



CROSS BORDER SUPPLIES OF INTANGIBLE SERVICES, RIGHTS AND DIGITAL CONTENT

GLOBAL VAT GUIDE

JUNE 2014

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INTRODUCTION

Welcome to DLA Piper's Global VAT Guide: Cross Border Supplies of Intangible Services, Rights and Digital Content.

As business grows more global, the challenge for in-house counsel and in-house VAT specialists is intensifying. This Guide is intended to meet this challenge head-on. We hope that it will be an invaluable resource for you.

Focusing on supplies of intangibles, such as services, intellectual property rights and digital content, we consider this guide to be timely, given that revenue authorities throughout the world are increasingly focussed on taxation issues for the growing e-commerce sector.

The release of this Guide follows the OECD's recent publication of its VAT Guidelines and the European Union's introduction of an expanded "One-Stop-Shop" for supplies of digital content, telecom services and broadcasting services with effect from 1 January 2015. The OECD VAT Guidelines and EU VAT initiatives are briefly discussed at the beginning of this Guide.

For convenience, we have used the term "**VAT**" in this Guide to refer to value added taxes. Such taxes may be known by other names, including "Goods and Services Tax" ("**GST**") or Consumption Tax.

We have used our global expertise and local knowledge to bring you this Guide. With over 300 world class legal experts, DLA Piper's Global Tax Group is one of the largest in the world, with one of the largest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this Guide provides high level guidance, it is not a substitute for legal advice in relation to specific matters. This is particularly important for VAT matters, given that local laws and policy can change quickly and without notice and the detail of the rules in different EU jurisdictions can vary significantly. If you wish to speak to any of our advisers, their contact details are set out towards the back.

We hope that you find this Guide valuable. We welcome your feedback on any aspect of it.

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OECD VAT GUIDELINES

On 18 April 2014, the OECD released the first three chapters of its VAT Guidelines. At this time, only the first three chapters have been finalised, with the remaining chapters still in draft. The finalised chapters relate to:

Chapter 1: Core Features of VAT

Chapter 2: Neutrality of VAT in the context of cross-border trade

Chapter 3: Place of Taxation for B2B [Business-to-Business] cross border supplies of services and intangibles.

The “Destination Principle”

Broadly speaking, the OECD VAT Guidelines support the adoption of the “Destination Principle” for supplies of services and intangibles. Under the Destination Principle, such supplies would be subject to VAT in the country in which the recipient of the supplies is located. This principle is intended to ensure that VAT is imposed in the destination country where supplies are consumed.

The OECD’s VAT Guidelines support the universal adoption of the Destination Principle as a means of reducing both potential double taxation (that is, supplies being taxed in both the source and destination country) and potential under taxation (that is, supplies not being taxed in either the source or destination country).

The OECD has stated that the above three chapters from its VAT Guidelines have been endorsed by 86 countries. The OECD is encouraging the immediate adoption of the guidelines. The guidelines are not, however, legally binding.

To reduce compliance costs for suppliers, and negate cash flow costs for businesses, it is anticipated that many countries will allow (or require) business customers to “reverse charge” the VAT applicable on imports of intangible supplies.

The OECD has not released its final VAT guidelines on the Place of Taxation for Business-to-Consumer cross border supplies of services and intangibles. However, the European Union has taken the lead in this regard as explained in the next section below. If the EU approach is successfully implemented, it is a model that may be adopted by the OECD in its future VAT guidelines. The EU model may also be adopted by other VAT jurisdictions ahead of the publication of further OECD VAT Guidelines.

EU VAT CHANGES FOR B2C E-COMMERCE SUPPLIES (FROM 1 JANUARY 2015)

NOTE: The following commentary relates to supplies made to recipients who are located in the EU only.

Important VAT changes that will apply across the European Union (“EU”) from 1 January 2015.

These changes will apply in relation to the following services (which we have collectively referred to as “**e-commerce services**”), to the extent the services are supplied to a non-VAT registered consumer:

- telecommunication services;
- television and radio broadcasting services; and
- electronically supplied services (including software subscription services, such as for games, music and other content).

The current “Place of Supply” Rules

In a EU VAT context, the “place of supply rules” govern where a particular supply takes place and consequently which party must pay the VAT to the tax authority and where. These rules will change for cross-border supplies of e-commerce services, which are provided to consumers (being private individuals or certain non-VAT registered organisations), from 1 January 2015.

Generally speaking, where the supplier has an establishment in the EU, the current place of supply for these services is the jurisdiction where the supplier is established. This enables the supplier to charge VAT at a uniform rate to all consumers, relevant to the supplier’s location, wherever the consumers are based in the EU. These current rules have led to perceived distortions as many non-EU businesses have set up fixed establishments in Luxembourg to secure a low uniform VAT rate of only 15%.

The “Place of Supply” rules from 1 January 2015

From 1 January 2015, the place of supply for both EU and non-EU suppliers of e-commerce services will be the non-business customer’s place of “belonging”.

A non-business customer will generally belong where the customer is registered, has their permanent address, or usually lives. However, if a particular jurisdiction provides that VAT should be charged where the service is “used and enjoyed”, and not where the customer belongs, VAT will be charged in the place of use and enjoyment. We note that the “use and enjoyment” rule only applies where the supply is enjoyed in the EU, but the customer belongs outside the EU (or vice versa). This is known as the “effective use and enjoyment rule” and it can be a trap in deciding where supplies (both B2B and B2C) take place, especially as the scope of the rules vary from jurisdiction to jurisdiction.

To reduce the onerous requirement on suppliers to obtain evidence of where customers live at the point of sale, EU Regulation (1042/2013) has been introduced to assist suppliers to determine the place of supply of their e-services more easily. Presumptions are made as to where the consumer’s place of belonging is located.

For example, if electronic services (B2B or B2C) are provided at a location such as a wi-fi hot spot, internet café, restaurant or hotel lobby where the physical presence of the customer is needed, there shall be a presumption that the service is supplied there. This would avoid a hotel providing wi-fi in its lobby needing to register for VAT in every jurisdiction where its guests are resident. These presumptions can be rebutted with evidence and will need to be built into VAT compliance systems. This is dealt with in more detail below.

For business-to-business transactions, a customer will still be liable to account for any VAT due through a reverse charge in accordance with current VAT rules. That is, the business customer itself will account for the VAT in the business customer’s jurisdiction.

However, for supplies to consumers, the reverse charge is not an option. As a result, liability to account for any VAT due in a Member State will rest entirely with the supplier and not the customer.

The new expanded One Stop Shop

An important additional change, which is of critical importance to the EU Commission, is the One Stop Shop (“**OSS**”), which allows payments and returns to be made electronically from a single Member State of Identification. This is being extended to EU businesses, and will cover not only electronic services, but telecommunications and broadcasting services.

The OSS as extended will reduce the obvious administrative burdens that the change in the place of supply rules could have led to, because EU suppliers will not have to register in every Member State where their customers belong, and indeed will no longer be liable to be registered in jurisdictions where they do not have establishments.

However, there are a number of issues that will need to be considered and planned for in advance. On 23 October 2013, the EU Commission published guidance on the extended OSS, envisaging that registrations would be applied for by both EU and non-EU business alike from 1 October 2014 to take effect from 1 January 2015. The success or failure of the OSS, not least from a technology point of view, is critical to how VAT accounting may develop in the years ahead. The earlier introduction of an electronic portal for EU VAT refunds proved to be a debacle.

It must be remembered the OSS is optional. Businesses can instead register in every Member State where they have non-business customers in the usual way.

Issues that will be important to consider include:

- Non-EU suppliers can use the OSS only if they have no EU establishment. This is called the “**Non-Union Scheme**”. They can choose whichever jurisdiction they wish to make their electronic registration. That jurisdiction, called the Member State of Identification, will receive all returns and payments and distribute the VAT payments to the Member States where the customers are based. The applicable VAT rules and rates are those which apply in the Member State of the customer. A Non-EU business cannot use the Non-Union Scheme if it is registered for VAT, or required to register for VAT, in any Member State. If it is so registered or liable to register, then even if it has no establishment in the EU, it will not be able to register under the OSS, but will need to account for VAT under the usual rules. If the Non-EU business is already using the mini OSS for electronic services, it can transfer its VAT registration number to the Non-Union Scheme.
- For EU businesses, they must register for OSS in the jurisdiction where they have their main place of business (“**the Union Scheme**”). They cannot use the OSS for supplies made to non-business customers in jurisdictions where they have either their main place of business or a fixed establishment. Rather, for these supplies, they must account for VAT in the usual way under a VAT registration. Once registered for OSS they must use it for all supplies made to customers in locations where they have no establishment.
- The OSS is simply for output VAT (i.e. VAT payable on supplies made). Input VAT refunds will still be available via the electronic VAT refund mechanism (EU Directive 2008/9/EC for the Union Scheme), or the 13th VAT Directive for non-EU businesses.
- As noted above, the OSS is optional. Any EU or non-EU business can decide to account for VAT in each jurisdiction where it has customers under a local VAT registration in the normal way. Using normal rules may be particularly attractive to those businesses which have substantial input VAT refunds to recover, or whose customers are based in less than three jurisdictions, or who have fixed establishments in the majority of the jurisdictions where their customers are based (and who therefore cannot use the OSS for those jurisdictions).
- Agents will be able to submit the OSS VAT returns on behalf of their clients, in accordance with the rules and procedures in the Member State of Identification.
- The Member State of Identification selected for an OSS registration retains 30% of the VAT collected from 1 January 2015 to 31 December 2016, 15% for supplies made from 1 January 2017 to 31 December 2018, and nothing thereafter. This is a retention fee from payments of VAT made between Member States. It does not affect the amount of VAT to be paid by businesses.
- Penalties and charges for late payments of VAT are outside the OSS and are the responsibility of the Member State where the supply takes place.
- There are strict rules of compliance and time limits for delivery of quarterly returns and payments of VAT, record keeping (10 years) and notification of changes. Non-compliance can lead to exclusion from the OSS for a period of time (known as quarantine).

Where must the supplier account for EU VAT?

It is incumbent on the supplier to determine the correct Member State of supply (that is, where the customer “belongs” or, where appropriate, where the service is used and enjoyed by the customer).

There are particular rules to be applied for determining where a customer is located and accordingly where the VAT must be accounted for. The new EU Regulation 1042/2013 provides for particular presumptions and scenarios which a supplier must adhere to in determining where a supply takes place. Obviously consumers move around and may be receiving the service far from home, for example on a mobile device, and there needs to be rules to enable suppliers to know where to account for the VAT, if it is otherwise uncertain.

The main rules are as follows:

- When services are provided at a location such as a telephone box, internet café, wi-fi hotspot or similar; where the recipient must be physically present in order for the service to be rendered to the customer, the presumption is that the customer belongs at that location (and so that is where the place of supply takes place.) If the location is on board a ship, aircraft or train travelling within the EU, the country of departure is deemed to be the country where the supply takes place.
- Where services are supplied via a residential fixed land line, the place of supply shall be wherever the fixed land line is installed.
- Where services are supplied through a mobile network against subsequent collection of payment, the place of supply shall be wherever is the mobile country code of the SIM card.
- Where services are supplied needing a fixed viewing card, the place of supply shall be the place to which the viewing card is sent with a view to it being used there.
- To rebut the presumptions, a supplier needs to obtain three pieces of non-contradictory evidence to identify where the customer actually belongs, i.e. where the customer has his or her permanent address or usually resides (and therefore where is the place of supply).
- If the presumptions do not apply, the supplier requires two pieces of non-contradictory evidence to identify residence. The non-exclusive list comprises:
 - customer details such as billing address;
 - IP address of the device used by the customer or any method of geolocation;
 - bank details such as the location of the bank account used or the customer’s billing address;
 - the mobile country code of the customer’s SIM card;
 - the location of the residential fixed land line through which the service is supplied; and
 - other commercially relevant information that is obtained by the supplier.

Currently, the UK and Dutch tax authorities accept that a business making supplies to consumers can rely on the customer’s self-declaration for where the customer resides combined with a reasonable level of verification. That verification can include the postal address for goods delivered, or verification of payment method (ie bank account details). Building verification processes capturing these indicators into a supplier’s IT system will need to be considered. The new Regulation includes the presumption that customers are non-business if they cannot provide a valid VAT number.

Impact of presumptions

The presumptions are largely sensible and should result in VAT being levied in the Member State of consumption of the e-service, and should remove some of the administrative burdens from suppliers. But where the presumptions do not apply, suppliers will need to obtain additional evidence of residence at the point of sale. Furthermore, given that new EU Regulations in the telecommunications sector will permit mobile operators to provide international roaming services to EU customers, it is anticipated that mobile operators will need to register in all other Member States, such that the OSS will prove very important for them.

Considering relocation

If a non-EU business has relocated to Luxembourg or another low VAT jurisdiction to take advantage of the current place of supply rules for EU-based businesses, that business may now wish to contemplate relocating again, either out of the EU or to another jurisdiction that offers efficient direct tax regimes such as the UK or the Netherlands.

Concluding remarks

From 1 January 2015, e-commerce services will always be taxed in the jurisdiction where the customer belongs, irrespective of whether (i) the customer is a business or consumer, and (ii) the supplier is based in or outside the EU.

Following this change to the VAT place of supply rules, a new simplification measure, an extended One Stop Shop, comes into force on 1 January 2015. The One Stop Shop allow a business supplying e-commerce services to non-taxable persons in Member States, in which the business does not have an establishment, to account for the VAT due on those supplies via a web-portal in a Member State in which they are identified. Although the scheme is optional, it is beyond question that for all businesses supplying these services in the EU the implementation of the new VAT place of supply rules requires new verification and validation processes to be built into their financial models and VAT compliance systems.

TIPS FOR MINIMISING VAT RISKS FOR CROSS BORDER SUPPLIES

Businesses that make cross-border supplies of intangibles services, rights and digital content need to be mindful of potential VAT risks on a global basis, particularly as more countries consider adopting the OECD VAT Guidelines outlined above.

To minimise these risks, we suggest the following:

- **All business-to-business supply contracts should state prices on a VAT exclusive basis.** It is necessary to confirm if this is permitted under local laws. The contract should also include a separate VAT gross up clause. This may allow the supplier to pass on VAT, or any VAT rate increase, if required. Ideally any such clause should be drafted to cover VAT in the supplier's home country, as well as any VAT that may apply in any destination country.
- **Consider whether any VAT can potentially be “reverse charged” and paid by a local business customer.** This may require the written agreement of the local business customer, which could be addressed in any VAT clauses in the contract. A reverse charge is unlikely to be available for supplies to a non-registered consumer.
- **For business-to-consumer supply contracts, prices should again be stated on a VAT exclusive basis (if permitted) and it should be made clear that VAT is chargeable on top.** Some countries do not permit VAT exclusive pricing for supplies to consumers.
- **If VAT exclusive pricing is not permitted (in either a B2B or B2C context), the contract should ideally permit the supplier to adjust prices if required.** The circumstances in which prices can be adjusted under the contract should be broad enough to cover the introduction of new VAT imposts (or changes to VAT rates). Note that it may be necessary to provide a period of notice to consumers before prices can be adjusted.
- **Businesses should consider how VAT compliance costs and risks can be best managed.** For example, in an EU context, the “One-Stop-Shop” is an option. Other options may include the establishment of new local subsidiary entities, the formation of VAT consolidated groups, the use of local resident agents and the reverse charging of VAT to business customers (where permissible).
- **Find out the invoicing rules in each jurisdiction.** Unfortunately, in an EU context, these may not be available on the EU Commission's web-portal until at least September 2014.

Our global network of leading VAT experts can assist you with the above, in addition to any other relevant local VAT considerations.



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

AUSTRALIA

Local name for VAT
Goods and Services Tax, or GST
Applicable Rates for E-Commerce Services
Standard Rate 10%
Special Rate N/A
Registration Requirements
Mandatory Entities with a GST turnover exceeding AUD\$75,000 in a 12 month period, from supplies that are “connected with Australia”, are required to be GST registered.
Optional An entity that carries on an “enterprise”, anywhere in the world, may be GST registered.
Place of supply for cross border supplies of intangibles to local consumers (B2C)
Australia has not adopted the “destination principle” from the OECD VAT Guidelines. Presently, it is necessary to determine whether intangible supplies (of things such as intellectual property rights and services) are “connected with Australia”. Such supplies may not be “connected with Australia”, and hence not subject to GST, if the supplies are made from outside of Australia and the supplier does not have a permanent establishment or other substantial presence in Australia. The Australian Government has indicated that it will not change the GST base or rate prior to the next Federal election, scheduled for 2016. While it cannot be ruled out, it is unlikely that there will be any changes to local GST laws, including to adopt the destination principle, prior to that election.
Place of supply for cross border supplies of intangibles to business (B2B)
With the exception of the “reverse charge” rules, the place of supply rules in a B2B context are the same as set out above in a B2C context. A mandatory reverse charge may apply if a GST registered entity in Australia acquires intangible rights or services through a supply that is not “connected with Australia”. The reverse charge should only apply if the entity will not use the rights or services acquired for a wholly “creditable purpose”. If a supply from a non-resident is “connected with Australia”, a GST registered business may voluntarily agree to reverse charge and pay that GST, provided that the supply by the non-resident is not made through an “enterprise” that it carries on in Australia. The parties must agree to the reverse charge in writing, which can normally be addressed in the VAT/GST clause in the supply contract.



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

Do you require evidence of a customer’s VAT number to treat a supply as B2B?

A business can only voluntary reverse charge GST on a supply from a non-resident if it is GST registered and has an “Australian Business Number” (known as an “ABN”).

Can prices be displayed on a tax exclusive basis?

B2B Transactions
Yes, prices can be displayed on a GST exclusive basis for B2B transactions, provided that this is clearly indicated and not misleading.

B2C Transactions
No, prices must be displayed on a GST inclusive basis.



Australia | **Brazil** | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

BRAZIL*

Local name for VAT
Social contributions on gross receipts on imports (PIS/PASEP & COFINS on Imports) – Federal level
Applicable Rates for E-Commerce Services
<p>Standard Rate PIS/PASEP – Import: 1.65% COFINS – Import: 7.6%</p> <p>Note that these taxes are not typical VAT because the offset/recoverability of these taxes will depend on the type of activity and essentiality of the IP imported for the business activity of the Brazilian entity.</p> <p>Depending on the type of transaction, other taxes may apply, such as: withholding income tax: 15% or 25%; CIDE (contribution for intervention on economic domain: 10%); and Service Tax (ISSQN): 2% to 5%.</p> <p>In addition, tax on financial transactions (IOF), including exchanges and currency conversions, apply at 0.38% or 6.38%, depending on the type of transaction involved.</p>
Registration Requirements
<p>Mandatory</p> <p>As a general rule, entities performing habitually industrial, commercial and professional activities are obliged to be registered before the tax authorities for the legal entity national registry and to obtain a tax ID number (CNPJ), which is necessary to collect PIS/PASEP and COFINS.</p> <p>Registration for municipal tax (ISSQN) is required for certain cross-border transactions involving importations of services.</p>
Place of supply for cross border supplies of intangibles to local consumers (B2C)
The Brazilian government holds studies to charge taxes over these transactions. At the moment, only IOF is charged currently at 6.38% over a payment abroad with international credit cards.



Australia | **Brazil** | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

Place of supply for cross border supplies of intangibles to business (B2B)

If it is an importation of services or any type of transaction payment abroad, it will be necessary to pay all applicable Brazilian taxes. The type of transaction is necessary to define which taxes apply.

Do you require evidence of a customer's VAT number to treat a supply as B2B?

Yes, it is necessary to hold a CNPJ and a municipal tax registration to be able to make payment in a B2B context.

Can prices be displayed on a tax exclusive basis?

It will depend on the taxes applicable.

* The information herein was prepared by Campos Mello Advogados, an independent law firm



Australia | Brazil | **China** | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

CHINA

Local name for VAT

China implements a dual system of indirect taxes:

- VAT: applicable to most services and the provision of digital content and intellectual property rights; and
- Business Tax: applicable to entertainment, post, construction, financial and insurance services.

For the purposes of this Guide, we will focus on VAT.

Applicable Rates for E-Commerce Services

Standard Rate

- 17% (leasing of moveable property and provision of digital content)
- 11% (transportation services and basic telecommunications services)
- 6% (other services, provision of intellectual property rights)

Special Rate

3% (for taxpayers recognized as small-scale taxpayers, including individuals and taxpayers whose annual turnover is less than RMB 5 million or who do not keep sound accounting records)

Registration Requirements

Mandatory

All entities registered in China and individuals conducting VAT taxable activities are subject to VAT registration. VAT taxpayers are registered as either general taxpayers or small-scale taxpayers; each category is subject to different tax treatment. General taxpayers apply standard tax rates and can claim input VAT credit. Small-scale taxpayers apply special levy rates without being allowed to deduct input VAT paid for purchases. Individuals can only be registered as small-scale taxpayers.

Optional

Foreign entities without a business registration within China, but which derive VAT taxable income, are not required to be VAT registered. Their VAT liabilities are settled by appointed agents inside China or through withholding by payers making payment in China.



Australia | Brazil | **China** | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

Place of supply for cross border supplies of intangibles to local consumers (B2C)

China has not adopted the “destination principle” from the OECD VAT Guidelines.

Chinese VAT laws do not differentiate the place of taxation for B2B and B2C cross-border supplies of services and intangibles. VAT is payable on supplies of intellectual property rights and certain services if either the supplier or the recipient is inside China. China does not have specific tax rules dealing with cross-border supplies of digital content. Thus the competent tax authorities normally make reference to the tax treatment in relation to the provision of intellectual property rights in this regard.

China allows VAT exemptions, or grants VAT refunds, for the exportation of certain intangible supplies if relevant conditions are satisfied. For importation of intangible supplies, the Chinese tax laws require Chinese importers (recipients of the supplies) to withhold VAT and settle tax payments with local tax authorities. VAT gross up clauses are allowed to be included in cross-border contracts for supplies of intangibles.

In practice, the above withholding rules are not strictly enforced against individual importers who do not maintain VAT registration in China.

Place of supply for cross border supplies of intangibles to business (B2B)

The place of supply rules in B2B transactions are the same as those set out above in the B2C context. However, the withholding rules as set out in the above section are strictly enforced in the case of importation of intangibles in a B2B context where the importers are corporations rather than individuals.

Do you require evidence of a customer’s VAT number to treat a supply as B2B?

Chinese VAT laws do not differentiate between the place of taxation for B2B and B2C cross-border supplies of services and intangibles.

For the exportation of intangibles that are eligible for VAT exemption, tax laws may require customers outside of China to provide documentation evidencing its foreign business or tax registration. This tax treatment will not change regardless of whether the customer is an individual or a business.

For the importation of intangibles, the importer, irrespective of whether it is an individual or a business, is required to withhold the relevant VAT from the gross payment. However, note that in the B2B context, the importer can claim VAT credit for the VAT withheld based on its general taxpayer registration number only if it is a general taxpayer (as opposed to small-scale payer).

Can prices be displayed on a tax exclusive basis?

Yes. Chinese tax laws do not have specific restrictions on price display in cross-border supplies of intangibles.



Australia | Brazil | China | **Germany** | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

GERMANY

Local name for VAT
VAT (Umsatzsteuer)
Applicable Rates for E-Commerce Services
<p>Standard Rate</p> <p>19%</p> <p>Special Rate</p> <p>7% for certain turnovers (but likely not applicable to e-commerce services)</p>
Registration Requirements
<p>Mandatory</p> <p>Mandatory registration is required for Non-EU enterprises rendering B2C services provided the enterprise is not registered in another EU member state for such purposes.</p> <p>Optional</p> <p>Optional registration is possible for all enterprises if they wish to be subject to the general VAT taxation rules. The Federal Tax Administration has established certain competent tax offices for registration depending on the origin of the respective enterprise.</p>
Place of supply for cross border supplies of intangibles to local consumers (B2C)
<p>The general rule regarding the place of supply is the place where the supplier is located (which is either the supplier's main establishment or a permanent establishment if the service is rendered from there. The place of "use or enjoyment" of the service is of no importance.</p> <p>In case of the supply of intangibles and e-commerce services a distinction has to be made. If the supplier is located within the EU, and the recipient is resident outside the EU, then the supply is carried out at the recipient's location.</p> <p>In the case of e-commerce services, if the supplier is located outside the EU and the recipient is resident within the EU, then the services are rendered at the recipient's location. As of 1 January 2015, this will become the general rule for all suppliers in respect of e-commerce services.</p> <p>The German administration has not yet published amendments to the VAT Code to reflect these changes for e-commerce services.</p>



Australia | Brazil | China | **Germany** | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

Place of supply for cross border supplies of intangibles to business (B2B)

In a B2B context, the place of supply is where the recipient of the services is located (be it the recipient's main establishment or another permanent establishment). Once again, the place of "use or enjoyment" is of no importance.

There is no distinction made between the supply of intangibles and the supply of e-commerce services in a B2B context.

The reverse charge system applies to the supply of the services.

Do you require evidence of a customer's VAT number to treat a supply as B2B?

As the supplier has to charge VAT, it is the supplier's general responsibility to obtain information about the supplier's customer. The information to be obtained includes the VAT registration of a business customer.

Can prices be displayed on a tax exclusive basis?

Prices have to be displayed on a tax inclusive basis.

Only where the recipient of services is located outside the EU can tax be excluded in the case of B2C supplies.



Australia | Brazil | China | Germany | **Italy** | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

ITALY

Local name for VAT
Imposta sul Valore Aggiunto or IVA
Applicable Rates for E-Commerce Services
Standard Rate
22%
Special Rate
N/A
Registration Requirements
Mandatory
As a general rule, entities performing habitually industrial, commercial and professional activities are obliged to be registered for VAT in Italy.
For so called “indirect e-commerce” (i.e. a supply of goods performed using website platforms) carried out by a VAT entity directly from abroad into Italy, no VAT registration occurs if the entity’s yearly turnover does not exceed Euros 35,000 (in this case e-commerce is a part of the “distance sales” regime).
Optional
N/A
Place of supply for cross border supplies of intangibles to local consumers (B2C)
In the case of supplies of intangibles (patents, marks, etc.) to Italian customers who are not registered for VAT, no Italian VAT is applied (being subject to tax, if any, in the country of the supplier). The place of “use or enjoyment” of the service is of no importance (in Italy this rules affects limited cases such as telecommunication services).
In the case of e-commerce supplies (e.g. on-line gaming, etc.) VAT registration in Italy is required in B2C transactions only in cases where the supplier is extra-EU based (this is until 31 December 2014) since in that case the transaction is considered performed in the country of the recipient. This is a derogation to the general principle related to B2C transactions according to which Italian VAT applies if the supply is rendered by an Italian VAT entity to an Italian non VAT entity.

Australia | Brazil | China | Germany | **Italy** | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

Place of supply for cross border supplies of intangibles to business (B2B)

In this case the transaction is relevant for VAT purposes in Italy pursuant to the general EU VAT principle that taxation occurs in the country of the recipient (if registered for VAT and duly registered in the VIES system). In such a scenario the reverse charge mechanism must be mandatorily applied by the Italian recipient, even if the foreign entity is registered for VAT purposes in Italy (through a VAT representative or through a so called direct identification).

Even if the foreign entity has an Italian fixed place of establishment, the reverse charge mechanism still applies if the transaction has been performed from abroad without the involvement of the Italian fixed place of establishment. Otherwise, the fixed establishment should invoice for the domestic supply, being the actual supplier of the service.

Also in this case the place of “use or enjoyment” of the service is of no importance. Rather, the service is subject to the general B2B’s rule according to which the service is taxed in the country of the recipient, regardless the place of use or enjoyment.

Do you require evidence of a customer’s VAT number to treat a supply as B2B?

Yes. For intra-EU supplies, reference has to be made to the VIES system in order to get information about the VAT status of the customer.

Italian VAT entities, in order to apply for the ordinary B2B rules (usually, taxation in the country of the recipient) must be registered in the VIES system.

If the supplier is Italian and the recipient is established outside the EU, evidence must be gathered to demonstrate that the customer is liable for a consumption tax similar to VAT in its country, or that the acquisition has been performed in the course of business.

Can prices be displayed on a tax exclusive basis?

In B2B transactions prices can be displayed exclusive of VAT but it should be clear that the price refers only to B2B transactions.

In B2C transactions the price should include any additional charge/taxes applied (including Italian or any applicable VAT).

If the price is displayed for both B2B and B2C transactions, the consumers’ interest shall prevail. Therefore, it is necessary to display the price reserved to the consumer underscoring that such price includes VAT.

Australia | Brazil | China | Germany | Italy | **Japan** | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

JAPAN

Local name for VAT

Consumption Tax

Applicable Rates for E-Commerce Services

Standard Rate

8% from 1 April 2014

Possible increase to 10% from 1 October 2015

Special Rate

N/A

Registration Requirements

Mandatory

The following companies have to register as taxable business operators:

- 1) A company with JPY 10 million or more of capital;
- 2) A company with more than JPY 10 million of taxable sales during the base period (generally, two (2) years prior to the current business year);
- 3) A company with more than JPY 10 million of taxable sales or salaries during the specific period (being the first six (6) months of a business year prior to the current business year); and
- 4) A company that meets all of the conditions below;
 - (a) A company with less than JPY 10 million capital;
 - (b) A company which does not have the base period;
 - (c) A company which is more than 50% owned by an entity, directly or indirectly, or otherwise controlled by an entity, where certain conditions are met ("Controlling Entity"); and
 - (d) Either a Controlling Entity or persons having a special relationship with the Controlling Entity have taxable sales of more than JPY 500 million during the base period.

Optional

A company who does not fall within the above categories is not subject to the Consumption Tax, but they can register as a taxable business operator in order to get refund of input Consumption Tax.

Australia | Brazil | China | Germany | Italy | **Japan** | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

Place of supply for cross border supplies of intangibles to local consumers (B2C)

Japan has not adopted the “destination principle” from the OECD VAT Guidelines.

The location of the service provider's office is the place of supply and offshore service providers to Japanese customers are not subject to Japanese Consumption Tax under the current rules. However, the Ministry of Finance (“**MOF**”) is considering amending the Consumption Tax Act, to treat the location of the performance of services as occurring where the recipient of the service is located.

In the proposal by the MOF, an offshore service provider will have an obligation to collect Consumption Tax from their customers in Japan and to pay such collected Consumption Tax to the National Tax Agency (“**NTA**”) (the system is referred to as the “**Foreign Supplier Registration/Filing System**”) with respect to B2C transactions. In these circumstances, the MOF is planning to require offshore providers to nominate a tax agent (an agent in Japan who handles tax procedures for foreign companies/residents pursuant to the law) and to pay the Consumption Tax through the tax agent.

Place of supply for cross border supplies of intangibles to business (B2B)

The location of the service provider's office is the place of supply. However, this rule will be changed as mentioned above.

For B2B transactions, a “**Reverse Charge Construction**” has been proposed by the MOF. Under the Reverse Charge Construction system, the fees collected for the cross border e-commerce services are subject to Consumption Tax, but the offshore service provider would be exempted from the obligation to pay the Consumption Tax to the NTA. Instead, Japanese purchasers would be required to pay the Consumption Tax to the NTA.

Do you require evidence of a customer's VAT number to treat a supply as B2B?

The MOF is still considering and has not proposed any requirements as yet.

Can prices be displayed on a tax-exclusive basis?

As a general rule, prices must be displayed including Consumption Tax if an enterprise offers to sell goods or provide services to the general public other than through B2B transactions (Gross Pricing Display Obligation; Art. 63 of the Consumption Tax Act).

However, since the Consumption Tax Act is currently under a transition period due to changes in the tax rate, the Gross Pricing Display Obligation is now being suspended from 1 October 2013 to 31 March 2017. Therefore, business enterprises are allowed to show prices excluding consumption tax as long as it is clear that such pricing does not include the tax (e.g., displaying tax exclusive prices with a note stating “tax is not included”).



Australia | Brazil | China | Germany | Italy | Japan | **Luxembourg** | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

LUXEMBURG

Local name for VAT
Taxe sur la valeur ajoutée, or TVA
Applicable Rates for E-Commerce Services
<p>Standard Rate</p> <p>15% (17% as from 1 January 2015)</p> <p>Special Rate</p> <p>3%, 6% (8% as from 1 January 2015), 12% (14% as from 1 January 2015)</p>
Registration Requirements
<p>Mandatory</p> <p>In principle, any taxable person must register for VAT purposes. There is an exception for taxable persons performing only exempt supplies without a right to deduct input VAT and taxable persons subject to the small enterprises regime (where annual turnover is less than EUR 25,000 (EUR 10,000 before 2013)). However, these taxable persons must register for VAT purposes in the following cases:</p> <ul style="list-style-type: none"> (1) where they are liable to pay Luxembourg VAT on services received from foreign services providers (no threshold) or on their intra-Community acquisitions of goods exceeds EUR 10,000 (excluding VAT) during the preceding or current year; or (2) if they perform services that are exempt in Luxembourg but taxable in the EU Member State where the recipient of the services liable to pay the tax is established. <p>Non-taxable persons (e.g. holding companies, public bodies) must register for VAT in order to pay the Luxembourg VAT on intra-Community acquisitions of goods when the value of the goods is lower than EUR 10,000 (excluding VAT) during the preceding or current year.</p> <p>Optional</p> <p>A taxable person may register for VAT in order to pay the Luxembourg VAT on intra-Community acquisitions of goods when the value of the goods is lower than EUR 10,000 (excluding VAT) during the preceding or current year.</p>



Australia | Brazil | China | Germany | Italy | Japan | **Luxembourg** | Netherlands | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

Place of supply for cross border supplies of intangibles to local consumers (B2C)

The transfer and licensing of intellectual property should be regarded as a supply of services for VAT purposes. The supply of intangibles when delivered in digital form is also treated as a service

If the company supplies services to a private consumer, the services are in general taxable in the country of the supplier and therefore subject to Luxembourg VAT where supplied by a Luxembourg established business.

From 1 January 2015, supplies of telecommunications, broadcasting and electronically supplied services made by European Union (EU)- suppliers to private individuals and non-business customers will be taxable in the Member State of the customer.

In case of a non-EU-established business to an EU-established consumer, VAT will be levied at the rate applicable in the country where the customer is located.

The application of Article 56 of the VAT Directive (VATD) implies that the place of taxation in the case of a supply of services to consumers /customers located outside the EU is the place where the customer is established.

Place of supply for cross border supplies of intangibles to business (B2B)

As noted above, the transfer and license of intellectual property falls under the VAT rules on the place of supply of services, as does supplies of intangibles when delivered in digital form.

In the case of a Luxembourg established business supplying services to a foreign EU- business customer, in general the supply of services is taxable in the country of the recipient under the reverse charge mechanism.

For a supply from a non EU-established business to an EU-established business, VAT will be payable in the business-customer's State, pursuant to Article 56 VATD.

In the case of a supply of services to customers located outside the EU, the place of supply is where the customer is established.

Do you require evidence of a customer's VAT number to treat a supply as B2B?

In order to properly determine the place of a cross border supply of services, and the person liable to pay the VAT, the supplier needs to ensure its customer has a valid VAT number or is a non-taxable consumer.

Can prices be displayed on a tax exclusive basis?

Prices must in principal be displayed on a VAT inclusive basis

Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | **Netherlands** | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

NETHERLANDS

Local name for VAT

Omzetbelasting or *btw*

Applicable Rates for E-Commerce Services

Standard Rate

21%

Special Rate

N.A.

Registration Requirements

Mandatory

Anyone who is liable for VAT in the Netherlands must register for VAT in the Netherlands. No VAT registration threshold applies in the Netherlands.

Optional

N.A.

Place of supply for cross border supplies of intangibles to local consumers (B2C)

The place of supply of cross-border B2C e-commerce services from 1 January 2015 is where the customer belongs or is presumed to belong.

Certain specific intangible cross-border B2C services are taxable with VAT in the Netherlands if the supplier is outside the EU, the customer is a non-taxable (legal) entity, and such specific intangible services are used and enjoyed in the Netherlands.

Place of supply for cross border supplies of intangibles to business (B2B)

The place of supply of cross-border B2B e-commerce services is where the customer has its business establishment, or if it has establishments in more than one jurisdiction, where its establishment is based which is most directly concerned with the supply.

The place of supply of cross-border B2B intangible services is where the customer has established its business or fixed establishment. The effective use and enjoyment rules do not apply.

Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | **Netherlands** | Poland | Russia | South Africa | Spain | Sweden | United Kingdom

Do you require evidence of a customer's VAT number to treat a supply as B2B?

Yes, when it comes to the assessment of the status of the customer, the supplier is assumed to have acted in good faith when the supplier has:

- (a) established whether the customer is a taxable person via the VAT number communicated to him or through any other proof presented to the supplier to show that the customer is a taxable person or a non-taxable legal person identified for VAT purposes, and
- (b) obtained confirmation of the validity of the VAT number of the customer and carried out a reasonable level of verification via existing security procedures.

Can prices be displayed on a tax exclusive basis?

In accordance with the Dutch VAT Act 1968, suppliers are prohibited from displaying prices to B2C customers exclusive of VAT.



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | **Poland** | Russia | South Africa | Spain | Sweden | United Kingdom

POLAND

Local name for VAT
Podatek od towarów i usług
Applicable Rates for E-Commerce Services
<p>Standard Rate</p> <p>23% (possible reduction to 22%)</p> <p>Special Rate</p> <p>N/A</p>
Registration Requirements
<p>Mandatory</p> <p>All entities performing taxable activities, except for small entrepreneurs (i.e. taxpayers whose annual value of taxable sales does not exceed 150 000 PLN – approx. 36 000 EUR). This exception is not applied, among others, to taxpayers who are not established in Poland.</p> <p>Optional</p> <p>Small entrepreneurs and entities performing only activities that are tax exempt.</p>
Place of supply for cross border supplies of intangibles to local consumers (B2C)
<p>The general rule regarding the place of supply is the place where the supplier is located, which is either the supplier's main establishment or a permanent establishment if the service is rendered from there.</p> <p>In relation to supplies of intangibles and e-commerce services a distinction has to be made. If the supplier is located within the EU, and the recipient is resident outside the EU, then the supply is carried out at the recipient's location.</p> <p>In relation to e-commerce services, if the supplier is located outside the EU, and the recipient is resident within the EU, then the services are rendered at the recipient's location. On 1 January 2015 this will become the general rule for all suppliers in respect of e-commerce services.</p> <p>The amendments to the Goods and Services Tax Act to reflect these changes for e-commerce services are being prepared and shall be sent to Parliament in the next few weeks.</p>



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | **Poland** | Russia | South Africa | Spain | Sweden | United Kingdom

Place of supply for cross border supplies of intangibles to business (B2B)

In B2B, the place of supply is where the recipient of the services is located (the recipient's main establishment or another permanent establishment).

The reverse charge system applies to the supply of the services.

Do you require evidence of a customer's VAT number to treat a supply as B2B?

Yes – as the supplier has to charge VAT, it is the supplier's responsibility to obtain information about the supplier's customer, including the VAT registration of a business customer.

Can prices be displayed on a tax exclusive basis?

B2B transactions

Yes, prices can be displayed on a tax exclusive basis, however if there is no clear information it is assumed the price includes VAT.

B2C transactions

No, prices must be displayed on a VAT inclusive basis.



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | **Russia** | South Africa | Spain | Sweden | United Kingdom

RUSSIA

Local name for VAT
VAT
Applicable Rates for E-Commerce Services
<p>Standard Rate</p> <p>18%</p> <p>Special Rate</p> <p>N/A</p>
Registration Requirements
<p>Mandatory</p> <p>There is no separate VAT registration available in Russia. A foreign company carrying out its activity in Russia for a period of time exceeding one month shall be tax registered in Russia. Once tax registered in Russia, the foreign entity becomes registered for all applicable local taxes, including VAT.</p> <p>Optional</p> <p>N/A</p>
Place of supply for cross border supplies of intangibles to local consumers (B2C)
<p>There are no specific VAT place of supply rules established for e-commerce services. The place of supply for transfer (provision) of patents, licenses, trademarks, copyrights and other similar rights shall be determined as the place where the consumer resides. However, there is no VAT payment mechanism established for B2C supplies unless the foreign supplier is tax registered in Russia.</p>
Place of supply for cross border supplies of intangibles to business (B2B)
<p>As for B2C supplies, there are no specific VAT place of supply rules established for e-commerce services. The place of supply for transfer (provision) of patents, licenses, trademarks, copyrights and other similar rights shall be determined as the place where the service recipient performs its activity. A reverse charge VAT payment mechanism functions in relation to B2B supplies if the foreign supplier is not tax registered in Russia.</p> <p>There is also a VAT exemption available for provision of exclusive rights for inventions, utility and design models, ECM software, databases, integrated circuit layouts, know-how as well as rights to use such intangibles under a license agreement.</p>



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | **Russia** | South Africa | Spain | Sweden | United Kingdom

Do you require evidence of a customer's VAT number to treat a supply as B2B?

No

Can prices be displayed on a tax exclusive basis?

B2B Transactions

Yes, prices can be displayed on a VAT exclusive basis for B2B transactions. However, in practice a VAT gross up clause would normally be introduced into the contract in such case.

B2C Transactions

No, prices should be displayed on a VAT inclusive basis.



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | **South Africa** | Spain | Sweden | United Kingdom

SOUTH AFRICA

Local name for VAT

Value-Added Tax, "VAT"

Applicable Rates for E-Commerce Services

Standard Rate
 14% is applicable if the supply is subject to SA VAT. The zero rate (0%) may apply if the supply is rendered by a SA VAT vendor to a non-resident in certain circumstances.

Special Rate
 N/A

Registration Requirements

Mandatory
 Registration is mandatory where the value of taxable supplies has exceeded R50,000.00 at the end of any month. In respect of electronic services, where the person or businesses outside South Africa supplies electronic services to clients in South Africa, they will need to register and account for VAT to the South African Revenue Services ("SARS") should their supplies exceed the compulsory registration threshold.

Optional
 Where it is anticipated that the value of the taxable supplies will exceed R50,000.00 within 12 months from the date of registration.

Place of supply for cross border supplies of intangibles to local consumers (B2C)

South Africa does not have explicit place of supply rules. Any person or business that supplies "electronic services" as defined from a place outside South Africa to a resident in South Africa, or where any payment made to that person or business in respect of such electronic services originates from a bank in South Africa, is regarded as carrying on an "enterprise" in South Africa. Registration is mandatory if the value of the supplies made through the enterprise exceeds the registration threshold (see above).

Where the foreign person or business is not required to register for VAT in South Africa the recipient of the services is obliged to account for VAT to SARS in terms of the reverse-charge mechanism within 30 days of the import and a VAT 215 form must be completed and submitted to SARS by the recipient.

Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | **South Africa** | Spain | Sweden | United Kingdom

Place of supply for cross border supplies of intangibles to business (B2B)

As noted above, South Africa does not have explicit place of supply rules. While the definition as to what constitutes “electronic services” will in most instances exclude B2B e-commerce transactions, there is no explicit exclusion of B2B transactions.

It is apparent that in respect of electronic services relating to B2B supplies, a policy decision was made not to tax B2B transactions at this time. However, B2B services could still fall within the general VAT rules if the service is an imported service. VAT is levied on “imported services” as defined, being services supplied by a supplier who is a non-resident or carries on business outside South Africa to a recipient who is a South African resident, to the extent that services are not used in South Africa for the purposes of making a taxable supply. In respect of an “imported service”, the recipient would need to account for VAT to SARS. Where the foreign supplier is registered or required to register as a VAT vendor, the foreign supplier must charge VAT on the supplies made.

Do you require evidence of a customer’s VAT number to treat a supply as B2B?

The general VAT rules require the VAT number to be displayed on an invoice if the person or business is a VAT registered vendor.

Can prices be displayed on a tax exclusive basis?

Yes, provided the amount of VAT is also displayed on the “tax invoice”. Usual practice in South Africa is to display the price on a tax exclusive basis, with the applicable VAT and total consideration indicated separately. Prices may be displayed on a VAT inclusive basis, but a statement that the consideration is VAT inclusive and the applicable VAT rate must also be included on the tax invoice.



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | **Spain** | Sweden | United Kingdom

SPAIN

Local name for VAT
Impuesto Sobre el Valor Añadido
Applicable Rates for E-Commerce Services
Standard Rate
21%
Special Rate
N/A
Registration Requirements
Mandatory
Registration is required when the taxable person needs to pay VAT to the Spanish tax authorities (intra-Community transactions).
Optional
Special regime for electronically supplied services
Place of supply for cross border supplies of intangibles to local consumers (B2C)
For the application of Directive 2008/08/CE and the Spanish VAT Law, the place of supply of services shall be deemed Spain when the supplier has established its business or has a fixed establishment within the Spanish territory, or, in absence of such a place of business or fixed establishment, Spain is the place where the supplier has a permanent address or usually resides.
In the case of electronic services, telecommunication services and radio and television broadcasting services supplied by a taxable person established outside the EU to a non-taxable person, they will be deemed to be located in Spain provided the recipient is established within the Spanish territory, or has a permanent address or usually resides in the Spanish territory.
The use and enjoyment rule applies in regards to telecommunication and radio and television broadcasting services.



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | **Spain** | Sweden | United Kingdom

Place of supply for cross border supplies of intangibles to business (B2B)

The place of supply of services to a taxable person acting as such shall be the place where the recipient has established the recipient's business or has a fixed establishment to which the service is supplied, or, in the absence of such a place of business or fixed establishment, the place where the recipient has a permanent address or usually resides.

The use and enjoyment rule applies to all e-commerce and intangible services.

Do you require evidence of a customer's VAT number to treat a supply as B2B?

To treat a supply as B2B, the customer's VAT number (VIES registered) is required by the supplier.

Can prices be displayed on a tax exclusive basis?

This is not possible, as prices must be displayed on a VAT inclusive basis.



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | **Sweden** | United Kingdom

SWEDEN

Local name for VAT
Mervärdesskatt, moms
Applicable Rates for E-Commerce Services
Standard Rate
25%
Special Rate
N/A
Registration Requirements
Mandatory
Registration for VAT is normally mandatory if sales of taxable goods or services are made in Sweden by a taxable person. A registration for VAT is always required when selling within Sweden to consumers. A taxable person who purchases goods or services where a reverse charge is applicable must register for VAT.
Optional
In certain circumstances, a foreign entrepreneur can voluntarily register for VAT and thereby become taxable for sales for which the buyer would otherwise be taxable. This is mainly applied in regards to the sale of goods but may also apply in some cases to the sale of services with a connection to real property situated in Sweden.
Place of supply for cross border supplies of intangibles to local consumers (B2C)
The Swedish rules regarding place of supply will most likely change as of 1 January 2015. The Swedish Tax Agency's opinion is that the issue regarding which place of supply rules apply is to be determined based on the conditions when a service was provided.
RULES APPLICABLE UNTIL 31 DECEMBER 2014:
The main rule is that services provided to a non-taxable person are provided in Sweden if the seller is established in Sweden. The provision of intangible services such as telecommunications services, radio and television broadcasting services and electronically supplied services to a taxable person follows the main rule if it is a provision within the European Union.
Telecommunications services and transmission of radio and television sold from Sweden and which are used and enjoyed outside of the European Union, by someone who is not a taxable person, are deemed to be supplied abroad.
Telecommunications services and transmission of radio and television sold from a country outside of the European Union to a buyer who is not a taxable person, but is established or resides in Sweden, are provided in Sweden if the services are used and enjoyed in Sweden.



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | **Sweden** | United Kingdom

Telecommunications services and transmission of radio and television are always deemed to be provided in Sweden if the services are used in Sweden by means of an electronic communication net with a fixed point of access in Sweden.

For electronic services there is no requirement that the service is effectively used or enjoyed in Sweden in order to have been provided in Sweden. Electronic services are provided in Sweden if provided from outside of the European Union and the buyer is not a taxable person, but is established, or has his or her permanent address or usually resides in Sweden, regardless of effective use and enjoyment.

PROPOSED RULES FROM 1 JANUARY 2015:

Telecommunications services, the transmission of radio and television, and electronic services sold to a buyer who is not a taxable person, and who is established or has his or her permanent address or usually resides in Sweden, will always be deemed to be provided in Sweden, regardless of where the seller is established and regardless of effective use and enjoyment. The other rules are not changed.

Place of supply for cross border supplies of intangibles to business (B2B)

When services are provided to a taxable person, the main rule is that the services are provided in Sweden if the buyer is established in Sweden and the service is not provided to a fixed establishment abroad.

The provision of intangible services such as telecommunications services, radio and television broadcasting services and electronically supplied services to a taxable person follows the main rule. This is regardless of the place of the seller's establishment.

Do you require evidence of a customer's VAT number to treat a supply as B2B?

No. In most cases the buyer's VAT number is sufficient, but the tax agency may also accept other evidence showing that the buyer is a taxable person (this may be necessary e.g. if the buyer has applied for a VAT number but not yet received it despite being a taxable person or the buyer is a taxable entity but has a turn-over lower than what is locally required for registration).

If the buyer is outside of the E.U. there may not be a VAT number recognizable in Sweden and the Seller must use other means to show that the buyer is a taxable entity established outside of the E.U.

Can prices be displayed on a tax exclusive basis?

Prices stated to consumers must include VAT as a main rule. If the price is stated exclusive of VAT and it is not clear to the consumer that there will be a VAT-charge, the consumer will only have to pay the price exclusive of VAT. Please note that this follows from consumer protection legislation and not from the tax legislation. Prices stated to businesses are usually stated exclusive of VAT.

With respect to invoices there are strict rules regarding what information the invoice must contain.



Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | **United Kingdom**

UNITED KINGDOM

Local name for VAT
VAT
Applicable Rates for E-Commerce Services
<p>Standard Rate</p> <p>20%</p> <p>Special Rate</p> <p>N/A</p>
Registration Requirements
<p>Mandatory</p> <p>VAT registration is mandatory for non-UK established businesses making any supplies in the UK, and for UK established businesses, which exceed the current VAT registration threshold of £81,000.</p> <p>Optional</p> <p>VAT registration is optional for UK established businesses trading below the £81,000 threshold.</p>
Place of supply for cross border supplies of intangibles and e-commerce to local consumers (B2C)
<p>In the case of e-commerce services, the place of supply from 1 January 2015 is where the customer belongs or is presumed to belong.</p> <p>In the case of intangibles, the supply takes place where the supplier is based, and therefore if the supplier is based in the UK, it must charge UK VAT. If, however, the customer is based outside the EU (other than the Isle of Man) the supply is treated as taking place there and there is no UK VAT.</p>

Australia | Brazil | China | Germany | Italy | Japan | Luxemburg | Netherlands | Poland | Russia | South Africa | Spain | Sweden | **United Kingdom**

Place of supply for cross border supplies of intangibles and e-commerce to business (B2B)

For e-commerce services, the supply takes place where the customer has its business establishment, or if it has establishments in more than one jurisdiction, where its establishment is based which is most directly concerned with the supply. Similarly, a business customer established in the UK, which receives an e-commerce supply from outside the UK, must account for VAT under the reverse charge.

The effective use and enjoyment rule applies to B2B e-commerce services. Where the usual rules would dictate that the place of supply is outside the EU, but the services are effectively used and enjoyed in the UK, the place of supply shifts to the UK, and if the usual rules would dictate that the place of supply is in the UK, but the services are effectively used and enjoyed outside the EU, there is no EU VAT. Great care must therefore be taken if the services are consumed in a different country from the one in which the customer is established.

So far as the supply of B2B services of intangibles is concerned, the supply takes place where the business customer is located. The effective use and enjoyment rules do not apply.

Do you require evidence of a customer's VAT number to treat a supply as B2B?

The VAT registration number is the best evidence, but UK HMRC accept alternative evidence of the customer being in business.

Can prices be displayed on a tax exclusive basis?

So far as invoicing is concerned, there are strict rules as to what details the invoice must contain. On websites and advertising material, it is generally possible to show the VAT exclusive amount, provided it is not misleading.

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