



New European VAT rules: simplified?

Since the 1st January 2010 there are changes regarding the European sales tax (hereafter VAT) in force.

In the case of international cross border service supply, it must be determined where the services are taxable. This is important for determining which country is authorised to collect the VAT. The rules regarding the determination of the location of the service are changed and simplified. A distinction is made between:

1. Services to entrepreneurs (business-to-business services: B2B); and
2. Services to non-entrepreneurs (business-to-consumer services: B2C).

B2B services

From 1st January 2010, cross-border services will be taxable in the country where the recipient of the service resides or has a permanent establishment. This new main rule for cross-border B2B services will apply to all B2B services, except:

1. Services regarding real estate (country of real estate);
2. Artistic, cultural, scientific, educative, entertainment or similar activities like trade fairs and exhibitions, including the organisation of such activities (country of activity);
3. Transport of people (country of transportation);
4. Restaurant and catering services (country of activity), unless on board ships, aircraft or trains within the EU (country of departure);
5. Vehicle hire for short periods (country of disposal);

The change in legislation has as a consequence that a great number of services are no

longer taxable in the country where the service provider is residing. Since 1st January 2010 the place of service is shifted towards the country of the recipient. This is the case, for example, for management services, merchant and investment bank services, rating office services, passing on (concern) costs, complex services, works on movables, arbitration services and executorial services. If the recipient of the services is residing in the EU, than VAT over the B2B service must be paid in the country of residence of the buyer. If the recipient is not established in the EU, no EU VAT is due.

Also new is that VAT taxation on cross-border B2B services will be transferred if the buyer is a (partial) entrepreneur. If the buyer carries out exempted works or partial works for which he is not qualified as an entrepreneur, the B2B service will also be taxable in the buyer's country, regardless of whether he is using the rendered services for exempted or for non-entrepreneurial works.

(Public or private) legal persons/non-entrepreneurs having a VAT identification number by other reasons, will be regarded as entrepreneurs for the determination of the service location. The VAT due over the services is transferred to the recipient of the services (reverse charged). The recipient of the cross-border B2B services must include the transferred VAT in his tax declaration as VAT due. The transferred VAT can be deducted in the same declaration as prepaid tax if and insofar as the buyer performs in a taxable way.

From 2010, the entrepreneur residing in the EU who renders B2B services to buyers in other EU-countries, must periodically submit a statement form on which those rendered services must be specified. This listing obligation only applies to services that, according to the main rule, are taxable in the country of the recipient of the services. On the basis of this listing, the tax authorities in the EU member states may check whether the entrepreneurs fulfil their VAT obligations. The statement form must be submitted after each quarter.

B2C services

With regard to B2C services, not much will be changed from 2010. In principle, those services will remain taxable in the country where the service provider is residing. The following exceptions apply to this:

1. Services regarding real estate (country of real estate);
2. Artistic, cultural, scientific, educative, entertainment or similar activities like trade fairs and exhibitions, including the

organisation of such activities (country of activity);

3. Transport of people (country/countries of transportation in proportion to distance travelled);
4. Vehicle hire for short periods (country of disposal);
5. Mediation on behalf and at the account of someone else (country where the underlying activity is taxable);
6. Non-intra-communal transport of goods (country/countries of transportation in proportion to distance travelled);
7. Intra-communal transport of goods (country of departure);
9. Loading, unloading and other activities connected to transportation (country of activity);
10. Disposal of the renter. From this date, the long-term hire of other means of transportation will be taxable where the buyer is residing or where he has his domicile or usual place of stay

Please note if an entrepreneur from the EU renders services to a non-entrepreneur outside the EU most of the services rendered will stay out of reach of VAT. But at the other hand,

a number of anti-abuse provisions will remain in force. Therefore, EU VAT is levied on the actual consumption of services in the EU. Entrepreneurs not residing in the EU must pay VAT in the EU for the services rendered.

For additional information regarding any of the issues raised in this Taxmail, please contact any of the professionals of Van Oers International listed below or your local Van Oers contact person.

Gijs Vernooij
F +31 (0)76 – 530 38 00
E g.vernooij@vanoers.nl

Eddy van Oosterhout
F +31 (0)165 – 58 26 00
E eddyvanoosterhout@vanoers.nl

Kurt van Heerwaarden
F +31 (0)76 – 530 38 00
E k.vheerwaarden@vanoers.nl

Ginnekenweg 145
4818 JD Breda
Postbus 2039
4800 CA Breda
T +31 (0)76 530 38 00
F +31 (0)76 530 38 01
E breda@vanoers.nl

Bovendonk 7
4707 ZH Roosendaal
Postbus 50
4700 AB Roosendaal
T +31 (0)165 58 26 00
F +31 (0)165 58 26 01
E roosendaal@vanoers.nl

Hofdreef 24
4881 DR Zundert
Postbus 88
4880 AB Zundert
T +31 (0)76 597 88 00
F +31 (0)76 597 88 99
E zundert@vanoers.nl

Europark 5
4904 SX Oosterhout
Postbus 60
4900 AB Oosterhout
T +31 (0)162 49 70 60
F +31 (0)162 49 70 61
E oosterhout@vanoers.nl

Bredaseweg 117
4872 LA Etten-Leur
Postbus 165
4870 AD Etten-Leur
T +31 (0)76 502 57 00
F +31 (0)76 502 57 01
E ettenleur@vanoers.nl

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