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 6: Qualitative impact assessment special scheme for small enterprises

23 December 2011

1. Purpose of the special regime[1]

1 The special scheme for small enterprises was introduced by article 14 of the Second VAT Directive2. More details and rules were set out by article 24 of the Sixth VAT Directive3. Further, with Council Directive 92/111/EECC4, the special scheme for small enterprises was adapted by excluding new means of transport and supplies by non-established taxable persons. With the recast of the Sixth VAT Directive in 2006, the special scheme for small enterprises is currently regulated by articles 281 to 292 of the VAT Directive5.

2 A special regime for small enterprises was introduced as these businesses were faced with (technical) difficulties when applying the normal VAT arrangements. The main purpose of this special scheme was to ease the burden of tax compliance for both administrations and small enterprises as well as to facilitate the audit and collection of tax while preserving the economic neutrality of the special scheme[6].

2. Summary of the provisions

3 Under the special scheme, small enterprises have the advantage of being exempt from VAT/being subject to a flat- rate for the supply of goods and services, on the one hand, and being exempt from certain VAT obligations and formalities, on the other.

4 Under the current legislation, Member States have the option to provide for a simplified scheme for small enterprises, which includes either a VAT exemption or a flat rate (i.e. VAT on a set percentage of its turnover) or a graduated system (e.g. no VAT below a certain threshold).

5 This scheme is limited to supplies in the Member State in which the small enterprise is established and thus not available to non-established small enterprises. Supplies made by small enterprises under the exemption scheme are excluded from the exemption for intra-Community supplies of goods in accordance with article 139(1) of the VAT Directive, and there is no intra-Community acquisition by the recipient in accordance of article 2 (1)(b)(i) of the VAT Directive.

6 The taxable persons exempt from VAT under the special scheme for small enterprises may not deduct input VAT and may not charge VAT on their invoices (article 289 of the VAT Directive).

[1] Terra, B., Kajus, J., Chapter 12.2 – The special scheme for small undertakings – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap12.html?WT.z_na.
[2] Second Council Directive 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.
[3] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment.
[4] Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax.
[5] Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.
[6] Points 48 and 49 of the preamble to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

7 Furthermore, in accordance with article 272(1)(d) of the VAT Directive, Member States are allowed to exclude small enterprises covered by the exemption scheme from the requirement to comply with certain or all administrative VAT obligations.

8 Small enterprises that can apply for the exemption scheme may opt for the normal VAT system (article 290 of the VAT Directive). The small enterprises that exercise this option or enjoy the graduated relief scheme are taxable persons subject to the normal VAT arrangements (article 291 of the VAT Directive). The general place of supply and liability rules are applicable.

9 Pursuant to article 292 of the VAT Directive, the exemption or graduated relief scheme shall apply until a date to be fixed by the Council in accordance with article 93 of the Treaty, which may not be later than that on which the definitive arrangements referred to in article 402 of the VAT Directive enter into force. Under the definitive arrangements, it shall be decided whether a special scheme for small enterprises is necessary under the definitive arrangements and, if appropriate, shall lay down the common limits and conditions for the implementation of the scheme (article 294 of the VAT Directive).

3. Qualitative impact assessment of transactions for which the current VAT treatment does not change

10 We will only analyse the impact of the new B2B localisation and liability principles with respect to the application of the special scheme for small enterprises. We will not elaborate on more general conclusions that have already been dealt with in the qualitative impact assessment of the general scenarios.

3.1. No change in place of supply and special regime for small enterprises

3.1.1. Description of scenarios

11 The small enterprise and the business customer are established in the same EU Member State.

12 The goods are located (at the time of dispatch or transport) within that same EU Member State.

13 The transactions concerned are local supplies of goods or cross-border supplies of goods in the EU.

14 The groups concerned are SEL5 and SEEU3.

15

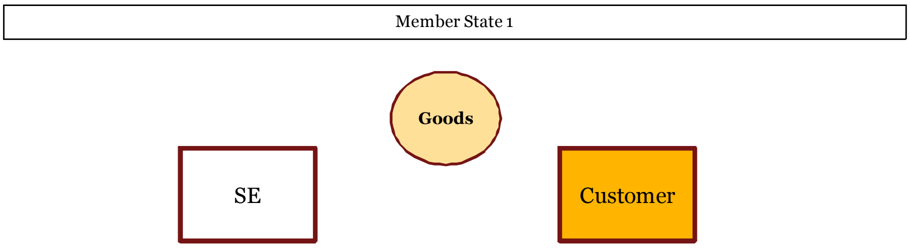
3.1.2. Comparison of VAT treatment of the special scheme for small enterprises

16 The VAT treatment "as is" is equal to the VAT treatment "to be".

17 This can be visualised by the following examples:

Figure 6.1: Local supply of goods

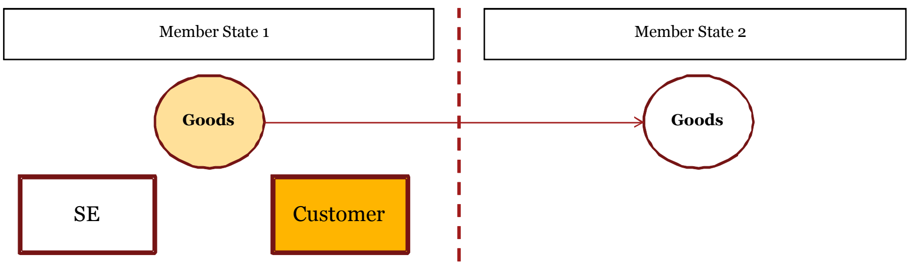
Diagram 105
GROUP SE/L – Scenario 8



Current treatment		Future treatment	
Place of supply	Exemption SE	Place of supply	Exemption SE
MS1 – the place where the goods are located at the time when supply takes place **MS1** – the place where the goods are located at the time dispatch or transport to the customer begins	Yes	**MS1** – the place where the customer is established	Yes
NO CHANGE IN PLACE OF SUPPLY AND APPLICATION OF EXEMPTION SE NO CHANGE IN PERSON LIABLE TO PAY VAT			

Figure 6.2: Cross-border supply of goods within the EU

Diagram 118
GROUP SE/EU– Scenario 6



Current treatment		Future treatment	
Place of supply	Exemption SE	Place of supply	Exemption SE
MS1 – the place where the goods are located at the time the dispatch or transport to the customer begins	Yes	**MS1** – the place where the customer is established	Yes
NO CHANGE IN PLACE OF SUPPLY AND APPLICATION OF EXEMPTION SE NO CHANGE IN PERSON LIABLE TO PAY VAT			

3.1.3. Qualitative impact assessment

3.1.3.1. Impact in country of taxation

Figure 6.3: Impact in country of taxation

Impact in country of taxation (AS IS)					Impact in country of taxation (TO BE)				
Budgetary impact		Ease of administration and cost of collection		Prevention of fraud and abuse on EU level	Budgetary impact		Ease of administration and collection		Prevention of fraud and abuse on EU level
Cash flow	Revenue	Ease of admini-stration	Cost of collection		Cash flow	Revenue	Ease of admini-stration	Cost of collection	
0	0	0	0	0					

Impact in country of taxation ("as is")

18 No impact as country of taxation "as is" is equal to country of taxation "to be".

Impact in country of taxation ("to be")

19 The country of taxation "as is" is equal to the country of taxation "to be".

3.1.3.2. Impact on taxable person

Figure 6.4: Impact on taxable person

Impact on supplier (TO BE)				Impact on customer (TO BE)			
Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implementation and compliance	Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implementation and compliance
0	0	0	0	0	0	0	0

Impact on supplier ("to be")

20 No impact.

Impact on customer ("to be")

21 No impact.

3.1.4. Conclusions

22 The new B2B localisation principle leads to the same VAT treatment as the current place of supply rules.

4. Qualitative impact assessment of transactions for which the current VAT treatment changes

23 We will only analyse the specific impact of the new B2B localisation and liability principles with respect to the application of the special scheme for small enterprises. We will not elaborate on more general conclusions that have already been dealt with in the qualitative impact assessment of the general scenarios.

4.1. Change in place of supply leading to a shift to normal VAT arrangements in the EU

4.1.1. Description of scenarios

24 The small enterprise and the business customer are not established in the same EU Member State.

25 The goods are located (at the time of dispatch or transport) within the EU Member State of the small enterprise.

26 The transactions concerned are local supplies of goods or cross-border supplies of goods in the EU.

27 The groups concerned are SEL2 and SEEU2.

4.1.2. Comparison of VAT treatment

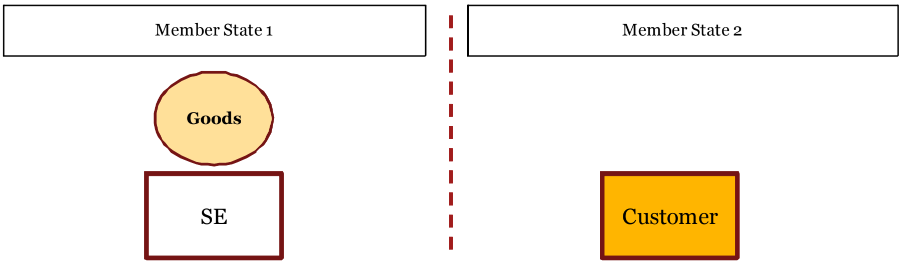
28 The VAT treatment “as is” differs from the VAT treatment “to be”.

29 The place of supply (“as is”) differs from the place of establishment of the customer (“to be”).

30 This can be visualised by the following examples:

Figure 6.5: Local supply of goods

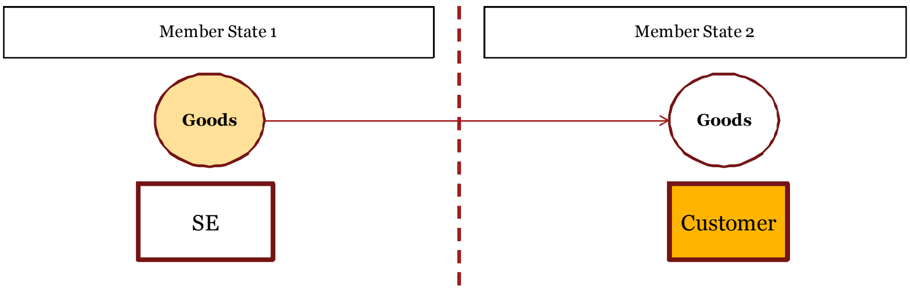
Diagram 100
GROUP SE/L – Scenario 3



Current treatment		Future treatment	
Place of supply	Exemption SE	Place of supply	Exemption SE
MS1 – the place where the goods are located at the time when supply takes place	Yes	**MS2** – the place where the customer is established	No
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins			
CHANGE IN PLACE OF SUPPLY WITH NO APPLICATION OF EXEMPTION SE CHANGE IN PERSON LIABLE TO PAY VAT			

Figure 6.6: Cross-border supply of goods in the EU

Diagram 117
GROUP SE/EU – Scenario 5



Current treatment		Future treatment	
Place of supply	Exemption SE	Place of supply	Exemption SE
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	Yes	**MS2** – the place where the customer is established	No
CHANGE IN PLACE OF SUPPLY AND NO APPLICATION OF EXEMPTION SE CHANGE IN PERSON LIABLE TO PAY VAT			

4.1.3. Issues

31 As the exemption for small enterprises is linked to the EU Member State of establishment of the small enterprise, it will not be applicable in the EU Member State of the customer.

32 As the small enterprise does not have a right to deduct input VAT in the EU Member State of establishment (one can assume that in the “to be” situation non-recoverable input VAT will increase under the new B2B localisation and liability rules in the EU Member State of establishment of the small enterprise), the customer will purchase the goods with a higher indirect tax burden, i.e. the small enterprise’s non-deducted input VAT relating to these goods will be included in the price charged. This situation could lead to double taxation.

33 Under the current EU VAT legislation, double taxation does not exist for cross-border supplies in the EU as the intra-Community acquisition of the goods is not subject to VAT. Furthermore, local supplies in another EU Member State than the small enterprise’s Member State of establishment are subject to the normal VAT regime.

34 Consequently, for a customer having no or only a limited right to deduct input VAT, it will be more beneficial to purchase goods from a small enterprise that is established in the same EU Member State. This has a distortive effect creating a barrier to trade in the Single Market.

4.1.4. Qualitative impact assessment

4.1.4.1. Impact in country of taxation

Figure 6.7: Impact in country of taxation

Impact in country of taxation (AS IS)					Impact in country of taxation (TO BE)				
Budgetary impact		Ease of administration and cost of collection		Prevention of fraud and abuse on EU level	Budgetary impact		Ease of administration and collection		Prevention of fraud and abuse on EU level
Cash flow	Revenue	Ease of admini-stration	Cost of collection		Cash flow	Revenue	Ease of admini-stration	Cost of collection	
0	0	1	1	0	0	1	-1	-1	0

Impact in country of taxation (“as is”)

Budgetary impact:

35 No impact as, under the special regime, the small enterprise has no right to deduct VAT with respect to the purchase of the goods in his Member State of establishment.

Positive impact on ease of administration and cost of collection:

36 It would always be clear that the place of supply is where the customer is established, which should reduce the potential for disputes.

37 There would be decrease in work for the tax authorities in terms of supervision and inspection in respect of the correct application of the special scheme for small enterprises.

Impact in country of taxation ("to be")

Cash-flow impact:

38 No impact as the customer becomes liable for payment of VAT.

Positive revenue impact:

39 There would be an increase in revenue where the customer does not have a full right to deduct VAT (i.e. customer with no or only a limited right to deduct VAT).

Negative impact on ease of administration and cost of collection:

40 There would be an increase in work in terms of supervision and inspection due to the shift in the place of supply.

4.1.4.2. Impact on taxable person

Figure 6.8: Impact on taxable person

Impact on supplier (TO BE)				Impact on customer (TO BE)			
Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implementation and compliance	Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implementation and compliance
0	-1	1	-1	-1	-1	-1	-1

Impact on supplier ("to be")

Budgetary impact:

41 No impact.

Negative impact on legal certainty and simplicity:

42 The administration in a day-to-day practice was easier as exemption for small enterprises applied irrespective of the place of establishment of the customer.

Shift in liability:

43 The customer becomes liable for payment of VAT.

Negative impact on cost of implementation and compliance:

44 The small enterprise will have to issue a valid VAT invoice.

45 There would be need for considerable changes to processes/systems/technologies to comply with the new VAT treatment of the supply.

Impact on customer ("to be")

Negative revenue impact:

46 There would be an additional VAT cost if the customer does not have a full right to deduct VAT (i.e. customer with limited or no right to deduct VAT).

47 There would be double taxation since the goods already bear an indirect tax burden (i.e. non-deductible VAT included in the sales price).

Negative impact on legal certainty and simplicity:

48 Currently no VAT is due for the supply of goods as goods are bought from a small enterprise falling under the special regime.

Shift in liability:

49 The customer becomes liable for payment of VAT.

Negative impact on cost of implementation and compliance:

50 There would be need to adapt processes/systems/technologies and need to train staff in order to comply with the new VAT treatment of the supply.

4.1.5. Conclusions

51 The new B2B localisation and liability principles will have a negative impact for the supplier and the customer who are used to selling and purchasing, respectively, goods under the special scheme for small enterprises.

52 For customers with no or only a limited right to deduct VAT, it will also be more beneficial to purchase goods from small enterprises established in the same EU Member State, which is distortive and contrary to the operation of a tax-neutral Single Market.

4.2. Local supplies of goods: change in place of supply leading to a shift to the special regime for small enterprises

4.2.1. Description of scenarios

53 The small enterprise and the customer are established in the same EU Member State.

54 The goods are located in another EU Member State than the EU Member State of establishment of the small enterprise and the customer or outside the EU.

55 The transaction concerned is a local supply of goods in or outside the EU.

56 The groups concerned are SEL6 and SEL7.

4.2.2. Comparison of VAT treatment

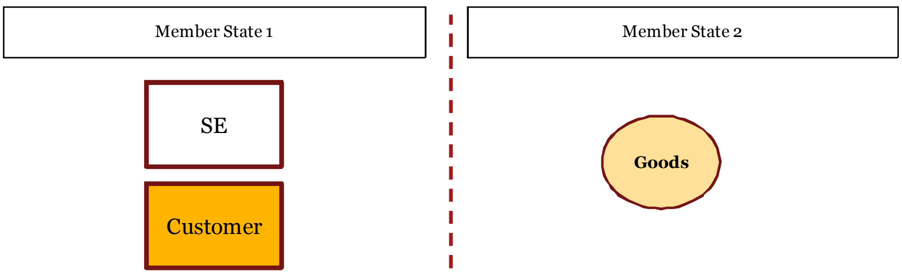
57 The VAT treatment “as is” differs from the VAT treatment “to be”. There is a shift from the normal VAT scheme to the special regime for small enterprises.

58 The place of supply of the goods (“as is”) differs from the place of establishment of the customer (“to be”).

59 This can be visualised by the following examples:

Figure 6.9: Local supply of goods in the EU

Diagram 106
GROUP SE/L – Scenario 9

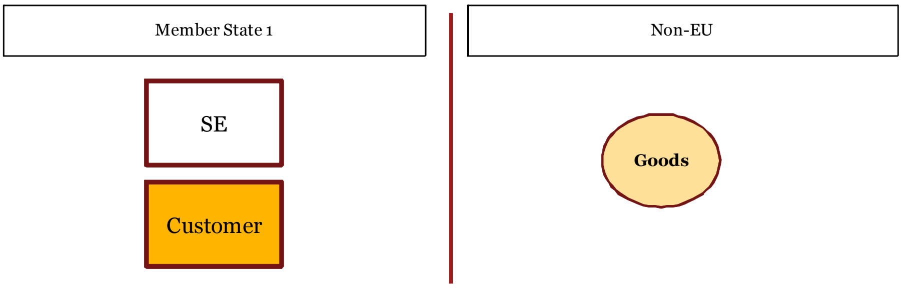


Current treatment		Future treatment	
Place of supply	Exemption SE	Place of supply	Exemption SE
MS2 – the place where the goods are located at the time when supply takes place **MS2** – the place where the goods are located at the time dispatch or transport to the customer begins	No	**MS1** – the place where the customer is established	Yes
CHANGE IN PLACE OF SUPPLY WITH APPLICATION OF EXEMPTION SE NO CHANGE IN PERSON LIABLE TO PAY VAT			

60 As the small enterprise is not established in the EU Member State of the place of supply of the goods, it needs a VAT registration in that EU Member State in the “as is” situation for this type of supplies.

Figure 6.10: Local supply of goods outside the EU

Diagram 107
GROUP SE/L – Scenario 10



Current treatment		Future treatment	
Place of supply	Exemption SE	Place of supply	Exemption SE
Non-EU – the place where the goods are located at the time when supply takes place	Not relevant	**MS1** – the place where the customer is established	Yes
Non-EU – the place where the goods are located at the time dispatch or transport to the customer begins			
CHANGE IN PLACE OF SUPPLY FROM NON-EU TO EU WITH APPLICATION OF SPECIAL SCHEME			

4.2.3. Issues

61 In the "to be" situation, the exemption for small enterprises will become applicable for EU goods where the customer is established in the same Member State as the small enterprise.

62 As the small enterprise does not have a right to deduct input VAT in his EU Member State of establishment, the customer will purchase the goods with a higher indirect tax burden, i.e. the small enterprise's non-deducted input VAT relating to these goods will be included in the price charged. This is distortive as the EU customer is likely to stop purchasing goods from small enterprises.

63 In the "to be" situation, the exemption for small enterprises will become applicable where the customer is established in the same Member State as the small enterprise although the goods are located outside the EU.

64 Furthermore, the customer will purchase the goods with a higher indirect tax burden, i.e. the small enterprise's non-deducted input VAT relating to these goods. This is distortive as the EU customer is likely to stop purchasing goods located outside the EU from small enterprises that are also established in his Member State.

65 The fact that the special regime for small enterprises is applicable to goods that are located outside EU is also not in line with the general assumption of the Study.

4.2.4. Qualitative impact assessment

4.2.4.1. Impact in country of taxation

Figure 6.11: Impact in country of taxation

Impact in country of taxation (AS IS)					Impact in country of taxation (TO BE)				
Budgetary impact		Ease of administration and cost of collection		Prevention of fraud and abuse on EU level	Budgetary impact		Ease of administration and collection		Prevention of fraud and abuse on EU level
Cash flow	Revenue	Ease of admini-stration	Cost of collection		Cash flow	Revenue	Ease of admini-stration	Cost of collection	
-1	-1	1	1	0	0	1	-1	-1	0
					0	1	-1	-1	0

Impact in country of taxation ("as is")

66 In case the goods are located within the EU (SEL6):

Negative cash-flow impact:

67 Due to the shift in the place of supply, there would no longer be pre-financing of VAT (time between payment of VAT to the local tax authorities by the supplier and VAT deduction/refund in the hands of the customer).

Negative revenue impact:

68 Due to the shift in the place of supply, there would be a decrease in revenue where the customer does not have a full right to deduct VAT (i.e. customer with no or only a limited right to deduct VAT).

Positive impact on ease of administration and cost of collection:

69 There would be a decrease in administrative work in terms of managing registrations and processing data from VAT returns and listings since there would no longer be need for the supplier not established in the relevant Member State to register for VAT.

70 It would always be clear that the place of supply is where the customer is established, which should reduce the potential for disputes.

71 There would be a decrease in administrative work for the tax authorities as the taxable customer no longer needs to obtain VAT deduction/refund and in terms of supervision and inspection as shift in place of supply.

72 The turnover threshold is easier to audit as the place of supply of goods is where the small enterprise is established (whereas, in the "as is" situation, it is in another EU Member State).

73 In case the goods are located outside the EU (SEL7):

74 As the "to be" country of taxation is outside the EU, this impact is not considered.

Impact in country of taxation ("to be")

Cash-flow impact:

75 No impact.

Positive revenue impact:

76 There would be an increase in revenue as the small enterprise has no right to deduct VAT with respect to the purchase of the goods (as the exemption for small enterprises is applicable in the "to be" situation).

Negative impact on ease of administration and cost of collection:

77 There would be additional administrative work in terms of supervision and inspection due to the shift in the place of supply and the application of the special scheme for small enterprises.

78

4.2.4.2. Impact on taxable person

Figure 6.12: Impact on taxable person

Impact on supplier (TO BE)				Impact on customer (TO BE)			
Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implementation and compliance	Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implementation and compliance
-1	1	0	1	1/0/-1	1	0	1
-1	-1	1	-1	-1	-1	0	1

Impact on supplier ("to be")

79 In case the goods are located within the EU (SEL6):

Negative revenue impact:

80 The small enterprise no longer has a right to deduct VAT with respect to the purchase of the goods (as the exemption for small enterprises is applicable in the "to be" situation).

Positive impact on legal certainty and simplicity:

81 The administration in a day-to-day practice is easier as the supply is subject to the special scheme for small enterprises in his EU Member State of establishment.

82 It is always clear that the place of supply is where the business customer is established.

No shift in liability:

83 The small enterprise remains liable for payment of VAT (but special scheme for small enterprises applies).

Positive impact on cost of implementation and compliance:

84 It would be easier for a small enterprise to administer in day-to-day practice since there would no longer be any need for additional VAT registrations and application of the exemption in his EU Member State of establishment.

85 There would be possibility for full automation, leading to a reduction in time spent.

86 There would be limited changes to processes/systems/technologies required and limited need to train staff in order to comply with the new VAT treatment of the supply.

87 In case the goods are located outside the EU (SEL7):

Negative revenue impact:

88 The small enterprise no longer has a right to deduct VAT with respect to the purchase of the goods (as the exemption for small enterprises is applicable in the "to be" situation).

Negative impact on legal certainty and simplicity:

89 There was no EU VAT treatment in the "as is" situation with respect to the purchase and sale of the goods as they were located outside the EU.

90 The value of the supplies of the goods was not taken into account to calculate the turnover to determine whether the supplier is subject to the special regime for small enterprises or not. This means that the small enterprise will more quickly reach the threshold.

91 There would be double taxation to the extent that the purchase of the goods gives rise to taxation in the non-EU country where they are located.

Shift in liability:

92 The small enterprise becomes liable for payment of VAT (but special scheme for small enterprises applies).

Negative impact on cost of implementation and compliance:

93 There would be changes to processes/systems/technologies required and need to train staff in order to comply with the new VAT treatment of the supply.

94 The value of the supplies of the goods was not taken into account to calculate the turnover to determine whether the supplier is subject to the special regime for small enterprises or not. This means that the small enterprise will more quickly reach the threshold.

Impact on customer ("to be")

95 In case the goods are located within the EU (SEL6):

Positive, no or negative budgetary impact:

96 The overall cash-flow impact would depend on the overall VAT position of the customer in the "as is" and "to be" countries of taxation, being payable or refundable, and on the payment terms with the supplier.

97 There would a positive impact and a decrease in VAT cost if the customer does not have a full right to deduct VAT (i.e. customer with limited or no right to deduct VAT).

98 There would be a negative impact if the goods bear an indirect tax burden (being the small enterprise's non-deductible VAT included in the sales price).

Positive legal certainty and simplicity:

99 It is always clear that the place of supply is where the business customer is established.

No shift in liability:

100 The customer does not become liable for payment of VAT.

Positive impact on cost of implementation and compliance:

101 There would be a decrease in administrative work as the customer no longer needs to obtain VAT deduction/refund.

102 There would be possibility for full automation, leading to a reduction in time spent.

103 There would be limited changes to processes/systems/technologies required and limited need to train staff in order to comply with the new VAT treatment of the supply.

104

105 In case the goods are located outside the EU (SEL7):

Negative budgetary impact:

106 The goods would bear an indirect tax burden (being the small enterprise's non-deductible VAT included in the sales price). In principle, the supply of the goods would also give rise to taxation in the non-EU country where they are located.

Negative impact on legal certainty and simplicity:

107 There was no EU VAT treatment in the "as is" situation with respect to the purchase of the goods as they were located outside the EU.

No shift in liability:

108 The customer does not become liable for payment of VAT.

Positive impact on cost of implementation and compliance:

109 There would be limited changes to processes/systems/technologies required and limited need to train staff in order to comply with the new VAT treatment of the supply.

4.2.5. Conclusions

110 For the small enterprise, there is a clear negative revenue impact as it will no longer have a right to deduct VAT with respect to the goods supplied. As the small enterprise does not have a right to deduct input VAT in his EU Member State of establishment, the customer will purchase the goods with a higher indirect tax burden, i.e. the small enterprise's non-deducted input VAT relating to these goods will be included in the price charged. This is distortive as the EU customer is likely to stop purchasing goods from small enterprises.

111 The fact that the special regime for small enterprises is applicable to goods that are located outside EU is also not in line with the general assumption of the Study.

4.3. Cross-border supplies by small enterprises: change in place of supply leading to a shift to the special regime for small enterprises

4.3.1. Description of scenarios

112 The small enterprise and the customer are established in the same EU Member State.

113 The goods are dispatched or transported from another EU Member State than the EU Member State of establishment of the small enterprise and the customer.

114 The transaction concerned is a cross-border supply of goods in the EU.

115 The group concerned is SEEU4.

4.3.2. Comparison of VAT treatment

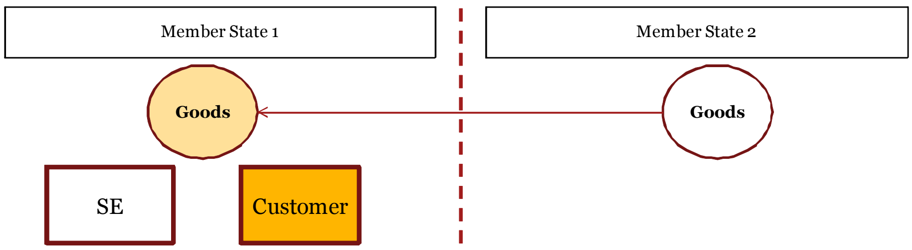
116 The VAT treatment "as is" differs from the VAT treatment "to be". There is a shift from the normal VAT arrangements to the special regime for small enterprises.

117 The place of supply ("as is") differs from the place of establishment of the customer ("to be").

118 This can be visualised by the following example:

Figure 6.13: Cross-border supply of goods in the EU

Diagram 119
GROUP SE/EU – Scenario 7



Current treatment		Future treatment	
Place of supply	Exemption SE	Place of supply	Exemption SE
MS2 – the place where the goods are located at the time dispatch or transport to the customer begins (i.e. intra-Community supply)	No	**MS1** – the place where the customer is established	Yes
MS1 – the place where dispatch or transport of the goods to the person acquiring them ends (i.e. intra-Community acquisition)			
CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION WITH APPLICATION OF SPECIAL SCHEME CHANGE IN PERSON LIABLE TO PAY VAT			

119 As the small enterprise is not established in the EU Member State of place of supply, it needs a VAT registration in that EU Member State for this type of supplies in the "as is" situation.

4.3.3. Issues

120 In the "to be" situation, the exemption for small enterprises will become applicable in the case that the customer is established in the same Member State as the small enterprise and, at the time of the supply, the goods are located in another Member State. The customer no longer has to apply an intra-Community acquisition in the Member State of arrival of the goods.

121 Furthermore, the customer will purchase the goods with a higher indirect tax burden, i.e. the small enterprise's non-deducted input VAT relating to these goods. This is distortive as the EU customer is likely to stop purchasing goods from small enterprises established in his Member State.

4.3.4. Qualitative impact assessment

4.3.4.1. Impact in country of taxation

Figure 6.14: Impact in country of taxation

Impact in country of taxation (AS IS)					Impact in country of taxation (TO BE)				
Budgetary impact		Ease of administration and cost of collection		Prevention of fraud and abuse on EU level	Budgetary impact		Ease of administration and collection		Prevention of fraud and abuse on EU level
Cash flow	Revenue	Ease of admini-stration	Cost of collection		Cash flow	Revenue	Ease of admini-stration	Cost of collection	
0	1	1	1	0					

Impact in country of taxation ("as is")

Cash-flow impact:

122 No impact.

Positive revenue impact:

123 There will be an increase in revenue as the small enterprise will not have a right to deduct VAT with respect to the purchase of the goods in its EU Member State of establishment.

124 However, in case the customer did not have a full right to deduct VAT with respect to the intra-Community acquisition of the goods in the "as is" situation (i.e. customer with limited or no right to deduct VAT), there would be a decrease in revenue. If the customer had a full right to deduct VAT with respect to the intra-Community acquisition of the goods in the "as is" situation, there would be no impact in this respect.

Positive impact on ease of administration and cost of collection:

125 There would be a decrease in work in terms of supervision and inspection due to the end of collection of VAT and verification of operated input VAT deduction.

126 The turnover threshold is easier to audit as the place of supply of goods is where the small enterprise is established (whereas, in the "as is" situation, it is in another EU Member State).

Impact in country of taxation ("to be")

127 The country of taxation "to be" is equal to country of taxation "as is".

4.3.4.2. Impact on taxable person

Figure 6.15: Impact on taxable person

Impact on supplier (TO BE)				Impact on customer (TO BE)			
Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implementation and compliance	Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implementation and compliance
-1	1	0	1	1/0/-1	1	1	1

Impact on supplier ("to be")

Negative revenue impact

128 The small enterprise no longer has a right to deduct VAT with respect to the purchase of the goods (as the exemption for small enterprises is applicable in the "to be" situation).

Positive impact on legal certainty and simplicity:

129 The administration in a day-to-day practice is easier as the supply of the goods is subject to the special scheme for small enterprises in his EU Member State of establishment.

130 It is always clear that the place of supply is where the customer is established.

No shift in liability:

131 The small enterprise remains liable for payment of VAT (but special scheme for small enterprises will apply).

Positive impact on cost of implementation and compliance:

132 The administration in a day-to-day practice is easier as there is no longer need for a VAT registration in another EU Member State, and the special regime is applied.

133 There would be possibility for full automation leading to a decrease in time spent.

134 There would be limited changes to processes/systems/technologies required and need to train staff in order to comply with the new VAT treatment of the supply.

Impact on customer ("to be")

Positive, no impact or negative budgetary impact:

135 There would be a positive impact and a decrease in VAT cost if the customer did not have a full right to deduct VAT with respect to the intra-Community acquisition (i.e. customer with limited or no right to deduct VAT). If the customer had a full right to deduct VAT with respect to the intra-Community acquisition of the goods, there would be no impact or a negative impact if the goods bear an indirect tax burden (being the small enterprise's non-deductible VAT included in the sales price).

Positive legal certainty and simplicity:

136 It is always clear that the place of supply is where the customer is established, and the special regime of small enterprises is applied.

Shift in liability:

137 The customer is no longer liable for payment of VAT due on the intra-Community acquisition of the goods.

Positive impact on cost of implementation and compliance:

138 There would be possibility for full automation leading to a decrease in time spent.

139 There would be limited changes to processes/systems/technologies required and need to train staff in order to comply with the new VAT treatment of the supply.

4.3.5. Conclusions

140 There are some obstacles to the application of the new B2B principle. Less compliance work is required as there are no VAT registration and filing requirements outside the Member State of establishment anymore for the supplier.

141 As a result of the new B2B localisation rule, the customer will purchase the goods with a higher indirect tax burden, i.e. the small enterprise's non-deducted input VAT relating to these goods. This is distortive as the EU customer is likely to stop purchasing goods from small enterprises established in his Member State.

4.4. Change in place of supply from EU to non-EU

4.4.1. Description of scenarios

142 The small enterprise is established in the EU and the customer is established outside the EU.

143 The goods are located within the EU Member State of the small enterprise.

144 The transactions concerned are local supplies of goods or cross-border supplies of goods in the EU.

145 The groups concerned are SEL8 and SEEU5.

4.4.2. Comparison of VAT treatment

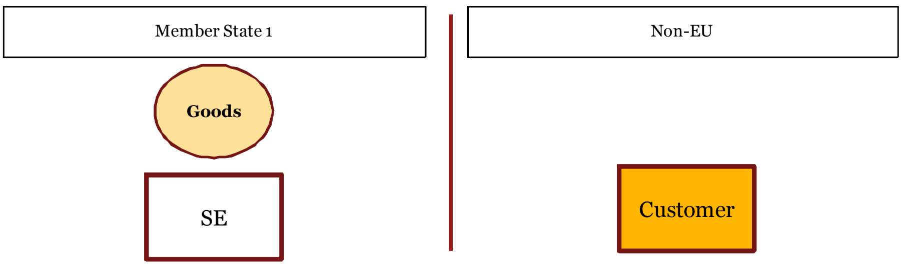
146 The VAT treatment "as is" differs from the VAT treatment "to be".

147 The place of supply ("as is") differs from the place of establishment of the customer ("to be").

148 This can be visualised by the following examples:

Figure 6.16: Local supply of goods

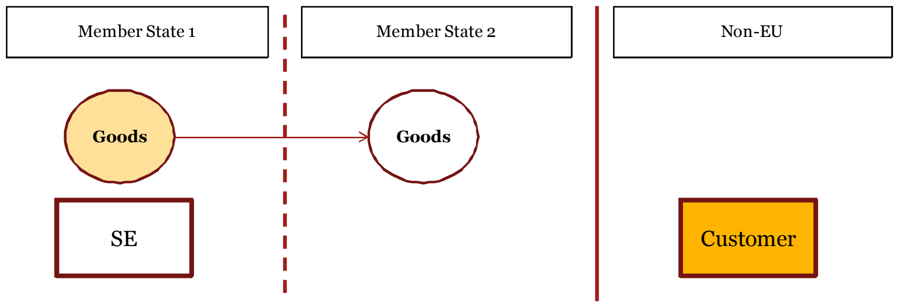
Diagram 108
GROUP SE/L – Scenario 11



Current treatment		Future treatment	
Place of supply	Exemption SE	Place of supply	Exemption SE
MS1 – the place where the goods are located at the time when supply takes place **MS1**– the place where the goods are located at the time dispatch or transport to the customer begins	Yes	**Non-EU** – the place where the customer is established	Not relevant
CHANGE IN PLACE OF SUPPLY FROM EU TO NON-EU NO TAXATION			

Figure 6.17: Cross-border supply of goods in the EU

Diagram 120
GROUP SE/EU– Scenario 8



Current treatment		Future treatment	
Place of supply	Exemption SE	Place of supply	Exemption SE
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	Yes	**Non-EU** – the place where the customer is established	Not relevant
CHANGE IN PLACE OF SUPPLY FROM EU TO NON-EU			

4.4.3. Issues

149 Under the new B2B localisation principle, the place of supply of the goods is outside the EU.

150 As the small enterprise does not have a right to deduct input VAT in his EU Member State of establishment, the non-EU customer will purchase the goods with a higher indirect tax burden, i.e. the small enterprise's non-deducted input VAT relating to these goods will be included in the price charged. This is distortive as the non-EU customer is likely to stop purchasing goods from small enterprises.

151 The non-taxation of goods that are in the EU is not in line with the general assumption of the Study. It is also distorting competition as supplies to EU customers established in another EU Member State than the small enterprise would be subject to VAT whilst supplies to non-EU customers would not be subject to VAT.

152 Furthermore, the application of the new B2B localisation rule for goods should be complemented by the collection of EU VAT as the goods remain in the EU.

4.4.4. Qualitative impact assessment

4.4.4.1. Impact in country of taxation

Figure 6.18: Impact in country of taxation

Impact in country of taxation (AS IS)					Impact in country of taxation (TO BE)				
Budgetary impact		Ease of administration and cost of collection		Prevention of fraud and abuse on EU level	Budgetary impact		Ease of administration and collection		Prevention of fraud and abuse on EU level
Cash flow	Revenue	Ease of admini-stration	Cost of collection		Cash flow	Revenue	Ease of admini-stration	Cost of collection	
0	0	1	1	-1					

Impact in country of taxation ("as is")

No budgetary impact:

153 No impact under the special regime for small enterprises because the small enterprise has no right to deduct VAT with respect to the purchases of the goods in his Member State of establishment.

Positive impact on ease of administration and cost of collection:

154 It is always clear that the place of supply is where the customer is established.

Negative impact on prevention of fraud and abuse on an EU level:

155 There would be an increase of risks of fraud and abuse in the case that the place of taxation shifts from inside the EU (i.e. effective consumption in the EU) to the business customer established outside the EU. Auditability of the transaction will be more difficult.

Impact in country of taxation ("to be")

156 As the "to be" country of taxation is outside the EU, this impact is not considered.

4.4.4.2. Impact on taxable person

Figure 6.19: Impact on taxable person

Impact on supplier (TO BE)				Impact on customer (TO BE)			
Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implementation and compliance	Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implementation and compliance
0	1	1	1	0	1	0	1

Impact on supplier ("to be")

Budgetary impact:

157 No impact under the special regime for small enterprises because the small enterprise has no right to deduct VAT with respect to the purchases of the goods in his Member State of establishment.

Positive impact on legal certainty and simplicity:

158 The administration in a day-to-day practice is easier as the place of supply is always where the customer is established.

Shift in liability:

159 The small enterprise is no longer liable for payment of VAT (as the place of supply is outside the EU).

Positive impact on cost of implementation and compliance:

160 It would be easier for a small enterprise to administer in day-to-day practice.

161 There would be possibility for full automation, leading to a reduction in time spent.

162 There would be limited changes to processes/systems/technologies required and limited need to train staff in order to comply with the new VAT treatment of the supply.

Impact on customer ("to be")

Budgetary impact:

163 No impact.

Positive legal certainty and simplicity:

164 It is always clear for the customer that the place of supply is where he is established.

Shift in liability:

165 No impact.

Positive impact on cost of implementation and compliance:

166 There would be possibility for full automation, leading to a reduction in time spent.

167 There would be limited changes to processes/systems/technologies required and limited need to train staff in order to comply with the new VAT treatment of the supply.

4.4.5. Conclusions

168 There are several obstacles to the application of the new B2B principle in these scenarios: no taxation of goods located in the EU, which is not in line with the general assumption of the new regime; risk of fraud; and higher difficulty level of auditability of the transaction.

169 Furthermore, the application of the new B2B localisation rule for goods should be complemented by the collection of EU VAT as the goods remain in the EU.

5. Overall conclusions and lessons learned

170 From an overall perspective, we derive that in general terms the new B2B localisation and liability principle will not work leading to double taxation or no taxation in some scenarios and distorting competition as in some scenarios the customer might stop to purchase goods from small enterprises due to a higher indirect tax burden.

171 Furthermore, the application of the new B2B localisation rule for goods should be complemented by the collection of EU VAT as the goods remain in the EU.

172 The main lessons learned from the qualitative impact assessment are the following:

173 In the case that the customer is not established in the EU, the non-taxation of goods that are in the EU is not in line with the general assumption of the Study. It is also distorting competition as supplies to EU customers would be subject to VAT whilst supplies to non-EU customers would not.

174 In the case that the goods are located outside the EU, there are two specific obstacles to the application of the new B2B principle in these scenarios.

175 First, the goods may not be located outside the EU in the case that the small enterprise and the customer are established in the same Member State as double taxation would occur. For the small enterprise, there is an overall clear negative revenue impact as it will no longer have a right to deduct VAT with respect to the goods supplied. The taxation of goods that are not in the EU is not in line with the general assumption of the Study.

176 Second, in the case that the business customer is established in the same Member State as the small enterprise and the goods are located in another Member State, the business customer will purchase the goods with a higher indirect tax burden, i.e. the small enterprise's non-deducted input VAT relating to these goods. For the small enterprise, there is an overall clear negative revenue impact as it will no longer have a right to deduct VAT with respect to the goods supplied. This is distortive as the EU customer is likely to stop purchasing goods from small enterprises in the Member State of establishment.