

The basic EU VAT rules for electronically supplied services explained for micro businesses

From 1 January 2015, telecommunications, broadcasting and electronically supplied services are always taxed in the country of the customer¹ – regardless of whether the customer is a business or a consumer. This document aims to give a simple explanation of the cases that fall under these provisions, especially having in mind electronically supplied services by micro businesses based in the EU.

This does not concern 1) the supply of goods where use is made of electronic systems only to place the order, and 2) the supply of services other than telecommunications, broadcasting and electronically supplied services.

If any of the explanations in this paper remain unclear, there are references to [Explanatory Notes](#) (and any other related documents), which provide the possibility to read about this in more detail. If still in doubt we advise you to contact your local tax administration. (Look at the end of this document on how to find the national contact points.)

In order to determine whether the 2015 rules apply to your business you should consider the following questions:

1. Does the definition of electronically supplied services apply to your business product?
2. Who and where are your customers?
3. How to fulfil your VAT obligations?

1. What are electronically supplied services?

The services are delivered over the Internet or an electronic network

The supply is all of the following:

- essentially automated
- involving minimal human intervention
- impossible to ensure in the absence of information technology

See more details in the [Annex below](#)

The business is involved in any of the following activities (**NB! the list of examples is not exhaustive**):

- [website supply, web-hosting, distance maintenance of programmes and equipment](#)
- [supply of software and its updates](#)
- [supply of images, text and information and making available of databases](#)
- [supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events](#)
- [supply of distance teaching](#)

Click on the links above to see specific examples.

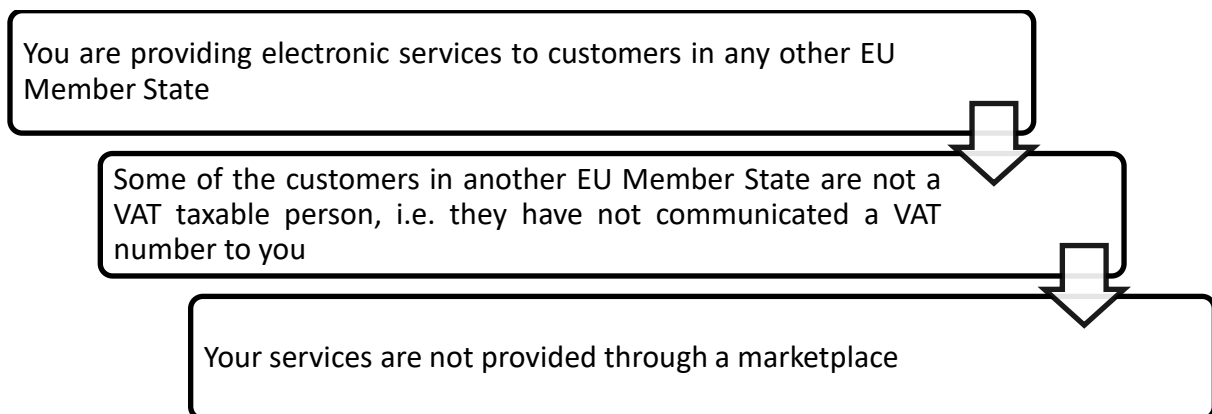
¹ See [page 3](#) for further explanation.

In order to determine whether a service qualifies as electronically supplied service you should check:

- first if the service is explicitly mentioned in one of the examples lists in the VAT Directive² and the VAT Implementing Regulation³ (see the chart above, and the examples in the [Annex below](#))
- secondly, if not mentioned among the examples, examine whether the service is mentioned as not being covered by the definition (see the [Annex below](#))
- finally, if the service cannot be found in any of these lists, verify whether it meets the criteria in the general definition (see the chart above and the [Annex below](#))

When looking at the examples list you must be mindful that the listed activities mainly serve as examples of main types of electronically supplied services known at the time of drafting the legal acts on VAT. Therefore, if you cannot find your service explicitly mentioned, you still have to go through the list which explicitly excludes certain services from being qualified and thereafter also check whether your service would be caught by the general definition.

2. Who and where are your customers?



If all of the above statements are true, then your business needs to account for VAT in the other EU Member State. You will find information about fulfilling the VAT obligations in Section 3 of this document.

If at least one of the statements is not true, then the consequences will be different.

If your business has customers only in your Member State you will account for VAT only in your Member State (that is if your business is or has to be registered for VAT).

If you have customers in another Member State, who are VAT registered (i.e. they have provided you with their VAT registration number), then these customers themselves account for VAT in their Member State (*reverse charge mechanism*).

² Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

³ Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax

If your services are provided through a marketplace then it is considered that you are supplying the service to a VAT taxable person (i.e. to the operator of the marketplace) who in turn is supplying the service further to the final customer, to a non-taxable person. The operator of the marketplace will be having VAT obligations in Member States where the final customers are located. See also [Explanatory Notes](#) Section 3, pages 22 to 44.

2.1. Determining the location of your customer

There are two general rules for determining the location of your customer.

In case the customer is a business (taxable person) it is either the country where it is registered or the country where it has fixed premises receiving the service.

In case the customer is a consumer (non-taxable person) it is the country where they are registered, have their permanent address or usually live.

Real life conditions often make it difficult to have full certainty of the location of a customer. Therefore some presumptions are allowed by the VAT Implementing Regulation (Articles 24a, 24b, 24d and 24f) to facilitate the application of VAT.

The following is a summary of more in depth explanations from [Explanatory Notes](#) Sections 7 to 9, pages 54 to 73.

2.1.1 Presumptions based on the information known about the consumer - apply only to business-to-consumer supplies (B2C).

Where physical presence of the consumer (i.e. **a non-taxable person**) is not required for receiving that service and you cannot be certain of the country where the consumer is registered, has its permanent address or usually lives, you are allowed to make a presumption based on the information available to you about your customer.

The most commonly used presumption is a general presumption which allows you to identify the location of the customer on the basis of **two items on non-contradictory evidence** as listed below in section 2.1.3. As of 2019, one item of evidence is sufficient if your annual turnover does not exceed EUR 100,000 – find more information on the [MOSS Portal](#), under the link '[What changes on 1 January 2019](#)'. This is a general presumption, to be used when none of the specific presumptions presented below applies (including the presumptions based on physical location).

Other B2C presumptions are as follows:

- Supply through a fixed land line – when services are supplied to a customer via his fixed land line, the customer is presumed to be actually located there and you will be able to rely on that.
- Supply through mobile networks – when services are supplied to a customer via mobile networks, the customer is presumed to be located in the country identified by the mobile country code of the SIM card used to receive the services.

- Supply using a decoder – where a decoder or similar device or a viewing card is needed to receive the services, the customer can be presumed to be located where the device is situated or where the viewing card is sent to for use there. It applies only if a fixed land line is not used.

2.1.2 Presumptions for the supplies at a physical location of the supplier and on board of a means of transport – apply to business-to-business (B2B) and business-to-consumer (B2C) supplies.

With the presumption for supplies at a physical location a supplier can assume that the customer is established, has his permanent address or usually resides at the place of the location where the service is being supplied by him and where the customer is present in person because the customer's physical presence is required for receiving that service. That would then be the place where the service supplied by that supplier is taxable. For example it concerns places such as a telephone box, telephone kiosk, Wi-Fi hot spot, internet café, restaurant, hotel lobby, but not only.

When the physical location where the services are supplied is on board of a ship, an aircraft or a train carrying out a passenger transport operation effected within the EU, the country of that location is deemed to be the country of departure of the transport.

2.1.3 Evidence for the identification of the location of the customer

There is a non-exhaustive list of evidence to determine the location of a customer in cases where you apply a general presumption (two pieces of non-contradictory evidence) or when you will need/want to rebut a presumption.

The illustrative list of evidence is as follows:

- the billing address of the customer;
- the Internet Protocol (IP) address of the device used by the customer or any method of geolocation;
- bank details such as the location of the bank account used for payment or the billing address of the customer held by that bank;
- the Mobile Country Code (MCC) of the International Mobile Subscriber Identity (IMSI) stored on the Subscriber Identity Module (SIM) card used by the customer;
- the location of the customer's fixed land line through which the service is supplied to him;
- other commercially relevant information.

2.1.4 Rebuttal of presumptions

You can choose to rebut a presumption in case you have **three items of non-contradictory evidence** (as listed above) which prove that the place of supply – the country of location of your customer – is different than deemed under a presumption. You are not obliged to rebut a presumption. Even though there can be evidence to the contrary, you may for determining the place where the customer belongs decide to rely on the presumption applied.

A tax authority may only rebut presumptions where there are indications of misuse or abuse by the supplier.

3. Fulfilling VAT obligations

If you supply services qualified as electronically supplied services to customers not being VAT taxable persons, located in other Member States than your own and receiving your service directly from you (not via a marketplace), you need to charge and account for the VAT of these other EU Member States. This implies that you have to charge VAT to these customers at the rate of the Member State where they are located.

It is important to acknowledge that even if your business is not registered as a VAT taxable person in your own Member State you still have to account for VAT in other Member States where your customers are located.

There are two options to fulfil your obligations:

- **Register for VAT in each Member State in which your customers are located**
- **Register for VAT Mini One Stop Shop (MOSS) in your own Member State only**

The first option – registering for VAT in other Member States – is not the subject of this paper.

As micro businesses will generally want to avoid registering for VAT in other Member States, the following focusses only on the simplification measure provided by the second option: the **VAT MOSS**.

- The MOSS is a computerised system that allows businesses supplying telecommunications, broadcasting and electronically supplied services to customers in another Member State to account for the VAT due on those services via a web-portal in their own Member State.
- If you are already registered for VAT in your Member State you can register for VAT MOSS in addition with the same VAT identification number that you use for your domestic returns.
- If you are not registered for VAT in your Member State (e.g. because the domestic threshold for registration is not reached) you can register only for the VAT MOSS. The sales in your Member State will remain VAT exempt as long as your annual turnover remains below the domestic threshold.
- You should submit a quarterly MOSS VAT return electronically to your Member State within 20 days after the end of the return period (e.g. the return for the first quarter of the year must be submitted by the 20th of April).
- In this VAT return, you have to declare the total turnover exclusive of VAT, the VAT rates applied and the total amount of VAT charged to your clients per Member State to which supplies have been made.

- You should pay the total amount of VAT due following the VAT return to your tax administration by the deadline for submitting the VAT return (e.g. by the 20th April for the first quarter of the year).
- Your Member State transmits the VAT return information to all Member States to which supplies have been made and distributes the VAT receipts to these Member States accordingly.

Deadline for registering to MOSS⁴

You should in principle register for the MOSS before you start supplying electronic services which qualify for its use. The registration takes effect from the first day of the calendar quarter following that in which you inform your tax administration of your intent.

However, it could be that you have had a customer from another Member State before you have decided to start using the MOSS scheme. In this case you have to inform your Member State by the 10th day of the next month that you have made such a supply and then the registration will take effect from the date of that supply.

4. The European Commission web portal for the MOSS and VAT rules on electronic services

There is a [dedicated web portal](#) with much more detailed information. You will find there, among others, several guides (translated into all EU languages), MOSS related information on national VAT rules and MOSS national contact points.

⁴ See also [Guide to the VAT mini One Stop Shop](#), "5) When will the registration take effect" on page 8.

Annex. The rules in detail: Definition and examples of electronically supplied services

The definition of "electronically supplied services" is given in Article 7(1) of the VAT Implementing Regulation:

'Electronically supplied services' include services which are delivered over the Internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology.

The following paragraphs of Article 7 provide a non exhaustive list of services that are covered and that are not covered by that definition.

| The definition shall cover , in particular | The definition shall not cover , in particular |
|---|---|
| <p>(a) the supply of digitised products generally, including software and changes to or upgrades of software;</p> <p>(b) services providing or supporting a business or personal presence on an electronic network such as a website or a webpage;</p> <p>(c) services automatically generated from a computer via the Internet or an electronic network, in response to specific data input by the recipient;</p> <p>(d) the transfer for consideration of the right to put goods or services up for sale on an Internet site operating as an online market on which potential buyers make their bids by an automated procedure and on which the parties are notified of a sale by electronic mail automatically generated from a computer;</p> <p>(e) Internet Service Packages (ISP) of information in which the telecommunications component forms an ancillary and subordinate part (i.e. packages going beyond mere Internet access and including other elements such as content pages giving access to news, weather or travel reports; playgrounds; website hosting; access to online debates etc.);</p> <p>(f) the services listed in Annex I [of the VAT Implementing Regulation, and given below in the Examples section].</p> | <p>(a) broadcasting services;</p> <p>(b) telecommunications services;</p> <p>(c) goods, where the order and processing is done electronically;</p> <p>(d) CD-ROMs, floppy disks and similar tangible media;</p> <p>(e) printed matter, such as books, newsletters, newspapers or journals;</p> <p>(f) CDs and audio cassettes;</p> <p>(g) video cassettes and DVDs;</p> <p>(h) games on a CD-ROM;</p> <p>(i) services of professionals such as lawyers and financial consultants, who advise clients by e-mail;</p> <p>(j) teaching services, where the course content is delivered by a teacher over the Internet or an electronic network (namely via a remote link);</p> <p>(k) offline physical repair services of computer equipment;</p> <p>(l) offline data warehousing services;</p> <p>(m) advertising services, in particular as in newspapers, on posters and on television;</p> <p>(n) telephone helpdesk services;</p> <p>(o) teaching services purely involving correspondence courses, such as postal courses;</p> |

| | |
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| | <p>(p) conventional auctioneers' services reliant on direct human intervention, irrespective of how bids are made;</p> <p>(t) tickets to cultural, artistic, sporting, scientific, educational, entertainment or similar events booked online;</p> <p>(u) accommodation, car-hire, restaurant services, passenger transport or similar services booked online.</p> |
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Examples

Here is a compilation of the activities listed in Annex II of the VAT Directive and of their examples in Annex I of the VAT Implementing Regulation.

(1) Website supply, web-hosting, distance maintenance of programmes and equipment:

- (a) Website hosting and webpage hosting;
- (b) automated, online and distance maintenance of programmes;
- (c) remote systems administration;
- (d) online data warehousing where specific data is stored and retrieved electronically;
- (e) online supply of on-demand disc space.

(2) Supply of software and updating thereof:

- (a) Accessing or downloading software (including procurement/accountancy programmes and anti-virus software) plus updates;
- (b) software to block banner adverts showing, otherwise known as Bannerblockers;
- (c) download drivers, such as software that interfaces computers with peripheral equipment (such as printers);
- (d) online automated installation of filters on websites;
- (e) online automated installation of firewalls.

(3) Supply of images, text and information and making available of databases:

- (a) Accessing or downloading desktop themes;
- (b) accessing or downloading photographic or pictorial images or screensavers;
- (c) the digitised content of books and other electronic publications;

- (d) subscription to online newspapers and journals;
- (e) weblogs and website statistics;
- (f) online news, traffic information and weather reports;
- (g) online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular such data as continually updated stock market data, in real time);
- (h) the provision of advertising space including banner ads on a website/web page;
- (i) use of search engines and Internet directories.

(4) Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events:

- (a) Accessing or downloading of music on to computers and mobile phones;
- (b) accessing or downloading of jingles, excerpts, ringtones, or other sounds;
- (c) accessing or downloading of films;
- (d) downloading of games on to computers and mobile phones;
- (e) accessing automated online games which are dependent on the Internet, or other similar electronic networks, where players are geographically remote from one another.
- (f) receiving radio or television programmes distributed via a radio or television network, the Internet or similar electronic network for listening to or viewing programmes at the moment chosen by the user and at the user's individual request on the basis of a catalogue of programmes selected by the media service provider such as TV or video on demand;
- (g) receiving radio or television programmes via the Internet or similar electronic network (IP streaming) unless the programmes are broadcast simultaneously over traditional radio and television networks.

(5) Supply of distance teaching:

- (a) Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student;
- (b) workbooks completed by pupils online and marked in an automated fashion without human intervention.