Study on applying the current principle for the place of supply of B2B services to B2B supplies of goods
Place of establishment of the customer

Specific Contract No. 1,
TAXUD/2011/DE/304

Appendix 11: Onwards B2C supplies of goods

23 December 2011

1. Purpose of the provisions[1]

1 To realise the creation of a common market in Europe with respect to indirect taxation, the Council of Ministers of the European Community decreed two Directives regarding the harmonisation of the regulations of the Member States in respect of turnover tax, based especially on articles 99 and 100 of the Treaty.[2]

2 The Sixth Council Directive, No. 77/388/EEC of 17 May 1977, on the harmonisation of the laws of the Member States relating to turnover taxes - Common system on value added tax : uniform basis of assessment, which came into force on 1 January 1978, made a significant step in terms of harmonisation of the legislation of the Member States on turnover taxes and, consequently, also in terms of the common market.

3 Creation of a single market as defined in the Treaty of Rome required fiscal controls at the internal borders between the Member States to disappear as of 1 January 1993.

4 As from 1 January 1993, tax on the importation of goods and exemptions from tax on exportation are only applied for the transactions, where, broadly speaking, goods are shipped from or to territories excluded from the common system of value added tax.

5 The requirements for achieving the definitive system – with taxation in the Member State of origin – had not been fulfilled by 31 December 1992. Therefore, transitional arrangements were set up as from 1 January 1993 with general taxation of intra-Community transactions of taxable persons (other than exempt taxable persons and non-taxable legal persons) in the Member State of destination on the basis of VAT rates and conditions imposed by that Member State.

6 This transitional arrangement was implemented by Directive 91/680/EEC of the Council of 16 December 1991 supplementing the common system on value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers.

7 The place of supply of goods as such does not make a distinction between B2B and B2C supplies, except where explicitly stated. However, with respect to B2C supplies of goods, there are two specific regimes for cross-border supplies in the EU as defined in Directive 91/680/EEC: the distance sales regime (including excise products) and supplies of new means of transport.

1 Terra, B., Kajus, J., Chapter 4 – Taxable transactions – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap04.html?WT.z_na

2 First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes and the Second Council Directive no 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes– Structure and procedures for application of the Common system of value added tax.

8 In this respect, Directive 91/680/EEC provided in its preambles that it is appropriate, during a transitional period, that intra-Community acquisitions of a certain value, made by exempt or by non-taxable legal persons, certain intra-Community distance selling and the supply of new means of transport to individuals or to exempt or non-taxable legal persons should also be taxed in the Member State of destination, in accordance with the rates and conditions set by that Member State, in so far as such transactions, in the absence of special provisions, would be likely to cause significant distortion of competition between Member States.

9 The main purpose of the intra-Community distance selling regime and the special regime for supplies of new means of transport is to avoid "VAT rate shopping". Should the general place of supply of goods be followed, it would for a private individual be more beneficial to purchase goods in Member States with a lower VAT rate.

2. Summary of the provisions

10 In this light, we only summarise the most important provisions. We will limit our review in this section to B2C onwards supplies of goods to non-taxable private persons (as non-taxable legal persons are included in our definition of B2B customer).

11 Pursuant to article 2 of the VAT Directive, the scope of VAT is, in principle, limited to the supply of goods or services and the intra-Community acquisition of goods for consideration within the territory of a Member State by a taxable person acting as such. Article 3 and article 4 of the VAT Directive stipulate which transactions are not subject to VAT in derogation from article 2 of the VAT Directive.

12 Article 14 of VAT Directive defines the supply of goods as the transfer of the right to dispose of tangible property as the owner.

13 Only the supply of goods for consideration within the territory of a Member State by a taxable person acting as such is subject to tax.

14 The place of supply of goods without transport is the place where the goods are located at the time when the supply takes place pursuant to article 31 of VAT Directive.

15 The place of supply of goods with transport by the supplier, by the customer or by a third person is the place where the goods are located at the time when dispatch or transport of the goods to the customer begins, pursuant to article 32 of the VAT Directive. However, if dispatch or transport of the goods begins in a third territory or third country, both the place of supply by the importer and the place of any subsequent supply are deemed to be within the Member State of importation of the goods.

16 By way of derogation from article 32 of the VAT Directive, the place of supply of goods dispatched by or on behalf of the supplier from a Member State to another Member State other than that in which dispatch or transport of the goods ends is deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends where the following conditions are met: (a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT or for any other non-taxable person; (b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier (article 33(1) of the VAT Directive). Where the goods supplied are dispatched or transported from a third territory or a third country and imported by the supplier into a Member State other than that in which dispatch or transport of the goods to the customer ends, they will be deemed to have been dispatched or transported from the Member State of importation (article 33(2) of the VAT Directive).

17 However, the place of supply of the goods remains the place where the goods are located at the time when dispatch or transport of the goods to the customer begins, pursuant to article 34 of the VAT Directive, if the goods supplied are not subject to excise duties and the total value of the goods dispatched to the same Member State, excluding VAT, does not, in a calendar year or in the preceding calendar year, exceed the equivalent in national currency of EUR 100.000 (article 34 of the VAT Directive).

18 The Member States where the goods are located at the time when their dispatch or transport to the customer ends may limit the threshold to the equivalent in national currency of EUR 35.000 (article 34(2) of the VAT Directive). The Member States where the goods are located at the time when dispatch or transport begins shall grant a right to opt for the place of supply to be determined in accordance with article 33 of the VAT Directive (article 34(4) of the VAT Directive). This option applies for two years.

19 Where goods dispatched or transported by the supplier, by the customer or by a third person are installed or assembled, with or without a trial run, by or on behalf of the supplier, the place of supply is deemed to be the place where the goods are installed or assembled (article 36 of the VAT Directive).

20 Any person who, on an occasional basis, supplies a new means of transport to another Member State shall be regarded as a taxable person (article 9(2) of the VAT Directive). Furthermore, such an intra-Community supply of a new means of transport to any other non-taxable person is exempt from VAT (article 138(2)(a) of the VAT Directive). The intra-Community acquisition of a new means of transport by any other non-taxable person is a transaction subject to VAT (article 2(b)(ii) of the VAT Directive).

21 The transfer of a new means of transport by a non-taxable person to another Member State upon moving house is not a taxable transaction from a VAT point of view[3].

[3] Council Implementing Regulation No. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EU.

22 Pursuant to article 146 of the VAT Directive, exports of goods to destinations outside the EU are exempt. A supply of goods dispatched or transported to a destination outside the Community by or on behalf of the vendor is tax exempt. If the goods are dispatched or transported to a destination outside the Community by or on behalf of the customer, the customer must not be established in the same Member State as the vendor.

23 The supply of goods to be carried in the personal luggage of travellers not established in the EU will only be exempt if the goods are transported out of the EU before the end of the third month following that in which the supply takes place and the total value of the supply, including VAT, exceeds EUR 175 or the equivalent in national currency, fixed annually by applying the conversion rate obtaining on the first working day of October with effect from 1 January of the following year. Proof of exportation shall be furnished by means of the invoice or other similar document, endorsed by the customs office of exit from the Community.

24 As a general principle, article 193 of the VAT Directive provides that the taxable person carrying out a taxable supply of goods is the person liable for payment of the VAT. Pursuant to article 204 of the VAT Directive, if the person liable for payment of VAT is a taxable person who is not established in the Member State in which the VAT is due, Member States may allow that person to appoint a tax representative as the person liable for payment of the VAT.

3. Qualitative impact assessment

25 The question is what the impact will be of the application of the new B2B localisation principle for the onwards B2C supplies from the perspective of the supplier and the tax authorities concerned.

26 Notably, in the B2C relation, the goods are in principle taxed where the consumption effectively takes place (and thus the physical flow of the goods is followed) whereas, in the previous B2B relation, the goods are taxed where the taxable person, supplier in the B2C relation, is established (and thus the physical flow of the goods as such is no longer followed).

3.1. B2B supply of goods and onwards B2C supply of goods in same Member State

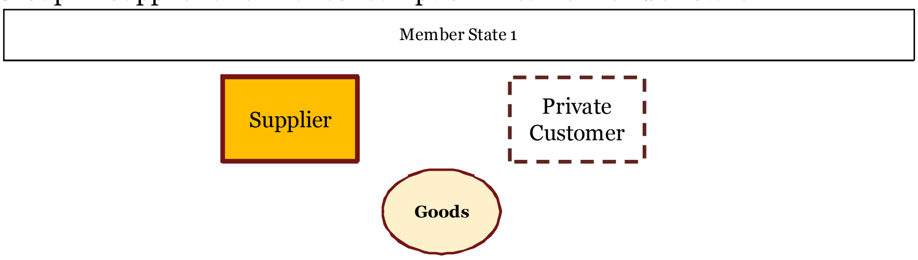
3.1.1. Description of scenarios

27 Both for the purchase of the goods by the taxable person and the subsequent B2C supply of these goods (with or without installation or assembly) by the supplier, the place of supply will be in the same Member State if the taxable person is established in the Member State of “final consumption” of the goods.

28 This can be visualised by the following examples:

Figure 11.1: Group L – Supplier and final consumption in same Member State

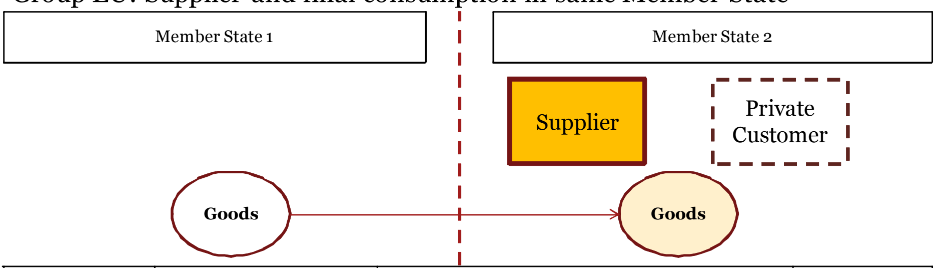
Diagram 1
Group L: Supplier and final consumption in same Member State



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS1 – the place where the supplier is established	Goods picked up by the customer	**MS1** – the place where the goods are located at the time when the supply takes place	NO
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS1**– the place where the goods are located at the time dispatch or transport to the customer begins	NO
	Goods installed or assembled by or on behalf of the supplier	**MS1** – the place where the goods are installed or assembled	NO

Figure 11.2: Group EU – Supplier and final consumption in same Member State

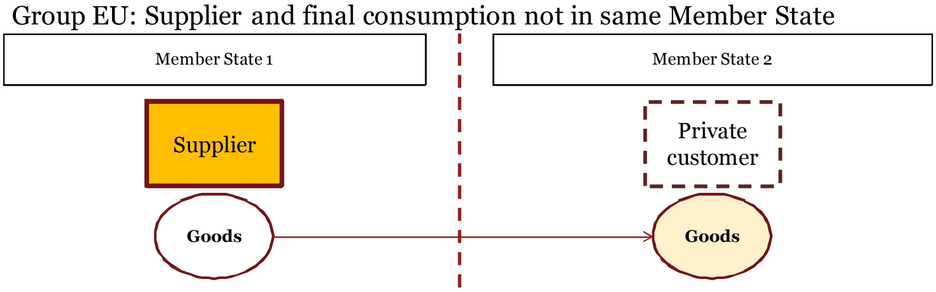
Diagram 5
Group EU: Supplier and final consumption in same Member State



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS2– the place where the supplier is established	Goods picked up by the customer	**MS1** – the place where the goods are located at the time when the supply takes place	YES
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS1**– the place where the goods are located at the time dispatch or transport to the customer begins (below distance sales threshold)	YES
		MS2– the place where the goods are located at the time dispatch or transport to the customer ends (above distance sales threshold)	NO
	Goods installed or assembled by or on behalf of the supplier	**MS2** – the place where the goods are installed or assembled	NO

Figure 11.3: Group EU – Supplier and final consumption not in the same Member State

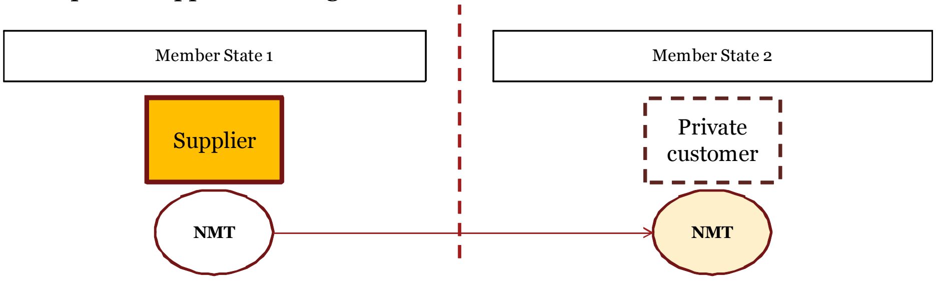
Diagram 6
Group EU: Supplier and final consumption not in same Member State



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS1 – the place where the supplier is established	Goods picked up by the customer	**MS1** – the place where the goods are located at the time when the supply takes place	NO
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS1**– the place where the goods are located at the time dispatch or transport to the customer begins (below distance sales threshold)	NO
		MS2– the place where the goods are located at the time dispatch or transport to the customer ends (above distance sales threshold)	YES
	Goods installed or assembled by or on behalf of the supplier	**MS2** – the place where the goods are installed or assembled	YES

Figure 11.4: Group EU – Supplier and registration of new means of transport not in same Member State

Diagram 9
Group EU: Supplier and registration of NMT* not in same Member State

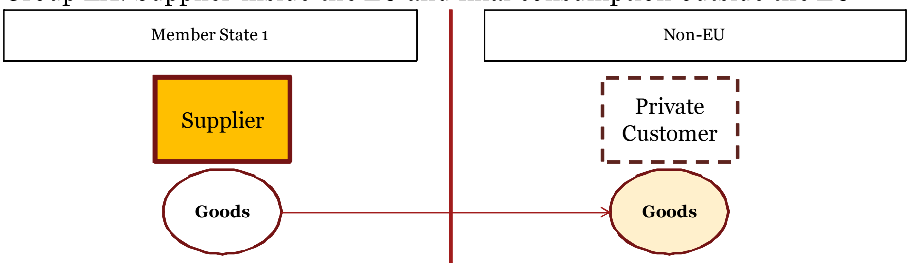


B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS1 – the place where the supplier is established	Intra-Community supply of new means of transport	**MS1** – the place where the goods are located at the time dispatch or transport to the customer begins	NO
	Intra-Community acquisition of new means of transport	**MS2** – the place where dispatch or transport of the goods to the person acquiring them ends	N/A

* NMT = New Means of Transport

Figure 11.5: Group EX - Supplier inside the EU and final consumption outside the EU

Diagram 10
Group EX: Supplier inside the EU and final consumption outside the EU



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS1 – the place where the supplier is established	Goods picked up by the customer	**MS1**– the place where the goods are located at the time when the supply takes place	NO
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS1**– the place where the goods are located at the time dispatch or transport to the customer begins	NO
	Goods installed or assembled by or on behalf of the supplier	**Non-EU** – the place where the goods are installed or assembled	YES

3.1.2. Qualitative impact assessment

29 For the following transactions, the new B2B localisation principle flows seamlessly into the B2C localisation principle.

3.1.2.1. Local supplies of goods

30 If the Member State of establishment of the supplier is the same as the Member State of final consumption of the goods, both the B2B supply of goods and the onwards B2C supply (with or without transport of the goods, with or without installation of the goods) will be taxed in the same Member State.

31 The tax revenue of the Member State concerned will not be impacted compared with the "as is" situation. The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as one can assume that he is already registered for VAT purposes in his Member State of establishment.

3.1.2.2. Cross-border supplies of goods in the EU

3.1.2.2.1. Supply of goods without installation or assembly

32 If the Member State of establishment of the supplier is the same Member State as the one where the dispatch or transport of the goods to the private customer ends and the supplier exceeds the distance sales threshold for supplies to the latter Member State (or has opted for taxation), both the B2B supply of goods and the onwards B2C supply will be taxed in the same Member State.

33 If the Member State of establishment of the supplier is the same Member State as the one where the dispatch or transport of the goods to the private customer begins and the supplier does not exceed the distance sales threshold for supplies to the Member State where the transport or dispatch of the goods ends or the private customer picks up the goods, both the B2B supply of goods and the onwards B2C supply will be taxed in the same Member State.

34 The tax revenue of the Member State concerned will not be impacted compared with the "as is" situation. Clearly, there should be a control by the Member States and communication between the Member States concerned on whether the supplier exceeds the distance sales threshold or not in order to have a correct application of the distance sales rules, which is not different compared with the current situation.

35 The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as one can assume that he is already registered for VAT purposes in his Member State of establishment.

3.1.2.2.2. Supply of goods with installation or assembly

36 If the Member State of establishment of the supplier is the same Member State as the one where the goods are installed or assembled by the supplier or for its account, both the B2B supply of goods and the onwards B2C supply will be taxed in the same Member State.

37 The tax revenue of the Member State concerned will not be impacted compared with the "as is" situation. The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as one can assume that he is already registered for VAT purposes in his Member State of establishment.

3.1.2.2.3. Supply of new means of transport

38 If the Member State of establishment of the supplier is the same as the Member State where the dispatch or transport of the new means of transport begins, both the B2B supply of the new means of transport and the onwards B2C supply will be located in the same Member State. The B2B supply will be taxed whereas the onwards B2C supply will remain exempt of VAT in the "to be" situation, too, assuming that, in the Member State where the new means of transport will be registered by the private person, the latter will be liable for payment of VAT as the private customer will acquire the status of taxable person for this transaction.

39 The tax revenue of the Member State concerned will not be impacted compared with the "as is" situation. The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as one can assume that he is already registered for VAT purposes in his Member State of establishment. Already in the "as is" situation, it is the private customer that bears the administrative burden in paying the VAT due in the cross-border supply of new means of transport within the EU.

3.1.2.3. Export of goods

40 If the Member State of establishment of the supplier is the same Member State as the one where the dispatch or transport of the goods to the private customer begins, both the B2B supply and the onwards B2C supply of the goods will be located in the same Member State. The B2B supply will be taxed whereas the onwards B2C supply will remain exempt of VAT similarly as in the "to be" situation.

41 The tax revenue of the Member State concerned will not be impacted compared with the "as is" situation. The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as one can assume that he is already registered for VAT purposes in his Member State of establishment.

3.1.2.4. Conclusions

42 There are no specific obstacles with respect to application of the new B2B principle for these scenarios compared to the “as is” situation. No mitigating measures, as set out in our qualitative impact assessment of the basic scenarios under the new VAT regime (see appendix 4), are required as the supplier is established in the same Member State as the Member State of the place of supply of the onwards B2C supply. In this instance, the new B2B localisation principle flows seamlessly into the B2C localisation principle. The tax revenue of the Member State concerned will not be impacted compared with the “as is” situation. The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as one can assume that he is already registered for VAT purposes in his Member State of establishment.

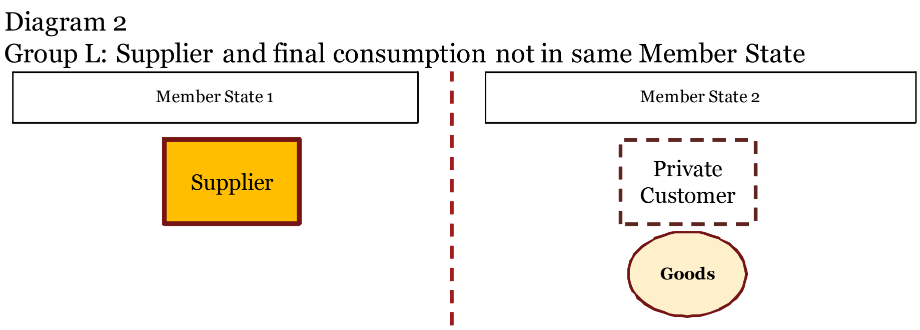
3.2. B2B supply of goods and onwards B2C supply of goods not in same Member State

3.2.1. Description of scenarios

43 The purchase of the goods by the taxable person and the subsequent B2C supply of these goods (with or without installation or assembly) by the supplier will not be in the same Member State. The supplier is not established in the Member State of “final consumption” of the goods. The new B2B localisation principle is not aligned with the B2C localisation principle.

44 This can be visualised by the following examples:

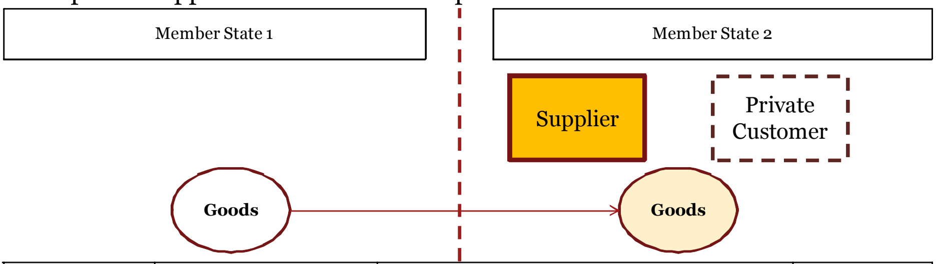
Figure 11.6: Group L – Supplier and final consumption not in same Member State



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS1 – the place where the supplier is established	Goods picked up by the customer	**MS2** – the place where the goods are located at the time when the supply takes place	YES
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS2**– the place where the goods are located at the time dispatch or transport to the customer begins	YES
	Goods installed or assembled by or on behalf of the supplier	**MS2** – the place where the goods are installed or assembled	YES

Figure 11.7: Group EU – Supplier and final consumption in same Member State

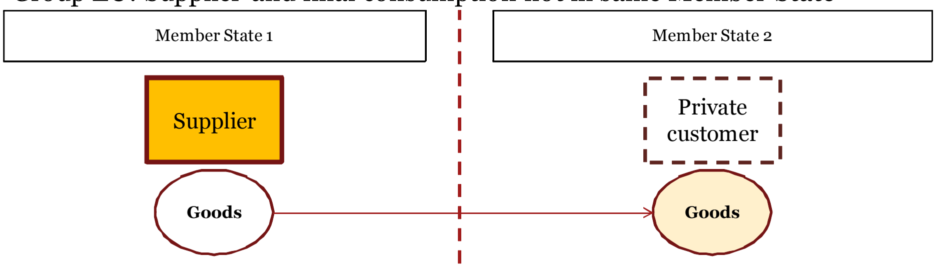
Diagram 5
Group EU: Supplier and final consumption in same Member State



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS2– the place where the supplier is established	Goods picked up by the customer	**MS1** – the place where the goods are located at the time when the supply takes place	YES
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS1**– the place where the goods are located at the time dispatch or transport to the customer begins (below distance sales threshold)	YES
		MS2– the place where the goods are located at the time dispatch or transport to the customer ends (above distance sales threshold)	NO
	Goods installed or assembled by or on behalf of the supplier	**MS2** – the place where the goods are installed or assembled	NO

Figure 11.8: Group EU – Supplier and final consumption not in same Member State

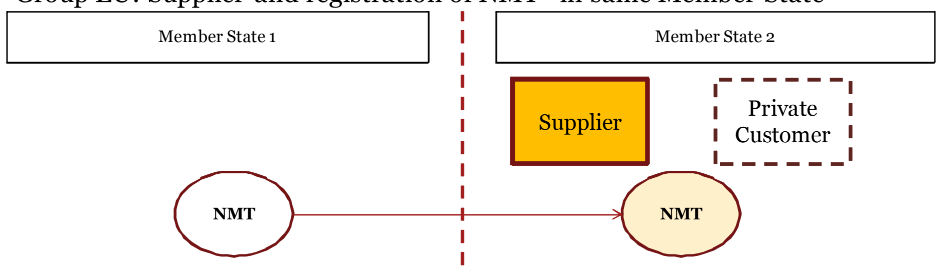
Diagram 6
Group EU: Supplier and final consumption not in same Member State



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS1 – the place where the supplier is established	Goods picked up by the customer	**MS1** – the place where the goods are located at the time when the supply takes place	NO
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS1**– the place where the goods are located at the time dispatch or transport to the customer begins (below distance sales threshold)	NO
		MS2– the place where the goods are located at the time dispatch or transport to the customer ends (above distance sales threshold)	YES
	Goods installed or assembled by or on behalf of the supplier	**MS2** – the place where the goods are installed or assembled	YES

Figure 11.9: Group EU – Supplier and registration of new means of transport in same Member State

Diagram 8
Group EU: Supplier and registration of NMT* in same Member State



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS2– the place where the supplier is established	Intra-Community supply of new means of transport	**MS1** – the place where the goods are located at the time dispatch or transport to the customer begins	YES
	Intra-Community acquisition of new means of transport	**MS2** – the place where dispatch or transport of the goods to the person acquiring them ends	N/A

* NMT = New Means of Transport

3.2.2. Qualitative impact assessment

45 For the following transaction, the new B2B localisation principle will not be aligned with the B2C localisation principle.

3.2.2.1. Local supplies of goods

46 If the Member State of establishment of the supplier is not the same as the Member State of final-consumption of the goods, the B2B supply of goods and the onwards B2C supply (with or without transport of the goods, with or without installation of the goods) will be taxed in different Member States.

47 The tax revenue of the Member State of the final consumption will not be impacted compared with the "as is" situation. Due to the shift in the country of taxation in the B2B supply of goods, there will even be a positive cash-flow impact as the supplier will no longer operate input VAT deduction. The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as, in the "as is" situation, he already needs to be registered for VAT purposes in the Member State of final consumption.

3.2.2.2. Cross-border supplies of goods in the EU

3.2.2.2.1. Supply of goods without installation or assembly

48 If the Member State of establishment of the supplier is not the same Member State as the one where the dispatch or transport of the goods to the private customer begins and the supplier does not exceed the distance sales threshold for supplies to the Member State where the transport or dispatch of the goods ends (or has not opted for taxation) or the private customer picks up the goods, the B2B supply of goods and the onwards B2C supply will be taxed in different Member States.

49 If the Member State of establishment of the supplier is not the same Member State as the one where the dispatch or transport of the goods to the private customer ends and the supplier exceeds the distance sales threshold for supplies to the latter Member State, the B2B supply of goods and the onwards B2C supply will be taxed in different Member States.

50 The tax revenue of the Member State of the final consumption will not be impacted compared with the "as is" situation. Due to the shift in the country of taxation in the B2B supply of goods, there will even be a positive cash-flow impact for the Member State of taxation of the B2C supply as the supplier will no longer operate input VAT deduction. Clearly, this should be audited by the Member States and communication between the Member States concerned on whether the supplier exceeds the distance sales threshold or not in order to have a correct application of the distance sales rules, which is not different compared with the current situation. The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as, in the "as is" situation, he already needs to be registered for VAT purposes in the Member State of final consumption.

3.2.2.2.2. Supply of goods with installation or assembly

51 If the Member State of establishment of the supplier is not the same Member State as the one where the goods are installed or assembled by the supplier or for its account, the B2B supply of goods and the onwards B2C supply will be taxed in different Member States.

52 The tax revenue of the Member State of the final consumption will not be impacted compared with the "as is" situation. Due to the shift in the country of taxation in the B2B supply of goods, there will even be a positive cash-flow impact as the supplier will no longer operate input VAT deduction. The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as, in the "as is" situation, he already needs to be registered for VAT purposes in the Member State of final consumption.

3.2.2.2.3. Supply of new means of transport

53 If the Member State of establishment of the supplier is not the same as the Member State where the dispatch or transport of the new means of transport begins, the B2B supply of the new means of transport and the onwards B2C supply will be located in different Member States. The B2B supply of the new means of transport will be taxed in the Member State of establishment of the supplier. The onwards B2C supply will remain exempt of VAT. We assume in the "to be" situation, VAT will be due in the Member State where the new means of transport will be registered by the private person. The private customer will acquire the status of taxable person upon registration and will be liable for payment of VAT. Note that, if the supplier is established in the Member State of registration of the new means of transport, the supplier would be liable for payment of VAT in the "to be" situation.

54 The tax revenue of the Member State concerned will not be impacted compared with the "as is" situation. Due to the shift in the country of taxation in the B2B supply of goods, if the supplier is established in the Member State of registration of the new means of transport, there will even be a positive cash-flow impact as the supplier will need to charge VAT to the private customer. The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as one can assume that he is already registered for VAT purposes in his Member State of establishment. In the "as is" situation, the private customer already bears the administrative burden in paying the VAT due in case of a cross-border supply of new means of transport within the EU.

3.2.2.3. Export of goods

55 If the Member State of establishment of the supplier is not the same Member State as the one where the dispatch or transport of the goods to the private customer begins, the B2B supply of the goods and the onwards B2C supply will be located in different Member States. The B2B supply will be taxed in the Member State of establishment of the supplier whereas the onwards B2C supply will remain exempt of VAT in the Member State where the dispatch or transport of the goods begins, similarly to the "to be" situation.

56 The tax revenue of the Member States concerned will not be impacted compared with the "as is" situation. The supplier has an additional administrative burden in respect of the onwards B2C supply of goods as he needs to register for VAT purposes in the Member State of export.

3.2.2.4. Conclusions

57 There are no specific obstacles with respect to application of the new B2B principle for these scenarios compared to the "as is" situation. No mitigating measures, as set out in our qualitative impact assessment of the basic scenarios under the new VAT regime (see appendix 4), are required as the supplier is established in the EU and the goods are located in the EU.

58 Whereas, in some cases, the supplier no longer needs a VAT number in another Member State for the purchase of the goods, he will, like in the "as is" situation, still need a VAT registration number for the onwards B2C supply in the Member States of taxation of the supply of the goods to the private customer. We suggest introducing a one-stop shop mechanism to reduce the cost of compliance.

59 The Member State of establishment of the supplier will have to grant a VAT deduction with respect to goods for which the turnover is reported in another Member State. The tax authorities of that Member State may not have, based on the VAT return filed by the supplier, sufficient information to audit whether the goods are supplied under circumstances allowing a right to deduct VAT. They need to have assurance that the turnover will be subject to EU VAT.

60 The tax authorities of the Member State of final consumption will also not have sufficient information at hand, based on the VAT return filed by the supplier in their Member State, to audit whether all B2C supplies to be taxed in their country are subject to VAT. Therefore, they will certainly want to obtain more information about the "origin" of the goods sold and the VAT treatment "applied" by the supplier upon purchase of the goods.

3.3. B2B supply of goods in the EU and B2C supply of goods outside the EU

3.3.1. Description of scenarios

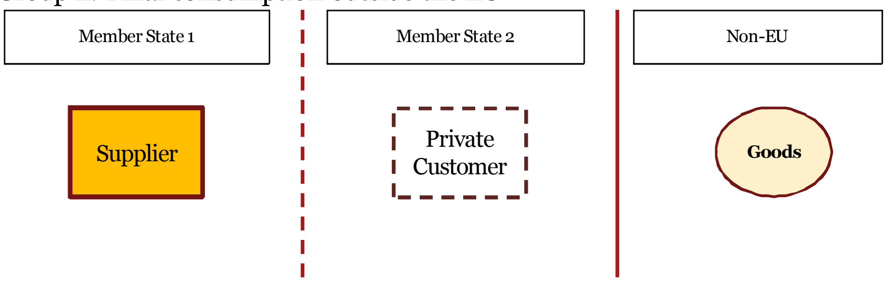
61 The purchase of the goods by the taxable person will be located in the EU and the subsequent B2C supply of these goods (with or without installation or assembly) by the supplier will be located outside the EU. The taxable person is not established in the country of "final consumption" of the goods. The new B2B localisation principle is not aligned with the B2C localisation principle.

62 If, at the time of the B2C supply, the goods are located outside the EU or located in the EU but installed or assembled by or for the account of the supplier outside the EU, the subsequent B2C supply of the goods (with or without installation or assembly) will take place outside the EU. If the supplier is established inside the EU, the place of supply of the B2B supply of the goods will take place in the Member State of establishment of the supplier.

63 This can be visualised by the following example:

Figure 11.10: Supplier inside the EU and final consumption outside the EU

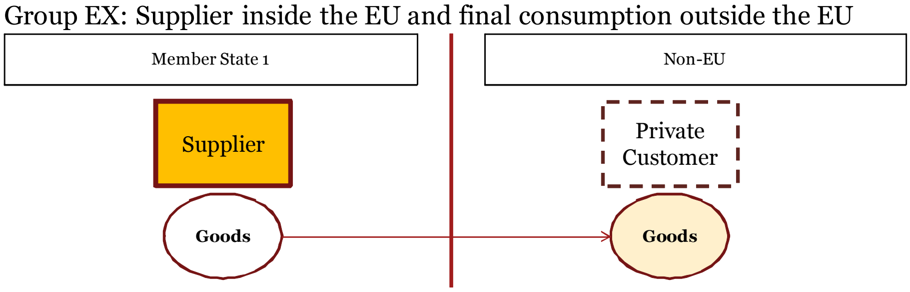
Diagram 3
Group L: Final consumption outside the EU



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS1 – the place where the supplier is established	Goods picked up by the customer	**Non-EU** – the place where the goods are located at the time when the supply takes place	YES
	Goods dispatched or transported to the customer by or on behalf of the supplier	**Non-EU**– the place where the goods are located at the time dispatch or transport to the customer begins	YES
	Goods installed or assembled by or on behalf of the supplier	**Non-EU** – the place where the goods are installed or assembled	YES

Figure 11.11: Supplier inside the EU and final consumption outside the EU

Diagram 10
Group EX: Supplier inside the EU and final consumption outside the EU



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS1 – the place where the supplier is established	Goods picked up by the customer	**MS1**– the place where the goods are located at the time when the supply takes place	NO
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS1**– the place where the goods are located at the time dispatch or transport to the customer begins	NO
	Goods installed or assembled by or on behalf of the supplier	**Non-EU** – the place where the goods are installed or assembled	YES

3.3.2. Issues

64 The goods are located outside the EU (except that, in the case that the goods are installed or assembled by or for the account of the supplier, they can also be located in the EU before installation or assembly) but give rise to EU taxation in the "to be" situation for the B2B supply as the supplier is established within the EU. The fact that VAT is charged on goods located outside the EU is not in line with the general assumption of the Study that no tax should be charged on goods located outside the EU. This could also lead to situations of double taxation should the B2B supply of the goods within the non-EU country concerned also give rise to taxation outside the EU.

65 This means that, in principle, EU taxation will occur with respect to the purchase of the goods by the supplier at the time of the subsequent B2C supply of goods located outside the EU. The supplier will have the burden of proof as regards the non-EU location of the goods supplied in order not to change VAT to the B2C customer.

3.3.3. Conclusions

66 The application of the new B2B principle will not work for these scenarios compared to the "as is" situation for the B2B supply as taxation will occur for goods "located" outside the EU. The application will lead to an increase of tax revenue in the EU. Distortion of competition will occur for the supplier due to the functioning of the new VAT regime for the B2B supply.

3.4. B2B supply of goods outside the EU and B2C supply of goods inside the EU

3.4.1. Description of scenarios

67 The purchase of the goods by the taxable person will be located outside the EU and the subsequent B2C supply of these goods (with or without installation or assembly) by the supplier will be located inside the EU. The taxable person is not established in the Member State of "final consumption" of the goods. The new B2B localisation principle is not aligned with the B2C localisation principle.

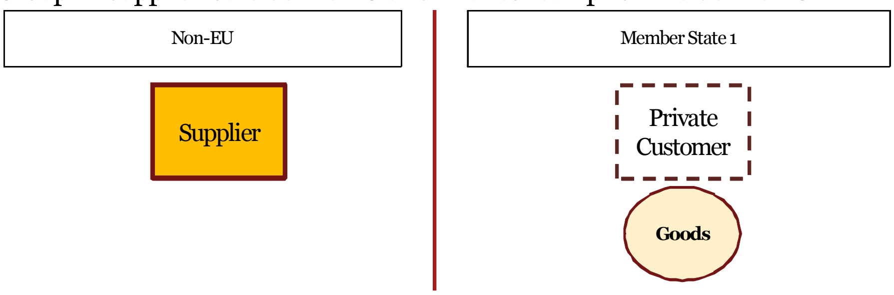
68 If, at the time of the B2C supply, the goods are located inside the EU or located outside the EU but installed or assembled by or for the account of the supplier inside the EU, the subsequent B2C supply of the goods (with or without installation or assembly) will take place in the EU. If the supplier is established outside the EU, the place of supply of the B2B supply of the goods will take place outside the EU.

69 This can be visualised by the following examples:

Figure 11.12: Supplier outside the EU and final consumption inside the EU

Diagram 4

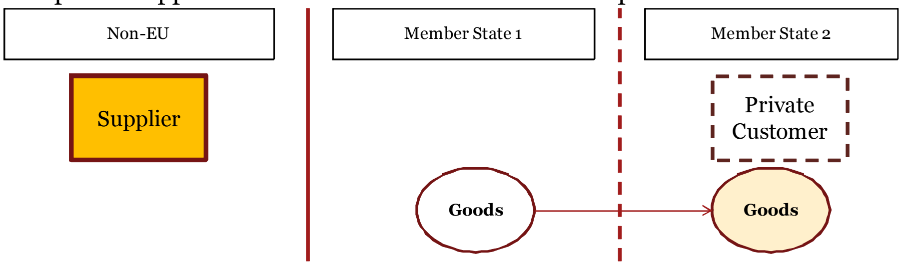
Group L: Supplier outside the EU and final consumption inside the EU



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
Non-EU – the place where the supplier is established	Goods picked up by the customer	**MS1** – the place where the goods are located at the time when the supply takes place	YES
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS1** – the place where the goods are located at the time dispatch or transport to the customer begins	YES
	Goods installed or assembled by or on behalf of the supplier	**MS1** – the place where the goods are installed or assembled	YES

Figure 11.13: Supplier outside the EU and final consumption inside the EU

Diagram 7
Group EU: Supplier outside the EU and final consumption in the EU



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
Non-EU – the place where the supplier is established	Goods picked up by the customer	**MS1** – the place where the goods are located at the time when the supply takes place	YES
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS1**– the place where the goods are located at the time dispatch or transport to the customer begins (below distance sales threshold)	YES
		MS2– the place where the goods are located at the time dispatch or transport to the customer ends (above distance sales threshold)	YES
	Goods installed or assembled by or on behalf of the supplier	**MS2** – the place where the goods are installed or assembled	YES

3.4.2. Issues

70 No EU taxation occurs with respect to the purchase of the goods by the supplier for goods located in the EU, the taxation of the onwards B2C supply requires a safety net in order to safeguard EU tax revenues. There is an increased risk of fraud and abuse as one can assume that the B2B and B2C transaction will be more difficult to audit, especially if the supplier is not established in the EU, as there is no longer any trail of the goods in the B2B situation.

71 The supplier established outside the EU must register for VAT purposes in the respective Member State of taxation for the onwards B2C supply of goods in the "to be" situation. As the customer is a private consumer, the VAT liability cannot be shifted to the latter. In principle, the supplier must appoint a VAT representative in the Member States concerned.

3.4.3. Conclusions

72 The application of the new B2B principle will not work for these scenarios compared to the "as is" situation for the B2B supply as no taxation will occur for goods "located" in the EU.

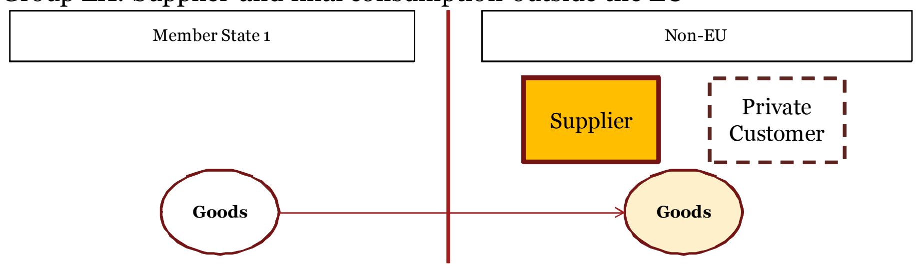
3.5. B2B supply of goods and B2C supply of goods outside the EU

3.5.1. Description of scenarios

73 Both for the purchase of the goods by the taxable person and the subsequent B2C supply of these goods (with or without installation or assembly) by the supplier, the place of supply will be outside the EU if the taxable person is established outside the EU and "final consumption" of the goods will take place outside the EU. In this instance, the new B2B localisation principle flows seamlessly into the B2C localisation principle.

Figure 11.14: Supplier and final consumption outside the EU

Diagram 11
Group EX: Supplier and final consumption outside the EU



B2B place of previous supply	B2C transaction	B2C place of supply	Different country
Non-EU – the place where the supplier is established	Goods picked up by the customer	**MS1** – the place where the goods are located at the time when the supply takes place	YES
	Goods dispatched or transported to the customer by or on behalf of the supplier	**MS1** – the place where the goods are located at the time dispatch or transport to the customer begins	YES
	Goods installed or assembled by or on behalf of the supplier	**Non-EU** – the place where the goods are installed or assembled	NO

3.5.2. Conclusions

74 If the goods are and remain "located" outside the EU and thus final consumption takes place outside the EU, and the supplier is also established outside the EU, application of the new B2B localisation rule will have no impact. However, also in this case, in order to mitigate the risk of fraud, the supplier should prove that the goods remained outside the EU. This is in line with the general principle of the Study that no tax should be charged on goods located outside the EU.

75 The new B2B localisation principle will then flow seamlessly into the B2C localisation principle.

4. Overall conclusions and lessons learned

4.1. B2B supply of goods and onwards B2C supply of goods in same Member State

76 There are no specific obstacles with respect to application of the new B2B principle. The tax revenue of the Member State concerned will not be impacted compared with the "as is" situation. The supplier has no additional administrative burden in respect of the onwards B2C supply of goods as one can assume that he is already registered for VAT purposes in his Member State of establishment.

77 In this instance, the new B2B localisation principle flows seamlessly into the B2C localisation principle.

4.2. B2B supply of goods and onwards B2C supply of goods not in same Member State

78 A consequence of the onwards B2C supply will be that the supplier still needs a VAT registration in the Member States of taxation of the supply of the goods to the private customer. We suggest introducing a one-stop shop mechanism that might resolve this issue.

79 The Member State of establishment of the supplier will have to grant VAT deduction with respect to the goods for which the turnover is reported in another Member State. The tax authorities of that Member State have no sufficient information at hand to control whether the goods are supplied under circumstances allowing a right to deduct VAT. They want to have assurance that the turnover will be subject to EU VAT.

80 The tax authorities of the Member State of final consumption have no sufficient information at hand to control whether all purchased goods are sold within the scope of VAT (being reconciliation between purchases and sales of goods). Therefore, they will certainly want to obtain more information about the "origin" of the goods sold and the VAT treatment "applied" by the supplier upon purchase of the goods.

4.3. B2B supply of goods in the EU and B2C supply of goods outside the EU

81 EU taxation will occur with respect to the acquisition of the goods by the supplier at the time of the subsequent B2C supply of goods located outside the EU. The supplier will have the burden of proof as regards the whereabouts of the goods supplied. This will lead to an increase of tax revenue in the EU, but distortion of competition will occur for the supplier due to the functioning of the new VAT regime for the B2B supply.

4.4. B2B supply of goods outside the EU and B2C supply of goods inside the EU

82 No EU taxation occurs with respect to the acquisition of the goods by the supplier for goods located in the EU, the taxation of the onwards B2C supply requires a safety net in order to further safeguard EU tax revenues. There is an increased risk of fraud and abuse as one can assume that the B2B and B2C transaction will be more difficult to audit, especially if the supplier is not established in the EU, as there is no longer any trail of the goods in the B2B situation.

4.5. B2B supply of goods and B2C supply of goods outside the EU

83 If the goods are and remain "located" outside the EU and thus final consumption takes place outside the EU, and the supplier is also established outside the EU, application of the new B2B localisation rule will have no impact.