

TELECOMMUNICATION, TELEVISION & RADIO BROADCASTING AND ELECTRONICALLY SUPPLIED SERVICES

JANUARY 2015

INTRODUCTION

1. REGULATION AND GENERAL CONSIDERATIONS
2. MAIN CHANGES
3. OPERATORS INVOLVED

INTRODUCTION

1. REGULATION AND GENERAL CONSIDERATIONS

- ✓ Council Implementing Regulation (EU) 1042/2013, of October 7th, 2013, amending the Implementing Regulation (EU) 282/2011 as regard the place of supply of services.
- ✓ Council Regulation (EU) 967/2012, amending the Implementing Regulation (EU) 282/2011, as regard the special scheme for non-established VAT taxable person supplying telecommunication, broadcasting and electronic services to non-taxable persons.
- ✓ Implementing Regulation (EU) 815/2012 of the Commission, establishing the provisions for applying the Council Regulation (EU) 904/2010 as regard the special scheme for non-established VAT taxable persons supplying telecommunication, broadcasting and electronic services to non-taxable persons.
- ✓ EU Directive 112/2006/EC, related to the VAT.

INTRODUCTION

1. REGULATION AND GENERAL CONSIDERATIONS

- ✓ New place of supply rules for telecommunication, broadcasting and electronically supplied services that will come into force as of **January 1st, 2015**.
- ✓ Main content of the Regulation 1042/2013:
 - ❖ Do define and update the services affected by the place of supply rules.
 - ❖ Do identify the supplier of the service for those cases when supplied through a telecommunication network, an interface or a portal.
 - ❖ Do specify questions such as where must be deemed to be established the recipient, the condition of this, evidence requested by the supplier in order to identify the recipient and place of effective consumption.
 - ❖ Transitional provisions.
- ✓ Mini One Stop Shop (MOSS) scheme is set up in order to facilitate the suppliers to comply with the obligations in other EU Member States (MS).

INTRODUCTION

2. MAIN CHANGES

- ✓ Definition of the telecommunication, broadcasting and electronically supplied services.
- ✓ Update of the list stated in the Implementing Regulation (EU) 282/2011 as regard the transactions deemed as supply of electronic services.
- ✓ Changes in the place of supply rules, when B2C, as of January 2015.

3. OPERATORS INVOLVED

- ✓ Entities, either established or not in the EU VAT territory, providing services under this Regulation (telecommunication, broadcasting and electronically supplied services) to clients which are not taxable persons (B2C).

REGULATION UNTIL DECEMBER 31ST, 2014

✓ Main considerations:

- ❖ Type of services: telecommunication, TV and radio broadcasting, electronically supplied services.
- ❖ Supplier's status: taxable person either established or not in the EU VAT territory.
- ❖ Recipient's status: either taxable person or non-taxable person, as well as its place of establishment.

		B2C		B2B	
		EU	Non-EU	EU	Non-EU
Supplier's establishment	EU	Country of supplier	Country of supplier	Country of the recipient	Country of the recipient
	Non-EU	Country of the recipient	-	Country of the recipient	-

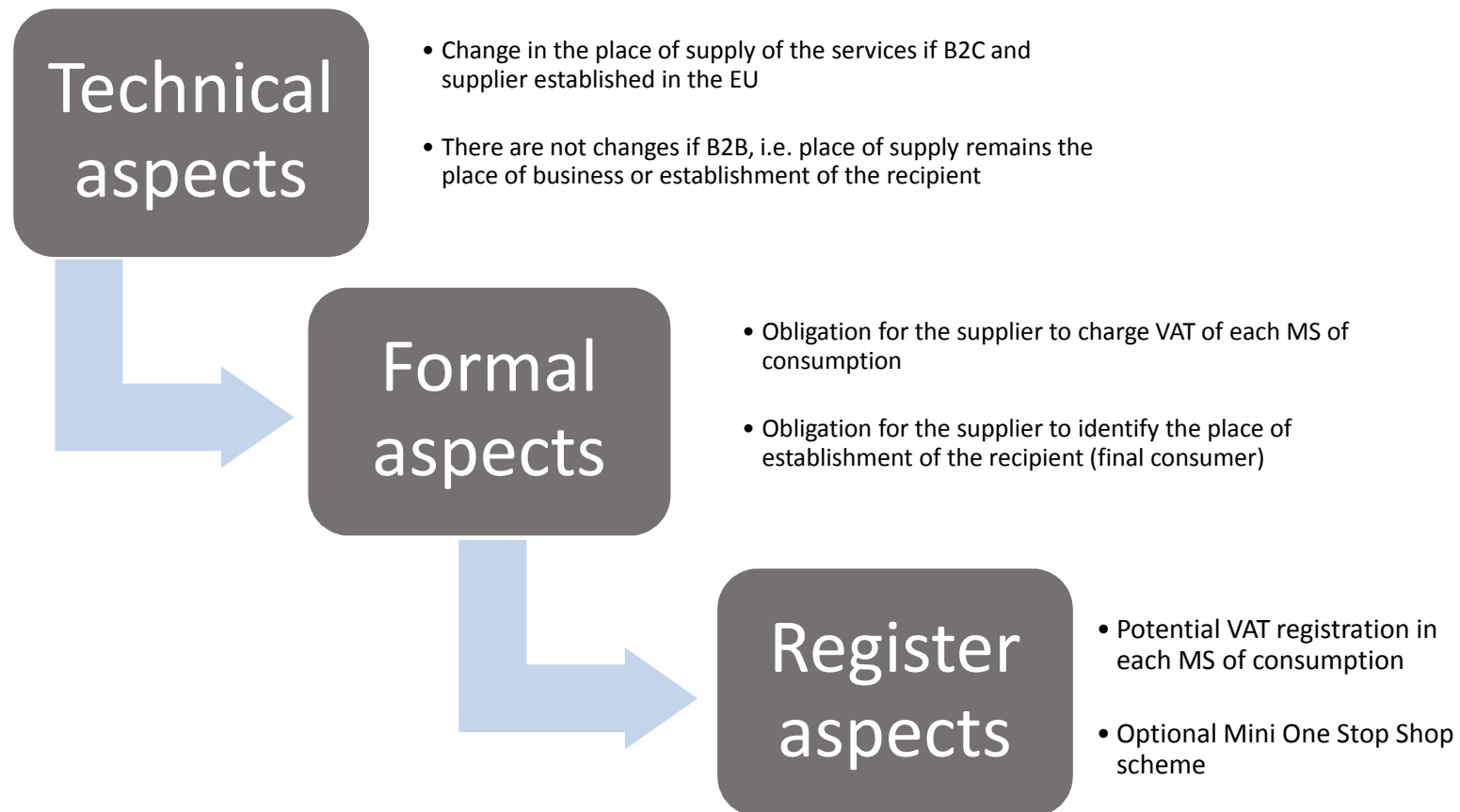
REGULATION AS OF JANUARY 1ST, 2015

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Supplier's establishment	EU	Country of the recipient	Country of the recipient	Country of the recipient	Country of the recipient
	Non-EU	Country of the recipient	-	Country of the recipient	-

REGULATION AS OF JANUARY 1ST, 2015



SERVICES COVERED BY THE REGULATION

1. TELECOMMUNICATIONS
2. TV AND RADIO BROADCASTING
3. ELECTRONICALLY SUPPLIED SERVICES

SERVICES COVERED BY THE REGULATION

1. TELECOMMUNICATIONS (art. 6.bis of Reg. 282/2011)

- ✓ Fixed and mobile telephone services for the transmission and switching of voice, data and video.
- ✓ Telephone services provided through internet.
- ✓ Voice mail, call waiting, call forwarding, caller identification and other related management services.
- ✓ Facsimile, telegraph and telex.
- ✓ Access to the internet.
- ✓ Private networks connections providing telecommunication links for the exclusive use of the client.

SERVICES COVERED BY THE REGULATION

2. BROADCASTING SERVICES (art. 6.ter of Reg. 282/2011)

- ✓ Services consisting of audio and audio-visual content, which are provided to the general public via communication networks by and under the editorial responsibility of a media service provider, for simultaneous listening or viewing.
- ✓ Radio or television programs transmitted over a radio or television network.
- ✓ Radio and television programs transmitted through internet, if they are broadcast simultaneous through the radio and television networks.
- ✓ It shall not cover: provision of information about particular programs on demand, transfer of broadcasting or transmission rights, leasing of technical equipment or facilities.
- ✓ Radio and television programs distributed through internet.

SERVICES COVERED BY THE REGULATION

3. ELECTRONICALLY SUPPLIED SERVICES (art. 7 of Reg. 282/2011)

- ✓ General definition: rendered via the Internet or an electronic network that, by their nature, are essentially automated and involving minimal human intervention, and have no viability outside the information technology.

- ✓ In particular:
 - Supply of digitized products, software, modifications and updates.
 - Services offer or support the presence of companies or individuals in an electronic network (website).
 - Services automatically generated from a computer via the Internet, in response to specific data input.
 - Granting the right to sell a good or service on the internet that works as an online marketplace.
 - Internet service packages relating to information and where telecommunication element is secondary.

SERVICES COVERED BY THE REGULATION

3. ELECTRONICALLY SUPPLIED SERVICES (art. 7 of Reg. 282/2011)

✓ Some of the services listed in the Annex I.

- Website hosting
- Distance maintenance of programs
- Remote System Administration
- Download software and upgrades (e.g. antivirus)
- E-magazines
- Subscriptions to newspapers and magazines online
- Online News
- Provision of advertising space
- Download music, movies, games and similar products
- Distance learning dependent on the Internet and which does not require human intervention

SERVICES COVERED BY THE REGULATION

3. ELECTRONICALLY SUPPLIED SERVICES (art. 7 of Reg. 282/2011)

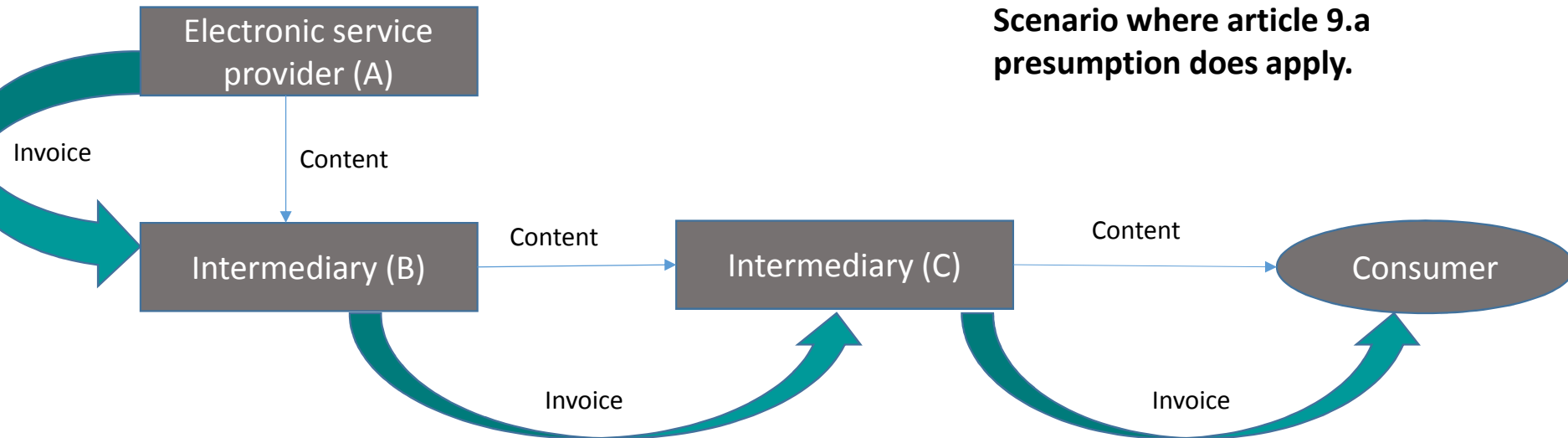
- ✓ However, Article 7 of Regulation 282, in paragraph 3, also provides a list of services that do not fall within the category of services electronically supplied, despite its electronic component.
 - Goods whose order is processed electronically (must be regarded as a supply of goods)
 - Delivery of CDs, video tapes, DVD, CD-ROOM games and similar
 - Printed materials such as books, magazines and newspapers
 - Services of professionals who advise clients by email
 - Education services offered by a teacher through internet
 - Telephone services provided over the Internet
 - Tickets to cultural, artistic, sporting, etc, which are booked online
 - Accommodation, car hire, restaurant, passenger transport and similar services booked online

SERVICES SUPPLIED BY INTERMEDIARIES

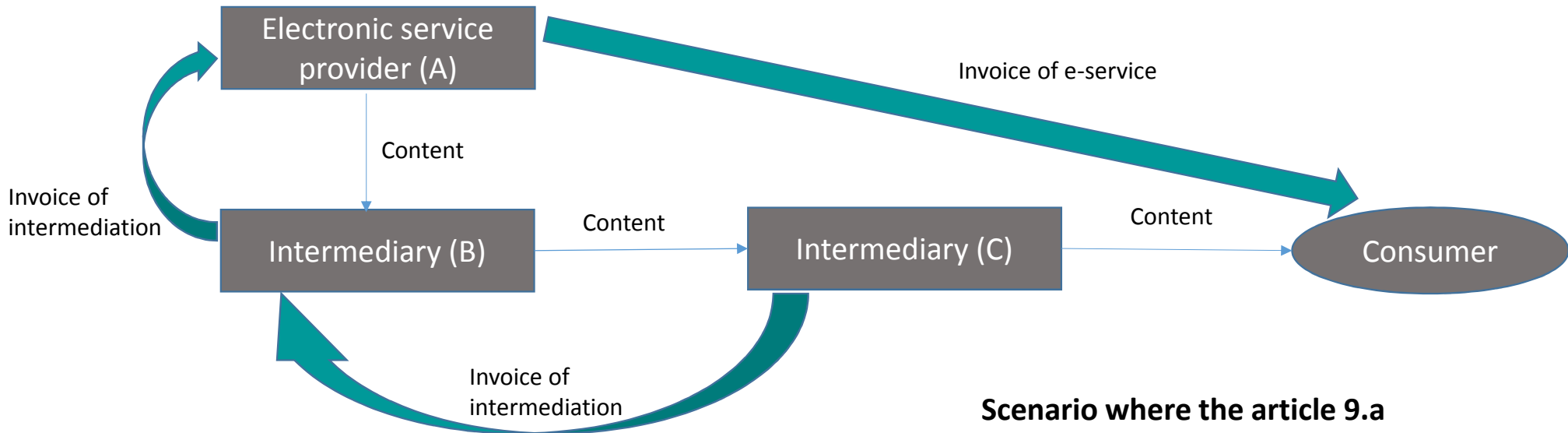
- ✓ Provision of electronic services or telephony through a telecommunications network, interface or portal, where several parties are involved.
- ✓ When multiple parties are involved in the service delivery (content owner, operator's portal where it is sold, etc..) it is necessary to properly identify the service provider.
- ✓ Presumption Article 9.a): an entrepreneur or professional involved in this service means acting on its own name and on behalf of the service provider, unless the provider is expressly identified by the intermediary and that is reflected in the contractual terms between the parties.
- ✓ Implications for the intermediary: it shall be considered as providing the same service it is receiving.
- ✓ This presumption does not apply to the taxable person involved only in the payment process (such as a credit card provider), which takes no part in the chain of electronic services.

SERVICES SUPPLIED BY INTERMEDIARIES

Scenario where article 9.a presumption does apply.



SERVICES SUPPLIED BY INTERMEDIARIES



Scenario where the article 9.a presumption is broken

SPECIAL SCHEME– MINI ONE STOP SHOP

1. GENERAL DEFINITION OF THE SCHEME AND CHARACTERISTICS
2. EU AND NON-EU OPTIONS
3. REGISTRATION AND DE-REGISTRATION
4. SPECIAL VAT RETURN
5. FURTHER OBLIGATIONS

SPECIAL SCHEME– MINI ONE STOP SHOP

1. GENERAL DEFINITION OF THE SCHEME AND CHARACTERISTICS

- ✓ The Mini One Stop Shop scheme comes into force on January 1st, 2015 for the entire EU.
- ✓ The purpose of the scheme is to simplify registration procedures and tax obligations in other MS for all operators performing services of telecommunications, broadcasting and television, or in general, services provided electronically.
- ✓ By its application, the taxable person supplying these services to end users residing in the EU would avoid the registration in each MS of consumption, opting for e-filing a special VAT return (just reporting these services) through a web portal set up for this purpose. Subsequently, it will be the Tax Administration of the country where the VAT return is filed, the one who take care of distributing the VAT among the MS of consumption. In this regard, it is important to remember that the VAT rate applicable to each transaction is the one in force in each MS where the service is located (consumption), ahead the one in force at the MS where this special return is filed.
- ✓ The scheme is voluntary and it is enabled as from October 2014.

SPECIAL SCHEME– MINI ONE STOP SHOP

2. OPTIONS OF THE SCHEME: EU AND NON-EU

- ✓ The special scheme has two modes: for operators established in the EU and for operators neither established nor registered in the EU.
- ✓ Scheme for EU Operators: this option can be applied by those entrepreneurs or professionals who have their place of business in the EU, or alternatively, a permanent establishment (PE). However, they can register only in the MS of their business location. If they only have a PE, they must be registered in the MS of establishment.
- ✓ Scheme for Non-EU operators: this option can be applied only by those entrepreneurs or professionals who are neither identified nor established for VAT in any EU MS. Hence, meeting these requirements, they can choose the MS for registering. If they are established for VAT purposes in a MS, they would only be eligible for such MS within the EU scheme.

SPECIAL SCHEME – MINI ONE STOP SHOP

3. REGISTRATION AND DE-REGISTRATION

- ✓ Both, registration and de-registration must be made by electronic means. Each MS has the right to request the information that it may considers necessary in order to accept the registration.
- ✓ If the registration refers to the EU scheme, the VAT number will be the same previously granted by the MS of the place of business. Under this option, if the company has other EU VAT number due to a permanent establishment, there is an obligation to communicate. If the option is for the non-EU scheme, it will be assigned a new VAT number.
- ✓ The registration must be applied during the 10 days following the start of the activity giving rise to it, otherwise the company will have to register in each MS of consumption and charge the corresponding VAT.
- ✓ If the registration is applied before the commencement of the activity it shall means to be deemed as started the first day of the following quarter, so being obliged to file the special VAT return of the scheme.

SPECIAL SCHEME – MINI ONE STOP SHOP

3. REGISTRATION AND DE-REGISTRATION

- ✓ It may be voluntarily de-registered or excluded (voluntary) from the scheme or be forced to exclusion thereof by the Tax Administration. Both cases involve a period of "quarantine" during which they may not be eligible again for the scheme.
- ✓ In the event of a voluntary de-registration the "quarantine" period refers to two calendar quarters, while in case of forced exclusion refers to eight calendar quarters. The inability to opt for the scheme during this time extends to all Member States.
- ✓ Reason of forced exclusion: failure to meet the formal requirements of the scheme (return, payment, etc.) on a regular basis. In case of failure to comply with the requirements allowing to be under the scheme (e.g. to have an EU VAT number by a non-EU operator) or do not provide the services corresponding to the scheme for 2 years, the company shall be excluded from the scheme but no period of "quarantine" would apply.
- ✓ De-registration must be applied 15 days before the end of the quarter.

SPECIAL SCHEME – MINI ONE STOP SHOP

4. SPECIAL VAT RETURN

- ✓ A VAT return for the services falling under the scheme shall be submitted on a quarterly basis, within 20 calendar days following the end of the quarter. This declaration must be submitted electronically and even though any activity has been performed. Payment is due at time of filing.
- ✓ If the return is not file, the MS of registration may request the submission of it, up to three times. If it is still does not filed, the company may be excluded from the scheme (“quarantine” period of 8 calendar quarters).
- ✓ Any Input VAT paid in the MS of consumption can be deducted through the special VAT return, but it must be requested for refund through the special procedure for non-established VAT operators.
- ✓ Corrections will have to be done by amending the return of the relevant period, so cannot be included in a subsequent VAT return.

SPECIAL SCHEME – MINI ONE STOP SHOP

4. SPECIAL VAT RETURN

- ✓ The special VAT return only refers to the services falling within the scheme, so any other supply of services or goods must be reported through the standard VAT return.

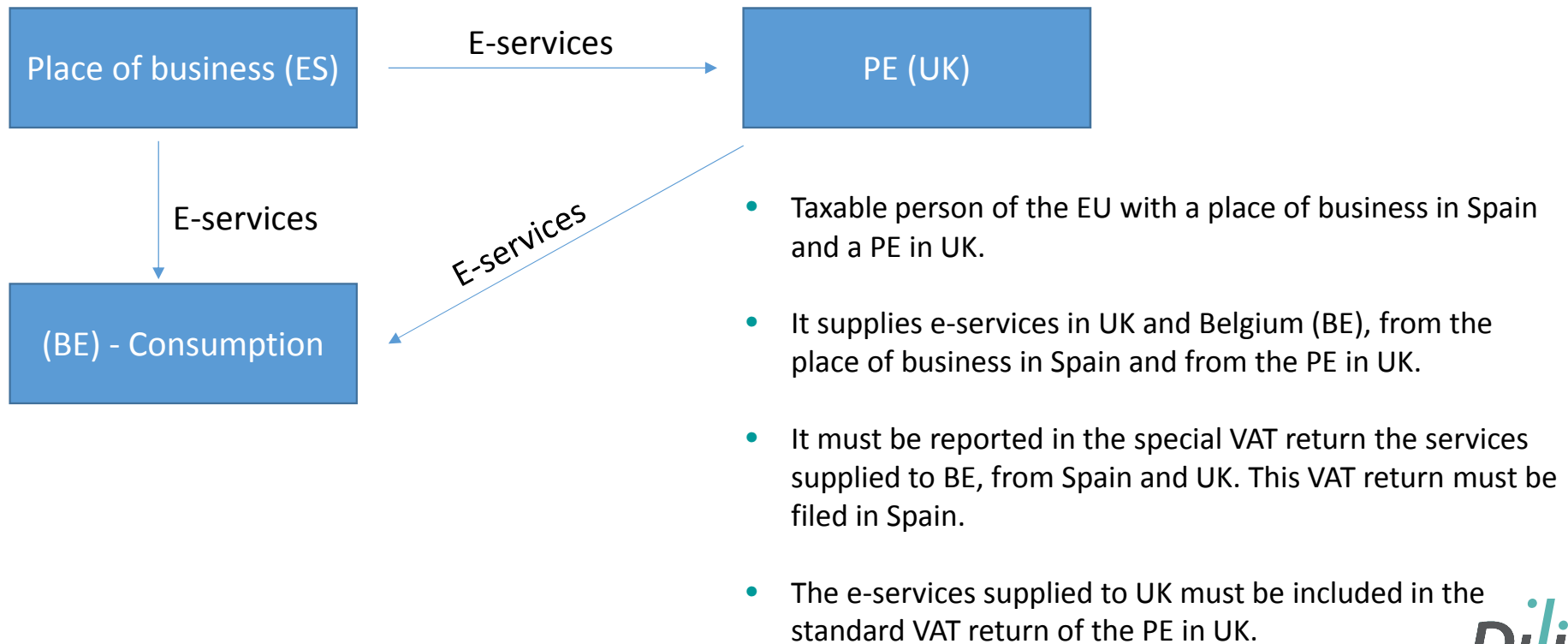
Non-EU Scheme

- It must be included in the special VAT return all the supplies of services corresponding to the scheme, which are carried out in the different MS of consumption.
- It also contemplates the sales carried out in the MS of identification.

EU Scheme

- It must be included in the special VAT return all the supplies of services corresponding to the scheme, which are carried out by the place of business in a MS of consumption.
- It must be also included the supplies of these services made by a PE other than the place of business, in a MS of consumption.
- It must NOT be included in the special VAT return the supplies made by the place of business or a PE in a MS where a PE has been set up. Those sales must be reported through the standard VAT return of the PE in the relevant MS.

SPECIAL SCHEME – MINI ONE STOP SHOP



SPECIAL SCHEME – MINI ONE STOP SHOP

5. FURTHER OBLIGATIONS

- ✓ Obligation to keep specific record books to these transactions, which shall include general information such as MS of consumption, type of transaction, date and specific information related to the consumer's domicile in order to determine the MS of consumption.
- ✓ These books must be kept for 10 years and be available to the Tax Authorities at its possible request.
- ✓ In case of bad debt the taxable base can be amended and it is permitted the inclusion in the original VAT return.

DILIGENS – SCOPE OF SERVICES

- ✓ **Diligens** does offer its customers a wide range of VAT services related to international e-commerce, in line with the new requirements of the European Directive and the optional scheme of Mini One Stop Shop.

- ✓ Some of the services offered by **Diligens** are:
 - Analysis of e-commerce transactions carried out by the client (goods or services).
 - VAT implications for electronic sales. Identification and categorization of services, identification of the customer, status, person liable to tax, VAT obligations in other MS, etc.
 - Audit of ERP systems to establish the correct VAT treatment and VAT codes.
 - Analysis of the VAT risks.
 - Assistance with the application for the MOSS scheme and further ongoing compliance services.
 - Assistance with the proper completion of the special VAT return. Identification of the sales to be included in the special VAT return, correct completion of the form, corrections, etc.

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