

VALUE-ADDED TAX

INFORMATION LEAFLET No. 7.

VAT on Telecommunications Services

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General

1. Several provisions in the 1997 and 1998 Finance Acts relate to changes in the VAT rules concerning international telecommunications services.

2. Prior to 1 July, 1997, the place where telecommunications services were deemed to be supplied was the place where the supplier had established his/her business. Therefore, a supply of telecommunications services from a supplier in, say, the US to a customer in the EU escaped VAT altogether because the place of liability to tax was outside the scope of EU VAT. This meant that although such services were entirely consumed within the EU, they were not subject to EU VAT. The opposite case also applied as EU suppliers of telecommunications services to customers outside the EU were obliged to account for VAT on those services, even though they were entirely consumed outside the EU. This resulted in distortion of competition to the disadvantage of the EU suppliers. To combat this, all Member States have sought and received identical derogations from Article 9(1) of the Sixth VAT Directive.

3. The arrangements set out in this leaflet explain how the derogation is applied in Ireland. The new rules deal primarily with international telecommunications suppliers.

4. Under the terms of the derogation, as from 1 July, 1997, VAT is chargeable on supplies of telecommunications services used within the EU, even if the supplier is established outside the EU. There are various rules which determine where and by whom this VAT must be accounted for. Also, certain supplies by EU suppliers to non-EU established customers are now taken out of the VAT net.

5. The main features of Irish VAT law and practice can now be summarised as follows:

the term “telecommunications service” has been defined for VAT purposes (see paragraph 8);

- telecommunications services have been added to the Fourth Schedule of the VAT Act (see Statement of Practice SP - VAT 5/94-Fourth Schedule Services) with the result that

a customer in the State, other than a private individual, who buys telecommunications services from outside the EU or from another Member State must self-account for and pay the VAT on those services and

a service provider established in the State whose customers are business persons outside the State may supply those customers without VAT;

- an EU service provider who supplies a service to a private individual in another Member State must account for the VAT in his/her own Member State;
 - a non-EU service provider who supplies a service to private individuals in this State must register and account for the VAT here;
 - a service provider established here must account for VAT here on services which he/she provides to private individuals who, although resident outside the EU, use the services while they are here. Such a service provider is not liable for VAT on the services which the non-EU resident uses outside the EU.
6. The derogation includes certain anti-avoidance rules concerning pre-payments, which have the effect of applying the new rules to payments made prior to 1 July, 1997, in respect of services supplied after that date.
7. The following chart (Chart A) illustrates how the new rules are being operated throughout the EU.

Chart A

Liability to VAT on supplies of telecommunications services.

	Status and place of establishment or residence of customer	Supplier in Ireland	Supplier in OMS	Supplier outside EU
1	business customer in Ireland	Supplier accounts for Irish VAT	Customer accounts for Irish VAT	Customer accounts for Irish VAT
2	private individual in Ireland	Supplier accounts for Irish VAT	Supplier accounts for OMS VAT	Supplier must register and account for Irish VAT
3	business customer in OMS	Customer accounts for OMS VAT	Supplier/customer accounts for OMS VAT ¹	Customer accounts for OMS VAT
4	private individual in OMS	Supplier accounts for Irish VAT	Supplier accounts for OMS VAT ²	Supplier must register and account for OMS VAT
5	outside EU, whether business customer or private individual	Outside the scope of Irish VAT - No VAT payable (but see column 6)	Outside the scope of Irish VAT	Outside the scope of EU VAT
6	private individual resident outside EU but avails of service while in Ireland	Supplier accounts for Irish VAT	Outside the scope of Irish VAT	Outside the scope of Irish VAT when mobile services, cards etc. are involved

OMS = other Member State of the EU

¹ If supplier and customer in the same Member State, supplier pays VAT.
If supplier and customer in different Member States, customer pays VAT in his/her Member State.

² Supplier pays VAT in his/her Member State, even if customer in a different State.

Scope of the tax

8. The scope of the term “telecommunications services” has been defined in the VAT Act as

“services relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the transfer or assignment of the right to use capacity for such transmission, emission or reception”.

9. In general, the services concerned are those which consist of making available the means of telecommunication. The types of service covered by the definition include the following:

- telephone calls, telephone calls delivered by cellular phones, paging, the transmission element of Electronic Data Interchange, teleconferencing and call-back services;
- switching, completion of another provider’s calls, the provision of leased lines and circuits or global networks;
- telex, facsimile, multi-messaging;
- e-mail and access to the internet;
- satellite transmission services, covering transponder rental/hire and both space segments and earth segments, which includes uplinks and downlinks via land earth stations, coastal stations, outside broadcasting units, or similar.

Added value services, for which the customer pays a charge in addition to the telecommunications service access charge, are not included in the definition. Each added value service is to be treated according to the VAT rules appropriate to the service in question e.g. advertising service (see SP VAT 3/92 - Advertising Services).

It should be noted that, by common agreement among all Member States, the definition does not cover the service of broadcasting, which remains taxable by reference to the place where the supplier has established his/her business or has a fixed establishment.

Who is liable?

10. Persons who are liable to pay VAT in the State in respect of telecommunications services are the following:

- (i) telecommunications suppliers established in the State (see para 13) whose customers are
 - established or resident in the State, (whether business customers or other) or
 - private individuals in another Member State of the EU, or
 - private individuals resident outside the EU and are availing of the service while in the State, on or after 1 May 1998

if the annual turnover of the supplier exceeds or is likely to exceed £20,000;

- (ii) telecommunications suppliers established outside the EU whose customers are private individuals in the State, regardless of the size of the supplier's turnover;
- (iii) business customers, who receive telecommunications supplies from outside the State (either from another Member State or from outside the EU), regardless of the value of the supply received.

The categories mentioned in subparagraphs (ii) and (iii) above are liable for the VAT involved in respect of supplies made/received on or after 1 July 1997. Persons who are not already registered for VAT, and who now find themselves obliged to register and account for VAT on telecommunications services should contact the Central Registration Information Office at Arus

Brugha, 9/15 Upper O'Connell Street, Dublin 2 for the appropriate form and information about the registration procedure. A list of Offices to which enquiries may be made is attached at Appendix I.

11. Where a telecommunications supplier established in another Member State supplies services to private individuals in this State, that supplier is liable to VAT on those services in the Member State where he or she is established.
12. Where a telecommunications supplier is established in the State and all the customers are either established outside the EU (and using the service outside the EU), or are business customers in another Member State, the supplier is deemed not to be supplying taxable services here. Therefore, unless that supplier is registered for VAT in respect of other activities, he or she would not normally be in a position to register for VAT here. However, such a supplier can recover VAT paid on the business inputs by applying to VAT Repayments Section, Ennis (see Statement of Practice SP - VAT/2/94 -Repayments to Unregistered Persons).

The Supplier

13. The place of establishment of a supplier is the place where the supplier has established the business or has an establishment, or, if he or she has more than one establishment, the one which is most concerned with the supply in question. If the supplier has established the business in several countries, and there is doubt about which establishment is most concerned with a particular supply, he or she should consult the local Inspector of Taxes (see Appendix I). In general terms, a supplier is regarded as making supplies from the location where he or she has the technical and staff resources sufficient to make those supplies. (However, a supplier whose establishment is outside the EU but who supplies private individuals within the State must register here and account for the VAT on those supplies.)

The customer

14. The status and place of establishment or residence of the customer and, in certain circumstances, the place of use and enjoyment must be taken into account in deciding where the service is to be taxed.

As regards status, the customer is either a private individual, a business customer or a public body. Farmers who are not registered for VAT are treated as business customers in respect of telecommunications services they receive from abroad for the purpose of their farming activities. Although they must register and account for VAT on these telecommunications services, they are entitled to retain their unregistered status for their farming activities. Public bodies i.e. Government Departments, local authorities and other statutory bodies must self-account for VAT in respect of telecommunication services received from suppliers outside the State where EU VAT has not been charged.

The Member State or country of establishment or residence of the customer can be identified in several ways, for example

- the country where the customer uses the service (e.g. a fixed line in a particular location)
- the country where the customer is billed for the service.

Normally it will be possible to identify which country is the appropriate one for the purposes of deciding where an international telecommunications service should be taxed (or if tax is due at all). However, if there is a doubt, for example if a business customer received a fixed line service or a mobile phone service in one country but is invoiced for it at an establishment in another country, the parties concerned should contact their local Inspector of Taxes to confirm whether, and where, tax is payable.

Effect of the rules on certain services

15. (a) Mobile phone services

Irish suppliers of mobile phone services are liable to VAT on services provided to business and private customers established or resident in the State, for their usage of the service anywhere in the world.

If an Irish supplier of mobile phone services makes supplies to business customers established in another Member State of the EU, those services are not subject to Irish VAT but the customers are liable to VAT in the Member State where they are established.

Similarly, any business customers who are established here and supplied with mobile phone services in Ireland from suppliers outside the State and who use their mobile phones for business purposes must account for the VAT on those services here. They are entitled to deductibility of that VAT under the normal deductibility rules.

(b) Phone cards

There are several variations of cards which can be used to procure telecommunications services, and the VAT treatment can vary, depending on the transaction involved. The following paragraphs indicate the VAT treatment of the cards currently available. Suppliers marketing new cards are advised to check on the correct VAT treatment in advance.

(i) Pre-paid phone cards

Pre-paid phone cards are specifically legislated for in the Finance Act, 1998. The following rules apply in the case of

- physical cards denominated in terms of units of service;
- physical cards denominated in money amounts;
- other tokens including personal identification numbers (P.I.Ns) which give the customer a right to access a telecom network without incurring a further charge at the time when that network is accessed (note - in this case it is possible that the customer may not receive a physical card or token at the time of sale - merely an allocation of a PIN, for which the payment is made).

For the purpose of clarity, the term 'pre-paid phone card' will be used to cover all the above possibilities.

The place and time of taxation are, respectively, the place and time of supply of the pre-paid phone card itself. Pre-paid phone cards sold in Ireland attract VAT at 21%. The Finance Act 1998 contains a provision to ensure there is not double taxation when a telecom service is provided on foot of a pre-paid phone card on which the VAT has already been accounted for.

A company which sells pre-paid phone cards either as a wholesaler or retailer is normally liable to VAT on those sales as if it was in the business of supplying any taxable fourth schedule service (see Statement of Practice SP - VAT 5/94 - Fourth Schedule Services). However, the Revenue are prepared to accept arrangements whereby a company which supplies pre-paid phone cards to retailers within the State can account for VAT by reference to the full retail value of the card so no liability attaches to the retailer. Retailers should not, however, assume this arrangement applies in the case of all pre-paid phone card sales and should check with their suppliers. Any telecommunications supplier wishing to avail of this arrangement should apply to the local Inspector of Taxes.

The Finance Act, 1998, makes provision for the repayment of VAT to a taxable person who, in the course of business, sells pre-paid phone cards *which are subsequently used outside the EU* to access a telecommunications network. (The repayment does not apply to cards used within the EU.) The repayment is allowed *to the extent that* the card is used outside the EU. This means that, in the case where a customer uses the same card both in the EU and also outside it, part of the VAT which was accounted for at the time of the sale of the card can be refunded to the taxable person, to the extent that the card was used outside the EU. The taxable person (telecommunications supplier or retailer) can make the appropriate adjustment in the VAT 3 return for the period in which the telecommunications supplier's records of the place of use of the card become available.

The formula for calculating the VAT deduction is as follows:

$$(A-B) \times \frac{C}{C + 100}$$

where

A equals the tax inclusive price charged *by* the company (telecommunications supplier or retailer) which sold the card for that part of the value of the card which was used up in accessing the telecommunications service in a country outside the EU, and

B equals the tax inclusive price charged *to* the company which sold the card for that part of the value of the card which was used up in accessing the telecommunications service in a country outside the EU, and

C is the percentage rate of tax chargeable on the supply of the card at the time of that supply by that supplier (currently 21).

Where pre-paid phone cards are supplied through a number of suppliers e.g. a telecommunications supplier and a retailer each supplier can claim a VAT refund based on the formula **provided** the appropriate proof of use outside the EU is available.

The following examples illustrate how a VAT refund may be calculated in various circumstances:-

- 1) retail selling price of phone card = IR£10.0
- 2) records/accounts show that IR£2.5 in value of phone calls (i.e. 25 per cent) accessed outside EU
- 3) retailer has a 10 per cent mark-up.

Example 1 - **Supplier to retailer to final consumer.**

Supplier - Formula $(A-B) \times \frac{C}{C+100} = (2.3 - \text{nil}) \times \frac{21}{21 + 100} = 39\text{p}$.

VAT refund to Supplier = 39p

Retailer - Formula $(A-B) \times \frac{C}{C+100} = (2.5 - 2.3) \times \frac{21}{21 + 100} = 4\text{p}$

VAT refund to Retailer = 4p

The combined refunds of 43p equals VAT at 21 per cent included in the value of IR£2.50 which reflects the value of the card accessed outside the EU.

Example 2 - **Supply of pre-paid phone card by a company which supplies to retailers but which accounts for VAT on the full retail value of the card and no VAT liability is attached to the retailer.**

Supplier - Formula $(A-B) \times \frac{C}{C+100} = (2.5 - \text{nil}) \times \frac{21}{21 + 100} = 43\text{p}$

- VAT Refund to Supplier = 43p.

As in the previous example the VAT refund equals the VAT at 21 per cent included in the value of IR£2.50. (i.e. value of card accessed outside EU) but the full refund is made to the supplier of the pre-paid phone card who is accounting on the gross retail value of the card.

Example 4

Exempt body which accounts for VAT under the reverse - charge mechanism on purchase of pre-paid phone cards from abroad.

	IR£
Price to exempt body from foreign supplier	7.5
-self accounts for VAT at 21 per cent in this State	<u>1.6</u>
VAT incl. price	9.1

Exempt body uses card outside EU
(for business purposes or not), to the
extent of 25 per cent.

Exempt body entitled to refund of VAT to the extent
of 25 per cent (i.e. 25 per cent of 1.6) = 40p

It is emphasised that a person claiming repayment of VAT for the non-EU use of a pre-paid phone card must have the appropriate proof that the card was used outside the EU and the extent of such use. This must be retained in the records and may be required for inspection.

(ii) Telephone charge cards or post-paid PIN cards

These are cards which are sold to customers for telephone use in advance of payment. The charge card operates on the basis of a PIN which is keyed in as part of the dialling sequence. The customer is subsequently invoiced in respect of the use of the card, frequently by incorporating the appropriate amount into the normal telephone bill covering the telephone services to his or her establishment or residence. While these cards are marketed as a convenience for persons travelling abroad, they can also be used within the State. When the card is used abroad, the customer dials a free-phone number allocated to the country where he or she is making the call, and

this puts him or her in contact with the network which issued the card and which will later issue the invoice. That network then connects the customer to the required number.

For VAT purposes these transactions are treated as telecommunications services supplied to the customer at the location of the customer's establishment or residence, regardless of where the customer is physically located when using the card. The VAT treatment is the same as that for other invoiced telecom services, as outlined in this leaflet.

(c) Internet

Access to the Internet is regarded as a telecommunications service for VAT purposes. Therefore, a person who supplies access to the Internet in return for subscription or fee by the customer is treated as a supplier of telecommunications services. If the customer is charged for access to specialised services *via* the Internet, these extra charges are not regarded as part of the charge for the telecommunications service. The VAT treatment of such extra charges follows the normal VAT rules regarding supplies of services, i.e. the nature of the service supplied dictates which VAT rule applies.

(d) Leased Lines

The provision of access to lines or networks is treated as a telecommunications service, including access under long or short-term lease arrangements.

Further Information

Any additional queries should be addressed to your local Inspector of Taxes. A list of useful addresses, telephone, fax numbers and e-mail addresses can be found here.