

# Who is making the supply?

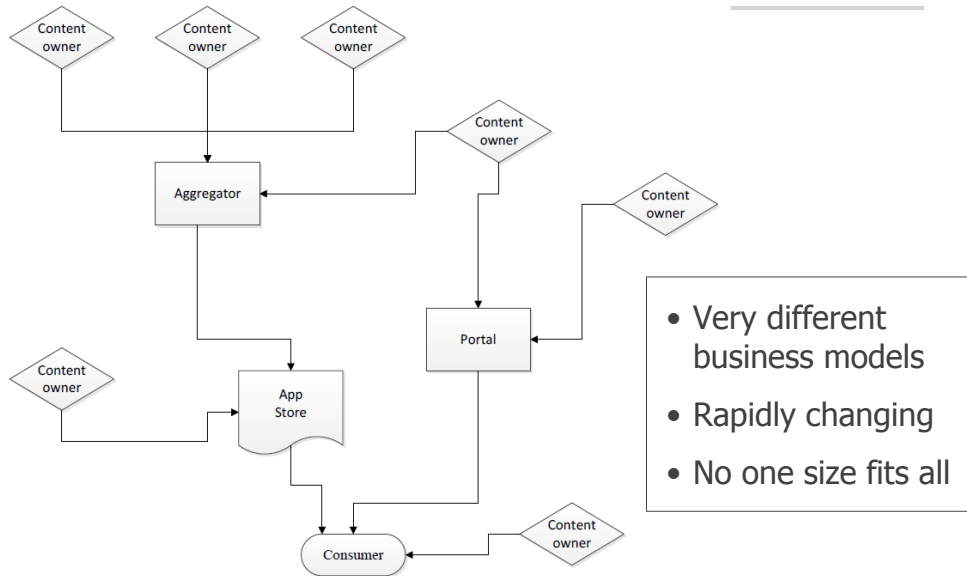
## The meaning of Article 9A

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## Legal background

- **Article 9a of Reg. 282/2011** as amended by Reg. 1042/2013
- applies from **1.1.2015**
  - but also relevant before for interpretative purposes
- implementing Art. 28 VAT Directive 2006/112/EC:  
*„Where a taxable person **acting in his own name** but on behalf of another person **takes part in a supply of services**, he shall be **deemed to have received and supplied those services himself.**“*
- **Explanatory notes** (3 April 2014)
  - Commission's views after consultation of Member States

## Structures (simplified examples)



## Scope and content

### Scope

- electronically supplied services OR
  - telephone services provided through the internet (e.g. VoIP)
- } supplied through a
- telecommunications network
  - interface or
  - portal (e.g. marketplace for applications)

### Presumption

- A taxable person taking part in the supply = presumed to be acting in his own name
- Presumption can be rebutted

## Taking part in the supply

Some **indicators** suggesting that a taxable person “takes part in the supply”:

- Owning or managing technical platform over which the services are delivered;
- Being responsible for the actual delivery;
- Being responsible for collecting payment;
- Controlling or exerting influence over the pricing;
- Issuing a VAT invoice or receipt for the supply to the end user;
- Providing customer support for the service;
- Exerting control or influence over the presentation and format of the virtual market place (such as app stores or websites); ...

## Taking part in the supply

**Indicators** that on their own do not suffice to suggest that a taxable person “takes part in the supply”:

- mere processing of payments
  - ≠ also other elements included (e.g. use of premium SMS)
- mere carrying of content
- mere provision of a network for technical carrying content (e.g. by mobile operator)

All features of the supply must be taken into account

## Rebuttal of presumption

Rebuttal only possible if:

- Each invoice/bill/receipt by each taxable person taking part in the supply identifies the service in question and its supplier **and**
- the taxable person taking part in the supply does neither
  - authorise payment
  - authorise delivery, nor
  - set the general terms and conditions of the supply, **and**

this is reflected in the contractual arrangements

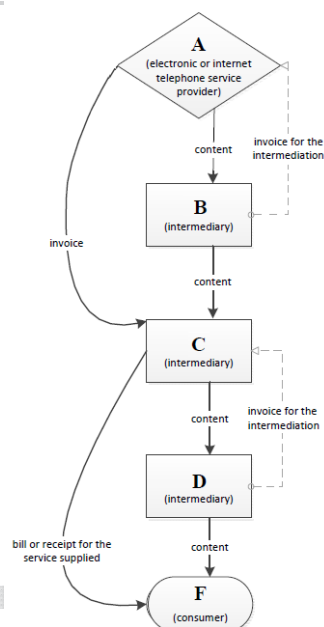
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## Rebuttal of presumption

### Partial rebuttal (part of the chain)

Assumptions:

- All taxable persons take part in the supply
- B and D rebut presumption
- C does not meet conditions to rebut presumption



## Concluding thoughts...

- Striking the balance between interests
- Provide for commercial and legal certainty
- Taxation as close to final consumer as possible  
(unless sufficient information allowing to identify a supplier at an earlier point in the chain)
- Information flow/knowledge within the chain will be crucial
- **Business need to be ready before 1.1.2015 !**