

In which country to tax telecommunications, broadcasting and electronic services? Overview

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DG TAXUD**

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The new 2015 EU VAT rules: which country gets the tax?

As of 1 January 2015, telecommunications, broadcasting and electronic services provided to a non-taxable person become in all cases **taxable in the country where the customer is located***.

– **the customer** could be a **business or a private individual**

* For a **business** (taxable person) the country where a taxable person is established or has a fixed establishment (nexus) to which services are provided.

* For a **final consumer** (a natural person or a non-taxable legal person) the country where he is established/has nexus (a non-taxable legal person) or where he has a permanent address or usual residence (a natural person).

– **the vendor** could be established within and outside EU:
equal treatment!



The new 2015 EU VAT : which country gets the tax?

When a vendor established within one of the EU countries provides a service to a **customer located outside the EU** (a **business** or a **final consumer**) : the service is **not subject to VAT** in the EU

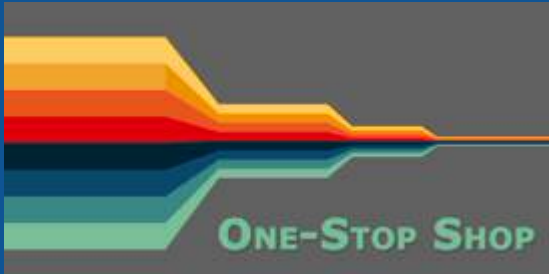


The new 2015 EU VAT rules: How to collect the tax?

“Use taxes” method (called reverse charge in the EU): only relevant if the client is a business

B2B: VAT not charged by the vendor: The business customer is obliged to account himself for the VAT (similar to use tax requirements in US)

B2C: VAT of the country of the customer charged* by the vendor. The vendor accounts for VAT



Where can you find detailed information?

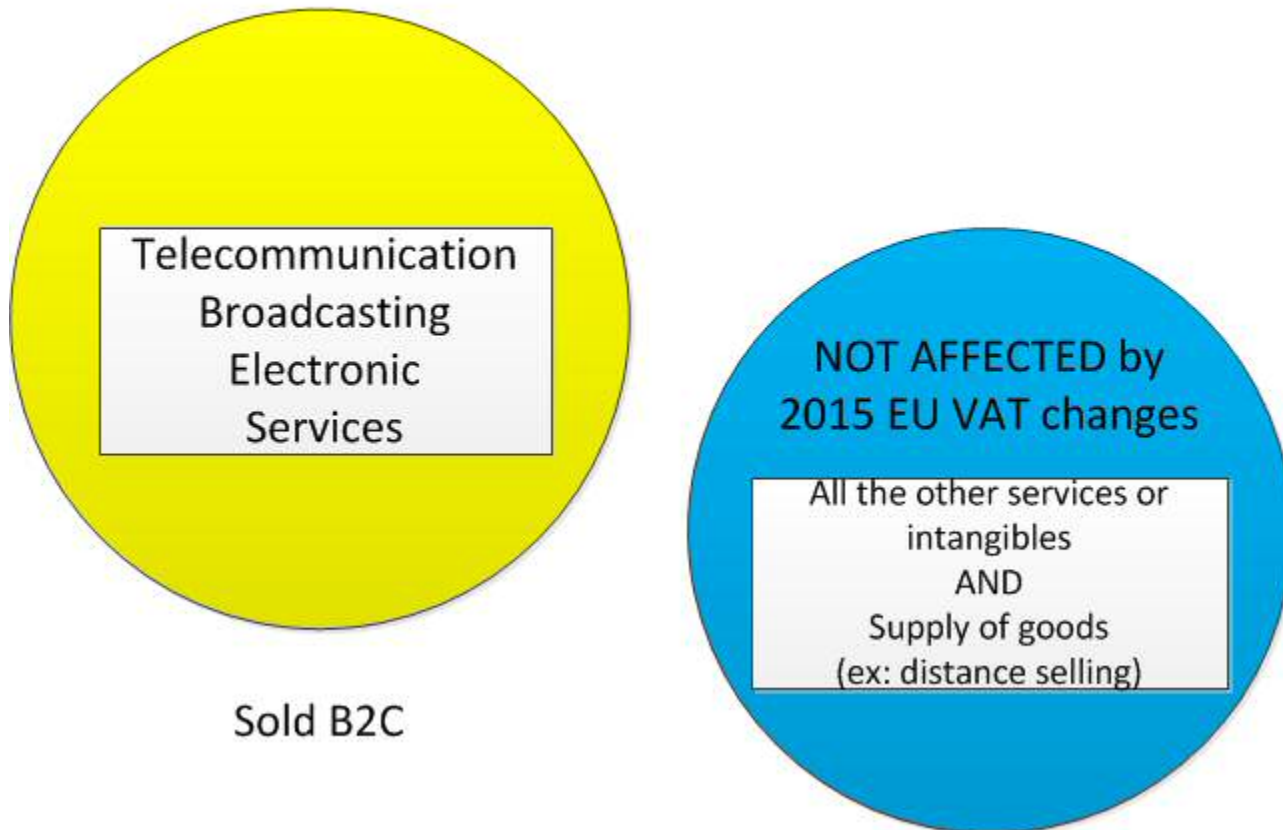
[Telecommunications, broadcasting & electronic services - European Commission](#)



What is a digital service?

- ❑ In the EU anything that is not a tangible good is treated as a service
- ❑ In the US you have a third category for “intangibles”
- ❑ A digital service in EU terms as covered by the new rules to these sorts of intangibles in US terms, includes:
 - ❑ **ONLY**
 - telecommunications
 - broadcasting
 - electronic (electronically supplied) services, like online games, downloads,...

2015 EU VAT CHANGES





What is a digital service?

- ❑ **For**
- ❑ lists of examples
- ❑ And a more complete picture of the services covered by the 2015 change
 - Please see the [Explanatory Notes](#), Chapter 2

What is a digital service?

- ❑ How are telecommunications defined in the rules?
- ❑ *'Telecommunications services' shall mean services relating to the transmission, emission or reception of signals, words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception, with the inclusion of the provision of access to global information networks.*
- ❑ What does this mean in practice?
 - ❑ Telephone calls and other types of similar activities are covered (cell phones, fixed lines, internet connections...)
 - ❑ NEVER the content!

What is a digital service?

- ☐ How is Broadcasting defined in the rules?
- ☐ *Broadcasting services shall include services consisting of audio and audio-visual content, such as radio or television programmes which are provided to the general public via communications networks by and under the editorial responsibility of a media service provider, for simultaneous listening or viewing, on the basis of a programme schedule.*
- ☐ What does this mean in practice?
 - ☐ Subscriptions people pay for receiving it
 - ☐ Simultaneous and quasi-simultaneous listening or viewing
- ☐ Broadcasting v. on demand: video on demand is NOT broadcasting, instead treated as an electronic service

What is a digital service?

- ❑ How are electronic services defined in the rules?
- ❑ *'Electronically supplied services' as referred to in Directive 2006/112/EC shall 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.*
- ❑ What does this mean in practice?
 - ❑ Communication via an e-mail does not mean that the service supplied is electronic: email is merely the means of delivery instead of E.G traditional mail
 - ❑ *E.G. Legal advice sent by e-mail is not an electronic service*
 - ❑ future proof

What is a digital service?

- ❑ **Lists of examples:** non-exhaustive; where possible priority given to positive lists
- ❑ **'Over the top' services**
 - ❑ can only be delivered via established communication networks (i.e. an underlying telecommunications service is necessary)
 - ❑ do not required the physical presence of the recipient at the location where the service is supplied
 - ❑ relevant for the presumptions on the customer's location
- ❑ **DETAILS:** CHAPTER 2 of [explanatory notes](#)
- ❑ 'Telecommunications networks' and 'communication networks' - interchangeable and cover all the possible networks
- ❑ 'Mobile networks' and 'electronic networks' - wholly contained subset of telecommunications networks

Who is the VENDOR?

Relationships with Intermediaries and Licensees

- Intermediaries are usually aggregators or integrators who act between content owners and app stores/mobile operators
- An intermediary can act either as:
 - “disclosed” agent leaving the designer of the content or the app developer responsible for VAT OR
 - “undisclosed” agent, in which case the intermediary is responsible for VAT on sales to consumers
- It is **really** important to state clearly in contracts who is responsible for VAT on sales to consumers
- If nothing clearly set: intermediary is responsible for VAT

Who is the **VENDOR**?

- ❑ Need to identify clearly who is the vendor to the final consumer, liable to pay the VAT to the relevant country
- ❑ Question arises when electronic services are supplied through a telecommunications network, an interface or a portal, and in particular when the service is not supplied directly to the final customer but via intermediaries taking part in the supply
- ❑ The final vendor to the final consumer will normally be responsible for the VAT

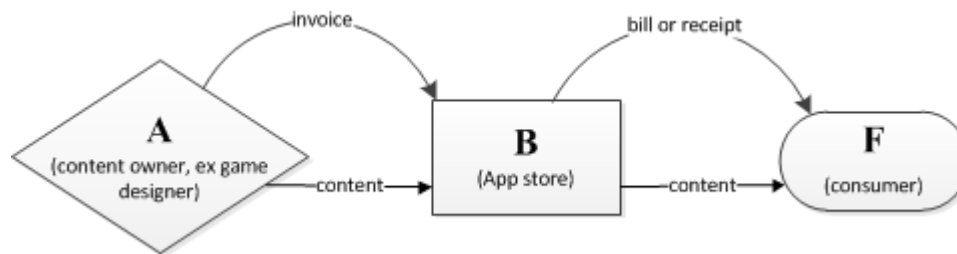


Who is the **VENDOR**?

- ❑ What does this mean in practice?
- ❑ the final vendor to the consumer (appstores, interface, portals) has responsibility to charge the VAT to the consumer
- ❑ *UNLESS* he can prove that he is not taking part in the supply
- ❑ The designers of the content or the app developers who sale through intermediaries should not normally be required to register and account for VAT

Who is the VENDOR? Case 1

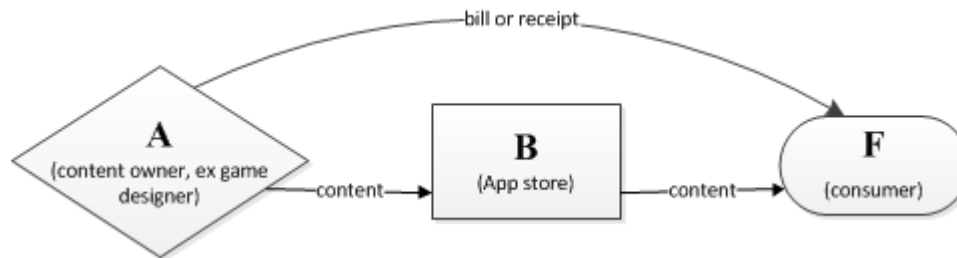
Who is responsible for VAT on sale to Consumer?



APPSTORE

Who is the VENDOR? Case 2

Who is responsible for VAT on sale to Consumer?



Content owner



Who is the **VENDOR?** Conclusion

- ❑ Need to look at the commercial, legal, relationships which will allow you to identify who has to collect the VAT
- ❑ Need for commercial and legal certainty and protection
- ❑ ***More details: see chapter 3 of***

[explanatory notes](#)



Who is the customer?

- ☐ VAT is due in the EU country where the customer is located
- ☐ You only have to charge VAT if your customer is not a business (ONLY B2C sales).
- ☐ How to know if your client is a business?
Customer and VAT identification number



Who is the customer?

How to decide in practice?

- a customer can be treated as a business if he has communicated to you his valid VAT number or that he is in the process of getting one
- a customer can be treated as a final consumer in all cases when he did not communicate his VAT number to you

Location of the customer – basic remarks

☐ Location of the final consumer

- ☐ for a natural person – permanent address or usual country of residence "what country are you living in?"
 - ☐ for a legal person – country where established
 - 1) country where functions of central administration are carried out, or
 - 2) other establishment: sufficiently permanent with suitable human and technical structure allowing to receive and use services supplied for its own needs
- What is a legal person other than businesses? Mainly public bodies – check from which country they are!



Location of the customer – basic remarks

- ❑ Customer in more than one country, obviously not always easy when customers are on the move!
- ❑ Commission worked with business and administration to simplify and come to easy and practical solutions.
- ❑ OBJECTIVE: EU and non EU vendors on the same page!
- ❑ Level playing field to avoid distortion of competition induced by different tax levels



Explanatory Notes on the EU VAT changes 2015

- ❑ Chapters 4, 5 and 6 of the EU 2015 VAT [explanatory notes](#)
- ❑ deal with issues included in this presentation



where is the tax due?

- ☐ How do you know where your customer is located?
- ☐ Practical solutions to:
 - ☐ Assist vendor in identifying country of taxation
 - ☐ High volume, low value supplies
 - ☐ Provide certainty



where is the tax due?
Digital supplies at physical location of vendor

- ☐ Presence of the customer is required?
 - ☐ Examples - Telephone booth, internet cafe, hotel lobby, wi-fi hot spot
 - ☐ Practical issues for the supplier:
 - ☐ Business and non-business customer?
 - ☐ Customer address?
- ☐ B2C supply + the sale is subject to tax in the country of telephone booth, internet café, hotel lobby, wi-fi spot
- ☐ Does not apply to 'over the top' services.



where is the tax due?
Digital supplies THROUGH -

TELECOMS via

☐ Fixed land line?

☐ country where land line is located

☐ Mobile networks (prepaid/post paid)

☐ country where code of SIM card

BROADCASTING via

☐ Decoder /viewing card

☐ where the decoder is located or viewing card is sent

☐ Decoder + landline? Country of landline takes precedence

ONLY applies to B2C

Does not apply to 'over the top' services.



where is the tax due? **Other Digital supplies**

- ☐ If the earlier simplifications do not apply:
- ☐ You need to obtain and retain 2 pieces of non-contradictory evidence
- ☐ More than 2 pieces?
 - ☐ Contradictory? Use the 2 most reliable



where is the tax due?

Evidence

Examples of acceptable evidence to support decision on where to tax:

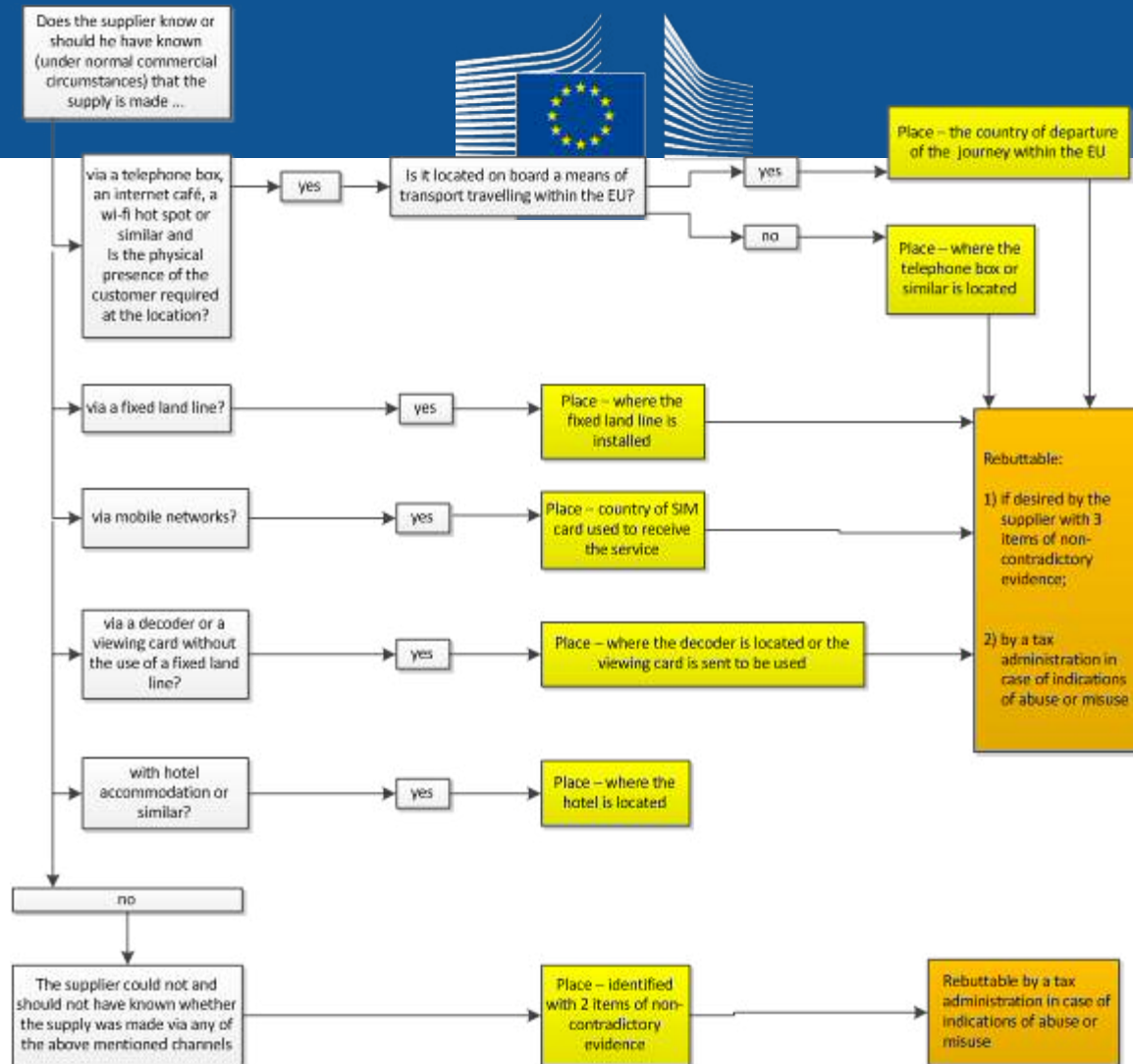
- ☐ Billing address
- ☐ IP address
- ☐ Bank details
- ☐ SIM country code
- ☐ Location of fixed landline
- ☐ Other commercially relevant information
 - ☐ examples
 - ☐ Unique payment mechanisms
 - ☐ Customer trading history



where is the tax due?
Can the simplifications be contradicted?

- ☐ The **vendor** may choose NOT to use the simplifications in following circumstances:
 - ☐ Usually on approach by customer
 - ☐ 3 pieces of non-contradictory evidence showing a country other than the one indicated by simplifications
- ☐ **Tax administration** can reject taxing decision
 - ☐ **ONLY** where there is indication of misuse or abuse
 - ☐ Legal certainty!

How to determine the country of consumption? **Summary**



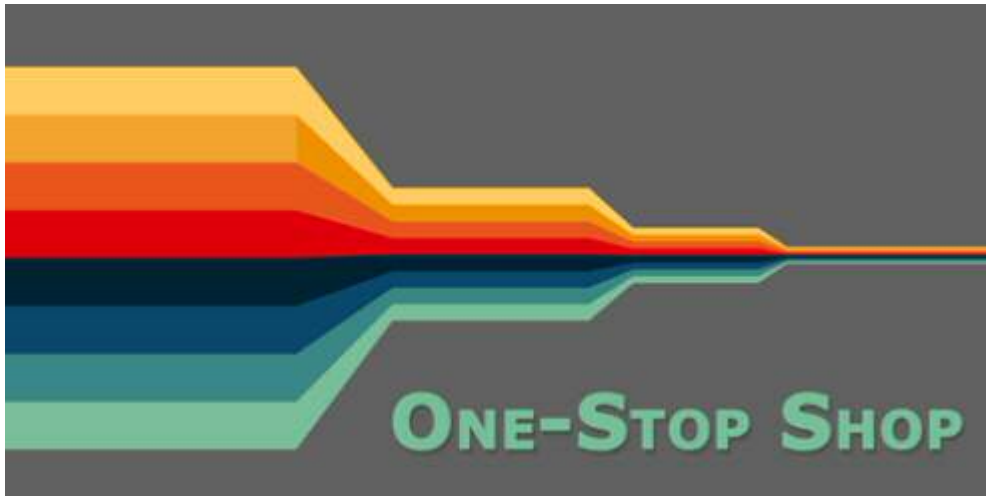
Evidence:

Billing address
 IP address
 Bank details
 SIM card country code
 Location of fixed land line
 Other commercially relevant information



CONCLUSION

- ❑ Be prepared
- ❑ Need for more details? Watch the video from the LONDON conference, which went into much more detail!
- ❑ Event in London, Monday 2 June 2014.
 - ❑ See [presentations and video of the event](#).
 - ❑ See Q&A document
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageLabel=pageLibrary_PublicNoticesAndInfoSheets&columns=1&id=LIB_VATINFO_2014



**Thank you for
your attention**