

## Media & Entertainment - France

### Extension of tax on television services to VOD services based outside France

Contributed by **Nomos**

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The tax on television services was originally payable by any French television service provider or distributor which had received a subsidy from the National Council for Cinema and Motion Pictures and had broadcast one or more audiovisual or cinematographic works in the previous year.

The Finance Act 2012 extended this tax to distributors offering internet or telephone services, if the subscription to such services also permits receipt of television services.

For television service providers, the tax rate is 5.5% of annual revenue (excluding value added tax (VAT)) originating from subscriptions, advertisements, sponsorships and call and messaging services, with a deduction of €11 million (or €16 million for television services that do not generate advertising revenue).

For distributors, there are nine different rates – calculated on the total moneys and subscriptions paid by end users, and with a deduction of 66% – ranging from 0.5% (for revenue in excess of €10 million) to 4.5% (for revenue in excess of €530 million).

The amounts collected are remitted to the council in order to finance the French cinematographic and audiovisual production support system.

The tax on television services was previously payable only by television service providers and distributors established in France (and offering their services to French end users). However, the Finance Commission of the National Assembly has since approved the Finance Amendment Bill 2013, which provides for the extension of this tax to:

- catch-up television services from January 1 2014; and
- video-on-demand (VOD) services offered to French consumers by service providers or distributors established outside France from January 1 2015.

The government has specified that the process for the collection of this tax from foreign entities shall be identical to that for the collection of VAT (ie, a mini one-stop-shop system).

This extension of the tax to VOD services based outside France is justified by the government's desire to restore equality between sellers and renters of videos, in physical or dematerialised form, regardless of their place of establishment.

However, in order to be implemented into French legislation, this measure must first be notified to the European Commission, which has the ability to approve or block its adoption.

As the purpose of this tax is the financing of public aid (ie, aid for the French cinematographic and audiovisual industry), pursuant to Section 3 of Article 108 of the Treaty on the Functioning of the European Union, it must be examined and approved by the European Commission to ensure that its implementation is compatible with the rules of the internal market. If the commission considers that the measure does not comply with such rules, the member state can be obliged to cancel or amend the measure within a certain timeframe.

The examination process takes between two and three months. If the measure is approved, its date of entry into force shall be determined by decree, but is likely to apply from January 1 2015.

*For further information on this topic please contact [Eric Lauvaux](mailto:elauvaux@nomosparis.com) at Nomos by telephone (+33 01 43 18 55 00), fax (+33 01 43 18 55 55) or email ([elauvaux@nomosparis.com](mailto:elauvaux@nomosparis.com)). The Nomos website can be accessed at [www.nomosparis.com](http://www.nomosparis.com).*

Author

**Eric Lauvaux**



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