

E-Commerce Company in Luxembourg

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Your LCG Team

E-Commerce in Luxembourg

I. Concept

E-Commerce is the electronic trading of goods and services on the internet. A distinction is made between indirect and direct E-Commerce.

In the case of indirect E-Commerce, the contract is concluded on the internet (online) whilst the performance of the contract takes place outwith the internet (offline). For the purposes of value-added tax (VAT), indirect E-Commerce is treated in the same way as a conventional commercial transaction.

Direct E-Commerce is treated differently for value-added tax (VAT) purposes due to the conclusion of the contract as well as its performance, and accordingly the entire legal transaction, taking place on the internet (online). In particular, this means that the exchange of goods and services for value-added tax (VAT) purposes is effected on the internet (online).

In light of its special tax treatment, the remainder of this text will focus exclusively on direct E-Commerce:

II. Direct E-Commerce services

Direct E-Commerce includes, yet is not limited to, the following services:

- 1.1 The provision of websites, web hosting and the maintenance of programmes and equipment;
- 1.2 The provision of software and the updating thereof;
- 1.3 The provision of texts and information for, yet not limited to, e-books and other electronic publications as well as online advertisements;
- 1.4 The provision of databases such as those required for search engines;
- 1.5 The provision of music, films and games used for gambling and lotteries as well as for programmes and events from the worlds of politics; culture; sport; science and entertainment;
- 1.6 The provision of long-distance learning;
- 1.7 Online auctions, insofar as this is not already dealt with by web hosting services, through automated databases where the customer is required to input data and where no or minimal human intervention is necessary;
- 1.8 Internet service packages which include more than mere access to the internet, instead including – yet not limited to – news, the weather forecast; travel information; gaming forums; web hosting and access to chatlines.

III. The E-Commerce Company in Luxembourg

In Luxembourg, so-called E-Commerce Companies are formed for the performance of the aforementioned services. The said companies may be formed either as corporations or as partnerships. The particular formation requirements will be determined by the legal form that a particular E-Commerce Company takes.

IV. Tax Aspects of direct E-Commerce

In accordance with the European Directive on E-Commerce, direct E-Commerce services are subject to a special EU value-added tax (VAT) regime. The said regime will remain in force until January 1st, 2015:

1. The taxation of direct E-Commerce services

In principle, every E-Commerce services provider liable to pay value-added tax (VAT) on such activities is to be treated as a business person for value-added tax (VAT) purposes. The place of performance is the determining factor for taxation.

In respect of services which have been provided electronically, where the performing business person is resident as well as the status and place of residence of the purchaser are the material factors in determining the place of performance. In respect of the latter, the distinction thereafter requires to be made as to whether they are a business person (commercial customer) who has purchased the service(s) for business purposes or a non-business person (private person).

1.1 Business persons within the European Union (EU)

1.1.1 Services to customers in the same EU member state

In the case where an EU business person provides direct E-Commerce services to a private person (business to customer, b2c) or to a commercial customer (business to business, b2b) in the same EU member state, the place of taxation continues to be where the services provider is domiciled. The value-added tax (VAT) therefore requires to be paid by the EU business person providing the services.

1.1.2 Services to customers in other EU member states

a) Commercial customers

Where an EU business person provides direct E-Commerce services to a commercial customer in another EU member state, value-added tax (VAT) requires to be paid in the member state in which the commercial customer is resident. The value-added tax (VAT) therefore requires to be paid by the customer.

In cases such as this, the so-called “reverse charge” procedure will operate. This means that the commercial EU customer -as the recipient of the services- is to calculate the value-added tax

(VAT) liability in accordance with the tax rates in force in his country, within the framework of the reversal of the tax liability, and thereafter to pay the tax to the competent tax authority in the country in which he is resident. In so doing, the said commercial customer has the right to deduct input tax for the same amount. The performing business person is not required to show value-added tax (VAT) on his invoice.

This procedure applies uniformly to all EU member states.

b. Private persons

In the case where an EU business person provides direct E-Commerce services to a private person in another member state, the place of taxation will continue to be where the services provider is resident. The value-added tax (VAT) accordingly requires to be paid by the performing EU business person.

Notwithstanding this, in accordance with the European E-Commerce Directive, where a business person resident in the EU provides electronic services to a private person also resident in the EU, value-added tax (VAT) will require to be paid in the customer's member state from January 1st, 2015.

1.1.3 Services to customers outwith the EU

Where such services are provided by an EU business person to customers outwith the EU, the place of taxation is where the customer is resident. Accordingly, such services are not liable to value-added tax (VAT) in the EU.

1.2. Business persons domiciled outwith the EU

1.2.1 Commercial EU customers

In the case where a business person domiciled outwith the EU (abroad) provides direct E-Commerce services to commercial customers within the EU, the place of taxation will be within the EU. This consequently means that such services will be liable to value-added tax (VAT) within the EU. The tax will be collected from the commercial EU customer through the reverse charge procedure. The non-EU business person is not required to be registered in the EU for value-added tax (VAT) purposes due to the commercial customer himself paying the value-added tax (VAT) through the reverse charge procedure.

1.2.2. EU private persons

Where a business person domiciled outwith the EU provides direct E-Commerce services to a private person within the EU, value-added tax (VAT) is collected within the EU. However, the said business person must be registered in the EU for value-added tax (VAT) purposes in a member state of his choice in such cases. Thereafter, he must bill such non-commercial customers in the EU at the standard rate of value-added tax (VAT) in force in the EU member state in which the customers are resident.

The said business person is thereafter required to pay the agreed taxes every three months to the tax authority in the member state in which he is registered for value-added tax (VAT) purposes

and to simultaneously provide an electronic statement containing a breakdown of transactions according to member state during the relevant period. In accordance with the said statement, the taxes will thereafter be forwarded to the relevant member states of the customers by the member state in which the business person is registered.

2. Taxation of direct E-Commerce services in Luxembourg

Luxembourg is an attractive location for direct E-Commerce due to its favourable and, with respect to certain services, reduced rates of value-added tax (VAT). Indeed, the provision of all goods and services is subject to value-added tax (VAT) at a rate not exceeding 15% in Luxembourg.

Notwithstanding this, special provisions apply to the trade of e-books in Luxembourg, namely a reduced rate of value-added tax (VAT) of 3% applies to the supply of e-books to end-customers. The said reduced rate remains in force until January 1st, 2015.

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