

CONSUMPTION TAXATION OF CROSS-BORDER SERVICES AND INTANGIBLE PROPERTY IN THE CONTEXT OF E-COMMERCE

A. Guidelines on the Definition of the Place of Consumption

Introduction

1. In 1998, OECD Ministers welcomed a number of Taxation Framework Conditions relating to the consumption taxation of electronic commerce in a cross-border trade environment, including:

- i) In order to prevent double taxation, or unintentional non-taxation, rules for the consumption taxation of cross-border trade should result in taxation in the jurisdiction where consumption takes place.
- ii) For the purpose of consumption taxes, the supply of digitised products should not be treated as a supply of goods.
- iii) Where businesses acquire services and intangible property from a non-resident vendor, consideration should be given to the use of reverse charge, self-assessment or other equivalent mechanism.

2. The Guidelines below are intended to achieve the practical application of the Taxation Framework Conditions in order to prevent double taxation or unintentional non-taxation, particularly in the context of international cross-border electronic commerce. Member countries are encouraged to review existing national legislation to determine its compatibility with these Guidelines and to consider any legislative changes necessary to align such legislation with the objectives of the Guidelines. At the same time, Member countries should consider any control and enforcement measures necessary for their implementation.

Business-to-business transactions

3. The place of consumption for cross-border supplies of services and intangible property that are capable of delivery from a remote location made to a non-resident business recipient¹ should be the jurisdiction in which the recipient has located its business presence².

4. In certain circumstances, countries may, however, use a different criterion to determine the actual place of consumption, where the application of the approach in paragraph 3 would lead to a distortion of competition or avoidance of tax.³

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1. This will normally include a “taxable person” or an entity who is registered or is obliged to register and account for tax. This may also include another entity that is identified for tax purposes.
 2. The “business presence” is, in principle, the establishment (for example, headquarters, registered office, or a branch of the business) of the recipient to which the supply is made.
 3. Such an approach should normally be applied only in the context of a reverse charge or self-assessment mechanism.

Business-to-private consumer transactions

5. The place of consumption for cross-border supplies of services and intangible property that are capable of delivery from a remote location made to a non-resident private recipient⁴ should be the jurisdiction in which the recipient has their usual residence.⁵

Application⁶

6. In the context of value-added or other general consumption tax systems, these Guidelines are intended to define the place of consumption (and so the place of taxation) for the international cross-border supply of services and intangible property by non-resident vendors/suppliers that are not otherwise registered and are not required to register in the destination jurisdiction under existing mechanisms.^{7,8}

7. These Guidelines apply to the cross-border supply of services and intangible property, particularly in the context of international cross-border electronic commerce, that are capable of delivery from a remote location.

8. The Guidelines do *not*, therefore, apply to services which are not capable of direct delivery from a remote location (for example, hotel accommodation, transportation or vehicle rental). Nor are they applicable in circumstances where the place of consumption may be readily ascertained, as is the case where a service is performed in the physical presence of both the service provider and the customer (for example, hairdressing), or when the place of consumption can more appropriately be determined by reference to a particular criterion (for example, services related to particular immovable property or goods). Finally, it is recognised that specific types of services, for example, some telecommunications services, may require more specific approaches to determine their place of consumption.⁹

4. In other words, a “non-taxable person” or an entity not registered and *not* obliged to register and account for tax.

5. It is recognised that implementing this Guideline will not always result in taxation in the actual place of consumption. Under a “pure” place of consumption test, intangible services are consumed in the place where the customer actually uses the services. However, the mobility of communications is such that to apply a pure place of consumption test would lead to a significant compliance burden for vendors.

6. In accordance with the Ottawa Taxation Framework Conditions, specific measures adopted in relation to the place of taxation by a group of countries that is bound by a common legal framework for their consumption tax systems may, of course, apply to transactions between those countries.

7. While these Guidelines are not intended to apply to sub-national value-added and general consumption taxes, attention should be given to the issues presented, in the international context, relating to these taxes.

⁸. The objective is to ensure certainty and simplicity for businesses and tax administrations, as well as neutrality via equivalent tax implications for the same products in the same market (*i.e.* avoiding competitive distortions through unintentional non-taxation).

9. When such specific approaches are used, the Working Party recognises the need for further work and for international co-ordination of such arrangements to avoid double or unintentional non-taxation.