Electronically supplied services: a guide to interpretation

VAT Information Sheet 04/03

April 2003

This Information Sheet gives guidance on, and examples of what is meant by 'electronically supplied services'. It should be read in conjunction with the following Information Sheets:

01/03 - Electronically supplied services and broadcasting services: new EU place of supply rules
05/03 - Electronically supplied services: evidence of customer location and status
07/03 - Electronically supplied services: special scheme for non-EU businesses

Introduction

This Information Sheet sets out guidance on, and gives examples of what is meant by 'electronically supplied services'. It will help businesses decide whether their supplies will be affected by changes to the place of supply rules for such services, following implementation of the VAT on E-Commerce Directive (2002/38/EC) which take effect from 1 July 2003.

This Information Sheet deals only with identifying which services are treated as electronically supplied. You should refer to Information Sheet 01/03 Electronically supplied services and broadcasting services: new EU place of supply rules for detailed information about the changes to the place of supply rules.

This Information Sheet attaches an EU guideline, electronically supplied services: guide to interpretation in the Annex. This received the unanimous agreement of all Member States at the 67th Meeting of the EU VAT Committee, which discusses VAT technical issues. It followed work done by Customs & Excise in consultation with businesses. The guideline should help to ensure consistency of treatment of these services throughout the EU. However, it is important to note that it is not legally binding on Member States.

Legal references in the Annex refer to the Sixth VAT Directive, as amended by the VAT on E-Commerce Directive. Please see below for details of the corresponding UK legislation.

Who is affected by these changes?

- UK businesses supplying electronically supplied services.
• Non-EU businesses supplying electronically supplied services to EU customers.

• UK businesses and non-business organisations receiving electronically supplied services from outside the UK.

Law

The VAT on E-Commerce Directive (2002/38/EC) amends Article 9 of the EC Sixth VAT Directive (Directive 77/388). In particular, electronically supplied services are added to Article 9(2)(e) and a new Annex L is added to the Sixth Directive to provide an illustrative list of those services.

These changes have been implemented into UK law, by the addition of a new paragraph 7C to Schedule 5 of the VAT Act 1994 as amended by the Value Added Tax (Reverse Charge) (Amendment) Order 2003 (SI 2003 No 863).

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 Services on 0845 010 9000. You can call between 8.00am and 8.00pm, 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 8.00am and 6.00pm.

Annex: EU VAT committee guideline

Electronically supplied services: guide to interpretation

Introduction

This document sets out guidance on what is meant by; electronically supplied services; and will help businesses decide whether their services fall within the place of supply rules for such services (as per the last indent of Article 9(2)(e) of the Sixth VAT Directive). This document only addresses the place of supply issue.

The attached tables give examples of transactions that are either included or excluded from the definition of 'electronically supplied services'. Supplies of goods or supplies of services that are excluded from the definition are treated in accordance with other place of supply rules.

What is an 'electronically supplied service'?

An 'electronically supplied service' is one that:
• in the first instance is delivered over the Internet or an electronic network (in other words reliant on the Internet or similar network for its provision)

• the nature of the service in question is heavily dependent on information technology for its supply (in other words the service is essentially automated, involving minimal human intervention and in the absence of information technology does not have viability).

Therefore, on the basis of this two step test, an ‘electronically supplied service’ includes:

• **digitised products** generally, such as software and changes to or upgrades of software

• **a service** which provides, or supports a business or personal presence on an electronic network (for example website or webpage)

• **a service automatically generated from a computer**, via the Internet or an electronic network, in response to specific data input by the customer

• **services, other than those specifically mentioned in Annex L, which are automated and dependent on the Internet or an electronic network for their provision.**

Telecommunications and radio and television broadcasting services, covered respectively in the ninth and penultimate indents of Article 9(2)(e) of the Sixth VAT Directive, are not regarded as electronically supplied services for purposes of this Directive.

In general, the use of the Internet or other electronic networks by parties to communicate with respect to transactions or to facilitate trading does not, any more than the use of a phone or fax, affect the normal VAT rules that apply. For example, where parties simply use the Internet to convey information in the course of a business transaction (for example email), this does not change the nature of that transaction. This differs from a supply that is completely dependent on the Internet in order to be carried out (for example searching and retrieving information from a database with no human intervention).

In all instances, electronically supplied services will be taxable at the standard rate established by a Member State (in accordance with Article 12(3)(a) of the Sixth Directive), unless an exempting provision in a Member State applies. For example, when considering the supply of gambling, if the supply in the traditional manner is exempt in a Member State, it would also be exempt if it constituted a supply of an electronically supplied service.
The attached tables illustrate the above approach by classifying a range of supplies to provide clear examples of those that are regarded as being electronically supplied services and those that are not. This guidance is not intended to be exhaustive.

Supplies shown as excluded are treated in accordance with other place of supply rules. Particular care should be taken where a service includes both electronic and other elements. Such composite transactions must generally be considered on a case-by-case basis.

**Table 1**

<table>
<thead>
<tr>
<th>Annex L reference</th>
<th>Supplies covered by the legal text</th>
<th>Example of a service that is an electronically supplied service</th>
</tr>
</thead>
</table>
| Item 1            | A. Website supply, web hosting and distance maintenance of programmes and equipment. | • Website hosting and web page hosting.  
• Automated, online distance maintenance of programmes.  
• Remote systems administration.  
• Online data warehousing (in other words where specific data is stored and retrieved electronically).  
• Online supply of on demand disc space. |
| Item 2            | A. Software and updating thereof. | • Accessing or downloading software (for example procurement/accountancy programmes, anti-virus software) plus updates.  
• Bannerblockers (software to block banner adverts showing).  
• Download drivers, such as software that interfaces PC with peripheral equipment (for example printers).  
• Online automated installation of filters on websites.  
• Online automated installation of firewalls. |
| Item 3            | A. Images.  
B. Text and information. | • Accessing or downloading desktop themes.  
• Accessing or downloading photographic or pictorial images or screensavers.  
• The digitised content of books and other electronic publications.  
• Subscription to online newspaper |
### C. Making databases available.

- Weblogs and website statistics.
- Online news, traffic information and weather reports.
- Online information generated automatically by software from specific data input by the customer, such as legal and financial data (for example continually updated stock market data).
- The provision of advertising space (for example banner ads on a website/webpage).
- Use of search engines and Internet directories.

### Item 4

| A. Music. | • Accessing or downloading of music onto PCs, mobile phones, and so on.  
• Accessing or downloading of jingles, excerpts, ringtones, or other sounds.  
• Accessing or downloading of films.  
• Web-based broadcasting that is only provided over the Internet or similar electronic network and is not simultaneously broadcast over a traditional radio or television network, as opposed to Item 4, Table 2.  
• Downloads of games onto PCs, mobile phones, and so on.  
• Accessing automated online games which are dependent on the Internet, or other similar electronic networks, where players are remote from one another. |
| B. Films. |  |
| C. Broadcasts and events - political, cultural, artistic, sporting, scientific and entertainment. |  |
| D. Games, including games of chance and gambling games. |  |

### Item 5

| A. Distance teaching. | • Teaching that is automated and dependent on the Internet or similar electronic network to function, including virtual classrooms, as opposed to Item 2(b), Table 2.  
• Workbooks completed by pupil online and marked automatically, without human intervention. |

### Item 6

| A. Those not explicitly | • Online auction services (to the |
Other services included listed in Annex L. extent that they are not already considered to be web hosting services under Item 1) that are dependent on automated databases and data input by the customer requiring little or no human intervention (for example an online market place or online shopping portals), as opposed to Item 3(f), Table 2.

- Internet Service Packages (ISPs) in which the telecommunications component is an ancillary and subordinate part (in other words a package that goes beyond mere Internet access comprising various elements (for example content pages containing news, weather, travel information; games for a; web hosting; access to chatlines and so on)).

Table 2

<table>
<thead>
<tr>
<th>Example of a transaction not considered to be a supply of an 'electronically supplied service'</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) A supply of:</td>
<td>• These are supplies of goods.</td>
</tr>
<tr>
<td>(a) A good, where the order and processing is done electronically.</td>
<td></td>
</tr>
<tr>
<td>(b) A CD-Rom, floppy disc and similar tangible media.</td>
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<tr>
<td>(c) Printed matter such as a book, newsletter, newspaper or journal.</td>
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<tr>
<td>(d) A CD, audio cassette.</td>
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<tr>
<td>(e) A video cassette, DVD.</td>
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<tr>
<td>(f) Games on a CD-Rom.</td>
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<tr>
<td>2) A supply of:</td>
<td>• This is a supply of service that relies on substantial</td>
</tr>
</tbody>
</table>
(a) services of lawyers and financial consultants and so on, who advise clients through email.  
(b) interactive teaching services where the course content is delivered by a teacher over the Internet or an electronic network (in other words via remote link).

human intervention and the Internet or electronic network is only used as a means of communication.

3) A supply of:  
(a) Physical repair services of computer equipment.  
(b) Offline data warehousing services.  
(c) Advertising services, such as in newspapers, on posters and on television.  
(d) Telephone helpdesk services.  
(e) Teaching services involving correspondence courses such as postal courses.  
(f) Conventional auctioneers’ services reliant on direct human intervention, irrespective of how bids are made (for example in person, Internet or telephone), as opposed to Item 6(a), Table 1.

These are supplies of services that are not delivered over the Internet and rely on substantial human intervention.

4) A supply of a radio and television broadcasting service provided over the Internet or similar electronic network simultaneous to the same broadcast being provided over traditional radio or television network, as opposed to Item 4(c), Table 1.  

This is a supply of a radio and television broadcasting service, which is covered by the penultimate indent of Article 9(2)(e).

5) A supply of:  
(a) Videophone services (in other words telephone services with a video component).  
(b) Access to the Internet and world wide web.  
(c) Telephony (in other words telephone

These are supplies of telecommunication services and are covered by the place of supply rules for such services under the ninth indent of Article 9(2)(e).
service provided through the Internet).