

4. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

4.1 Origin: Commission
References: Article 58 and Annex II of the VAT Directive
Article 7 and Annex I of the VAT Implementing Regulation
Subject: VAT 2015: Scope of the notion of electronically supplied services; minimal human intervention (second follow-up)
(Document taxud.c.1(2017)1270284 – Working paper No 919)

1. The VAT Committee **almost unanimously** agrees that as regards the scope of the definition of “electronically supplied services” as laid down in Article 7(1) of the VAT Implementing Regulation:

- (a) the independent activity of a third person/party, to which the service being analysed relates, shall be irrelevant for the assessment of what is “minimal human intervention”;
- (b) the activity of staff of the supplier of services, performed independently from any individual request to provide a particular service made by a customer, shall be seen as falling within the limits of “minimal human intervention”.

2. The VAT Committee **unanimously** agrees that where the human activity on the side of the supplier focuses on generic, non-specific adjustments to the system environment and not on individual requests made by customers, such activity shall be seen as not trespassing the “minimal human intervention” requirement included in the definition of electronically supplied services.

Therefore, the VAT Committee **unanimously** confirms that work of staff of a company providing online services on a system through which the services are delivered with a view to its constant update, customisation or improvement, shall be seen as falling within the limits of “minimal human intervention” where the work does not target individual requests of customers but refers to generic, non-specific changes of the system environment as such.

The VAT Committee also agrees **unanimously** that staff of a company running the system in real time with a view to preventing the system from breaking down as a result of actions taken by customers requesting the provision of a service, shall be seen as acting within the limits of “minimal human intervention”.

It is thus the **unanimous** view of the VAT Committee that the above kinds of arrangements shall be seen as an activity of the supplier comparable to the initial setting up of the system needed for the supply, its regular maintenance and repairs¹.

3. The VAT Committee **unanimously** recognises that for the assessment of the scope of the definition of electronically supplied services, account shall be taken of possible abusive practices aimed at circumventing the rules on the place of supply of services for VAT purposes.
4. The VAT Committee **unanimously** confirms that the assessment of whether bundled/composite services, when they also include electronically supplied services, qualify as a single supply or multiple supplies must be done on a case-by-case basis taking into account the criteria set by the Court of Justice of the European Union. When carrying out that assessment, the VAT Committee unanimously agrees that all the circumstances of the composite supply must be taken into consideration.
5. The VAT Committee **unanimously** agrees that in situations where one and the same supplier offers several different packages (i.e. supplies of services each containing certain different elements distinguishing one supply from the other) for the customer, each package has to be assessed separately for VAT purposes.

Where within the package the supplier is obliged to provide feedback by a staff member to the customer, even if this option is not used in practice by the customer, the VAT Committee **almost unanimously** acknowledges that such a supply shall be seen as involving more than just “minimal human intervention”.

6. The VAT Committee **unanimously** agrees that services shall qualify as electronically supplied where:
 - (i) such services are as a rule fully automated, and
 - (ii) at the same time within the system, *via* which these services are supplied, there is the possibility, in exceptional individual cases involving particular, more complex problems, for the programmes running that system to direct the customer to a staff member for resolution of those problems.

¹ Guidelines resulting from the 102nd meeting of 30 March 2015 – Document D – taxud.c.1(2015)4128689 – 862480 (point 3).

In essence, the VAT Committee **almost unanimously** considers that such exceptional interventions must be seen as activities assuring the smooth running of the system as such, and therefore not exceeding the “minimal human intervention” requirement included in the definition of electronically supplied services.

7. The VAT Committee **unanimously** agrees that the following shall be covered by the definition of electronically supplied services:
- (a) online access (time-limited or not) to template documents and software, without support by a staff member from the supplier, providing the customer with the tools allowing him to draft his own bespoke versions of required documents (letters, contracts, etc.);
 - (b) online supply of legal contract templates which are customised to purchasers’ needs in an automated manner following data input by the purchaser;
 - (c) digitised products (for example publications, programmes, design patterns and guidance on how to use them, etc.) supplied in an automated manner;
 - (d) online access to portals providing a platform for virtual debates between its members;
 - (e) online access to Internet platforms with automatic search and filter functions and no additional support by a staff member of the supplier;
 - (f) online access to platforms providing a contact place for the supplier of goods or services and their customers and for peer-to-peer interaction (i.e. with no commercial purpose) where the service provided by the platform itself is automated and may include the organisation of payment arrangements;
 - (g) online access to securities-trading platforms allowing investors to purchase and/or sell securities where running of the platform involves monitoring of trade and the possibility of intervening in a transaction but the platform provider only ensures the smooth running of the platform and does not provide investment advice to clients by a staff member;
 - (h) remote monitoring of patients’ medical condition in real-time (e.g. glucose or blood pressure readings) through the use of technological devices, which transmit the relevant health information or reading to the service provider’s system which analyses it and generates an alert or notification to the patient;

- (i) remote maintenance of computer systems, such as system health-checks, maintenance tasks and fixes which are run by the supplier's system in an automated manner, for example, at pre-determined intervals or pursuant to an electronic request by the customer;
 - (j) online access to gambling platforms which enable players to play Random Number Generator games, whether against the "house" (such as casino-type games) or against other players (e.g. poker) where the players are geographically remote from one another, and where the entire process is automated and the service provider's staff cannot impact on the transaction nor intervene in the process;
 - (k) online access to bingo games with numbers generated by the system or to streamed conventional bingo games where players make their selection during the game by using the electronic system and winners are identified automatically;
 - (l) online access to horoscope/astrology platforms which generate insights, predictions or advice from a pre-populated database, in response to details inserted by the customer (e.g. the date of birth).
8. The VAT Committee **almost unanimously** agrees that the following shall be covered by the definition of electronically supplied services:
- (a) online access to seminars where only passive participation (no possibility of interacting with the provider of the seminar) is possible;
 - (b) online access to previously recorded seminars, events, etc.;
 - (c) online access to learning materials, courses, programmes, etc. where students have no possibility of interacting with a teacher.
9. The VAT Committee **unanimously** agrees that the following shall not be covered by the definition of electronically supplied services:
- (a) online supply of legal contract templates which are customised to the purchasers' needs where the service comprises a review of the contract for accuracy by staff acting for the supplier prior to delivering it to the customer, even if the final draft is delivered to the customer electronically;

- (b) remote monitoring of patients’ medical condition in real-time (e.g. glucose or blood pressure readings) through the use of technological devices which transmit the relevant health information or reading to the service provider’s system, where medical professionals are involved in the analysis of the information or readings;
 - (c) remote maintenance of computer systems, when health-checks, maintenance tasks and fixes, even if requested and supplied electronically, are run by staff who access the customer’s system *via* remote desktops (i.e. non-automated);
 - (d) “Live Casino” services where players interact with a physical croupier so that the croupier responds to instructions received from the player, and the Internet is merely a means of streaming the live feed of the casino table to the player and a tool for communication between the croupier and the player;
 - (e) online access to horoscope/astrology platforms which generate insights, predictions or advice, where customers’ information/requests received by the platform are analysed and processed by staff who generate a response (i.e. non-automated).
10. The VAT Committee **almost unanimously** agrees that the following shall not be covered by the definition of electronically supplied services:
- (a) online access (time-limited or not) to template documents and software providing the customer with the tools allowing him to draft his own bespoke versions of required documents accompanied by the possibility to have support by a staff member of the supplier;
 - (b) digitised products (for example publications, programmes, design patterns and guidance on how to use them, etc.) where each product supplied is sent to the customer individually, in a non-automated manner by the supplier and/or meeting the individual request of the customer;
 - (c) online access to seminars where there is a possibility to interact with the provider of the seminar, for example asking questions, receiving feedback, etc.;
 - (d) online access to learning materials, courses, programmes and similar where students have the possibility (regardless whether it is used or not) to interact with the teacher via e-mail, telephone, video conference, etc.;

- (e) online access to Internet platforms with automatic search and filter functions and the possibility of additional support by a staff member of the supplier (for example assessment and advice on the search results);
- (f) online access to securities-trading platforms allowing investors to purchase and/or sell securities where running of the platform involves monitoring of trade and the possibility of intervening in a transaction with a view to providing an individual investment advice to clients by the platform provider.