Electronically supplied services and broadcasting services: New EU place of supply rules

This Information Sheet explains the changes to the EU place of supply rules for electronically supplied services and radio and TV broadcasting services provided on or after 1 July 2003. These changes implement the VAT on E-Commerce Directive.

If you supply electronically supplied services you will also need to read the following VAT Information Sheets:

- Electronically supplied services: A guide to interpretation.
- Electronically supplied services: Evidence of customer location and status.
- Electronically supplied services: Special Scheme for non-EU businesses

This Information Sheet expands on guidance given in Business Brief 13/02. With effect from 1 July 2003 it replaces VAT Information Sheet 3/01 Digitised publications and announcements concerning Internet service packages in Business Briefs 22/97 and 06/02, which are withdrawn.

Introduction

What is this Information Sheet about?

This Information Sheet explains the effect on electronically supplied services and radio and TV broadcasting services of changes to the EU place of supply rules following implementation of the VAT on E-Commerce Directive (2002/38/EC).

Why are these new rules being introduced?

Under the rules in force until 1 July 2003, most electronically supplied services, including digitised products, and all radio and TV broadcasting services, were subject to VAT in the country where the supplier belongs. That meant UK businesses were required to charge UK VAT on those services to all their customers, irrespective of their customer’s location. Similarly, businesses in other Member States were required to charge VAT at their local rate. However, non-EU businesses were not required to charge EU VAT on supplies to EU customers. The changes removed this distortion of competition so that EU and non-EU businesses are taxed in a similar way.

The changes

With effect from 1 July 2003, the place of supply of electronically supplied services and radio and TV broadcasting services is normally in the country where the customer belongs subject, in certain circumstances, to where the services are effectively used and enjoyed.

Notice 741 VAT: Place of supply of services explains the place of supply rules for services and will be revised in due course to incorporate these changes.
Who is affected by these changes?

You will only be affected by these changes if you supply electronically supplied services or broadcasting services to, or receive them from, other countries whether EU or non-EU.

If you are a UK supplier of these services, you will no longer be required to account for VAT on supplies to:

- businesses in other Member States or
- non-EU customers (except, in certain circumstances, where they are used and enjoyed in the UK).

If you are a UK customer receiving these services from an overseas supplier for business purposes, or, in certain circumstances, using and enjoying those services in the UK, you will be required to account for VAT using the reverse charge procedure. Information about the reverse charge procedure can be found in Notice 741 VAT: Place of supply of services.

If you are a non-EU supplier of broadcasting services you will be required to register and account for UK VAT if you supply services that are used and enjoyed in the UK by UK private individuals or non-business organisations (eg government departments).

If you are a non-EU supplier of electronically supplied services providing services to private individuals or non-business organisations in the EU, you will be required to register and account for EU VAT.

How is this guidance set out?

Because of variations in the place of supply rules for the services affected by these changes, guidance is set out in separate sections. Sections 4 and 5 refer to electronically supplied services and Sections 6 and 7 refer to broadcasting services.

Law

New paragraphs 7B and 7C have been added to Schedule 5 of the VAT Act 1994 covering respectively radio and TV broadcasting services and electronically supplied services.

A new Article 16A has been added to the VAT (Place of Supply of Services) Order 1992 SI 1992/3121 (the Order) to ensure that electronically supplied services provided by non-EU businesses to EU consumers are taxed in the country where the customer belongs.

Amendments to Articles 17(b) and 18(b) of the Order allow the use and enjoyment provisions to be extended to broadcasting and electronically supplied services in certain circumstances.
What types of services are affected?

**Electronically supplied services**

If you supply electronically supplied services you will need to read the VAT Information Sheet *Electronically supplied services: A guide to interpretation*. It provides detailed guidance about the types of services affected by these new arrangements.

An electronically supplied service is likely to be dependent upon the Internet for its provision. However, it can also include other electronic networks used to provide digital content such as telecommunications (fixed or mobile), intranets and extranets, whether public or private. A common indicator of this type of service is that it will typically involve a high degree of automation, often with minimal human intervention.

The definition of electronically supplied services covers a wide variety of services such as:

- supply of websites or web-hosting services
- downloaded software (including updates of software)
- downloaded images, text or information, including making databases available
- digitised books or other electronic publications
- downloaded music, films or games
- electronic auctions or
- internet service packages.

However, services where an electronic network, such as the Internet, is used simply as a means of communication in much the same manner as a telephone or fax machine are not regarded as electronically supplied. An example of such a situation is where a solicitor uses the Internet to transmit reports in respect of work undertaken for a client. The supply by the solicitor is of legal services and not electronically supplied services.

**Radio and TV broadcasting services**

This includes broadcasting by audio and video signals, regardless of the means used (eg landline, line of sight or satellite link).

An example of a service affected is a subscription for satellite or cable television.

However, the service of transmitting another person’s material by electronic means is not a broadcasting service. For example, company A transmits the programmes of company B, a subscription TV company, via satellite. Company A is supplying telecommunications services within paragraph 7A of Schedule 5 of the Act to company B (but company B is supplying broadcasting to its subscribers).
Electronically supplied service: place of supply

When is the place of supply of electronically supplied services determined by where the customer belongs?

The place of supply is where the customer belongs when electronically supplied services are received by:

- any customer who belongs outside the EU or
- a customer who belongs in a Member State, but in a different country (EU or non-EU) to the supplier, and who receives the supply for business purposes or
- a private individual or non-business organisation who belongs in a member state, when supplied by a non-EU business.

This means that UK businesses receiving electronically supplied services from non-UK suppliers will have to account for the VAT using the reverse charge procedure. (Information about the reverse charge procedure can be found in Notice 741 VAT: Place of supply of services) Conversely, supplies by UK providers to customers in the first two categories above are not subject to UK VAT because they are outside its scope.

However, in certain circumstances, the place of supply is determined by where the effective use and enjoyment occurs.

When does the place of supply remain where the supplier belongs?

The place of supply remains in the country where the supplier belongs when:

- the customer belongs in the same Member State as the supplier or
- the customer belongs in a different Member State to his supplier and receives the supply other than for business purposes (eg a private individual or non-business organisation).

However, in certain circumstances, the place of supply is determined by where the effective use and enjoyment occurs.

How do suppliers of electronically supplied services determine if their customers are in business?

Suppliers are required to obtain commercial evidence from their customer to support any claim that they are in business in the EU.

You will need to read the VAT Information Sheet Electronically supplied services: Evidence of customer location and status which gives detailed guidance about the evidence which Customs will accept.
**Electronically supplied services: additional use and enjoyment rules**

**What does effective use and enjoyment of electronically supplied services mean?**

Effective use and enjoyment takes place where the customer actually consumes the electronically supplied services irrespective of contract, payment or beneficial interest.

For electronically supplied services, the use and enjoyment provisions do not apply in any situation where the customer is a private individual or non-business organisation. This is because most non-business customers use and enjoy the services in the same country in which they belong.

**When do the use and enjoyment rules apply?**

These extra rules apply in the following situations:

- where the supply is to another business (and not to a private individual or non-business organisation)
- where the place of supply would be the UK (because the supplier or the customer belongs in the UK) but the services are effectively used and enjoyed outside the EU and
- where a supply would be outside the EU (because the supplier or the customer belonged outside the EU), but the service was effectively used and enjoyed in the UK.

In these circumstances, the place of supply of the electronically supplied services is where their effective use and enjoyment takes place. Where this is the UK, the services are subject to UK VAT.

**Example:** A UK business purchases digitised software from an Irish supplier for use only in its branch in the Channel Islands. Although the supply is received in the UK where the business belongs, it is used outside the EU and is outside the scope of UK (and EU) VAT.

**Example:** A USA business purchases web-hosting services for its international business, including its UK branch. Although the supply is received in the USA, to the extent that it is used in the UK, it is subject to UK VAT.

**Example:** A UK business purchases downloaded information from another UK business for use both in its UK headquarters and its Canadian branch. Although the supply is received in the UK, to the extent it is used in Canada, it is outside the scope of UK VAT. UK VAT is due only to the extent of use by the UK headquarters.

Flowcharts 1-3 in the Annex will help you decide where electronically supplied services are supplied.
Do the use and enjoyment rules for electronically supplied services always apply?

The use and enjoyment rules apply in situations where the EU VAT position would otherwise be distortive. Consequently, they do not apply where:

- the supply is to a private individual or non-business organisation or
- the place of supply is the UK (because either the supplier or the customer belongs in the UK) and the service was effectively used and enjoyed in another Member State or
- the place of supply is in another Member State (because either the supplier or the customer belongs there) but the supply is effectively used and enjoyed in the UK.

Broadcasting services: place of supply

When is the place of supply determined by where the customer belongs?

The place of supply is where the customer belongs when broadcasting services are received by:

- any customer who belongs outside the EU or
- a customer who belongs in a Member State, but in a different country (EU or non-EU) to the supplier and who receives the supply for business purposes.

This means that UK businesses receiving broadcasting services from non-UK suppliers will have to account for the VAT using the reverse charge procedure. (Information about the reverse charge procedure can be found in Notice 741 VAT: Place of supply of services) Conversely, supplies by UK providers to customers in the above two categories are not subject to UK VAT because they are outside its scope.

However, where the services are received in the UK but are used outside the EU or are received outside the EU but are used in the UK, the place of supply is to be determined by where the effective use and enjoyment occurs.

For example, if the customer belonged outside the EU but effectively used and enjoyed the services in the UK then the supply would be subject to UK VAT.

When does the place of supply remain where the supplier belongs?

The place of supply remains in the country where the supplier belongs when:

- the customer belongs in the same Member State as the supplier or
- the customer belongs in any Member State and receives the supply for non-business purposes (eg a private individual or non-business organisation).
However, in certain circumstances, the place of supply is determined by where the effective use and enjoyment occurs.

**How do broadcasters determine if their customers are in business?**

Suppliers are required to obtain commercial evidence from their customer to support any claim that they are in business in the EU.

VAT registration numbers are the best evidence of business status and should be requested. If your customer is unable to provide a VAT number, you can accept alternative evidence of business status. This includes certificates from fiscal authorities, business letterheads or other commercial documents indicating the nature of the customer’s business activities. Such evidence should be kept as part of your records. Where VAT numbers are available, they should be shown on your invoice.

Some customers may be VAT registered but have non-business as well as business activities. Examples of such customers are eg government departments, municipal authorities. In such circumstances you must be satisfied that the services you are supplying to your customer are being used for the purpose of his business activities. If your customer cannot provide satisfactory evidence, you should charge VAT.

**Broadcasting services: additional use and enjoyment rules**

**What does effective use and enjoyment of broadcasting services mean?**

Effective use and enjoyment takes place where the customer actually consumes the broadcasting services irrespective of contract, payment or beneficial interest.

**When do the use and enjoyment rules apply?**

These extra rules apply in either of the following situations:

- where the place of supply would be the UK (because the supplier or the customer belongs in the UK) but the services are effectively used and enjoyed outside the EU and
- where a supply would be outside the EU (because the supplier or the customer belonged outside the EU), but the service was effectively used and enjoyed in the UK.

In these circumstances, the place of supply of the broadcasting services is where their effective use and enjoyment takes place. Where this is the UK, the services are subject to UK VAT.

**Example:** A satellite TV company established in India supplies broadcasting to UK subscribers. The services are used and enjoyed in the UK and are subject to UK VAT.

Flowcharts 4-6 in the [Annex](#) will help you decide where broadcasting services are supplied.
Do the use and enjoyment rules for broadcasting services always apply?

The use and enjoyment provisions apply where the EU VAT position would otherwise be distortive. Consequently, they do not apply where:

- the place of supply is the UK (because either the supplier or the customer belongs in the UK) and the service was effectively used and enjoyed in another Member State or
- the place of supply is in another Member State (because either the supplier or the customer belongs there) but the supply is effectively used and enjoyed in the UK.

Simplification for businesses supplying electronically supplied services and other services

Do I have to apply different rules if I supply telecommunications or broadcasting services as well as electronically supplied services?

Customs recognise that in certain situations, the place of supply would be the same whether the rules for telecommunications and broadcasting services, or those for electronically supplied services were applied. This is because most non-business customers use and enjoy services in the same country in which they belong.

Consequently, if you are:

- a UK business which supplies electronically supplied services
- your services are supplied to private individuals or non-business organisations
- your existing accounting systems are set up to tax supplies where they are effectively used and enjoyed and
- you may, exceptionally, opt to apply the use and enjoyment rules to your supplies of electronically supplied services.

This is a simplification measure which prevents the need for businesses to adjust their systems. However, Customs will not allow this simplification to be used in any case where we consider it leads to abuse.

Accounting for VAT on electronically supplied services and broadcasting services

Who accounts for VAT?

VAT must be accounted for on broadcasting and electronically supplied services supplied in the UK as set out below.

If you are UK supplier, you should account for output tax on these services in the normal way.
If you are a UK customer receiving these services for business purposes, you will be required to account for VAT using the reverse charge procedure if you:

- receive the services from an overseas supplier (except, in certain circumstances, where they are used and enjoyed outside the EC) or
- are a UK VAT registered branch of an international business and you use and enjoy these services in the UK which have been supplied by an overseas supplier to a non-EU establishment of your business.

Information about the reverse charge procedure can be found in Notice 741 VAT: Place of supply of services.

If you are a non-EU supplier of broadcasting services you will be required to register and account for UK VAT with effect from 1 July 2003 if you supply services that are used in the UK by UK private individuals and non-business organisations, subject to the normal rules.

If you are a non-EU supplier of electronically supplied services providing services to private individuals or non-business organisations in the EU, you are potentially required to register and account for VAT with effect from 1 July 2003 in every Member State where you supply your services. However, to relieve this burden, a simplified special scheme permits you to register electronically in the Member State of your choice and account for EU VAT on an electronic VAT return. You should submit this, with payment, to the authority in the member state of registration. That authority will then distribute the VAT to the member states where the services are consumed. This scheme does not apply to non-EU businesses supplying broadcasting or other services. If you choose not to register under the special scheme, or are not eligible for it, you will be required to register under the normal rules which apply in the relevant Member States. You can find out more about this in the VAT Information Sheet Electronically supplied services: Special Scheme for non-EU businesses.

If you are not already registered for UK VAT, the value of any broadcasting or electronically supplied services supplied to you in the UK, for use in your business, by a supplier outside the UK, must be added to the value of your own taxable supplies in determining whether you should be registered. Even if you make no taxable supplies yourself, you will still be a taxable person if the value of your imported services exceeds the registration limits.
How do I account for VAT on broadcasting or electronically supplied services that are only partly liable to UK VAT because of the use and enjoyment provisions?

You are only required to account for UK VAT to the extent that the place of supply of services is the UK. Therefore you should seek to identify the location where the services are actually used. Customs will normally accept any records or documentation that demonstrates any division in the provision of services, but where such records do not exist, you should make a fair and reasonable assessment. There is no prescribed method for determining the extent to which services are used in the UK. You may adopt whatever method is available to you that produces a fair and reasonable reflection of services that are liable to UK VAT, but if you are in doubt you should contact the National Advice Service. Evidence of how the apportionment has been made should be retained to be made available on request.

What if a UK VAT registered branch of an international company uses broadcasting or electronic services supplied to its non-EU headquarters by a non-UK provider?

The branch is required to account for UK VAT to the extent that the services are used in the UK by applying the reverse charge at the time the provider is paid. Customs recognise that branches may not always know at the time the exact amount which relates to UK use and enjoyment (or may even be unaware that the payment has been made). In the circumstances Customs will accept use by the branch of agreed provisional figures to be corrected at such time as actual figures become available.

How do I treat supplies which span the implementation date of 1 July 2003?

You are required to account for VAT on broadcasting and electronic services supplied in the UK to the extent which provides a fair and reasonable reflection of the services performed in the UK on or after 1 July 2003. Where you receive services from a business in another member state which span the implementation date, UK VAT will not be required if you can demonstrate that you have paid VAT in another Member State.

Who can I contact for further information?

If you require further information about the treatment of services supplied under these new arrangements please ring the National Advice Service on 0845 010 9000. You can call between 8.00 am and 8.00 pm, Monday to Friday.

If you have hearing difficulties, please ring the Textphone service on 0845 000 0200.

If you would like to speak to someone in Welsh, please ring 0845 010 0300, between 8.00 am and 6.00 pm, Monday to Friday.
Annex

Flowcharts

The flowcharts which follow are intended as guidelines to show whether UK VAT is due under the new rules. They should be read in conjunction with the relevant sections of this Information Sheet.

These flowcharts are available as PDFs.

Flowchart 1 Electronically supplied services - where the supplier is a UK business

Flowchart 2 Electronically supplied services – where the supplier is within the EU

Flowchart 3 Electronically supplied services – where the supplier is outside the EU

Flowchart 4 Broadcasting services - where the supplier is a UK business

Flowchart 5 Broadcasting services - where the supplier is within the EU

Flowchart 6 Broadcasting services - where the supplier is outside the EU

Electronically supplied services and broadcasting services: New EU place of supply rules

Changes to the EU place of supply rules for electronically supplied services and radio and TV broadcasting services provided on or after 1 July 2003