

**Rule [insert number]. Taxes On Communications Services Excluding Sales and Use Taxes.**

- A. 1. **What is the purpose of this rule?** The purpose of this rule is to identify those taxes that are considered “taxes on communications services” under section 315.1.C of the Agreement. The taxes identified by this rule are subject to the minimum simplifications required under section 315.1.B of the Agreement.
- B. **What are “taxes on communications services”?** The following subsections address what the phrase “taxes on communications services” includes for purposes of this rule.
1. **Communications services:** Communications services include only “telecommunications services” and “ancillary services” as defined in Appendix C, Part II, of the Agreement’s Library of Definitions.

2. **Taxes:** Taxes include any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for communications services, regardless of whether such tax, charge, or fee is imposed on the vendor or customer or the service and regardless of the terminology used to describe the tax, charge, or fee.

**[Drafter’s notes: The workgroup will need to decide if a definition of “tax” is appropriate for this rule, and if so, what the definition should be. An overall definition may provide useful criteria in the future when determining if a new state/local imposition should be considered a communications tax. The definition provided is taken from language considered by the Communications Task Force in 2010. The definition is based on a definition contained in the Mobile Telecommunications Sourcing Act.**

Alternative options might be to simply list specific impositions that to be treated as communications taxes for purposes of the rule, or a combination of a general definition and of specific taxes.

Also, should “customer” be better defined for purposes of section 315.1 if the definition above is used, e.g., as including subscribers, users, etc?]

The term “tax” does not apply to taxes otherwise covered by the Agreement under the Agreement’s sales and use tax provisions and also excludes the following categories of tax imposition:

- a. Any tax, charge or fee levied upon or measured by the net income, modified net income, capital stock, net worth, or property value of the seller of communications services.
- b. Any tax, charge or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis.
- c. Any tax, charge or fee imposed on sellers of communications service that use the public rights of way which represents compensation for such use of the public rights of way or other public property, generally considered as a franchise or right of way fee.

- d. Any generally applicable tax that is imposed by any taxing jurisdiction within a member state and is applied to gross receipts or gross proceeds, is the legal liability of the seller of communications services and that statutorily requires the seller of communications services to use the sourcing method under the agreement. E.g. business and occupation or public utilities taxes

**[Drafter's note:** If this rule addresses the term “tax,” should it also include one or more of the exclusions above that were discussed during the Communications Task Force negotiations?]

**C. When is an imposition determined to be a “tax on communications services”?** A member state’s imposition is determined to be a “tax on communications services” if it meets the requirements contained in subsections B.1 and B.2 of this rule and is included in the list of taxes on communications services provided in Appendix [insert number]. The Appendix represents an exclusive/non-exclusive list of taxes subject to sections 315.1 of the Agreement.

1. When the list may be updated. [placeholder]
2. How the list will be updated. [placeholder]
3. Updates become effective when. [placeholder]

**[Drafter's notes:** The language regarding B.1 and B.2 need only be considered if the workgroup determines that definitions are appropriate for the rule. Additionally, the “list” and “Appendix” language need only be considered if the workgroup determines a list is appropriate under the rule].

**D. What is the impact of an imposition being determined a “tax on communications services”?** Taxes on communications services are subject to the minimum simplifications required by section 315.1.B of the Agreement and member states must comply with these requirements in order to maintain their compliance under the Agreement. Under section 315.1.B members states must provide the following:

1. Databases in accordance with the provisions of Sections 305 and 307 containing applicable rates and jurisdictional boundaries.
2. Refund procedures consistent with the provisions in Section 325 of the Agreement,
3. Relief consistent with the provisions set out in Sections 306 and 328 of the Agreement, and
4. A taxability matrix consistent with Section 328 of the Agreement.

In adopting requirements (1) through (4) of subsection D, a member state shall apply the applicable sourcing rules in Article III of the Agreement.

**[Drafter's note:** What is intended by the sourcing language here? Do member states understand this language? What is the business community’s understanding of this language? Would additional clarifying language be helpful here?]