

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

3.1 Origin: Belgium
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
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1. The VAT Committee **unanimously** acknowledges that the definition of electronically supplied services from Article 7(1) of the VAT Implementing Regulation consists of the four following elements: (1) a service is delivered over the Internet or an electronic network, (2) the nature of the service is that it is essentially automated, (3) the nature of the service is that it involves minimal human intervention, and (4) the nature of the service is such that it is impossible to ensure in the absence of information technology. The VAT Committee **unanimously** agrees that in the assessment of whether a service qualifies as an electronically supplied service all these four elements are equally important.
2. The VAT Committee **almost unanimously** agrees that for the assessment of the notion of ‘minimal human intervention’ included in the definition of ‘electronically supplied services’, focus shall be on the involvement on the side of the supplier without any regard to the level of human intervention on the side of the customer. In cases where each individual supply requires human intervention on the part of the supplier, the VAT Committee **almost unanimously** considers that the supply shall be seen as involving more than minimal intervention. In particular, the VAT Committee **almost unanimously** agrees that providing non-standardised PDF files via e-mails shall be seen as involving more than minimal human intervention.
3. The VAT Committee **unanimously** agrees that the service shall be regarded as requiring only a ‘minimal human intervention’ in situations where the supplier initially sets up a system needed for the supply, regularly maintains the system or repairs it in cases of problems linked with its functioning.

4. The VAT Committee **almost unanimously** agrees that in order to determine whether a service qualifies as an electronically supplied service one shall proceed in the following way:
 - first check if the service is mentioned in Annex II of the VAT Directive or under Article 7(2) or Annex I of the VAT Implementing Regulation as being covered by the definition;
 - secondly, if not mentioned there, examine whether the service is mentioned under Article 7(3) of the VAT Implementing Regulation as not being covered by the definition;
 - finally, if the service cannot be found on any of these lists, verify whether it meets criteria set out under Article 7(1) of the VAT Implementing Regulation for being covered by the definition.
5. The VAT Committee **almost unanimously** considers that although services supplied using information technology (online) and in more traditional ways (offline) may have similar features and be comparable by having some or many elements in common, a service supplied online and a service supplied offline cannot be regarded as identical. The VAT Committee **almost unanimously** agrees that in relation to such comparable services (supplied online and offline), only the services fulfilling all the conditions of the definition of electronically supplied services shall be found to be covered by it.
6. The VAT Committee **unanimously** agrees that to determine whether a given supply is taxed or exempt, the place of supply of the service in question must first be identified, and that an objective assessment of the nature of the service shall be required in order to establish whether the supply is covered by a particular rule or by one of the general rules. Only after establishing the correct place of supply of a given supply of a service can the correct VAT rate or VAT exemption be identified.
7. The VAT Committee **almost unanimously** agrees that where a service is susceptible to be covered by more than one of the particular rules governing the place of supply, the rule which best ensures taxation at the place of actual consumption of the service shall prevail. In particular, in the context of electronically supplied services, this approach is relevant in establishing whether Articles 47, 58 and 59 of the VAT Directive apply.