

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

- A. **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 connection or line or measured by gross amounts charged for communications services, regardless of whether such tax, charge, or fee is imposed on the seller or purchaser of the service and regardless of the terminology used to describe the tax, charge, or fee.

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:

- i. 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.
  - ii. Any tax, charge or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis.
  - iii. Any tax, charge or fee that is 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. It does not include a fee labeled a right of way fee that is imposed on wireline and wireless providers that includes revenue from wireless telecommunications as a measure of the tax.
  - iv. Any generally applicable business and occupation tax or other similar generally applicable business activity tax, that is imposed by any taxing jurisdiction, is applied to gross receipts or gross proceeds, and is the legal liability of the seller.
  - v. Any generally applicable privilege tax measured by taxable margin or modified gross receipts.
- 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 the Telecommunications Tax List (the “Telecom List”). The Telecom List represents a list of taxes subject to sections 315.1 of the Agreement.

**D. How the Telecom List will be updated**

1. *Adding taxes to the Telecom List:*

- i. If a member state identifies a state or local tax on communications services in a member state that meets the requirements of subsections B.1 and B.2 of this rule, then the member state shall request the Executive Director to add the tax to the Telecom List.
- ii. If a party other than the member state identifies a state or local tax on communications services that it believes meets the requirements of subsections B.1 and B.2 of this rule, and the member state disagrees, the party may request an Interpretation under the Agreement consistent with Agreement section 902. If the Governing Board determines that the tax meets the requirements of subsections B.1 and B.2, the tax will be added to Telecom List.

2. *Removing taxes from the Telecom List:*

- i. If a tax is repealed, the member state may notify the Executive Director of the repeal and thereafter the tax will be removed from the Telecom List.
- ii. If the tax is amended such that it no longer meets the requirements of subsections B.1 and B.2, or the member state believes the tax no longer meets the requirements of subsections B.1 and B.2 for any other reason, the member state may notify the Governing Board and request that the tax be removed from the Telecom List. If, after public notice no objection is received, the tax will be removed from the list. If any party believes the tax should not be removed it may request an Interpretation under the Agreement consistent with Agreement section 902. If the Governing Board determines the tax no longer meets subsection B.1 and B.2, the tax will be removed from the Telecom List.

**E. 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.