



**EUROPEAN COMMISSION**  
DIRECTORATE GENERAL  
TAXATION AND CUSTOMS UNION  
TAX POLICY  
**VAT and other turnover taxes**

**TAXUD/2303/03 Rev 2 final-- EN**  
Brussels, 15 January 2003

**VALUE ADDED TAX COMMITTEE**  
**(ARTICLE 29 OF DIRECTIVE 77/388/EEC)**

**GUIDELINES**  
**67<sup>TH</sup> MEETING**  
**– 8 JANUARY 2003 –**  
**GUIDELINES DOCUMENT A**

Rue de la Loi 200, B-1049 Brussels, Belgium - Office: MO59 05/45.  
Telephone: direct line (+32-2)296.02.36, switchboard 299.11.11. Fax: 299.36.48.  
Telex: COMEU B 21877. Telegraphic address: COMEUR Brussels.

Internet: [Quentin.Bradshaw@cec.eu.int](mailto:Quentin.Bradshaw@cec.eu.int)  
E-commerce - richtsnoeren BTW-comité (eng).doc 16/05/03

**TAXUD 2303/03 Rev 2 final-  
VAT Committee – Guidelines of the 67<sup>th</sup> meeting**

**4 QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS**

- 4.1 Origin : The Commission**  
**References : Article 9 and Annex L**  
**Subject : E-Commerce. Electronically supplied services**  
**(Document TAXUD/2436/02 – Working paper n°372)**

1. The Delegations agree **unanimously** that a television or radio programme that is broadcast over the Internet or similar electronic network and is simultaneously broadcast over a traditional radio and television network (i.e., by wire or over the air, including by satellite) is radio and television broadcasting within the penultimate indent of Article 9(2)(e) of the Sixth Directive. Conversely, a program that is broadcast only over the Internet or similar electronic network, is an electronically supplied service under the last indent of Article 9(2)(e).
2. The Delegations agree **unanimously** that distance teaching is an electronically supplied service within the meaning of the last indent of Article 9(2)(e) when it is automated and dependent on the Internet or similar electronic network to function and its supply requires little or no human involvement. Where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student (e.g., e-mail), this will not be viewed as an electronically supplied service.
3. The Delegations agree **unanimously** that a non-established taxable person who is taxable under the special scheme provided for under Article 26C, may cease to qualify for the special scheme under that Article at anytime throughout a calendar quarter where any of the criteria for exclusion are satisfied. The non-established taxable person is required to submit any outstanding return up to the end of the calendar quarter in which they were excluded. The requirement to submit this return has no effect on the requirement, if any, for the non-established taxable person to register under the normal procedures in a Member State immediately upon exclusion from the special scheme.
4. The Delegations agree **unanimously** that where a non-established taxable person declares and remits an amount of VAT to the Member State of Identification, who in turn distributes the amount to the Member State of Consumption, and the Member State of Consumption subsequently realises that the amount is too high, the Member State of Consumption will advise the Member State of Identification of the adjustment and send the overpayment directly to the non-established taxable person. The Delegations also agree **unanimously** that where a non-established taxable person remits, in relation to the declaration, an overpayment of VAT to the Member State of Identification, this Member State will return the overpaid amount directly to the non-established person.
5. The Delegations agree **unanimously** that each reporting period of a non-established taxable person to the Member State of Identification under the special scheme set out in Article 26C, is treated as an independent, closed reporting period.
6. The Delegations agree **unanimously** that, in respect of returns made under the special scheme set out in Article 26C, the Directive does not permit the rounding

**TAXUD 2303/03 Rev 2 final-  
VAT Committee – Guidelines of the 67<sup>th</sup> meeting**

of amounts to the nearest whole monetary unit (e.g., Euro) and that the exact amount of VAT must be reported and remitted in accordance with the Sixth Directive.

7. The Delegations agree **unanimously** that where potential sellers obtain the right to list an item for sale on a website (e.g., an online market place) in exchange for a fee (e.g., a listing fee and/or a success fee), potential buyers bid for the item on the website via an automated process, the parties are notified by an automatically computer generated e-mail in the event of a completed sale and the buyer and the seller ultimately complete the sale, the service provided by the website operator (e.g., the operator of the online market place) is considered to be an electronically supplied service under the last indent of Article 9(2)(e). Such supplies may well constitute, at least in part, web-hosting services.
8. The Delegations agree **unanimously** that the attached Guide to Interpretation and accompanying tables set out the guidance on what is meant by “electronically supplied services” for purposes of the last indent of Article 9(2)(e) of the Sixth VAT Directive.

## **"ELECTRONICALLY SUPPLIED SERVICES"**

### **GUIDE TO INTERPRETATION**

#### **Introduction**

This document sets out guidance on what is meant by "electronically supplied services" and will help businesses decide whether their services fall within the place of supply rules for such services (as per the last indent of Article 9(2)(e) of the Sixth VAT Directive). This document only addresses the place of supply issue.

The attached tables give examples of transactions that are either included or excluded from the definition of "electronically supplied services". Supplies of goods or supplies of services that are excluded from the definition are treated in accordance with other place of supply rules.

#### **What is an "electronically supplied service"?**

An "electronically supplied service" is one that:

- in the first instance is delivered over the Internet or an electronic network (i.e. reliant on the Internet or similar network for its provision); and then
- the nature of the service in question is heavily dependent on information technology for its supply (i.e., the service is essentially automated, involving minimal human intervention and in the absence of information technology does not have viability.).

Therefore, on the basis of this two step test, an "electronically supplied service" includes:

- *digitised products* generally, such as software and changes to or upgrades of software; or
- *a service* which provides, or supports a business or personal presence on an electronic network (e.g., web site or web page); or
- *a service automatically generated from a computer*, via the Internet or an electronic network, in response to specific data input by the customer; or
- *services, other than those specifically mentioned in Annex L, which are automated and dependent on the Internet or an electronic network for their provision.*

Telecommunications and radio and television broadcasting services, covered respectively in the ninth and penultimate indents of Article 9(2)(e) of the Sixth VAT Directive, are not regarded as electronically supplied services for purposes of this Directive.

In general, the use of the Internet or other electronic networks by parties to communicate with respect to transactions or to facilitate trading does not, any more

**TAXUD 2303/03 Rev 2 final-  
VAT Committee – Guidelines of the 67<sup>th</sup> meeting**

than the use of a phone or fax, affect the normal VAT rules that apply. For example, where parties simply use the Internet to convey information in the course of a business transaction (e.g., e-mail), this does not change the nature of that transaction. This differs from a supply that is completely dependent on the Internet in order to be carried out (e.g., searching and retrieving information from a database with no human intervention).

In all instances, electronically supplied services will be taxable at the standard rate established by a Member State (in accordance with Article 12(3)(a) of the Sixth Directive), unless an exempting provision in a Member State applies. For example, when considering the supply of gambling, if the supply in the traditional manner is exempt in a Member State, it would also be exempt if it constituted a supply of an electronically supplied service.

The attached tables illustrate the above approach by classifying a range of supplies to provide clear examples of those that are regarded as being electronically supplied services and those that are not. This Guidance is not intended to be exhaustive.

Supplies shown as excluded are treated in accordance with other place of supply rules. Particular care should be taken where a service includes both electronic and other elements. Such composite transactions must generally be considered on a case-by-case basis.

**TAXUD 2303/03**  
**VAT Committee – Guidelines of the 67<sup>th</sup> meeting**

**TABLE 1**

<b>ANNEX L REFERENCE</b>	<b>SUPPLIES COVERED BY THE LEGAL TEXT</b>	<b>EXAMPLE OF A SERVICE THAT IS AN ELECTRONICALLY SUPPLIED SERVICE</b>
<b>Item 1</b>	<i>A. Web site supply, web-hosting and distance maintenance of programmes and equipment</i>	<ul style="list-style-type: none"> <li>• Web-site hosting and web-page hosting</li> <li>• Automated, on-line distance maintenance of programmes</li> <li>• Remote systems administration</li> <li>• On-line data warehousing (i.e., where specific data is stored and retrieved electronically)</li> <li>• On-line supply of on-demand disc space</li> </ul>
<b>Item 2</b>	<i>A. Software and updating thereof</i>	<ul style="list-style-type: none"> <li>• Accessing or downloading software (e.g., procurement/accountancy programmes, anti-virus software) plus updates</li> <li>• Bannerblockers (software to block banner adverts showing)</li> <li>• Download drivers, such as software that interfaces PC with peripheral equipment (e.g., printers)</li> <li>• On-line automated installation of filters on web-sites</li> <li>• On-line automated installation of firewalls</li> </ul>



**TAXUD 2303/03 Rev 2 final-  
VAT Committee – Guidelines of the 67<sup>th</sup> meeting**

<b>ANNEX L REFERENCE</b>	<b>SUPPLIES COVERED BY THE LEGAL TEXT</b>	<b>EXAMPLE OF A SERVICE THAT IS AN ELECTRONICALLY SUPPLIED SERVICE</b>
<b>Item 4</b>	<p><i>A. Music</i></p> <p><i>B. Films</i></p> <p><i>C. Broadcasts and events – political, cultural, artistic, sporting, scientific and entertainment</i></p> <p><i>D. Games, including games of chance and gambling games</i></p>	<ul style="list-style-type: none"> <li>• Accessing or downloading of music onto PCs, mobile phones, etc.</li> <li>• Accessing or downloading of jingles, excerpts, ringtones, or other sounds</li>   <li>• Accessing or downloading of films</li>   <li>• Web-based broadcasting that is only provided over the Internet or similar electronic network and is not simultaneously broadcast over a traditional radio or television network, as opposed to Item 4, Table 2</li>   <li>• Downloads of games onto PCs, mobile phones, etc.</li> <li>• Accessing automated on-line games which are dependent on the Internet, or other similar electronic networks, where players are remote from one another</li> </ul>

**TAXUD 2303/03 Rev 2 final-  
VAT Committee – Guidelines of the 67<sup>th</sup> meeting**

<b>ANNEX L REFERENCE</b>	<b>SUPPLIES COVERED BY THE LEGAL TEXT</b>	<b>EXAMPLE OF A SERVICE THAT IS AN ELECTRONICALLY SUPPLIED SERVICE</b>
<b>Item 5</b>	<i>A. Distance teaching</i>	<ul style="list-style-type: none"> <li>• Teaching that is automated and dependent on the Internet or similar electronic network to function, including virtual classrooms, as opposed to Item 2(b), Table 2.</li> <li>• Workbooks completed by pupil on-line and marked automatically, without human intervention</li> </ul>
<b>Item 6 Other services included:</b>	<i>A. Those not explicitly listed in Annex L</i>	<ul style="list-style-type: none"> <li>• On-line auction services (to the extent that they are not already considered to be web-hosting services under Item 1) that are dependent on automated databases and data input by the customer requiring little or no human intervention (e.g., an on-line market place or on-line shopping portals), as opposed to Item 3(f), Table 2.</li> <li>• Internet Service Packages (ISPs) in which the telecommunications component is an ancillary and subordinate part (i.e., a package that goes beyond mere Internet access comprising various elements (e.g., content pages containing news, weather, travel information; games fora; web-hosting; access to chat-lines etc.))</li> </ul>

TAXUD 2303/03 Rev 2 final-  
VAT Committee – Guidelines of the 67<sup>th</sup> meeting

**TABLE 2**

EXAMPLE OF A TRANSACTION <b><u>NOT</u></b> CONSIDERED TO BE A SUPPLY OF AN “ELECTRONICALLY SUPPLIED SERVICE”	RATIONALE
<p><i>1) A supply of . . .</i></p> <p><i>a) A good, where the order and processing is done electronically</i></p> <p><i>b) A CD-ROM, floppy disc and similar tangible media</i></p> <p><i>c) Printed matter such as a book, newsletter, newspaper or journal</i></p> <p><i>d) A CD, audio cassette</i></p> <p><i>e) A Video cassette, DVD</i></p> <p><i>f) Games on a CD-ROM</i></p>	<ul style="list-style-type: none"> <li>• These are supplies of goods</li> </ul>
<p><i>2) A supply of . . .</i></p> <p><i>a) services of lawyers and financial consultants, etc., who advise clients through e-mail</i></p> <p><i>b) interactive teaching services where the course content is delivered by a teacher over the Internet or an electronic network (i.e., via remote link)</i></p>	<ul style="list-style-type: none"> <li>• This is a supply of service that relies on substantial human intervention and the Internet or electronic network is only used as a means of communication</li> </ul>

**TAXUD 2303/03 Rev 2 final-  
VAT Committee – Guidelines of the 67<sup>th</sup> meeting**

<b>EXAMPLE OF A TRANSACTION <u>NOT</u> CONSIDERED TO BE A SUPPLY OF AN “ELECTRONICALLY SUPPLIED SERVICE”</b>	<b>RATIONALE</b>
<p><b>3) <i>A supply of . . .</i></b></p> <p><b><i>a) Physical repair services of computer equipment</i></b></p> <p><b><i>b) Off-line data warehousing services</i></b></p> <p><b><i>c) Advertising services, such as in newspapers, on posters and on television</i></b></p> <p><b><i>d) Telephone helpdesk services</i></b></p> <p><b><i>e) Teaching services involving correspondence courses such as postal courses</i></b></p> <p><b><i>f) Conventional auctioneers’ services reliant on direct human intervention, irrespective of how bids are made (e.g., in person, Internet or telephone), as opposed to Item 6(a), Table 1</i></b></p>	<ul style="list-style-type: none"> <li>• These are supplies of services that are not delivered over the Internet and rely on substantial human intervention</li> </ul>
<p><b>4) <i>A supply of a radio and television broadcasting service provided over the Internet or similar electronic network simultaneous to the same broadcast being provided over traditional radio or television network, as opposed to Item 4(c), Table 1</i></b></p>	<ul style="list-style-type: none"> <li>• This is a supply of a radio and television broadcasting service, which is covered by the penultimate indent of Article 9(2)(e)</li> </ul>

**TAXUD 2303/03 Rev 2 final-  
VAT Committee – Guidelines of the 67<sup>th</sup> meeting**

<b>EXAMPLE OF A TRANSACTION <u>NOT</u> CONSIDERED TO BE A SUPPLY OF AN “ELECTRONICALLY SUPPLIED SERVICE”</b>	<b>RATIONALE</b>
<p>5) <i>A supply of . . .</i></p> <p><i>a) Videophone services (i.e., telephone services with a video component)</i></p> <p><i>b) Access to the Internet and World Wide Web</i></p> <p><i>c) Telephony (i.e., telephone service provided through the Internet)</i></p>	<ul style="list-style-type: none"><li>• These are supplies of telecommunication services and are covered by the place of supply rules for such services under the ninth indent of Article 9(2)(e)</li></ul>