The taxation of electronic services provided to consumers has been subject to a number of changes during the last decade. At the end of 2007 and after years of dispute in particular with Luxembourg the EU Finance Ministers once again agreed on substantial amendments on the VAT regime. Due to the fact that the agreed amendments would have substantial economic consequences it was decided that the most relevant changes should become effective as of January 2015 after a transition period.

Under the new regime electronic as well as telecommunications and broadcasting services to consumers shall be generally taxed where the recipient is established. These amendments will have far-reaching consequences for EU based providers of electronic services. They will also affect remote gaming operators who are offering their services to customers in the EU.

This article shall give an overview over EU VAT system and the modifications being made to those rules and shall illustrate what those modifications could mean for remote gambling operators.

I. Current Tax Constellation

In 1967 the First Council Directive on the harmonisation of legislation of Member States concerning turnover taxes was adopted (Council Directive 67/227/EEC). Even then, the harmonisation of the laws of the EU Member States relating to turnover taxes was a declared aim in order to achieve such harmonisation of legislation on turnover taxes by means of a system of value added tax (“VAT”) in order to eliminate, as far as possible, factors which may distort conditions of competition, whether at national or Community level.

1. Existing EU legal framework

EU VAT legislation is mainly based on directives. A directive is binding upon each Member State to which it is addressed, but leaves the choice of form and methods to the national authorities who transpose it into national legislation.

EU legislation relating to the mini one-stop shop, as well as the functional and technical specifications for the special schemes. According to this guide, Member States will make their registration procedures available to taxable persons from October 1, 2014.

4. Determination of Place of Supply – Council Regulation 1042/2013

To ensure the uniform application of the rules governing the place of supply of electronic services, it is necessary to specify where a consumer should be considered to be established. Council Regulation (EU) no 1042/2013 of 7 October 2013 includes amendments of Council Regulation (EU) no 282/2011 which cover the question where such services are to be taxed.

• The new Article 24 of Council Regulation 282/2011 sets forth that where services supplied to a consumer who is established in more than one country or who has his permanent address in one country and his usual residence in another, priority shall be given to the place where he usually resides, unless there is evidence that the service is used at his permanent address.

• Article 24a includes presumptions for the location of the customer. The determination shall be performed based on criteria like the location of a wifi hot spot, an internet café, a restaurant or a hotel lobby where services are consumed.

• Article 24b provides additional criteria for the determination of the location including the fixed land line or the country code of a SIM card used when receiving those services or two items of non-contradictory evidence as listed in Article 24 f of the Regulation.

• Presumptions under Article 24a or 24b may be rebutted pursuant to Art. 24d on the basis of three items of non-contradictory evidence indicating that the customer is established, has his permanent address or usually resides elsewhere.

• Article 24f lists aspects which particularly serve as evidence for the location of a customer including his billing address, his IP address or any method of geolocation, bank details of the account used for payment, the mobile country code of a SIM card, the location of the fixed land line of the customer or other commercially relevant information.

The European Commission has announced to publish additional explanatory notes on place of supply rules for electronically supplied services.

5. Example Germany

A bill amending sec. 3 a of the German VAT Code has not been published yet. Therefore it can only be assumed how the directive will be implemented. However, the directive does not leave considerable scope for implementation.

It is likely that the amendments as of 2015 will not affect EU based operators with regard to sports bets. Sports bets will remain exempted from VAT in Germany. Nonetheless, other gambling services like online casino games might be subject to German VAT unless such activities would be exempted which seems unlikely. This change might have substantial economic consequences and might require the adaptation of the business model.

Additional provisions might apply for operators under a Schleswig-Holstein license. It should be noted that this article exclusively covers tax aspects. There is not enough room to discuss whether and under what circumstances the provision of online gambling services to German customers is legal and whether German provisions restricting gambling activities comply with European Law.

III. Summary and Consequences

• As of 2015 remote gambling services supplied to customers in EU member states are subject to VAT of the member state where the customer is located unless local legislation of this state exempts respective gambling transactions from VAT.

• Different from the supply of other electronic services legislation may vary in EU member states since member states may follow different approaches with regard to the exemption of gambling activities from VAT.

• An operator will have to assess whether to make use of the Mini-One-Stop solution mentioned above in the state of residence to reduce organisational efforts.

• In order to determine where a customer is located and to create respective documentation there is the need to implement mechanisms pursuant to Regulation EU 282/2011 as amended by Regulation EU 1042/2013.

• There is not much time left for assessing and implementing appropriate measures in line with the amended VAT provisions.

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use of a simplified procedure which allows them only to register for VAT in one EU country, regardless of how many other EU countries they are supplying (so called mini one-stop shop – MOSS). That country collects and distributes the VAT on behalf of all the other countries – charged at the applicable national rate depending where the customer belongs.

Therefore it paid off for operators outside Europe to establish an entity in Europe and provide services to consumers by an entity in Europe. To the annoyance of other member states many companies established subsidiaries in countries with low VAT rates like Luxemburg (ebay, Apple, Amazon, etc.).

In this context it should be noted that Gibraltar is not part of the EU VAT regime and VAT wise is deemed as third country.

c. Overview current Legislation

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(see http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/telecom/index_en.htm)

4. Relationship VAT – Gaming Taxes of Member States

a. General relationship between VAT and Gaming Taxes

Art. 135 of the VAT Directive provides that Member States shall exempt “betting, lotteries and other forms of gambling, subject to the conditions and limitations laid down by each Member State.”

Generally speaking EU states exempt gambling from VAT to the extent that such activities are subject to a specific gambling tax.

b. Remote Gambling Operators in Europe

As outlined above until the end of 2014 the place of service for VAT purposes is the place where the operators are established. In the event that the state of residence has exempted gambling services pursuant to Art. 135 of the VAT Directive there is no obligation to pay or to file VAT, neither in the state of residence nor in other member states.

c. Example Germany

The respective German VAT provision in Sec. 4 Nr. 9 of the German VAT Code provides that transactions are exempted to the extent that they are subject to the German Race Betting and Lottery Act.

Since sports bets are taxed under the Race Betting and Lottery Act (sec. 17 of the Act, tax rate 5 % on the stakes) they are exempted from VAT. Casino games, however, are not exempted. Since most privately held gambling operators reside in other EU states like Malta there is no German VAT on their transactions at present.

For operators under a license of Schleswig-Holstein additional tax provisions may apply.

II. Changes as of January 1, 2015

There has been a great deal of criticism which focuses on the fact that the current rules allow businesses to take advantage of different VAT rates applicable across the EU. Many businesses choose Member States with low VAT rates. At the same time, the member states where consumption takes place are excluded from the revenue stream.

This was one of the reasons for amending the sourcing rules for broadcasting, telecommunications and electronically supplied services provided to individuals and households established in the EU. As from January 1, 2015 the place of supply of telecommunications, broadcasting and electronic services to private individuals will be in the Member State where the customer is established, rather than the Member State in which the supplier is established. This principle will apply for services supplied by both EU and non-EU businesses.


Art. 5 of the EU Directive 2008/8/EG reads as follows:

“From 1 January 2015, Directive 2006/112/EC is hereby amended as follows: (…)”

Article 58

The place of supply of the following services to a nontaxable person shall be the place where that person is established, has his permanent address or usually resides:

(a) telecommunications services;
(b) radio and television broadcasting services;
(c) electronically supplied services, in particular those referred to in Annex II.”

The destination principle which already applies for operators outside Europe will apply for EU businesses. Recital (3) of Council Directive 2008/8/EC clearly states that for all supplies of services the place of taxation should, in principle, be the place where the actual consumption takes place.

3. MOSS – Mini One–Stop Shop Scheme

As of January 2015, the mini one-stop shop will be extended to telecommunications and broadcasting and will be made available to EU businesses, too. It will allow the supplier, rather than register for VAT in each Member State in which he supplies services to his customers, to register, declare and pay the VAT due on supplies of telecommunications, broadcasting and electronic services supplied to private consumers in other Member States via a web portal in the Member State where he is identified and registered for VAT purposes.

Details are laid down in Council Regulation (EU) no 967/2012 amending Implementing Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons. Moreover, the European Commission on October 23, 2013 has issued a practical guide in order to provide a better understanding of the
The recast brings together various provisions in a single piece of legislation. It provides a clearer overview of EU VAT legislation currently in force. The VAT Directive codifies the provisions governing the introduction of the common system of VAT in the EU.

Binding implementing measures to ensure uniform application of the VAT Directive can be found in the VAT Implementing Regulation (Council Regulation (EU) No 282/2011). Unlike directives, those measures are directly applicable without transposition into national law.

Under certain conditions, Member States may be authorised to derogate from the common VAT rules to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance.

2. Place of supply of telecommunications, broadcasting and electronic services

Over the years, gradual changes were undertaken with regard to the place of supply of services. Globalisation, deregulation and technological progress created enormous changes in the volume and pattern of trade in services.


For B2B transactions, the EU VAT Directive generally states that the place of supply of services shall be the place where the recipient is established. With regard to B2C transactions, those transactions are generally sourced in the location where the provider is established.

Furthermore, the Directive currently distinguishes between supplies into or from the EU and supplies between EU countries.

In addition to that, Article 58 of the Directive provides special rules for the supply of electronic services by a non-EU business to non-taxable persons.

3. Electronic B2C Transactions

Annex II to the VAT Directive shows an indicative list of the electronically supplied services. (4) of the Annex explicitly refers to supply of (…) games, including games of chance and gambling games.

According to the provisions of the VAT Directive and its amendments by Directive 2008/8/EC a distinction needs to be drawn between supplies by EU-businesses and non-EU businesses.

a. Operator in Europe

When supplying a consumer in the EU, the EU business must charge VAT in the EU country where the business is based, no matter where the customer belongs. Article 45 of the Directive reads as follows:

Article 45

The place of supply of services to a non-taxable person shall be the place where the supplier has established his business.

However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides.

This scheme sets out the so called “Country-of-origin principle” according to which VAT is charged locally by the supplier at the local VAT rate.

b. Operator outside Europe

Non-EU businesses supplying electronic services to consumers in the EU must charge VAT in the EU country where that consumer belongs (is registered, has a permanent address or usually lives). Article 58 of the VAT Directive reads as follows:

Article 58

The place of supply of electronically supplied services, in particular those referred to in Annex II, when supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the service is supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, shall be the place where the non-taxable person is established, or where he has his permanent address or usually resides (…)

Non-EU businesses supplying electronic services to consumers in the EU can make