

Belgium's New VAT Rules for Electronically Supplied Services Enter Into Force

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Belgium, by way of a 22 April law published in the official gazette on 13 May, has implemented the EU Council Directive on electronically supplied services, with effect from 1 July.

The basic idea behind Council Directive 2002/38/EC (of 7 May 2002) is to tax radio and television broadcasting services and certain electronically supplied services provided across EU borders at the place where the recipient of the service is established and to allow the providers to register for VAT in only one member state. (For prior coverage, see *2002 WTD 95-20* or *Doc 2002-11788 (4 original pages)* [[PDF](#)].)

Services and Place of Services

The definition of "services" in the Belgian VAT code has been expanded to include "electronically supplied services," a category that includes products (such as digital books and music) and services (such as teaching) supplied via the Internet. The definition does not extend to companies (such as Amazon.com) that take orders over the Internet but physically deliver their products via the postal service or other air or ground delivery services.

The concept is explained in article 18 of the Belgian VAT law with a list of examples taken from annex L to Council Directive 77/388/EEC, to wit:

- Web site supply, Web hosting, and distance maintenance of programs and equipment;
- the supply of software and the updating thereof;
- the supply of images, text, and information, and the service of making databases available;
- the supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific, and entertainment broadcasts and events; and
- the supply of distance teaching.

For purposes of determining the place of the services, electronically supplied services and radio and television broadcasting services have been added to a list of similar services (such as advertising, legal services, and telecommunication services) contained in article 21 of the VAT law.

That means that those services are VAT-exempt if provided by an EU provider to a customer outside the European Union, and they are taxed in the member state of an EU customer if they are provided by a supplier outside of the European Union.

However, there was a slight complication. The services listed in article 21 were taxable only if the customer was established within the European Union and acted for his economic activity (that is, as a VAT payer). That means that (customer) individuals and nontaxable corporate entities did not pay Belgian VAT if the provider was established outside of Belgium. The VAT was either due in the member state of the provider, or no VAT was due if the provider was, for example, American.

That gave non-EU providers a competitive advantage over their EU competitors and meant that EU providers who were able to choose their location often opted for Luxembourg (where the VAT is only 15 percent), rather than for Denmark (where it is 25 percent).

Therefore, specific rules were introduced in article 21 of the VAT law for radio and television broadcasting services and for electronically supplied services. Now, services supplied electronically by a non-EU provider to a customer in Belgium are subject to Belgian VAT. Furthermore, an additional condition was added for broadcasters of radio and television programs: If a non-EU provider supplies those services to an EU customer that does not pay VAT, the services will be subject to VAT in Belgium if they are used in Belgium. Those services also are subject to Belgian VAT if the user is established outside Belgium but within the European Union, and the services are performed in Belgium. The same rule already applies to providers of telecommunications services.

Single EU VAT Registration

At the same time, Belgium has introduced an optional regime for non-EU operators providing electronically supplied services to nontaxable persons, to facilitate compliance with their fiscal obligations. Rather than requiring those operators to register in every member state, Belgium allows them to opt for identification in a single member state, even if they do not operate there (new article 58 bis of the VAT law). The selected member state will give the supplier a VAT number, collect the VAT due, and distribute it to the other member states.

If the supplier opts for Belgium, it must file an electronic statement of its name, mailing address, electronic addresses, and Web sites, and if applicable, its national fiscal identification number. Any changes, including the suspension or end of the activity, must be reported in the same manner. The supplier does not have to appoint a VAT representative in Belgium, but must declare and pay to Belgian VAT authorities all VAT due for services rendered within the European Union within 20 days following the end of the quarter. It also must detail, for each member state in which it has electronically supplied services, the turnover, the VAT rate, and the VAT due.

Furthermore, the supplier must keep records of all transactions covered by the special optional regime for a period of 10 years. Those records must be made available electronically, on request, to Belgium and to the member state of consumption.

The supplier cannot deduct input VAT from the VAT due on its electronically supplied services. If it wants to recover the VAT, it must apply for a refund under 13th Council Directive 86/560/EEC of 17 November 1986.

Temporary Rules

These rules were adopted for three years and can be renewed by royal decree. By mid-2006, the European Commission will review the relevant provisions, and the EU Council may extend the effective period or adopt an electronic mechanism for charging, declaring, collecting, and allocating tax revenue on electronically supplied services with taxation in the place of consumption.

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