

VAT2015 DECODED



Changes to the VAT rules –
Telecommunications, Broadcasting and Electronic Services

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Determining the location of the customer

With effect from 1 January 2015, telecommunications, broadcasting and electronic services supplied to private consumers (private individuals / non-taxable persons) in the EU will be taxable in the Member State of the customer.

Cross-border service providers will have to identify where their customers are located and charge VAT accordingly.

The rules will provide that the place of supply of the relevant services will be where the customer is **established**, has his **permanent address** or **usually resides**. One of the challenges will be the implementation of measures which can properly identify the location of customers, in line with the requirements of the legislation, with the aim of ensuring taxation at the actual place of consumption.

The EU Commission's proposed amendments to the VAT Implementing Regulation¹ provides some guidance towards determining the location of a customer.

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The general principles

The rules set out the following location points: the place of establishment (in the case of non-taxable legal persons) and permanent address and usual residence (in the case of natural persons). Where an individual's permanent address is different to his usual residence, the proposed guidance suggests that priority is to be given to the place of usual residence unless it can be proven that the service is consumed at the

¹ Proposal for a Council Regulation amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services.

location of the permanent address.

Evidence of location

The proposed Commission guidance provides a non-exhaustive list of details which will be considered acceptable in determining where a customer belongs, including, a billing address, bank details and an IP address. Two pieces of non-contradictory evidence will be required.

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Specific Scenarios: presumptions

The proposed Commission guidance sets out presumptions which apply in specific scenarios and are intended to provide practical assistance and guidance to operators in the process of identifying where the service is considered to be supplied, particularly in cases where a customer's address/place of residence cannot be identified (e.g. telecom services in a phone booth; internet access through a WiFi hotspot). For example, the proposed presumption is that in the case of telecoms, broadcasting and e-services services supplied at certain locations such as a booth, restaurant, hotel lobby, etc., the customer will be considered to have his permanent address/place of usual residence at that specific location and the service is used and enjoyed there.

Certain presumptions as to customer location may be rebutted on the basis of evidence to the contrary.

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For further information contact:

Sarah Aquilina

saquilina@deloitte.com.mt

Senior Manager, Indirect Taxes

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Deloitte Place
Mriehel Bypass, Mriehel
Malta

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