

The VAT Treatment of Online Events in the EU

Review of the EU proposal for a Council Directive amending the VAT Directive: a reduced VAT rate and place of supply rules for online events



Background

The European Commission has been working on a proposal relating to the application of reduced VAT rates, ever since this intention was announced back in 2018. In December 2021, the Council of the European Union ("Council") reached an agreement on a proposal for a Council Directive amending Directive 2006/112/EC (the "VAT Directive"), as regards rates of VAT, (the "Proposal").

This Proposal aims to implement some significant changes regarding the possibility of applying a reduced VAT rate, including the possibility of applying that to certain online events. In addition, the Proposal also introduces a significant change concerning the *place of supply rules* for online events.

We expect that these proposed changes will have a substantial impact on the VAT treatment for online events. This will obviously apply to online service providers that supply certain online events such as online courses, webinars, etc. But these

changes could also apply to certain intercompany online events (training sessions) or online customer events (product launches, etc.).

For now, the European Parliament must issue its opinion (expected in March 2022) on the Proposal before the Council will formally adopt the new Directive. Once formally adopted by the Member States, the legislation will come into force 20 days after its publication in the Official Journal of the European Union.

Reduced VAT Rate for Online Events

In the Proposal, the Council has included the possibility for EU Member States to apply a reduced VAT rate to (granting the right to access) certain online events. This point is analyzed in detail in the following page.

Place of Supply for Online Events

Based on the current VAT rules, granting access to 'real life' events (concerts, seminars, festivals, shows, etc.) is taxable in the EU Member State where the event physically takes place. However, online events lack such a physical presence and thus have proved to be a challenge for the local tax authorities and courts.

» CJEU, C-568/17 (Geelen)

The CJEU ruled in the *Geelen* case on the VAT

treatment of such online events and decided that '*physically carried out*' within the meaning of the VAT Directive would be the place where the supplier has established his/her business or has a fixed establishment from which those services are supplied. The CJEU's ruling stated:

Article 52(a) of the VAT Directive must be interpreted as meaning that a complex supply of services, consisting in the offer of live interactive erotic webcam sessions constitutes an 'entertainment activity' within the meaning of those provisions, which had to be regarded as being 'physically carried out' within the meaning of those provisions at the place where the supplier has established his business or a fixed establishment from which those services are supplied or, in the absence of such a place, the place where he has his permanent address or usually resides.

However, given the fact that the EU VAT Directive predominantly aims to tax where the actual consumption takes place, this outcome triggered various discussions. As a result, the European Commission's VAT Committee has only recently published its new Working Paper 1013 on the taxation of online events.

» Working Paper 1013

In Working Paper 1013 the Commission has provided guidelines on the place of supply of services performed by video-chat studios (*i.e.* services that can be regarded as *entertainment* and are thus captured by either article 53 or article 54 of the VAT Directive). The Commission has pointed out that further to the *Geelen* case and given the technical and legal developments ever since, there are sufficient reasons to consider that in the case of virtual activities/events, the place where such activities/events actually take place is where the customer is located and enjoys the

entertainment.

The Proposal in detail

The European Council has now followed up on the Commission's Working Paper 1013 and included amendments to the Proposal regarding:

- » the applicable VAT rates on online events (*i.e.* the option to apply a reduced VAT rate on online events); as well as
- » changes to the place of supply rules concerning online events.

For the VAT rate, the Proposal states:

Furthermore, in view of the digital transformation of the economy, it should be possible for Member States to provide for the same treatment of live-streamed activities, including events, as those which, when attended in person, are eligible for reduced rates.

For the place of supply rules, the proposal states:

To ensure taxation in the Member State of consumption, it is necessary for all services that can be supplied to a customer by electronic means to be taxable at the place where the customer is established, has his permanent address or usually resides. Therefore, it is necessary to modify the rules governing the place of supply of services relating to such activities.

In light of the above, the following changes to the articles 53 (B2B) and 54 (B2C) of the VAT Directive, have been proposed:

- » in Article 53, the following paragraph is added: "*This Article shall not apply in respect of admission to the events referred to in the*

first paragraph where the attendance is virtual.”;

- » in Article 54(1), the following subparagraph is added: *“Where the services relate to activities which are streamed or otherwise made virtually available, the place of supply shall however be at the place where the non-taxable person is established, has his permanent address or usually resides”.*

As a result of the proposed changes to the place of supply of online events, such events will no longer be taxable “where the event takes place”. Based on the proposed changes, the following rules will apply regarding the place of supply of online events:

- » In **B2C transactions**, the online event will be taxable for EU VAT purposes in the jurisdiction in which the recipient of the services is established *i.e.* resides.
- » In **B2B transactions**, the online event will be taxable for EU VAT purposes based on the general place of supply rules. This means that, in a cross-border situation, no VAT will be charged, and the service provider will apply the so-called Reverse Charge Mechanism. Subsequently, the B2B recipient will self-assess the VAT due in its own local VAT return.

Event

Determining whether an (online) event qualifies as an *event* within the scope of article 53 of the VAT Directive in practice can be a challenge.

In this regard we note that the CJEU stated in the C-647/17 (*Srf konsulterna AB*) case that:

In order to determine whether a course, seminar or conference is to be considered as an event, all the relevant elements must be examined, i.e.

content, place and duration. In most cases, in order to qualify as an “event”, a course, seminar or conference may not last longer than one week.

Following that ruling, the VAT Committee provided further guidance about *events* in its Working Paper 982.

In our view, granting admission to a “regular” online event, such as an online webinar, no doubt will be captured by these changes. However, we expect that subscription-based business models that also offer their subscribers the opportunity to attend online events will face some challenges in determining the exact EU VAT consequences of such a subscription.

Furthermore, given the increasing role of digitalization, partially because of Covid-19, we especially recommend larger companies that organise events, whether intercompany events or commercial events (*e.g.* internal training sessions, sales events, etc.), to verify the possible impact that these changes will have on their online events.

Broadcasting or electronically supplied services (ESS)

Following the Commission’s analysis in Working Paper 1013, it is worth noting that the underlying changes relate to online events that do not qualify as broadcasting or electronically supplied services (“ESS”).

As you may be aware, services that qualify for VAT purposes as ESS have their own place of supply rules. More importantly, for such services the VAT Regulation provides for a deemed buy-sell under article 9A VAT Implementing Regulation (“VAT IR”). The latter deemed buy-sell does not apply to services that qualify as online events or

entertainment.

In addition, we note that based on the definition of Article 6b of the current EU VAT IR, services consisting of the *"live streaming of digital content"* are not broadcasting services.

Furthermore, since the supply of online events in practice is not essentially automated and in many cases depends on direct (online) human interaction, these services cannot qualify as ESS, due to the more than minimal *"human intervention"*.

Therefore, online events that lack such *human intervention* could qualify as ESS.

Online Marketplaces

As mentioned, services that qualify for VAT purposes as ESS have their own place of supply rules. More importantly, for such services the VAT Regulation provides for a deemed buy-sell under article 9A VAT IR. The latter deemed buy-sell does not apply to services that qualify online events or entertainment.

Article 9A VAT IR typically would apply to online marketplaces through which ESS are supplied by the creators of such services (e.g. apps, music, games etc.) to the final users.

This means that if an online event would qualify as ESS, rather than an event as stated in article 53 VAT Directive, the online marketplace in principle would be deemed to have bought and subsequently (re)sold this ESS.

However, as mentioned, if the online event would qualify as an event as stated in article 53 VAT Directive, then such a deemed buy-sell does not (automatically) apply. Instead, in our view the online marketplace should assess

whether from a VAT perspective it acts as an intermediary (disclosed agent) or as a commissionaire (undisclosed agent).

The Metaverse

One place where we expect a substantial increase in online events is in the so-called Metaverse. The first Metaverse wedding was even reported in the New York Times in December 2021. The possibilities within the Metaverse are limitless.

For instance, on the Ethereum blockchain, initiatives like [The Sandbox](#) already enable users to purchase land, construct properties, and host whatever events they would like. As an example, Snoop Dogg "constructed" a "mansion" within the Sandbox Metaverse and is offering live show VIP tickets to participants.

Regarding the potential EU VAT consequences, and specifically for the applicable VAT rate, the Council's proposal states the following:

(7) Admission to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities or access to the live streaming of these events or visits or both;

Furthermore, in view of the digital transformation of the economy, it should be possible for Member States to provide for the same treatment of live-streamed activities, including events, as those which, when attended in person, are eligible for reduced rates.

Therefore, buying a ticket to Snoop Dogg's VIP event within The Sandbox should, in our view, be within the scope of the reduced VAT rate.

However, if the show of Snoop Dogg did not include a live element *i.e.* would not include a

"streaming" element, local tax authorities may take another approach.

It will also be interesting to learn whether the local tax authorities, the local courts, or perhaps even the CJEU consider an online event, such as those taking place within the Metaverse, as an *event* within the meaning of EU VAT law. And if so, whether they would allow the reduced VAT rate in situations where an online event has no specific offline equivalent or lacks in case the online event does not have a dominant "live streaming" element, or even lacks such a "live streaming" element.

Crypto payments

With the increase of online events, we also expect an increase of the use of payments in Crypto currencies, especially when it regards online events within the Metaverse.

As a result, we foresee some substantial challenges with regard to the VAT compliance. To the extent that the VAT consequences of granting access to an online event will depend on the place where (*i.e.* jurisdiction in which) the participant of such events is established or usually resides, the organizers of online events have to be able to determine this location.

However, Crypto payments in principle take place on an anonymous basis. This would, in its turn, limit the possibility for organizers of online events to verify the location of the participant. As a result, such organizers could face substantial VAT risks in the jurisdictions in which the participants are established or usually reside.

In the event that an online event organizer, or a platform which hosts online events, considers to accept Crypto payments, we

strongly recommend to review the best approach in order to comply with all of the Indirect Tax obligations, not to mention the upcoming European DST, DAC7 and DAC8 obligations.

Digital Services Tax

Although the OECD/G20 agreed not to implement any new Digital Services Taxes ("DST"), various EU jurisdictions currently still have their own DST in place, which are likely to be withdrawn once a multilateral Pillar I solution has been implemented.

The same applies to other countries, like Canada, which recently announced its plans to introduce a DST despite the OECD/G20 agreement.

Regarding the underlying changes relating to online events, we note that almost all DSTs aim to tax various online services, or services provided by or through online marketplaces.

In this regard, we note that the online services that are taxed under the various DSTs are not necessarily similar to the services that qualify under the EU VAT rules as so-called ESS.

As a result, an online event that does not qualify as ESS for VAT purposes could very well be within a DST's scope.

Next Steps

We expect that the proposed changes described above will trigger a substantial effect for the EU VAT treatment of online events.

Although the European Parliament still has to adopt the Proposal (we expect this to happen at the end of Q1 2022), we strongly recommend that companies, particularly

online events providers, as well as online market places through which online events are supplied, review their business lines and product lines to:

- » Identify online events (webinars, client conferences, (internal) training sessions) that could be affected by this proposal.
- » Identify possible opportunities to lower the VAT burden (i.e. the opportunity to apply a reduced VAT rate to an online event).
- » Identify the points for attention following the introduction of the reduced VAT rate (e.g. the possible transitional periods) and identify the impact on financial systems, invoicing, customer onboarding, etc.
- » Determine the impact on existing or pending commercial agreements.
- » Determine the impact on negotiations of future commercial agreements.
- » Review and determine the DST consequences for online events.

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