

Telecommunications, broadcasting and electronic (TBE) services

This document should be read in conjunction with sections 91A, 91B, 91C, 91D and 91E of the VAT Consolidation Act 2010 (VATCA 2010).

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Introduction

This guidance sets out the Value Added Tax (VAT) treatment of supplies of telecommunications, broadcasting and electronic (TBE) services from a VAT registered person to a customer. The place of taxation will be determined by the location of the supplier, the customer, and the business to consumer (B2C) €10,000 place of supply threshold.

1 What are TBE services?

1.1 Telecommunications services

Telecommunications services are defined 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. This includes the related transfer or assignment of the right to use capacity for such transmission, emission or reception, and the provision of access to global information networks. Please see [Appendix 1](#) for examples of telecommunications services.

1.2 Broadcasting services

Broadcasting services includes services consisting of audio and audio-visual content (for example radio or television programmes). These programmes are provided to the general public via communications networks by and under the editorial responsibility of a media service provider, for simultaneous listening or viewing, on the basis of a programme schedule.

The definition of broadcasting services also covers the distribution of radio and television programmes via electronic networks such as the internet, but only if they are broadcast for simultaneous listening or viewing. The definition does not cover on-demand programming, a service which, in return for a specific fee, provides access to a customer to specific programmes at the time the customer demands. On-demand programming qualifies as an electronically supplied service as detailed in paragraph 1.3 . Please see [Appendix 2](#) for examples of broadcasting services.

1.3 Electronically supplied services

An electronically supplied service or 'e-service', is a service that is delivered over the internet (or an electronic network which is reliant on the internet or similar network for its provision). The e-service is heavily dependent on information technology for its supply. This means the service is essentially automated, involves minimal human intervention and in the absence of information technology does not have viability.

The use of the internet to convey information (for example by e-mail) in the course of a business transaction does not change the nature of the transaction and make it a supply of an e-service.

Particular care should be taken where a service includes both electronic and other elements. The VAT treatment of such composite or multiple supplies must generally be considered on a case-by-case basis. Please see [Appendix 3](#) for examples of electronically supplied services.

2 Place of supply rules

2.1 The Place of supply of TBE services to customers

In general, the place of supply in respect of supplies of TBE services to customers is the place where the customer is established, has a permanent address or usually resides.

Business to business (B2B) supplies of TBE services continue to be taxable where the business customer is established.

Business to consumer (B2C) supplies are taxable where the customer is based subject to a [€10,000 place of supply threshold](#). The supplier must register in the Member State of their customers or use the [One-Stop-Shop \(OSS\)](#) to register in their own Member State and pay the VAT due on their supplies.

The supply of TBE services to all customers established or residing outside the European Union (EU) falls outside the scope of EU VAT. This is, of course, subject to the [use and enjoyment rules](#).

2.2 B2C supplies - €10,000 Place of Supply Threshold

Where a supplier is involved in the provision of TBE services to non-taxable persons and the value of those supplies is less than €10,000 in the current and preceding calendar year, the supplies will be subject to domestic VAT.

This threshold is subject to the following conditions:

1. the supplier is established, has a permanent address or is residing in only one Member State
2. the supplier supplies TBE services to customers who are established, have a permanent address or are residing in another Member State
and
3. the value of the TBE services and intra-Community distance sales supplied to other Member States is not more than €10,000 in the current and preceding calendar year.

The €10,000 figure is exclusive of VAT.

A supplier who makes supplies of TBE services with a value of less than €10,000 can decide to apply the general place of supply rules to his or her supplies. This can be done through registering for VAT in the Member State to which the supplies are made (as distance sales are being made to that Member State), or by registering for the [Union Scheme One Stop Shop \(OSS\)](#) . Where a supplier opts to apply the general place of supply rules, they will be bound by that decision for two years.

As soon as the €10,000 threshold is exceeded, the supplier cannot avail of the exception for the place of supply rules. The general rules in relation to place of supply will apply to all supplies after the threshold is exceeded, with the VAT being due in the Member State in which the customer is based.

The €10,000 threshold does not apply to supplies of TBE services made by a supplier who is not established in the EU.

3 Customer status - taxable or non-taxable status

The supplier must identify the taxable or non-taxable status of the customer. This will determine whether it is the supplier or the customer that is liable for the VAT on the supply. The supply of TBE services will be taxable in the Member State of the customer unless the [€10,000 place of supply threshold](#) rules apply and are optioned by the supplier.

A business customer's status is often verified through the provision of the VAT number by the customer. Where the customer has not provided a VAT number but the supplier has other evidence of the customer's business status, (for example proof that the customer is in the process of registering for VAT), they are not required to charge VAT. In this situation the supplier may treat the customer as a business customer.

If the customer has not provided the supplier with a VAT number and they are unsure of his or her status, they may treat the customer as a non-business customer and charge VAT on the supply. Where the customer subsequently provides the supplier with a VAT number within a reasonable time of the supply and they are satisfied that the customer was in business at the time the supply was made, they should make an adjustment to reflect the customer's taxable status.

4 Who is making the supply to the final consumer?

For broadcasting and for most telecoms services, it is normally apparent who is making the supply to the final customer.

For e-services which are supplied through a telecommunications network, an interface or a portal and for telephone services provided through the internet (VOIP as an example), the supplier of the service is not always obvious. It is therefore necessary to identify which supplier in the supply chain is supplying the service to the final customer.

If a supplier is a taxable person 'taking part in a supply' of:

- e-services which are supplied through a telecommunications network, an interface or portal
- or**
- a telephone service provided through the internet

that supplier is presumed to have received and supplied those services in their own name. They are therefore liable to account for VAT on the supply of these services to their customer.

This presumption can be overridden where the actual service supplier is 'explicitly indicated as the supplier' and this is reflected in the contractual arrangements between the parties.

'Taking part in the supply' of TBE services is explained in [paragraph 5](#).

4.1 What is meant by 'explicitly indicated as the supplier'?

If a person is taking part in the supply of TBE services and any of the following apply:

- they authorise the charge to the customer in respect of the supply
- they authorise the delivery of the supply to the customer
- they set the terms and conditions of the supply

they have, or are presumed to have, received and supplied that service in their own name. They cannot explicitly indicate another person in the chain as the supplier. They are accountable for the VAT on the supply of the service to the customer.

The presumption that the person has received the service in their own name can be overridden:

- if they do not carry out any of the actions listed above
- and**
- both the service and the actual supplier of the service are explicitly indicated on each invoice issued in the supply chain and on the bill or receipt issued to the final customer.

If these conditions are satisfied, they will not be obliged to account for the VAT in relation to the supply of that service.

5 What is meant by 'taking part in the supply' to the consumer?

All features of the supply of TBE services need to be taken into account to assess whether a person is 'taking part in the supply'. There are various indicators which may be evidence of a taxable person taking part in the supply including the following:

- Owning or managing the technical platform over which the services are delivered.
- Being responsible for the actual delivery.
- Being responsible for collecting payment, unless the only involvement of the taxable person is the processing of the payment.
- Controlling or exerting influence over the pricing.
- Being the person legally required to issue a VAT invoice, receipt or bill to the end user in respect of the supply.
- Providing customer care or support in relation to queries about the service or problems with the service itself.
- Exerting control or influence over the presentation and format of the virtual market place (such as app stores or websites) such that the brand and identity of the taxable person are significantly more prominent than those of other persons involved in the supply.
- Having legal obligations or liabilities in relation to the service provided.
- Owning the customer data related to the supply in question.
- Being in a position to credit a sale without the supplier's permission or prior approval, in cases where the supply was not properly received.

It should be borne in mind that not all taxable persons involved in transactions in the supply chain, are taking part in the supply. A payment service provider who only provides a payment processing service is not regarded as taking part in the supply. Similarly, an internet provider who only makes the internet network available for the carrying of content and/or collection of payment (via Wi-Fi, cable, satellite, other) would not be regarded as taking part in the supply of an electronic service.

Further information in respect of deemed supplier, electronic interfaces, and record-keeping is available on [Revenue's website](#).

6 Customer location and presumptions

6.1 Why do I need to know where the customer is located?

Subject to the €10,000 place of supply threshold rules the place of supply in respect of TBE services to customers is the place in which the customer is established, has a permanent address or usually resides.

The supplier should be aware of the rules and VAT rates of the Member State in which the service is supplied to ensure the correct VAT treatment. The European Commission has developed a [web portal](#) which provides this information.

6.2 How is the customer's location identified?

Supplies of TBE services are usually supplied remotely so it can be difficult for the supplier to identify where the customer is established, has his or her permanent address or usually resides. To try to simplify the rules for some supplies, the supplier can make a 'presumption' about the place where the supply is to be taxed. This presumption gives legal certainty to the supplier without imposing a significant burden in identifying the place of taxation.

Generally, one specific presumption is sufficient unless there is contradictory information that points to a different customer location.

6.2.1 Specific presumptions for customer location

Types of TBE services covered by the presumption rule include where the service is supplied:

- At a telephone box, a telephone kiosk, a Wi-Fi hot spot, an internet café, a restaurant or a hotel lobby. For example, the customer location is the place where the telephone box is located. This rule applies to the initial service only (that is the connection to the telecom or internet service) and not to any 'over the top services' delivered using the connection. (['Over the top services'](#) are explained below.)
- On board transport travelling within the EU (for example by ship, or train), the customer location is the Member State of departure for the journey.
- Through an individual customer's telephone landline, the customer location is the place where the customer's landline is located.
- Through a mobile phone, the customer location is identified by the country code of the SIM card.
- Through a decoder without use of a fixed land line, the customer location is where the decoder is located or the postal address where the viewing card is sent.

6.2.2 Exception to the specific presumption rule

The supplier must use the specific presumption unless the supplier has three pieces of non-contradictory evidence indicating that the customer resides in a different Member State to that indicated by the presumption. In this case, the supplier may override the presumption.

6.2.3 General presumptions for customer location

Where the services are supplied other than in the circumstances listed above, the supplier must determine the place of supply using two pieces of non-contradictory evidence.

6.2.4 'Over the top services' and how they are treated

'Over the top services' are services that can only be received once the connection to the internet or communications network is established (for example, the download of an application (app) onto a mobile phone).

The specific presumptions can only be used if the supplier knows with certainty how the customer received the service. Usually the supplier will not know with certainty how the customer received an 'over the top service'. Where this is the case, two pieces of non-contradictory evidence will be required to determine the place of supply. (See [Presumptions & evidence requirements](#)).

7 Presumptions - evidence requirements

7.1 What evidence can be used in deciding where the customer is located?

The information that is available to the supplier will vary depending on their industry and business model. Examples of evidence that can be used are:

- customer's billing address
- IP address
- bank details (location of bank)
- country code of SIM card
- location of fixed land line
- any other commercially relevant information (for example, payment mechanisms or gift cards unique to specific Member States, information from third party payment service providers, customer trading history details, etc.).

Generally, the supplier can use any two pieces of non-contradictory evidence to determine the customers' location. Where the supplier has multiple pieces of evidence, he or she should use their best judgement in selecting the most reliable indicators of the correct location of the customer.

The supplier will need three pieces of non-contradictory evidence to override a specific presumption.

The supplier will need to ensure that their systems and processes are capable of collecting relevant information and applying that information and the presumptions in a manner that will produce the most accurate result possible. It is acknowledged complete accuracy may be difficult to achieve, but the supplier is required to make best efforts and to review their systems regularly.

With effect from 1 January 2019, where a taxable person is supplying TBE services to customers in other Member States, only one piece of evidence is required to determine the customer's location. Where the total value of TBE services supplied to customers in other Member States exceeds the €10,000 threshold during a calendar year, the normal rules will apply and two pieces of non-contradictory evidence to determine the customer's location will be required.

8 Supplies of TBE services at hotels or similar accommodation

Where is the place of supply of Wi-Fi services to hotel guests?

The supply of TBE services by the supplier (acting in the name of the hotel) together with accommodation is deemed to be supplied where the hotel is located. This also applies to hostels, campsites, guesthouses and other similar types of accommodation where the supply is made in the name of the accommodation provider.

Appendix 1 Examples of Telecommunications services

Examples of Telecommunications services:

- fixed and mobile telephone services for the transmission and switching of voice, data and video
- including telephone services with an imaging component (videophone services)
- telephone services provided through the Internet, including Voice over Internet Protocol (VoIP)
- voice mail, call waiting, call forwarding, caller identification, three-way calling and other call
- management services
- paging services
- audio text services
- facsimile, telegraph and telex
- access to the Internet, including the World Wide Web and
- private network connections providing telecommunications links for the exclusive use of the client.

Appendix 2 Examples of Broadcasting Services

Examples of Broadcasting Services:

- radio or television programmes transmitted or retransmitted over a radio or television network
- radio or television programmes distributed via the Internet or similar electronic network (IP streaming) if they are broadcast simultaneously to their being transmitted or retransmitted over a radio or television network.

Examples of services not considered to be Broadcasting Services:

- the provision of information about particular programmes on demand
- the transfer of broadcasting or transmission rights
- the leasing of technical equipment or facilities for use to receive a broadcast
- radio or television programmes distributed via the Internet or similar electronic network (IP streaming), unless they are broadcast simultaneously over traditional radio or television networks.

Appendix 3 Examples of Electronically Supplied Services

Examples of Electronically Supplied Services:

- the supply of digitised products generally, including software and changes to or upgrades of software
- services providing or supporting a business or personal presence on an electronic network such as a website or a webpage
- services automatically generated from a computer via the Internet or an electronic network, in response to specific data input by the recipient
- the transfer for consideration of the right to put goods or services up for sale on an Internet site operating as an online market on which potential buyers make their bids by an automated procedure and on which the parties are notified of a sale by electronic mail automatically generated from a computer
- internet Service Packages (ISP) of information in which the telecommunications component forms an ancillary and subordinate part (i.e. packages going beyond mere Internet access and including other elements such as content pages giving access to news, weather or travel reports playgrounds website hosting access to online debates etc.)
- website hosting and webpage hosting
- automated, online and distance maintenance of programmes
- remote systems administration
- online data warehousing where specific data is stored and retrieved electronically
- online supply of on-demand disc space
- accessing or downloading software (including procurement/accountancy programmes and anti-virus software) plus updates
- software to block banner adverts showing, otherwise known as Bannerblockers
- download drivers, such as software that interfaces computers with peripheral equipment (such as printers)
- online automated installation of filters on websites
- online automated installation of firewalls
- accessing or downloading desktop themes
- accessing or downloading photographic or pictorial images or screensavers
- the digitised content of books and other electronic publications
- subscription to online newspapers and journals
- weblogs and website statistics
- online news, traffic information and weather reports
- online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular such data as continually updated stock market data, in real time)

- the provision of advertising space including banner ads on a website/web page
- use of search engines and Internet directories
- accessing or downloading of music on to computers and mobile phones
- accessing or downloading of jingles, excerpts, ringtones, or other sounds
- accessing or downloading of films
- downloading of games on to computers and mobile phones
- accessing automated online games which are dependent on the Internet, or other similar electronic networks, where players are geographically remote from one another receiving radio or television programmes distributed via a radio or television network, the internet or similar electronic network for listening to or viewing programmes at the moment chosen by the user and at the user's individual request on the basis of a catalogue of programmes selected by the media service provider such as TV or video on demand
- receiving radio or television programmes distributed via the internet or similar electronic network (IP streaming) unless they are broadcast simultaneous to their being transmitted or retransmitted over a radio and television network
- the supply of audio and audio visual content via communications networks which is not provided by and under the editorial responsibility of a media service provider
- the onward supply of the audio and audio visual output of a media service provider via communications networks by someone other than the media service provider
- automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student and
- workbooks completed by pupils online and marked automatically, without human intervention.

Examples of services not considered to be Electronically Supplied Services:

- goods, where the order and processing is done electronically
- CD-ROMs, floppy disks and similar tangible media
- printed matter, such as books, newsletters, newspapers or journals
- CDs and audio cassettes
- video cassettes and DVDs
- games on a CD-ROM
- services of professionals such as lawyers and financial consultants, who advise clients by email

- teaching services, where the course content is delivered by a teacher over the Internet or an electronic network (namely via a remote link)
- offline physical repair services of computer equipment
- offline data warehousing services
- advertising services, in particular as in newspapers, on posters and on television
- telephone helpdesk services
- teaching services purely involving correspondence courses, such as postal courses
- conventional auctioneers' services reliant on direct human intervention, irrespective of how bids are made
- tickets to cultural, artistic, sporting, scientific, educational, entertainment or similar events booked online and
- accommodation, car-hire, restaurant services, passenger transport or similar services booked online.