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LIMITED
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VAT ON TELECOMS, BROADCASTING AND E-SERVICES – NEW RULES FOR 2015

On 1st January 2015, the VAT rules will change for EU businesses making cross – border B2C supplies of telecoms, broadcasting and e-services. The obligation to account for VAT in up to 28 EU countries will have a major impact on systems, pricing and customer relations.

Summary

At present B2C supplies (supplies to final consumers and other non-taxable persons) of telecoms, broadcasting and e-services by providers based in the EU are liable to VAT in the country where the supplier is established. From 1 January 2015, the VAT treatment of supplies to such customers will change and suppliers will be required to account for VAT in the country where the customer is located. If you have customers located in all 28 member states of the European Union, this means you will need to account for VAT to the tax authorities in each of those countries.

How do I know if the new rules will apply to my business?

The rules will apply to your business if you are an EU based supplier of:

- Telecoms (including fixed and mobile telephones, fax, telegraph and telex and access to the internet)
- Broadcasting (such as radio, TV and live broadcasts on the internet)
- E-services (for example, video on demand, music downloads, downloaded apps, online gaming, e-books, software and online auctions)

to final consumers or other non-taxable persons in other EU member states.

Providers without a fixed establishment in the EU (non EU suppliers) are already subject to a special scheme for paying VAT on supplies of these services to B2C customers in the EU

What does this mean for my business?

If you operate across the EU, you will need to consider which of your services are caught by these new rules If you operate through an undisclosed agency model, it may be your agent that is affected by the rules and you will need to work through the implications, for example, on pricing. Where you supply directly to final consumers etc., all of the supplies listed above will come within the new regime and you will need to address the implications for your business and the actions you will need to take.

Identifying customers and their location

One of your key actions will be to establish a method to identify the location of your customers as this will determine the countries in which you will have a VAT liability. In some cases, this may be relatively easy (for example, if you provide internet access in a Wi-Fi hotspot). However, the same will not be true for other supplies, particularly services that can be accessed by customers from any location (for example, downloads from websites).

Under the new VAT rules, you will normally have to collect at least two pieces of evidence to identify the location of your customer and you will need to ensure that your method for identifying those customers meets the legal requirements in the VAT legislation. Your method will also need to incorporate a 'back-up plan' to deal with any cases where the two pieces of evidence are contradictory. This may mean that you will need to ask customers to provide further information - potentially a sensitive issue as customers may be reluctant to divulge additional personal information. In addition to the VAT requirements, you will need to consider any compliance obligations which arise under data protection laws.

VAT rates & pricing

VAT rates differ from country to country across the EU. The lowest is Luxembourg's standard rate of 15%; the highest is Hungary, which has a VAT rate of 27%. Not only will you have a different VAT exposure in each EU member state, but you will need to review your pricing structures and determine appropriate strategies to maximise margins and to manage the customer impact.

VAT registration

In addition to the systems and commercial issues that the new rules create, there are also the on-going VAT compliance implications to consider, notably, whether to opt for multiple VAT registrations and multiple VAT returns or to adopt the Mini One Stop Shop (MOSS).

What is the Mini One Stop Shop?

The EU Commission and member states have developed the MOSS to ease the administrative burden of registering for VAT in multiple countries. Under the MOSS, UK service providers will be able to register to use a special web portal (separate from their existing UK VAT registration). This will enable you to account for VAT due in other EU member states by submitting a single return to HMRC. HMRC is expected to start accepting applications to register for the MOSS from October 2014 so that businesses can be ready to start using the system as soon as it comes into effect on 1 January 2015.

The alternative to the MOSS, is to register for VAT in each country where your customers are end consumers. While many will find the MOSS attractive just because it avoids that obligation, it is important to decide whether the MOSS is right for you. Some businesses will find some of the MOSS rules considerably less favourable and palatable than those applicable to separate VAT registrations in the countries where they make B2C sales. The impact on existing VAT registrations in other member states will also need to be considered.

The MOSS is very similar to the existing scheme for non EU providers of telecoms, broadcasting and e-services, which will be absorbed into the MOSS when it comes into force. Recent guidance issued by the European Commission states that those using the non EU scheme can keep their existing VAT registration number when transferring to the MOSS.