

# Place of supply of electronically supplied services 1/44/21



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As opportunities for digitalisation evolve, more and more companies are interested in supplying and acquiring services remotely over the internet. For example, ads are placed in news portals and e-mails. All that virtual data has to be stored somewhere, new apps are being created for customer authorisations and payments, and various other services are supplied with the help of information technology. Which of those services qualify as supplied electronically? What difficulties tend to arise in applying VAT on such services?

## Electronically supplied services

Electronically supplied services are services that are provided over the internet or an electronic network, mostly automatically, with minimal human intervention, and cannot be provided without information technology (IT). These are services specified in article 7 of EU Regulation No. 282/2011<sup>1</sup> and also listed in section 1 of [the Latvian VAT Act](#), including remote maintenance of software, websites and equipment, downloads of apps and other programs, reading digital books and news, placing ads on websites, watching films, listening to music, automated distance learning online etc.

Because of the different VAT rules in place, we need to make a distinction by assessing whether the services in question are typical IT services liable to VAT under the general rules along with most services, or whether we should look at exclusions the VAT Act prescribes for electronically supplied services.

The main distinction is whether services can be supplied automatically without the involvement of human resources and are supplied over the internet. For example, IT software development services requiring the involvement of IT staff will be governed by the general VAT rules for services. However, if customers can download and use a ready-made program online in exchange for a user fee, and the program does not need any special tailoring that would require the involvement of the supplier's staff, the service might be treated as supplied electronically.

The VAT Act lays down special rules for electronically supplied services, and their VAT treatment depends on the customer's status, yet in certain cases VAT is applied according to where services are actually used and enjoyed.

## Use and enjoyment

Telecommunications, broadcasting and electronically supplied services should be assessed according to whether their use and enjoyment takes place outside the EU, within the EU, or in Latvia. Services that are used and enjoyed outside the EU should be treated as supplied in a third country, so its local rate of VAT might apply. For services that are used and enjoyed in Latvia, even if they are supplied to a taxable person registered for VAT in a third country, the Latvian rate of VAT will apply. For example, if a company offers software for downloading or online use and this opportunity is taken by a person using a third-country online network, it is very likely that the company will have to apply the third country's VAT (if its national law provides for this) and enquire about the need to register for local VAT.

It is important to note that the current legislation is silent as to how we should assess in practice where such services are used and enjoyed, what criteria should be applied to determine whether services are actually used and enjoyed in a third country (the location of the server, the IP address, the country of the internet connection etc). The current EU rules (see below) help to determine the customer's place of belonging in intra-Community services to non-taxable persons but they are silent as to how the place of use and enjoyment should be determined.

## The customer's status and place of belonging

Small companies are allowed to continue applying their registration country's VAT. In other words, if telecommunications, broadcasting and electronic services are supplied in the EU to non-taxable persons (failing to notify their VAT ID number to the supplier) the services are treated as supplied where the supplier belongs or has declared a residence (in the case of suppliers registered for Latvian VAT this is Latvia) if the following conditions are met:

1. The company carries on a business in only one member state.
2. Services are supplied to a non-taxable person established or having a permanent address or habitual residence in any member state other than Latvia.
3. The ex-VAT value of those supplies in the previous or current calendar year does not exceed EUR 10,000 (including distance sales).

If these conditions are not met, the services are treated as supplied where the customer belongs or has declared a residence, or if there is none, then at the customer's permanent residence. This place-of-supply principle may be chosen voluntarily without waiting for EUR 10,000 but in that case this cannot be changed for two years. So a company registered for VAT only in Latvia that supplies services to non-taxable persons belonging in another member state may apply Latvian VAT up to EUR 10,000. If this threshold is exceeded, or voluntarily, VAT of other member states should be applied and paid on the services supplied. To report and pay another member state's VAT, the company may register for VAT in the relevant member state or register for the "Union scheme" (OSS) in Latvia and report VAT of other member states on the Latvian OSS VAT return.

Where it might be difficult to determine the customer's place of belonging for electronically supplied services (and others), we need to invoke articles 24.a, 24.b and 24.f of EU Regulation No. 1042/2013<sup>2</sup>, which explain how the place of supply of services should be determined. For example, to determine the customer's place of belonging, we can refer to the customer's invoice address and the IP address used for receiving services. It is important to note, however, that this approach is valid for intra-Community transactions, not supplies to third-country customers.

Electronic services supplied to EU VAT-registered taxable persons will be governed by the general VAT rules for services.

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<sup>1</sup>Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast)

<sup>2</sup>Council Implementing Regulation (EU) No. 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No. 282/2011 as regards the place of supply of services