



New VAT rules for electronically supplied services enter into force today.

With effect of 1 July 2003, the Act of 22 April 2003 (Belgian State Gazette 13 May 2003) implements Council Directive on electronically supplied services.

The basic idea behind Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services (O.J. , 15 May 2002 L 128/41) is to tax these services at the place of the recipient of the service is established if they are supplied across the borders of the European Community and to allow the providers to register in one Member State only.

Services and place of services

The definition of services in the Belgian VAT code has been completed with the notion of 'electronically supplied services'. This concept relates to products (such as a digital book, music, ...) or services (e.g. teaching, ...) supplied via internet. Companies such as Amazon.com that take orders over the internet but physically deliver their products via the post are not aimed at.

To this effect, the concept is explained with a list of examples of services provided electronically (Article 18 § 1 2° 16° VAT Code). This is a word for word copy of the list in annex L to Directive 77/388/EEC, i.e.

- Website supply, web-hosting, distance maintenance of programmes and equipment;
- Supply of software and updating thereof;
- Supply of images, text and information, and making databases available;
- 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.

As for determining the place of the services, the electronically supplied services and the radio and television broadcasting services are added to the list of similar services such as advertising and legal services, telecommunication services (Article 21 § 3 7° i and j VAT Code).

This means that

- they are exempt of VAT if they are provided by a European Community provider to a customer outside the Community, and that
- they are taxed in the Member State of the customer if they are provided to him by a provider outside the Community.



However, there was a slight complication. The services listed in Article 21 § 3 7° are only taxable if the customer is established within the Community and acts for his economic activity, i.e. as a VAT payer. This would mean that individuals and non taxable corporate entities would not pay Belgian VAT if the provider is established outside Belgium. The VAT would be due in the Member State of the provider or no VAT would be due if the provider was e.g. American. This meant that non Community providers would have had a competitive advantage over their competitors within the Community, and that providers established in the Community who were able to chose their location would opt for Luxembourg (where the VAT is only 15 per cent) rather than for Denmark (25 per cent).

A specific rule is, therefore, introduced for radio and television broadcasting services (Article 21 § 3 9°) and for electronically supplied services (Article 21 § 3 10° VAT code).

- Services supplied electronically by a non Community provider to a customer in Belgium are liable to Belgian VAT.
- An additional criterion is added for broadcasters of radio and television programmes. If a non Community provider supplies such services to a non VAT payer within the Community, his services shall be liable to VAT in Belgium if they are used in Belgium. These services are also liable to Belgian VAT if the user is established outside Belgium but within the Community, if these services are performed in Belgium. The same rule already applies to providers of telecommunication services.

A single VAT number for the European Community

At the same time, Belgium introduces a special, optional, scheme for non Community operators providing electronically supplied services to non-taxable persons, in order to facilitate compliance with their fiscal obligations. Rather than obliging them to register in every Member States, Belgium allows such providers to opt for an identification in a single Member State, even if they are not operating in that Member State (new Article 58 bis VAT Code). The chosen Member State will give him a VAT number, collect the VAT and retrocede it to the other Member States.

If such provider opts for Belgium, he has to file an electronic statement of his name, mailing address, electronic addresses, and websites, and where applicable, his national fiscal identification number. Any changes or the end of the activity must be notified in the same manner. In particular, the provider does not have to appoint a VAT representative in Belgium.

He will have to declare and pay to the Belgian VAT Authorities the VAT due for all services rendered within the European Community, within 20 days following the end of the quarter. He will have to detail, for each Member State in which he has electronically supplied services, the turnover, the VAT rate and the VAT due

The provider must keep records of all transactions covered by the special optional regime for a period of ten years. These records must be made available electronically on request to Belgium and to the Member State of consumption.

The provider can, however, not deduct the input VAT from the VAT due on these electronically supplied services. If he wishes to recover the VAT, he will have to apply for a refund under the thirteenth Council Directive 86/560/EEC of 17 November 1986.



Temporary Rules

These rules are adopted for a period of three years, starting on 1 July 2003 which can be renewed by Royal Decree. By the middle of 2006, the European Commission shall review the relevant provisions and the Council may extend this period of three years or adopt an electronic mechanism for charging, declaring, collecting and allocating tax revenue on electronically supplied services with taxation in the place of consumption.

Marc Quaghebeur
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New E-Commerce VAT Rules Take Effect, Tax Notes Int'l, 7
July 2003, p. 16.