

VAT AND THE E.U.

# Electronic Services Providers



MALTA

# ELECTRONIC SERVICES PROVIDERS

This leaflet is intended for persons who provide Electronic Services and who are either established in Malta or established outside the European Union (E.U.).



**Electronic Services** are defined as services relating to website supply, web-hosting, distance maintenance of programmes and equipment, supply of software and updating thereof, supply of images, text and information, and making databases available, 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, as well as the supply of distance teaching.

Where the supplier of a service and his customer communicates via electronic mail, this shall not in itself mean that the service performed is an electronic service.

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## ***Electronic Services supplied to a Taxable Person by a person established in or outside the European Union.***

The place of supply of electronic services is in this case always the place where the customer is established. This rule applies no matter where the supplier is established (in or outside the E.U.).

In the context of this write up, "Taxable Person" means a person who carries on an economic activity, whatever the purpose or the result of that activity (economic activity is further defined in article 5 of the VAT Act). For the purpose of establishing whether a customer is a taxable person or not, the supplier may require documentary evidence that his customer is carrying on an economic activity, e.g. a VAT identification number:

Consequently, if you are a supplier of electronic services and you are established and registered in Malta under article 10 then

- you must not charge VAT on these services if your customer is established outside the E.U. or is a taxable person established in another member state;
- you must charge VAT on these services (unless a specific exemption applies) to any taxable person who is established in Malta.



On the other hand, if you are a person registered in Malta under article 10, and are receiving an electronic service from a supplier in another member state or even from a supplier established outside the E.U., that service is deemed to take place in Malta and Maltese VAT is therefore due on it. In any case, wherever your supplier is established, you are to account for the VAT due in your trade records and pay the amount by declaring it in your next VAT Return under the Reverse Charge Rule (unless a specific exemption applies).

The Reverse Charge Rule means that the customer has to declare the electronic services and the relative output VAT due and then claim back the tax as a deduction thus resulting in a zero balance. The whole amount may only be claimed as a deduction if all these services are acquired for business use (and you have a full right to deduct VAT). Otherwise the customer may claim back as a deduction only that input VAT related to the part of the service that was for business use (that opens a right to deduct) and has to pay VAT on the remaining part of the service.

If you are a taxable person not registered under article 10 (because you are either providing exempt without credit goods or services or because you are

a small undertaking falling below the established turnover threshold and registered under article 11) and you receive an electronic service from any supplier established outside Malta, then you have to pay the VAT due to the VAT Department by not later than the fifteenth day of the month following that during which it becomes chargeable.

### ***Electronic Services supplied to a Non-Taxable Person by a person established in the European Union.***

In the case of a non-E.U. customer the place of supply of electronic services is the place where the non-E.U. customer is established. Where the customer is established in the E.U., the supply of electronic services is the place where the E.U. supplier is established.

Consequently, if you are a supplier of electronic services and you are established and registered in Malta under article 10 then

- you must not charge VAT on these services if your customer is established outside the E.U.;
- you must charge VAT on these services (unless a specific exemption applies) to
  - Any non-taxable person (including a non-taxable legal person) who is established in Malta
  - Any non-taxable person (including a non-taxable legal person) established in another member state.



## *Electronic Services supplied to a Non-Taxable Person by a person established outside the European Union.*

A person who is established outside the E.U. who provides electronic services to "a non-taxable person (including a non-taxable legal person) who is established in a member state of the E.U.", normally has to register in that member state. However, as this person may supply such services to many customers in different member states, a scheme has been set up to avoid registration for VAT in each member state.

This scheme allows such a person (known as the Non-Established Taxable Person {NETP}) to register in any member state of his choice. The member state of registration is known as the **Member State of Identification**.



The NETP would then charge VAT according to the rate applicable in the member state of consumption i.e. where his customer is established. Therefore he may have to charge at the different rates applicable in the different member states.

A NETP who is established outside the E.U. and who chooses Malta as his place of identification has to apply to the Commissioner of VAT by electronic means stating when his taxable activity commences. He should also furnish the following information:

- (a) Name
- (b) Postal address
- (c) Electronic addresses, including web sites
- (d) National tax number, if any
- (e) A declaration that he is not identified for Value Added Tax purposes within the European Union.

He shall also notify electronically the Commissioner of VAT within thirty days of any changes in the information submitted or if the activity ceases or changes to the extent that he no longer qualifies for the special scheme.



The Commissioner of VAT shall identify the non-established taxable person by means of a VAT registration number notified to him by electronic means.

The non-established taxable person shall submit to the Commissioner by electronic means a Value Added Tax return for each calendar quarter whether or not electronic services have been supplied. The return shall be submitted within 20 days following the end of every calendar quarter.

The Value Added Tax return shall be made out in Euro and payment of tax due shall be made to a bank account denominated in euro, designated by the Commissioner of VAT. Until such time as the national currency is the Euro, the Commissioner of VAT may require that payment be made to a bank account denominated in the Maltese Lira.

The Non-Established Taxable Person shall keep records in sufficient detail to enable the tax administration of the member state of consumption to determine correct VAT due. These records shall be made available electronically on request to the Commissioner of VAT and to the member state of consumption and shall be kept for a period of 6 years from the end of the year when the transaction was carried out.

The Commissioner of VAT shall cancel the registration of a non-established taxable person if:

- (a) He is notified that the NETP no longer supplies electronic services, or
- (b) It can be otherwise assumed that his taxable activities have ended, or
- (c) The NETP no longer fulfils the requirements necessary to be allowed to use the special scheme, or
- (d) The NETP persistently fails to comply with the provisions related to the special scheme.

Please be aware that the leaflets referred to in this brochure are published by the VAT Department for information purposes and as guidance for further exploration. That means these documents are not legally binding. They are simply guidelines and not legal documents providing legally binding rulings. If you need to know more or require precise information on how to implement VAT legislation in specific special situations, kindly contact the VAT Department or consult the documents available in the special section for Tax Professionals at the VAT Department's website .