

Newsletter – Extra VAT

VAT – package 2010

Place of supply of services – periodical VAT return – listing of intra-Community services

1. Definition of the problem

As of 1 January 2010 VAT application will undergo a number of important changes, especially:

- new criteria are established for determining the place of supply of services;
- a number of new boxes are added to the periodical VAT return and transactions have to be included that formerly did not have to;
- the recapitulative statement of intra-Community supplies is extended to intra-Community services.

Awaiting the alteration of Belgian legislation, we discuss the most important items below.

2. Place of supply of services

2.1. General rule

2.1.1. Concepts

2.1.1.1. From 1978 until 2009

From 1978 until 2009, according to the general rule, the place of supply of services is deemed to be the place where the supplier has established his business. However, exceptions to this rule are so numerous that, in practice, there are more applications for the exceptions than for the general rule.

During this period, the place of supply of services, under certain conditions, can be determined on the basis of criteria such as the place where immovable property is located, place of effective use and enjoyment, the member state where the customer is identified for VAT purposes, the place of the underlying transaction, etc.

2.1.1.2. As of 2010

As of 2010 the general rule is based on the distinction regarding the quality of the customer, namely:

- if the customer is a taxable person, the place of the supply of services is, except for deviations, the place where that person has established his business;
- if the customer is not a taxable person, the place of the supply of services, except for deviations, is the place where the supplier has established his business.

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Knowing that the majority of services are provided between economic entities, especially the criterion of the taxable customer's place of establishment will be applicable.

However, as of 2010 a significant number of exceptions will remain, which use other criteria for determining the place of supply of services. These exceptions are intended for specific services and are applicable to either all customers, both taxable and non-taxable, or exclusively to non-taxable customers.

The legal debtor of the chargeable tax, namely the person that has to guarantee the levy and payment to the Member State of the place of supply of services, is either the service provider, or his customer, depending on the distinction discussed below.

2.1.2. Quality of the customer – service recipient

For the application of the general rule, a clear distinction has to be made depending on the customer's quality:

- is he a taxable person?
- is he a non-taxable person?

2.1.2.1. Taxable customer

As of January 2010 and according to the general rule, every time the customer is a taxable person acting as such, the place of supply of services, in principle, is the place where the customer has established his business or has a fixed establishment or, in the absence of such a place, the place where he has his permanent address or where he usually resides.

Examples of the application of the general rule as of 1 January 2010

- Management services provided by a taxable person established in Belgium to a business established and identified for VAT purposes in another Member State take place in the customer's country;
- Cross border leasing of vehicles is taxable in the member state of the taxable customer;

The concept of taxable person also includes the persons that are completely exempted in accordance with section 44 of the Belgian VAT code.

If a non-taxable legal person is identified for VAT purposes, he has, for the application of the rules regarding the place of supply of services, the quality of a taxable person. The same applies to, for instance, public authorities (municipalities, provinces, communities, etc.) that are identified for VAT purposes for the distribution of tap water, sale of wood, exploitation of a car park, a camping site, etc.

And also the partial and mixed taxable persons are subject to this category, even if the intended transactions are exclusively destined for the non-taxable sector, in respect of which no VAT paid is deductible. In English, the fact that the services take place in the place where the taxable customer has established his business is called 'business to business', abbreviated 'B2B'. We will also use this abbreviation.

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2.1.2.2. Non-taxable customer

According to the general rule, the place of supply of services provided to a non-taxable person is in principle the place where the service provider has established his business. If these services are provided from a fixed establishment of the service provider, in another place than the place where he has established his business, the place of the supply of services is the place where this fixed establishment is located. In the absence of such a place, the place of supply of services is the place where he has his permanent address or where he usually resides.

In English, the fact that the services take place in the place where the service provider has established his business is called ‘business to consumer’, abbreviated ‘B2C’. We will also use this abbreviation.

2.2. Deviations

2.2.1. *Concepts*

To the general criteria, the place where the service provider or customer have established their business, there are exceptions.

Some of these exceptions are applicable to all customers, regardless whether they are taxable persons or not.

Other deviations are only applicable to non-taxable customers.

2.2.2. *Services of intermediaries – non-taxable customers – place of the underlying transaction*

The place of supply of a service that is provided to a non-taxable person by an intermediary who acts in the name and on behalf of third parties, is the place where the underlying transaction takes place.

However, if the customer is a taxable person, the B2B criterion remains applicable.

Examples

- A private person, Belgian resident, uses a broker for the purchase of a painting in a French museum. If the purchase took place in France, the broker’s invoice to the private person for his services is also deemed to have taken place in France. In this case, French VAT is due.
- If the same transaction is concluded for a taxable customer, the B2B criterion applies, namely the place where the customer has established his business.

The VAT’s debtor, in other terms the person that is responsible for payment of the tax to the Member State where the service takes place, is explained below.

2.2.3. *Services connected with immovable property – customer is taxable person or not – place of immovable property*

The place of supply of services connected with immovable property, including:

- the services of estate agents and experts;
- the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites;
- the granting of rights to use immovable property;

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- services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision;
is, regardless of the customer's quality (taxable person or not), the place where the immovable property is located.

Example

A business established in Belgium carries out excavation works to an immovable property in Germany, on behalf of a contractor established in Belgium. Without further consideration, German VAT is due on the immovable works, since the immovable property is located there.

2.2.4. Supply of passenger transport – customer is taxable person or not – distances covered

Regardless of the customer's quality (taxable person or not), the place of supply of services is the place where the transport takes place, proportionate to the distances covered.

Example

A taxi company established in Belgium transports a company director from Brussels to Paris. On the Belgian part of the distance, Belgian VAT is due. French VAT is due for the kilometres in France.

The issue of the VAT's debtor is discussed below.

2.2.5. The supply of transport of goods, other than the intra-Community transport of goods – non-taxable person – distances covered

The place of supply of the transport of goods, other than the intra-Community transport of goods, to non-taxable persons is the place where the transport takes place, proportionate to the distances covered.

Examples

- A mover established in Morocco moves goods from Algeria to Congo on behalf of a private person.

The transport takes place in Africa. Hence, no Community VAT is due.

- The same mover does the same transport in Africa, but on behalf of a business established in Belgium.

Since the customer is a taxable person, the B2B rule remains applicable in all its aspects and Belgian VAT is due, since the customer is identified in Belgium for VAT purposes.

Also remember that for this tax, the boxes 87 and 56 (see below) of the periodical VAT return have to be filled in (see below).

2.2.6. Intra-Community transport of goods – non-taxable customer – place of departure of the transport

The place of supply of intra-Community transport for non-taxable persons is the place of departure of the transport.

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Examples

- a retired couple requests a mover to move furniture from Belgium to Italy. As the intra-Community transport departs in Belgium, Belgian VAT is due over the entire price.
- If the same service is provided to a business established in France. In that case, the B2B criterion is applicable and French VAT is due.

For determining the VAT debtor, we refer to the discussion below.

2.2.7. Cultural, artistic, sporting, scientific, educational, entertainment or similar activities

2.2.7.1. Year 2010

Services connected with cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, including the activities of the organisers of such activities and, where appropriate, ancillary services take place in the place where the services are physically carried out.

From 1 January until 31 December 2010, these services take place in the place where they are physically carried out, regardless of the customer's (taxable or non-taxable) quality.

Example

A taxable person subject to Belgian VAT has a stand on a fair in Berlin. The organiser has to invoice with German VAT, as the service is physically provided there.

2.2.7.2. Year 2011 and following

As of 1 January 2011, and for the following years, a distinction has to be made depending on the customer's quality:

- if the customer is a non-taxable person, the place where the services are physically provided remains applicable;
- however, if the customer is a taxable person, these services take place in the place where the customer is established. In that case, the B2B rule is applicable in all its aspects. The admission to these activities remain located, as of 1 January 2011 and for the following years, on the place where the service is physically provided, even for taxable customers.

The issue of the VAT's debtor is discussed below.

2.2.8. Ancillary transport activities – non-taxable customer – place where service is physically carried out

Ancillary transport activities, such as loading, unloading, handling and similar activities, provided to non-taxable persons, take place in the place where they are physically carried out.

Examples

- Private persons, Belgian residents, buy wine in France. They request a local firm to load the lorry of the Belgian transporter who transports the goods from France to Belgium.

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The loading charges are subject to French VAT, place where the services are physically carried out.

Remember that the Belgian transporter also has to apply French VAT to his transport, as the transport departs there (see above).

- If the same loading charges are invoiced to the Belgian transporter.

In this case the B2B rule applies, namely the place where the Belgian transporter is established, and Belgian VAT is applicable.

For determining the VAT debtor, we refer to the discussion below.

2.2.9. Valuations of and work on movable tangible property – non-taxable customer – place where the services are physically carried out

Valuations of and work on movable tangible property provided to non-taxable persons, take place in the place where they are physically carried out.

Examples

- A Belgian tourist has his car repaired in the Netherlands.

Dutch VAT is applicable.

- If the customer is a person identified for VAT purposes in Belgium.

As a result of application of the B2B rule, Belgian VAT is due.

Remember that the restriction on the right of deduction for motor cars also applies to this VAT.

2.2.10. Supply of restaurant and catering services – taxable person or not – place where services are physically carried out

Restaurant and catering services take place, regardless of the customer's (taxable or non-taxable) quality, in the place where the services are physically carried out, with the exception of those services physically carried out on board ships, aircraft or trains during the section of a passenger transport within the Community. These services take place in the place where the passenger transport departs.

Example

A restaurant owner established in Belgium asks a Luxembourg colleague to organise a business lunch in a restaurant located in the Grand Duchy of Luxembourg. The Luxembourg restaurant owner invoices to the Belgian restaurant owner, who in his turn invoices to a French business.

Luxembourg VAT has to be applied to all invoices, as restaurant and catering services are physically carried out in the Grand Duchy of Luxembourg.

2.2.11. Short-term hiring of a means of transport – taxable person or not – place where means of transport is put at disposal

Regardless of the customer's (taxable or non-taxable) quality, short-term hiring of a means of transport takes place in the place where the means of transport is actually put at the disposal of the customer.

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“Short-term hiring” means the continuous possession or use of the means of transport throughout a period of not more than thirty days and, in the case of vessels, not more than ninety days (wording of the Directive).

This method is not limited in time. It applies in 2010, 2011, 2012 and the following years, which is certainly not the case for long-term hiring (see below).

Examples

- A Belgian tourist hires a car in Turin in order to travel from Italy to Spain for private purposes. Italian VAT is applicable to the entire contract, no distinction is made between the places of the private use.
- A Belgian business hires a car in Sweden for 15 days. Swedish VAT is applicable to the entire price.

2.2.12. Long-term hiring of a means of transport – non-taxable customer – place of service provider or customer

2.2.12.1. Concepts

For hiring for more than thirty days, in the case of vessels for more than ninety days (wording of the Directive), evidently including leasing, a distinction has to be made whether the customer is a taxable person or not.

Furthermore, another distinction has to be made depending whether the hiring takes place between 1 January 2010 and 31 December 2012 or as of 1 January 2013.

2.2.12.2. Taxable customer – years 2010, 2011, 2012, 2013 and following

For taxable customers the B2B rule is applicable in all its aspects.

This means that long-term hiring of a means of transport takes place in the place where the taxable customer is established.

Example

A Belgian company leases a car from a business established in the Grand Duchy of Luxembourg.

As of 2010, and without foreseeable change for the next years, the lease payments are taxable in Belgium. In other words, Belgian VAT is applicable.

Hence, this VAT is also subject to the restriction on the right of deduction in accordance with section 45 § 2 of the Belgian VAT code, namely, in principle only 50 % deductible.

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2.2.12.3. Non-taxable customer – years 2010, 2011 and 2012

For non-taxable customers the general B2B rule remains applicable, in any case for the three years from 2010 until 2012.

During the above-mentioned years, long-term hiring remains taxable in the member state in which the service provider is established.

Example

A private person, Belgian resident, leases a car from a company established in the Grand Duchy of Luxemburg. On the lease payments that become payable between 1 January 2010 and 31 December 2012, Luxemburg VAT is applicable.

2.2.12.4. Non-taxable customer - years 2013 and following

As of 1 January 2013, long-term hiring of a means of transport to non-taxable customers takes place in the place where the customer is established.

In other terms, as of 1 January 2013, the criterion of place of establishment of the customer fully applies, so that it no longer matters whether the customer is a taxable person or not.

Example

Suppose that both a private person, Belgian resident, and a company established in Belgium lease a car from a Dutch leasing company.

In both cases, Belgian VAT is due, regardless of the quality of the customer (taxable person or not).

However, for the hiring of a pleasure boat, special criteria will be used as of 1 January 2013. The discussion of these criteria does not fall within the scope of the present article.

2.2.13. Electronic services – non-taxable customer – place of service provider or customer

2.2.13.1. Concepts

The criteria depend on the quality of the customer (taxable person or not), place of residence of the non-taxable customer (inside or outside the Community) and the place of the service provider (inside or outside the Community).

2.2.13.2. Taxable customer

In these cases the B2B rule applies: VAT is due in the place where the customer has established his business.

2.2.13.3. Non-taxable customer residing outside the Community

These services take place in the place where the non-taxable customer resides.

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2.2.13.4. Non-taxable customer residing in the Community

If the customer resides in the Community, distinction has to be made whether the service provider is established in the Community or not.

2.2.13.4.1. Service provider outside the Community

These services are deemed to take place in the place where the non-taxable customer is residing inside the Community.

2.2.13.4.2. Service provider inside the Community

In this case, the place where the service provider has established his business applies, i.e. the B2C rule.

2.2.14. Telecommunications, radio and television broadcasting – non-taxable customer – place of service provider or customer

2.2.14.1. Concepts

In this case, also a distinction has to be made between the customer and the service provider.

The rules below apply as of 1 January 2010 until 31 December 2014.

As of 1 January 2015, a number of simplifications are provided for. The discussion of these simplifications does not fall within the scope of the present article.

2.2.14.2. Taxable customer

If the customer is a taxable person, the B2B rule applies and these services take place in the place where the customer has established his business.

2.2.14.3. Non-taxable customer residing outside the Community

These services are deemed to take place in the place where the non-taxable customer is residing, i.e. outside the Community.

2.2.14.4. Non-taxable customer residing inside the Community

In accordance with the legal motivation, a distinction has to be made whether the service provider has established his business inside or outside the Community.

But for VAT taxation, the solution is that, in both cases, the service is deemed to take place in the place where the service provider has established his business. In this context, the distinction will not further be discussed.

2.2.15. Miscellaneous services – non-taxable customer residing outside the Community – place of customer

2.2.15.1. Non-taxable customer

The place of supply of the following services to a non-taxable person who is established or has his permanent address or usually resides outside the Community, is the place where this person is established, has his permanent address or usually resides:

- a) transfers and assignments of copyrights, patents, licences, trade marks and similar rights;
- b) advertising services

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- c) the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;
- d) obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this Article;
- e) banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes;
- f) the supply of staff;
- g) the hiring out of movable tangible property, with the exception of all means of transport;
- h) the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto;
- i) telecommunication services
- j) radio and television broadcasting services
- k) electronically supplied services.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.
The items i), j), and k) will be cancelled as of 1 January 2016.

2.2.15.2. Taxable customer

The B2B rule remains fully applicable: The service takes place in the place where the taxable customer has established his business.

2.2.16. Possibility to deviate from certain stipulations

In order to prevent double taxation, non-taxation or distortion of competition, Member States may, in certain well-defined cases:

- consider the place of supply of any or all of those services, if situated within their territory, as being situated outside the Community if the effective use and enjoyment of the services takes place outside the Community;
- consider the place of supply of any or all of those services, if situated outside the Community, as being situated within their territory if the effective use and enjoyment of the services takes place within their territory.

This possibility, of course, also applies to Belgium. However, awaiting the official publications, we think it premature to discuss this further.

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2.3. Non-exhaustive summary

This summary is not complete. It only intends to describe the most important alterations to the determination of the place of supply of services in the place where the taxable customer has established his business, namely the B2B rule.

<i>Main exception to B2B</i>	<i>Other place than place of taxable customer</i>
1. Construction works	= place where immovable property is located
2. Supply of passenger transport	= place proportionate to distances covered
3. Cultural, artistic, sporting, educational activities,..	2010 = place where service is physically carried out 2011 and later = place of customer (B2B) (except right of access = place where service is physically carried out)
4. Restaurants, bars	place where service is physically carried out
5. SHORT-TERM hiring of means of transport	place where means of transport is put at disposal
<i>! Place of actual use or exploitation</i>	<i>! Member States have possibility to deviate</i>

2.4. Debtor

2.4.1. Concepts

The debtor is the person who legally has to charge the VAT and pay it to the Member State in which the service takes place.

Depending on the circumstances, the debtor can be either the service provider or the customer. The discussions below apply to the B2B criteria.

In the other cases (B2C), in principle and except for compromises, especially on the initiative of the Member States that are entitled to the VAT revenue, the service provider is debtor of the VAT, who, in general, has to identify himself for VAT purposes.

2.4.2. Service provider who is established in the customer's Member State – B2B

If the B2B criteria are met and if both parties have established their business in the same Member State, in principle, the VAT is payable by the service provider.

In other terms, it is the supplier of the service who has to charge and pay the VAT due.

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2.4.3. Service provider not established in the customer's Member State – B2B

For the application of the B2B criteria, the VAT is payable by the taxable person or the non-taxable legal person that is identified for VAT purposes to whom the services are provided, if the services are provided by a taxable person who has not established his business in the customer's Member State where the tax is payable.

3. Periodical VAT return

3.1. Concepts

In the context of the discussions dedicated to the determination of the place of supply of services as of 2010 and the debtor of the related tax, according to B2B criteria, we also discuss the alterations to the form of the periodical Belgian VAT return.

The other changes to the VAT return form as of 2010 (new box that has to be ticked in order to justify the filing of a zero recapitulative statement of intra-Community supplies, new data that have to be filled in in box 00, new criteria with regard to the periodicity of the filing of the VAT return and the recapitulative statement of intra-Community supplies) will not be discussed here

3.2. New box 44

This new box is intended for the taxable amount of the services, supplied to a taxable person who has established his business in another Member State, where this taxable person is debtor of the tax.

The transactions that are not subject to VAT in the supplier's Member State, are to be included in the recapitulative statement of intra-Community supplies discussed below. Until the end of 2009, these intra-Community services have to be included in box 47 of the VAT return form.

3.3. Existing box 48

Except for the corrections already intended before 1 January 2010, this existing box will also include possible negative corrections to the transactions in new box 44.

3.4. New box 88

This new box is intended for the taxable amount of the services received from a taxable person established in another Member State, that take place in Belgium as a result of application of the B2B rule and for which the taxable customer is debtor of the tax. The transactions mentioned have to be included in box 87 until the end of 2009.

3.5. Existing box 55

As of 1 January 2010 this box 55 will also include the VAT payable on the transactions mentioned in box 88.

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Until the end of 2009, box 56 is used to that purpose.

3.6. Existing box 84

Apart from the other negative corrections, this box will also include the negative corrections to the transactions mentioned in box 88.

3.7. Existing boxes 87 and 56

If the service provider has established his business outside the Community, but the transaction takes place in Belgium as a result of the application of the B2B rule, the taxable amount has to be included in box 87 and the VAT payable in box 56.

For an illustration we refer the reader to the second example under 2.2.5, (A mover established in Morocco moves goods in Africa on behalf of a Belgian company).

4. Recapitulative statement of intra-Community transactions

4.1. Concepts

Already before 2010, a recapitulative statement of intra-Community supplies that were VAT exempted had to be filed, because the supplies were done to customers that were themselves debtor to the tax on intra-Community acquisitions in their own Member State. The intra-Community acquisitions can be found in box 46 of the periodical VAT return.

As of 2010, this recapitulative statement is supplemented with the intra-Community supply of services that, as a result of the application of the B2B rule, are not subject to Belgian VAT, namely the intra-Community supply of services for which the taxable customer is debtor of the tax in the Member State in which he has established his business. These are the services included in the new box 44 of the periodical VAT return form.

4.2. Indication of the category of transactions

The different transactions that have to be included in the recapitulative statement of intra-Community transactions, receive a letter to indicate the category to which they belong:

- letter L for intra-Community supplies (box 46 of the return);
- letter S for intra-Community supplies of services (box 44 of the return);
- letter T for transactions in triangulation (as formerly – box 46 of the return).

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