over the internet

Examples of telecommunications services:
- Fixed and mobile telephone services
- Videophone services
- Access over the internet

[1] Definitions come from the UK Customs and Revenue website: http://webarchive.nationalarchives.gov.uk/+/http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&id=HMCE_CL_000907&propertyType=document

Where to register for VAT?

Since non-European suppliers will have to register for VAT, the EC has set up a single point of registration that will be valid for all transactions in 28 EU Member States. The Special Scheme for Non-EU Businesses offers companies the option of registering electronically in a single Member State of their choice and accounting for VAT from their sales throughout the EU.

Mini One-stop-shop (*MOSS)*

The MOSS (Mini One-Stop-Shop) system is a means whereby a supplier who is registered for VAT in one Member State will be able to declare the VAT it owes authorities in all EU Member States on a quarterly basis. Businesses will be able to make a single declaration and payment in the Member State where they have chosen to register their identification for VAT through the MOSS web portal. The tax authorities of the "Member State of Identification" will be responsible for forwarding the information and revenues, according to the declaration, to the relevant "Member States of Consumption." Thus, businesses will have to deal with just one administration rather than up to 28.

The EC's practical guide (167 kB) provides a good understanding of the MOSS system, which allows for two options, one EU and the other non-EU. Businesses are referred to as "taxable persons" in EU documents. U.S.-based businesses should chose the option under the "Non-Union scheme," where a business (be it a company, a partnership or a sole proprietor) can register if it "has not established its business in the EU, nor has a fixed establishment there, nor is either registered or otherwise required to be identified for VAT in the EU." Under the Non-EU scheme, U.S. businesses are free to choose the "Member State of Identification" where they will register for VAT.

What information will be supplied through the MOSS?

For each Member State in which a business has sold "electronically supplied services," companies must state on the declaration:

- The total value of all supplies in the 3-month period excluding any VAT;
- The VAT rate which has been applied; and
- The total amount of VAT payable

Determination of the place of taxation

Under current rules for e-services within the EU, VAT is due where the supplier is based and at the rate set by that Member State. With the standard rate of VAT varying from 15% to 27% across the EU, businesses frequently opt to establish in a Member State with a low VAT rate, which then applies for the e-services they supply throughout Europe.

The change in VAT rules in January 2015 will bring an end to this imbalance, as VAT will be charged at the rate of the country where the customer is located. This will apply equally to all businesses, whether European or non-European. For example, a customer living in Copenhagen will be charged the Danish VAT rate, regardless of whether the supplier is from Denmark, Luxembourg or the United States.

VAT rates are not harmonized

Each EU Member State has different VAT rates. The EU VAT Directive outlines the various processes, areas and types of goods and services which are covered by VAT rules, as well as possible exemptions. However, each country is free to set and change the VAT rate that is applicable in its territory; each EU Member State is also sovereign in its decisions to apply an exemption to a particular good.

For the various VAT rates, go to:
http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/rates/index_en.htm

Useful links

Presentations given at the EC seminar on VAT for ESS held in London, U.K., in June 2014:
http://www.online-web-presentations.com/HMRC/

EC Directorate-General for Taxation website :
http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm#new_rules

EC Explanatory Notes on the rule change:
http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/how_vat_works/telecom/explanatory_notes_2015_en.pdf

Our Report on how VAT impacts U.S. companies:
http://buyusainfo.net/docs/x_7079960.pdf

For More Information:

The U.S. Commercial Service at the U.S. Mission to the European Union is located at Boulevard du Regent 27, Brussels BE-1000, Belgium, and can be contacted via e-mail at: brussels.ec.office.box@mail.doc.gov; or www.export.gov/europeanunion
One can locate the nearest U.S. Export Assistance Center or Commercial Service offices throughout Europe by visiting www.export.gov

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