

# Place of Supply of Services

## 2010— THE EU VAT PACKAGE

### Introduction

On 12 February 2008, two Directives, one on the place of supply of services, the other on VAT refunds, were adopted by the EU Council of Ministers.

From 1 January 2010, the new rules on the place of supply of services will mean that business-to-business “B2B” supplies of services will be taxed where the customer is situated, rather than where the supplier is located.

For business-to-consumer “B2C” supplies of services, the place of taxation will continue to be where the supplier is established.

However, in certain circumstances, the general rules for supplies both to businesses and to consumers will not be applicable and specific rules will apply to reflect the principle of taxation at the place of consumption.

**“COUNCIL DIRECTIVE 2008/8/EC  
of 12 February 2008  
amending Directive 2006/112/EC  
as regards the place of supply of  
services**

These exceptions concern services such as restaurant and catering services, the hiring of means of transport, cultural, sporting, scientific and educational services, and telecommunications broadcasting and electronic services supplied to consumers.

Also from 1 January 2010, the current procedure for reimbursement of VAT incurred by EU businesses in Member States where they are not established will be replaced by a new fully electronic procedure, thereby ensuring a quicker refund to claimants. The current paper-based procedure is slow, cumbersome, and costly. It also lacks in legal certainty. The new procedure will better facilitate businesses and improve the functioning of the internal market.

A new feature is that businesses will be paid interest if Member States are late making refunds.

**“Changes effective  
as of  
1 January 2010”**

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**“New VAT  
refund  
procedure”**

## Place of Supply of Services 2010— THE EU VAT PACKAGE

### General Rule

The place of taxation is determined by where the services are supplied. This depends not only on the nature of the service supplied but also on the status of the customer receiving the service.

A distinction must be made between a taxable person acting as such (a business acting in its business capacity) and a non-taxable person (a private individual who is the final consumer).

The concept of a taxable person covers anyone who carries out an economic activity, even if that person is not identified for VAT purposes, but it also includes a non-taxable legal person identified for VAT purposes [Article 43 of the VAT Directive].

Only once the exact nature of the service and the status of the customer are known can the place where the services are supplied be correctly determined.

### “B2B

**Taxed at the  
customer’s place  
of establishment”**

### Business to Business — “B2B”

There is a new basic rule between the supply of services between businesses (B2B services) situated in different member states. The basic rule is that in principle these services are taxed at the customer's place of establishment, and no longer at the place where the supplier is established (as is currently the case).

#### Example 1

Supply of services by a Cyprus taxable company to another taxable company established in another member state, or to another taxable company established outside Europe.

No VAT should be charged as the services are outside the scope of Cyprus VAT.

The supplier of the services is obliged to verify the VAT number of the recipient of the service if the recipient is situated in a member state.

If the recipient is situated outside Cyprus then is obliged to keep appropriate evidence showing that the recipient is situated outside Europe and it carries out economic activity.

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### Example 2

Supply of services by a Cyprus taxable company to another Cyprus taxable company. Cyprus VAT should be charged (current vat rate 15%) as the supplier is established in Cyprus.

### Example 3

Supply of services by a non-Cyprus taxable company to a taxable company established in Cyprus. VAT should be charged by the Cyprus established company under the reverse charge provisions.

Under the reverse charge mechanism, it is the receiver of the services, rather than the supplier, who is liable to account for the VAT on the supply. The supplier will not charge VAT, but will have to specify on his invoice that the reverse charge applies.

The purchaser must account for VAT, but has the right to input tax recovery on the same VAT return, subject to the normal rules of claiming input VAT.

**“B2C  
Taxed at the  
supplier’s place of  
establishment”**

### “New Reverse Charge Provisions”

#### Business-to-Consumer — “B2C”

For business-to-consumer “B2C” supplies of services, the place of taxation will continue to be where the supplier is established.

However, in certain circumstances, the general rules for supplies both to businesses and to consumers will not be applicable and specific rules will apply to reflect the principle of taxation at the place of consumption.

These exceptions concern services such as restaurant and catering services, the hiring of means of transport, cultural, sporting, scientific and educational services, and telecommunications, broadcasting and electronic services supplied to consumers.

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### Example 4

Supply of consulting services by a Cyprus taxable company to a UK resident individual.

The place of supply is Cyprus and as a result Cyprus VAT should be charged at the rate of 15%.

### Example 5

Supply of consulting services by a Cyprus taxable company to a UK non-taxable company (i.e. pure holding company).

The place of supply is Cyprus and as a result Cyprus VAT should be charged at the rate of 15%.

### “Immovable Property

—

Where the immovable property is located.....”

### Special Rules with regards to the supply of services

#### *Supply of services connected with immovable property*

#### Article 47

The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, *shall be the place where the immovable property is located.*

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### Example 6

A company established in Cyprus is providing architectural services to either a company (B2B) or an individual (B2C) established in France in relation to the construction of a hotel in France.

The place of supply is where the land is situated, thus no Cyprus VAT.

However, the Cyprus company might be obliged to charge French VAT to its customer.

### “Passenger Transport

—

The place where the transport takes place..”

### Supply of transport

Article 48

The place of supply of passenger transport shall be the place where the transport takes place, proportionate to the distances covered.

### Example 7

The price of a bus ticket for a trip from Poland to France through Germany will include Polish, German and French VAT, proportionate to the distances travelled in each of these countries.

Should the trip pass via Switzerland, there will be no EU VAT on the distances covered in that country since Switzerland is not a member of the EU.

“No VAT on distances covered in countries that are not members of the EU”

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## Place of Supply of Services 2010— THE EU VAT PACKAGE

### Article 49

The place of supply of the transport of goods, other than the intra-Community transport of goods, to non-taxable persons shall be the place where the transport takes place, proportionate to the distances covered.

### Example 8

For goods transported for a private customer from Paris to Marseille, the company carrying out the transport must charge French VAT irrespective of where it is established.

### Article 50

The place of supply of the intra-Community transport of goods to non-taxable persons shall be the place of departure.

### Example 9

For goods transported from Germany to France for a private customer, German VAT must be charged on the transport irrespective of where the company carrying out the transport, or the customer is established.

**“Cultural, artistic, sporting etc....**

The place where the services are physically carried out ..”

**“Non intra EU transport of Goods**

The place where the transport takes place..”

**“Intra EU transport of Goods**

The place of departure..”

***Supply of services relating to cultural, artistic, sporting, scientific, educational, entertainment and similar activities and ancillary transport services***

The place of supply of the above services is at the place where those services are physically carried out [Article 53 of the VAT Directive]

### Example 10

For a conference organised in Stockholm for participants paying a fee to attend, Swedish VAT is charged.

### Example 11

A ticket bought for a football match played in Liverpool will contain UK VAT.

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### *Supply of restaurant and catering services*

#### Article 55

The place of supply of restaurant and catering services other than those physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, shall be the place where the services are physically carried out.

#### Example 12

Guests dining at a restaurant in Paris will be charged French VAT.

#### Example 13

A company which caters for an event in Firenze, arranging for food and drinks which it prepares and serves to the guests must charge Italian VAT on the services, no matter where it is established.

### **“Restaurant and catering services....**

The place where the services are physically carried out ..”

### *Supply of restaurant and catering services for consumption on board ships, aircraft or trains*

#### Article 57

The place of supply of restaurant and catering services which are physically carried out on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, shall be at the point of departure of the passenger transport operation.

#### Example 14

A meal served in a restaurant on board of a ferry sailing from Hull to Rotterdam (or any EU port). The service is subject to UK VAT.

### **“Restaurant and catering services for consumption on board ships, aircraft or trains....**

At the point of departure of the passenger transport operation..”

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## Place of Supply of Services 2010— THE EU VAT PACKAGE

### *Hiring of means of transport*

#### Article 56

The place of short-term hiring of a means of transport shall be the place where the means of transport is actually put at the disposal of the customer.

For the purposes of the above paragraph, "short-term" shall mean the continuous possession or use of the means of transport throughout a period of not more than thirty days and, in the case of vessels, not more than ninety days.

#### **Example 15**

A Belgian, on holiday or on business, in the Baltic countries arrives at Riga airport and picks up a car hired for two weeks. Latvian VAT will be charged on the hire.

#### **Example 16**

For a boat hired in Sardinia for 2 months, the hire will be subject to Italian VAT regardless of who is hiring the boat and where it goes.

### **"Short-term hiring of means of transport...."**

The place where the means of transport is actually put at the disposal of the customer .."

### *Supply of electronic services to non-taxable persons*

#### Article 58

The place of supply of electronically supplied services, in particular those referred to in Annex II, when supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the service is supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, shall be the place where the non-taxable person is established, or where he has his permanent address or usually resides.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.

#### **Example 17**

If a private person residing in Sweden makes use of a Japanese on-line library, Swedish VAT will have to be paid on the amount the Japanese company charges.

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### **"Electronically supplied services...."**

The place where the non taxable person is established/resides .."



## Place of Supply of Services 2010— THE EU VAT PACKAGE

### Supply of services to non-taxable persons outside Europe

#### Article 59

The place of supply of the following services to a non taxable person who is established or has his permanent address or usually resides outside the Community, shall be the place where that person is established, has his permanent address or usually resides:

- a) transfers and assignments of copyrights, patents, licences, trade marks and similar rights;
- b) advertising services;
- c) the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;
- d) obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this Article;
- e) banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes;
- f) the supply of staff;
- g) the hiring out of movable tangible property, with the exception of all means of transport;
- h) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto;
  - i) telecommunications services;
  - j) radio and television broadcasting services;
  - k) electronically supplied services, in particular those referred to in Annex II.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.

#### Example 18

When a Hungarian company sells an anti-virus program to be downloaded through its website to private individuals residing in Australia, there will be no VAT due in Hungary.

#### Example 19

Services rendered by a Belgian lawyer to a US professor will not be subject to VAT in Belgium.

### “Supplied services to non taxable persons outside Europe....

The place where the non taxable person is established/resides ..”

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## Place of Supply of Services 2010— THE EU VAT PACKAGE

### VIES & Reverse Charge Services

#### *Supply of services by a non-Cyprus taxable company to a taxable company established in Cyprus.*

VAT should be charged by the Cyprus established company under the reverse charge provisions.

Under the reverse charge mechanism, it is the receiver of the services, rather than the supplier, who is liable to account for the VAT on the supply. The supplier will not charge VAT, but will have to specify on his invoice that the reverse charge applies.

The purchaser must account for VAT, but has the right to input tax recovery on the same VAT return, subject to the normal rules of claiming input VAT.

#### *Supply of services by a Cyprus taxable company to a taxable company established in a Member State.*

VAT should be charged by the recipient of the service under the reverse charge provisions.

The Cyprus company will not charge VAT, but will have to specify on the invoice that the reverse charge provisions apply.

The receiver of the service must account for VAT, but has the right to input tax recovery on the same VAT return, subject to the normal rules of claiming input VAT.

**“Non Cyprus taxable company to a Cyprus taxable company....**

Reverse charge provisions. Cyprus company to account for VAT ..”

**“Cyprus taxable company to a EU taxable company ....**

Reverse charge provisions. EU company to account for VAT ..”

#### **Requirement to submit VIIES returns**

The new VAT package also extends the requirement to submit VIIES declarations in relation to reverse charge services.

This means that suppliers of services to businesses established in another EU Member State on which the recipient is required to account for VAT under the reverse charge procedure, will, from 1 January 2010, have to submit a VIIES statement.

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## Place of Supply of Services 2010— THE EU VAT PACKAGE

### **VIES & Reverse Charge Services**

From 1 January 2010, VAT registered persons making intra-EU supplies of services that are:

- Supplied to VAT registered businesses; and
- Taxable under reverse charge arrangements according to the rules in the customer's Member State

Will need to complete and submit VIES statements.

VIES will not be required in respect of supplies which are exempt according to the rules in the customer's Member State or where the customer is not VAT registered.

### **General Information about VIES statements**

- The new VIES form must be submitted every calendar month i.e. 12 submissions per year for each form.

**“VIES statements must be submitted every calendar month.... ”**

**“Extended obligation to submit VIES statements.... ”**

- There is no threshold for either supply of goods or supply of services. Hence, VAT registration and consequently, VIES registration is required irrespective of the value of transactions.
- VIES statements are to be submitted by the 15th day of the month following the month for which the statement relates. For example the VIES statement for February 2010 must be submitted by the 15th day of March 2010.
- Any corrections that need to be made to the VIES statement of a particular month can be made on a Corrections Statement which must be submitted by the end of the month following the month the original statement was submitted.

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