

EGI Pay-for-Use – Tax/Legal Issues

Introduction

The recently endorsed report on pay-per-use models from the EGI Council poses the question on how users can be billed for their usage of EGI resources¹. Two possible payment models have been elaborated. The first option envisions that users pay the resource providers directly (direct payment), the second option envisions that the users pay EGI.eu who in turns provides the money to the resource providers (indirect payment).

The first model is more suitable for one-to-one relationships where a resource provider (e.g. NGI, RC) provides directly services to a customer (e.g. user community). The second model is more suitable in a many-to-many relationship where consumers from one country are using computing resources coming from the pool of resources collected from many service providers from different countries.

This paper aims to kick-off the discussion on two main aspects involved in this new scenarios: 1) taxation/VAT implementation for international service provision and cross-national payments, 2) legal issues.

Survey results around VAT and Legal Constraints

According to a recent survey to both the NGIs and RCs to understand the willingness to participate in a pay-for-use experiment, 6 respondents expressed the interest for EGI.eu to handle the financial transactions with the customers, while 6 prefer the direct charge (note: both options were able to be selected, which was done by 4 respondents).

Invoices can be issued by a resource centre, an NGI acting as national broker, or by EGI.eu acting as international broker. Therefore, brokerage can take two forms. One is being a broker for providing services internally within one country, while other one is having a European broker for the transnational service provisions and transactions. EGI.eu handling the invoices is one of the options complementing the NGIs or sites capability to handle invoices in certain cases.

¹ EGI Pay for Use Models – Council Report
<http://go.egi.eu/1391>

The survey contained a question to understand if the responding resource provider should charge the VAT for the provided services. Six respondents stated that they are subject to VAT with only one responding saying ‘No’. In terms of legal constraints around issuing invoices for the consumed services, five respondents stated that there are no legal constraints around issuing invoices.

NGI/RC	VAT Applicable	Legal Constraint
NGI-DE	Yes	Yes
RC Leibniz Supercomputing Centre	Do not know yet	Yes
NGI UIIP NASB	No	No
RC SARA	Yes	No
NGI TUBITAK ULAKBIM	Yes	No
RC Albert Einstein Center, University of Bern	Depends on type of institution	No
NGI PL-GRID	Yes	Yes
RC MASTER-UP S.R.L	Yes	No
IGI JRU - NGI_IT	Probably	Under investigation

These results show that in most cases invoices are subject to VAT for the service provision within the country, while legal constraints are mostly not the issue common to the the majority of the respondents willing to participate in the experiment.

Taxation of Services in case of indirect payment through EGI.eu

In the case of the indirect payment model, the main question that arises is how will EGI.eu as a broker reconcile the tax burdens across Europe?

According to the EC Directive 2008/8/EC², the place of taxation is determined by where the services are supplied. This depends not only on the nature of the

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:044:0011:0022:EN:PDF>

service supplied but also on the status of the customer receiving the service. A distinction should be made between a taxable person (i.e., VAT-registered business) and a non-taxable person (a private individual who is the final consumer). The place where the services are supplied can be correctly determined only when the status of the customer is known. The supply of services between businesses (B2B services) is in principle taxed at the customer's place of establishment, while services supplied to private individuals (B2C services) are taxed at the supplier's place of establishment³.

From 1 January 2015, B2C telecommunications, broadcasting and electronically supplied services will be taxed at the place where the private customer is established, has his permanent address or usually resides. For example, when webhosting is supplied to a private customer living in Lisbon, Portuguese VAT must be charged irrespective of whether the supplier is established in Portugal, in another EU Member State or outside the EU.⁴

EGL.eu is a not-for-profit foundation established under the Dutch law as a Stichting (Dutch Foundation). EGL.eu currently does not have a VAT number, but it could easily get it so to be able to issue invoices.

According to the Dutch law, If an organisation based in the Netherlands purchase services from other EU countries, it will receive an invoice that states "VAT deferred". This means that an organisation should pay the VAT in the Netherlands. This, however, does not apply to some services in the area of the sciences and education. These services are taxed in the country of the business person who supplies the service. This business person will charge VAT. If the services are used for commercial activities, then they are VAT taxed and the consuming organisation can request for a VAT refund in the Netherlands.⁵

If EGL.eu becomes an ERIC, it can potentially negotiate VAT exemption with the host government and establish a central tax-free purchasing mechanism. However, any tax benefit would be dependent on the exemption given by the host country not by default.⁶

Electronically supplied services from non-EU Organisations and VAT

All non-EU organisations providing electronically supplied services need to be registered for EU VAT under the Electronically Supplied Services (ESS) simplified VAT registration regime to do business in EU. For example, Amazon Web Services (AWS), charges as a requirement VAT on sales of their services to private (non-business) EU customers. All VAT collected from customers in the EU will be paid to the tax authority of the appropriate EU member state. However, AWS is not required to charge VAT to European Union business customers. In order not to get charged, EU business consuming AWS should get a valid EU VAT registration number issued by one of the EU member states. Upon verification of the VAT number Amazon will exempt business account from VAT on future purchases of AWS.

Legal Considerations

Each resource centre entering a pay-for-use service provision model should clearly state the policy around who can access the services in order to avoid incurring in unfair competition with the commercial sector. This matter needs to be further developed as federated marketplaces for cloud services are emerging potentially bridging both commercial and not-for-profit suppliers. Therefore, questions to be answered are:

- What type of customers can be served?
- For what kind of activities? (e.g. research-only, pre-competitive research)
- How the pricing should be defined?

Conclusion

This report provides an initial analysis of tax and legal issues around the provision of pay-for-use services by the EGL community. The material can provide a base to kick-off the discussion at the "Evolving EGL Workshop"⁷, nevertheless, the involvements of tax advisors and legal experts should be considered.

³http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/vat_on_services/index_en.htm

⁴<http://www.revenue.ie/en/tax/vat/leaflets/place-of-supply-of-services.html>

⁵<http://www.answersforbusiness.nl/VAT-products-services-other-EU-countries>

⁶<https://documents.egi.eu/document/1339>

⁷<http://go.egi.eu/Evolving-EGL-WS-2013>