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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

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Final Report

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Contents

Preface

"The Green Paper on the future of VAT – Towards a simpler, more robust and efficient VAT system", adopted by the European Commission on 1 December 2010, is expected to open up a wide-scale debate with stakeholders on all aspects of the EU's VAT system.

The first part of the Green Paper concerns the principles governing the taxation of intra-EU transactions, on which an EU VAT system, fully adapted to the Single Market, should be based. The Green Paper once again opens up the debate on implementation of the so-called "definitive arrangements" based on taxation at origin of goods and services or alternatives such as maintaining the current system or adapting it to a regime based on taxation in the Member State of destination.

Within the verges of this alternative route, several options are available as regards business-to-business (B2B) transactions.

One is setting the place of intra-EU supplies of goods in the Member State of destination, with or without VAT actually being charged by the supplier.

Within this framework, the European Commission has asked for a "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" ("the Study"), as it wants to explore what the impact would be if the current principle for the place of supply of B2B services (i.e. the place of establishment of the business customer) were also to be applied to B2B supplies of goods.

We would like to thank the European Commission for entrusting PwC[1] with carrying out this Study, which we consider as being of strategic significance. We are also grateful for the very valuable input provided by the European Commission in the course of the Study. The close collaboration we enjoyed during our contacts and meetings proved to be of extreme importance for reaching our conclusions.

In Phase 1, we prepared the templates for our Study which we discussed and agreed with the European Commission during a meeting. In Phase 2, we provided the Commission with a draft Interim Report which was also discussed during a meeting with the European Commission.

Phase 3 entailed an extensive working session with the European Commission. Next, the final report with our findings, conclusions and recommendations has been drafted as part of the final Phase of the Study.

A Study of this size requires an excellent expertise in the field of VAT. In order to deliver this Study, we worked with two groups of experts; a Core Team and a Quality Team.

The Core Team consisted of Ine Lejeune, who acted as the project leader and of Eric Schmitz, Inge Stuyver, Wouter Sooghen and Steven Dhaene, who acted as experts in their field, i.e. VAT. Inge Stuyver also acted as the project senior manager for this Study.

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The Quality Team provided input on a regular basis during the Study. Throughout the Study, the Quality Team provided assurance in relation to the robustness of the methodology, data collection, assumptions and conclusions. The Experts involved in this Study were Serge Mary, Stephen Dale and Stan Beelen.

Equally so, a Commission Steering Group was appointed. This Steering Group provided input and challenged findings where needed on a periodical basis.

In accordance with the Statement of Work and our discussions, we are pleased to present the European Commission with our Final Report.

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Ine Lejeune

Global Leader, Indirect Taxes

8 February 2012

Executive summary

Background and scope

1 "The Green Paper on the future of VAT – Towards a simpler, more robust and efficient VAT system", adopted by the European Commission on 1 December 2010, has opened up a wide-scale debate with stakeholders on all aspects of the EU's VAT system.

2 The first part of the Green Paper concerns the principles governing the taxation of intra-EU transactions, on which an EU VAT system fully adapted to the Single Market should be based. The Green Paper once again opens up the debate on implementation of the so-called "definitive arrangements" based on taxation at origin of goods and services or alternatives such as maintaining the current system or adapting it to a regime based on taxation in the Member State of destination.

3 The objective of the Study is to identify and assess the impact of applying the current principle for the place of supply of B2B services to B2B supplies of goods on a qualitative and legislative level. The Study provides recommendations on applying the principle of taxation at the place of establishment of the customer and whether it would be feasible to further pursue this as an approach.

4 The Study focuses on situations where goods remain in a Member State or circulate within the EU in a B2B context. It takes into account the notion that VAT receipts should, in principle, accrue to the Member State where consumption of the goods takes place. This also entails examining situations where the customer is not entitled to deduct VAT in full. A clear distinction is also drawn between where the customer and/or supplier are and are not established within the EU.

5 The following activities do not fall within the scope of the Study:

- assessing the economic aspects of the changes in terms of quantifying their effects (e.g. estimates of the financial impact of the changes on VAT revenues in terms of receipts, potential fraud and avoidance risks or the additional or reduced costs of collection and compliance they could entail);
- assessing the compliance, administration or any other costs in the hands of businesses or tax authorities;
- other impacts not related to VAT (e.g. Intrastat, shipment of goods under a customs regime and interaction with customs, excise or other applicable legislation);
- drafting any new provisions of the VAT Directive.

Methodology – project steps and approach

6 In order to come to a final recommendation on the principle of taxing B2B supplies of goods at the place of establishment of the customer ("the new principle") and on whether it would be feasible to further pursue this as an approach, PwC delivered the project in four Phases.

7 Phase 1 was dedicated to identifying the criteria to be used for the qualitative impact assessment from a tax authority and taxable person (supplier and customer) perspective to analyse the impact on the various scenarios.

8 Phase 2 was dedicated to assessing the general concepts for the Study against the impact of the new principle from a qualitative and legislative point of view, where defined.

9 PwC then identified and mapped the general scenarios that might be impacted by the new principle. Next, the VAT treatment for each of them was tabulated in accordance with the current rules for defining the place of supply, exemptions and liability ("as is"). The VAT treatment in accordance with the new principles ("to be") was also completed.

10 Visuals providing an immediate overview showing whether applying the new principle results in a change or no change compared to the "as is" situation were also prepared.

11 PwC then reviewed the impacted articles of the VAT Directive for the first time. A very schematic approach was used giving a clear view of which articles will be affected. Three columns captioned as "to be repealed", "to be amended" and "options for consideration" were used.

12 The Interim Report contained the concept and definitions, a table with general scenarios reflecting the "as is" and "to be" situations as well as some visuals of said scenarios, a more in-depth explanation of the assessment criteria and a preliminary draft overview of the articles affected by the new rule on the place of supply of goods.

13 In Phase 3, PwC fine-tuned the 101 general scenarios based on discussions with the European Commission at the meeting on the Interim Report.

14 A further 208 scenarios were developed for analysing all special schemes provided for in the VAT Directive.

15 244 visual diagrams were also prepared for a large number of the scenarios in PowerPoint format.

16 Qualitative assessment criteria were applied to all the scenarios (general scenarios and special schemes) from a tax authority and a taxable person (supplier and customer) perspective.

17 From a tax authority perspective, PwC assessed the budgetary impact, the ease of administration, the cost of collection and the prevention of fraud and abuse at an EU level. From a taxable person perspective (supplier and customer), PwC assessed the budgetary impact, legal certainty and simplicity, the shift in liability and the cost of implementation and compliance.

18 The impact of applying the new principle in the case that the supplier subsequently supplies the goods in a B2C relationship was also examined.

19 Further, a number of critical issues were also examined that need to be resolved because they could otherwise form a barrier to the full functioning of the new principle.

20 After the working session with the Commission the final Report was prepared by:

- finalising the analysis of scenarios, diagrams and assessments;
- performing a second review and finalising identification of the rules that would need to be changed;
- finalising the key issues to be overcome and proposing solutions;
- drafting the final report.

New B2B place of supply rules for goods: working assumptions

21 The new general B2B place of supply rule for goods should be where the customer has established its business or has its fixed establishment to which the goods are supplied.

22 The supply of goods should only be taxable in the EU if the goods are located in or circulating within the EU.

23 The physical flow of movable goods should no longer be followed as long as the goods remain or circulate within the EU.

24 The place of supply rules applicable to local EU and intra-EU cross-border B2B supplies of goods should be streamlined with the B2B place of supply rules for services in order to minimise the need for distinctions between the VAT treatment of goods and services.

25 The new B2B localisation rule should apply to supplies of goods to businesses in the meaning of taxable persons and non-taxable legal persons.

26 The new B2B localisation rule should not place an additional administrative burden on the supplier to determine the customer's place of establishment. The place of supply should easily be defined with certainty by the supplier regardless of the legal structure of the customer and the contractual arrangements.

27 The person liable for payment of any VAT due on the supply of goods should be the supplier if the goods were supplied by a taxable person established within the same Member State as the customer. The person liable for payment of any VAT due on the supply of the goods should be the taxable person or non-taxable legal person to whom the goods are supplied if they were supplied by a taxable person not established within the same Member State (similar to the current article 196 of the VAT Directive).

28 We have assumed that the existing rules regarding importation of goods and the existing exemption upon exportation would not change.

Source

29 The consolidated 1 January 2011 version of Council Directive 2006/112/EC of 28 November 2006 has been used and references to "the VAT Directive" are references to that consolidated text.

Definitions

30 Wherever necessary, specific definitions have also been used highlighted in section 3.3 of chapter 3 of the Study.

31 Throughout the Study, we also define whether mitigating measures should be implemented on a long- or short term basis (i.e. whether the suggested measures do or do not require immediate implementation for the new B2B localisation and liability principle to function properly). We also indicate where those mitigating measures require a revision of the current provisions which are far-reaching or not.

Manuals

32 Finally, manuals for reading the different tables included in the Study can be found in chapter 4 of the Study.

Qualitative assessment of the different scenarios benchmarked against the defined working assumptions

33 After defining the new B2B place of supply rule for supplies of goods, the Study sets out a number of criteria in order to perform a qualitative impact assessment for the scenarios. The evaluation criteria were defined from a tax authority perspective and from a supplier and customer perspective.

34 They were defined using a number of the OECD criteria for benchmarking tax regimes.[2] However, only the criteria that in our opinion are most relevant to the scope of this Study were selected. These criteria are internationally recognised as the best to meet the legitimate expectations of the tax authorities and businesses and consequently are used internationally to benchmark VAT/GST regimes.

35 The selected criteria are, for tax authorities, budgetary impact (cash flow and revenue), ease of administration, cost of collection and prevention of fraud and abuse at an EU level and, for taxable persons, budgetary impact (cash flow and revenue), legal certainty and simplicity, shift in liability, and cost of implementation and compliance.

[2] Ottawa framework taxation conditions contained in the OECD "International VAT/GST Guidelines" report of February 2006, http://www.oecd.org/dataoecd/16/36/36177871.pdf.

36 For our Study, we opine that all selected criteria are equally important to identify the impact for Member States and businesses. We therefore have not given a weight to the criteria. Some of the criteria are also linked. Increased legal certainty and simplicity can increase revenues and lower cost of collection. From many examples analysed, we derive that this needs to be looked at on a case-by-case basis.

37 The ratings "+1", "-1" or "0" were used depending on whether the new principle has a positive, a negative or no impact.

38 A number of assumptions for performing the assessments were also defined.

39 Detailed assessments were performed for B2B supplies of goods covered by the normal VAT regime, for onward B2C supplies of goods and for supplies covered by the special regimes.

40 Our detailed assessment disregards the number of times each transaction might occur in reality when goods are traded as this aspect was not part of the scope of the Study. The detailed assessment is therefore purely based on transactions that are likely to occur. We do not assess the economic impact of the changes as that quantitative assessment does not fall within the scope of the Study.

41 The following issues were identified and conclusions drawn.

- **Supplies covered by the normal VAT regime**
  - ***Goods located in the EU and the customer is established in the EU***

Overall assessment

42 Except for application of the export exemption if the customer is responsible for transport of the goods to a destination outside the EU, the new B2B localisation principle for supplies of goods functions properly if the customer is established in the EU and if, at the time of the supply, the goods are or remain located in the EU.

43 The export exemption applies to that "one" transaction to which dispatch or transport of the goods outside the EU can be attributed.

44 If the customer is established in the Member State where the goods are located at the time dispatch or transport begins to a destination outside the EU and the customer is responsible for the transport, the exemption upon exportation is not applicable according to the current exemption rules (article 146(1)(b) of the VAT Directive).

45 However, under the new B2B localisation and liability principle, there should be no need to know the location of the goods and no need to follow the physical flow of the goods except to keep track of whether the goods are in or outside the EU. Consequently, in the short term, we recommend amending the export exemption regardless of who dispatches or transports the goods as long as the goods leave the EU. This will not require any far-reaching revision of the current export exemption.

46 Where the supplier and customer are not established in the same Member State, the customer is in principle liable for the VAT unless it proves that the exemption upon exportation applies. The customer should have sufficient proof of exportation of the goods outside the EU using a set of documents such as an export declaration, transport documents, insurance documents, a bill of lading and payment documents. However, it should be pointed out that a customer would have more difficulty in providing such proof when the supplier is responsible for dispatch or transport of the goods to a destination outside the EU.

47 To overcome the issue associated with the difficulty of obtaining proof of exportation of goods, the customer should also be able to prove that the goods have been transported outside the EU based on the subsequent use or supply of the goods outside the EU.

48 Further, the customer may not have the necessary documentation to prove the export exemption at the time the VAT becomes due. If the customer is liable for VAT and accounts for it, it will not in principle have a right to deduct the VAT under the current rules. The same is true where the supplier is liable to pay VAT and unduly charges the VAT to the customer. In this respect, it will be better for the proper functioning of the new B2B localisation and liability principle, at least in the long term, that the customer should have a right to deduct the VAT and is not penalised.

Risk of distortion of competition

49 There is a risk that distortion of competition would occur due to the working of the new VAT regime if the supplier and the customer are established in the same Member State as, if due to the supplier's obligation to charge local VAT, the customer would prefer to contract with a supplier not established in its Member State in order to optimise its cash flow.

Impact on purchases by farmers, taxable persons who only carry out supplies of goods and services on which the VAT is not deductible and non-taxable legal persons

50 In the case where goods are supplied locally or cross-border in the EU and the supplier is not established in the same Member State, some farmers subject to the common flat-rate scheme, taxable persons who only carry out supplies of goods or services on which the VAT is not deductible and non-taxable legal persons will need to register for VAT and will have to account for VAT on their purchases.

51 The VAT registrations imply an additional administrative burden and increased compliance costs for these B2B customers in order to be able to fulfil their new obligations. This will create costs for the tax authorities in managing those registrations. There will also be an additional need for supervision and inspection of those B2B customers by the tax authorities increasing the cost of administration and collection.

52 Those B2B customers which currently are already required to account for VAT on their intra-Community acquisitions of goods will not need a new VAT registration number in the "to be" situation if the intra-Community acquisition takes place in their Member State of establishment. It can be assumed this will be the case for the vast majority of these customers. In this case, the new B2B localisation and liability rules would have no fundamental impact on these customers in respect of EU cross-border transactions or on the tax authorities concerned. Nevertheless, the size of the impact on those B2B customers and on the tax authorities should be assessed.

Impact on country of taxation

53 With respect to the impact on the current country of taxation, we see a positive cash flow impact where the supplier and the customer are established in the same Member State and the customer was liable for paying VAT on the intra-Community acquisition of goods in that Member State.

54 Where the customer becomes liable for the VAT instead of the supplier under the new B2B localisation and liability principle, the cash flow of Member States is negatively impacted. Cash flow is also negatively impacted for the current country of taxation where the new principle entails a change in the country of taxation. If the supplier is liable for the payment of VAT under the new principles, the new country of taxation will logically benefit from a positive cash flow impact. Similarly, there will be a positive revenue impact for the new country of taxation.

55 There is no cash flow impact for the current country of taxation where the customer was already liable for payment of the VAT on the intra-Community acquisition of goods or where the export exemption applies.

56 There might be a positive impact on the ease of administration and cost of collection for the current country of taxation as VAT is always due in the Member State where the customer is established, which should reduce the potential for disputes. There is also a positive impact due to the fact that the non-established supplier or customer should no longer register for VAT in the current country of taxation. Consequently, the administrative work in terms of managing registrations and processing data from VAT returns and listings might decrease compared to the current situation.

57 However, where the customer has other fixed establishments in addition to its main place of business, defining the place of taxation is more difficult. We therefore suggest mitigating measures (place of supply based on contractual arrangements and the concept of a deemed supply) that we believe are crucial to ensure that taxation occurs in a due and proper manner and with a view to avoiding a negative impact on both tax authorities and taxable persons. These measures require far-reaching revision of the current rules.

58 Where VAT is no longer collected in the current country of taxation due to a shift in the place of taxation, the related activities will be eliminated. However, VAT will be collected in the new country of taxation, resulting in an increased need for supervision and inspection in that Member State.

59 It seems that the new B2B localisation and liability principle shall better safeguard the tax revenues of the Member States, especially where the liability for payment of the VAT shifts from a non-EU supplier to an EU customer.

Impact on taxable persons

60 With respect to the impact on taxable persons, we deduce from the assessment that the new B2B localisation principle might have a positive impact on taxable persons. A negative impact would appear where, from a VAT point of view, the supplier or the customer becomes liable for paying VAT under the new B2B localisation and liability principles and the customer bears the burden of proving the exemption upon exportation (see above).

61 The new B2B localisation rule will be easier to administer than the current localisation rules. There will be certainty as to who is liable as VAT will always be due in the Member State where the customer is established. However, where the customer has other fixed establishments in addition to its main place of business, defining the place of taxation is more difficult. We therefore suggest mitigating measures (place of supply based on contractual arrangements and the concept of a deemed supply) that we believe are crucial to ensure that taxation occurs in a due and proper manner and with a view to avoiding a negative impact on both tax authorities and taxable persons. These measures require far-reaching revision of the current rules.

62 For both the supplier and the customer, full automation is possible, reducing the time spent on compliance. The VAT determination logic is based on the place of establishment of the customer and the supplier. Implementation of the new B2B localisation principle requires limited changes to processes, systems and technologies. The need to train staff in order to comply with the new VAT treatment of the supply should also be limited.

63 As already stated in a number of scenarios, the supplier and the customer will no longer be required to register for VAT purposes in the current country of taxation.

64 In the case of EU cross-border supplies of goods, the supplier also no longer has the burden of proving that the goods were actually dispatched or transported to or installed in another EU Member State.

- ***Goods located in the EU and the customer is established outside the EU***

65 Where the customer is not established in the EU (non-EU customer) and, at the time of the supply, the goods remain located in the EU, an issue was identified with respect to application of the new B2B localisation and liability principle: no VAT would be charged on supplies of goods located in the EU, which is not in line with the general principle of taxation at the place of consumption. This would lead to a loss of tax revenue in the EU and competition would be distorted due to the working of the new VAT regime. Furthermore, there is also a risk of fraud as supplies of goods located and remaining in the EU would not be subject to VAT.

66 Therefore, it will be necessary for the following far-reaching measures to be taken from the outset.

67 First, we recommend broadening the application of the new B2B localisation and liability rules, allowing non-EU traders (non-EU suppliers and non-EU customers) to trade goods within the EU in a compliant and simple way.

68 More specifically, the new B2B localisation principle for B2B supplies of goods should also apply if a non-EU customer is identified for VAT purposes via the appointment of a VAT representative within the EU. Through the appointment of a VAT representative, the non-EU business would be deemed to have a presence in the EU ("an EU VAT presence").

69 Broadening the application of the new B2B localisation rule to non-EU customers with an EU VAT presence would be an incentive for bona fide non-EU customers to appoint a VAT representative in the EU in order not to be confronted with EU VAT being charged and with VAT refunds. For the EU tax authorities, it would allow them to keep track of transactions of goods, located within the EU. The non-EU customer should appoint this VAT representative in the Member State where it has its main activities with respect to the goods concerned. In the case of multiple VAT representatives (e.g. due to B2C supplies), in view of reconciliating and control purposes, all reporting should be done using a one-stop-shop.

70 Second, if the non-EU customer does not have an EU VAT presence, it is necessary to deem the place of supply of the goods to be in the EU. The supplier would have to charge the VAT of its country of establishment to a customer not established in the EU unless the supplier could prove that the exemption for exportation of goods can be applied. For supplies by non-EU suppliers with an EU VAT presence to a non-EU customer without such an EU VAT presence, the place of supply would be in the Member State where the non-EU supplier has an EU VAT presence.

71 The non-EU customer should request a refund of this VAT via the refund procedure laid down in Directive 86/560/EEC[3] (article 171(2) of the VAT Directive), which would give the tax authorities of the Member State of the supplier a trail of the goods supplied within the EU and enable them to verify whether the subsequent supply of the goods is subject to EU VAT.

72 However, if the non-EU customer subsequently supplies the goods to another non-EU customer, again no EU VAT would be due.

73 Therefore, a third solution is required to prevent non-taxation and the risk of fraud for supplies contracted by non-EU traders involved in chain supplies of EU goods. In particular, the Member State where the goods are located at the time of supply should be able to collect the tax on the supply of the goods. In order to achieve this, we recommend that a person other than the non-EU supplier or non-EU customer should be held jointly and severally liable for paying the VAT in the Member State where the goods are located, such as persons who have physical control or access to the goods such as the transporter, warehouse keeper, toll manufacturer, agent, etc. This rule will only apply if the other localisation rules cannot be applied.

[3] 13th Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover tax arrangements for the refund of value-added tax to taxable persons not established within EU.

74 A warehouse keeper storing goods of a non-EU customer, transporter or toll manufacturer (and any other person who has physical control or access to the goods) can only exclude its joint liability if its non-EU customer appoints an EU VAT representative. This means that there is an incentive for these entities, as part of managing their own risks and as part of their client acceptance procedures, to request their non-EU customers to appoint a VAT representative.

75 Based on article 205 of the VAT Directive, a previous supplier and subsequent customer should also be held liable for paying the VAT (e.g. chain liability). Suppliers and business customers should manage chain supplies diligently by applying severe client or supplier acceptance procedures.

76 Finally, for chain transactions involving several non-EU customers not appointing a VAT representative, an extension of the possibility to use the exemption for warehousing arrangements (including warehousing other than customs warehousing) should, in the long term, become an obligation for all Member States for both non-EU and EU suppliers and customers, by amending articles 156 and 157 of the VAT Directive from optional to obligatory provisions. This will lead to further simplification in respect of compliance formalities for taxable persons and avoid VAT charges requiring additional auditing by tax authorities.

- ***Importation of goods into the EU***

77 In order not to distort competition (depending on who acts as the importer of record), to avoid double taxation on both the supply and the importation, and to simplify the new B2B localisation principle, it will be necessary to exempt the importation from the outset.

78 This exemption would apply where the customer acting as the importer of record is established within the EU or has an EU VAT presence via the appointment of a VAT representative and is liable to pay the VAT in accordance with the new B2B localisation and liability rules. If own stock is imported, the import exemption would not be applicable. Imports of goods by a non-EU customer without an EU VAT presence would not be exempt, either, as there would be no risk of double taxation in that case.

79 Where the possibility now already exists to exempt the importation of goods followed by an intra-Community supply of goods and the importation of gas through a natural gas system or any network connected to such a system or fed in from a vessel transporting gas into a natural gas system or any upstream pipeline networks, electricity, heat or cooling energy, in principle, we expect that no considerable changes will be needed to how the import system operates compared to the current rule. However, further research is needed with respect to the impact of the proposed VAT exemption, the control methodology and also the link with the central customs clearance as defined in article 106 of the Modernised Customs Code[4]. Specific guidelines will also be necessary for declarants (importers/customs agents) with respect to applying the proposed VAT exemption.

[4] Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code.

- ***Goods located outside the EU and the customer is established in the EU***

80 If the customer is established in the EU and, at the time of the supply, the goods remain located outside the EU, VAT is charged on supplies of the goods located outside the EU, which is not in line with the general principle of not taxing goods located outside the EU. This might possibly lead to an increase in tax revenue in the EU, but competition would be distorted due to the functioning of the new VAT regime.

81 Therefore, these supplies should be considered as out of scope of the application of EU VAT, as is already the case today. The burden of proving that goods are located outside the EU should lie with the supplier or the customer, depending on who would be liable for paying the VAT if VAT were due.

82 In practice, we do not expect significant problems in this respect as most traders have warehouse management systems tracking the location of goods. Only for traders of gas, electricity, heat or cooling energy, it needs to be investigated whether this would lead to simple taxation as these goods are difficult to track physically.

- ***Goods located outside the EU and the customer is established outside the EU***

83 If the goods are and remain "located" outside the EU and the customer is established outside the EU, application of the new B2B localisation rule will not lead to EU taxation, as is already the case today. However, to mitigate the risk of abuse and fraud, the supplier should prove that the goods remain outside the EU. All this is in line with the general principle of not taxing goods located outside the EU.

- **Onward B2C supply of goods in the normal VAT regime**

  - ***B2B supply of goods and onward B2C supply of goods in the same Member State***

84 At first sight, for the Member State concerned and the B2C supplier, there will be no impact as both supplies remain in the same Member State.

85 Nevertheless, there is a reconciliation and control issue for the tax authorities in the Member States concerned. As the physical flow of the goods is no longer followed with respect to the B2B supply of goods, they might not know that the goods are within the Member States' territory. See below, where we further elaborate on the one-stop-shop mechanism as a mitigating measure in this respect.

  - ***B2B supply of goods and onward B2C supply of goods not located in the same Member State***

86 A consequence of the onward B2C supply would be that the supplier still needs to register for VAT in the Member States of taxation of the B2C supply of goods.

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

88 The tax authorities of the Member State of final consumption would also not have sufficient information from 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 would 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.

89 In order to achieve their control objectives, both tax authorities would need to make additional VAT inquiries with the supplier and amongst themselves (exchange of information). This undermines the general idea of introducing a simplified VAT system for tax authorities and businesses.

90 It goes without saying that a mechanism is required to ensure that the simplification aimed at by the new B2B localisation principle is not lost whilst at the same time assuring both the Member State of taxation of the B2B purchase of the goods and the onward B2C supply can ensure efficient and effective compliance and collection of the tax. Therefore, the introduction of a one-stop-shop mechanism (OSS) is required in the short term[5]. The implementation of the mini one-stop-shop in 2015 is seen by many Member States and businesses as a major milestone that will pave the way for a more general use of this concept[6]. If no such one-stop-shop mechanism were available, the tax authorities would need to exchange huge amounts of information and request additional information from taxable persons, leading to higher administrative burdens and related costs.

One-stop-shop mechanism

91 The supplier would be subject to the compliance obligations (including invoicing) of its Member State of establishment. A single VAT return would be filed in its Member State of establishment, in which it would report its B2B and B2C turnover. The onward B2C supplies subject to VAT in other Member States would be reported in the same VAT return by the supplier and remitted to the Member State of establishment.

92 In the case where VAT is due, the supplier should pay the VAT amount due to the tax authority of the Member State in which it is established. Subsequently, the Member State of establishment would remit the VAT regarding B2C supplies in other Member States to the latter.

93 The one-stop-shop mechanism allows the tax authorities of the Member State of the B2C supplier to verify that all purchased or produced goods supplied are subject to VAT, either in its own Member State or in another Member State, or otherwise have been exported outside the EU. It will be up to the supplier to provide the necessary proof in this respect, including proof of the B2B status of the customer in view of applying the B2B localisation and liability rules and the export exemption.

[5] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT towards a simpler, more robust and efficient VAT system tailored to the single market, COM (2011) 851/3, 5.1.1 The one-stop-shop concept.

[6] Council Regulation amending Implementation Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons.

94 The Member State of establishment consequently would be able to identify risks. If there were any, it should be obliged to audit the supplier and inform the other Member States of the audit, allowing the latter to take assessment measures if necessary.

95 Moreover, from a supplier's perspective, the cost of compliance would reduce as he could file and be audited in its Member State of establishment. As all the compliance obligations of the supplier's Member State of establishment would apply, this would allow greater automation of processes, technology and systems.

Other mitigating measures

96 We recommend other measures to further mitigate risks. They should be applied in a given sequence, as explained. First, any supplies for which the B2C supplier cannot prove that it concerns B2B supplies of goods should be considered to be B2C supplies taking place, in general terms, where the goods are located. Second, the B2C supplier is assumed to be liable to pay VAT due in the Member State of establishment, except if he could prove that VAT of the Member State of consumption has been charged and paid to the relevant tax authorities (via the one-stop-shop mechanism). This ensures that there is EU taxation with respect to the B2C supply of the goods in any case.

97 Should the tax authorities of the Member State where the goods are located levy local VAT, the B2C supplier should be able to obtain a refund of the VAT paid with respect to the supply in its Member State of establishment. This measure is similar to the provision currently applied in the case of intra-Community acquisitions where VAT is due in the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that VAT has been charged on that acquisition in the Member State where the dispatch or transport ended (article 41 of the VAT Directive).

- **Supplies covered by special regimes**

98 We identify the following issues and conclude the following:

  - ***The supply of gas through the natural gas system, supply of electricity and of heat or cooling energy***

99 First, the current provision specifies that, when a trader sells gas, electricity, heat or cooling energy located in the EU to a trader established outside the EU, the place of supply is outside the EU. The supplier should only prove that the trader is indeed established outside the EU. There is no EU taxation. Should the non-EU trader subsequently sell the gas, electricity, heat or cooling energy to another non-EU trader, there will again be no EU taxation. Once an EU trader is involved in the supply chain, EU taxation will again be levied.

100 Under the current place of supply rules for gas, electricity and heat or cooling energy, there is no safety net for the tax authorities when non-EU traders are involved in the trading phase.

101 Second, the current provision also specifies that, that when an EU trader sells gas through a natural gas system not connected to such a system in the EU to another EU trader, the place of supply is outside the EU. Thus, there is no EU taxation for non-EU goods. When a trader sells other gas, electricity and heat or cooling energy located outside the EU to another EU trader, the place of supply is inside the EU. Thus, there is EU taxation on non-EU goods.

102 This VAT treatment allows EU and non-EU traders active on the resale market (from generator to distributor) to trade this kind of goods with a minimum of EU VAT formalities.

103 However, the non-taxation of EU goods and the taxation of non-EU goods are assessed to be key issues in the proper functioning of the B2B localisation principle.

104 With a view to applying the new B2B localisation principle broadly, Member States may decide to also apply the new B2B localisation principles (including any mitigating measures in the case of non-EU traders or non-EU goods) to supplies of gas, electricity, heat and cooling energy, just as for any B2B supply of goods.

105 If we also apply these principles to supplies of gas, electricity and heat or cooling energy, the question is whether taxation is still as simple as at present, as these goods are difficult to track physically. Therefore, given the specifics of the market and to attain an internal market free of barriers linked to the VAT regime, it might be necessary to further scrutinise whether the principles should also be applicable for this kind of supplies in the trading phase or whether there is a need for an exception.

106 In order to avoid double taxation in the case of imports of gas, electricity or heat or cooling energy, the existing exemption upon importation should continue to be applicable and should be extended to all B2B supplies.

- ***The special scheme for small enterprises***

107 The exemption for small enterprises is in principle only applicable in the EU Member State of establishment of the small enterprise. If the place of taxation is shifted from the Member State of the small enterprise to another Member State, the exemption for small enterprises will no longer be applicable. If the place of taxation is shifted to the Member State of the small enterprise, the exemption for small enterprises will become applicable. In both cases, the customer will purchase goods with a higher indirect tax burden, i.e. the small enterprise's non-deductible input VAT relating to these goods will be included in the price charged. This might be distortive and create a barrier to trade in the Single Market as customers are likely to stop purchasing goods from small enterprises due to the higher indirect tax burden.

108 Where the customer is not established in the same Member State as the small enterprise, there will even be an increased risk of double taxation ("tax on tax").

109 Thus, the new B2B localisation and liability principle might lead to distortion of competition and double taxation. These issues are noted where a small enterprise sells goods to B2B customers established in another EU Member State and/or where the goods supplied are located in another EU Member State.

110 In order to make a sound evaluation of introducing the new B2B localisation principle for small enterprises and find a suitable solution to the issues defined above in the short and long term, it needs to be further investigated how far small enterprises are indeed involved in such cross-border supplies.

111 Furthermore, in order to avoid distortion of competition between small enterprises in different Member States, a review of the level of the applied thresholds will be required under the common small enterprise regime under article 294 of the VAT Directive.

112 One option might be to limit the scope of application of the small enterprise regime pursuant to article 294 of the VAT Directive to cases where both the small enterprise and the customer are established in the same EU Member State. In all other cases, the regime would not be applicable and accordingly small enterprises would be granted a right to deduct VAT in order to avoid the risk of double taxation in cross-border relations.

113 However, the risk of distortion of competition is not solved as customers with no or only a limited right to deduct VAT would still prefer to purchase goods from small enterprises established in their Member State (because then the exemption for small enterprises applies). Furthermore, the question is whether this solution still meets the objective of having a simplified VAT regime for small enterprises.

114 More specifically, this solution would mean that the small enterprise for EU goods will have to make a difference between sales to customers established in its Member State of establishment subject to the special regime and sales to customers established abroad subject to the normal VAT regime. Where the small enterprise applies both the normal arrangements for VAT and the special scheme, its accounts must keep track of the transactions falling under each of the arrangements.

115 This option would be a solution to the extent that the small enterprise only supplies goods to customers established in the same Member State.

116 Another option is to provide a specific localisation criterion for supplies by small enterprises and to link the place of supply rule to the small enterprise's Member State of establishment. This requires that the B2B customer established in another Member State should check the status of the supplier in VIES and that the supplier qualifying for the small enterprise regime should inform its customer of its status on the invoice. The VIES database should be adapted in this respect by also providing the information on the VAT status of the supplier.

117 This creates an additional administrative burden for both the supplier and the customer. As already stated before, for consistency purposes, it is also recommendable to maintain a broad application of the new B2B localisation principle.

118 The most radical option is to abolish the special regime for small enterprises based on a combined reading of articles 292 and 402 of the VAT Directive. More specifically, the special regime for small enterprises applies until a date which may not be later than that on which the definitive arrangements enter into force. Of course, this is to the extent that the new B2B place of supply of goods and liability rules are deemed to be the definitive arrangements.

119 In abolishing the special regime for small enterprises, it has to be borne in mind that subjecting small enterprises to the normal VAT regime means probably an additional administrative burden on and higher compliance costs for them. In this respect, the purpose of easing the burden of tax compliance for both administrations and small enterprises is no longer met. Therefore, repealing the regime might not be a solution to be recommended under today's constellation.

- ***The special flat-rate scheme for farmers***

120 The new B2B localisation principle would lead to situations where, in the case of a non-EU customer, a EU flat-rate-scheme farmer would no longer be able to apply the flat-rate compensation or, if the customer were established in another EU Member State than the flat-rate-scheme farmer, the EU Member State of the customer would need to provide compensation for non-recoverable VAT incurred in another EU Member State by the flat-rate-scheme farmer.

121 It needs to be questioned whether the flat-rate scheme for farmers should remain in existence under the new B2B localisation principle. In this respect, it needs to be assessed what the impact would be of maintaining a special scheme for flat-rate farmers and to not subject supplies of agricultural goods to the normal VAT regime (or special regime for small enterprises if maintained and the farmer is qualifying for this scheme).

122 The current flat-rate scheme for farmers is to be regarded as a transitional scheme. Under article 25 (11) of the Sixth VAT Directive, it was stated that the Commission would, before the end of the fifth year following the entry into force of the Directive, present to the Council new proposals concerning the application of VAT to transactions in respect of agricultural products and services. The recast VAT Directive no longer contains any such provision. In this light, it needs to be scrutinised whether there is still a rationale for the flat-rate scheme for farmers in the Single Market.

123 If the scheme remains in existence, it might be opted to limit the scope of application of the flat-rate scheme to cases where both the farmer and the customer are established in the same Member State. In all other cases, the regime would not be applicable and accordingly a right to deduct VAT would be granted to the farmer.

124 However, this solution would not simplify the VAT regime for farmers.

125 More specifically, it would mean that farmers would have to make a difference between sales to customers established in the same Member State subject to the special regime and sales to customers established abroad subject to the normal VAT regime. Where farmers apply both the normal arrangements for VAT and the special scheme, their accounts must keep track of the transactions falling under each of the arrangements. This would make it very complicated for them.

126 Therefore, to avoid such complexity, the current flat-rate scheme could be revisited taking into account the issues outlined when implementing the new B2B application principle. In this respect, the flat-rate compensation should in all cases be linked to the Member State of establishment of the EU flat-rate-scheme farmer, regardless the applicable localisation rule for the supply of the agricultural goods by the farmer. There would no longer be a direct link between the new place of supply of the agricultural goods and the applicable flat-rate compensation.

127 Furthermore, this solution should be combined with a refund mechanism for the flat-rate compensation for customers established abroad. The EU and non-EU taxable customer should be able to obtain a refund of the flat-rate compensation paid. Where the EU taxable customers are no longer able to deduct the flat-rate compensation in their VAT return (but need to request for refund in the Member State of establishment of the farmer), this would of course mean an additional burden. This is equally the case for the tax authorities in the Member State of the farmer.

128 The flat-rate compensation should also be applicable to supplies of agricultural goods to non-taxable legal persons and flat-rate farmers established in other EU Member States. This would simplify the VAT administration for farmers. This solution should also be combined with a refund mechanism of the flat-rate compensation for non-taxable legal persons and flat-rate farmers established in other EU Member States.

129 However, in order to be able to make a sound evaluation on the application of the new B2B localisation principle and to find a right solution to the issues defined above, further research is needed.

- ***Second-hand goods subject to the margin scheme***

130 If the customer becomes liable for payment of the VAT under the new B2B localisation and liability rule (because the taxable dealer and customer are not established in the same EU Member State), an exception would be needed to the new B2B localisation or liability rule in the short term to overcome "resistance" by taxable dealers to disclosing their gross profit margin on transactions and thus their opting to apply the standard VAT scheme instead of the margin scheme.

131 A first solution is that the supplier-taxable dealer is liable for payment of the VAT due over the gross profit margin on the B2B supply under the special scheme in the EU Member State where the customer is established. This means that the supplier has an additional administrative burden in each EU Member State where its B2B customers are established.

132 A second solution is to implement a specific localisation rule, being where the taxable dealer has established its business in the EU.

133 We recommend the first solution combined with the option for taxable dealers to apply the normal VAT arrangements as this allows broad application of the new B2B localisation principle. As this means that the taxable dealer needs to register in the Member States of its B2B customers, a one-stop-shop mechanism is necessary to reduce its compliance costs. With a one-stop-shop mechanism, the margin scheme will still be attractive for the taxable dealer to apply and will be beneficial for the customer as only taxation on the gross margin of the taxable dealer will occur. As already dealt with above, the one-stop-shop mechanism will also allow the Member State of establishment of the taxable dealer to identify risks on the basis of the reconciliation between purchases/costs and sales/turnover.

134 However, in order to be able to make a sound evaluation on the application of the new B2B localisation principle and to find a right solution to the issues defined above, further investigation is necessary.

- ***Supplies by exempt taxable persons and exempt supplies without input VAT deduction***

135 If the EU customer becomes liable for paying VAT under the new B2B localisation and liability rules, the customer will have the burden of proving the "exemption". Although the new B2B localisation and liability principle can be applied, there is an increased risk of undue taxation leading to an additional VAT cost for the customer in the case that this VAT is not fully recoverable, on top of the unrecoverable VAT of the exempt supplier embedded in the sale price of the goods (i.e. tax-on-tax situation).

136 Owing to the new burden of proof, the customer will prefer to buy goods from an exempt taxable person established within the same Member State. This is distortive and contrary to the Single Market.

137 We should also be aware that similar risks already exist under the current provisions with respect to the exempt intra-Community acquisitions of goods.

138 A first possible short term solution not requiring extensive revision of the current exemptions entails the tax authorities of the Member State of the supplier certifying the supplier's VAT exempt status in the case of EU cross-border transactions. This means additional administrative work for the supplier, the customer and the tax authorities.

139 One way to certify or disseminate the VAT exempt status of the supplier could be via the VIES database, which would minimise additional administrative work for the Member States. Plus, the customer could easily verify the VAT exempt status of the supplier on line, irrespective of whether the transaction is EU cross-border or not.

140 It will allow the new B2B localisation principle to work better for supplies by VAT-exempt taxable persons without any exceptions.

141 However, in order to ensure a proper functioning of the new B2B principle, the VIES database would have to be adjusted in this respect for it to be able to provide additional information in order for the B2B customer to check if the supply is exempt or not where he is liable for VAT.

142 From an administrative point of view, whether the VIES database is used or not, there will be additional work for the supplier, the customer and the tax authorities either way. This is especially the case where the supplier applies a partial exemption method where costs are attributed to a VAT exempt sector.

143 Another long term solution is to consider supplies of capital goods used solely for an exempt activity with no right to deduct VAT as regular taxable supplies. The mechanism is similar to the current article 172 of the VAT Directive in the case of the supply of new means of transport by an incidental supplier. This requires an amendment to article 136 of the VAT Directive.

144 This solution has an effect in the case of supplies of capital goods for which the adjustment period has not yet prescribed (article 187 of the VAT Directive). If the capital good is supplied during the adjustment period, it is treated as if it had been applied to an economic activity of the taxable person up until expiry of the adjustment period. The economic activity is presumed to be fully taxed in cases where the supply of the capital goods is taxed (article 188 of the VAT Directive).

145 Where the supply of the capital goods is taxed, there will be a positive one-off revision for the remaining part of the revision period. However, in order to avoid unjustified advantages, the revision amount should not exceed the amount of VAT for which the supplier would be liable if the customer were established in the same Member State and the supply of the capital goods were not exempt.

146 In the case of non-capital goods, the same mechanism can also be applied (article 184 of the VAT Directive). When applying this option, the VAT exempt taxable person must be granted a full or partial right to deduct the "old" input VAT incurred on the purchase of the goods by him and this up to an amount not exceeding the amount of VAT for which the supplier would be liable if the supply of the goods was not exempt but in all cases to the VAT paid on the purchase of the goods. This would work to the extent that the provisions regarding the adjustment of not operated VAT deduction would be defined at an EU level to avoid abuse/distortion of competition.

147 Before looking for a final solution, it is however advisable to review the need and impact of maintaining this exemption regime instead of removing it and providing for the alternative solution suggested avoiding cascading of the tax. Specific attention should be paid to the revision/adjustment rules for capital/non-capital goods.

- ***Supplies by non-taxable legal persons***

148 Where the non-taxable legal person and the customer are not established in the same EU Member State, the customer liable for paying the VAT will have the burden of proving whether the supply is outside the scope of VAT pursuant to article 2(1)(a) of the VAT Directive. Although the new B2B localisation and liability principle can be applied, there is an increased risk of double taxation ("tax on tax").

149 Owing to the new burden of proof on customers, the customer will prefer to buy goods from a non-taxable legal person established within the same EU Member State. This is distortive and contrary to the Single Market.

150 We should also be aware that similar risks already exist under the current provisions as the customer needs to prove that an intra-Community acquisition of the goods is outside scope of VAT in the Member State of arrival.

151 The first possible short term solution, which will not require extensive revision of the current out of scope treatment, should be that the tax authorities of the Member State of the non-taxable legal person certify the supplier's VAT status in the case of transactions with customers established in other Member States. This would be the easiest solution as there would be no need for any change to the VAT treatment of the supplies. Nevertheless, there would be additional administrative work for the supplier, the customer and the tax authorities.

152 The certification could also be done via the VIES database in order to minimise the additional administrative work for the Member State of the supplier. We refer to the solutions defined for supplies by exempt taxable persons where we further elaborated on the use of the VIES database.

153 A long term solution is to consider as (incidental) taxable persons, non-taxable legal persons who, on an occasional basis, supply (capital) goods for consideration for which no right to deduct input VAT was exercised and for which the customer is liable to pay the VAT. In this case, the non-taxable legal person should, like an exempt taxable person, be entitled to have a right to deduct, as outlined above. Before looking for a final solution, it is however advisable to review the impact of the B2B localisation principle and the alternative solution suggested avoiding cascading of the tax.

- ***The special scheme for investment gold***

Investment gold including gold coins

154 Combining the new B2B localisation principle with the specific exemption for investment gold is possible.

155 As a prerequisite for proper application of the special scheme for investment gold under the new B2B localisation principle, a uniform definition of the goods falling within the scope of the special scheme should be introduced in all Member States, resulting in repeal of the option for Member States to exclude from the special scheme small bars or wafers having a weight of 1 g or less and in fully harmonised comprehensive list of gold coins applicable in all Member States.

156 More problems will appear with respect to the taxation option for investment gold in articles 348 and 349 of the VAT Directive. More specifically, where the supplier and the customer are not established in the same Member State and the customer is liable for the payment of VAT, it should be clear for the customer that taxable supplies of investment gold have been made. The customer should be aware that VAT is due on the supply of investment gold via the reverse charge mechanism.

157 The taxation option should be repealed. The potential restricted input VAT (if any) for supplies of investment gold by taxable persons who produce investment gold or transform any gold into investment gold and industrial gold traders should be resolved by amending articles 354 and 355 (the latter in combination with article 173 (2) (a) and (b)) of the VAT Directive).

Transactions on a regulated gold bullion market

158 As the scope of application of the current option to tax will become limited to supplies of gold bullions where the supplier and customer are established in the same Member State and where both of them are a member of the regulated market in that Member State, we consequently suggest repealing this option to tax. If the option to tax were repealed, the special scheme for investment gold would always be applicable.

159 However, it needs to be further analysed whether this approach would result in a better taxation mechanism for dealing with transactions on “local” regulated gold bullion markets in the EU compared with the current schemes in the various Member States, also depending on the importance and economic impact of these markets.

Issues to be solved and proposed solutions

160 Resulting from our qualitative impact assessment of the general scenarios and the scenarios covered by the special VAT regimes, we have identified a number of issues. These issues need to be solved in order for the new B2B localisation rule to function properly.

- **The first issue concerns the legal structure of the customer and the contractual arrangements**

161 First, the supplier and its customer should be able to determine the VAT treatment of the supply of the goods without requiring any data regarding the physical flow of the goods or use of the goods.

162 This should be the case in all circumstances, even when the bill-to party, i.e. the contractual party, differs from the ship-to party.

163 The B2B localisation principle should be easy to handle in the supplier's day-to-day business and be administered practically. The VAT treatment should depend neither on who the goods will be shipped to or who will ultimately "use" the goods or on the legal structure of the customer.

164 It should not make any difference to a supplier whether he supplies goods to a business group with several subsidiaries/legal entities or to a head office with several branches or to a branch or legal entity acting as the central purchaser for the group.

165 The customer should also be certain about the place of supply and who is liable for payment of the VAT without any risk of dispute with the tax authorities or the supplier.

166 It will be equally important for tax authorities to have a principle that allows easy, cost-efficient audits and avoids disputes between tax authorities and taxable persons.

167 Second, it needs to be reviewed how far the new principle will give a B2B customer with a head office/branch structure room for VAT cash flow planning.

168 Depending on their VAT position (payable or refundable), taxable persons can prefer to purchase their goods with VAT (being charged) on the invoice or without VAT and accounting themselves for the VAT due in their VAT return (via the reverse-charge mechanism). The head office might for instance purchase goods that will be used by its branch or the other way round to obtain a VAT cash flow advantage.

169 Third, the new principle combined with a customer's head office/branch structure could lead to a loss of revenue resulting from VAT-rate and VAT-deduction planning. However, it seems that applying the new principle should not entail a loss of revenue for Member States if appropriate measures are put in place.

The proposed short term measures that are necessary and require extensive revision of the current system are:

- **Definition of the place of supply based on the contractual arrangements**

170 The supplier would determine the place of the supply of the goods according to the contractual arrangements between the parties. The place of supply would be the place where the contracting party defined as the "customer" in the agreement is established or has a fixed establishment. The place of supply would not be defined according to where the goods would be shipped to or by the entity/subsidiary/branch that would actually use the goods.

171 The fact that (part of) the goods are on-charged by the customer to another group entity or allocated to a branch or another place of business would be of no relevance in the supplier-customer relationship.

172 The person liable for payment of the VAT would also be defined by the contractual arrangements, as being the "supplier" or "customer" party to the agreement. The supplier and customer should identify the person liable on the basis of the contractual arrangements without reviewing data regarding the physical location of the goods and their respective operations and structures.

173 This means that, if, in the Member State of taxation, the supplier has a fixed establishment that intervenes in the supply of the goods, this fixed establishment should not be liable for payment of the VAT.

174 The intervention criterion means that not only the supplier but also the customer should review data regarding the physical location, handling of the goods and the operations and structure of the customer and supplier before they can identify who is liable for the VAT. The tax authorities will also need to spend time and efforts to audit the fact pattern and there is an increased risk of litigation on the matter.

175 As the intervention principle also requires data on the physical flow of the goods, we recommend that article 192a of the VAT Directive should be repealed for B2B supplies of goods.

176 Furthermore, the supplier should be able to verify the status of its customer via the VIES database. Therefore, the information needed to check the validity of the associated name and address should be made available in all Member States, which is not currently the case. If the customer is a non-EU customer with a "VAT presence" in the EU via a VAT representative, the supplier should also be able to verify that data on the VIES database. It will be of the utmost importance for the VIES database to be modified to provide such confirmation.

- **Supply of the goods against a charge to another group entity**

177 If the customer orders goods under a global agreement and requests to deliver the goods directly to another legal entity of the same group, it is assumed that the customer will enter into another agreement with and (re)invoice the goods to the group entity. At that time, the place of supply of the goods will, in principle, be where the group entity "buying" the goods is established.

178 In the case of a cross-border recharge, a group entity established within the EU will be liable to pay the local VAT due (+). Whether the EU group entity can deduct the local VAT due on the purchase of the goods (–) will depend on its VAT status.

179 If the customer has a limited right to deduct VAT, charging the goods on to another group entity should allow it to deduct input VAT on the purchase of the goods.

180 No additional measures are needed to deal with those onward supplies of goods to other group entities compared to independent third-party transactions.

- **Allocation of the cost of the goods to a branch or other place of business - deemed supply**

181 If the customer orders goods and requests delivery of those goods directly to its branch or other place of business that also bears the costs, it will allocate the cost of the goods to its branch or other place of business (such as a representative office). These are goods that are actually used by a branch or other place of business but that were purchased or even manufactured by the head office. The same is true whenever a branch orders or produces goods but the goods are delivered to its head office.

182 We recommend not treating these transactions as transfers of own goods as the current "transfer of goods" concept does not correspond to the new principle of no longer tracking physical flows of goods within the EU. We therefore suggest introducing the concept of a "deemed supply" between a head office and a fixed establishment although applying this concept will require flanking measures as set out below to ascertain the correct manner of taxation for the Member States.

183 The new concept should allow the supplier to only follow the contractual arrangements between the parties regardless of the legal structure of its customer and the physical flows of the goods. The VAT treatment of supplies of goods to legal entities and head offices with fixed establishments should be the same. Furthermore, there will no longer in principle be any room for VAT-rate and deduction shopping, which will safeguard the revenues of Member States.

184 The deemed supply should be based on allocation of the cost of the goods from a head office to its fixed establishment or the other way around or between fixed establishments. The concept of deemed supply entails Member States treating such allocations as a supply of goods for consideration (similar to article 16 of the VAT Directive). The new B2B localisation and liability rules and the existing VAT definitions of fixed establishment and place of business can be used in this respect.

185 The deemed supply would occur in all cases of cost allocations, whether cross-border or otherwise. The same result would be achieved if the supplier invoiced the goods to a legal entity that, in turn, charged the goods on to another legal entity in the group, regardless of whether it was established in a different Member State.

186 In practice, it might prove difficult to determine the exact time that VAT actually becomes due on the deemed supply as it might not always be clear when the goods are indeed allocated to the branch or other place of business. In principle, businesses will do provisional cost allocations on a monthly basis and a final cost allocation on a yearly basis at least.

187 Therefore, it needs to be provided that the deemed supply is carried out at the latest at the end of each calendar or accounting year, if different (similar to article 64 of the VAT Directive for continuous supplies of services). At least once a year, final accounting entries need to be made to comply with other regulatory requirements (accounting law, income tax law, stock exchange reporting, ...).

188 The taxable amount should be the purchase price of the goods or, in the absence of a purchase price, the cost price, determined at the time when cost of the goods is allocated. To prevent tax evasion or avoidance, there should be a provision that the taxable amount may not be lower than the open market value in cases where the head office or fixed establishment to which the cost of the goods is allocated does not have a full right to deduct VAT.

189 The head office will be able to exercise its right to deduct VAT with respect to the goods "supplied" to its EU branch or other place of business (following direct attribution). To the extent that the head office does not carry out a deemed supply to its EU branch or other place of business and the goods are not used for the specific economic activity of the head office, it will have no right to deduct VAT with respect to the goods purchased. Should the head office be a mixed taxable person with a limited right to deduct VAT, the value of the deemed supplies should be excluded from the calculation of the general/special pro rata. This is necessary to avoid overestimation of the value of the deemed supply to obtain a higher right to deduct VAT.

190 If the goods supplied to the branch are capital goods for which no full VAT deduction has arisen in the past, the normal rules with respect to the adjustment period and the actual adjustments are applicable.

191 Whether the EU branch or other place of business will be able to deduct the local VAT due on the deemed supply will depend on its VAT status in the Member State of establishment.

192 If an EU head office allocates the cost of goods to a non-EU branch or other place of business, a distinction should be made between goods allocated and dispatched or transported outside the EU and those remaining in the EU.

193 If the goods remain in the EU, the EU head office should charge VAT of its Member State of establishment on the deemed supply of the goods to the non-EU branch or other place of business. More specifically, the EU head office would qualify as the VAT representative of the non-EU branch or other place of business within the EU. For the purposes of applying the new B2B localisation principle, the non-EU branch or other place of business is deemed to be established in the EU via the EU head office.

194 The non-EU branch is allowed to fully or partially recover the VAT due depending on the activities of the non-EU branch. This right will be exercised by the head office, as the VAT representative of the non-EU branch.

195 If the goods are dispatched or transported outside the EU, the EU head office is again qualified as the EU representative of the non-EU branch. However, the deemed supply will be exempt due to exportation of the goods outside the EU. In this respect, proof needs to be provided that the goods actually left the EU.

196 In both cases, the EU head office has a full right to deduct VAT with respect to the purchase of the goods.

Reporting

197 Ideally the reporting should provide an overall view of the transactions of the head office and branches in the EU. In the case of head offices and branches with several EU VAT returns, there is only a fragmentary reporting meaning need for exchange between tax authorities with respect to the application of the deemed supply.

198 Therefore, from a reporting perspective, we suggest that, for the long term, a single EU VAT return on a legal entity level (head offices/branches) would be filed. In the case of a single VAT return, the EU head office or if not available the main EU branch should be identified as the representative towards the EU VAT authorities[7].

199 The representative is by default responsible for filing (electronically) a "single VAT return" and any other VAT related listings. The periodical single VAT return should be filed in the Member State where this representative is established.

200 In this single VAT return the representative should report all transactions, i.e. sales and purchases with third parties but also the deemed supplies of goods within the same legal entity (from head office to fixed establishment or the other way around). In particular, the single VAT return should show for each Member State in which VAT is due or refundable, the total value exclusive of VAT on taxable transactions carried out during the tax period (including the deemed supplies). In principle, this single VAT return should be filed in the Member State of establishment of the representative using the one-stop-shop mechanism.

201 This way of working will allow the Member State of establishment to identify whether the allocation of the goods by the head office or fixed establishment and the use of the goods by respectively the fixed establishment or head office is indeed correctly reported in the VAT return. It will be up to the representative to provide any proof in this respect. In the case deemed supplies are not or incorrectly reported, the Member State of the representative should inform the Member States concerned, allowing the latter to take measures for assessment.

202 In order to have equal treatment between head office/branches and subsidiaries, it might be opted to also foresee such a single VAT return for groups having multiple subsidiaries.

Audit/control measures

203 From an audit/control perspective, we suggest the following approach on a short term basis, which ensures correct application of the deemed supply principle. This approach should be followed even if there is no single EU VAT return. This VAT audit approach should be based on the following factors:

- obligation to issue a VAT only invoice for the deemed supplies, including where head office and fixed establishment are in the same Member State;

[7] In this respect we also refer to the PwC Expert Study on VAT and Pan-European businesses – Specific Contract No. 4, TAXUD/2011/DE/307.

- reporting of intra-EU transactions, as set out above, in a recapitulative statement, informing the appropriate tax authorities in the Member States concerned;
- obligation to retain and archive underlying documentation used for preparing the VAT only invoice for the deemed supply (e.g. accounting entry, cost centre for valuing goods produced, reference to the purchase invoices for trading goods);
- the application of SAF-T (i.e. data file of relevant tax data in structured format) should be obligatory. If one structured format existed, a data-warehouse model could be applied enabling businesses and tax authorities to compare and exchange data;[8]
- the tax authorities should be allowed to perform mutual cross-border audits (e.g. joint audits on head office and fixed establishment levels).[9]

204 The VAT audit approach could include in its methodology the comparison of the findings from a VAT point of view with the accounting rules, transfer pricing principles and methodologies applied by countries under OECD guidelines.[10] In this respect, we refer to the report of the OECD regarding the attribution of profits to permanent establishments where a fixed establishment is regarded as a distinct and separate enterprise with respect to the attribution of profits.

205 The treatment from a transfer pricing (direct tax) perspective and in the accounts should not be decisive, as the application of the VAT Directive should be done by respecting the nature of the tax and in a harmonised way at an EU level.[11] They may provide an indication for the tax authorities that a cost or income is actually borne or attributed by a head office or fixed establishment to establish the occurrence of a deemed supply for VAT purposes.

206 However, further research is needed to develop the (joint) audit methodology.

[8] The OECD's Guidance Note: Guidance for the Standard Audit File – Tax Version 2.0 April 2010, http://www.oecd.org/dataoecd/42/35/45045602.pdf and PwC Study on the feasibility of alternative methods for improving and simplifying the collection of VAT through the means of modern technologies and/or financial intermediaries – Specific Contract No. TAXUD/2009/AO-05, ec.europa.eu/taxation_customs/resources/...vat/vat-study_en.pdf; Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT towards a simpler, more robust and efficient VAT system tailored to the single market, COM (2011) 851/3, 5.3 Towards a more robust and fraud-proof VAT system and 5.3.3 Reviewing the way VAT is collected and monitored.

[9] Proposal for a regulation of the European Parliament and of the Council establishing an action programme for customs and taxation in the European Union for the period 2014-2020 (FISCUS) and repealing decisions N°1482/2007/EC and N°624/2007/EC, COM(2011) Final, 9 November 2011.

[10] The OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 2010 Report on the attribution of profits to permanent establishments 22 July 2010, http://www.oecd.org/document/32/0,3746,en_2649_37989746_45689952_1_1_1_1,00.html

[11] EUCJ, 23 March 2006, C-210/04, FCE Bank plc.

207 Furthermore, in order to ensure that the head office (branch or other place of business) does not circumvent the deemed supply by merely allowing the fixed establishment to make use of the goods, the mere use of the goods should also be deemed to be a supply (supply of services for consideration similar to article 26 of the VAT Directive). This also fits in with the suggestion of aligning the B2B supply rules for goods with the B2B supply rules for services (see below).

- **The second issue concerns the alignment of B2B supply rules for goods with B2B supply rules for services**

208 First, there is an interaction with the place of supply rule for services pursuant to article 44 of the VAT Directive with respect to the definition of taxable persons. More specifically, the B2B supply rule in article 44 of the VAT Directive is applicable to non-taxable legal persons who are identified for VAT purposes whereas the new B2B localisation rule for goods is applicable to all non-taxable legal persons.

209 Second, to avoid keeping track of the physical flow of the goods, following the contractual arrangements between the parties combined with the deemed supply of goods rule would be different from the current localisation rule for services. The current rules are not only based on the contractual arrangements but also on the entity that actually "uses and enjoys" the services.

210 If the B2B supply rules for goods are not aligned with the B2B supply rules for services a supplier supplying both goods and services would have to follow different place of supply rules in the case of a customer operating through a head office with multiple branches, depending on whether the supply concerned goods or services. This might be especially cumbersome in cases where it is not clear cut whether goods or services are being supplied or in the case of bundled/composite supplies, and in the cases where under the same contract between the same parties goods and services are to be supplied.

211 Moreover, the liability rule due to the intervention principle in article 192a of the VAT Directive would also differ as we recommend from the outset repealing this for B2B supplies of goods, given that the physical flow of goods would no longer be followed under the new concept and the contractual arrangements would prevail.

212 Furthermore, current practices in the Member States shows that the delineation and application of the intervention principle is hard to define for both tax authorities and businesses leading to double or non-taxation[12].

[12] Value Added Tax Committee Article 398 of Directive 1006/112/EU, Guidance, Working Paper No 614 rev 1, 86th meeting of the VAT Committee, 18 June 2009.

213 Uniformity of the localisation and liability rules for goods and services will enhance legal certainty and simplicity for taxable persons and tax authorities[13]. This may well reduce conflicts among businesses, among tax authorities and between the two groups with respect to the applicable rules, focusing on the correct taxation of the underlying transactions. For the tax authorities, this will also lead to a uniform control and audit methodology in respect of taxing supplies of goods and services.

214 Therefore, we recommend the following measures to align supplies of both goods and services fully. These measures require extensive revision of the current concepts.

215 First of all, the definition of business customer needs to be aligned for supplies of both goods and services. More specifically, the single definition of business customer for the localisation rules for supplies of goods and services will need to include non-taxable legal persons. This probably means that the compliance burden for non-taxable legal persons purchasing goods and services for which they are liable for VAT will increase.

216 Second, as we recommend a single definition for business customer for supplies of both goods and services, the liability rules for supplies of goods and services should be aligned. Further, similar to supplies of goods, we suggest repealing the intervention principle in article 192a of the VAT Directive.

217 Third, the concept of "deemed supply" in the case of an allocation of costs from a head office to a fixed establishment or the other way around or between fixed establishments should also be introduced for services. In order to avoid abuse, it will be necessary to introduce a similar concept of deemed supply where a head office merely allows its fixed establishment to make use of the services.

- **The third issue concerns the optional use of exemptions of articles 146, 148, 156 and 157 of the VAT Directive**

218 It concerns the exemptions related to export, to international transport and to transactions relating to international trade.

219 Following the new B2B localisation and liability principle, it will be the supplier or the customer that will be liable for payment of VAT in its Member State of establishment. This means that it will be the suppliers' or customers' responsibility to interpret whether VAT is due on the transactions or whether an exemption applies. Should the supplier charge VAT or the customer pay VAT on the transactions via a reverse charge, the customer would not currently have a right to deduct VAT because the exemption applies.

[13] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT towards a simpler, more robust and efficient VAT system tailored to the single market, COM (2011) 851/3, 4.2, A simpler, more efficient and robust VAT system.

220 As EU taxation should occur with respect to goods located in the EU, it is advisable to leave it up to the supplier or customer to decide whether or not they use the exemption. If the supplier or customer does not make use of the exemption for goods located in the EU, the customer should have a right to deduct the VAT paid on the transaction as taxation prevails over the exemption. The customer may, however, prefer to apply the exemption in order not to incur non-deductible input VAT. The same goes for the supplier intending to avoid pre-financing of VAT.

221 Even if the supplier or customer does not make use of the exemption, he should still, for control purposes, hold the necessary proof with respect to the whereabouts and use of its goods. For instance, in the case of exportation of the goods, the customer should be able to prove that the subsequent sale of the goods takes place outside the EU.

222 This principle should not apply for goods located outside the EU as those should not be subject to EU VAT and are outside scope of VAT. In the case of taxation, the customer should not be entitled to deduct EU VAT.

223 The supply of goods having "special customs/VAT status" in the Member State where they are located should also be exempt in the Member State where the customer is established, even if that Member State has not adopted the relevant exemption. In that case, certification of the status of the goods is required and should be provided to the customer.

224 Furthermore, we believe that the exemptions in articles 156 and 157 of the VAT Directive should in any case be open to EU traders and non-EU traders trading goods within the EU. This is necessary to provide sufficient simplification measures when goods are traded within the EU. Therefore, as the exemptions of articles 156 and 157 of the VAT Directive are optional for Member States, we suggest changing them from optional to obligatory in the long term (i.e. from "may" to "shall").

225 It is however advisable to gain more insight in this respect and to know the exact impact for Member States when implementing or changing the application of the exemptions of articles 156 and 157 of the VAT Directive. Whilst reviewing the impact we would also suggest reviewing the alignment with the Modernised Customs Code to assess the impacts from a collection and control perspective for governments and a compliance cost perspective for traders[14].

Review of the legislative impact

226 Of the 414 provisions of the VAT Directive, 192 are impacted, which is almost half of the provisions. 58 provisions, which is 14% of all provisions, should be repealed. 78 provisions, which is 19%, should be amended. 10 new articles should be introduced.

227 For 46 provisions, one or more policy options are put forward for consideration.

228 The changes identified and the policy options for consideration can be grouped into 4 categories:

[14] Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code.

- **changes required in order to no longer follow the physical flow for B2B supplies of goods circulating in the EU**

  In order to introduce the new B2B localisation principle, the following changes are required:

  - repeal of the exemption for supplies of goods that are transported from one Member State to another member State;
  - repeal of the concept of deemed intra-Community supplies of goods (so-called transfers);
  - repeal of all the rules with respect to intra-Community acquisitions of goods;
  - introduction of the new place of supply and liability rule for B2B supplies of goods, including amending the provisions for supplies of gas through a natural gas system, of electricity and of heat or cooling energy through heating and cooling networks;
  - amendments of the obligations;
  - restriction of the scope of application of certain provisions for B2C supplies of goods;
  - amendment of the exemption on exportation (article 146 of the VAT Directive);
  - amendment of the exemption related to international transport and for transactions relating to international trade (articles 148, 156 and 157 of the VAT Directive);
  - amendments to the special regimes.

- **changes required to harmonise the B2B place of supply rules for goods and services**
  - the definition of business customer for supplies of goods and services;
  - the introduction of the new concept of self-supply in the case of allocation of cost of services from a head office to a fixed establishment or the other way round or between fixed establishments in cross-border situations;
  - the deletion of article 192a of the VAT Directive;
  - the liability.

- **changes required to avoid non-collection of EU VAT due**
  - supplies of non-EU goods to EU customers.

- **changes required to avoid double taxation.**
  - supplies of goods located outside the EU to EU established customers;
  - special import exemption;
  - supplies by exempt taxable persons and exempt supplies without input VAT deduction.

Conclusions

229 We believe that, from a general perspective, the new localisation and liability rule for the B2B supplies of goods will function in such a way that it leads to a Single Market with fewer fiscal barriers than the current transitional arrangements, which lead to taxation in the Member State of final consumption.

230 Those transitional arrangements that 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, will disappear.

231 This Study demonstrates that the new B2B localisation and liability rule for B2B supplies of goods can lead to simplification of the VAT legislation and a more efficient VAT regime. More simplicity and legal certainty for suppliers and customers will reduce costs of compliance. For tax authorities, costs of collection could potentially decrease and ease of administration could improve.

232 However, in order for the new B2B localisation principle to function properly, (mitigating) measures will need to be taken and additional research done for the domains set out below.

- **(Mitigating) measures in order for the new B2B localisation principle to function properly**

233 We stress that the mitigating measures should be thoroughly assessed in advance of their implementation to guarantee an optimal result in the future functioning of the new B2B localisation principle for all stakeholders impacted.

  - **Exportation of goods to destinations outside the EU**

234 No taxation should occur where goods supplied are not "consumed" in the EU. In order to achieve this, the exemption for exports has been introduced in the VAT Directive.

235 Where the customer is established in the Member State where the goods are located at the time dispatch or transport begins to a destination outside the EU and the customer is responsible for the transport, the exemption upon exportation is not applicable.

236 However, under the new B2B localisation principle, neither the localisation of the goods (ship from), nor the physical flow of goods (ship to) should define the place of taxation. Nevertheless the export exemption should continue to apply.

237 Therefore, in the short term, we recommend amending the export exemption regardless of who dispatches or transports the goods as long as the goods leave the EU. This will not require extensive revision of the current export exemption.

238 Where the supplier and customer are not established in the same Member State, the customer is in principle liable for VAT in the "to be" situation, unless he proves that the exemption upon exportation applies.

239 The customer should be able to prove that the goods were transported outside the EU based on the subsequent use or supply of the goods outside the EU.

240 If the customer does not have the necessary documentation to prove the export exemption at the time the VAT becomes due and he is liable for it and accounts for it or the supplier is liable to pay VAT and charges VAT to the customer unduly, it will be better for the proper functioning of the new B2B localisation and liability principle that the customer, at least in the long term, should have a right to deduct the VAT and is not penalised.

- **B2B supply of goods located in the EU to a customer not established in the EU**

241 Under the new B2B localisation principle for supplies of goods, the supply of all goods, even those located in the EU, will be where the customer is established. Where the B2B customer is established outside the EU, the place of supply of the goods will be outside the EU.

242 The new B2B localisation rule leads to non-taxation of supplies of EU goods to non-EU customers, which is assessed to be a key issue. This becomes even more manifest in the case of chain supplies of EU goods between several non-EU customers and non-EU suppliers.

243 Therefore, it will be necessary to take the following extensive measures from the outset:

- Localisation of the supply where the non-EU customer has a VAT presence in the EU;
- Specific localisation of the supply where the non-EU customer has no VAT presence in the EU, i.e. where the EU supplier is established or where the non-EU supplier has an EU VAT presence;
- Specific localisation of the supply where the non-EU customer has no VAT presence in the EU, i.e. where the goods are located at the time of supply, combined with jointly and severally liability for persons who have physical control or access to the goods such as the transporter, warehouse keeper, previous supplier or subsequent customer.

- **Importation of goods**

244 If the importation of goods is taxed in the EU, applying the new B2B localisation principle will lead to double taxation within the EU whenever the customer is established in the EU and acts as the importer of record.

245 In order to solve this issue, it will be necessary to exempt the importation of goods from the outset.

246 However, further research is needed with respect to the impact of the proposed VAT exemption, the control methodology and also the link with the central customs clearance as defined in article 106 of the Modernised Customs Code. Specific guidelines will also be necessary for declarants (importers/customs agents) with respect to applying the proposed VAT exemption.

- **B2B supply of goods located outside the EU to a customer established in the EU**

247 The new B2B localisation rule leads to taxation of supplies of non-EU goods to EU customers, which is assessed to be a key issue. To the extent that the goods are also taxed in the non-EU country where they are located, there may even be double taxation.

248 As no EU VAT should be due, the EU supplier or customer will have to evidence the whereabouts of the goods. In practice, we do not expect any problems as most traders have warehouse management systems tracking the location of goods. For traders of gas, electricity, heat or cooling energy, further investigation is needed as these goods are difficult to track physically.

- **Onward B2C supplies: B2B supply of goods and onward B2B supply of goods located in the same Member State**

249 Although the place of supply is in the same Member State, there is a reconciliation and control issue due to the difference in the concepts of B2B and B2C supplies of goods. As the physical flow is no longer followed for the B2B supply, the Member State concerned might not know that the goods are within its territory. Therefore, a one-stop-shop mechanism is a necessary mitigating measure needed as from the outset.

- **Onward B2C supplies: B2B supply of goods and onward B2B supply of goods not located in the same Member State**

250 The B2B purchase of goods and the subsequent B2C supply of the goods may no longer be located in the same Member State from a VAT point of view. The new B2B localisation principle is not aligned with the B2C localisation principle.

251 This means that tax authorities will need exchange of information to achieve their control objectives and be assured that VAT is levied in the Member State of final consumption.

252 However, this undermines the general idea of introducing a simplified VAT system for tax authorities and businesses.

253 It goes without saying that another mechanism is required to ensure that the simplification aimed at by the new B2B localisation principle is not lost, also in relation to B2C supplies.

254 Therefore, the introduction of a one-stop-shop mechanism (OSS) is required in the short term[15]. The implementation of the mini one-stop-shop in 2015 is seen by many Member States and businesses as a major milestone that will pave the way for a more general use of this concept[16]. If no such one-stop-shop mechanism were available, the tax authorities would need to exchange huge amounts of information and request additional information from taxable persons, leading to higher administrative burdens and related costs.

255 Other mitigating measures are recommended. Any supplies for which the B2C supplier cannot prove that it concerns B2B supplies of goods should be considered to be B2C supplies taking place where the goods are located. The B2C supplier is also assumed to be liable to pay VAT due in the Member State of establishment, except if he can prove that VAT of the Member State of consumption has been charged and paid to the relevant tax authorities. Should the tax authorities of the Member State where the goods are located levy local VAT, the B2C supplier should be able to obtain a refund of the VAT paid with respect to the supply in its Member State of establishment.

- **Second-hand goods subject to the margin scheme**

256 The new B2B localisation and liability principle will not work with respect to the margin scheme for second-hand goods where the supply of the goods is subject to the margin scheme for second-hand goods and the customer becomes liable to pay VAT on the margin.

257 If the customer becomes liable for payment of the VAT under the new B2B localisation and liability rules (because the taxable dealer and customer are not established in the same Member State), an exception is needed to the new B2B localisation or liability principle as taxable dealers will resist disclosing their gross profit margin under the margin scheme.

258 We believe that it is advisable to combine a derogation from the liability rule with the option for taxable dealers to apply the normal VAT arrangements with a view to broad application of the new B2B localisation principle. As this means that the taxable dealer needs to register in the Member States of its B2B customers, a (mini) one-stop-shop mechanism is recommendable to reduce his compliance costs.

[15] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT towards a simpler, more robust and efficient VAT system tailored to the single market, COM (2011) 851/3, 5.1.1 The one-stop-shop concept.

[16] Council Regulation amending Implementation Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons.

- **Supplies by exempt taxable persons and exempt supplies without input VAT deduction**

259 Where the exempt taxable person and the customer are not established in the same EU Member State, it will be the customer liable for paying VAT who will have the burden of proof with respect to the exemption applied. In this respect, there is an increased risk of undue taxation leading to an additional VAT cost for the customer in the case that this VAT is not fully recoverable, on top of the unrecoverable VAT of the exempt supplier embedded in the sale price of the goods (i.e. tax-on-tax situation).

260 The easiest (short term) solution, although it causes additional administrative burden for the supplier and the tax authorities, is for the Member State of the supplier to certify his VAT-exempt status, which shall not require extensive revision of the current exemptions. In this respect, an on-line check via the VIES database might be an option. A long term solution, which nonetheless requires more detailed research, is to consider this kind of supply of (capital) goods as a regular taxable supply. Special attention should be paid to the revision/adjustment rules for capital/non-capital goods.

- **Supplies by non-taxable legal persons**

261 Where the non-taxable legal person and the customer are not established in the same EU Member State, it will be the customer liable for paying VAT who will have the burden of proving the supply is outside the scope of VAT. In this respect, there is an increased risk of double taxation.

262 The easiest (short term) solution, although it causes additional administrative burden for the supplier and the tax authorities, is for the Member State of the supplier to certify the supplier's status as a non-taxable legal person which shall not require extensive revision of the current out of scope treatment. Also in this case an on-line check via the VIES database might be an option. A long term solution, which nonetheless requires more detailed research, is to consider non-taxable legal persons occasionally supplying goods as taxable persons entitled to a right to deduct VAT with respect to those supplies.

- **The special scheme for investment gold**

263 It is possible to combine the new B2B localisation principle with the specific exemption for investment gold.

264 However, as a prerequisite for properly applying the special scheme for investment gold under the new B2B localisation principle, a uniform definition of the goods falling within the scope of the special scheme should be introduced in all Member States.

265 More problems will appear with respect to the taxation option for investment gold. More specifically, where the supplier and the customer are not established in the same Member State and the customer is liable for paying the VAT, it should be clear for the customer that taxable supplies of investment gold have been made.

266 The option to tax for supplies of investment gold by taxable persons who produce investment gold or transform gold into investment gold and for traders in investment gold should therefore be repealed. Where the customer becomes liable for the VAT, its supplier should inform him of the option to tax so that he is able to comply. This is not workable for traders and Member States.

267 The same goes for the taxation option for certain transactions on the regulated bullion market.

- **Legal structure of the customer and contractual arrangements: deemed supply**

268 As the physical flow of the goods would no longer be followed for goods remaining or circulating within the EU, the supplier should be able determine the place of supply on the basis of contractual arrangements (especially for entities with multiple fixed establishments or other places of business).

269 However, in order to ensure that VAT accrues to the Member State where the goods are actually used and to avoid VAT cash flow, VAT-rate and VAT-deduction planning, we recommend introducing the concept of "deemed supply". Theoretically, this concept seems to be the right answer but, in practice, there are a number of issues that need to be gone into, such as the valuation and timing of the supply, the use of goods without actual allocation of the costs, and reporting/audit/control measures.

- **Information in the VIES system**

270 The supplier should be able to verify the status of its customer via the VIES database. However, the information needed to check the validity of the associated name and address is not available in all Member States at the moment. Furthermore, the VIES database should also provide information in the case of a non-EU customer with a VAT presence in the EU or regarding the VAT status of the supplier where the customer is liable for payment of VAT (such for farmers/VAT-exempt taxable persons/non-taxable legal persons).

271 In order to ensure proper functioning of the new B2B principle, it is important for the VIES database to be adapted in this respect.

- **Alignment of B2B supply rules for goods with B2B supply rules for services**

272 Uniformity of the localisation and liability rules for goods and services will enhance legal certainty for taxable persons and tax authorities. This will reduce conflicts among businesses, among tax authorities and between the two groups with respect to the applicable rules focusing on the correct taxation of the underlying transactions.

273 For the tax authorities, this will also lead to a uniform control and audit methodology in respect of taxation of supplies of goods and services. This will require from the outset extensive revision of the current concepts.

274 The need for alignment comes from the interaction between the new B2B localisation principle and the current rules for B2B supplies of services and the complications for suppliers supplying both goods and services to one B2B customer (composite/bundled supplies). To align the B2B localisation and liability rules for goods and services, the definition of business customer for supplies of goods and services should become the same.

275 Furthermore, if the place of a supply of goods is determined on the basis of the contractual arrangements between the parties combined with the concept of a deemed supply, this should also become the case for the supply of services.

- **Use of the exemptions of article 146, 148, 156 and 157 in the VAT Directive**

276 The supply of goods having "special customs/VAT status" in the Member State where they are located should be exempt in the Member State where the customer is established, even if that Member State has not adopted the relevant exemption. In that case, certification of the status of the goods is required and should be provided to the customer.

277 Furthermore, we believe that the exemptions in articles 156 and 157 of the VAT Directive should in any case be open to EU traders and non-EU traders trading goods within the EU. This is necessary to provide sufficient simplification measures when goods are traded within the EU. Therefore, as the exemptions of articles 156 and 157 of the VAT Directive are optional for Member States, we suggest changing them from optional to obligatory in the long term (i.e. from "may" to "shall").

278 It is however advisable to gain more insight in this respect and to know the exact impact for Member States when implementing or changing the application of the exemptions of articles 156 and 157 of the VAT Directive. Whilst reviewing the impact we would also suggest to review the alignment with the Modernised Customs Code to assess the impacts from a collection and control perspective for governments and a compliance cost perspective for traders.

- **Specific research**

279 Furthermore, it became apparent that specific research will be needed in the following domains:

- **Impact on purchases by farmers, taxable persons who only carry out supplies of goods and services on which the VAT is not deductible and non-taxable legal persons**

280 Under the new B2B localisation rule, farmers, taxable persons that only carry out supplies of goods and services on which the VAT is not deductible and non-taxable legal persons qualify as B2B customers. To the extent that they were not already required to account for VAT on their intra-Community acquisitions of goods, they will have an additional administrative burden and increased compliance costs in situations in which they become liable for paying VAT.

281 Although we assume that the vast majority of these customers are already VAT registered for their intra-Community acquisitions of goods, it should be further investigated whether there would be a fundamental impact resulting from the new principle.

- **Supply of gas, electricity and heat or cooling energy**

282 The same problems and possible solutions arise for supplies of these particular goods as for other goods when the new B2B localisation principle is implemented.

283 However, as the rationale of the current localisation rules for supplies of gas, electricity, heat or cooling energy is to achieve simple taxation, especially in the trading phase, further investigation might be needed with respect to the recommended solutions. Nevertheless, for consistency purposes, it would be advisable to also apply the new B2B localisation principle and the defined solutions to the supply of gas, electricity, heat or cooling energy.

- **Special scheme for small enterprises**

284 The new B2B localisation principle leads to double taxation and distortion of competition as the customer might stop purchasing goods from small enterprises due to a higher indirect tax burden.

285 These issues surface where the small enterprise sells goods to B2B customers established in other Member States and/or where the goods supplied are located in other Member States. Therefore, in order to be able to make a sound evaluation of application of the new B2B localisation principle and find a proper solution to the issued defined (should this be necessary), it needs to be further investigated to what extent small enterprises are indeed involved in such supplies.

286 The abolition of the special scheme for small enterprises is not an option in view of the increased administrative burden and higher compliance costs. Other options are to limit application of the special scheme to situations where both the small enterprise and the customer are established in the same Member State or to lay down a specific localisation criterion, i.e. where the small enterprise is established.

- **Special scheme for farmers**

287 In essence, the main problem appears where the Member State of the customer needs to provide compensation for non-recoverable VAT incurred in another EU Member State by the flat-rate-scheme farmer.

288 As the special scheme is transitional, it will be important to question whether the flat-rate scheme for farmers should remain in existence under the new B2B localisation principle.

289 In this respect, it needs to be investigated whether there are sufficient grounds in the current market conditions to support the existence of a special scheme for farmers and not subject supplies of agricultural goods to the normal VAT regime (or the special regime for small enterprises if the farmer qualifies for that scheme).

- **Optional use of the exemptions of articles 146, 148, 156 and 157 in the VAT Directive**

290 Bearing in mind that the physical flow of the goods would no longer be followed and because EU taxation should be imposed on EU goods, it might be questioned whether some exemptions (article 146, 148, 156 and 157 of the VAT Directive) should be made optional. It would be up to the supplier or customer to decide whether or not to use the exemption. Even if the supplier or customer did not make use of the exemption, they should still, for control purposes, hold the necessary proof with respect to the whereabouts and use of the goods. The impact of the latter should be investigated.

Recommendations for next steps

291 The following activities can be recommended as subsequent steps towards implementation of a new B2B place of supply rule. We have put them in order of importance.

- assessing the compliance, administration or any other costs for change in the hands of businesses and tax authorities. A case study could be used to confirm the feasibility of the new B2B localisation and liability principles, including the proposed mitigating solutions or measures. One or more pilot companies, one or more Member States and the EU Commission should be involved. The proposed alignment between B2B supplies of goods and services, including deemed supplies, should also be assessed. The treatment of B2B supplies of goods under the new principle for each of the special regimes should be in scope and the impact of the proposed changes to those regimes should be assessed in detail, too. The outcome of the feasibility study could also be used to define the methodology for a more detailed impact assessment if a Directive were proposed;
- B2C onward supplies of goods should be reviewed in depth. This should include an analysis of whether the place of B2C supply rules should be more aligned with the B2B supply rules (e.g. distance selling regime) and, if so, whether an alternative method could be used to report and collect VAT to mitigate risks of non-collection for the Member States' tax authorities and to ease compliance for the B2C supplier;
- assessing the required changes in terms of quantifying their effects on VAT revenues in terms of receipts, on tax authorities' audit methodologies, including the common approach on a secured VAT data warehouse (SAF-T) maintained by the taxable person and accessible to the tax authorities, on potential fraud and avoidance risks, the additional or reduced costs of collection and compliance including an assessment of the (mini) one-stop-shop mechanism, as well as the impact on economic operators and the functioning of the Single Market;
- reviewing interaction with other indirect tax legislation impacting the VAT treatment (e.g. customs, excise or any other relevant indirect tax legislation);
- if the concept of Single European Entities were to be further considered together with new B2B place of supply rules for goods and amended place of supply rules for B2B services, the alignment of both changes should be assessed from a qualitative and legal perspective;
- drafting any necessary new provisions and amendments to the VAT Directive;
- reviewing the impact on the implementing regulation.

1 Scope of this Study

292 The objective of the Study is to identify and assess the impact of applying the current principle for the place of supply of B2B services to B2B supplies of goods on a qualitative and legislative level. The Study provides recommendations on applying the principle of taxation at the place of establishment of the customer and whether it would be feasible to further pursue this as an approach.

1.1 Transactions in scope and assumptions

293 The Study focuses on situations where goods remain in a Member State or circulate within the EU in a B2B context. It takes into account the notion that VAT receipts should, in principle, accrue to the Member State where the consumption of the goods takes place. This also entails examining situations where the customer is not entitled to deduct VAT in full. A clear distinction is also drawn between where the customer and/or supplier are and are not established within the EU.

294 The Study assumes that the following rules will not change, although some may be affected indirectly:

- importation into the EU;
- exportation out of the EU;
- place of B2B supplies of services;
- place of B2C supplies of goods and services;
- exemptions other than those related to shipments of goods within the EU (i.e. articles 132 – 137 of the VAT Directive);
- exemptions related to supplies for ships, aircraft, NATO, etc. (i.e. articles 148 and 151 of the VAT Directive).

1.2 Activities within scope

295 The activities carried out are listed below:

- mapping different scenarios;
- qualitative assessment of the impact of the different scenarios on the tax authorities;
- qualitative assessment of the impact of the different scenarios on taxable persons (suppliers and customers);
- assessment of the impact on the principle according to which the VAT receipts must accrue to the Member State where the consumption occurs;
- identifying the relevant VAT rules;

- defining possible changes to the current VAT rules and identifying possible exceptions.

1.3 Activities outside scope

296 The following activities do not fall within the scope of the Study:

- assessing the economic aspects of the changes in terms of quantifying their effects (e.g. estimates of the financial impact of the changes on VAT revenues in terms of receipts, potential fraud and avoidance risks or the additional or reduced costs of collection and compliance they could entail);
- assessing the compliance, administration or any other costs in the hands of businesses or tax authorities;
- other impacts not related to VAT (e.g. Intrastat, shipment of goods under a customs regime and interaction with customs, excise or other applicable legislation);
- drafting any new provisions of the VAT Directive.

2 Methodology – project steps and approach

297 PwC started the Study in February 2011 and is providing this Final Report (including the various appendices) to the European Commission on 23 December 2011.

298 In order to come to a final recommendation on the principle of taxing B2B supplies of goods at the place of establishment of the customer ("the new principle") and on whether it would be feasible to further pursue this as an approach, we have delivered the project in four Phases.

299 Throughout these Phases, we have built our assessment of how the functioning of the EU VAT system would be affected by implementation of the new principle on an analysis of various general and specific scenarios, on whether introducing the new principle would simplify the current VAT legislation and whether any exceptions would be necessary to be able to apply the new principle in practice.

2.1 Phase 1: Preparation of the templates

300 In the period up to 21 March 2011, PwC designed a table of content for the Final Report and templates for the following:

- a template to identify the various scenarios and their VAT treatment (in table format);
- a template to visualise the scenarios (in PowerPoint format);
- the criteria to be used for the qualitative impact assessment from a tax authority and taxable person (supplier and customer) perspective to analyse the impact on the various scenarios.

301 The drafts were presented to and agreed with the European Commission at a kick-off meeting held on 21 March 2011.

2.2 Phase 2: Preparation of the Interim Report

302 With a view to preparing the Interim Report, we focused on the following topics.

Step 1 - *Brainstorming on general concept and definitions*

303 First, we brainstormed on the general concepts and definitions involved in the Study.

304 These general concepts and definitions are the starting point for the Study and are the benchmark against which we have assessed the impact of the new principle from a qualitative and legislative point of view.

Step 2 - *Identification of various scenarios and analysis of their VAT treatment ("as is" and "to be")*

305 Second, we identified the scenarios that might be affected by the new principle. We used the following parameters to map the different combinations:

- the type of transaction: local, cross-border supply within the EU, import or export of goods;
- the location of the goods ("ship from"): from a Member State or from a non-EU country;
- the destination of the goods ("ship to"): to a Member State or to a non-EU country;
- the place of establishment of the supplier: in a Member State or outside the EU;
- the place of establishment of the customer: in a Member State or outside the EU.

306 We focussed on scenarios with two parties (supplier/customer in a B2B context).

307 In drafting the scenarios, we did not categorise them according to whether they are likely, less likely or unlikely to occur: even if a scenario occurs only in very few cases, it will still have an impact on the rules. Businesses and tax authorities will still have to apply a certain tax treatment to it.

308 We developed a schematic approach to mapping the scenarios, analysing their VAT treatment and performing our assessment: the scenarios are analysed using tables and the result (whether or not there is a change) is visualised in diagrams (see step 3).

309 Once we identified and mapped all scenarios, we tabulated the VAT treatment for each of them in accordance with the current rules for defining the place of supply, exemptions and liability ("as is"). The VAT treatment in accordance with the new principles ("to be") was also completed. We developed and analysed 101 general scenarios in total (46 "local" scenarios, 32 "EU cross-border" scenarios, 10 "import" scenarios and 13 "export" scenarios) (see appendix 1.1).

310 For some of the scenarios, we added the qualitative impact assessment (based on criteria previously discussed with the European Commission) to already provide the European Commission with an indication of our future deliverables. This also allowed us to discuss with them the approach for the qualitative impact assessment.

Step 3 - *Preparation of diagrams to visualise the scenarios*

311 We also prepared diagrams to visualise all scenarios in PowerPoint format (see appendix 2). At the beginning of the visuals, we add a legend explaining the symbols used in the diagrams. We also explain them in the main body of this Report (see section 4.2).

312 The visuals are user-friendly. They provide an immediate overview showing whether applying the new principle results in a change or no change compared to the "as is" situation. Within the tables containing all the scenarios, we include a cross-reference to the visuals for each scenario.

Step 4 - *Identification of the rules that would need to be changed*

313 We first mapped the relevant articles of the VAT Directive and for each article assessed whether it should be repealed or amended.

314 We indicated whether there is a need to include a new provision in the VAT Directive in order to introduce the new localisation principle for B2B supplies of goods. In those cases, we analyse whether there is only one option or whether multiple options could be considered for implementing the new principle. In the latter case, a decision will be required (e.g. the place of supply of second-hand goods, works of art, collectors' items and antiques falling under the margin scheme can be solved in a number of ways and one option will need to be selected to develop the new provision).

315 As there was a wide range of impacted articles, we used a very schematic approach giving a clear view on which articles will be affected. We used three columns captioned as "to be repealed", "to be amended" and "options for consideration".

316 Next, we defined the special rules that should be adopted for implementing the principle of taxation of intra-EU B2B supplies of goods at the place of establishment of the customer. Defining the special rules has consisted in a high-level statement of the aim of the rule and its terms, without our drafting any legal texts.

317 Simultaneously, we examine and define the required exceptions to the new principle.

Step 5 - *Preparation and presentation of our Interim Report*

318 Our concept and definitions, a table with general scenarios reflecting the "as is" and "to be" situations, some of the visuals depicting the scenarios and a preliminary draft overview of the articles affected by the new rule on the place of supply of goods were presented to and discussed with the European Commission on 29 April 2011.

319 All the work performed was reflected in an Interim Report delivered on 20 May 2011.

320 It contained our concept and definitions , a table with general scenarios reflecting the "as is" and "to be" situations as well as some visuals of said scenarios, a more in-depth explanation of the assessment criteria and a preliminary draft overview of the articles affected by the new rule on the place of supply of goods.

321 The Interim Report was presented to and discussed with the European Commission on 25 May 2011.

2.3 Phase 3: Preparation of working session with the European Commission

Step 1 - *Finalisation of the different general scenarios and identification of special cases and supplies made under special schemes*

322 Based on our discussions with the European Commission at the meeting on the Interim Report, we have further fine-tuned the general scenarios as discussed above.

323 Furthermore, we also developed scenarios for analysing special cases and supplies made under special schemes provided for in the VAT Directive such as:

- the supply of gas through a natural gas system, of electricity and of heating or cooling energy through heating and cooling networks to taxable dealers (44 "local, EU cross-border and export" scenarios and 10 "import" scenarios);
- the supply of gas through a natural gas system, of electricity and of heating or cooling energy through heating and cooling networks to customers (final consumption) (40 "local, EU cross-border and export" scenarios and 10 "import" scenarios);
- the supply of goods by small enterprises (15 "local" scenarios, 10 "EU cross-border" scenarios and 13 "export" scenarios);
- the supply of agricultural products by farmers subject to the flat-rate scheme (7 "local" scenarios, 7 "EU cross-border" scenarios and 9 "export" scenarios);
- the supply of second-hand goods, works of art, collectors' items and antiques subject to the margin scheme (10 "local" scenarios, 10 "EU cross-border" scenarios and 13 "export" scenarios);
- the supply of goods by exempt taxable persons without right to deduct VAT and non-taxable legal persons (3 "local" scenarios, 3 "EU cross-border" scenarios and 4 "export" scenarios).

324 As for the general scenarios, we reflected the VAT treatment for each of them in the tables in accordance with the "as is" and "to be" situations. We developed and analysed a total of 208 different scenarios (Appendices 1.2 to 1.7).

325 In this Step, we also looked at the impact of applying the new principle on the supply of gold for investment purposes.

Step 2 - *Preparation of diagrams to visualise the scenarios*

326 We also prepared visual diagrams for a large number of the scenarios in PowerPoint format (see appendix 2). There are 244 diagrams in total.

Step 3 - *Qualitative impact assessment of the scenarios*

327 Subsequently, we applied the qualitative assessment criteria from a tax authority and a taxable person (supplier and customer) perspective to all the scenarios.

328 From a tax authority perspective, we assessed the budgetary impact (cash flow and revenue), the ease of administration, the cost of collection and the prevention of fraud and abuse at an EU level. From a taxable person perspective (supplier and customer), we assessed the budgetary impact (cash flow and revenue), legal certainty and simplicity, the shift in liability and the cost of implementation and compliance.

329 We applied these assessment criteria to the various general and special scenarios contained in the tables. We used ratings of "+1", "-1" or "0" depending on whether the new rule has a positive, a negative or no impact.

330 For ease of reading the quality impact assessment, we have produced an overview of the criteria used for the ratings (see first page of appendices 1.1 to 1.7).

331 On the basis of our assessment, we group the scenarios that have more or less a similar impact. Each of the groups has a unique sequential number, including the transaction type.

332 Our detailed assessment is, however, made independent from the number of instances each transaction might occur in reality when trading goods as this was not in scope of the Study. The detailed assessment is therefore purely based on transactions that are likely to occur. We do not assess the economic impact of the changes as the quantitative assessment does not fall within the scope of this Study.

Step 4 - *Treatment of onward B2C supplies*

333 We also looked at the impact of applying the new principle in the case the supplier subsequently supplies the goods in a B2C-relationship. In this respect, we identified the scenarios that might be affected by the new principle. We used the following parameters to map the different combinations:

- the type of transaction: local, cross-border supply within the EU or export of goods;
- the location of the goods ("ship from"): from a Member State or from a non-EU country;
- the destination of the goods ("ship to"): to a Member State or to a non-EU country;
- the place of establishment of the supplier: in a Member State or outside the EU;
- the place of establishment of the B2C customer: in a Member State or outside the EU.

334 These scenarios were visualised in PowerPoint format (see appendix 3).

Step 5 - ***With a view to a preliminary discussion with the European Commission on this, we prepared a document with our preliminary findings***

Step 6 - ***First analysis of key issues to be overcome and proposed solutions***

335 In this Step, we also worked on a number of critical issues needing to be resolved because they could otherwise form a barrier to the full functioning of the new principle.

336 We identified the issues when assessing the scenarios and reviewing the articles. In particular, they concern the impact of the legal structure of the B2B customer on the new B2B localisation rules and the cases where goods circulating within the EU are supplied to a non-EU customer or where goods circulating outside the EU are supplied to an EU customer.

337 With a view to a preliminary discussion with the European Commission on these items, we prepared a document with our findings and some proposed solutions.

Step 7 - ***Working session with the European Commission***

338 At the beginning of July 2011 the analytical process was coming to an end.

339 The general and special scenarios (including the qualitative impact assessment) and the visuals depicting the scenarios were presented to and discussed with the European Commission. The onward B2C supplies of goods and the critical items that had been identified were also discussed in-depth at the extensive working session held with the European Commission on 8 July 2011.

340 Thereafter, we started drafting this Final Report.

2.4 Phase 4: Preparation of Final Report

Step 1 - ***Finalisation of analysis of scenarios, diagrams and assessments***

341 Based on our discussions with the European Commission at the working session, we made minor changes to the scenarios, diagrams and qualitative impact assessment as discussed above. For instance, we also added the "shift in liability" as an assessment criterion for customers/suppliers and we clearly indicated in the visuals whether or not applying the new B2B localisation rule entailed a change from to the "as is" situation.

342 Next, we started drafting the qualitative impact assessment for the general scenarios, the supplies made under special schemes and the onward B2C supplies of goods. The full report of these assessments is attached to this Final Report (see appendices 4 to 11). The body of the Final Report contains the most important lessons learned and conclusions derived from the qualitative impact assessment as well as proposed solutions (chapters 6 & 7).

Step 2 - ***Second review and finalisation of the identification of the rules that would need to be changed***

343 Based on the knowledge gained during our research and the analysis and qualitative assessments, we performed a second in-depth analysis of the overview of the articles that would need to be changed. This involved thoroughly analysing the overview of the articles which led to a significant number of adjustments and fine-tuning of the text. We stress that there was high interaction and this in both ways, between the drafting of the qualitative impact assessment and the research on the legislative changes.

344 The final overview of the legislative changes in attached to this report (see appendix 12). The body of the Final Report contains a high-level overview of the most important legislative changes (chapter 9).

Step 3 - ***Finalisation of key issues to be overcome and proposed solutions***

345 The critical scenarios in which adjustments would be needed to the main rule were further scrutinised and solutions developed. An assessment was also done of the adjustments and solutions in respect of their short- or long term implementation and the impact on current provisions which are far-reaching or not. The need for alignment with the place of supply rules for services, the importance of the exemption upon exportation and for transactions relating to international trade were also further scrutinised.

Step 4 - ***Drafting the Final Report***

346 Finally, we prepared this Final Report with our findings, conclusions and recommendations resulting from the aforementioned work.

3 Concept of the new B2B place of supply rule for goods and definitions

3.1 Concept of the new B2B place of supply rule for goods

347 Within this Study, we define the new general B2B place of supply rule for goods as being where the customer has established its business or has its fixed establishment to which the goods are supplied.

348 The supply of the goods should be taxable in the case they are located in or circulating within the EU. Once the goods are located outside the EU without importing them for VAT and customs purposes into the EU, no taxation within the EU should apply to the supply of the goods. By contrast, once the goods are located within the EU without exporting them for VAT and customs purposes outside the EU, the supply of the goods should be taxable within the EU.

349 The physical flow of movable goods should no longer be followed as long as the goods remained or circulated within the EU.

350 Under the new rule, the place of supply rules applicable to local EU and intra-EU cross-border B2B supplies of goods should be streamlined with the B2B place of supply rules for services in order to avoid as much as possible differences between the VAT treatment of goods and services (see chapter 8).

351 We assume that the rules for defining the place of supply of immovable property and for supplies of goods on board of ships, aircrafts or trains remain unchanged (in line with the localisation rule for the supply of services connected with immovable property and of restaurant and catering services for consumption on board of ships, aircrafts or trains).

352 The new B2B localisation rule would apply to supplies of goods to taxable persons and non-taxable legal persons. In this respect, there is a difference with the localisation rules for services which are only applicable for non-taxable legal persons identified for VAT purposes (see chapter 8).

353 Under the new localisation rule for B2B supplies of goods, as a matter of principle, the supplier needs certain information in order to determine how the supply should be treated, i.e. the status and place of establishment of his business customer. The supplier should no longer need to have data regarding the physical flow of the goods as for supplies within the EU this should not longer impact the place of supply. No additional administrative burden should be placed on the supplier to determine the customer's place of establishment.

354 Furthermore, the supplier should be able to define the place of supply in all contractual circumstances. The certainty with which the place of supply can be correctly identified should be such that the supplier can be compliant regardless of how the business customer legally structures its business (branch/fixed establishment versus subsidiary) and regardless of the contractual arrangements governing the supply (global contracts versus single contracts, i.e. contract at a group level versus contract at the level of an entity in a group that could be a branch or subsidiary).

355 The person liable for payment of any VAT due on the supply of goods would be the supplier, if the goods were supplied by a taxable person established within the same Member State as the customer. The person liable for payment of any VAT due on the supply of the goods would be the taxable person or non-taxable legal person to whom the goods are supplied, if they were supplied by a taxable person not established within the same Member State (similar to the current article 196 of the VAT Directive).

356 Within our concept, we assume that the existing rules regarding importation of goods and the existing exemption upon exportation would not change.

357 It is important to note that the B2B place of supply rule for goods as defined in this section (referred to as the new B2B localisation rule) is the benchmark against which we have assessed the impact of the new principles from a qualitative and legislative point of view. When in our qualitative impact assessment, we ended up with a result which was not in line with the general concept, we have recommended solutions.

3.2 Source

358 We have used the consolidated 1 January 2011 version of Council Directive 2006/112/EC of 28 November 2006, which is the most recent consolidated text at our disposal. Thus, all references to "the VAT Directive" are references to that consolidated text of 1 January 2011.[17]

359 Please note that Council Directive 2010/45/EU amending Council Directive 2006/112/EC as regards the rules on invoicing (applicable as from 1 January 2013) is not included in this version.[18]

[17] As most recently amended by Directives 2008/8/EC, 2009/47/EC, 2009/69/EC, 2010/23/EU and 2010/88/EU – text applicable as from 1 January 2011.

[18] Council Directive 2010/45/EU of 13 July 2010 amending Directive 2006/112/EC as regards the rules on invoicing.

3.3 Definitions

360 Here is an alphabetical list of the definitions we use throughout the Study:

361 **"Business customer (as in the second B of B2B)"** means taxable persons and non-taxable legal persons.

This definition also includes taxable persons that only carry out supplies of goods or services in respect of which VAT is not deductible and farmers (whose activity is carried out in an agricultural, forestry or fisheries undertaking) subject to the common flat-rate scheme for farmers.

A taxable person that also carries out activities or transactions that are not considered to be taxable supplies of goods or services under article 2 (1) of the VAT Directive is regarded as a taxable person in respect of the goods supplied to him (similar to the current article 43 of the VAT Directive with respect to services).

With regard to the status of the customer, the supplier may regard a customer established within the EU as a taxable person where the customer has communicated its individual VAT identification number and the supplier obtains confirmation of the validity of that identification number and of the associated name and address. The supplier may also regard as a taxable person a customer who has not yet received an individual VAT identification number but informs the supplier that it has applied for it and the supplier obtains any other proof which demonstrates that the customer is a taxable person required to be identified for VAT purposes and carries out a reasonable level of verification of the accuracy of the information provided by the customer by normal security measures such as those relating to identity or payment checks (similar to article 18(1) of the Implementing Regulation).[19]

362 **"Cash flow"** is a generic term used differently depending on the context. In our Study, it means the balance of incoming and outgoing payments of VAT amounts in cash for tax authorities and taxable persons. The (total) net cash flow for over a period (typically a month, quarter or a full year) is equal to the change in cash balance over this period.

363 **"Common flat-rate scheme for farmers"** means the scheme defined in articles 295 to 305 of the VAT Directive.

364 **"Cross-border supply of goods"** is a transaction where the goods are transported or dispatched by or on behalf of the supplier or customer from one Member State to another Member State, irrespective of the place of establishment of the supplier or customer.

365 **"EU"** means the territories as defined in articles 5 and 6 of the VAT Directive.

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

366 **"EU goods"** are any goods that are located on EU territory. This also includes goods that have not yet been put in free circulation from a customs and VAT point of view (such as goods under a customs warehouse regime, a warehouse other than customs warehouse and other customs arrangement as determined in articles 156 and 157 of the VAT Directive) and goods that will leave the EU upon exportation.

367 **"Exempt taxable persons"** mean taxable persons only engaging in activities covered by articles 132 to 136 of the VAT Directive.

368 **"Exportation of goods"** means a transaction where goods are transported or dispatched by or on behalf of the supplier or customer from the EU to a destination outside the EU (article 146 of the VAT Directive).

369 A **"Fixed Establishment"** is any establishment, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the goods supplied to it for its own needs and to enable it to provide the goods which it supplies (similar to article 11 of the Implementing Regulation).[20]

370 **"General B2B localisation rule"**: the place of supply of goods circulating within the EU and supplied to a taxable or non-taxable legal person acting as such is the place where that person has established its business.

However, if those goods are supplied to a fixed establishment of the taxable or non-taxable legal person located in a place other than the place where it has established its business, the place of supply of those goods is the place where that fixed establishment is located. In the absence of such a place of establishment or fixed establishment, the place of supply of goods is the place where the taxable person who receives such goods has its permanent address or usually resides.

371 **"Goods"** means tangible property and electricity, gas, heat or cooling energy. This definition does not include certain interests in immovable property, rights in rem giving the holder thereof a right of use over immovable property and shares or interest equivalent to shares giving the holder thereof de jure or de facto rights of ownership or possession over immovable property or a part thereof.

"Goods" also means tangible property that is installed or assembled, with or without a trial run, by or on behalf of the supplier.

372 **"Importation of goods"** means the entry into the EU of goods that are not in free circulation within the meaning of article 24 of the Treaty (article 30 of the VAT Directive).

373 **"Local supply of goods"** is a transaction where the goods do not leave one country (Member State or a third country), irrespective of the place of establishment of the supplier or the customer. The goods might circulate within the given Member State or third country.

[20] Council Implementing Regulation N° 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC.

374 **"Long term"** means that the suggested measure does not require immediate implementation but will improve/optimise the functioning of the new B2B localisation and liability principle.

375 **"Margin scheme for second-hand goods, works of art, collectors' items and antiques and second-hand means of transport"** means the scheme as defined in articles 311 to 325 of the VAT Directive.

376 **"New means of transport"** means, where they are intended for the transport of persons or goods, motorised land vehicles, vessels and aircraft as defined in article 2(2) of the VAT Directive.

377 **"Missing trader fraud"** or "**Carousel fraud"** is the theft of VAT from a government by organised crime who exploit the way VAT is treated within multi-jurisdictional trading where the movement of goods between jurisdictions is exempt of VAT. This allows the fraudster to charge VAT on the sale of goods, and then instead of paying this over to the government's collection authority, simply absconds, taking the VAT with him. The term "missing trader" refers to the fact that the trader goes missing with the VAT. "Carousel" refers to a more complex type of fraud in which VAT and goods are passed around between companies and jurisdictions, similar to how a carousel goes round and round.

378 **"Non-EU goods**" are goods that are not located on EU territory.

379 **"Non-taxable legal persons"** means states, regional and local government authorities and other bodies governed by public law in respect of the activities or transactions in which they engage as public authorities and legal persons that are engaged in activities outside the scope of VAT (because for instance the sole purposes of the legal person is to acquire holdings in other undertakings without involving itself directly or indirectly in the management of those undertakings[21]).

380 **"One-stop-shop mechanism"** refers to the option that traders, who are liable to pay VAT in several Member States, have to choose one single place for the fulfilment of their VAT obligations and compliance.

381 **"Place of business"** of a taxable person is where the functions of the business's central administration are carried on. More specifically, this is the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located and the place where management meets.

Where these criteria do not allow the place of establishment of a business to be determined with certainty, the place where essential decisions concerning the general management of the business are taken prevails (similar to article 10(2) of the Implementing Regulation).[22]

382 **"Pre-financing of VAT in hands of the customer"** means the time span between payment of VAT to the supplier and the operated VAT deduction/refund.

[21] EUCJ, 20 June 1991, C-60/90, Polysar Investments Netherlands BV vs Inspecteur der Invoerrechten en Accijnzen.

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

383 **"Pre-financing of VAT in hands of the supplier"** means the time span between payment of VAT to the local tax authorities and payment of the VAT by the customer.

384 **"Pre-financing of VAT in hands of the tax authorities"** means the time span between payment of VAT to the local tax authorities and operated VAT deduction/refund in the hands of the customer.

385 **"Refund of VAT"** means cross-border refund of VAT in the EU for taxable persons not established in the Member State of refund but established in another Member State or outside the EU.

386 **"Right to deduct VAT"** means that a taxable person is allowed to deduct the VAT he paid on its purchases insofar as the goods or services are used for its business activities subject to VAT. A taxable person whose input VAT exceeds its output VAT is in principle entitled to a refund of the excess VAT from its national treasury. However, Member States may decide to carry forward the excess to the next taxable period and offset it against VAT due in that period.

387 **"Second-hand goods"** mean tangible property suitable for further use as it is or after repair, other than works of art, collectors' items or antiques and other than precious metals or precious stones as defined by the Member States.

388 **"Short term"** means that the suggested measure requires immediate implementation as the new B2B localisation and liability principle will not otherwise function.

389 **"Special scheme for investment gold"** means the scheme as defined in articles 344 to 356 of the VAT Directive.

390 **"Special scheme for small enterprises"** means the scheme as defined in articles 281 to 294 of the VAT Directive.

391 **"Taxable person established in the EU"** means a taxable person who established its business in the territory of the EU or who has a fixed establishment there.

392 **"Taxable person not established in the EU"** means a taxable person who has not established its business in the territory of the EU and who has no fixed establishment there.

4 Manuals for reading the tables containing the scenarios and the diagrams

4.1 Manual for reading the tables containing the scenarios

393 In this section, we provide you with a short manual for reading the analysed scenarios included in the attached tables (see appendix 1).

Figure 4.1: Overview column headings – description of scenarios

Group (1)	Diagram (2)	Scenario (3)	Additional remark (4)	Location goods (5)	Country supplier (6)	Country customer (7)	Ship from (8)	Ship to (9)

394 We explain the columns included in the screen shot above (figure 1) from left to right:

395 **(1) "Group":** number of the group.

We have grouped together the scenarios that have more or less a similar impact (see chapters 6 and 7 with respect to the qualitative impact assessment and appendices 4 to 11).

Please note that, for the general scenarios, the group number is preceded by "L", "EU", "IM" or "EX" (see chapter 6 and appendices 4 and 11), where:

- "L" stands for local supplies of goods;
- "EU" stands for cross-border supplies of goods within the EU;
- "IM" stands for importation of goods within the EU; and
- "EX" stands for exportation of goods outside the EU.

For the special schemes (see chapter 7 and appendices 5 to 10), the group number also makes reference to the scheme, where:

- "G" stands for supply of gas, of electricity and of heating or cooling energy to taxable dealers;
- "GC " stands for supply of gas, of electricity and of heating or cooling energy to a customer for final consumption;
- "SE" stands for supplies under the special scheme for small enterprises;
- "F" stands for supplies under the common flat-rate scheme for farmers;
- "SH" stands for supplies of second-hand goods, works of art, collectors' items and antiques;
- "E" stands for supplies by VAT exempt/non-taxable legal persons (outside scope of VAT).

396 **(2) "Diagram":** reference to the PowerPoint diagram number visualising the scenario.

397 **(3) "Scenario":** sequential numbering of all scenarios analysed in the sheets. The scenarios are numbered per transaction type.

398 **(4) "Additional remark":** additional information with respect to the transaction (i.e. with or without dispatch or transport and installation or assembly by or on behalf of the supplier).

399 **(5) "Location goods":** the place where the goods are located at the time of the supply.

400 **(6) "Country supplier":** the place where the supplier has established its business.

401 **(7) "Country customer":** the place where the customer has established its business.

402 **(8) "Ship from":** the place where the goods are located at the time when dispatch or transport of the goods to the customer begins.

403 **(9) "Ship to":** the place where the goods are located at the time when dispatch or transport of the goods to the customer ends.

Figure 4.2: Overview column headings – treatment

Current treatment (AS IS) (10)			Future treatment (TO BE) (11)		
Place of supply	Exemption	Liable	Place of supply	Exemption	Liable

404 We explain the columns included in the screen shot above (figure 2) from left to right:

405 **(10) "Current treatment ("as is")":** application of the current rules for the place of supply of goods subdivided into the place of supply, whether exemptions are applicable and who is liable for the VAT due.

406 **(11) "Future treatment ("to be")":** application of the new B2B localisation rule for the place of supply of goods subdivided into the place of supply, whether exemptions are applicable and who is liable for the VAT due. We apply the new B2B localisation rule as defined in chapter 3.1. We do not take into account of potential solutions if the new rule should result in double taxation or non-taxation.

Figure 4.3: Overview column headings – impact assessment

Impact in country of taxation (AS IS) (12)			Impact in country of taxation (TO BE) (13)		
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

Impact on supplier (TO BE) (14)				Impact in customer (TO BE) (15)			
Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implemen-tation and compliance	Budgetary impact	Legal certainty and simplicity	Shift of liability	Cost of implemen-tation and compliance

407 We explain the columns included in the screen shot above (figure 3) from left to right:

408 **(12) "Impact in country of taxation ("as is")":** the impact of the new principle on the current country of taxation is analysed. It is subdivided into budgetary impact (cash flow and revenue), ease of administration, cost of collection and prevention of fraud and abuse on an EU level. Please see chapter 5 for a further explanation of the assessment criteria.

409 **(13) "Impact in country of taxation ("to be")":** the impact of the new principle on the future country of taxation is analysed. It is subdivided into budgetary impact (cash flow and revenue), ease of administration, cost of collection and prevention of fraud and abuse on an EU level. Please see chapter 5 for a further explanation of the assessment criteria.

410 **(14) "Impact on supplier ("to be")":** the impact of the new principle on the supplier is assessed. It is subdivided into budgetary impact (cash flow and revenue), legal certainty and simplicity, shift in liability and cost of implementation and compliance. Please see chapter 5 for a further explanation of the assessment criteria.

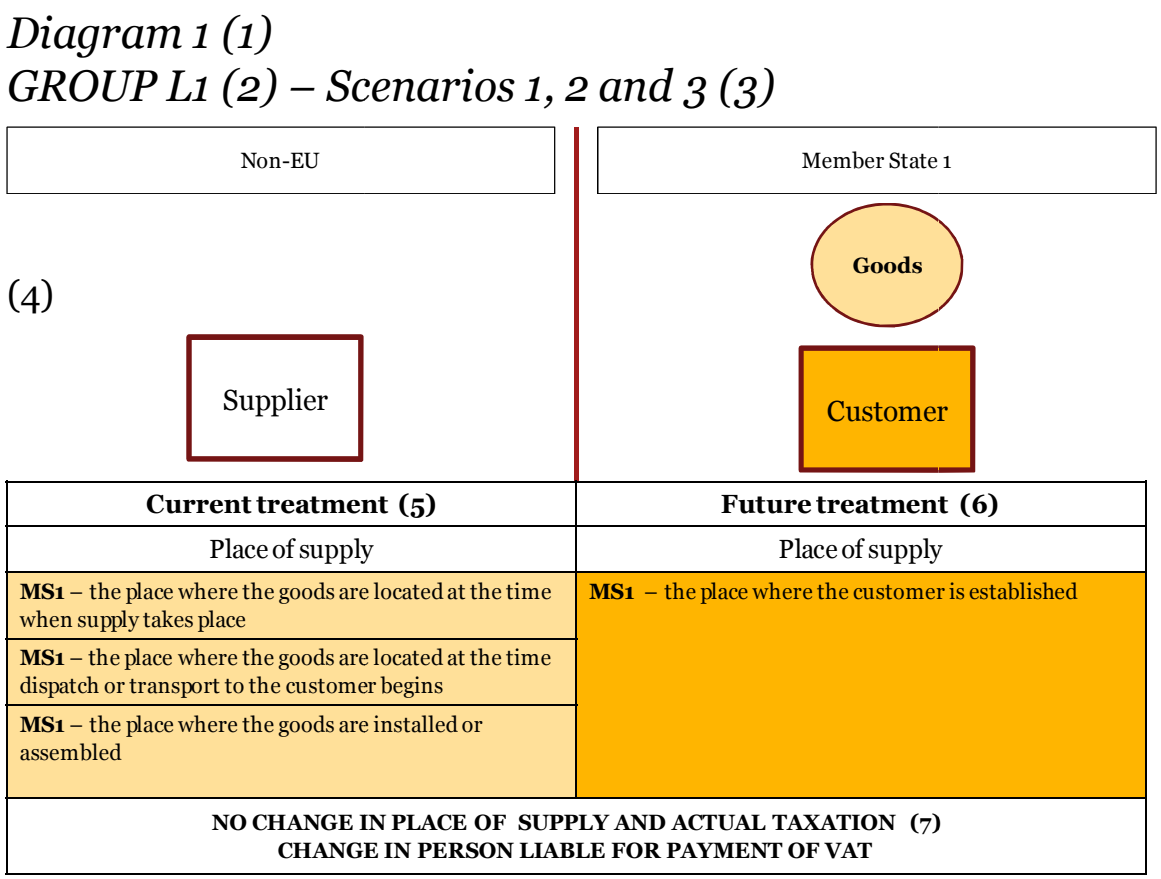
411 **(15) "Impact on customer ("to be")":** the impact of the new principle on the customer is reviewed. It is subdivided into budgetary impact (cash flow and revenue), legal certainty and simplicity, shift in liability and cost of implementation and compliance. Please see chapter 5 for a further explanation of the assessment criteria.

4.2 Manual for reading the diagrams

412 In this section we provide you with a manual for reading the diagrams used to visualise the scenarios.

413 A number of the diagrams are included as figures in the appendices 4 to 11 to illustrate our qualitative impact assessment. All diagrams are attached in appendices 2 and 3 to the Final Report.

Figure 4.4: Example of diagram



Current treatment (5)	Future treatment (6)
Place of supply	Place of supply
MS1 – the place where the goods are located at the time when supply takes place	**MS1** – the place where the customer is established
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	
MS1 – the place where the goods are installed or assembled	
NO CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION (7) **CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

414 **(1) "Diagram":** reference to the PowerPoint diagram number visualising the scenario.

415 **(2) "Group":** number of the group (see section 4.1 for further explanation with respect to the labelling of the groups).

416 **(3) "Scenario":** sequential numbering of all scenarios analysed in the sheets. The scenarios are numbered per transaction type.

417 **(4) "Visual":** drawing of the scenarios analysed in the sheet. Please find below an overview of the symbols used in the diagrams. This legend is also included in appendices 2 and 3 to the Final Report (first page).

For local supplies of goods, cross-border supplies of goods within the EU with installation or assembly, exports and importation of goods, the yellow "goods symbol" visualises the current place of supply. For cross-border supplies of goods within the EU (without installation or assembly), the white" goods symbol" visualises the current place of supply and the yellow "goods symbol" the current place of actual taxation of the supply of the goods. If there is only one "goods symbol" used in the drawing (being a yellow one), the current place of supply corresponds to the current place of actual taxation.

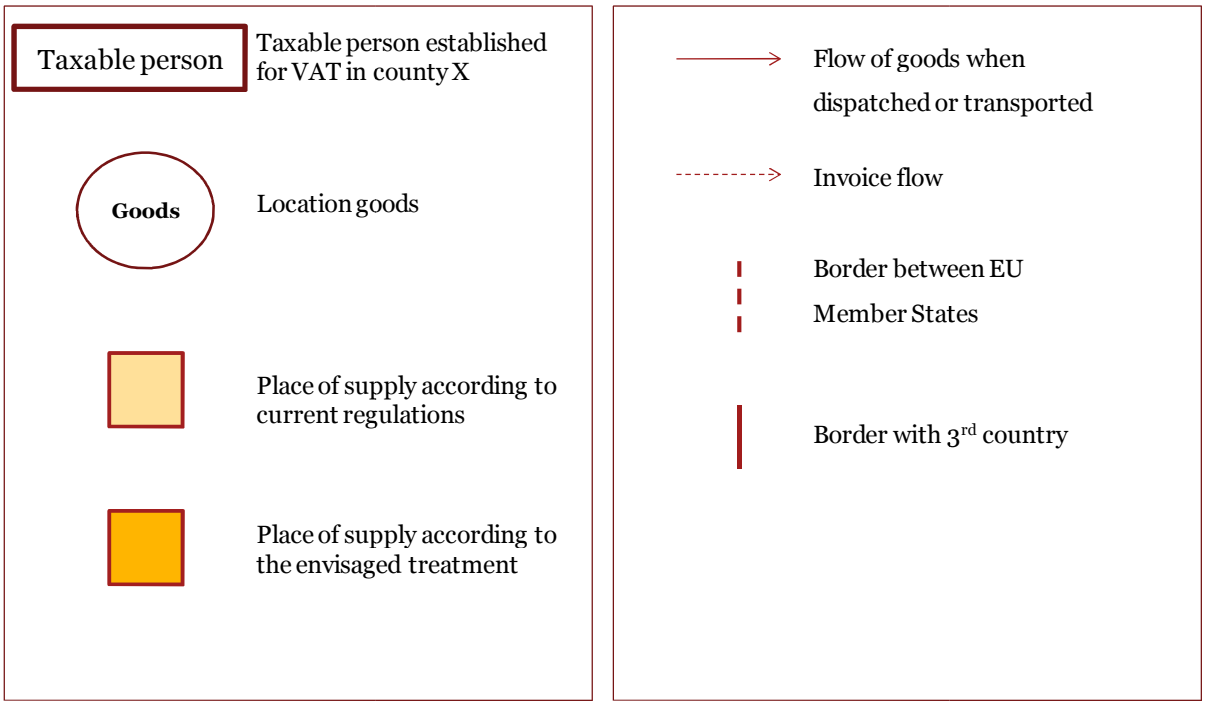
The orange "customer symbol" visualises the future place of supply, i.e. where the customer is established.

418 **(5) "Current treatment ("as is")":** application of the current rules for the place of supply of goods subdivided into the place of supply and whether exemptions or special regimes are applicable. The same colours as explained above are used.

419 **(6) "Future treatment ("to be")":** application of the new B2B localisation rule for the place of supply of goods subdivided into the place of supply, whether exemptions or special regimes are applicable. The same colours as explained above are used.

420 **(7) "Change or no change":** short description on whether the application of the new B2B localisation and liability principle entails a change compared to the current place of supply and liability rules.

Figure 4.5: Legend diagram



5 Qualitative assessment criteria and working assumptions

5.1 Introduction

421 In order to perform a high level qualitative assessment for the scenarios, we defined evaluation criteria from a tax authority perspective and from a supplier and customer perspective. We selected our assessment criteria out of the OECD criteria used for benchmarking tax regimes[23]. We selected those criteria that are, in our opinion, the most relevant regarding the scope of this Study. These criteria are indeed internationally recognised as the best to meet the legitimate expectations of the tax authorities and the businesses and consequently internationally used to benchmark VAT/GST regimes. We also took into account the feedback received in this respect during the working sessions with the Commission.

422 The selected criteria are, for tax authorities, the budgetary impact (cash flow and revenue), ease of administration, cost of collection and prevention of fraud and abuse at an EU level and for taxable persons, budgetary impact (cash flow and revenue), legal certainty and simplicity, shift in liability and cost of implementation and compliance. Based on this selection the most important qualitative advantages and disadvantages for Member States and businesses (supplier and customer) are identified.

423 For our Study, we opine that all selected criteria are equally important to identify the impact for Member States and businesses. We therefore have not given a weight to the criteria. Some of the criteria are also linked. Increased legal certainty and simplicity can increase revenues and lower cost of collection. From many examples analysed, we derive that this needs to be looked at on a case-by-case basis.

5.2 Definition of assessment criteria

5.2.1 Assessment criteria from a tax authority's perspective

5.2.1.1 Budgetary impact

424 The impact of the new B2B localisation rule for supplies of goods on the cash flows and revenues of a Member State needs to be assessed. The time span between charging and paying taxes should be limited so that tax authorities can optimise their working capital. A big gap between the time of collection and the time of payment can cause financial risk and require additional auditing to mitigate the risks.

[23] Ottawa framework taxation conditions contained in the OECD "International VAT/GST Guidelines" report of February 2006, http://www.oecd.org/dataoecd/16/36/36177871.pdf.

425 The impact of the limitations to the right to deduct in hands of the customer on a Member State's revenue is also covered by this criterion.

426 Finally, the impact of the apportionment of tax revenues between Member States by the implementation of the new principle should be assessed.

427 The following questions can be posed:

- Will the new place of supply principle or the shift in liability impact the cash flow and revenue of the Member States concerned?
- Will the new principle lead to a shift in revenue from one Member State to another Member State (to the extent that the customer is a taxable person established in the EU with limited or no right to deduct VAT)?
- Will the new principle mean that there is no longer taxation within the EU with respect to goods located in the EU?
- Will the new principle mean that there will be taxation in the EU with respect to goods located outside the EU?
- Will the new principle mean that existing exemptions and special schemes are no longer applicable?
- Will the new principle mean that the application of exemptions and special schemes will shift to another Member State?

5.2.1.2 Ease of administration and cost of collection

428 Member States will be more likely to accept the new principle, if there is no increase in the costs of administering VAT and carrying out effective and efficient inspections (e.g. the need for co-operation and exchange of information between revenue authorities).

429 A new easy-to-administer B2B localisation principle will minimise work for revenue authorities in terms of supervision and inspections. Where legal certainty is available for both revenue authorities and operators, collection will improve as the number of disputes decreases accordingly. The required level of interaction with other Member States and non-EU countries' revenue authorities should also decrease.

430 The following questions arise for:

- Ease of administration:
  - Will the new principle lead to additional administrative work in terms of managing registrations and processing data from VAT returns and listings?
- Cost of collection:
  - Will the new principle cause additional work for revenue authorities in terms of supervision?
  - Is the new principle likely to lead to an increased need for VAT inspections by revenue authorities?

- Does the new principle allow easy and cost-efficient checks by the revenue authorities (for instance, use of e-auditing techniques, cooperation and exchange of information between revenue authorities)?
- Does the new principle ensure legal certainty and so, increase voluntary compliance and consequently improve collection by the revenue authorities?

- In order to be controlled effectively, does the new principle require additional interaction with other Member States and non-EU countries revenue authorities?

5.2.1.3 Prevention of fraud and abuse on an EU level

431 The new B2B localisation rule should be transparent. It should not leave room for abuse, which makes a new principle unacceptable to both Member States and compliant economic operators. Law-abiding operators do not want to be faced with uncertainty and competition from operators abusing their rights, leading to stricter and more costly inspections to the detriment of compliant businesses. The rule should ensure that tax audit processes can be carried out reliably and such that the costs to both revenue authorities and businesses can be minimised.

432 This criterion is assessed at the EU level, without allocating the risk, if any, to a specific Member State.

433 The following questions arise:

- Does the new principle safeguard the tax revenues of the Member States, i.e. does it minimise the risk of abuse?
- Is the new principle simple and transparent enough to guarantee to revenue authorities that economic operators can be adequately audited (link to ease of administration and cost of collection for revenue authorities)?
- Is the new principle likely to lead to abuse of rights by use of existing schemes?
- Is any potential abuse easy to detect?

5.2.2 Assessment criteria from a taxable person perspective (that of the supplier and the customer)

5.2.2.1 Budgetary impact

434 From a taxable person's point of view, it needs to be assessed whether the new principle has a budgetary impact. There are two aspects: the impact on its cash flow and the impact on its revenues (to the extent that the latter has no or only limited right to deduct VAT).

435 This means the following questions need to be answered to define the impact on the supplier:

- Does the new principle mean that the supplier no longer has to pre-finance VAT (for the time between the payment of VAT to the tax authorities and payment of his invoice by his customer)?
- Note that the overall impact on the supplier depends on the payment terms granted to his customers, the timing of the VAT payment to the tax authorities and his VAT position, being payable or refundable.
- Does the new principle mean that the supplier no longer takes the risk with respect to pre-financing of VAT on bad debts?
- To what extent will the new principle cause situations of double taxation?

436 This means the following questions need to be answered to define the impact on the customer:

- Does the new principle mean that the customer no longer pre-finances VAT (for the time between the payment of VAT to the supplier and obtaining a VAT deduction/refund in the relevant Member State)?
- Note that the overall impact on the customer depends on the payment terms with his suppliers, his VAT position, being payable or refundable and the time frame within which a VAT refund is paid in the relevant Member State.
- Does the new principle entail that the customer no longer needs to obtain refund of VAT in another Member State?
- Does the new principle mean an additional cost for customers that have no or only limited right to deduct VAT?
- Does the new principle entail an impact on the cost of the goods acquired due to changes in the applicable VAT rate or application of special schemes?
- To what extent will the new principle cause double taxation?

5.2.2.2 Legal certainty and simplicity

437 The new VAT principle should be clear and simple to understand and there should be no scope for differing interpretations so that taxable persons can anticipate the tax consequences of a transaction, including knowing when, where and how the VAT is accounted.

438 The new principle should reduce the risks of conflicts and litigation, not only between businesses and authorities but also between authorities (which also has an impact on taxable persons) and between businesses (suppliers and customers).

439 The provisions should be able to cope with any change in the economy within the EU and globally. As the pace of change is still accelerating, the amended VAT provisions should be capable of weathering the next few decades, given that any change to the VAT Directive requires unanimity.[24]

440 The following questions arise:

- To what extent will the new principle provide legal certainty for economic operators?
- Will the new principle give economic operators a clear view on the VAT treatment of certain transactions before they enter into them (no postponement of or refraining from important decisions due to legal uncertainty from a VAT point of view)?
- To what extent will the new principle enable economic operators to make justified business decisions regarding their go- to-market strategy and their operations/infrastructure where the business case is also certain from a VAT point of view?
- To what extent will the new principle equally give economic operators more certainty on local and intra-EU transactions as well as importations, exportations and transactions outside the EU (not subject to EU VAT)?
- To what extent will the new principle be capable of uniform interpretation and application in all Member States without the need for detailed guidance or rulings by Member States?
- To what extent will the new principle reduce the amount of local and EUCJ litigation?
- To what extent is the new principle capable of coping with – at this time even unforeseeable – developments in global trade and changes in business models, front-office and back-office activities, new go-to-market strategies and new offerings?

5.2.2.3 Shift in person liable for paying VAT

441 As a general principle the person liable for the VAT due on the supply of the goods will be the supplier. However, if the goods are supplied by a taxable person not established within the territory of a Member State, any business customer to whom goods are supplied will be liable for the VAT due.

442 The new principle might entail a shift in the person liable for paying VAT. The supplier or the customer might be liable for paying VAT under the new principle whereas it was not liable before. If so, the economic operator would need to make the necessary arrangements with respect to reporting and, in some cases, also paying the VAT due to the Treasury. This can also cause a change from a risk perspective, where either the supplier or the customer becomes or ceases to be jointly liable.

[24] Article 113 of the Treaty on European Union and the Treaty on the Functioning of the European Union – http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:FULL:EN:PDF.

443 This means the following questions need to be answered to define the impact on the supplier:

- Does the new principle mean that the supplier remains or becomes liable for the VAT due?
- Does the new principle mean that the supplier will need to make the necessary arrangements with respect to reporting and paying the VAT due to the revenue authorities?

444 This means the following questions need to be answered to define the impact on the customer:

- Does the new principle mean that the customer remains or becomes liable for payment of the VAT due via the reverse charge mechanism?
- Does the new principle mean that the customer will need to make the necessary arrangements with respect to reporting and paying the VAT due to the Treasury?

5.2.2.4 Cost of implementation and of compliance

445 The new principle should be easy to administer in day-to-day business practice and should not disproportionally increase the burden of VAT compliance requirements and costs for economic operators compared to the benefit flowing to them from the new principle. It will be equally important to determine how far economic operators need to amend their back-office operations and/or increase the number of full time equivalents needed to perform the back-office operations.

446 The new principle should also be integrated into economic operators' existing risk management policies and internal controls.

447 The new principle should be easy to implement by economic operators within a reasonable timeframe. VAT changes that can be implemented in the short term with minimum upfront investment and transition costs are beneficial for economic operators.

448 The following questions arise:

- Does the new principle mean that economic operators have to make major investments to comply in terms of people, processes and technology leading to important one-time costs?
- Does the new principle mean that economic operators have to incur major recurring costs to comply in people, processes and technology?
- Will the new principle cause extra administrative work for economic operators (for instance, due to an increase in VAT compliance formalities)?
- Is the new principle practical and easy to handle, even in day-to-day practice, for all sectors and for all sizes of businesses?
- Can implementation of the new principle be fully automated?

5.3 Assumptions for the qualitative impact assessment

449 In order to carry out our qualitative impact assessment, we used general and specific assumptions.

5.3.1 General assumptions

450 There is uniformity in VAT rates and VAT deduction/refund rules in all Member States.

451 There is a time span between the payment of VAT to the national tax authorities by the supplier and the VAT deduction/refund in the hands of the customer.

452 There is uniformity with respect to the refund of VAT on bad debts in the Member States.

453 The transactions only concern the supply/installation of goods "for consideration".

454 The Member State of the customer is always the Member State of establishment of the customer to which the supply is made (being the contracting party with whom the sale is contracted).

455 The customer always acts as the importer of record and is mentioned in this capacity on the import document.

456 With respect to the special scheme for small enterprises, there is only application of the exemption scheme (not graduated relief scheme).The special scheme is only applicable to suppliers established within the Member State where the supply of the goods takes place.

457 There is uniformity in the Member States with respect to the annual turnover threshold to determine whether a taxable person can fall under the special scheme for small enterprises.

458 The farmers supply agricultural products covered by the activities listed in Annex VII of the VAT Directive (list of agricultural production activities referred to in article 295(1)(4) of the VAT Directive) under the conditions of the common flat-rate scheme for farmers.

459 Supplies of agricultural products between qualifying flat-rate-scheme farmers are excluded.

460 The supplies of second-hand goods, works of art, collectors' items and antiques are subject to the margin scheme pursuant to articles 312 to 325 of the VAT Directive.

461 The exempt taxable persons supply the goods under the condition of article 136 of the VAT Directive (i.e. goods solely used for an activity exempt from VAT which have not given rise to deductibility).

462 The Member States do not apply the transitional arrangement for second-hand means of transport.

463 The supplies of investment gold, including gold coins, are subject to the special scheme for investment gold pursuant to articles 344 to 352 of the VAT Directive. This special "exemption" scheme for investment gold is not applicable with regard to transactions on a regulated gold bullion market. Member States opted for taxation for specific transactions on the regulated gold bullion market pursuant to article 353 of the VAT Directive.

5.3.2Assumptions specific for the "as is"-situation

464 The supplier always needs to register for VAT purposes in the Member State where the goods are supplied, where the goods are located at the time the transport or dispatch begins or where the goods are installed or assembled (via direct registration or by appointing a VAT representative).

465 The customer always needs to register for VAT purposes in the Member State where the goods are acquired (i.e. place of intra-Community acquisition of goods) or imported (i.e. place of importation of goods).

466 If the supplier is directly registered or has appointed a VAT representative, he always issues an invoice charging local VAT on local supplies of goods (meaning no shift of VAT liability under article 194 of the VAT Directive).

467 There is only a VAT exemption on the intra-Community supply, importation and exportation of goods.

468 The supplier has the necessary supporting documentation with respect to VAT exempt intra-Community supplies and exports of goods (such as transport documents/CMRs/bills of lading/export document).

469 The supplier acts as the exporter of record and is mentioned in this capacity on the export document.

470 The customer is liable to pay local VAT on its intra-Community acquisitions of goods.

471 For supplies of gas and electricity falling under article 39 of the VAT Directive, the place where the goods are located or to where the goods are transported or dispatched is the place where the customer effectively uses and consumes the goods.

5.4 Overview of ratings used in the qualitative impact assessment

472 We used the ratings "+1", "-1" or "o" depending on whether the new principle has a positive, a negative or no impact.

473 We have defined them as follows:

Figure 5.1: Overview of ratings used

Qualitative impact assessment of the scenarios: evaluation framework

From a Tax Authority's perspective				*From a Taxable Person's perspective (supplier and customer)*			
Cash flow	***Revenue***	***Ease of administration and collection***	***Prevention of fraud and abuse***	***Budgetary impact***	***Legal certainty and simplicity***	***Shift of liability***	***Cost of implementation and compliance***
-1 = negative impact on cash flow	*-1 = loss of VAT income*	*-1 = additional effort necessary*	*-1 = not resistant to existing types of fraud*	*-1 = negative budgetary impact*	*-1 = less certainty and simplicity*	*-1 = liable to pay VAT*	*-1 = higher costs*
+1 = positive impact on cash flow	*+1 = gain of VAT income*	*+1 = less effort necessary*	*+1 = resistant to existing types of fraud*	*+1 = positive budgetary impact*	*+1 = higher certainty and simplicity*	*+1 = not liable to pay VAT*	*+1 = lower costs*
0 = no impact	*0 = no impact*	*0 = no impact*	*0 = no impact*	*0 = no impact*	*0 = no impact*	*0 = no impact*	*0 = no impact*

6 Qualitative assessment of the new B2B localisation rules for supplies under the normal VAT regime and for onward B2C supplies of goods

6.1 Qualitative impact assessment of the new B2B localisation rules for supplies under the normal VAT regime

6.1.1 Introduction

474 We have assessed the impact of the new B2B localisation principle for B2B supplies of goods covered by the normal VAT regime from the perspective of the tax authorities and the taxable persons.

475 We have analysed 101 different scenarios. The detailed assessments can be found in appendix 4. This appendix contains a description of the purpose of the normal VAT regime, a summary of the provisions of the VAT Directive, visuals and extracts of the tables containing the scenarios. All scenarios are included in appendix 1.1., general scenarios.

476 In this chapter, we provide you with our findings. In order to describe the impact and issues identified, we have structured our analysis in five groups:

- B2B supply of goods located in the EU to a customer established in the EU (56 scenarios);
- B2B supply of goods located in the EU to a customer not established in the EU (20 scenarios);
- Importation of goods (10 scenarios);
- B2B supply of goods located outside the EU to a customer established in the EU (9 scenarios);
- B2B supply of goods located outside the EU to a customer not established in the EU (6 scenarios).

477 Our detailed assessment is made independent from the number of instances each transaction might occur in reality when trading goods as this is not in scope of this Study. The detailed assessment is therefore purely based on transactions that are likely to occur. We do not assess the economic impact of the changes as the quantitative assessment does not fall within the scope of this Study.

6.1.2 B2B supply of goods located in the EU to a customer established in the EU

6.1.2.1 General conclusion

478 The application of the new B2B localisation principle functions properly for 54 of the 56 scenarios concerned.

479 However, it does not function properly for 2 scenarios where goods supplied are exported to a non-EU country by or on behalf of the customer established in the Member State where the transport or dispatch of the exported goods starts. You will find below a detailed description and solution to mitigate this issue.

480 We also draw your attention to the impact the new localisation rule may have in the case of supplies of goods to farmers, taxable persons who only carry out supplies of goods or services of which VAT is not deductible and non-taxable legal persons.

481 In a number of scenarios, those customers would become liable for paying VAT and would be obliged to be registered for VAT in instances where they were until now not liable for VAT, nor required to be identified for VAT purposes.

482 We describe this in section 6.1.2.5.

6.1.2.2 Issues to be solved and solutions

483 No taxation should occur where goods supplied are not "consumed" in the EU. In order to achieve this, the exemption for exports has been introduced in the VAT Directive. The supply of goods dispatched or transported to a destination outside the EU by or on behalf of the vendor is VAT exempt (article 146(1)(a) of the VAT Directive). If the goods are dispatched or transported to a destination outside the EU by or on behalf of the customer, the supply is exempt only if the customer is not established in the Member State where the goods are located at the time dispatch or transport begins (article 146(1)(b) of the VAT Directive).

484 Where the customer is established in the Member State where the goods are located at the time dispatch or transport begins to a destination outside the EU and the customer is responsible for the transport, the exemption upon exportation is not applicable.

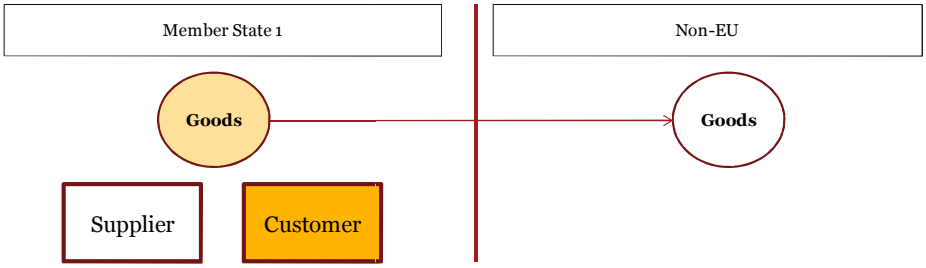
485 The localisation of the goods at the time dispatch or transport to a destination outside the EU begins, the place of establishment of the customer and the person responsible for the transport are the decisive factors to apply the export exemption.

486 However, under the new B2B localisation principle, neither the localisation of the goods (ship from), nor the physical flow of goods (ship to) should define the place of taxation. Nevertheless the export exemption should continue to apply.

487 The first issue to be solved is visualised in figure 6.1.

Figure 6.1: Exemption upon exportation

Diagram 54
GROUP EX1 – Scenario 1



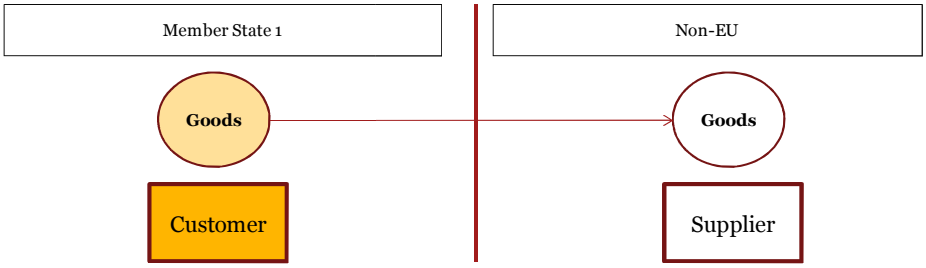
Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	**MS1**– the place where the customer is established
NO CHANGE IN PLACE OF SUPPLY **NO CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

488 We advise that, in the short term, the export exemption should be applicable once the goods leave the EU and be limited to that "one" transaction to which dispatch or transport of the goods outside the EU can be attributed. Whether the supplier or the customer is dispatching or transporting the goods to a destination outside the EU should no longer be of relevance. This amendment will not require extensive revision of the current export exemption.

489 The second scenario where an issue occurs is visualised in figure 6.2.

Figure 6.2: Exemption upon exportation

Diagram 56
GROUP EX3 – Scenario 3



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	**MS1**– the place where the customer is established
NO CHANGE IN PLACE OF SUPPLY **CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

490 Where the supplier and customer are not established in the same Member State, the customer is in principle liable for VAT in the "to be" situation, unless he proves that the exemption upon exportation applies. The customer incurs a new burden of proof compared to the "as is" situation, where it was always the supplier who had to provide evidence of the export exemption.

491 The customer claiming the export exemption should have sufficient evidence of the transport of the goods outside the EU. At this moment the most common documents used in this respect are, amongst others, the customs export declaration, transport documents, bill of lading, insurance documents and payment documents. Where the supplier is responsible for the dispatch or transport of the goods to a destination outside the EU, the customer should obtain these documents from the supplier, which can be quite difficult to gather. Therefore, we advise that where the customer claiming the export exemption would not receive a complete set of documents from the supplier, he should also be able to prove the transport of goods outside the EU based on the subsequent use or supply of the goods outside the EU. For instance, if the customer subsequently installs or assembles the goods at a production plant in Brazil, it could use that evidence to apply the export exemption.

492 Finally we draw your attention to the following. The customer may not have the necessary documentation to prove the export exemption at the time the VAT becomes due. If the customer is liable for VAT and accounts for it, he will, in principle, not have a right to deduct as the VAT was, in principle not due (articles 167 to 192 of the VAT Directive). The same is true where the supplier is liable to pay VAT and would unduly charge VAT to the customer. For proper functioning of the new B2B localisation and liability principle, at least in the long term, we advise, that the customer in this case should have a right to deduct VAT and should not be penalised.

493 As exports of goods represent a large part of trade in the EU, we believe a comprehensive solution is required solving all the above issues at once, which we describe in chapter 8, section 8.4.

6.1.2.3 Impact on tax authorities

494 We start our impact assessment from the point of view of the "as is" country of taxation, being the country where taxation takes place under the existing place of supply rules. In the case where the application of the new B2B localisation principle shifts the taxation to another Member State, we also review the impact on the "to be" country of taxation.

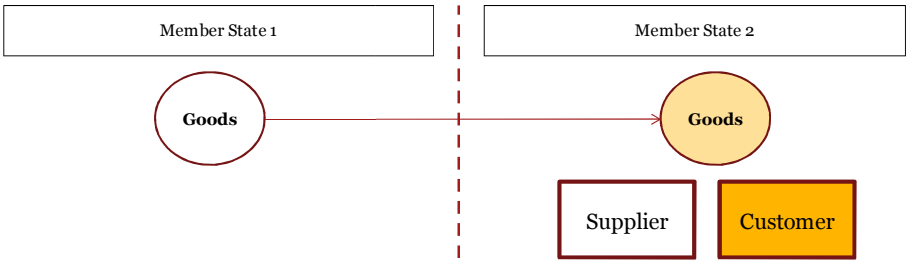
a) Cash flow impact

495 We identified a positive cash flow impact on the "as is" country of taxation for 1 of the 56 scenarios.

496 It concerns the situation visualised in figure 6.3 for EU cross-border supplies of goods.

Figure 6.3: Cross-border supply of goods within the EU

Diagram 39
GROUP EU8 – Scenario 24



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time the dispatch or transport to the customer begins (i.e. intra-Community supply)	**MS2** – the place where the customer is established
MS2 – 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 BUT NOT IN PLACE OF ACTUAL TAXATION **CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

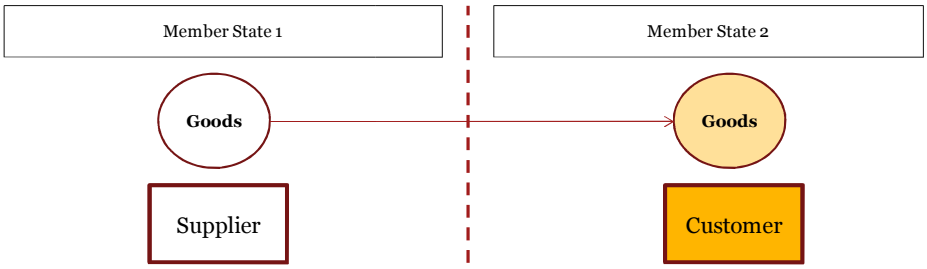
497 In the "as is" situation, the customer is liable for VAT on the intra-Community acquisition in Member State 2 where the dispatch or transport of the goods ends. The customer in principle is able to deduct the VAT paid via its VAT return filed in Member State 2.

498 In the "to be" situation, the place of supply shifts from Member State 1 to Member State 2, where the customer is established. However, as the supplier and the customer are established in the same Member State, the supplier will be liable for payment of VAT. The supplier will issue an invoice with VAT of Member State 2 and the customer in principle will deduct the VAT paid to the supplier in the VAT return of Member State 2, where he is established. Hence, Member State 2 will potentially benefit from a pre-financing of VAT as there can be a time span between the payment of VAT to the tax authorities by the supplier and the VAT deduction/refund in the hands of the customer.

499 In almost half of the scenarios, there is no cash flow impact for the "as is" country of taxation (24 of the 56 scenarios). This is the case where the Member State of taxation and the person liable for payment of the VAT do not change (5 of the 24 scenarios). The same applies where the customer was already liable for payment of the VAT on the intra-Community acquisition of goods (9 of the 24 scenarios). This is visualised in figure 6.4[25]. When the customer was liable for payment of the VAT on the intra-Community acquisition of goods in another Member State than its Member State of establishment in the "as is" situation and the supplier becomes liable in the "to be" situation, there is also no cash flow impact for the "as is" country of taxation (2 of the 24 scenarios).

Figure 6.4: Cross-border supply of goods within the EU

Diagram 16
GROUP EU1 – Scenario 1



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time the dispatch or transport to the customer begins (i.e. intra-Community supply)	**MS2** – the place where the customer is established
MS2 – 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 BUT NOT IN PLACE OF ACTUAL TAXATION NO CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT	

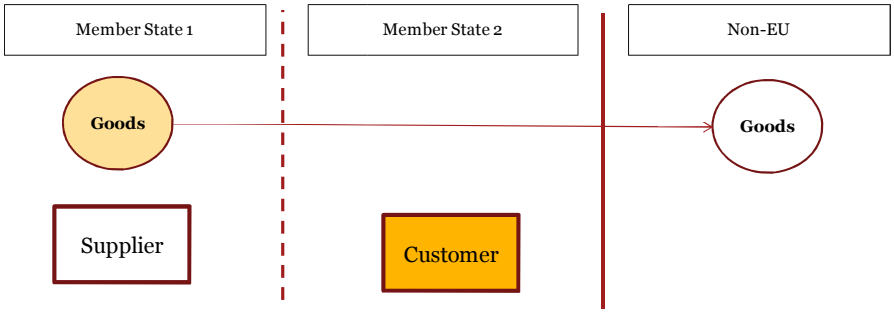
500 There is also no cash flow impact where the current exemption upon exportation applies in the "as is" and "to be" situations (7 of the 24 scenarios). In the "as is" and "to be" situations, no VAT will be due because the exemption upon exportation applies. Figure 6.5 provides a visual in this respect.

501 If the current exemption upon exportation is not applicable there will only be no cash flow impact where the supplier and customer are established in the same Member State (1 scenario of the 24).

[25] As of the total EU trade 10,7% is qualified as intra-EU cross-border trade without double count, it is advisable to make a quantitative assessment in order to obtain a more precise result. In this respect, we also refer to the PwC Expert Study on VAT and Pan-European businesses – Specific Contract No. 4, TAXUD/2011/DE/307.

Figure 6.5: Export of goods outside the EU

Diagram 58
GROUP EX4– Scenario 5



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	**MS2**– the place where the customer is established
CHANGE IN PLACE OF SUPPLY **CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

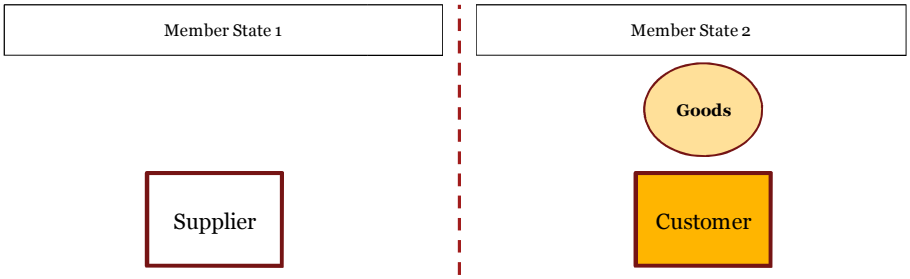
502 We found a negative cash flow impact for the "as is" country of taxation for 31 of the 56 scenarios. It concerns scenarios with respect to local supplies of goods (18 of the 31 scenarios), EU cross-border supplies of goods with installation or assembly by or on behalf of the supplier (11 of the 31 scenarios) and export supplies for which the exemption upon exportation is currently not applicable (2 of the 31 scenarios).

503 A negative cash flow impact occurs where the country of taxation "as is" and "to be" is the same but the customer becomes liable for paying the VAT instead of the supplier (11 of the 31 scenarios).

504 Figure 6.6 illustrates this for local supplies of goods.

Figure 6.6: Local supplies of goods

Diagram 2
GROUP L1 – Scenarios 4, 5 and 6



Current treatment	Future treatment
Place of supply	Place of supply
MS2 – the place where the goods are located at the time when supply takes place	**MS2** – the place where the customer is established
MS2 – the place where the goods are located at the time dispatch or transport to the customer begins	
MS2 – the place where the goods are installed or assembled	
NO CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT	

505 In the "as is" situation, the place of supply is where the goods are located at the time when the supply takes place or at the time dispatch or transport to the customer begins, being in Member State 2. The supplier issues an invoice with VAT of Member State 2 and needs to pay this VAT to Member State 2. The customer is able to deduct the VAT paid to its supplier via its VAT return filed in Member State 2.

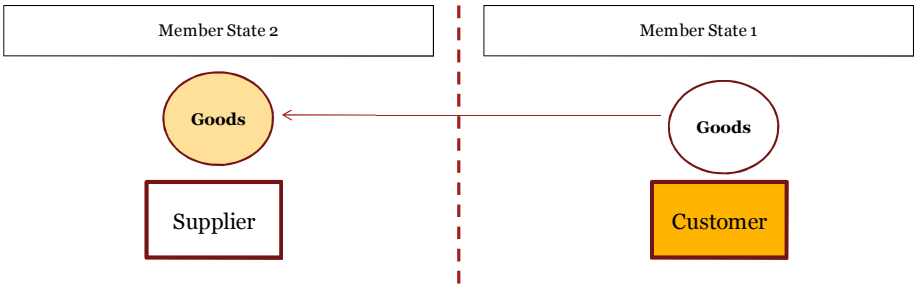
506 In the "to be" situation, the place of supply is unchanged. It remains where the customer is established, which is in Member State 2. The customer however has become liable for paying the VAT as the supplier and the customer are not established in the same Member State. The customer will pay the VAT via a reverse charge in the VAT return to be filed in Member State 2 and will in principle at the same time be entitled to deduct the VAT paid. Hence, VAT is no longer pre-financed in Member State 2.

507 The VAT is also no longer pre-financed in the "as is" country of taxation when the country of taxation changes in the "to be" situation. This occurs in 20 of the 31 scenarios, with a negative cash flow impact on the "as is" country of taxation.

508 Figure 6.7 shows an example for EU cross-border supplies of goods with installation or assembly by or on behalf of the supplier.

Figure 6.7: Cross-border supplies of goods within the EU with installation or assembly by or on behalf of the supplier

Diagram 26
GROUP EU4 – Scenario 11



Current treatment	Future treatment
Place of supply	Place of supply
MS2 – the place where the goods are installed or assembled	**MS1** – the place where the customer is established
CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION **CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

509 In the "as is" situation, the place of supply is in Member State 2 where the goods are installed or assembled. The supplier issues an invoice with Member State 2 VAT and needs to pay this VAT to the tax authorities of Member State 2. The customer can in principle obtain a deduction/refund of the VAT paid in Member State 2.

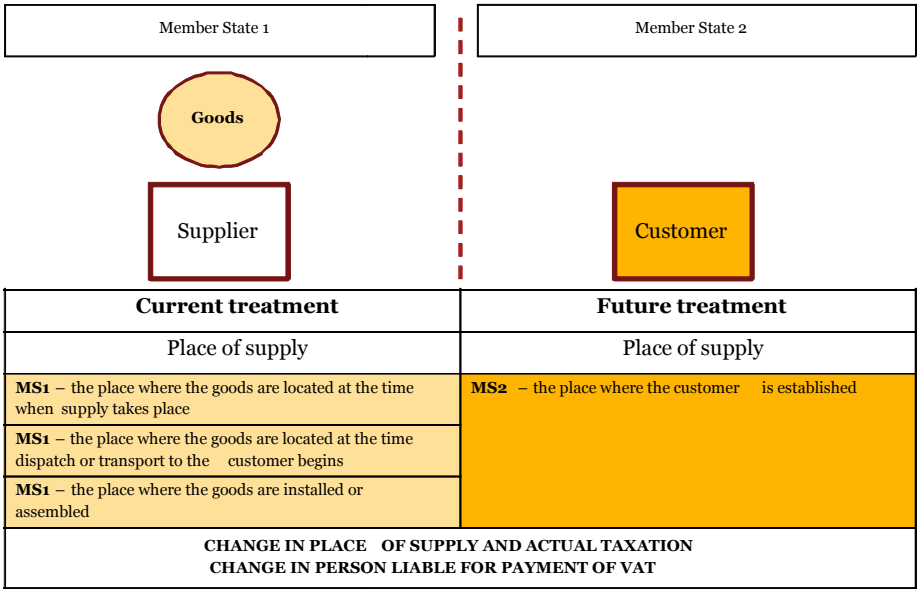
510 In the "to be" situation, the place of supply changes from Member State 2 to Member State 1, where the customer is established. Hence, there is no taxation, nor any pre-financing of VAT in Member State 2. In the example at hand, there will be no cash flow impact in Member State 1, the "to be" country of taxation, as the customer is liable for paying the VAT (15 of the 20 scenarios). To the extent that the supplier is liable for paying the VAT (as the supplier and customer are established in the same Member State), there will also be a negative cash flow impact in the "as is" country of taxation due to the change of country of taxation in the "to be" situation (5 of the 20 scenarios).

b) Revenue impact

511 There will be a negative revenue impact for the "as is" country of taxation, in case the taxation shifts to another Member State and to the extent the customer does not have a full right to deduct VAT (i.e. non-taxable legal persons, flat-rate scheme farmers, small enterprises subject to the special regime, taxable persons with limited or no right to deduct VAT) (28 of the 56 scenarios). Under the same circumstances, the "to be" country of taxation will benefit from a positive revenue impact. We refer to the example in figure 6.8 in this respect.

Figure 6.8: Local supplies of goods

Diagram 4
GROUP L3 – Scenarios 11, 12 and 13



512 If there is no shift in country of taxation (18 of the 56 scenarios) or in cases of exports (10 of the 56 scenarios), there will be no revenue impact.

c) Impact on ease of administration and cost of collection

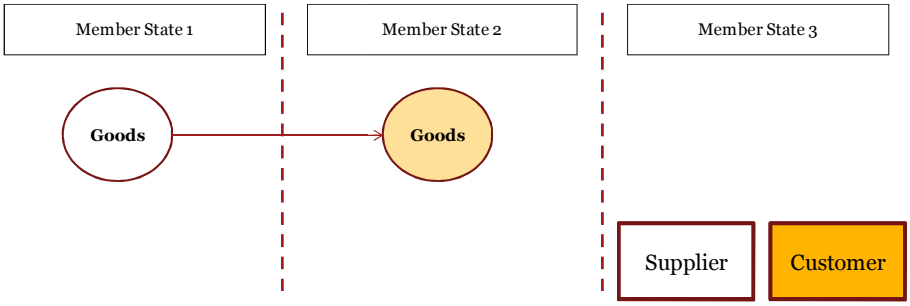
513 There might be a positive impact on the ease of administration and cost of collection for the "as is" country of taxation as VAT is always due in the Member State where the customer is established, which should decrease the potential for disputes (46 out of 56 scenarios).

514 The possible positive impact is also due to the fact that the non-established supplier (31 of the 46 scenarios) or customer (8 of the 46 scenarios) no longer needs to register for VAT in the "as is" country of taxation. Consequently, the administrative work in terms of managing registrations and processing data from VAT returns and listings might decrease compared to the current situation.

515 Whenever the supplier and customer are established in the same Member State, cross-border transactions will be more easily auditable. The information captured in recapitulative statements will no longer be required for such VAT audits. We refer to the example in figure 6.9 in this respect.

Figure 6.9: Cross-border supply of goods within the EU

Diagram 37
GROUP EU7– Scenario 22



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time the dispatch or transport to the customer begins (i.e. intra-Community supply)	**MS3**– the place where the customer is established
MS2 – 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 **CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

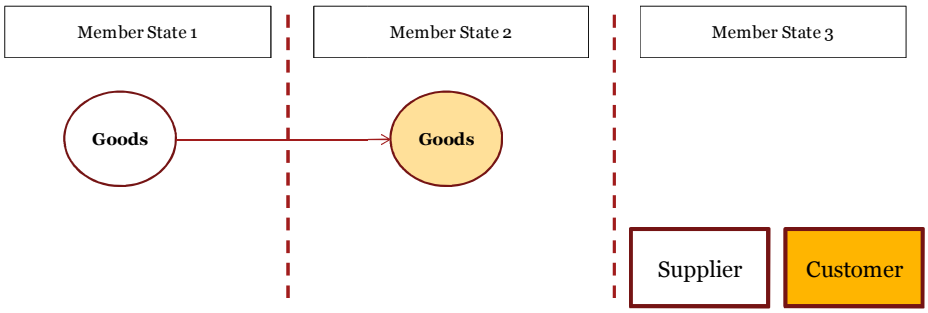
516 When VAT is no longer collected in the "as is" Member State of taxation, the related activities will be eliminated. This is the case where the place of taxation is shifted to another EU Member State (32 of the 46 scenarios). This is also the case where the country of taxation remains in the "as is" Member State but the customer becomes liable for payment of VAT (14 of the 46 scenarios).

517 When there is no change in country of taxation and person liable for payment of VAT (10 of the 56 scenarios), there is no impact. This situation occurs for local supplies of goods where the supplier and customer are established in the same Member State where the goods are also located. This is also the case for EU cross-border supplies of goods where the customer is established in the Member State where the goods arrive.

518 The contrary also occurs where the place of taxation is shifted to another EU Member State in the "to be" situation, resulting in an increased need for supervision and inspections in that Member State, for instance in the case where the supplier and customer are established in the same Member State and the supplier is liable for payment of the VAT (8 of the 56 scenarios). We refer to the example in figure 6.10 in this respect.

Figure 6.10: Cross-border supply of goods within the EU with installation or assembly by or on behalf of the supplier

Diagram 35
GROUP EU7– Scenario 20



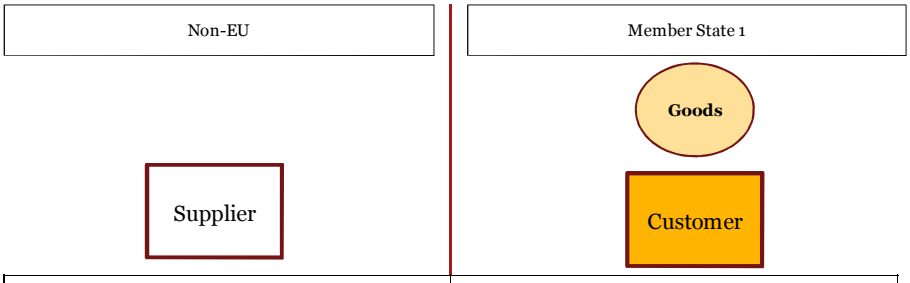
Current treatment	Future treatment
Place of supply	Place of supply
MS2 – the place where the goods are installed or assembled	**MS3**– the place where the customer is established
CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION **NO CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

d) Prevention of fraud and abuse on an EU level

519 It seems that the new B2B localisation and liability principle shall better safeguard the tax revenues of the Member States, especially where the liability for payment of the VAT shifts from a non-EU supplier to an EU customer (12 of the 56 scenarios). We refer to the example in figure 6.11 in this respect.

Figure 6.11: Local supplies of goods

Diagram 1
GROUP L1 – Scenarios 1, 2 and 3



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time when supply takes place	**MS1** – the place where the customer is established
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	
MS1 – the place where the goods are installed or assembled	
NO CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION **CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

6.1.2.4 Impact on taxable persons

520 The application of the new B2B localisation principle has a positive impact on taxable persons in most scenarios. The only negative impact would appear where, from a VAT point of view, the supplier or the customer becomes liable for paying VAT compared to the "as is" situation and where the customer has a burden of proof with respect to the exemption upon exportation (see section 6.1.2.2).

521 As further explained below, there will also be a negative impact for a specific group of customers that will be obliged to be registered for VAT for purchases of goods in the "to be" situation, whereas this was not the case in the "as is" situation (see section 6.1.2.5).

522 We provide below an overview of the impact on taxable persons.

a) Budgetary impact

523 The paragraphs below only review the budgetary impact for the taxable person for B2B supplies of goods. In order to determine the full impact on the taxable person, we need to analyse the broader picture. For the supplier, the impact depends on its overall VAT position in the "as is" and "to be" country of taxation, the payment terms granted to the customer and the time of payment of VAT to the local tax authorities.

524 For the customer, the impact depends on its overall VAT position in the "as is" country of taxation, being payable or refundable, on the payment terms with the supplier and the time frame within which the VAT is refunded in the relevant Member State (in the case of refunds).

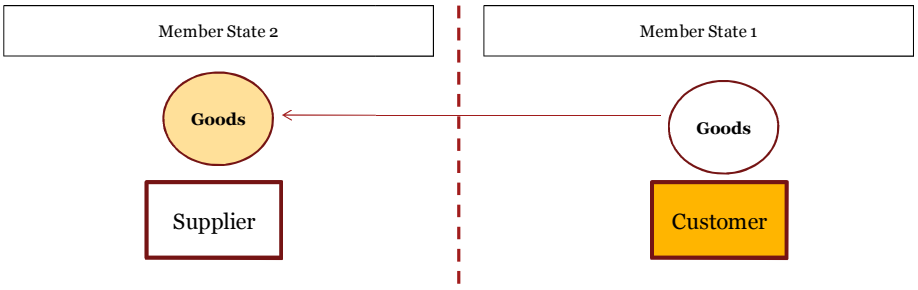
525 With respect to local supplies of goods and EU cross-border supplies of goods with installation or assembly by or on behalf of the supplier, there is a positive budgetary impact for the supplier and the customer in 29 of the 34 scenarios.

526 The positive budgetary impact occurs where VAT is no longer pre-financed. For the supplier, pre-financing of VAT occurs when payment of VAT to the local tax authorities has to be made prior to the payment of the invoice by the customer. Where the supplier no longer pre-finances the VAT, the risk related to bad debts (and the pre-financing of VAT) will also disappear for the supplier. For the customer, VAT is pre-financed if VAT has to be paid to the supplier prior to the VAT deduction/refund of this VAT by the tax authorities.

527 The customer and supplier no longer pre-finance VAT where the liability shifts from the supplier to the customer (24 of the 29 scenarios). Please see figure 6.12.

Figure 6.12: Cross-border supply of goods within the EU with installation or assembly by or on behalf of the supplier

Diagram 26
GROUP EU4 – Scenario 11



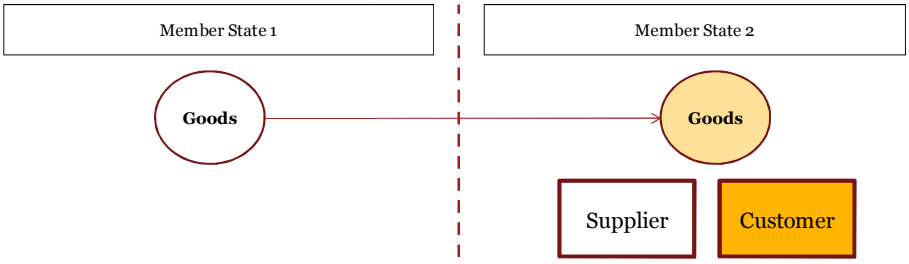
Current treatment	Future treatment
Place of supply	Place of supply
MS2 – the place where the goods are installed or assembled	**MS1** – the place where the customer is established
CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT	

528 There is also a positive impact for the customer even where pre-financing of VAT remains because the supplier becomes liable for VAT but the customer is now able to deduct the VAT in its Member State of establishment in the "to be" situation (5 of the 29 scenarios). Especially when the customer requested the refund in another Member State in the "as is" situation, we see a positive impact. Most companies only file a refund claim once per calendar year and usually by 30 September of the year following that in which the VAT is due.

529 The supplier is however negatively impacted in 3 of the 56 scenarios. It concerns the case where the supplier becomes liable for paying the VAT (as the supplier and the customer are established in the same Member State) whereas, in the "as is" situation, it was the customer who was liable to pay the VAT on the intra-Community acquisitions of goods. In the "to be" situation, the supplier will issue an invoice with VAT of its Member State of establishment. Please see figure 6.13 for an illustration.

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

Diagram 39
GROUP EU8 – Scenario 24



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time the dispatch or transport to the customer begins (i.e. intra-Community supply)	**MS2** – the place where the customer is established
MS2 – 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 BUT NOT IN PLACE OF ACTUAL TAXATION **CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

530 For all scenarios where the supplier and the customer are established in the same Member State (16 of the 56 scenarios), a risk of distortion might occur. The risk indeed exists that the customer would prefer to contract with a supplier not established in his Member State in order to optimise his cash flow.

531 There is no budgetary impact for the supplier and customer where there is no change in Member State of taxation and/or person liable for payment of VAT or where the customer was already liable for payment of VAT on the intra-Community acquisition of the goods.

532 There is also no budgetary impact where the current exemption upon exportation applies (7 of the 56 scenarios).

b) Impact on legal certainty and simplicity

533 In 50 of the 56 scenarios analysed, we found a positive impact on the supplier and the customer as there is improved legal certainty and simplicity.

534 The new localisation rule will be easier to administer than the current localisation rules. Certainty will exist regarding who is liable as VAT will always be due in the Member State where the customer is established. Where the customer has in addition to its main place of business other fixed establishments, defining the place of taxation under the current rules is difficult. However, we have suggested measures (place of supply based on contractual arrangements and the concept of a deemed supply) crucial to achieving correct taxation with a view to avoiding a negative impact on both tax authorities and taxable persons. These measures require extensive revision of the current rules. In this respect, we also refer to chapter 8, section 8.2.

535 There is no impact in the hands of the supplier and the customer for local supplies of goods and exports where the Member State of taxation and person liable for payment of VAT do not change (6 of the 56 scenarios).

c) Shift of liability

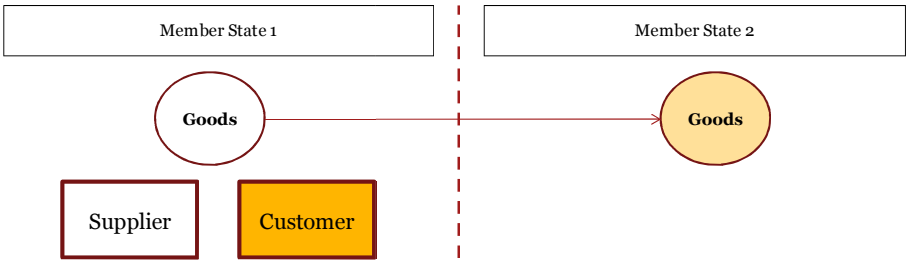
536 For local supplies of goods, EU cross-border supplies with installation and assembly by or on behalf of the supplier and exports of goods, a positive impact for the supplier and a negative impact for the customer occur where the supplier and the customer are not established in the same Member State. Under the new B2B localisation and liability principle, the customer will indeed become liable for paying VAT in a majority of the scenarios analysed (31 of the 56 scenarios). This shift in liability is positive for the supplier as he is no longer responsible for paying the VAT due.

537 Where the supplier and the customer are established in the same Member State, there is no impact for both of them (16 of the 56 scenarios).

538 However, where the supplier and the customer are established in the same Member State, there is no impact for the supplier as he was already liable for paying the VAT with respect to the intra-Community supply of goods when the conditions with respect to the exemption were not fulfilled. Nevertheless, there will be a positive impact for the customer as the latter is no longer liable for VAT on the intra-Community acquisition of goods (3 of the 16 scenarios). This is shown in figure 6.14.

Figure 6.14: Cross-border supply of goods within the EU

Diagram 36
GROUP EU7 – Scenario 21



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time the dispatch or transport to the customer begins (i.e. intra-Community supply)	**MS1** – the place where the customer is established
MS2 – the place where dispatch or transport of the goods to the person acquiring them ends (i.e. intra-Community acquisition)	
NO CHANGE IN PLACE OF SUPPLY BUT IN PLACE OF ACTUAL TAXATION CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT	

539 For EU cross-border supplies of goods, there is in 9 of the 56 scenarios no impact for the customer as the latter was already liable for the VAT due on its intra-Community acquisitions of goods. For the supplier not established in the same Member State as the customer, there is a positive impact as he is no longer liable for paying the VAT in the case where the conditions for exempting the intra-Community supply of the goods are not fulfilled.

d) Impact on cost of implementation and compliance

540 It can be said that there is either no impact for both the supplier and the customer (6 of the 56 scenarios) or a positive impact for the supplier and/or the customer (45 of the 56 scenarios) on the cost of implementation and compliance.

541 For both the supplier and the customer, there is a possibility for full automation reducing time spent on compliance. The VAT determination logic is only based on the place of establishment of the customer and the supplier.

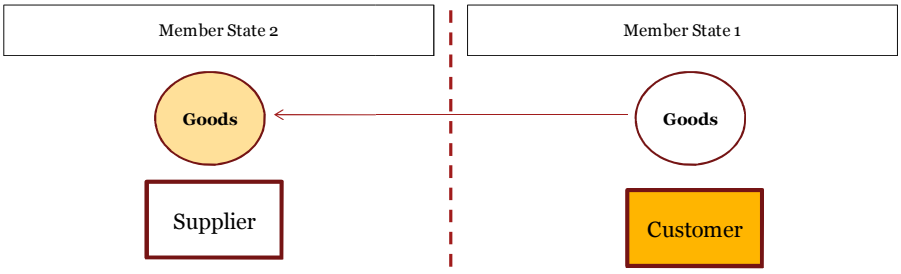
542 The implementation of the new B2B localisation principle requires limited changes to processes, systems and technologies. The need to train staff in order to comply with the new VAT treatment of the supply should also be limited.

543 In a number of scenarios (31 of the 56 scenarios), the supplier will no longer be required to register for VAT in the Member State where the goods are located. Therefore the compliance cost will be reduced. All compliance requirements being defined by the country of establishment of the supplier, those will be easier to manage in day-to-day practice and at no additional cost (e.g. no need to know the specific compliance requirements of other Member States and to maintain the systems, processes, technologies up to date in case of changes and no need to retrain staff in case of changes or to use external advisers for those purposes).

544 Also the customer will no longer be required to register for VAT purposes with respect to supplies of goods that are transported to other EU Member States than his Member State of establishment (8 of the 56 scenarios). This is visualised in figure 6.15.

Figure 6.15: Cross-border supply of goods within the EU

Diagram 23
GROUP EU3 – Scenario 8



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time the dispatch or transport to the customer begins (i.e. intra-Community supply)	**MS1** – the place where the customer is established
MS2 – the place where dispatch or transport of the goods to the person acquiring them ends (i.e. intra-Community acquisition)	
NO CHANGE IN PLACE OF SUPPLY BUT IN PLACE OF ACTUAL TAXATION **NO CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

545 In the "as is" situation, the customer was required to register for VAT purposes in the Member State where the dispatch or transport of the goods ends, being Member State 2. In the "to be" situation, he is no longer required to register for VAT in Member State 2 as the VAT is due in Member State 1 where he is established.

546 In the case of EU cross-border supplies of goods, the supplier also no longer has the burden of proof that the goods were actually dispatched or transported to or installed in another EU Member State. The burden of proof with respect to the export exemption remains but is often shifted from the supplier to the customer, which has a positive impact on the supplier but creates a specific issue for the customer that needs to be solved (5 of the 56 scenarios)(see section 6.1.2.2).

6.1.2.5 Impact on purchases by farmers, taxable persons who only carry out supplies of goods and services on which VAT is not deductible and non-taxable legal persons

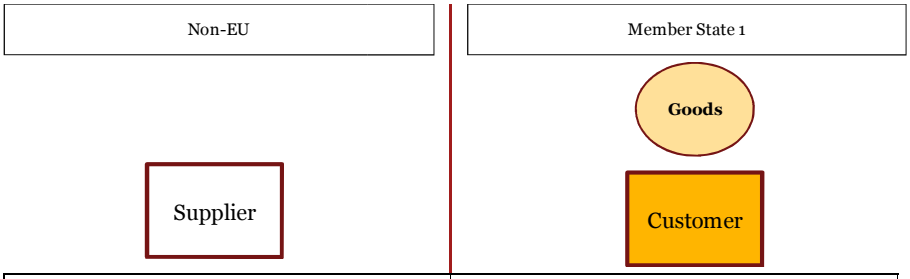
547 Farmers subject to the common flat-rate scheme for farmers, taxable persons who only carry out supplies of goods or services on which VAT is not deductible and non-taxable legal persons qualify as B2B customers.

548 In the case where goods are supplied locally or cross-border in the EU and the supplier is not established in the same Member State, those B2B customers will need a VAT registration.

549 Figure 6.16 provides an example for local supplies of goods.

Figure 6.16: Local supply of goods

Diagram 1
GROUP L1 – Scenarios 1, 2 and 3



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time when supply takes place	**MS1** – the place where the customer is established
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	
MS1 – the place where the goods are installed or assembled	
NO CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION **CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

550 In the "as is" situation, those customers do not have to comply with any VAT obligations with respect to the local purchase of goods located in Member State 1. The customer receives an invoice with VAT of Member State 1 and does not have a right to deduct VAT. In the "to be" situation, the customer will need to be identified for VAT purposes to be able to account for the VAT of Member State 1 on the purchase of goods. As its VAT status remains unchanged, it will still not have a right to deduct VAT.

551 The same applies for EU cross-border supplies of goods where those B2B customers currently are not required to account for VAT on their intra-Community acquisitions of goods, either as they did not exceed the threshold of EUR 10.000 defined in article 3(2) of the VAT Directive or as they did not exercise the option of article 3(3) of the VAT Directive. The supplier will charge VAT on the supply either of the Member State where the goods are transported from or of the Member State of arrival (in the case where the distance selling regime of article 33 of the VAT Directive applies). The VAT charged is neither deductible nor refundable for those B2B customers.

552 However, in the "to be" situation, the customer will need to obtain a VAT number and will be obliged to account for the VAT on the purchase of goods.

553 The VAT registrations imply an additional administrative burden for these B2B customers in order to be able to fulfil their new obligations. This will create costs for the tax authorities to manage those registrations. There will also be an additional need for supervisions and inspections of those B2B customers by the tax authorities increasing the cost of administration and collection.

554 Those B2B customers which currently are already required to account for VAT on their intra-Community acquisitions of goods, will not need a new VAT registration number in the "to be" situation if the intra-Community acquisition takes place in their Member State of establishment. One can assume this will be the case for the vast majority of these customers. The new B2B localisation and liability rules would in this case have no fundamental impact on these customers in respect of EU cross-border transactions or on the tax authorities concerned. Nevertheless, the size of the impact on those B2B customers and on the tax authorities should be assessed.

6.1.3 B2B supply of goods located in the EU to a customer not established in the EU

6.1.3.1 General conclusion

555 We have reviewed 20 scenarios. For all of them, the supplies of goods located in the EU are not taxed. This means the new B2B localisation principle is not functioning as no taxation will occur for supplies of EU goods. This issue also occurs in the case of B2B chain supplies involving non-EU customers and non-EU suppliers. In order for the new B2B localisation principle to work, it will be necessary for extensive measures to be taken from the outset.

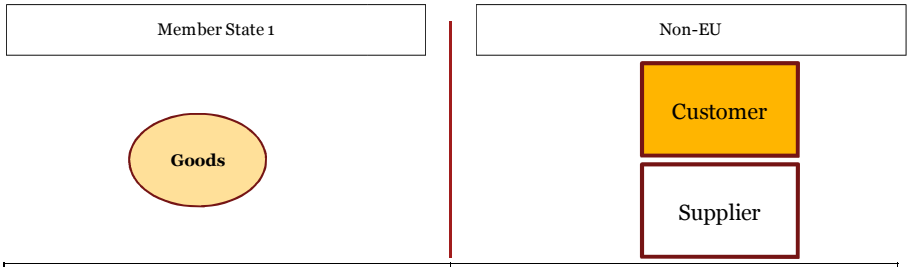
6.1.3.2 Issue to be solved

556 Under the new B2B localisation principle for supplies of goods, the supply of all goods, even those located in the EU, would be where the customer is established. Where the B2B customer is established outside the EU, the place of supply of the goods will be outside the EU. No EU VAT would be charged.

557 This is visualised in figure 6.17. Under the current localisation rules, the supply takes place in Member State 1 and VAT of Member State 1 is due. In the "to be" situation, no EU VAT will be due as the customer is established outside the EU.

Figure 6.17: Local supply of goods

Diagram 8
GROUP L5 – Scenarios 23, 24 and 25



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time when supply takes place	**Non-EU** – the place where the customer is established
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	
MS1 – the place where the goods are installed or assembled	
CHANGE IN PLACE OF SUPPLY FROM EU TO NON-EU NO TAXATION	

558 This result is not in line with the general working assumptions which provide that VAT should be due on this supply (see chapter 3). Our starting position is that EU VAT should always be due on goods located in the EU.

559 When looking for a solution to this issue and in view of globalisation of trade, the application of the new B2B localisation principle for supplies of goods should to the maximum extent possible (with limited risk of fraud and abuse) be available to non-EU suppliers trading goods within the EU, without having to follow the physical flow of goods in the EU.

560 In this respect, it should be underlined that specific rules are provided for services to avoid non-taxation. Indeed, if the place of supply of a service is outside the EU, a Member State may deem this place of supply to be shifted within the territory of that Member State where the effective use and enjoyment takes place (article 59a of the VAT Directive). For our Study, we do not want to pursue the effective use and enjoyment as an option as it would again mean following the physical flow of goods.

6.1.3.3 Proposed solutions

561 In order to resolve the key issue, we would like to suggest four different measures that need to be taken from the outset:

- Localisation of the place of supply where the non-EU customer has a VAT presence in the EU;
- Localisation of the place of supply where the non-EU customer has no VAT presence in the EU, i.e. where the EU supplier is established;

- Localisation of the place of supply where the non-EU customer has no VAT presence in the EU and the goods are supplied by a non-EU supplier;
- Joint liability of persons who have physical control or access to the goods, such as the transporter, warehouse keeper, toll manufacturer, agent, etc., and the suppliers and the customers.

6.1.3.3.1 Localisation of the supply where the non-EU customer has a VAT presence in the EU

562 We recommend extending the application of the new B2B localisation principle for B2B supplies of goods to a non-EU customer if he is identified for VAT purposes by means of the appointment of a VAT representative in one of the Member States. The appointment of a VAT representative would be deemed to qualify as a presence for VAT purposes in the EU ("an EU VAT presence"). For supplies to non-EU customers, the place of supply would be in the Member State where the non-EU customer has an EU VAT presence.

563 Broadening the application of the new B2B localisation rule to non-EU customers having an EU VAT presence would be an incentive for bona fide non-EU customers to appoint a VAT representative in the EU in order not to be confronted with EU VAT being charged and with VAT refunds. For the EU tax authorities, it will allow to keep track of the transactions located within the EU.

564 In this respect, the non-EU customer should provide the supplier with the particulars of his VAT representative. The supplier has to do the necessary security checks prior to applying the B2B localisation and liability rules for supplies to the non-EU customer with an EU VAT presence.

565 In principle, taxable persons established outside the EU and doing business in the EU should already be familiar with the VAT representative concept as it exists in many Member States; consequently in practice, there would be no difference from the "as is"-situation for those non-EU customers. Only one VAT representative would be required to have an EU "VAT presence" for the whole EU. This would still be beneficial for non-EU businesses compared with the current situation where they need to register for VAT or to appoint a VAT representative in all Member States where they make taxable B2B supplies.

566 Pursuant to article 204 of the VAT Directive, if the person liable to pay the VAT due in a Member State is a taxable person that is not established within that Member State, the relevant Member State can allow that taxable person to appoint a VAT representative as the person liable to pay the VAT. This provision is currently an option for the Member States. Most of them except for the Czech Republic, Ireland and Slovakia[26] have implemented this option in their local VAT legislation.

[26] A Guide to VAT in the 27 EU Member States, Norway and Switzerland, PwC, 2010, p. 1022.

567 This provision should be changed from being optional into an obligation for the Member States (from "may" to "shall") in order for the new B2B localisation principle for supplies of goods to work. Furthermore, suppliers not established in the EU with no other activities than supplying goods located in the EU to B2B customers who are liable to pay the VAT should be able to register for VAT purposes solely for purchases of goods under the new B2B localisation rule for which they are liable for VAT. Article 214 of the VAT Directive should be amended in this respect (similar as for article 214(1)(d) of the VAT Directive).

568 Moreover, the Member State, in which the non-EU customer should appoint a VAT representative, should be the Member State where the latter has its main economic activities with respect to the goods concerned.

569 In practice, this would translate into the Member State where the non-EU taxable person has a hub/warehouse/distribution centre or where the main supplier and/or customer are established. At the time when a VAT registration is applied for by appointing a VAT representative, the Member State concerned could request necessary evidence in this respect.

570 The non-EU taxable person might also have multiple VAT representatives due to the need to have multiple VAT identification numbers within the EU in view of its onward B2C sales of goods as long as a one-stop-shop scheme would not be implemented. Again the non-EU taxable person in principle should provide the supplier with a VAT identification number of the Member State where the goods are located. Nevertheless, it should always be kept in mind that the EU supplier of the goods should not be required to follow the physical flow nor be required to perform additional checks creating an additional administrative burden.

571 If a non-established trader would be identified only in one Member State and file VAT returns at an one-stop-shop (in one Member State of identification), all incoming and outgoing transactions would be reported in the same VAT return, allowing the Member State where the VAT representative is appointed to have a full picture of all transactions of goods located in the EU.

6.1.3.3.2 Localisation of the supply when the non-EU customer has no VAT presence in the EU, where the EU supplier is established

572 If the supplier is established in the EU or has a VAT presence in the EU but the customer is a non-EU customer without EU VAT presence, we recommend locating the place of supply where the EU supplier has established its business or where the non-EU supplier has an EU VAT presence. This localisation criterion fits within the general concept of no longer tracking the goods located within the EU.

573 Further to this specific place of supply rule, the supplier not provided with the particulars of a VAT representative within the EU of the non-EU B2B customer issues an invoice charging VAT of the supplier's Member State of establishment or the Member State where the supplier has an EU VAT presence. Should the non-EU customer request to be refunded the VAT of the latter Member State, it can do so via the refund procedure laid down in Directive 86/560/EEC[27] (article 171(2) of the VAT Directive). The VAT refund will only be granted if the tax authorities obtain evidence that the subsequent supply of these goods was subject to EU VAT.

574 If the non-EU customer sells the goods located in the EU to a B2B customer established in the EU, the latter will be liable for paying the VAT on the subsequent supply of goods (following the new B2B localisation and liability principle). In this case the refund could be granted to the non-EU customer.

575 In the case of a supply of goods located in the EU to a B2C customer, the non-EU customer should have registered for VAT purposes. In this case the refund would in principle be refused.

576 If we apply this localisation criterion to the example in figure 6.18, the supplier would charge VAT of Member State 1 to the non-EU customer.

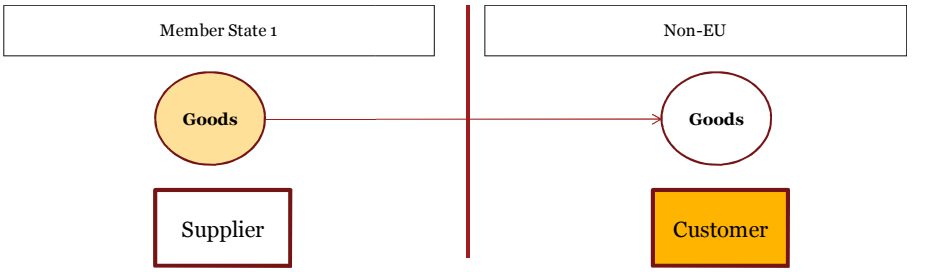
577 In this case also, the place of supply will be where the supplier is established, i.e. Member State 1. However, as the export exemption applies, the supplier will not charge VAT but has to evidence that the export exemption was applied correctly.

578 The subsequent supply will no longer fall within the scope of EU VAT. There will be no EU VAT formalities for the non-EU customer.

[27] 13th Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover tax arrangements for the refund of value-added tax to taxable persons not established within the EU.

Figure 6.18: Export of goods outside the EU

Diagram 61
GROUP EX5 – Scenario 8



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	**Non-EU**– the place where the customer is established
CHANGE IN PLACE OF SUPPLY FROM EU TO NON-EU	

6.1.3.3.3 Localisation of the supply when the non-EU customer has no VAT presence in the EU and the goods are supplied by a non-EU supplier

579 The question is how assurance can be provided that goods located within the EU sold by a non-EU supplier to a non-EU customer will be subject to EU taxation.

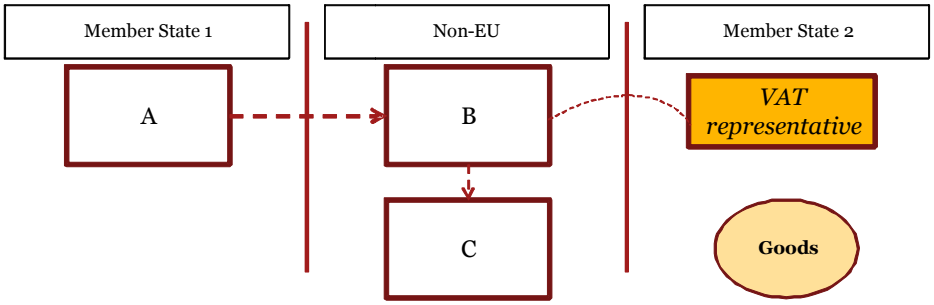
580 In order to ensure EU taxation, the Member State where the goods are located at the time of supply should have the power to tax those goods. Therefore the place of supply when the non-EU customer has no VAT presence in the EU and the goods are supplied by a non-EU supplier should be in the Member State where the goods are at the time of the supply.

581 This rule will only apply if the other localisation rules cannot be applied.

582 We will explain this by using a number of examples.

583 In figure 6.19, supplier A, being a supplier established in Member State 1, sells goods located in the EU to a non-EU customer B who has appointed a VAT representative in Member State 2. The goods are located and remain in Member State 2.

Figure 6.19: Chain supply with a non-EU customer with a VAT representative (a VAT presence) in the EU



	Current treatment	Future treatment
	Place of supply	Place of supply
A-B	**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 **MS1**– the place where the goods are installed or assembled	**MS 2** – the place where theVAT representative in the EU is established
B-C	**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 **MS1**– the place where the goods are installed or assembled	**MS2** – the place where the VAT representative in the EU is established

584 The non-EU customer B has appointed a VAT representative in Member State 2 as its EU stock is located in that Member State. The new B2B localisation and liability principle is applicable to the supply between supplier A and the non-EU customer B, meaning that the latter will be liable for paying VAT in Member State 2.

585 The non-EU taxable person B supplies goods to a non-EU customer C. If C has appointed a VAT representative, C has an EU VAT presence and the new B2B localisation principle applies. If C has not appointed a VAT representative, VAT is due in the Member State where B has a VAT presence through his appointed VAT representative, i.e. in Member State 2 (following the specific localisation criterion).

6.1.3.3.4 Joint liability

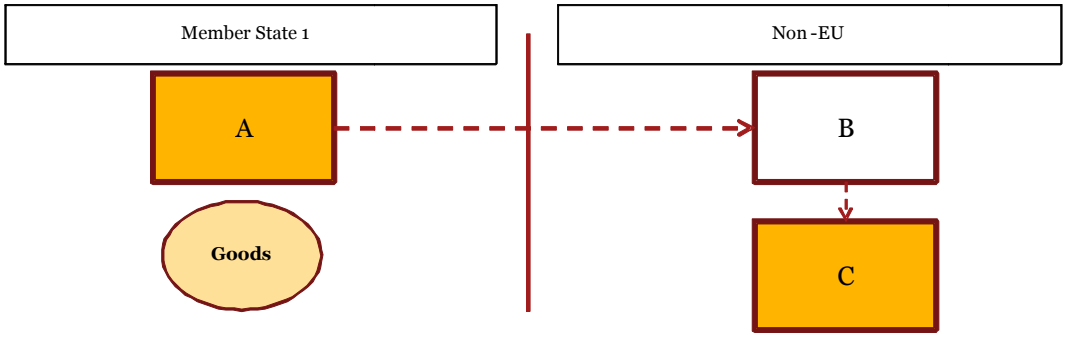
586 Problems appear when mala fide non-EU customers do not appoint voluntarily a VAT representative in the EU.

6.1.3.3.4.1 Joint liability of persons who have physical control or access to the goods

587 There is a risk of non-taxation of supplies of goods in the EU when a non-EU supplier supplies goods to a non-EU customer not having a VAT presence in the EU.

588 In figure 6.20, supplier A, being a supplier established in Member State 1, sells goods located in the EU to a non-EU customer B without an EU VAT presence. In this case the place of supply is where the EU supplier is established. Supplier A will charge VAT of Member State 1 to the non-EU customer B.

Figure 6.20: Chain supply between two non-EU customers with no VAT representative (no VAT presence) in the EU



	Current treatment	Future treatment
	Place of supply	Place of supply
A-B	**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 **MS1** – the place where the goods are installed or assembled	**MS 1** – the place where the EU supplier is established
B-C	**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 **MS1** – the place where the goods are installed or assembled	**MS1**– the place where the goods are located.

589 The non-EU customer B sells the goods located in the EU to another non-EU customer C, which also has no VAT presence in the EU. The place of supply is in Member State 1 where the goods are located.

590 B will be liable for payment of VAT in Member State 1. In order to mitigate the risk of B not registering by means of a VAT representative in Member State 1 and not paying the VAT due, we recommend introducing a joint liability. We recommend that a person other than the non-EU supplier or non-EU customer would be held jointly and severally liable for paying the VAT in the Member State where the goods are located, i.e. persons who have physical control or access to the goods such as the transporter, warehouse keeper, toll manufacturer, agent, etc. Article 205 of the VAT Directive needs to be amended in this respect.

591 A warehouse keeper storing goods of a non-EU customer, transporter or toll manufacturer (and any other person who has physical control or access to the goods) can only exclude its joined liability when its non-EU customer appoints an EU VAT representative. It is consequently not to be excluded that those entities will, as part of their risk management procedures, request their non-EU customers to appoint a VAT representative.

592 It should also be clear that non-EU and EU traders should to a large extent be able to make use of the exemptions related to customs warehouses, warehouses other than customs warehouses and similar arrangements for their EU trade. In this respect, articles 156 and 157 of the VAT Directive should be amended from an optional to an obligatory provision (from "may" to "shall") in the long term. This will lead to further simplification in respect of compliance for taxable persons and avoid VAT charges requiring additional auditing by tax authorities.

6.1.3.3.4.2 Joint liability for suppliers/customers

593 Based on article 205 of the VAT Directive, a previous supplier and subsequent business customer should also be held liable for paying the VAT (e.g. chain liability). Suppliers and business customers should manage chain supplies diligently by applying severe customer or supplier acceptance procedures.[28]

6.1.4 Importation of goods

6.1.4.1 General conclusion

594 For 10 scenarios reviewed, there is an issue with respect to the proper functioning of the new B2B localisation principle as double taxation would occur. In order for the new B2B localisation principle to function, mitigating measures will be required to exempt importation from the outset.

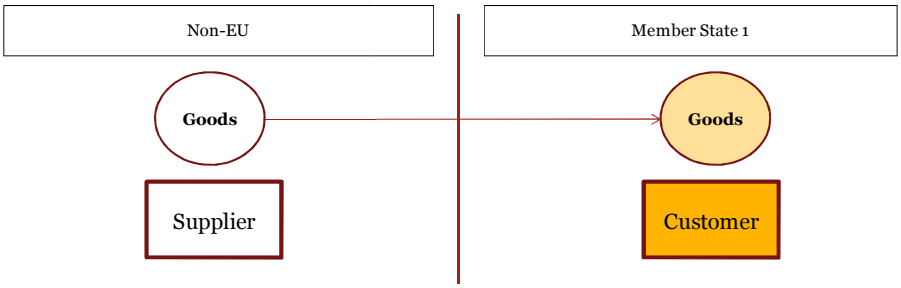
6.1.4.2 Issue to be solved and solution

595 If the importation of goods is taxed in the EU, the application of the new B2B localisation principle will lead to double taxation within the EU whenever the customer is established in the EU and acts as the importer of record.

[28] In accordance with EUCJ case law C255/02, Halifax and Others, 21 February 2006; joined cases C-354/03, C-355/03 and C-484/03, Optigen Ltd, Fulcrum Electronics Ltd and Bond House Systems Ltd, 12 January 2006.

Figure 6.21: Importation of goods into the EU

Diagram 44
GROUP IM1 – Scenario 1



Current treatment	Future treatment
Place of supply	Place of supply
Non-EU – the place where the goods are located at the time dispatch or transport to the customer begins	**MS1** – the place where the customer is established
MS1 – the place where the importation takes place	**MS1** – the place where the importation takes place
CHANGE IN PLACE OF SUPPLY FROM NON-EU TO EU DOUBLE TAXATION	

596 Under the new B2B localisation principle, there will be a shift in the place of supply from non-EU (where the goods are located at the time dispatch or transport begins) to the EU (where the customer is established).

597 In the example in figure 6.21, this means that in the "to be" situation the customer will be liable to pay VAT on the supply of goods in its Member State of establishment, being Member State 1. The customer, acting as importer of record, will also be liable to pay VAT upon importation of the goods in Member State 1. Hence, there will be double taxation.

598 In order to resolve this issue, it will be necessary to exempt the importation of goods (similar to the exemption for the importation of gas, electricity or heat or cooling energy in article 143(1)(l) of the VAT Directive). This exemption upon importation would apply where the customer acting as importer of record is established within the EU or has an EU VAT presence via the appointment of a VAT representative and is liable to pay the VAT in accordance with the new B2B localisation and liability rules. If own stock is imported, the import exemption will not be applicable. Import of goods by a non-EU established customer or customers without an EU VAT presence will not be exempt either as no risk of double taxation occurs in that case.

599 Where the possibility now already exists to exempt the importation of goods followed by an intra-Community supply of goods and the importation of gas through a natural gas system or any network connected to such a system or fed in from a vessel transporting gas into a natural gas system or any upstream pipeline networks, electricity, heat or cooling energy, in principle, we expect that no considerable changes will be needed to how the import system operates compared to the current rule. However, further research is needed with respect to the impact of the proposed VAT exemption, the control methodology and also the link with the central customs clearance as defined in article 106 of the Modernised Customs Code.[29] Specific guidelines will also be necessary for declarants (importers/customs agents) with respect to applying the proposed VAT exemption.

6.1.5 B2B supplies of goods located outside the EU to a customer established in the EU

6.1.5.1 General conclusion

600 For 9 scenarios reviewed, there is an issue with respect to the proper functioning of the new B2B localisation principle. In order for the new B2B localisation principle to work, the current situation of non- taxation of the supplies of non-EU goods should be maintained.

6.1.5.2 Issue to be solved and conclusion

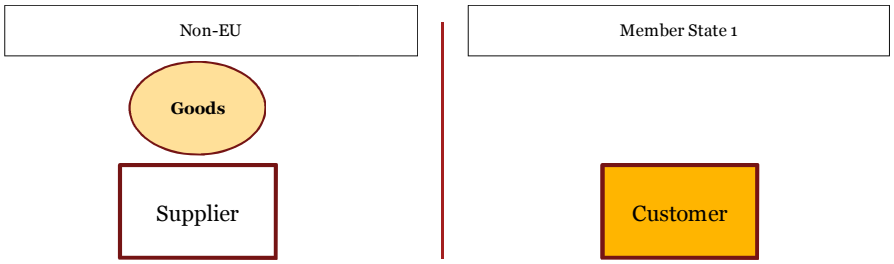
601 Under the new principle, there will be EU taxation where goods are located outside the EU which will not be shipped to the EU and are supplied to a customer who is established within the EU.

602 This result is not in line with the general working assumption of our Study stating that the supply of goods located outside of the EU should not be subject to EU VAT (see chapter 3). To the extent that the goods are also taxed in the non-EU country where they are located, there may be double taxation. This is visualised in figure 6.22.

[29] Regulation (EC) No. 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code.

Figure 6.22: Supply of goods located outside the EU

Diagram 11
GROUP L6 – Scenarios 32, 33 and 34



Current treatment	Future treatment
Place of supply	Place of supply
Non-EU – the place where the goods are located at the time when supply takes place	**MS1** – the place where the customer is established
Non-EU – the place where the goods are located at the time dispatch or transport to the customer begins	
Non-EU – the place where the goods are installed or assembled	
CHANGE IN PLACE OF SUPPLY FROM NON-EU TO EU	

603 As no EU VAT should be due, the supplier or customer established in the EU (or with an EU VAT presence) will have to evidence the whereabouts of the goods. In practice for the supplier, there is no difference with the current situation. Also in the current situation, the supplier needs to prove that no EU VAT was due as the goods were located outside the EU.

604 Following the application of the new B2B localisation and liability principles, the EU customer not established in the same Member State as the supplier will also have the burden of proof with respect to the whereabouts of the goods.

605 In practice, we do not expect significant problems in this respect as most traders have warehouse management systems tracking the location of goods. Only for traders of gas, electricity, heat or cooling energy, it needs to be investigated whether this would lead to simple taxation as these goods are physically difficult to track. For these goods the localisation is nearly impossible and this is the reason why the current localisation rules which are very similar to the new B2B localisation principle have been introduced.

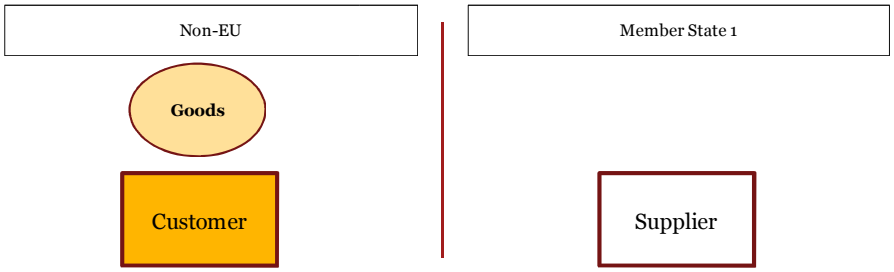
6.1.6 B2B supplies of goods located outside the EU to a customer not established in the EU

6.1.6.1 General conclusion

606 If the goods are and remain located outside the EU and the customer is established outside the EU, the application of the new B2B localisation rule will not lead to EU taxation as it is already the case today (6 scenarios reviewed; see figure 6.23 below).

Figure 6.23: Supply of goods located outside the EU

Diagram 14
GROUP L8 – Scenarios 41, 42 and 43



Current treatment	Future treatment
Place of supply	Place of supply
Non-EU – the place where the goods are located at the time when supply takes place	**Non-EU** – the place where the customer is established
Non-EU – the place where the goods are located at the time dispatch or transport to the customer begins	
Non-EU – the place where the goods are installed or assembled	
NO CHANGE IN PLACE OF SUPPLY	

607 However, the supplier should evidence that the goods are and remain located outside the EU. This is in line with the general working assumption of our Study that no tax should be charged on goods located outside the EU (chapter 3).

6.2 Qualitative assessment for onward B2C supplies of goods

6.2.1 Introduction

608 The impact of the new B2B localisation principle for onward B2C supplies was also assessed from the perspective of the tax authorities and the B2C supplier.

609 In this respect, the assessment focused on the impact when goods purchased with application of the new B2B principle are subsequently supplied in a B2C relationship. Notably, in the B2B relation, goods are taxed where the taxable person is established without following the physical flow. In the B2C relation, the goods will continue to be taxed where the consumption effectively takes place requiring to follow their physical flow.

610 The detailed assessment for the onward B2C supplies can be found in appendix 11. It contains a description of the purpose of the VAT regime, a summary of the provisions of the VAT Directive and visuals.

611 We have structured our findings on the impact and issues into two groups:

- B2B supply of goods and onward B2C supply of goods located in the same Member State;
- B2B supply of goods and onward B2C supply of goods not located in the same Member State.

612 You will find below an overview of the high-level impact assessment, the reconciliation and the control issue for the tax authorities and an explanation of a possible solution to mitigate this issue.

6.2.2 B2B supply of goods and onward B2C supply of goods located in the same Member State

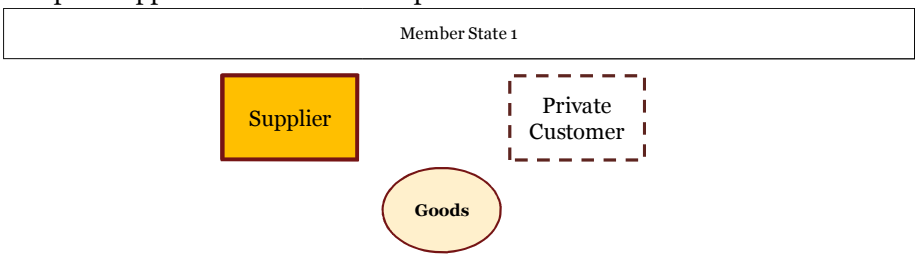
6.2.2.1 General conclusion

613 There are no technical VAT issues with respect to the interaction between the new B2B principle and the B2C principle in the scenarios at hand.

614 For both the B2B purchase of goods and the subsequent B2C supply of goods, the place of supply will be in the same Member State. Thus, the new B2B localisation principle is in line with the B2C localisation principle. This is visualised in figures 6.24 and 6.25.

Figure 6.24: Group L – Supplier and final consumption in same Member State

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

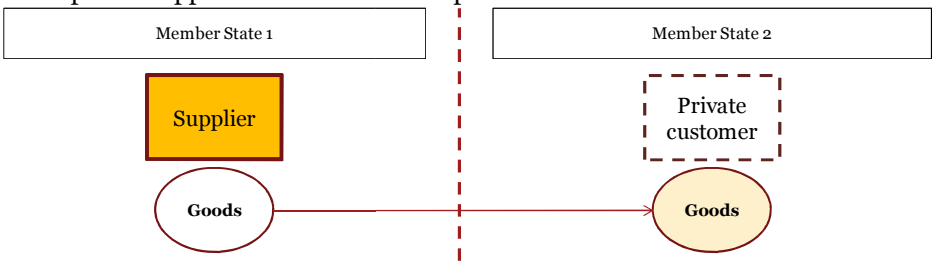


B2B place of previous supply	B2C transaction	B2C place of supply	Different country
MS1 – the place where the supplier is established	Goods picked up by the customer	**MS1** – the place where the goods are located at the time when the supply takes place	NO
	Goods dispatched or transported to the customer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

615 From figures 6.24 and 6.25, it appears that the B2C supplier will pay VAT of Member State 1 on the purchase of goods and will in its turn charge VAT of Member State 1 to its B2C customer. Both transactions will be recorded in the VAT return of the B2C supplier in Member State 1 allowing the tax authorities of Member State 1 to keep track of the goods.

Figure 6.25: 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

616 You will notice that, for figure 6.25, the same results will only occur when the goods are picked up by the customer in Member State 1 or when the supplier responsible for the transport does not exceed the distance sales threshold for supplies to the Member State of the private customer (or has not opted for taxation).

617 Nevertheless, in both situations, there is a reconciliation and control issue for the tax authorities of the Member States concerned. As the physical flow of the goods is no longer followed with respect to the B2B supply of goods, they might not know that the goods are within the Member State's territory. We refer to section 6.2.3.2, where we further elaborate on the one-stop-shop mechanism as a mitigating measure in this respect.

618 With respect to the distance sales threshold, this should still be audited by the Member States. Data should be exchanged between the Member States concerned on whether or not the supplier exceeds the distance sales threshold in order to ensure an accurate application of the distance sales rules.

6.2.3B2B supply of goods and onward B2C supply of goods not located in the same Member State

6.2.3.1 General conclusion

619 The B2B supply of goods to the B2C supplier and the subsequent B2C supply of those goods are from a VAT point of view no longer located in the same Member State. The new B2B localisation principle is not in line with the B2C localisation principle.

6.2.3.2 Issue to be solved and solution

620 There are no technical VAT issues with respect to the interaction between the new B2B principle and the B2C principle in the scenarios at hand, although the B2B purchase of goods and the subsequent B2C supply of these goods are from a VAT point of view no longer located in the same Member State. The new B2B localisation principle is not in line with the B2C localisation principle, but EU taxation will occur. Nevertheless, this needs to be qualified as tax authorities will have a high need of exchange of information to achieve their control objectives and be assured that a correct tax charge will be levied in the Member State of final consumption.

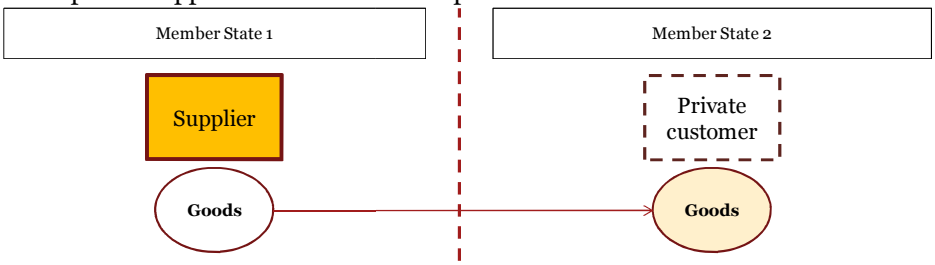
621 The example in figure 6.26 shows that the B2B supply of goods takes place in the Member State where the B2C supplier is established, i.e. Member State 1. Therefore, VAT of Member State 1 will be due on the purchase of goods.

622 If the B2C supplier has exceeded the distance sales threshold for supplies to the Member State of its customer or installs or assembles the goods at the customer's premises, the onward B2C supply will take place in Member State 2. This means that VAT of Member State 2 will be due on the B2C supply and that the B2C supplier needs to register for VAT in Member State 2 in this respect.

623 The B2C supplier will record the purchase of goods in its VAT return in Member State 1 and the onward B2C supply in its VAT return in Member State 2.

Figure 6.26: 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

624 Member State 1 will have to grant a VAT deduction with respect to goods of which the turnover is reported in Member State 2. Member State 1 does not have, based on the VAT return filed by the B2C 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.

625 Member State 2 will also not have sufficient information at hand, based on the VAT return filed by the B2C supplier in Member State 2, to audit whether all B2C supplies to be taxed in its country are indeed supplied with VAT. Therefore, the Member State will certainly want to obtain more information about the "origin" of the goods sold and the VAT treatment "applied" by the B2C supplier upon purchase of the goods.

626 There is a further control issue as the Member States concerned might not know whether the goods are within their territory or not. However, this issue already exists today under the distance sales regime where the Member State of consumption might not know that goods are supplied to B2C customers in its territory and whether the threshold for distance sales to its territory is exceeded or not.

627 In order to achieve their control objectives, both tax authorities will need to make additional VAT inquiries with the supplier and amongst themselves (exchange of information). This undermines the general idea of introducing a simplified VAT system for tax authorities and businesses.

628 It goes without saying that another mechanism is required to ensure that the simplification aimed at by the new B2B localisation principle is not lost, also in relation to B2C supplies. Therefore, the introduction of a one-stop-shop mechanism (OSS) is required in the short term[30]. The implementation of the mini one-stop-shop in 2015 is seen by many Member States and businesses as a major milestone that will pave the way for a more general use of this concept[31]. If no such one-stop-shop mechanism were available, the tax authorities would need to exchange huge amounts of information and request additional information from taxable persons, leading to higher administrative burdens and related costs.

629 The supplier would be subject to the compliance obligations (including invoicing) of its Member State of establishment. A single VAT return would be filed in its Member State of establishment wherein he would report its B2B and B2C transactions. The onward B2C supplies subject to VAT in other Member States would be reported in the same VAT return by the supplier and remitted to the Member State of establishment. This would provide the reconciliation data needed to the Member State of establishment between purchases/costs and sales/turnover.

630 The Member State of establishment would be able to identify risks. If there were any, it should be obliged to audit the supplier and inform the other Member States of the audit, allowing the latter to take assessment measures if necessary.

631 The one-stop-shop mechanism allows the tax authorities of the Member State of the B2C supplier to verify that all purchased or produced goods supplied are subject to VAT, either in its own Member State or in another Member State, or otherwise have been exported outside the EU. It will be up to the supplier to provide the necessary proof in this respect, including proof of the B2B status of the customer in view of applying the B2B localisation and liability rules and the export exemption.

632 Moreover, from a supplier's perspective, its compliance cost will reduce as it is allowed to file and will be audited in its Member State of establishment. As all compliance obligations of the Member State of establishment of the supplier would apply, this will allow greater automation of processes, technologies and systems.

633 Alongside the one-stop-shop mechanism, we recommend providing the following measures to further mitigate risks. They should be applied in a given sequence, as explained. First, any supplies for which the B2C supplier cannot prove that it concerns B2B supplies of goods should be considered to be B2C supplies taking place, in general terms, where the goods are located. Second, the B2C supplier is assumed to be liable to pay VAT due in the Member State of establishment, except if he could prove that VAT of the Member State of consumption has been charged and paid to the relevant tax authorities via the one-stop-shop mechanism. This is to ensure that there is in any case EU taxation with respect to the B2C supply of the goods.

[30] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT towards a simpler, more robust and efficient VAT system tailored to the single market, COM (2011) 851/3, 5.1.1 The one-stop-shop concept.

[31] Council Regulation amending Implementation Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons.

634 Should the tax authorities of the Member State where the goods are located levy local VAT, the B2C supplier should be able to obtain a refund of the VAT paid with respect to the supply in its Member State of establishment. This measure is similar to the provision currently applied in the case of intra-Community acquisitions where VAT is due in the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that VAT has been applied to that acquisition in the Member State where the dispatch or transport ends (article 41 of the VAT Directive).[32]

[32] In accordance with EUCJ case law: joined cases C-536/08 and 539/08, Staatssecretaris van Financiën, Facet BV and Facet Trading BV, 22 April 2010.

7 Qualitative assessment of the special regimes

7.1 Introduction

635 The impact of the new B2B localisation principle for B2B supply of goods covered by the special VAT regimes has been assessed from the perspective of the supplier, the customer and the tax authorities.

636 We have analysed 208 different scenarios. The detailed assessment can be found in appendices 5 to 10 containing a description of the purpose of the special regime, a summary of the provisions of the VAT Directive, visuals and extracts from the tables containing the scenarios.

637 In this chapter, we only look at the specific issues with respect to the functioning of the B2B localisation principle for goods located in the EU sold to customers established in the EU. In order to describe the impact and the issues identified, we have structured our analysis in seven groups:

- supply of gas through the natural gas system, supply of electricity and of heat or cooling energy (appendix 5 covering 104 scenarios);
- special scheme for small enterprises (appendix 6 covering 38 scenarios);
- special flat-rate scheme for farmers (appendix 7 covering 23 scenarios);
- second-hand goods subject to the margin scheme (appendix 8 covering 33 scenarios);
- supplies by exempt taxable persons and exempt supplies without input VAT deduction (appendix 9 covering 10 scenarios);
- supplies by non-taxable legal persons (appendix 9 covering 10 scenarios);
- the special scheme for investment gold (appendix 10).

638 Issues dealt with in chapter 6 are not analysed again in this chapter, such as supplies to non-EU customers or supplies of goods located outside the EU.

7.2 Supply of gas through the natural gas system, supply of electricity and of heat or cooling energy

7.2.1 Purpose of the special regime

639 Council Directive 2003/92/EC changed the place of supply rules for gas and electricity.[33]

640 Liberalisation of the gas and electricity sector entailed an increase in cross-border transactions between EU Member States. Exempting intra-Community supplies and taxing intra-Community acquisitions of gas and electricity would no longer lead to a simple tax regime.

641 Therefore, in order to avoid double taxation or no taxation and to attain a genuine internal market free of barriers in terms of VAT regimes, there was a need to reconsider the place of supply rules for those types of goods.[34] In this respect, it was decided to no longer follow the physical flow of gas and electricity to determine their VAT treatment. This decision was supported by the fact that in most cases it is not possible to link the commercial transaction and the physical flow of goods.

642 As supplies of heat and cooling energy through heating or cooling networks face the same problems, the specific VAT rules for gas and electricity were expanded to heat and cooling energy on 1 January 2011.[35] For gas, the special scheme was extended to imports and supplies of gas through any natural gas system situated within the EU or any network connected to such a system (hereinafter simply referred to as "supplies of gas through a natural gas system or supplies of gas") and for imports of gas by vessels where the gas is fed into a natural gas system or any upstream pipeline network.

7.2.2 Summary of relevant provisions

643 There is a distinction between non-consumptive and consumptive supplies of gas, electricity, heat or cooling energy.

644 Non-consumptive supplies of gas, electricity, heat or cooling energy shall mean the supplies of gas, electricity, heat or cooling energy which are made with a view to resale. Consumptive supplies are those which are considered to be purchased for consumption.

[33] Council Directive 2003/92/EC of 2 October 2003 amending Directive 77/388/EC as regards the rules on the place of supply of gas and electricity.

[34] Point 19 of the preamble to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

[35] Council Directive 2009/162/EU of 22 December 2009 amending Directive 2006/112/EC as regards the rules on the place of supply of gas and electricity.

645 Non-consumptive supplies take place where the (EU or non-EU) taxable dealer is established (article 38 of the VAT Directive). A taxable dealer is a taxable person whose principal activity in respect of purchases of gas, electricity, heat or cooling energy is reselling those goods and whose own consumption is negligible.

646 On the other hand, consumptive supplies take place where the customer effectively uses and consumes the goods (article 39 of the VAT Directive).

647 A further simplification with respect to the person liable for the payment of VAT was also adopted (to avoid a VAT registration in other EU Member States). The VAT registered customer is liable for the payment of VAT in the EU Member State where the supply takes place, unless the supplier is established within that EU Member State (article 195 of the VAT Directive).

648 In order to avoid double taxation in the EU, an exemption was introduced upon importation of gas through a natural gas system or any network connected to such a system or fed in from a vessel transporting gas into a natural gas system or any upstream pipeline networks, of electricity or of heat or cooling energy through heating or cooling networks (article 143(1)(l) of the VAT Directive).

7.2.3 General conclusion

649 There are in principle no VAT technical obstacles when applying the new B2B localisation principle for supplies of gas through the natural gas system, supplies of electricity and of heat or cooling energy in the consumption phase.

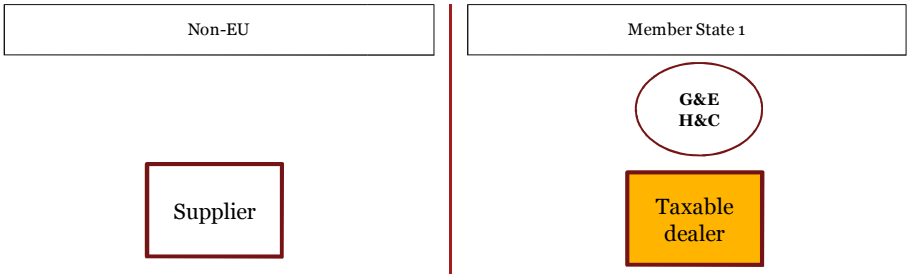
650 For consumptive supplies of gas, electricity, heat or cooling energy, the new localisation principle will be easier to handle than the current one, where the supplier needs to take account of the place where the customer effectively uses and consumes the goods to determine the place of supply. Under the new B2B localisation principle, the current VAT rule would only be applicable for B2C supplies.

651 For non-consumptive supplies of gas, electricity, heat or cooling energy located in the EU to EU customers the current localisation rule (article 38 of the VAT Directive) is already where the taxable dealer has established his business. The new B2B localisation principle will have no impact (see figure 7.1).

652 The only difference is that the new localisation principle will apply to all B2B customers and not only to taxable dealers.

Figure 7.1: Local supplies of goods

Diagram 64
GROUP G1 – Scenario 1



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the taxable dealer is established	**MS1** – the place where the taxable dealer is established
NO CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION **NO CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT**	

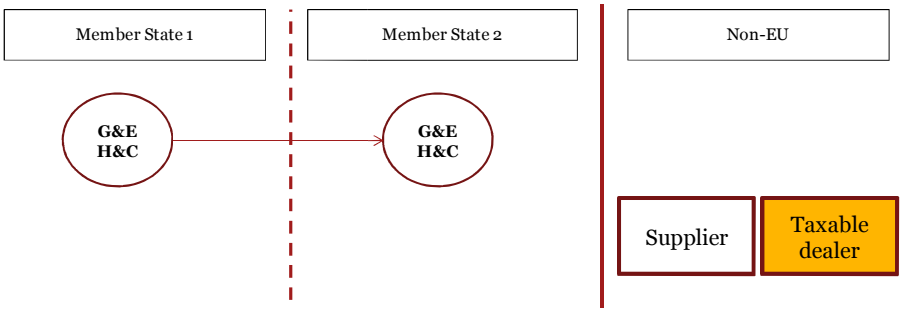
653 To avoid double taxation, it will be necessary to maintain a specific VAT exemption upon importation similar to the present VAT exemption upon importation of supplies of gas, electricity and of heat or cooling energy (article 143(1)(l) of the VAT Directive).

7.2.4 Issues to be solved and solutions

654 First, the current provision specifies that when a trader sells gas, electricity, heat or cooling energy located in the EU to a trader established outside the EU, the place of supply is outside the EU. The supplier should only prove that the trader is indeed established outside EU. There is no EU taxation. Should the non-EU trader subsequently sell the gas, electricity, heat or cooling energy to another non-EU trader, there will again be no EU taxation (see figure 7.2). As from the moment that an EU trader is involved in the supply chain, EU taxation will again occur.

Figure 7.2: Cross-border supplies of goods

Diagram 74
GROUP G4– Scenario 33



Current treatment	Future treatment
Place of supply	Place of supply
Non-EU – the place where the taxable dealer is established	**Non-EU** – the place where the taxable dealer is established
NO CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION	

655 This VAT treatment allows traders active on the resale market (from generator to distributor) to trade this kind of goods with a minimum of EU VAT formalities. Under the current place of supply rules for gas, electricity and heat or cooling energy, there is no safety net for the tax authorities when non-EU traders are involved in the trading phase.

656 However, in chapter 6, the non-taxation of EU goods is assessed to be a key issue for the proper functioning of the B2B localisation principle of goods. With a view to applying the new B2B localisation principle broadly, Member States may decide to also apply the new B2B localisation principles to supplies of gas, of electricity and of heat or cooling energy. Thus, EU VAT should be introduced for supplies of EU goods to non-EU customers (i.e. not having a "VAT presence" in the EU).

657 The question is whether this alignment would still lead to a simple and efficient tax regime for the goods in scope.

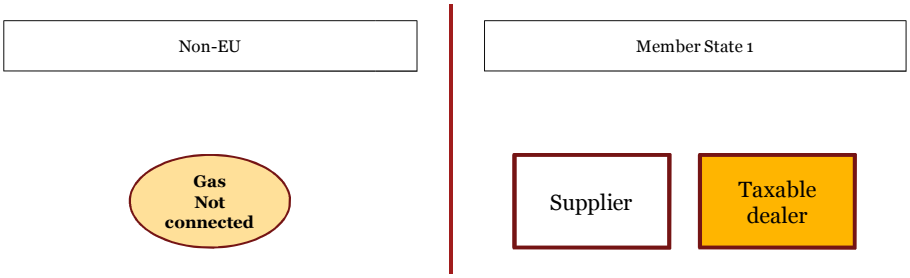
658 Currently the supplier only has to prove that the customer is established outside the EU, whereas under the new B2B localisation principle the EU supplier or the non-EU customer will have an additional administrative burden. The EU supplier will have to charge VAT of its Member State of establishment in the case the customer is established outside the EU and does not have a "VAT presence" in the EU and the goods are located in the EU. The non-EU customer could appoint a VAT representative in the EU and become an EU customer (through the "VAT presence") to avoid a VAT charge. Therefore, in view of the specifics of the market and to attain an internal market free of barriers linked to the VAT regime, it needs to be investigated whether this alignment should also be applicable for this kind of supply in the trading phase or whether an exception needs to be laid down. That would in principle mean that there would again be a distinction in treatment between consumptive and non-consumptive supplies (as is currently already the case).

659 Nevertheless, if the new B2B place of supply rule were to be introduced, it would be advisable, for consistency purposes, to apply the new general B2B localisation principle of goods to the supply of gas, electricity, heat and cooling energy, as for any B2B supply of goods.

660 Second, the current provision also specifies that when an EU trader sells gas through a natural gas system not connected to such a system in the EU to an EU trader, the place of supply is outside the EU. Thus, there is no EU taxation for non-EU goods (see figure 7.3). When a trader sells other gas, electricity and heat or cooling energy located outside the EU to an EU trader, the place of supply is inside the EU. Thus, there is EU taxation for non-EU goods.

Figure 7.3: Gas not connected

Diagram 72
GROUP G3 – Scenarios 28 and 29



Current treatment	Future treatment
Place of supply	Place of supply
Non-EU – the place where the goods are located at the time when supply takes place	**MS1** – the place where the taxable dealer is established
Non-EU - the place where the goods are located at the time dispatch or transport begins	
CHANGE IN PLACE OF SUPPLY FROM NON-EU TO EU	

661 Non-EU goods should in principle not be taxed. The EU established supplier or customer needs to prove with respect to supplies of non-EU goods that the goods are located outside the EU at the time of the supply.

662 Again, it needs to be further analysed whether changing the current provision would result in a taxation mechanism for those goods as simple as today. The recent changes to articles 38 and 39 of the VAT Directive (i.e. gas system not in the EU or not connected to such a gas system in the EU) seem to indicate that such an approach would be necessary to avoid double taxation in the hands of EU established taxable dealers. This is the case where the supply of gas, electricity or heat or cooling energy would also give rise to taxation in the non-EU country concerned.

663 However, as already stated above, it would be advisable, for consistency purposes, to also apply the new B2B localisation principles of goods also to the supply of gas, electricity, heat and cooling energy, as for any B2B supplies of goods.

7.3 Special scheme for small enterprises

7.3.1 Purpose of the special regime

664 The special scheme for small enterprises was introduced by article 14 of the Second VAT Directive.[36] More details and rules were set out in article 24 of the Sixth VAT Directive[37] Further, with Council Directive 92/111/EEC,[38] 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 Directive.[39]

665 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.[40]

7.3.2 Summary of relevant provisions[41]

666 Under the special scheme, small enterprises have the advantage of their supplies of goods and/or services being exempt from VAT/subject to a flat-rate, for one, and being exempt from certain VAT obligations and formalities, for another.

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

668 This scheme is limited to supplies in the Member State in which the small enterprise is established and is 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 the intra-Community acquisition by the recipient in accordance with article 2(1)(b)(i) of the VAT Directive is not subject to VAT.

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[36] 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.

[37] 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.

[38] Council Directive 92/111/EEC of 14 December 1992 amending Directive 77/388/EEC and introducing simplification measures with regard to value added tax.

[39] Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

[40] 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.

[41] 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.

669 Taxable persons exempt from VAT under the special scheme for small enterprises may not deduct input VAT and may not charge VAT on their supplies (article 289 of the VAT Directive).

670 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.

671 Small enterprises that can apply for the exemption scheme may opt for the normal VAT system (article 290 of the VAT Directive). 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).

672 The general place of supply and liability rules are applicable.

673 Pursuant to article 292 of the VAT Directive, the exemption or graduated relief scheme applies 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 is to be decided whether a special scheme for small enterprises is necessary and, if appropriate, to lay down the common limits and conditions for implementation of the exemption scheme (article 294 of the VAT Directive).

7.3.3 General conclusion

674 It appears that the new B2B localisation and liability principle will not work properly since, for some scenarios, it might lead to double taxation and distortion of competition. The customer will have a higher indirect tax burden in some scenarios and might stop purchasing goods from small enterprises in intra-EU cross-border situations.

675 In order for the new B2B localisation principle to work properly for small enterprises, mitigating measures are therefore needed on a short and long term basis based on articles 292, 294 and 402 of the VAT Directive. You will find below a description of the issues as well as some possible solutions.

7.3.4 Issues to be solved and solutions

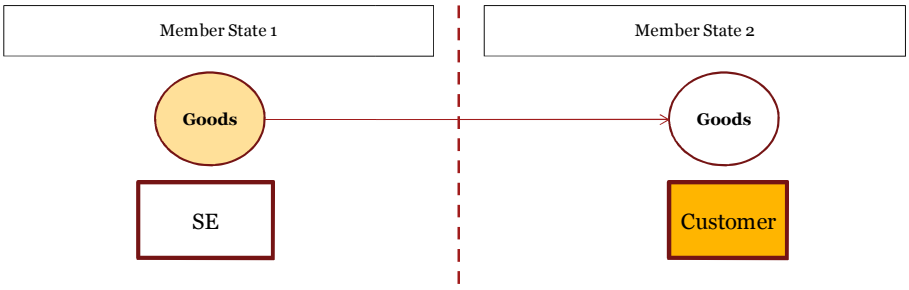
7.3.4.1 Shift to normal VAT regime: risk of double taxation and distortion of competition

676 The exemption for small enterprises is in principle only applicable in the EU Member State of establishment of the small enterprise. Therefore, it will not be applicable if the supply of goods takes place in the EU Member State of the customer (if different).

677 From figure 7.4 below, it appears that in the “as is” situation the supply of the goods takes place in Member State 1. As this is the Member State of establishment of the small enterprise, the exemption for small enterprises is applicable on the supply. Thus, no VAT will be due on the supply of the goods.

Figure 7.4: 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			

678 In the "to be" situation, the supply of the goods will take place in Member State 2, i.e. where the customer is established. As the supply takes place in another Member State than the Member State of establishment of the small enterprise, the special regime is no longer applicable. Thus, VAT of Member State 2 will be due on the supply of the goods.

679 As the small enterprise does not have a right to deduct input VAT in Member State 1, being its Member State of establishment, the customer will purchase the goods with a higher indirect tax burden, i.e. the small enterprise's non-deductible input VAT of Member State 1 relating to these goods will be included in the price charged. As in the "to be" situation VAT of Member State 2 is due on the supply by the customer, there will be an increased risk of double taxation ("tax on tax").

680 Following the new B2B localisation and liability principle, it is assumed that the non-recoverable input VAT will increase in the hands of the small enterprise in its Member State of establishment. This will be the case for all purchases of EU goods by the small enterprise as all these supplies will be located in the Member Sate of establishment of the small enterprise not allowing any input VAT deduction under the special regime, regardless the applicable VAT treatment of the subsequent supply of these goods by the small enterprise, i.e. in scope of the special regime in the case the supply will be located in the Member State of establishment or in scope of the normal VAT regime if the supply is situated in another Member State.

681 Under the current rules, double taxation does not exist for cross-border supplies in the EU as the intra-Community acquisition of the goods supplied by small enterprises 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 allowing a right to deduct VAT in the hands of the small enterprise in that other Member State.

682 Furthermore, for a customer with 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 will have a distortive effect creating a barrier to trade in the Single Market.

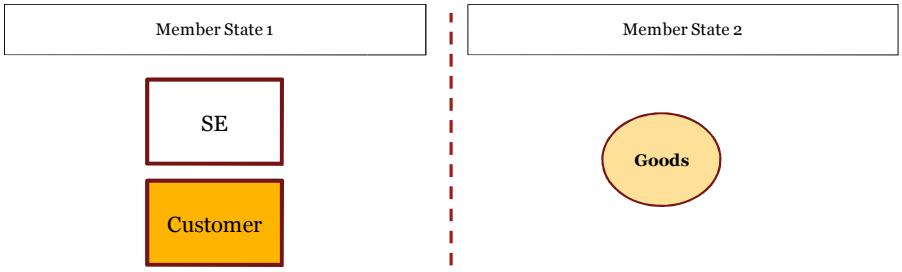
7.3.4.2 Shift to the special regime for small enterprises: risk of distortion of competition

683 The exemption for small enterprises is only applicable in the EU Member State of establishment of the small enterprise. Therefore, it will become applicable if the place of supply is shifted to the Member State of establishment of the small enterprise.

684 This is visualised in figure 7.5.

Figure 7.5: 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	No	**MS1** – the place where the customer is established	Yes
MS2 – the place where the goods are located at the time dispatch or transport to the customer begins			
CHANGE IN PLACE OF SUPPLY WITH APPLICATION OF EXEMPTION SE NO CHANGE IN PERSON LIABLE TO PAY VAT			

685 In the "as is" situation, the place of supply is Member State 2, i.e. where the goods are located at the time when the supply takes place or dispatch or transport to the customer begins. The exemption of the special regime is not applicable. In the "to be" situation, the place of supply is Member State 1, where the customer is established. As the customer is established in the same Member State as the small enterprise, the exemption for small enterprises will be applicable.

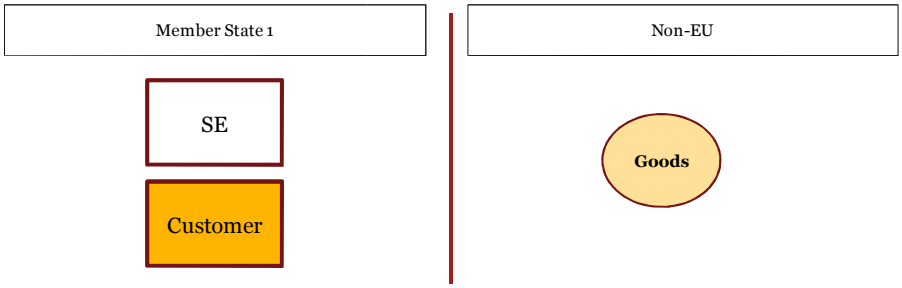
686 The small enterprise will incur an additional VAT cost as in the "to be" situation the supply of the goods located in Member State 2 takes place in Member State 1, his Member State of establishment.

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

688 The same is applicable when the goods are situated outside the EU (figure 7.6).

Figure 7.6: 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			

689 The difference is that in the "as is" situation the place of supply of the goods supplied by the small enterprise is outside the EU. The fact that, by applying the new B2B localisation principle, the special regime for small enterprises would be applicable to goods that are located outside EU is not in line with the general assumption of non-taxation of non-EU goods.

7.3.4.3 Proposed solutions

690 The issues are spotted where the small enterprise sells goods to B2B customers established in another EU Member State and/or where the goods supplied are located in another EU Member State.

691 In order to be able to make a sound evaluation of application of the new B2B localisation principle and find an appropriate solution to the issues defined above, it needs to be further investigated to what extent small enterprises are indeed involved in cross-border supplies.

692 Furthermore, in order to avoid distortion of competition between small enterprises in different Member States, a review of the thresholds applied will be required under the common small enterprise regime in article 294 of the VAT Directive.

693 An option might be to limit the scope of application of the small enterprise regime pursuant to article 294 of the VAT Directive to cases where both the small enterprise and the customer are established in the same EU Member State. In all other cases, the regime would not be applicable and accordingly small enterprises would be granted a right to deduct VAT in order to avoid the risk of double taxation in cross-border relations.

694 However, the risk of distortion of competition is not solved as customers with no or only a limited right to deduct VAT would still prefer to purchase goods from small enterprises established in their Member State (because then the exemption for small enterprises applies). Furthermore, the question is whether this solution still meets the objective of having a simplified VAT regime for small enterprises.

695 More specifically, this solution would mean that the small enterprise for EU goods will have to make a difference between sales to customers established in its Member State of establishment subject to the special regime and sales to customers established abroad subject to the normal VAT regime. Where the small enterprise applies both the normal arrangements for VAT and the special scheme, its accounts must keep track of the transactions falling under each of the arrangements.

696 This option would be a solution to the extent that the small enterprise only supplies goods to customers established in the same Member State.

697 Another option is to provide a specific localisation criterion for supplies by small enterprises and to link the place of supply rule to the Member State of establishment of the small enterprise. This requires that the B2B customer established in another Member State should check the status of the supplier in VIES and that the supplier qualifying for the small enterprise regime should inform its customer of its status on the invoice. The VIES database should be adapted in this respect by also providing the information on the VAT status of the supplier.

698 This creates an additional administrative burden for both the supplier and the customer. As already stated before, for consistency purposes, it is also recommendable to maintain a broad application of the new B2B localisation principle.

699 The most radical option is to abolish the special regime for small enterprises based on the combined reading of articles 292 and 402 of the VAT Directive. More specifically, the special regime for small enterprises applies until a date which may not be later than that on which the definitive arrangements enter into force. Of course, this is to the extent that the new B2B place of supply of goods and liability rules are deemed to be the definitive arrangements.

700 In abolishing the special regime for small enterprises, it has to be borne in mind that subjecting small enterprises to the normal VAT regime means probably an additional administrative burden on and higher compliance costs for them. In this respect, the purpose of easing the burden of tax compliance for both administrations and small enterprises is no longer met. Therefore, repealing the regime might not be a solution to be recommended under today's constellation.

Special flat-rate scheme for farmers

7.3.5 Purpose of the special regime

701 The Second Directive[42] allows Member States to apply a special scheme to businesses in the agricultural sector that is best suited to national requirements and possibilities. This special scheme was included in the Sixth Directive[43] and is now regulated by articles 295 to 305 of the VAT Directive. The special scheme for farmers, also called the "flat-rate scheme", is adjusted to the needs of small agricultural farmers. It was introduced to meet the specific needs of farmers who are not able to comply with the normal VAT scheme or the special scheme for small enterprises.

702 It was not feasible to introduce a single scheme for farmers and small businesses because of an essential difference between the two: small enterprises are presumed to supply their goods and services to end consumers, which is probably not the case for farmers, who are at the beginning of the supply chain.

7.3.6 Summary of relevant provisions[44]

703 Under article 296 of the VAT Directive, Member States may introduce a flat-rate scheme allowing farmers to offset paid, non-recoverable input VAT on their purchases. No annual turnover limits or any other quantitative output criteria are set down in the EU VAT legislation. Therefore, the special scheme for farmers is still widely applied in the Member States.

704 The Member States that have introduced the special scheme do not require the scheme to apply to all farmers in their country: they may exclude certain categories of farmers from the scheme. Transactions not qualifying as a typically agricultural activity should be excluded from the special scheme.

705 Moreover, the Member States can use different flat-rate percentages for different categories of farmers. The flat-rate compensation is a macro-economic calculation (common to all Member States) done by each Member State. The figures include total output derived directly from agricultural production and the input needed to achieve that production. The ratio of VAT on inputs to farm output represents the flat-rate compensation percentage.

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[42] 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.

[43] 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.

[44] Terra, B., Kajus, J., Chapter 12.3 – Common flat-rate scheme for farmers – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap12.html?WT.z_na.

706 The special scheme for farmers is an optional system not only for the Member States but also for farmers. Farmers that meet the requirements to apply the special scheme can opt to apply the normal VAT scheme or, if the requirements are fulfilled, the special scheme for small businesses.

707 The flat-rate-compensation percentages are applied to the prices, exclusive of VAT, of agricultural products supplied by flat-rate-scheme farmers to taxable persons other than those covered by the flat-rate scheme in the Member State in which these products were supplied, and, in the case of intra-Community supplies of these goods, to non-taxable legal persons whose intra-Community acquisitions of goods are subject to VAT (article 300 of the VAT Directive).

708 Local, intra-Community supplies and export supplies of goods made by the flat-rate-scheme farmer are in scope of the special scheme.

709 The flat-rate compensation can also be paid by the public authorities, whereby the farmer receives a flat-rate amount of compensation based on its total sales.

710 Flat-rate-scheme farmers are not entitled to deduct VAT.

711 A taxable customer is able to deduct the compensation amount paid from the VAT for which it is liable in the Member State in which the taxed transactions are carried out. In other situations, the compensation paid may be refunded applying the provisions of Directives 2008/9/EC[45] and 86/560/EEC.

712 Furthermore, under article 272(1)(e) of the VAT Directive, Member States may release flat-rate-scheme farmers from certain or all of the administrative obligations imposed on other taxable persons.

713 If a flat-rate-scheme farmer exceeds the threshold for intra-Community acquisitions of goods, it has to register for and pay VAT in respect of those transactions.

7.3.7 General conclusion

714 The impact on the flat-rate compensation was only assessed. The general VAT treatment of these scenarios is dealt with in the impact assessment of the general scenarios (chapter 6).

715 Where the farmer and the customer are established in the same EU Member State, the new B2B localisation principle and the corresponding flat-rate scheme can be applied. The administration and compliance burden will even decrease for the flat-rate-scheme farmer as the supply takes place in its Member State of establishment.

716 However, it appears that the new B2B localisation principle will not work with respect to the flat-rate compensation where the farmer and the customer are not established in the same EU Member State.

[45] Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State. This Directive repealed Directive 79/1072/EEC as from 1 January 2010.

717 In order for the new B2B localisation principle to apply in this situation, mitigating measures are needed. You will find hereinafter a description of the key issues as well as some possible solutions.

7.3.8 *Issues to be solved and solutions*

7.3.8.1 Risk of jeopardising the correct application of the flat-rate compensation

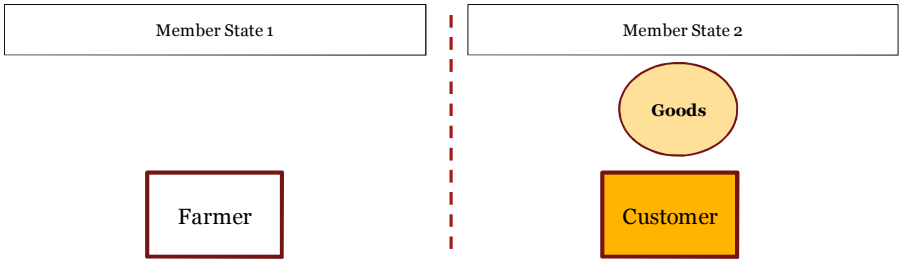
718 The common flat-rate scheme for farmers allows farmers to offset the non-recoverable input VAT paid on their purchases at a fixed rate. In this respect, a flat-rate farmer applies a fixed percentage to its prices, exclusive of VAT.

719 As the flat-rate compensation is linked to the place of supply of the goods in scope of the special scheme, the applicable flat-rate compensation would be that of the Member State where the customer is established under the new B2B localisation principle. The question is what the impact of applying the new B2B localisation principle will be on the flat-rate compensation.

720 In the figure 7.7 below, there is no shift in the Member State of taxation (as the goods were located in the Member State where the customer was established). Thus, the flat-rate compensation of Member State 2 is applicable in the "as is" and "to be" situation.

Figure 7.7: Local supply of goods

Diagram 146
GROUP FL – Scenario 1

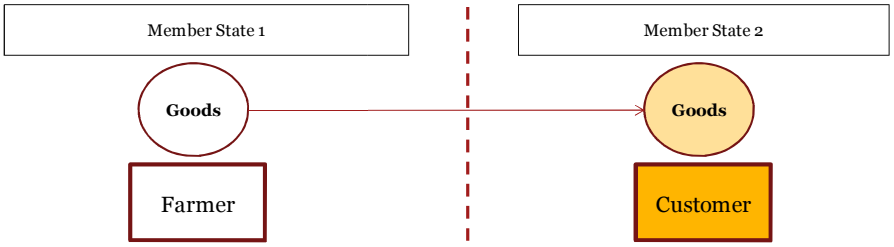


Current treatment		Future treatment	
Place of supply	Flat-rate comp. refund	Place of supply	Flat-rate comp. refund
MS2– the place where the goods are located at the time when supply takes place	MS2	**MS2**– the place where the customer is established	MS2
MS2 – the place where the goods are located at the time dispatch or transport to the customer begins			
NO CHANGE IN MEMBER STATE OF FLAT RATE COMPENSATION			

721 In figure 7.8, the flat-rate compensation "as is" differs from the flat-rate compensation "to be". In the "as is" situation, the supply of the goods is located in Member State 1 and the flat-rate compensation of Member State 1 is applicable. As in the "to be" situation, the place of supply will be located in Member State 2, the flat-rate compensation of Member State 2 will be applicable.

Figure 7.8: Cross-border supply of goods within the EU

Diagram 150
GROUP FEU – Scenario 3



Current treatment		Future treatment	
Place of supply	Flat-rate comp. refund	Place of supply	Flat-rate comp. refund
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins (i.e. intra-Community supply)	MS1	**MS2** – the place where the customer is established	MS2
MS2 – the place where dispatch or transport of the goods to the person acquiring them ends (i.e. intra-Community acquisition)			
CHANGE IN MEMBER STATE OF FLAT RATE COMPENSATION			

722 There would be a clear benefit for the customer as it would be able to deduct the flat-rate compensation in its Member State of establishment. Although it is always clear to the flat-rate-scheme farmer that the place of supply is where the customer is established, it would need to know whether its agricultural products are subject to the flat-rate scheme and what the flat-rate compensation percentages are for all Member States where its customers are established.

723 We distinguish three issues with respect to the application of the flat-rate compensation in these cases.

724 First, the flat-rate compensation is no longer applicable for EU cross-border supplies of goods to non-taxable legal persons for which the intra-Community acquisitions were subject to VAT in the "as is" situation (as article 300(2) of the VAT Directive will be repealed – see chapter 9) and to flat-rate-scheme farmers established in the same Member State (as the supplies to the latter do not fall under article 300(1) of the VAT Directive – see chapter 9) (figure 7.8).

725 This means that the flat-rate farmer would no longer receive a compensation for EU cross-border supplies to this kind of customers in the "to be" situation, whereas there is compensation of the non-recoverable VAT on its purchases in the "as is" situation. Under the new B2B localisation principle, non-taxable legal persons and flat-rate scheme farmers would be liable to pay VAT on purchases of the goods. Therefore, for supplies to this kind of customers, the scheme would fail to meets its objectives in the "to be" situation.

726 Second, applying the new B2B localisation principle would not entail any simplification for the farmer. On the contrary, for both examples, it would still need to know whether its agricultural goods are subject to the flat-rate scheme for farmers, the VAT status of the customer (taxable person versus flat-rate-scheme farmer and non-taxable legal person) and what the flat-rate compensation percentages are for all EU Member States where taxable customers are established. As the scheme was introduced to meet the specific needs of farmers who are not able to comply with the normal VAT scheme or the special scheme for small enterprises, it would again not meet its objectives in the "to be" situation.

727 Third, under the new B2B localisation principle, the flat-rate-scheme farmer would incur non-recoverable input VAT on its purchases in its Member State of establishment. However, the flat-rate compensation of other Member States where customers are established would also offset the non-recoverable input VAT on its purchases.

728 This would jeopardise the correct application of the flat-rate scheme for farmers. The Member State of establishment of the customer would have to provide compensation for non-deductible VAT incurred in another Member State. This would not be in line with the overall objective of the special scheme and would certainly not be acceptable to the Member State of establishment of the customer.

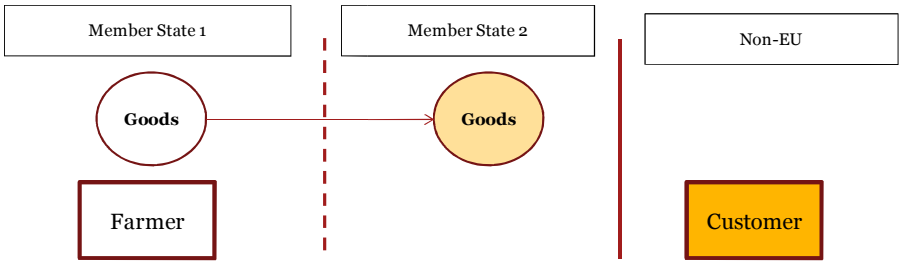
7.3.8.2 Shift of place of supply from EU to non-EU

729 Under the new B2B localisation principle, the place of supply of the agricultural goods as illustrated in figure 7.9 would be where the non-EU customer is established, i.e. outside the EU.

730 This means that the flat-rate compensation scheme would not apply in the "to be "situation: neither in the EU Member State where the agricultural goods are located nor in the EU Member State where the flat-rate-scheme farmer is established.

Figure 7.9: Cross-border supply of goods within the EU

Diagram 152
GROUP FEU – Scenario 6



Current treatment		Future treatment	
Place of supply	Flat-rate comp. refund	Place of supply	Flat-rate comp. refund
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins (i.e. intra-Community supply)	MS1	**Non-EU** – the place where the customer is established	Not relevant
MS2 – 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 FROM EU TO NON-EU NO FLAT RATE COMPENSATION			

731 In the "as is" situation, the flat-rate compensation of Member State 1 is applicable. Compared with the "as is" situation, the flat-rate-scheme farmer would no longer be compensated for non-recoverable input VAT on his purchases. The farmer would have the tendency to opt to apply the normal VAT scheme.

732 Furthermore, as non-EU customers would not need to pay any flat-rate compensation to flat-rate scheme farmers in the EU, they would have a competitive advantage over EU customers. This would not be in line with the overall objective that the new VAT regime should be tax neutral.

7.3.8.3 Proposed solutions

733 It needs to be questioned whether the flat-rate scheme for farmers should remain in existence under the new B2B localisation principle. In this respect, it needs to be assessed what the impact would be of maintaining a special scheme for flat-rate farmers and to not subject supplies of agricultural goods to the normal VAT regime (or special regime for small enterprises if maintained and the farmer is qualifying for this scheme).

734 The current flat-rate scheme for farmers is to be regarded as a transitional scheme. Under article 25(11) of the Sixth VAT Directive, it was stated that the Commission would, before the end of the fifth year following the entry into force of the Directive, present to the Council new proposals concerning the application of VAT to transactions in respect of agricultural products and services. The recast VAT Directive no longer contains any such provision. In this light, it needs to be scrutinised whether there is still a rationale for the flat-rate scheme for farmers in the Single Market.

735 If the flat-rate scheme remains in existence, it might be opted to limit its scope of application to cases where both the farmer and the customer are established in the same Member State. In all other cases, the regime would not be applicable and accordingly a right to deduct VAT would be granted to the farmer.

736 However, this solution would not simplify the VAT regime for farmers.

737 More specifically, it would mean that farmers would have to make a difference between sales to customers established in the same Member State subject to the special regime and sales to customers established abroad subject to the normal VAT regime. Where farmers apply both the normal arrangements for VAT and the special scheme, their accounts must keep track of the transactions falling under each of the arrangements. This would make it very complicated for them.

738 Therefore, to avoid such complexity, the current flat-rate scheme could be revisited taking into account the issues outlined when implementing the new B2B application principle. In this respect, the flat-rate compensation should in all cases be linked to the Member State of establishment of the EU flat-rate-scheme farmer, regardless the applicable localisation rule for the supply of the agricultural goods by the farmer. There would no longer be a direct link between the new place of supply of the agricultural goods and the applicable flat-rate compensation.

739 Furthermore, this solution should be combined with a refund mechanism for the flat-rate compensation for customers established abroad. The EU and non-EU taxable customer should be able to obtain a refund of the flat-rate compensation paid. Where the EU taxable customers are no longer able to deduct the flat-rate compensation in their VAT return (but need to request for refund in the Member State of establishment of the farmer), this would of course mean an additional burden. This is equally the case for the Member State of the farmer.

740 The flat-rate compensation should also be applicable to supplies of agricultural goods to non-taxable legal persons and flat-rate farmers established in other EU Member States. This would simplify the VAT administration for farmers. This solution should also be combined with a refund mechanism of the flat-rate compensation for non-taxable legal persons and flat-rate farmers established in other EU Member States.

741 However, in order to be able to make a sound evaluation on the application of the new B2B localisation principle and to find a right solution to the issues defined above, further research is needed.

7.4 Second-hand goods subject to the margin scheme

7.4.1 Purpose of the special regime

742 A special scheme for second-hand goods, works of art, antiques and collectors' items was introduced by Council Directive 94/5/EC of 14 February 1994.[46] This Directive lays down special arrangements for taxable dealers and sales by public auction and a range of transitional arrangements for second-hand goods, work of art, collectors' items and antiques. These arrangements have applied to all transactions since 1 January 1995. They are now covered by articles 311 to 343 of the VAT Directive.[47]

743 The purpose of this special "margin" scheme for second-hand goods, works of art, antiques and collectors' items is to eliminate double taxation and the application of very different systems causing distortion of competition and deflection of trade both internally and between Member States.

744 Directive 94/5/EC introduced the country-of-origin principle for all taxable dealers in second-hand goods, works of art, antiques and collectors' items, enabling them to enjoy the same ease and simplicity of operations as private individuals. This means that second-hand goods can be purchased without VAT formalities in the EU, followed by total freedom of movement, irrespective of the capacity of the vendor (professional or individual), the method of purchase (on-the-spot or at a distance), the type of sale (by private agreement or auction) or the mode of transport (by the vendor, by the purchaser or by a third party).

7.4.2 Summary of the relevant provisions[48]

745 Article 311 of the VAT Directive starts by defining second-hand goods as "movable tangible property that is suitable for further use as it is or after repair, other than works of art, collectors' items or antiques and other than precious metals or precious stones as defined by the Member States". This means that second-hand goods are in principle used goods and goods that do not qualify as immovable property. Definitions are also given of works of art, collectors' items and antiques.

746 The scope of these special arrangements is limited to taxable dealers, organisers of public auctions and principals of organisers of public auctions.

747 A distinction should be drawn between taxable dealers and public auctions.

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[46] Council Directive 94/5/EC of 14 February 1994 supplementing the common system of value added tax and amending Directive 77/338/EEC – Special arrangements applicable to second-hand goods, work of art, collectors' items and antiques.

[47] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

[48] Terra, B., Kajus, J., Chapter 12.5 – Special arrangements applicable to second-hand goods, works of art, collectors' items and antiques – A guide to the Recast VAT Directive.

748 Further to article 313 of the VAT Directive, Member States must apply special arrangements for taxing the profit margin made by taxable dealers in respect of supplies of second-hand goods, works of art, antiques and collectors' items.

749 Most second-hand goods have already been subject to VAT when sold as new or at a previous stage in their life. Hence, in order to avoid double taxation of a transaction, the special VAT scheme for second-hand goods provides that, within the EU, VAT is due on sales of second-hand goods on the basis of the taxable dealer's profit margin. The taxable amount of a supply of second-hand goods is thus equal to the profit margin of the taxable dealer, less the VAT on this margin. The profit margin is the difference between the sales price charged by the taxable dealer and the purchase price of the goods sold.

750 Under article 333 of the VAT Directive, Member States may apply the margin scheme in respect of supplies of second-hand goods, works of art, antiques and collectors' items by an organiser of public auctions, acting in its own name pursuant to a contract under which commission is payable on the sale of those goods by public auction.

751 The special arrangements apply to supplies made by a taxable dealer or an organiser of a sale by public auction when the goods are supplied to him within the EU by a taxable person who has no right to deduct VAT, a non-taxable person or another taxable dealer.

752 In respect of supplies that are made by taxable dealers to a destination outside the EU where the exemption under article 146, 147, 148 or 151 of the VAT Directive is applicable, this exemption also applies to the margin scheme (article 321 of the VAT Directive).

753 Intra-Community acquisitions of second-hand goods, works of art, collectors' items and antiques supplied by a taxable dealer under the margin scheme are not subject to VAT pursuant to article 4 of the VAT Directive.

754 A taxable dealer can opt to apply the normal VAT scheme to any supply covered by the margin scheme (article 320 of the VAT Directive). In that case, he may deduct from the VAT for which he is liable the VAT due or paid on works of art, antiques and collectors' items he imports, the VAT due or paid on works of art supplied to him by their creators or the creator's successors in title and the VAT due or paid on works of art supplied to him by taxable persons other than taxable dealers.

7.4.3 General conclusion

755 The new B2B localisation and liability principle will not work with respect to the margin-scheme for second-hand goods where the supply of the goods is subject to the margin scheme for second-hand goods and the customer becomes liable to pay VAT on the margin.

756 If the customer becomes liable for payment of the VAT under the new B2B localisation and liability rules (because the taxable dealer and customer are not established in the same Member State), an exception is needed to the new B2B localisation or liability principle in the short term as taxable dealers will resist disclosing their gross profit margin on transactions and thus resist applying the margin scheme.

757 If the taxable dealer remains liable for payment of the VAT (because the taxable dealer and the customer are established in the same EU Member State), the new B2B localisation principle can be applied.

758 You will find below a description of the key issue as well as some possible solutions.

7.4.4 *Issue to be solved and solutions*

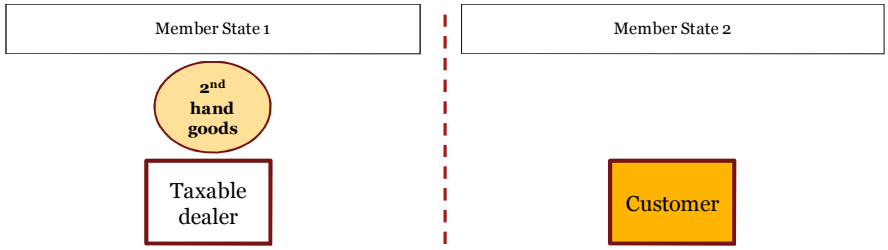
7.4.4.1 Customer becomes liable for payment: need for disclosing profit margin

759 If the new B2B localisation and liability principle entails a shift to the customer as being the person liable for paying VAT, the following key issue was spotted.

760 In the figure 7.10, the place of taxation shifts from Member State 1 (where the goods are located) to Member State 2 (where the customer is established). As the taxable dealer and the customer are not established in the same Member State, the customer becomes liable for paying the VAT.

Figure 7.10: Local supply of goods

Diagram 135
GROUP SH/L – Scenario 3



Current treatment		Future treatment	
Place of supply	Margin scheme	Place of supply	Margin scheme
MS1 – the place where the goods are located at the time when supply takes place	Yes	**MS2** – the place where the customer is established	Yes
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins			
CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION **CHANGE IN PERSON LIABLE TO PAY VAT**			

761 However, under the margin scheme, the taxable amount is the difference between the "selling price" paid by the customer and the "purchase price" that was paid by the taxable dealer, less the amount of VAT relating to that margin. Only the taxable dealer has the necessary information in respect of the "purchase price".

762 This means that in order for the customer to be able to fulfil his obligations, he needs to know that the supplier is a taxable dealer, the supply of goods is within the scope of the margin scheme in his Member State of establishment and the gross profit margin on the transaction. It can be assumed that a taxable dealer would not be willing to disclose his gross profit margin (VAT inclusive) to his customer.

763 Second, in order for the taxable dealer to fulfil his VAT obligations (pricing, invoicing and reporting), he needs to know which second-hands goods are covered under the specific scheme and what the applicable VAT rate is in all Member States where customers are established to be able to inform them accordingly. The gross profit actually earned by the taxable dealer will depend on the VAT rate applicable to second-hand goods in the Member State of the customer.

764 If the customer is established in a Member State where the VAT rate is higher than in the Member State of establishment of the taxable dealer, the gross profit actually earned by the latter will be lower. In this respect, we assume that there is no impact on the selling price. The gross profit could be higher if the VAT rate were lower. If the gross profit were to be higher (due to a lower VAT rate), the taxable dealer would prefer to stick to the margin scheme.

765 To avoid such issues, taxable dealers would normally tend to opt for the normal VAT scheme in order to safeguard their gross profit margins and avoid disclosing them to their customers. The margin scheme would become superfluous in intra-EU cross-border relations in the "to be" situation.

766 The tax burden would shift to the customer, with the risk that non-recoverable VAT might still be included in the selling price of the second-hands goods (less risk for works of art).

7.4.4.2 Proposed solutions

767 Two solutions are possible to mitigate the identified issues.

768 The first solution entails also applying the new B2B localisation principle to second-hand goods falling under the margin scheme but providing a derogation with respect to the liability rule (the new article to be introduced with respect to liability). More specifically, the supplier-taxable dealer would be liable for payment of the VAT due over the gross profit margin on the B2B supply under the special scheme in the EU Member State where the customer is established.

769 On the other hand, this means that the supplier would have an additional administrative burden in each Member State where its B2B customers are established.

770 The second solution includes a special localisation rule for supplies of second-hand goods to B2B customers, i.e. where the taxable dealer has established its business in the EU.

771 We recommend the first solution combined with the option for taxable dealers to apply the normal VAT arrangements as this allows broad application of the new B2B localisation principle. As this means that the taxable dealer needs to register in the Member States of its B2B customers, a one-stop-shop mechanism is necessary to reduce its compliance costs. With a one-stop-shop mechanism, the margin scheme will still be attractive for the taxable dealer to apply and will be beneficial for the customer as only taxation on the gross margin of the taxable dealer will occur. As already dealt with in section 6.2.3, the one-stop-shop mechanism will also allow the Member State of establishment of the taxable dealer to identify risks on the basis of the reconciliation between purchases/costs and sales/turnover.

772 However, in order to be able to make a sound evaluation on the application of the new B2B localisation principle and to find a right solution to the issues defined above, further investigation is necessary.

7.5 Supplies by exempt taxable persons and exempt supplies without input VAT deduction

7.5.1 Purpose of the special regime

773 Under article 131 of the VAT Directive, the exemptions provided for in the VAT Directive shall apply without prejudice to other provisions and in accordance with conditions which the EU Member States lay down for the purposes of ensuring correct, straightforward application of those exemptions and preventing any possible evasion, avoidance or abuse.

774 There are two lists of VAT exemptions without input VAT deduction: one concerns exemptions for certain activities in the public interest and one concerns exemptions for other activities.

775 The first list includes postal, medical, social, welfare, educational, physical recreation and cultural services (articles 132 to 134 of the VAT Directive). These exemptions already existed in the majority of the Member States prior to introduction of the Sixth VAT Directive.

776 The other exemptions include insurance and reinsurance transactions, banking and financial transactions, betting, lotteries and other forms of gambling, the leasing or letting of immovable property (article 135 of the VAT Directive). The supply of goods used solely for an exempt activity, if these goods have not given rise to deductibility is exempt (article 136 of the VAT Directive).

777 The latter exemptions were justified for reasons of general policy common to all the Member States because VAT was not considered to be the most appropriate way of taxing those transactions.

778 Member States may allow taxable persons an option to tax banking and financial transactions, the supply of land and the leasing or letting of immovable property (article 137 of the VAT Directive).

7.5.2 Summary of the relevant provisions[49]

779 Persons with transactions in scope of articles 132 to 135 of the VAT Directive qualify as exempt taxable persons having no right to deduct input VAT with respect to those transactions (article 168 of the VAT Directive).

[49] Terra, B., Kajus, J., Chapter 9 – Exemptions – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap09.html?WT.z_na; Terra, B., Kajus, J., Chapter 3 – Taxable persons – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap03.html?WT.z_na.

780 The supply of human organs, blood and milk is also exempt from VAT (article 132(d) of the VAT Directive).

781 The supplies of goods used solely for an exempt activity, if those goods have not given rise to deductibility is exempt (article 136(a) of the VAT Directive).

782 The supplies of goods for which the VAT was not deductible is also exempt (application of article 136(b) of the VAT Directive).

783 According to article 2(1)(a) of the VAT Directive, the supply of goods for consideration within the territory of a Member State by exempt taxable persons will thus be in scope of VAT.

784 In the case of an intra-Community supply of goods by an exempt taxable person, according to article 2(1)(b)(i) of the VAT Directive, the intra-Community acquisition of goods for consideration within the territory of a Member State will be in scope of VAT. Nevertheless, intra-Community acquisition of the goods will be VAT exempt in accordance with article 140(a) of the VAT Directive. That article says that an intra-Community acquisition of goods is VAT exempt if the supply of the goods is in all circumstances VAT exempt.

7.5.3 General conclusion

785 The impact of the new B2B localisation principle with respect to the application of articles 132(d) and 136 of the VAT Directive was only assessed.

786 The new B2B localisation and liability principle can be applied. However, in practice, where the exempt taxable person and the customer are not established in the same EU Member State, it will be the customer liable for paying VAT who will have the burden of proof with respect to the exemption applied. In this respect, there is an increased risk of undue taxation leading to an additional VAT cost for the customer in the case this VAT is not fully recoverable, on top of the unrecoverable VAT of the exempt supplier embedded in the sales price of the goods (i.e. tax-on-tax situation). However, this risk already exists under the current rules for EU cross-border supplies of goods as the customer needs to prove that the intra-Community acquisition of the goods is exempt in the Member State of arrival of the goods.

787 For EU cross-border supplies of goods, where the exempt taxable person and the customer are established in the same Member State, the customer no longer needs to produce proof that the intra-Community acquisition of the goods is VAT exempt.

788 You will find hereinafter a description of this issue as well as some possible solutions.

7.5.4 Issue to be solved and solutions

7.5.4.1 Customer becomes liable for payment: risk of double taxation and distortion of competition

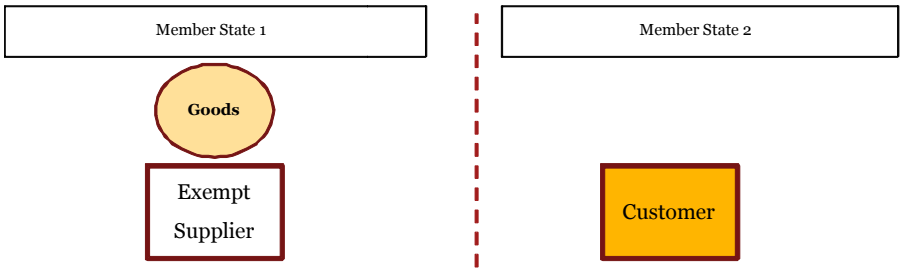
789 Following the new B2B localisation and liability principle, it will be the customer who will be liable for payment of the VAT due in its Member State of establishment in the case the supplier is not established in the Member State of the customer.

790 This means that it will be the customers' responsibility to interpret whether the exemption under articles 132(d) and 136 of the VAT Directive are applicable. It will be the customer that has to provide the necessary proof supporting how the transaction has been treated in accordance with the status of the supplier or the nature of the goods.

791 In the example of figure 7.11, it will be the customer in Member State 2 who has to provide the necessary proof with respect to the applied exemption.

Figure 7.11: Local supply of goods

Diagram 156
GROUP EL – Scenario 1

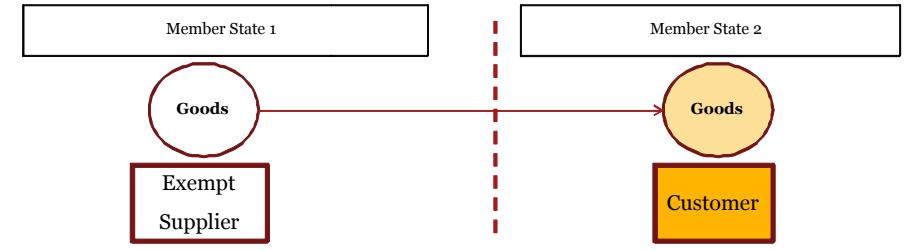


Current treatment		Future treatment	
Place of supply	Exempt	Place of supply	Exempt
MS1 – the place where the goods are located at the time when supply takes place	Yes	**MS2** – the place where the customer is established	Yes
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins			
CHANGE IN PLACE OF SUPPLY **CHANGE IN PERSON LIABLE TO PAY VAT**			

792 Note that, in the "as is" situation for EU cross-border supplies of goods the customer already has the burden of proving that the intra-Community acquisition is exempt in Member State 2 (see figure 7.12).

Figure 7.12: EU cross-border supply of goods

Diagram 159
GROUP EEU– Scenario 1



Current treatment		Future treatment	
Place of supply	Exempt	Place of supply	Exempt
MS1 – the place where the goods are located at the time the dispatch or transport to the customer begins (i.e. intra -Community supply)	Yes	**MS2** – the place where the customer is established	Yes
MS2 – 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 **CHANGE IN PERSON LIABLE TO PAY VAT**			

793 As the VAT treatment relates to the status of the supplier or the nature of the goods, it will be the supplier that has to provide the customer with the necessary proof in this respect. The supplier will need to provide the customer with proof that the goods supplied did not give rise to any VAT deduction.

794 If a customer fails to apply the exemption, this leads to a "tax on tax" situation (double taxation) as the supplier was not entitled to deduct input VAT on the goods. Furthermore, the customer also bears the risk that the input VAT deduction will be rejected due to the VAT being unduly paid.

795 Owing to the new burden of proof on customers, customers will prefer to buy goods from an exempt taxable person established within the same EU Member State. This is distortive and contrary to the Single Market.

7.5.4.2 Proposed solutions

796 A first possible short term solution, which does not require extensive revision of the current exemptions, entails the tax authorities of the Member State of the supplier certifying the supplier's VAT exempt status in the case of intra-EU cross-border transactions.

797 One way to certify or disseminate the VAT exempt status of the supplier could be via the VIES database, this would minimise additional administrative work for the Member States. Plus, the customer could easily verify the VAT exempt status of the supplier on line and this irrespective of whether we are dealing with an intra-EU cross-border transaction or not.

798 It will also allow the new B2B localisation principle to work better for supplies by VAT exempt taxable persons without any exceptions.

799 A downside of the use of the VIES database in its current set-up is however that it is not possible for the customer to scrutinise whether the supplies are attributed to the exempt part of the supplier's business when dealing with a supplier who applies a partial exemption method and did not have a right to deduct with respect to the good concerned.

800 Furthermore, in order to ensure a proper functioning of the new B2B principle, it is important for the VIES database to also be adjusted in this respect and for it to be able to provide additional information in order for the B2B customer to check if the supply is exempt or not where the B2B customer is liable for VAT.

801 From an administrative point of view, whether the VIES database is used or not, there will be additional work for the supplier, the customer and the tax authorities either way. This is especially the case where the supplier applies a partial exemption method where costs are attributed to a VAT exempt sector.

802 A long term solution is to consider supplies of capital goods used solely for an exempt activity with no right to deduct VAT as regular taxable supplies. The mechanism is similar to the current article 172 of the VAT Directive in the case of the supply of new means of transport by an incidental supplier. This requires an amendment to article 136 of the VAT Directive.

803 This solution has an effect in the case of supplies of capital goods for which the adjustment period has not yet prescribed (article 187 of the VAT Directive). If the capital good is supplied during the adjustment period, it is treated as if it had been applied to an economic activity of the taxable person up until expiry of the adjustment period. The economic activity is presumed to be fully taxed in cases where the supply of the capital goods is taxed (article 188 of the VAT Directive).

804 Where the supply of the capital goods is taxed, there will be a positive one-off revision for the remaining part of the revision period. However, in order to avoid unjustified advantages, the revision amount should not exceed the amount of VAT for which the supplier would be liable if the customer were established in the same Member State and the supply of the capital goods were not exempt.

805 In the case of non-capital goods, the same mechanism can also be applied (article 184 of the VAT Directive). When applying this solution, the VAT exempt taxable person must be granted a full or partial right to deduct the "old" input VAT incurred on the purchase of the goods by him and this up to an amount not exceeding the amount of VAT for which the supplier would be liable if the supply of the goods was not exempt but in all cases to the VAT paid on the purchase of the goods. This solution would work to the extent that the provisions regarding the adjustment of not operated VAT deduction would be defined at an EU level to avoid abuse/distortion of competition.

806 Before looking for a final solution, it is however advisable to review the need and impact of maintaining this exemption regime instead of removing it and providing for the alternative solution suggested avoiding cascading of the tax. Specific attention should be paid to the revision/adjustment rules for capital/non-capital goods.

7.6 Supplies by non-taxable legal persons

7.6.1 Purpose of the special regime[50]

807 VAT is meant to be a general tax on consumption.

808 In this light, article 4 of the Second VAT Directive,[51] later also article 4 of the Sixth VAT Directive[52] and article 9(1) of the VAT Directive, include a very broad definition of the term "taxable person". The very broad definition of economic activities in article 9(1) implies that a priori classification as a "taxable person" is independent from the nature, under private or public law, of the legal person carrying out the relevant economic activities.

809 This explains also why, apart from the restrictions in the VAT Directive itself, States, regional and local government authorities and other bodies governed by public law fall under the scope of the VAT Directive. The exclusion of public legal persons with respect to activities or transactions in which they engage as public authorities is reversed "where treatment as non-taxable legal persons would lead to significant distortions of competition" (article 13(1) of the VAT Directive).

7.6.2 Summary of the relevant provisions

810 Article 9(1) of the VAT Directive defines a taxable person as "any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity".

811 This definition should be read in conjunction with articles 10 to 13 of the VAT Directive, dealing with taxable persons.

[50] Terra, B., Kajus, J., Chapter 9 – Exemptions – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap09.html?WT.z_na;

Terra, B., Kajus, J., Chapter 3 – Taxable persons – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap03.html?WT.z_na.

[51] 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.

[52] 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.

812 The very broad definition of economic activities in article 9(1) of the VAT Directive means that, apart from the restrictions in the directive itself, States, regional and local government authorities and other bodies governed by public law fall under the scope of the VAT Directive. The basis for their inclusion can be found in the second sentence of article 13(1) of the VAT Directive, which refers to distortions of competition between the private and public sectors. The exclusion of public legal persons with respect to activities or transactions in which they engage as public authorities is reversed "where treatment as non-taxable legal persons would lead to significant distortions of competition" (article 13(1) of the VAT Directive).

813 In other words, two conditions must be fulfilled for entities to fall outside the scope of taxation: they must be classified as a public legal person and they must engage in transactions as a public authority. In any case, such bodies are considered to be taxable persons in relation to activities listed in Annex I to the VAT Directive provided the activities are not carried out on such a small scale as to be negligible.[53]

814 Under article 2(1)(a) of the VAT Directive, the supply of goods for consideration within the territory of a Member State by a non-taxable legal person acting as such will be outside the scope of VAT. In the case of an intra-Community supply of goods by a non-taxable legal person, according to article 2(1)(b)(i) of the VAT Directive, the intra-Community acquisition of goods for consideration within the territory of a Member State by a taxable person acting as such or a non-taxable legal person will not be subject to VAT as the vendor does not qualify as a taxable person.

7.6.3 General conclusion

815 In the case of non-taxable legal persons, although their supplies are outside the scope of VAT pursuant to article 2(1)(a) of the VAT Directive, we have assessed the impact of the new B2B localisation and liability principle of their outside scope of VAT supplies on the customer, being established in the same Member Sate or not.

816 The new B2B localisation and liability principle can be applied. However, in practice, where the non-taxable legal person and the customer are not established in the same EU Member State, it will be the customer liable for paying VAT who will have the burden of proof whether the supply is outside the scope of VAT pursuant to article 2(1)(a) of the VAT Directive. In this respect, there is an increased risk of double taxation. Although this risk already exists under the current rules for EU cross-border supplies of goods as the customer needs to prove that the intra-Community acquisition of the goods in the Member State of arrival of the goods is also outside scope of VAT.

817 You will find hereinafter a description of this issue as well as some possible solutions.

[53] Terra, B., Kajus, J., Chapter 9 – Exemptions – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap09.html?WT.z_na.

7.6.4 Issue to be solved and possible solutions

7.6.4.1 Customer becomes liable for payment: risk of double taxation and distortion of competition

818 As already outlined under section 7.6.4.1, it will be the customer that has to provide necessary proof supporting how the transaction has been treated in accordance with the status of the supplier, i.e. non-taxable legal person, if established in another Member State.

819 As the VAT treatment relates to the non-taxable status of the supplier the goods, it will be the supplier who has to provide the customer with the necessary proof in this respect.

820 If a customer unduly applies the reverse charge, this leads to a "tax on tax" situation (double taxation) as non-taxable legal persons are not entitled to deduct input VAT. Furthermore, the customer also bears the risk that the input VAT deduction will be rejected due to the VAT unduly being paid.

821 Owing to the new burden of proof on customers, customers will prefer to buy goods from a non-taxable legal person established within the same Member State. This is distortive and contrary to the Single Market.

7.6.4.2 Proposed solutions

822 A first possible short term solution, which does not require extensive revision of the current out of scope treatment, entails the tax authorities of the Member State of the non-taxable legal person certifying the supplier's VAT status in the case of transactions with customers established in other Member States.

823 The certification could also be done via the VIES database in this case in order to minimise the additional administrative work for the Member State of the supplier. We refer to section 7.5.4.2., where we further elaborate on the use of the VIES database.

824 The advantage of this solution is that it allows the new B2B localisation principle to work for supplies by non-taxable legal persons without any exceptions. From an administrative point of view, there will be additional work for the supplier, the customer and the tax authorities.

825 A long term solution is to consider as (incidental) taxable persons, non-taxable legal persons who, on an occasional basis, supply (capital) goods for consideration for which no right to deduct input VAT was exercised and for which the customer is liable for paying VAT. At least for the intra-EU supplies of goods, this option should be considered for a proper functioning of the new B2B rule for the place of supplies of goods and to avoid distortions in the Single Market. In this case the non-taxable legal person should, like an exempt taxable person, be entitled to have a right to deduct, as outlined under 7.5.4.2, for the goods supplied.

826 Before looking for a final solution, it is however advisable to review the impact of the B2B localisation principle and the alternative solution suggested avoiding cascading of the tax.

7.7 The special scheme for investment gold

7.7.1 Purpose of the special regime[54]

827 A separate exempt VAT treatment for investment gold was introduced by the Council Directive 1998/80/EC[55] of 12 October 1998, replacing the provision under article 12(3)(e) and point 26 of Annex F to the Sixth VAT Directive[56], granting the option to the Member States either to continue to exempt transactions concerning gold other than gold for industrial use or to implement such a scheme. Currently this special scheme for investment gold is laid down in articles 344 to 356 of VAT Directive 2006/112/EC[57].

828 Under the Sixth VAT Directive, before the special scheme for investment gold was introduced, the normal VAT arrangements were applicable. Tax was due on supplies of investment gold, but some Member States could apply a tax exemption for those supplies on a transitional basis. This distortion of competition between the Member States has been eliminated by the implementation of VAT Directive 1998/80/EC giving all Member States the possibility to introduce a special scheme for investment gold.

829 As the supply of gold for investment purposes is similar in nature to other financial investments often exempt from tax, the tax exemption appeared to be the most appropriate tax treatment for supplies of investment gold. The purpose of this special scheme for investment gold is to promote the use of gold as a financial instrument and to strengthen the competitiveness of the European gold market because the gold market is an international market with a quoted price that is practically the same throughout the world, from sheer necessity on a tax-exempt basis.

7.7.2 Summary of the provisions

830 Under the special scheme, article 344 of the VAT Directive provides for a definition of "investment gold", i.e. gold, in the form of a bar or wafer of weights accepted by the bullion market, whether or not represented by securities and gold coins listed by the Member States.

831 The supply, intra-Community acquisition and importation of investment gold are exempt from tax pursuant to article 346 of the VAT Directive. This also includes services of undisclosed agents involved in those transactions.

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[54] Terra, B., Kajus, J., Chapter 12.6 – Investment Gold – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap12.html?WT.z_na

[55] Council Directive 98/80/EC of 12 October 1998, supplementing the common system of value added tax and amending Directive 77/388/EEC –Special scheme for investment gold.

[56] 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.

[57] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

832 Although the exemption applies, specific taxable persons have the right to opt to apply the normal VAT system. Member States must allow this right of option for taxable persons, producing investment gold or transforming gold into investment gold, who supply this investment gold to other taxable persons (article 348 of the VAT Directive). Member States may allow taxable persons who normally supply gold for industrial purposes, to opt for the taxation of supplies of gold bars or wafers, as referred to in point (1) of article 344(1), to other taxable person that would otherwise be exempt pursuant to article 346 of the VAT Directive. They may restrict the scope of this option (article 349 of the VAT Directive).

833 With regard to transactions on a regulated gold bullion market, Member States are authorised not to apply the special scheme for investment gold. No VAT may be applied to intra-Community supplies and to exports of investment gold. They may introduce simplification measures because of the huge number and the speed of such operations.

834 According to article 353 of the VAT Directive, Member States that pursuant to article 352 of the VAT Directive, tax transactions between taxable persons who are members of a regulated gold bullion market for the purpose of simplification, must authorize suspension of tax collection and relieve taxable persons of accounting requirements in respect of VAT. If a customer is not a member of the regulated gold bullion market and is a taxable person requiring to be identified for VAT purposes in the Member State in which the tax is due solely in respect of those transactions, the vendor has to fulfil the tax obligations on behalf of the customer in the Member Sate where the VAT is due.

835 The exemption from VAT on investment gold transactions is an exemption with a limited right to deduct VAT (articles 354 and 355 of the VAT Directive). Taxable persons involved in the production or supply of investment gold or the transformation of gold into investment gold have a right to deduct input VAT if their subsequent supply of gold is exempt under the special scheme for investment gold.

836 In order to prevent tax fraud, special obligations exist for traders in investment gold. Member States must ensure that, as a minimum, traders in investment gold keep accounts of all substantial transactions in investment gold and documents that enable the customers in such transactions to be identified. Member States may also accept equivalent obligations under measures adopted pursuant to other Community legislation, such as Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (article 356 of the VAT Directive).

837 Moreover, pursuant to article 198 of the VAT Directive, the reverse charge mechanism can be introduced by a Member States for the supply of investment gold, whereby the customer is liable to pay the VAT due.

7.7.3 General conclusions and solutions

7.7.3.1 Investment gold including gold coins

838 Combining the new B2B localisation principle with the specific exemption for investment gold is possible.

839 No correction mechanism is required if the customer is established outside the EU and the investment gold would be located in the EU. The supply of the investment gold will be outside the territorial scope of the VAT Directive. This leads to the same result as exempting the transaction under the special scheme does in the "as is" situation. The same goes if the customer is established in the EU and the investment gold is located outside the EU, resulting in the place of supply being in the EU but with exemption for the supplier or the customer concerned, depending on the applicable liability rules. In both situations, no taxation will occur, which is in line with the special scheme principle of exempting supplies of investment gold. Also the importations of investment gold should remain exempt as it is today.

840 However, as a prerequisite for proper application of the special scheme for investment gold under the new B2B localisation principle, a uniform definition of the goods falling within the scope of the special scheme should be introduced in all Member States, resulting in repeal of the option for Member States to exclude from the special scheme small bars or wafers having a weight of 1 g or less (article 344(2) of the VAT Directive) and in fully harmonised comprehensive list of gold coins applicable in all Member States (article 345 of the VAT Directive).

841 More problems will appear with respect to the taxation option for investment gold in articles 348 and 349 of the VAT Directive. More specifically, where the supplier and the customer are not established in the same Member State and the customer is liable for the payment of VAT, it should be clear for the customer that taxable supplies of investment gold have been made. The customer should be aware that VAT is due on the supply of investment gold via the reverse charge mechanism.

842 The taxation option should be repealed. The potential restricted input VAT (if any) for supplies of investment gold by taxable persons who produce investment gold or transform any gold into investment gold and industrial gold traders should be resolved by amending articles 354 and 355 (the latter in combination with article 173(2)(a) and (b)) of the VAT Directive).

843 Member States, as stated under article 356 of the VAT Directive, must continue to ensure that traders in investment gold established in the EU keep detailed accounts of all substantial transactions in investment gold and also keep full documentation of their customers in such transactions. The same requirements should be imposed on business customers established in the EU, if they acquire investment gold from taxable traders established in another country, the aim being to combating fraud and tax evasion.

844 The supply of investment gold under the exemption of the special regime will grant the supplier a right to deduct input VAT for investment gold transactions. This possibility should also be available where the supply of the investment gold would be outside the territorial scope of EU VAT according to the new B2B localisation principle.

7.7.3.2 Transactions on a regulated gold bullion market

845 Member States are authorised to derogate and not apply the exemption for investment gold with regard to specific transactions on a regulated gold bullion market regulated by the Member State concerned. In the "as is" situation, in general terms this simplification is limited to local transactions. However, in the "to be" situation, the physical flow of the investment gold supplied is no longer followed.

846 As the scope of application of the current option to tax will become limited to supplies of gold bullions where the supplier and customer are established in the same Member State and where both of them are a member of the regulated market in that Member State, we consequently suggest repealing this option to tax. If the option to tax were repealed, the special scheme for investment gold would always be applicable.

847 However, it needs to be further analysed whether this approach would result in a better taxation mechanism for dealing with transactions on "local" regulated gold bullion markets in the EU compared with the current schemes in the various Member States, also depending on the importance and economic impact of these markets.

8 Issues to be solved and solutions proposed

8.1 Introduction

848 During the qualitative assessments of the impact of the new B2B localisation principle on B2B supplies of goods covered by the normal and the special VAT regimes and on onward B2C supplies of goods, some issues were identified that would prevent the new B2B localisation rule from functioning properly.

849 Those issues are explained in depth in chapters 6 and 7. In the same chapters, short- and long term measures/solutions have been proposed including an assessment in terms of the current rules.

850 In those assessments, the impact of the legal structure of the customer and the contractual arrangements on the functioning of the new B2B localisation principle and liability principle was not analysed. Nor was the interaction between B2B supplies of goods and B2B supplies of services and the optional use of certain exemptions analysed. This will be done in the next sections of this chapter.

8.2 Impact of the legal structure of the customer and the contractual arrangements

8.2.1 Issue to be solved

851 Under the new B2B localisation and liability principle, the physical flow of the goods would no longer be followed as long as they remained or circulated within the EU.

852 The supplier and his customer should be able to determine the VAT treatment of the supply of the goods, without requiring any data regarding the physical flow of the goods or the use of the goods.

853 This should be the case in all circumstances, even when the bill-to party, i.e. the contractual party, differs from the ship-to party. More specifically, it concerns the following cases where:

- the customer, being a legal entity, orders goods and requests delivery of the goods direct to its branch or to another legal entity of the same group;
- the customer, being a branch, orders goods and requests delivery of the goods to the branch or to another location;
- the customer, being a legal entity, orders goods and requests delivery of the goods to another place of business such as a representative office or a central distribution centre;

- a head office of a group of companies orders goods under a global agreement and requests delivery of the goods direct to its branches or to other legal entities of the same group.

854 For all these cases, the supplier should be able to determine the VAT treatment of the supply of the goods uniformly. The B2B localisation principle should be easy to handle in the supplier's day-to-day business and be administered practically. The VAT treatment should depend neither on who the goods will be shipped to, or on who ultimately will "use" the goods or on the legal structure of the customer.

855 From a VAT point of view, it should not make any difference to a supplier whether it is supplying goods to a business group with several subsidiaries/legal entities or to a head office with several branches or to a branch or legal entity acting as the central purchaser for the group.

856 It will be equally important for tax authorities to have a principle that allows easy, cost-efficient audits and avoids disputes between tax authorities and taxable persons.

857 The B2B customer also needs certainty on the place of taxation and who is liable for VAT without a risk of disputes with the tax authorities or its supplier.

8.2.2 Proposed solutions

858 We suggest short term measures at two different levels, which are necessary and require extensive revision of the current system:

- Definition of the place of supply based on the contractual arrangements;
- Treatment of the onward supply or subsequent allocation to a different legal entity, branch or other place of business.

8.2.2.1 Definition of the place of supply based on the contractual arrangements

859 In order to mitigate this issue, we recommend the following solution.

860 The supplier would determine the place of the supply of the goods according to the contractual arrangements between the parties. The place of supply would be the place where the contracting party defined as the "customer" in the agreement is established or has a fixed establishment. The place of supply would not be defined according to where the goods would be shipped to or by the entity/subsidiary/branch that would actually use the goods.

861 The fact that (part of) the goods are on-charged by the customer to another group entity or allocated to a branch or another place of business would be of no relevance in the supplier-customer relationship.

862 Following the OECD draft Guidelines for Customer Location[58], the concept of a business agreement is to be interpreted broadly and consists of the elements that identify the parties to a supply and the rights and obligations with respect to that supply. It is generally based on mutual understanding. The term "business agreement" does not only imply the actual contract (whether written or in some other format, for instance e-mail) but all relevant elements of the business agreement, such as purchase orders, invoices, payment instruments and receipts.

863 The "supplier" or the "customer" would be liable for the VAT due. Even if the supplier has a fixed establishment in the Member State of taxation that intervenes in the supply of the goods, this fixed establishment should not be liable for payment of the VAT (see section 8.2.2.2).

864 In practice, this means that the supplier only has to take into consideration the VAT status and place of establishment of his contracting party. The supplier may regard a customer having his place of business or a fixed establishment within the EU as a taxable person where the customer has communicated his EU VAT number and the supplier obtains confirmation of the validity of that VAT number and of the associated name and address[59] of its place of business or fixed establishment in the EU.

865 The supplier should be able to verify the status of his customer via the VIES database. In this respect, it should be noted that the information to check the validity of the associated name and address is not available for all Member States at the moment: currently it only confirms whether or not a specific EU VAT number is valid. In order for the new localisation principle to work properly, the supplier should be able to verify whether the customer has an EU VAT number for his place of business or fixed establishment.

866 If the customer is non-EU customer with a "VAT presence" in the EU via a VAT representative, he is also deemed to be established in the EU (see chapter 6, section 6.1.3.3.1). The supplier should also be able to verify that data on the VIES database. This is currently not possible.

867 Therefore, it will be of utmost importance for the VIES database to be modified to provide such confirmations.

8.2.2.2 Following contractual arrangements and intervention principle

868 The VAT treatment of B2B supplies should be defined by the contractual arrangements between the parties. This should be the case both for defining the place of supply and for determining who is liable for the VAT: the supplier or the customer.

[58] Organisation for Economic Co-operation and Development, Working Party No. 9 on Consumption Taxes, Public Consultation on Draft Guidelines for Customer Location, 1 February to 30 June 2010, http://www.oecd.org/dataoecd/19/63/44559751.pdf.

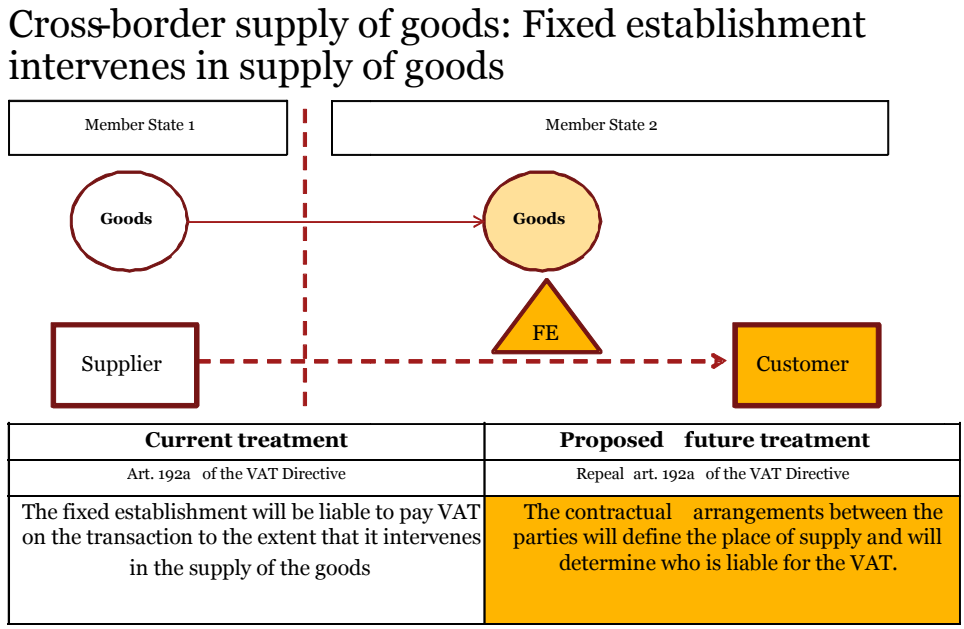
[59] Article 18 (1) of Council Implementing Regulation No. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC.

869 A fixed establishment is under the current rules liable to pay VAT on a transaction to the extent that it intervenes in the supply of the goods (article 192a of the VAT Directive). Intervention means that the technical and human resources of the fixed establishment are used for transactions inherent in fulfilment of the supply of the goods within that Member State, before or during this fulfilment[60].

870 Where the resources of the fixed establishment are only used for administrative support tasks such as accounting, invoicing and collection of debt-claims, they are not to be regarded as being used for fulfilment of the supply of goods or services.

871 We explain the impact of this rule on the functioning of the new B2B principle by means of an example in figure 8.1.

Figure 8.1: EU cross-border supply – intervention principle



Current treatment	Proposed future treatment
Art. 192a of the VAT Directive	Repeal art. 192a of the VAT Directive
The fixed establishment will be liable to pay VAT on the transaction to the extent that it intervenes in the supply of the goods	The contractual arrangements between the parties will define the place of supply and will determine who is liable for the VAT.

872 A supplier established in Member State 1 sells goods to a customer established in Member State 2. The supplier has a fixed establishment in Member State 2, which intervenes in the supply of the goods. The place of supply is where the customer is established in Member State 2. Under the new B2B liability principle, the customer is liable for payment of the VAT in his Member State of establishment (via the reverse-charge mechanism). However, as the supplier has a fixed establishment in Member State 2 that intervenes in the supply of the goods, this fixed establishment will be liable for payment of VAT.

[60] Article 53 (2) of Council Implementing Regulation No. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC.

873 The intervention criterion means that not only the supplier but also the customer should review data regarding the physical location, handling of the goods and the operations and structure of the customer and supplier before they can identify who is liable for the VAT. The tax authorities will also need to spend time and efforts to audit the fact pattern and there is an increased risk of litigation on the matter.

874 As the intervention principle also requires data on the physical flow of the goods, we recommend the article 192a of the VAT Directive to be repealed. We elaborate hereinafter on the proposed mitigating measures in order to ensure that VAT is accrued to the Member State where the goods are actually used.

8.2.2.3 Treatment of onward supply or subsequent allocation to a different legal entity, branch or other place of business

875 The customer will be solely and fully responsible for the VAT treatment of the goods supplied to him by the supplier.

876 In this respect, we need to distinguish two scenarios. The customer can subsequently:

- supply the goods (partially or fully) against a charge to another group entity, or
- allocate the cost of the goods (partially or fully) to a branch or other place of business.

8.2.2.3.1 Supply of the goods (partially or fully) against a charge to another group entity

877 If, say, the customer orders goods under a global agreement and requests delivery of the goods direct to another legal entity of the same group, it is assumed that the onward supply of the goods is governed by separate business agreements entered into between the customer and the group entities concerned. The new B2B place of supply rules will be applicable.

878 The place of supply of the goods will in principle be where the group entity "purchasing" the goods has its place of business or a fixed establishment. The customer will (re-)invoice the goods to the group entity and report the invoice in its VAT return and respective recapitulative statement, if required.

879 In the case of cross-border recharges of goods by the customer to a group entity established in another Member State, the latter will be liable to pay the VAT due in its Member State of establishment. Whether the group entity can deduct the local VAT due on the purchase of the goods will depend on its VAT status.

880 If the customer has a limited right to deduct VAT and charges the goods on to a group entity, it could deduct input VAT on the purchase of the goods from the supplier.

881 No additional measures are needed to deal with those onward supplies and charges compared to independent third party transactions.

8.2.2.3.2 Allocation of the cost of the goods (partially or fully) to a branch or other place of business

a) Issue

882 If the customer orders goods and requests delivery of those directly to a branch or other place of business within the EU that also bears the costs, it will allocate the cost of these goods to its branch or other place of business (such as a representative office).

883 It concerns goods that are actually used by a branch or other place of business but that are purchased or manufactured by the head office. The same is true whenever a branch orders or produces goods but the goods are delivered to its head office.

884 If VAT is only charged between the supplier and the customer further to their contractual arrangements in the case of a customer that has a head office with multiple branches, VAT will not always accrue to the EU Member State where the goods supplied are actually used. This can especially be the case for supplies made under global agreements contracted with the head office or one of the branches that buys on behalf of the group.

885 Furthermore, without a solution, this can also give room to VAT cash flow, VAT-rate and VAT-deduction planning.

886 VAT cash flow planning occurs when taxable persons prefer to purchase their goods either with VAT being charged on the invoice or without VAT but where the VAT is accounted in their own VAT return (via the reverse charge mechanism). The head office might for instance purchase goods which will be used by its branch or the other way round to obtain this VAT cash flow advantage.

887 VAT-rate and deduction planning occurs where a head office purchases goods meant for its branch or the other way round to reduce the financial impact on the company of a limitation on the deduction of input VAT. In practice, this can happen if head office or branches have no or only a limited right to deduct VAT (for instance banks or insurance companies with multiple branches).

888 The decision to have goods purchased by the head office or a branch can be determined by the VAT rate. If the VAT rate in the Member State of the head office is lower than the VAT rate in the Member State of the branch, there would be a revenue advantage to purchasing goods through the head office, while the goods would actually be used by the branch. The reverse could also be the case.

889 The decision to have goods purchased by the head office or a branch can also be determined by the extent of the VAT deduction. If the branch's right to deduct VAT exceeds the head office's (or vice versa), there may be an incentive to have goods purchased through the branch/head office while the goods will be actually used by the head office/branch.

b) Proposed solution: deemed supply of goods

8.2.2.4 Definition

890 The introduction of a deemed supply between a head office and a fixed establishment is in our view the soundest solution to the issues defined above, although the application of this concept will require flanking measures to ascertain correct taxation for Member States[61].

891 The allocation of the cost of goods between a head office and its fixed establishments or the other way around would be deemed to be a supply of goods. The deemed supply would be taxed in accordance with the rules applicable to supplies of goods. Thus, the new B2B localisation and liability principles would also be applicable to the deemed supply.

892 We do not recommend treating the allocation as a transfer of own goods applying the current provisions for deemed intra-Community supplies. The "transfer of goods" only applies to cross-border movements of goods and is not applicable to "allocation" without a physical movement. This concept would also require head office and branches (contrary to legal entities) to monitor the physical flows of goods within the EU, which would be contrary to the new B2B localisation principle.

893 The fact that a deemed supply occurs will not impact the VAT treatment of the supply of the goods by the supplier. The supplier defines the VAT treatment based on the contractual arrangements between the parties. This will not be influenced by either the legal structure of its customer or the physical flows of the goods. For the supplier, the VAT treatment of a supply of goods made to a customer that is a legal entity or that is the head office or a branch belonging to a group with multiple fixed establishments and/or legal entities will be the same.

894 Furthermore, the deemed supply will do away the risks of VAT-rate and VAT-deduction planning, thus safeguarding the revenues of Member States.

8.2.2.5 VAT treatment of the deemed supply

895 The deemed supply would be based on the allocation of costs of goods from a head office to its fixed establishment or the other way around or between fixed establishments. The concept entails Member States treating the allocation of costs of goods from a head office to its fixed establishment or between fixed establishments as a supply of goods for consideration (similar to article 16 of the VAT Directive).

[61] Our approach is in line with the OECD's approach as set out in the Interim Report CTPA/CFA/WP9(2011)3 on the place of taxation – supplies of services and intangibles to multiple location entities, which is discussed in VAT Committee working paper no. 693 of 11 April 2011; Organisation for Economic Co-operation and Development, Working Party No. 9 on Consumption Taxes, Public Consultation on Draft Guidelines for Customer Location, 1 February to 30 June 2010, http://www.oecd.org/dataoecd/19/63/44559751.pdf.

896 We will use the existing VAT definitions of fixed establishment and place of business in this respect (see chapter 3 for the definition of fixed establishment). The concept will also be applicable to establishments that only work for the head office or for other fixed establishments and that make no supplies to customers (such as distribution centres, representative offices, etc.).

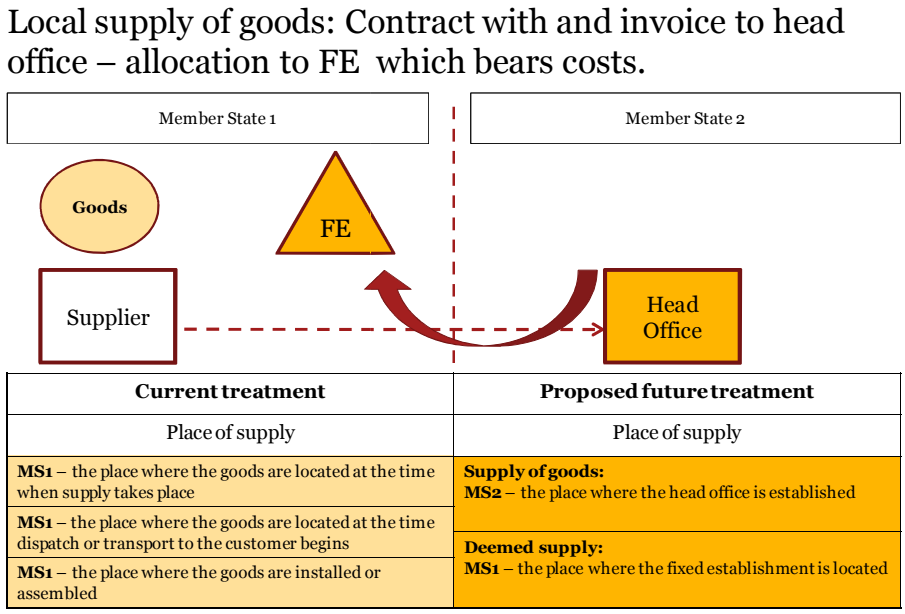
897 Please find below two examples illustrating the VAT treatment of the deemed supply.

898 Please note that the examples below and also the further argumentation deal with a head office allocating goods to its branch or other place of business. However, we stress that the same principles apply where a branch allocates the goods to its head office.

899 In the first example, a supplier established in Member State 1 has an agreement with a head office established in Member State 2. The agreement provides that the goods need to be delivered at the premises of a fixed establishment also located in Member State 1, which will actually use the goods.

900 The transactions are visualised in figure 8.2.

Figure 8.2: Local supply of goods - contract with and invoice to head office



Current treatment	Proposed future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time when supply takes place	**Supply of goods:** **MS2** – the place where the head office is established
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	
MS1 – the place where the goods are installed or assembled	**Deemed supply:** **MS1** – the place where the fixed establishment is located

901 If, as currently, the physical flow of the goods is followed or the fixed establishment in Member State 1 that is actually using the goods is taken into account, the supply of the goods is a domestic supply of goods subject to VAT in Member State 1 (figure 8.2). The supplier will have to issue an invoice with Member State 1 VAT.

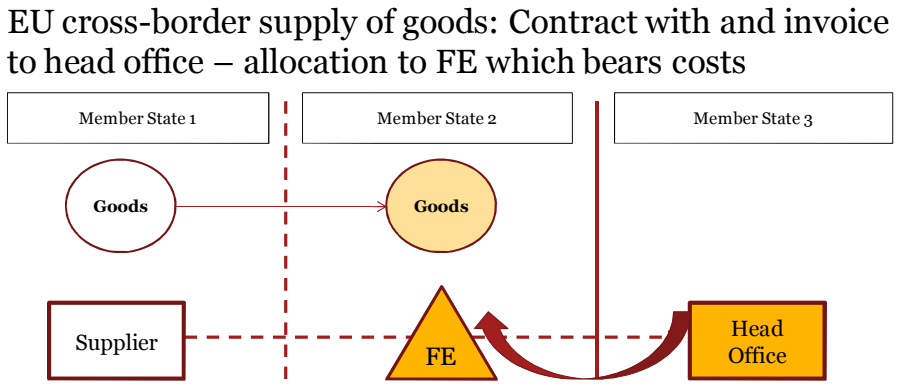
902 In the "to be" situation, the contractual arrangements would be followed. Thus, the supply takes place in Member State 2 where the head office, the customer in the agreement, is located. Under the new B2B liability principle, the head office will be liable for paying VAT in Member State 2 (via the reverse charge mechanism).

903 Next, the head office allocates the cost of the goods to its fixed establishment. This allocation to the fixed establishment is a deemed supply of goods. It takes place where the fixed establishment is established, i.e. in Member State 1. The head office will issue an invoice without VAT and report the deemed supply in its recapitulative statement. The fixed establishment has to pay VAT in Member State 1 (via the reverse charge mechanism).

904 In the second example, a supplier established in Member State 1 has an agreement with a head office established in Member State 3. The agreement provides that part of the goods need to be delivered to the premises of a fixed establishment located in Member State 2 as that fixed establishment will actually be using the goods.

905 The transactions are visualised in figure 8.3.

Figure 8.3: EU cross-border supply of goods – contract with and invoice to head office



Current treatment	Proposed future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time the dispatch or transport to the customer begins (i.e. intra-Community supply)	**Supply of goods:** **MS3** – the place where the head office is established
MS2 – the place where dispatch or transport of the goods to the person acquiring them ends (i.e. intra-Community acquisition)	**Deemed supply:** **MS2** – the place where the fixed establishment is located
MS2 – the place where the goods are installed or assembled	

906 If the physical flows are followed or the fixed establishment in Member State 2 that is actually using the goods is taken into account, the fixed establishment would be liable to pay VAT in Member State 2. However, under the proposed solution, the head office is the contracting partner. The place of supply is in Member State 3 and the head office is liable for payment of the VAT in that Member State. As the head office allocates the cost of the goods to its fixed establishment, a deemed supply of goods occurs and VAT shall be due by the fixed establishment in Member State 2 (via the reverse charge mechanism).

907 Under the proposed solution, the supply of the goods is split up into a supply to the head office followed by a deemed supply between the head office and the fixed establishment. In both cases, VAT continues to be due in the Member State where the fixed establishment using the goods is established. The deemed supply would occur in all cases of cost allocations be it cross-border or not. Furthermore, the same result would be achieved if the supplier invoiced the goods to a legal entity that, in turn, charged the goods on to another legal entity in the group be it established in a different Member State or not.

908 The deemed supply also means that, should the EU branch or other place of business not yet have a VAT number in the Member State of establishment (for instance because it is a representative office), it should identify itself to the local VAT authorities with respect to the deemed supply (as is currently already the case for receiving services according to the general localisation rule under article 44 of the VAT Directive).

8.2.2.6 Chargeable event and taxable amount of the deemed supply

909 The question is how we will deal with the timing and the valuation of the deemed supply.

910 In general, VAT becomes due on the deemed supply where the goods are supplied. The supply of goods concerns transfer of the goods from one party to another party, entitling the latter to actually dispose of the goods as if it were the (economic) owner.

911 In practice, the transfer and its timing will be supported by actual use of the goods in the hands of the fixed establishment; either because the goods are sold on to its customers or because the goods are used at the premises of the fixed establishment or the place of business in the course of its business. The latter is the case for instance with telephones bought by the head office but used by a call centre located in another EU Member State working solely for the head office. Goods that are used at the premises are, in principle, accounted in the books and records and registered in the table of fixed assets and depreciated by the fixed establishment concerned.

912 In the case of another place of business such as a representative office, the head office will, in principle, create a special cost centre within its accounts attributing the costs to the representative office.

913 In practice, it might prove difficult to determine the exact time that VAT actually becomes due on the deemed supply as it might not always be clear when the goods are indeed allocated to the branch or other place of business. In principle, businesses will do provisional cost allocations on a monthly basis and a final cost allocation on a yearly basis at least.

914 Therefore, it needs to be provided that the deemed supply is carried out at the latest at the end of each calendar or accounting year if different (similar to article 64 of the VAT Directive for continuous supplies of services). At least once a year final accounting entries need to be made to comply with other regulatory requirements (accounting law, income tax law, stock exchange reporting ...).

915 As regards the taxable amount of the deemed supply, it will be the purchase price of the goods or similar goods or, in the absence of a purchase price, the cost price, determined at the time when the allocation takes place.

916 In order to prevent tax evasion or avoidance, there should be a provision that the taxable amount may not be lower than the open market value in cases where the head office or fixed establishment to which the cost of the goods is allocated does not have a full right to deduct VAT.

917 These topics need to be dealt with before drawing any final conclusions on the deemed supply.

8.2.2.7 Right to deduct

918 The head office will be able to exercise its right to deduct VAT with respect to the goods "supplied" to its EU branch or other place of business (following direct attribution). To the extent that the head office does not carry out a deemed supply to its EU branch or other place of business and the goods are not used for the specific economic activity of the head office, it will have no right to deduct VAT with respect to the goods purchased. Should the head office be a mixed taxable person with a limited right to deduct VAT, the value of the deemed supplies should be excluded from the calculation of the general/special pro rata. This is necessary to avoid overestimation of the value of the deemed supply to obtain a higher right to deduct VAT.

919 If the goods supplied to the branch are capital goods for which no full VAT deduction has arisen in the past, the normal rules with respect to the adjustment period and the adjustments are applicable.

920 Whether the EU branch or other place of business will be able to deduct the local VAT due on the deemed supply will depend inter alia on its VAT status in the Member State of establishment.

8.2.2.8 Allocation of cost of goods to a non-EU branch or other place of business

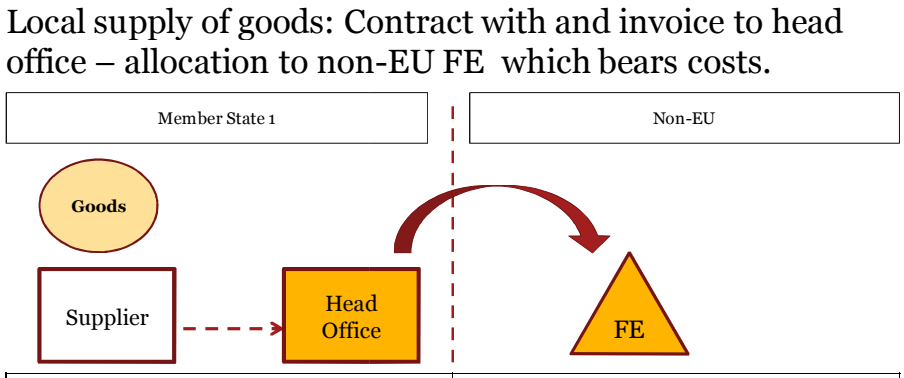
921 The above deals with allocation of the costs to an EU branch or other place of business. In practice, it might also happen that the EU head office allocates the cost of goods to a non-EU branch or other place of business.

922 We make a distinction between whether or not the goods allocated are also dispatched or transported outside the EU.

923 If the goods remain in the EU, the EU head office should charge VAT of its Member State of establishment on the deemed supply of the goods to the non-EU branch or other place of business. More specifically, the EU head office would qualify as the VAT representative of the non-EU branch or other place of business within the EU. For the purposes of applying the new B2B localisation principle, the non-EU branch or other place of business is deemed to be established in the EU via the EU head office (see chapter 8).

924 This is visualised in figure 8.4.

Figure 8.4: Local supply of goods – contract with and invoice to head office



Current treatment	Proposed future treatment
Place of supply	Place of supply
MS1 – the place where the goods are located at the time when supply takes place	**Supply of goods:** **MS1** – the place where the head office is established
MS1 – the place where the goods are located at the time dispatch or transport to the customer begins	**Deemed supply:** **MS 1**– the place where the head office is established
MS1 – the place where the goods are installed or assembled	

925 The non-EU branch is allowed to fully or partially recover the VAT due depending on the activities of the non-EU branch. This right will be exercised by the head office, as the VAT representative of the non-EU branch. The EU head office should also have a full right to deduct VAT with respect to purchase of the goods.

926 If the goods are dispatched or transported outside the EU, the EU head office is again qualified as the EU representative of the non-EU branch. However, the deemed supply will be exempt due to exportation of the goods outside the EU. In this respect, proof needs to be provided that the goods actually left the EU.

927 In this case, too, the EU head office has a full right to deduct VAT with respect to purchase of the goods.

8.2.2.9 Reporting and audit/control measures

8.2.2.9.1 Reporting

928 Ideally the reporting should provide an overall view of the transactions of the head office and branches in the EU. In the case of head offices and branches with several EU VAT returns, there is only a fragmentary reporting meaning need for exchange between tax authorities with respect to the application of the deemed supply.

929 Therefore, from a reporting perspective, we suggest for the long term a single EU VAT return on a legal entity level (head offices/branches) would be filed. In the case of a single VAT return, the EU head office or if not available the main EU branch should be identified as the representative towards the EU VAT authorities.[62]

930 The representative is by default responsible for filing (electronically) a "single VAT return" and any other VAT related listings. The periodical single VAT return should be filed in the Member State where this representative is established.

931 In this single VAT return the representative should report all transactions, i.e. sales and purchases with third parties but also the deemed supplies of goods within the same legal entity (from head office to fixed establishment or the other way around). In particular, the single VAT return should show for each Member State in which VAT is due or refundable, the total value exclusive of VAT on taxable transactions carried out during the tax period (including the deemed supplies). In principle, this single VAT return should be filed in the Member State of establishment of the representative using the one-stop-shop mechanism.

932 This way of working will allow the Member State of establishment to identify whether the allocation of the goods by the head office or fixed establishment and the use of the goods by respectively the fixed establishment or head office is indeed correctly reported in the VAT return. It will be up to the representative to provide any proof in this respect. If deemed supplies are not or incorrectly reported, the Member State of the representative should inform the Member States concerned, allowing the latter to take measures for assessment.

933 In order to have equal treatment between head office/branches and subsidiaries, it might be opted to also foresee such a single VAT return for groups having multiple subsidiaries.

8.2.2.9.2 Audit/control measures

934 From an audit/control perspective, we suggest on a short term basis the following approach assuring the correct application of the deemed-supply rule. This approach should be followed even in the case there is not a single EU VAT return. This VAT audit approach should be based on the following elements:

- obligation to issue a VAT only invoice for the deemed supplies, including in the case head office and fixed establishment are in the same Member State;
- reporting of intra-EU transactions, as set out above, in recapitulative statement, informing the appropriate tax authorities of the Member States concerned;
- obligation to retain and archive underlying documentation used for drafting the VAT only invoice for the deemed supply (e.g. accounting entry, cost centre for the valuation of goods produced, reference to the purchase invoices for trading goods);

[62] In this respect we also refer to the PwC Expert Study on VAT and Pan-European businesses – Specific Contract No. 4, TAXUD/2011/DE/307.

- the application of SAF-T (i.e. data file of relevant tax data in structured format) should be obligatory. If one structured format would exist a data warehouse model could be applied enabling businesses and tax authorities to compare and exchange data;[63]
- the tax authorities should be allowed to perform mutual cross-border audits e.g. joint audits on head office and fixed establishment level.[64]

935 The VAT audit approach could include in its methodology the comparison of the findings from a VAT point of view with the accounting rules, transfer pricing principles and methodologies applied by countries under OECD guidelines.[65] In this respect, we refer to the report of the OECD regarding the attribution of profits to permanent establishments where a fixed establishment is regarded as a distinct and separate enterprise with respect to the attribution of profits.

936 The treatment from a transfer pricing (direct tax) perspective and in the accounts should not be decisive, as the application of the VAT Directive should be done by respecting the nature of the tax and in a harmonised way at an EU level.[66] They may provide an indication for the tax authorities that a cost or income is actually borne or attributed by a head office or fixed establishment to establish the occurrence of a deemed supply for VAT purposes.

937 However, further research is needed to develop the (joint) audit methodology.

938 Furthermore, in order to ensure that the head office (branch or other place of business) does not circumvent the deemed supply by merely allowing the fixed establishment to make use of the goods, the mere use of the goods should also be deemed to be a supply (supply of services for consideration similar to article 26 of the VAT Directive). This also fits in the suggestion to align the B2B supply rules for goods with the B2B supply rules for services.

[63] The OECD's Guidance Note: Guidance for the Standard Audit File – Tax Version 2.0 April 2010, http://www.oecd.org/dataoecd/42/35/45045602.pdf and PwC Study on the feasibility of alternative methods for improving and simplifying the collection of VAT through the means of modern technologies and/or financial intermediaries – Specific Contract No. TAXUD/2009/AO-05, ec.europa.eu/taxation_customs/resources/...vat/vat-study_en.pdf.

[64] Proposal for a regulation of the European Parliament and of the Council establishing an action programme for customs and taxation in the European Union for the period 2014-2020 (FISCUS) and repealing decisions N°1482/2007/EC and N°624/2007/EC, COM(2011) Final, 9 November 2011.

[65] The OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 2010 Report on the attribution of profits to permanent establishments 22 July 2010, http://www.oecd.org/document/32/0,3746,en_2649_37989746_45689952_1_1_1_1,00.html

[66] EUCJ, 23 March 2006, C-210/04, FCE Bank plc.

8.3 Alignment of B2B supply rules for goods with B2B supply rules for services

8.3.1 Issues

939 First, there is an interaction with the place of supply rule for services pursuant to article 44 of the VAT Directive with respect to the definition of taxable persons. More specifically, the B2B supply rule in article 44 of the VAT Directive is applicable to non-taxable legal persons who are identified for VAT purposes whereas the new B2B localisation rule for goods is applicable to all non-taxable legal persons (following the concept as defined in chapter 3).

940 Indeed, article 44 of the VAT Directive applies inter alia to non-taxable legal persons that are identified for VAT purposes because they have to subject their intra-Community acquisitions of goods to VAT.

941 Under the new B2B localisation principle for supplies of goods, non-taxable legal persons will need to be identified for VAT purposes immediately they purchase EU goods for which they are liable for the payment of VAT. This is due to the fact that the threshold of EUR 10,000 for intra-Community acquisitions of goods and the possibility to opt if the threshold is not met will be abolished under the new B2B localisation principle (see chapter 9 for further explanations in this respect). This has the effect that the place of supply rule in article 44 of the VAT Directive will come into play sooner for non-taxable legal persons.

942 Furthermore, in order to determine the place of supply of goods in the case of head offices with multiple branches and to avoid keeping track of the physical flow of the goods, we recommend following the contractual arrangements between the parties combined with the deemed supply of goods rule (as explained above).

943 However, this means that there would be a difference from the localisation rule for services, as this rule specifies that, where the service is provided to a fixed establishment of a taxable person located in a place other than where the customer has established its business, that supply is taxable at the place of the fixed establishment receiving and using the service.[67] In this respect, the supplier has to examine the nature and use of the services provided.[68] These rules are not based on the contractual arrangements as we propose for supplies of goods but on the entity that is actually "using and enjoying" the services.

[67] Article 21 of Council Implementing Regulation No. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC.

[68] Article 22(1) of Council Implementing Regulation No. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC.

944 A supplier supplying both goods and services would have to follow different place of supply rules in the case of head offices with multiple branches, depending on whether a supply of goods or a supply of services was concerned. This might be especially cumbersome in cases where it was not clear cut whether the supply was of goods or services (e.g. financial leases) or in the case of bundled/composite supplies (e.g. supplies consisting of two or more components, each of which is either goods or services), and in the cases where under the same contract between the same parties goods and services are to be supplied.

945 There would also be a difference with respect to the liability rule due to the intervention principle in article 192a of the VAT Directive, as we recommend from the outset repealing this principle for supplies of goods where the contractual arrangements between parties are followed (see chapter 8, section 8.2.2.2).

946 Furthermore, current practices in the Member States shows that the delineation and application of the intervention principle is hard to define for both tax authorities and businesses leading to double or non-taxation[69].

8.3.2 Proposed solution: alignment of B2B rules for goods and services

947 Uniformity of the localisation and liability rules for goods and services will enhance legal certainty and simplicity for taxable persons and tax authorities. This will possibly reduce conflicts among businesses, among tax authorities and between the two groups with respect to the applicable rules, focusing on the correct taxation of the underlying transactions. For the tax authorities, this will also lead to a uniform control and audit methodology in respect of taxation of supplies of goods and services.

948 Therefore, we recommend the following measures to align the supplies of both goods and services fully. This will require extensive revision of the current concepts.

949 First of all, it will be important to align the definition of business customer for supplies of both goods and services.

950 The definition for supplies of goods and services will specify that non-taxable legal persons are regarded as taxable persons for the purpose of applying the rules concerning the place of any supply. As previously said, this would mean that the compliance burden for non-taxable legal persons purchasing goods and services for which they are liable for paying VAT would increase considerably (chapter 6). More specifically, they would need to be identified for VAT purposes as from the moment that they purchased goods and services for which they were liable for paying VAT whereas, in the past there was a buffer, being the threshold of EUR 10,000 for intra-Community acquisitions of goods.

[69] Value Added Tax Committee Article 398 of Directive 1006/112/EU, Guidance, Working Paper No 614 rev 1, 86th meeting of the VAT Committee, 18 June 2009.

951 Secondly, if the definition of taxable person is aligned for goods and services and the place of supply rule also, the rules governing the liability will have to be aligned (current articles 192a and 196 of the VAT Directive).

952 Thirdly, we recommend introducing the new concept of "deemed supply" (deemed to be a supply of services for consideration) in the case of an allocation of costs from a head office to a fixed establishment or the other way round or between fixed establishments, also for services. In this respect, the supplier should no longer examine the nature and use of the service provided to identify the establishment of the customer to which the service is supplied (article 22 of the Implementing Regulation).[70] This would mean a simplification for service providers as they would only have to follow the contractual arrangements between the parties independent of the legal structure of their customer.

953 Furthermore, as explained above, it will be necessary to introduce a similar concept of deemed supply where a head office allows its fixed establishment to use goods or vice versa remaining in the EU to avoid abuse (deemed supply for services).

8.4 The new B2B localisation principle and the optional use of exemptions

8.4.1 Issues

954 Following our Study concept (chapter 3), we no longer keep track of the physical flow of the goods. We only take account of whether EU goods or non-EU goods are concerned.

955 If EU goods are concerned, EU taxation should occur. If non-EU goods are concerned, no taxation should occur.

956 Nevertheless, until now, we have followed the idea that no EU taxation should occur where a special exemption applies. In light of this concept, the question is whether the exemption upon exportation (article 146 of the VAT Directive), the exemption for international transport (article 148 of the VAT Directive) and that related to international trade (articles 156 and157 of the VAT Directive) should be made optional.

8.4.2 Proposed solution: optional use of the exemptions of articles 146, 148, 156 and 157 in the VAT Directive

957 Following the new B2B localisation and liability principle, it will be the supplier or the customer that will be liable for payment of VAT in his Member State of establishment. This means that it will be the suppliers' or customers' responsibility to interpret whether VAT is due on the transactions or whether an exemption applies. Should the supplier charge VAT or the customer pay VAT on the transactions via a reverse charge, the customer would not currently have a right to deduct VAT because the exemption applies.

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

958 As EU taxation should occur with respect to goods located in the EU, it is advisable to leave it up to the supplier or customer to decide whether or not they use the exemption. If the supplier or customer does not make use of the exemption for goods located in the EU, the customer should have a right to deduct the VAT paid on the transaction as taxation prevails over the exemption. The customer may, however, prefer to apply the exemption in order not to incur non-deductible input VAT. The same goes for the supplier intending to avoid pre-financing of VAT.

959 Even if the supplier or customer does not make use of the exemption, he should still, for control purposes, hold the necessary proof with respect to the whereabouts and use of his goods. For instance, in the case of exportation of the goods, the customer should be able to prove that the subsequent sale of the goods takes place outside the EU.

960 This principle should not apply for goods located outside the EU as those should not be subject to EU VAT and are outside scope of VAT. In the case of taxation, the customer should not be entitled to deduct EU VAT.

961 The supply of goods having "special customs/VAT status" in the Member State where they are located should be exempt in the Member State where the customer is established, even if that Member State has not adopted the relevant exemption. In that case, certification of the status of the goods is required and should be provided to the customer.

962 Furthermore, we believe that the exemptions in articles 156 and 157 of the VAT Directive should in any case be open to EU traders and non-EU traders trading goods within the EU. This is necessary to provide sufficient simplification measures when goods are traded within the EU. Therefore, as the exemptions of articles 156 and 157 of the VAT Directive are optional for Member States, we suggest changing them from optional to obligatory in the long term (i.e. from "may" to "shall").

963 It is however advisable to gain more insight in this respect and to know the exact impact for Member States when implementing or changing the application of the exemptions of articles 156 and 157 of the VAT Directive. Whilst reviewing the impact, we would also suggest reviewing the alignment with the Modernised Customs Code to assess the impacts from a collection and control perspective for governments and a compliance cost perspective for traders[71].

[71] Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code.

9 Review of the legislative impact

9.1 Introduction

964 After the analysis of 309 scenarios and performing the impact assessments, we reviewed the legislative impact of changing the B2B place of supply rules for goods.

965 We analysed which provisions of the VAT Directive would need to be repealed or amended. We have also reviewed if new provisions should be laid down.

966 Where multiple policy options for amending the VAT Directive should be considered, we have suggested options for consideration.

967 The detailed analysis is enclosed in appendix 12 "Identification of the rules that would need to be changed".

9.2 Overview of the legislative impact and general conclusion

968 Of the 414 provisions of the VAT Directive, 192 are impacted, which is almost half of the provisions. 58 provisions, which is 14% of all provisions, should be repealed. 78 provisions, which is 19%, should be amended. 10 new articles should be introduced.

969 For 46 provisions, one or more policy options are put forward for consideration.

970 The changes can be grouped into 4 categories:

- changes required in order to no longer follow the physical flow for B2B supplies of goods circulating in the EU;
- changes required to harmonise the B2B place of supply rules for goods and services;
- changes required to avoid non-collection of EU VAT due;
- changes required to avoid double taxation.

971 In the next sections of this chapter, we will explain for each of those categories what the changes affect. The explanations will be brief if the changes have already been covered in detail in any of the prior chapters, which we will refer to. In Appendix 12, you can also find in the last column a cross-reference to the relevant chapter and Appendix.

972 Figure 9.1 below provides an overview of the Titles and Chapters of the VAT Directive that are impacted.

Figure 9.1: Overview of the impact on the VAT Directive

VAT Directive 2006/112/EC	To be repealed	To be amended	Options for consideration	New Article
Title I Subject matter and scope	3	1	1	0
Title III Taxable persons	0	1	2	0
Title IV Taxable transactions	6	5	3	0
Chapter 1 Supply of goods	1	4	2	0
Chapter 2 Intra-Community acquisition of goods	4	0	0	0
Chapter 3 Supply of services	1	1	1	0
Title V Place of taxable transactions	5	7	10	8
Chapter 1 Place of supply of goods	2	7	9	8
Chapter 2 Place of an intra-Community acquisition of goods	3	0	0	0
Chapter 3 Place of supply of services	0	0	1	0
Title VI Chargeable event and chargeability of VAT	3	2	0	0
Chapter 2 Supply of goods or services	1	2	0	0
Chapter 3 Intra-Community acquisition of goods	2	0	0	0
Title VII Taxable amount	4	4	0	0
Chapter 2 Supply of goods or services	1	2	0	0
Chapter 3 Intra-Community acquisition of goods	2	0	0	0
Chapter 5 Miscellaneous provisions	1	2	0	0

Figure 9.1: Overview of the impact on the VAT Directive (cont.)

VAT Directive 2006/112/EC	To be repealed	To be amended	Options for consideration	New Article
Title VIII Rates	2	1	0	0
Chapter 1 Application of rates	2	0	0	0
Chapter 4 Special provisions applying until the adoption of definitive arrangements	0	1	0	0
Title IX Exemptions	7	3	13	0
Chapter 2 Exemptions for certain activities in the public interest	0	1	1	0
Chapter 3 Exemptions for other activities	0	0	2	0
Chapter 4 Exemptions for intra-Community transactions	4	0	0	0
Chapter 5 Exemptions on importation	1	0	1	0
Chapter 6 Exemptions on exportation	0	0	1	0
Chapter 7 Exemptions related to international transport	0	0	3	0
Chapter 9 Exemptions for the supply of services by intermediaries	0	1	0	0
Chapter 10 Exemptions for transactions relating to international trade	2	1	5	0
Title X Deductions	3	10	4	0
Chapter 1 Origin and scope of right of deduction	1	8	3	0
Chapter 4 Rules governing exercise of the right of deduction	2	2	1	0

Figure 9.1: Overview of the impact on the VAT Directive (cont.)

VAT Directive 2006/112/EC	To be repealed	To be amended	Options for consideration	New Article
Title XI Obligations of taxable persons and certain non-taxable persons	20	32	4	1
Chapter 1 Obligation to pay	6	9	2	1
Chapter 2 Identification	3	3	0	0
Chapter 3 Invoicing	3	7	1	0
Chapter 4 Accounting	1	0	0	0
Chapter 5 Returns	1	6	0	0
Chapter 6 Recapitulative statements	5	6	0	0
Chapter 7 Miscellaneous provisions	1	1	1	0
Title XII Special schemes	5	11	8	1
Chapter 1 Special scheme for small enterprises	0	2	0	0
Chapter 2 Common flat-rate scheme for farmers	1	2	1	1
Chapter 4 Special arrangements for second-hand goods, works of art, collectors' items and antiques	0	2	7	0
Chapter 5 Special scheme for investment gold	4	5	0	0
Title XIII Derogations	0	1	0	0
Chapter 1 Derogations applying under the adoption of definitive arrangements	0	1	0	0
Title XV Final provisions	0	0	1	0
Chapter 1 Transitional arrangements for the taxation of trade between Member States	0	0	1	0

9.3 Changes required in order to no longer follow the physical flow for B2B supplies of goods circulating in the EU

9.3.1 Overview

973 In order to introduce the new B2B localisation principle, the following changes are required:

- repeal of the exemption for supplies of goods that are transported from one Member State to another member State;
- repeal of the concept of deemed intra-Community supplies of goods (so-called transfers);
- repeal of all the rules with respect to intra-Community acquisitions of goods;
- introduction of the new place of supply and liability rule for B2B supplies of goods, including amending the provisions for supplies of gas through a natural gas system, of electricity and of heat or cooling energy through heating and cooling networks;
- amendments of the obligations;
- restriction of the scope of application of certain provisions for B2C supplies of goods;
- amendment of the exemption on exportation (article 146 of the VAT Directive);
- amendment of the exemption related to international transport and for transactions relating to international trade (articles 148, 156 and 157 of the VAT Directive);
- amendment of the special regimes.

974 In the next sections of this chapter, we will explain in greater depth those changes on the VAT Directive not yet covered in chapters 6, 7 or 8.

9.3.2 Repeal of the exemption for supplies of goods that are transported from one Member State to another Member State

975 The VAT exemption for supplies of goods dispatched or transported from one Member State to another Member State, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began should be repealed (articles 138 and 139 of the VAT Directive).

976 Many other provisions of the VAT Directive are impacted when this exemption is repealed. They should either also be repealed or amended. Concerned are the provisions regarding:

- the place of taxable transactions (article 32 of the VAT Directive – to be amended);
- the chargeable event (article 67 of the VAT Directive – to be repealed);
- the exemptions (articles 138, 139, 143(1)(d) and (2) and 164(2) of the VAT Directive – to be repealed);

- the deductions (articles 169(b), 171(3)(b) and 172 of the VAT Directive – to be amended);
- the obligations (articles 220(3), 251(a) and 262(a) of the VAT Directive – to be repealed and articles 216, 226(4) and (12), 238(3), 239, 240, 254, 264(1)(a), 270, 271, 272(1)(b) of the VAT Directive – to be amended);
- the special schemes (article 300(2) of the VAT Directive – to be repealed and articles 283(b), 303(2), 313(2), 333(2) and 352 of the VAT Directive – to be amended).

9.3.3 *Repeal of the concept of deemed intra-Community supplies of goods (so-called transfers)*

977 A deemed intra-Community supply of goods should no longer be qualified as a taxable transaction. Transfers of goods forming part of business assets from one Member State to another Member State should no longer be assimilated to a supply of goods for consideration as the physical flow of goods in the EU would no longer be followed. Article 17(1) of the VAT Directive should be repealed.

978 All other provisions of the VAT Directive related to this taxable transaction should be repealed or amended as well. Concerned are the provisions regarding:

- the place of taxable transactions (article 32 of the VAT Directive – to be amended);
- the chargeable event (article 67 of the VAT Directive – to be repealed);
- the taxable amount (article 76 of the VAT Directive – to be repealed);
- the exemptions (articles 138(2)(c), 139 and 164(2) of the VAT Directive – to be repealed);
- the obligations (articles 220(3), 251(a), 262(a), 264(1)(c) and (e) of the VAT Directive – to be repealed and articles 226(4), 238(3), 239, 240, 270, 271 and 272(1)(b) of the VAT Directive – to be amended).

979 The concept of non-transfers of goods (article 17(2) of the VAT Directive) should also be abolished together with a provision regarding the obligations to be complied with in cases of non-transfers (article 243(1) VAT Directive – to be repealed).

9.3.4 *Repeal of all the rules with respect to intra-Community acquisitions of goods*

980 All the rules with respect to intra-Community acquisitions of goods and deemed intra-Community acquisitions of goods as taxable transactions should be repealed (articles 20, 21, 22 and 23 of the VAT Directive). Only supplies of goods, supplies of services and importations of goods will continue to be taxable transactions. These were also the taxable transactions prior to introduction of the transitional arrangements in 1993.

981 The simplification measure for triangulation must also be abolished (articles 42 and 141 of the VAT Directive).

982 28 other articles of the VAT Directive related to (deemed) intra-Community acquisitions of goods should also be repealed. This concerns the following:

- the subject-matter and scope (articles 2(1)(b), 3 and 4 of the VAT Directive);

- the place of taxable transactions (articles 40, 41 and 42 of the VAT Directive);
- the chargeable event (articles 68 and 69 of the VAT Directive);
- the taxable amount (articles 83 and 84 of the VAT Directive);
- the rates (articles 93(b) and 94(1) of the VAT Directive);
- the exemptions (articles 140, 141 and 162 of the VAT Directive);
- the deductions (articles 168(c) and (d), 178(c) and (d) and 181 of the VAT Directive);
- liability (articles 197 and 200 of the VAT Directive);
- the obligations (articles 213(2), 214(1)(b) and (c), 216, 251(c), 265, 268 and 272(1)(a) of the VAT Directive);
- the special schemes (article 300(2) of the VAT Directive).

983 A number of other articles of the Directive cross-refer to those repealed articles relating to (deemed) intra-Community acquisitions. The following provisions should therefore be amended:

- the exemptions (article 164(1)(a) of the VAT Directive);
- the deductions (articles 172 and 182 of the VAT Directive);
- liability (articles 209 and 210 of the VAT Directive);
- the obligations (articles 238(3), 239, 240, 257, 258, 259 and 272(1)(b) of the VAT Directive);
- the special schemes (articles 303(2), 346, 354 and 355 of the VAT Directive).

984 Only the provisions regarding supplies and intra-Community acquisitions of new means of transport to and by non-taxable persons remain (articles 138(2)(a) and 2(1)(b)(ii) of the VAT Directive).

985 For the sake of simplification, it might be considered also repealing these provisions. The purpose of the specific rules for new means of transport was to avoid VAT rate shopping, i.e. buying new means of transport in other EU Member States due to differences in VAT rates. In this light, one could consider to locate the place of supply of new means of transport where the new means of transport will be registered (i.e. registration plate for cars, certificate of registry for ships and tail number for aircraft).

986 For the sake of consistency, it might be opted to expand the use of the specific localisation rule for new means of transport to B2B transactions (except for traders) and/or to all supplies of means of transport (including new means of transport no longer falling under the conditions set down in article 2(2) of the VAT Directive). In any case, should there be no registration of the means of transport in a B2B relationship (for instance sale from the production plant to a local distributor of the means of transport), the normal rules for B2B supplies of goods should apply.

9.3.5 *Introduction of the new place of supply and liability rule for B2B supplies of goods, including amending the provisions for supplies of gas through a natural gas system, of electricity and of heat or cooling energy through heating and cooling networks*

9.3.5.1 Definition of "business customer" and amendment to identification

987 Taxable persons and non-taxable legal persons should be defined as business customers. This is also required to align the definitions of business customer for supplies of goods and supplies of services (article 43 of the VAT Directive – also see chapter 8, section 8.3).

988 Furthermore, each party to the agreement that is either established in the EU or has a "VAT presence" in the EU through its VAT representative falls under the definition of business customer (see chapter 6, section 6.1.3.3.1) .

989 The notion of taxable dealer defined in article 38(2) of the VAT Directive for supplies of gas through a natural gas system, of electricity and of heat or cooling energy should be repealed. Taxable dealers will qualify as "business customers".

990 Every taxable person receiving goods for which that taxable person is liable to pay VAT pursuant to the new liability concept should be identified for VAT purposes (amendment of article 214(1)(d) of the VAT Directive).

9.3.5.2 Amendment of the definition of supply of goods

991 For the new concept to function properly and to avoid double or non-taxation, supplies of goods should be defined the same in all Member States. This is currently not the case due to a number of options granted to Member States, which can decide to treat or not treat some supplies as supplies of goods. All these "may" provisions should therefore be changed to "shall", assuming the concepts are maintained.

992 In this respect, Member States "shall" regard (instead of "may" regard):

- the handing over of certain works of construction as a supply of goods (article 14(3) of the VAT Directive);
- certain interests in immovable property, rights *in rem* giving the holder thereof a right of use over immovable property and shares or interests equivalent to shares giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof as tangible property (article 15(2) of the VAT Directive – also alignment with article 25(a) for services);
- certain transactions as a supply of goods for consideration (article 18 of the VAT Directive);
- in the event of a transfer, whether for consideration or not or as a contribution to a company, of a totality of assets or part thereof as not being a supply of goods, and the person to whom the goods are transferred as the successor to the transfer (article 19 of the VAT Directive).

993 Tangible and movable property that is installed or assembled, with or without a trial run, by or on behalf of the supplier should also be included in the definition of a supply of goods (article 14 of the VAT Directive).

9.3.5.3 Introduction of "deemed supply"

994 In order to ensure that B2B supplies of goods circulating within the EU can be taxed without following the physical flow of the goods, certainty is required for suppliers, customers and the tax authorities, whilst mitigating the risk of unacceptable avoidance schemes (VAT rate and deduction optimisation) and safeguarding revenues for EU Member States. To achieve this, a new concept of "deemed supply" should be introduced (see chapter 8, section 8.2.2.3.2).

995 The new concept can be introduced in article 16 of the VAT Directive.

996 For the same reasons as mentioned above and to align the place of supply rules for goods and services, a similar concept for services is required (see chapter 8, section 8.3). Furthermore, a self-supply will also be necessary in the case of a head office allowing its fixed establishment to use goods forming part of the assets of the business (see chapter 8, section 8.2.2.3.2).

997 These can be introduced into article 26 of the VAT Directive.

998 With respect to the chargeable event and the taxable amount of these deemed supplies, we suggest amendments to articles 64 and 74 of the VAT Directive.

9.3.5.4 New B2B place of supply rule

999 A new article is needed implementing the new B2B localisation principle. The place of supply would be where the B2B customer, the party contracting the agreement, is established (see chapter 8, section 8.2). Ideally, this should also be laid down for services.

1000 Non-EU traders will be charged VAT if the goods supplied are located in the EU (see chapter 6, section 6.1.3.3.2).

1001 In order to make the new principle applicable to the maximum extent possible to B2B supplies of goods circulating in the EU sold to non-EU traders, we suggest introducing the concept of a "presence" in the EU (see chapter 6, section 6.1.3.3.1). The non-EU taxable persons not established in the EU would have a "presence" if represented by a third party acting as their VAT representative in the EU. This new rule would therefore also be applicable to B2B supplies of goods to non-EU customers with a "presence" in the EU.

1002 Where the previous mentioned rules do not lead to EU taxation, the Member State where the goods are located at the time of supply should have the power to tax the goods (see chapter 6, section 6.1.3.3.3).

1003 We suggest introducing these new provisions in Chapter 1 of Title V "Place of Taxable Transactions" of the VAT Directive prior to the current article 31.

1004 A specific localisation rule is needed for supplies of immovable property, rights *in rem* and other similar rights with respect to immovable property. The place of supply should be where the immovable property is located, similar to article 47 for services. The place where the immovable property is located is a clear criterion to determine the place of supply.

1005 Consequently the taxation option for the supply of a building or parts thereof, of the land on which a building stands and the supply of land that has not been built on will not change. It will continue to apply in the Member State where the building is situated (article 137 of the VAT Directive).

9.3.5.5 Liability of the B2B customer under the new B2B place of supply rule

1006 A new article is required providing that VAT will be payable by the business customer to whom goods are supplied if the goods are supplied by a taxable person not established within the territory of the Member State.

1007 Customers not established within the EU purchasing goods located in the EU who have a "VAT presence" via a VAT representative will also be liable to pay EU VAT that is due. This should be included in the VAT Directive (amendment to article 204 of the VAT Directive – see chapter 6, section 6.1.3.3.1).

1008 As we recommend having a single definition of business customer for supplies of goods and services, the liability rule for both supplies of goods and services should also be aligned. This amendment can be integrated into article 194 of the VAT Directive or in a new article. Article 196 of the VAT Directive should be repealed.

1009 For the proper functioning of the new B2B place of supply rule for both goods and services, the intervention criterion to define who is liable for the VAT due, in article 192a of the VAT Directive, should be repealed (see chapter 8, sections 8.2.2.2 and 8.3).

1010 The provision regarding the person liable with respect to supplies of gas through a natural gas system, of electricity and of heat or cooling energy through heating and cooling networks pursuant to articles 38 and 39 of the VAT Directive can be repealed (article 195 of the VAT Directive). The liability for those supplies will be in scope of the general B2B liability rule.

9.3.5.6 Obligations

1011 The information listed in recapitulative statements will change.

1012 Taxable persons will have to report in recapitulative statements supplies to business customers for which the customer is liable to pay VAT pursuant to the new B2B liability rule (article 262 of the VAT Directive to be amended).

1013 The recapitulative statement will also include local supplies of goods but for which the customer is liable for VAT pursuant to the new B2B liability rule. For control purposes, it is recommended also including supplies of goods that are exempt in the Member State of the customer (such as exemptions listed in article 146, 148 or 151 of the VAT Directive) and the new concept of "deemed supplies".

9.3.6 Restriction of the scope of application of certain provisions for B2C supplies of goods

1014 Under the new principle, some articles would only apply to B2C supplies.

1015 More specifically, the following provisions should be changed:

- the place of supply of goods without transport (article 31 of the VAT Directive);
- the place of supply of goods with transport (article 32 of the VAT Directive);
- the rules and thresholds regarding distance sales (articles 33, 34 and 35 of the VAT Directive);
- the place of supply of goods with installation or assembly (article 36 of the VAT Directive);
- the place of supply of gas through a natural gas system situated within the EU or any network connected to such a system, the supply of electricity or the supply of heat or cooling energy through heat or cooling networks, i.e. place of supply where the customer effectively uses and consumes the goods (article 39 of the VAT Directive – to be amended).

9.3.7 Amendment of the exemption on exportation (article 146 of the VAT Directive)

1016 The export exemption (article 146 of the VAT Directive) should apply regardless of who is dispatching or transporting the goods, be it the supplier or the customer, as long as the goods leave the EU.

1017 This should also apply irrespective of the place of establishment of the supplier and the customer. The person claiming the export exemption should have sufficient proof of exportation of the goods outside the EU (export document, transport documents, bill of lading and payment documents) (see chapter 6, section 6.1.2.2).

1018 If the supplier unduly charges VAT or the customer unduly accounts for VAT, we advise that the customer would have a right to deduct and would not be penalised (see chapter 6, section 6.1.2.2).

1019 As EU taxation should occur for EU goods, the question is whether the exemption upon exportation (article 146 of the VAT Directive) should be made optional (chapter 8, section 8.4).

9.3.8 Amendment of the exemption related to international transport and for transactions relating to international trade (articles 148, 156 and 157 of the VAT Directive)

1020 The articles 156 and 157 of the VAT Directive should be amended from an optional to an obligatory provision (from “may” to “shall”). This is necessary to provide for sufficient simplification measures when trading goods within the EU.

1021 As EU taxation should occur for EU goods, the question is whether the exemptions should be made optional (chapter 8, section 8.4).

9.3.9 *Amendments to special regimes*

9.3.9.1 Special scheme for small enterprises

1022 We derive that the new B2B localisation and liability principle will not work leading to double taxation or non taxation and will be distorting competition as the customer might stop to purchase goods from small enterprises due to a higher VAT burden (see chapter 7, section 7.3.4).

1023 In this respect, it might be considered to abolish the special regime on the basis of the combined reading of articles 292 and 402 of the VAT Directive, or, in the case a common small enterprises regime is maintained by the Member States pursuant to article 294 of the VAT Directive, by limiting the scope of application to cases where both the small enterprise and the customer are established in the same Member State.

1024 Another option is to introduce a specific localisation criterion for supplies by small enterprises and to link the place of supply to the Member State of establishment of the small enterprise (see chapter 7, section 7.3.4.3).

9.3.9.2 Second-hand goods subject to the margin scheme

1025 If the customer becomes liable for payment of the VAT under the new B2B localisation and liability rules (because the taxable dealer and customer are not established in the same Member State), an exception is needed as taxable dealers will resist to disclose their gross profit margin (article 313 of the VAT Directive).

1026 In this respect, it might be considered to foresee a derogation with respect to the liability rule where the supplier would be liable (new article to be introduced with respect to liability) or a specific localisation rule for supplies of second-hand goods to B2B customers, i.e. where the taxable dealer has established its business in the EU (being new article to be introduced with respect to the localisation) (see chapter 7, section 7.5.4.2).

9.3.9.3 The special flat-rate scheme for farmers

1027 If the customer becomes liable for paying VAT in the EU under the new B2B localisation and liability rules (because the flat-rate-scheme farmer and customer are not established in the same Member State), the flat-rate compensation amount should be linked to the place of establishment of the EU farmer.

1028 Alternative are to abolish the special scheme or to only apply it where the farmer is established in the same Member State as the customer. In all other cases, the normal VAT regime would be applicable (see chapter 7, section 7.4.4.3).

9.3.9.4 The special scheme for investment gold

1029 The option for taxation Member States can introduce pursuant to article 348 of the VAT Directive should be repealed.

1030 Another prerequisite for a proper functioning of the special scheme for investment gold under the new B2B localisation principle is to also repeal article 349 of the VAT Directive allowing Member States to grant an option to industrial gold traders for taxation of the supplies of investment gold.

1031 The potential restricted input VAT (if any) for supplies of investment gold by taxable persons who produce investment gold or transform gold into investment gold and by industrial gold traders should be resolved by amending articles 354 and 355 of the VAT Directive.

1032 Articles 198(2), 208 and 255 of the VAT Directive would become redundant if the option(s) for taxation was/were repealed (see chapter 7, section 7.8.3.1).

1033 The option for taxation for specific transactions on the regulated bullion market should no longer be available to Member States (article 352 of the VAT Directive). Articles 198(1) and 353 of the VAT Directive would become redundant in that case (see chapter 7, section 7.8.3.2).

9.4 Changes required to harmonise the B2B place of supply rules for goods and services

1034 There is a need to align the B2B place of supply rules for goods and services (see chapter 8, section 8.3).

1035 We hereafter list the changes required:

- the definition of business customer for supplies of goods and services (article 43 of the VAT Directive – options for consideration);
- the introduction of the new concept of "self-supply" (assimilation to supply of services for consideration) in the case of allocation of cost of services from a head office to a fixed establishment or the other way round or between fixed establishments in cross-border situations;
- the deletion of article 192a of the VAT Directive;
- the liability (article 194 of the VAT Directive - to be amended and article 196 of the VAT Directive - to be repealed).

9.5 Changes required to avoid non-collection of EU VAT due

9.5.1 Supplies of goods by suppliers not established in the EU to non-EU customers

1036 If both the supplier and customer are not established in the EU and have no "VAT presence" in the EU, there is a risk that the EU VAT due on goods located in the EU will not be collected. In order to safeguard EU VAT revenues, article 205 of the VAT Directive should be amended. It should provide that a person other than the supplier or customer is jointly and severally liable for payment of VAT in the Member State where the goods are located (see chapter 6, section 6.1.3.3.4).

1037 Based on article 205 of the VAT Directive, a previous supplier and subsequent business customer can also be held liable for paying the VAT (e.g. chain liability). This should remain applicable.

9.6 Changes required to avoid double taxation

9.6.1 Supplies of goods located outside the EU to EU established customers

1038 The territorial scope of the VAT Directive should assure that goods that remain outside the EU are not taxed. If the customer is established in the EU, tax will be levied on goods located outside the EU (without there being an intent to import them into EU), leading to distortion of competition due to the functioning of the new B2B localisation principle.

1039 No EU VAT should be levied in the hands of the supplier or customer, depending who is liable for the payment of VAT. The burden of proving that goods are located outside the EU will be with the supplier or the customer not applying EU VAT (see chapter 6, section 6.1.5.2).

9.6.2 Special import exemption (article 143 of the VAT Directive)

1040 The new B2B localisation rule leads to double taxation in the case of importation of the goods within the EU whenever the customer is established in the EU and acts as the importer of record.

1041 Therefore, we suggest introducing a special import exemption to the VAT Directive if the supplier and the customer are established or assumed to be established in the EU via the appointment of a VAT representative (similar to the exemption for the importation of gas, electricity or heat or cooling energy in article 143(1)(l) of the VAT Directive) (see chapter 6, section 6.1.4.2).

9.6.3 *Supplies by exempt taxable persons and exempt supplies without input VAT deduction (article 136 of the VAT Directive)*

1042 In order for the new B2B localisation principle to work in a proper way, the application of the exemption of article 136 of the VAT Directive should be reviewed. There is an increased risk of "tax on tax" situation (double taxation) for the customer with a limited or no right to deduct VAT.

1043 The customer will have the burden of proof. It should be screened how the EU customer is able to provide the necessary evidence in this respect. An option might be that the supplier certifies its VAT exempt status (for instance under supervision of the supplier's local VAT authorities) (see chapter 7, section 7.6.4.2).

1044 Another solution is to consider supplies of capital goods used solely for an exempt activity with no right to deduct VAT as regular taxable supplies. The mechanism is similar to the current article 172 of the VAT Directive in the case of the supply of new means of transport by an incidental supplier. This requires an amendment to article 136 of the VAT Directive.

10 Conclusions and recommendations

1045 We believe that, from a general perspective, the new localisation and liability rule for the B2B supplies of goods will function in such a way that it leads to a Single Market with fewer fiscal barriers than the current transitional arrangements, which lead to taxation in the Member State of final consumption.

1046 Those transitional arrangements that 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, will disappear.

1047 This Study demonstrates that the new B2B localisation and liability rule for B2B supplies of goods can lead to simplification of the VAT legislation and a more efficient VAT regime. More simplicity and legal certainty for suppliers and customers will reduce costs of compliance. For tax authorities, costs of collection could potentially decrease and ease of administration could improve.

1048 However, in order for the new B2B localisation principle to function properly, (mitigating) measures will need to be taken and additional research done for the domains set out below.

- **(Mitigating) measures in order for the new B2B localisation principle to function properly**

1049 We stress that the mitigating measures should be thoroughly assessed in advance of their implementation to guarantee an optimal result in the future functioning of the new B2B localisation principle for all stakeholders impacted.

  - **Exportation of goods to destinations outside the EU**

1050 No taxation should occur where goods supplied are not "consumed" in the EU. In order to achieve this, the exemption for exports has been introduced in the VAT Directive.

1051 Where the customer is established in the Member State where the goods are located at the time dispatch or transport begins to a destination outside the EU and the customer is responsible for the transport, the exemption upon exportation is not applicable.

1052 However, under the new B2B localisation principle, neither the localisation of the goods (ship from), nor the physical flow of goods (ship to) should define the place of taxation. Nevertheless the export exemption should continue to apply.

1053 Therefore, in the short term, we recommend amending the export exemption regardless of who dispatches or transports the goods as long as the goods leave the EU. This will not require extensive revision of the current export exemption.

1054 Where the supplier and customer are not established in the same Member State, the customer is in principle liable for VAT in the "to be" situation, unless he proves that the exemption upon exportation applies.

1055 The customer should be able to prove that the goods were transported outside the EU based on the subsequent use or supply of the goods outside the EU.

1056 If the customer does not have the necessary documentation to prove the export exemption at the time the VAT becomes due and he is liable for it and accounts for it or the supplier is liable to pay VAT and charges VAT to the customer unduly, it will be better for the proper functioning of the new B2B localisation and liability principle that the customer, at least in the long term, should have a right to deduct the VAT and is not penalised.

- **B2B supply of goods located in the EU to a customer not established in the EU**

1057 Under the new B2B localisation principle for supplies of goods, the supply of all goods, even those located in the EU, will be where the customer is established. Where the B2B customer is established outside the EU, the place of supply of the goods will be outside the EU.

1058 The new B2B localisation rule leads to non-taxation of supplies of EU goods to non-EU customers, which is assessed to be a key issue. This becomes even more manifest in the case of chain supplies of EU goods between several non-EU customers and non-EU suppliers.

1059 Therefore, it will be necessary to take the following extensive measures from the outset:

- Localisation of the supply where the non-EU customer has a VAT presence in the EU;
- Specific localisation of the supply where the non-EU customer has no VAT presence in the EU, i.e. where the EU supplier is established or where the non-EU supplier has an EU VAT presence;
- Specific localisation of the supply where the non-EU customer has no VAT presence in the EU, i.e. where the goods are located at the time of supply, combined with jointly and severally liability for persons who have physical control or access to the goods such as the transporter, warehouse keeper, previous supplier or subsequent customer.

- **Importation of goods**

1060 If the importation of goods is taxed in the EU, applying the new B2B localisation principle will lead to double taxation within the EU whenever the customer is established in the EU and acts as the importer of record.

1061 In order to solve this issue, it will be necessary to exempt the importation of goods from the outset.

1062 However, further research is needed with respect to the impact of the proposed VAT exemption, the control methodology and also the link with the central customs clearance as defined in article 106 of the Modernised Customs Code. Specific guidelines will also be necessary for declarants (importers/customs agents) with respect to applying the proposed VAT exemption.

- **B2B supply of goods located outside the EU to a customer established in the EU**

1063 The new B2B localisation rule leads to taxation of supplies of non-EU goods to EU customers, which is assessed to be a key issue. To the extent that the goods are also taxed in the non-EU country where they are located, there may even be double taxation.

1064 As no EU VAT should be due, the EU supplier or customer will have to evidence the whereabouts of the goods. In practice, we do not expect any problems as most traders have warehouse management systems tracking the location of goods. For traders of gas, electricity, heat or cooling energy, further investigation is needed as these goods are difficult to track physically.

- **Onward B2C supplies: B2B supply of goods and onward B2B supply of goods located in the same Member State**

1065 Although the place of supply is in the same Member State, there is a reconciliation and control issue due to the difference in the concepts of B2B and B2C supplies of goods. As the physical flow is no longer followed for the B2B supply, the Member State concerned might not know that the goods are within its territory. Therefore, a one-stop-shop mechanism is a necessary mitigating measure needed as from the outset.

- **Onward B2C supplies: B2B supply of goods and onward B2B supply of goods not located in the same Member State**

1066 The B2B purchase of goods and the subsequent B2C supply of the goods may no longer be located in the same Member State from a VAT point of view. The new B2B localisation principle is not aligned with the B2C localisation principle.

1067 This means that tax authorities will need exchange of information to achieve their control objectives and be assured that VAT is levied in the Member State of final consumption.

1068 However, this undermines the general idea of introducing a simplified VAT system for tax authorities and businesses.

1069 It goes without saying that another mechanism is required to ensure that the simplification aimed at by the new B2B localisation principle is not lost, also in relation to B2C supplies.

1070 Therefore, the introduction of a one-stop-shop mechanism (OSS) is required in the short term[72]. The implementation of the mini one-stop-shop in 2015 is seen by many Member States and businesses as a major milestone that will pave the way for a more general use of this concept[73]. If no such one-stop-shop mechanism were available, the tax authorities would need to exchange huge amounts of information and request additional information from taxable persons, leading to higher administrative burdens and related costs.

1071 Other mitigating measures are recommended. Any supplies for which the B2C supplier cannot prove that it concerns B2B supplies of goods should be considered to be B2C supplies taking place where the goods are located. The B2C supplier is also assumed to be liable to pay VAT due in the Member State of establishment, except if he can prove that VAT of the Member State of consumption has been charged and paid to the relevant tax authorities. Should the tax authorities of the Member State where the goods are located levy local VAT, the B2C supplier should be able to obtain a refund of the VAT paid with respect to the supply in its Member State of establishment.

- **Second-hand goods subject to the margin scheme**

1072 The new B2B localisation and liability principle will not work with respect to the margin scheme for second-hand goods where the supply of the goods is subject to the margin scheme for second-hand goods and the customer becomes liable to pay VAT on the margin.

1073 If the customer becomes liable for payment of the VAT under the new B2B localisation and liability rules (because the taxable dealer and customer are not established in the same Member State), an exception is needed to the new B2B localisation or liability principle as taxable dealers will resist disclosing their gross profit margin under the margin scheme.

1074 We believe that it is advisable to combine a derogation from the liability rule with the option for taxable dealers to apply the normal VAT arrangements with a view to broad application of the new B2B localisation principle. As this means that the taxable dealer needs to register in the Member States of its B2B customers, a (mini) one-stop-shop mechanism is recommendable to reduce his compliance costs.

[72] Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT towards a simpler, more robust and efficient VAT system tailored to the single market, COM (2011) 851/3, 5.1.1 The one-stop-shop concept.

[73] Council Regulation amending Implementation Regulation (EU) No 282/2011 as regards the special schemes for non-established taxable persons supplying telecommunications services, broadcasting services or electronic services to non-taxable persons.

- **Supplies by exempt taxable persons and exempt supplies without input VAT deduction**

1075 Where the exempt taxable person and the customer are not established in the same EU Member State, it will be the customer liable for paying VAT who will have the burden of proof with respect to the exemption applied. In this respect, there is an increased risk of undue taxation leading to an additional VAT cost for the customer in the case that this VAT is not fully recoverable, on top of the unrecoverable VAT of the exempt supplier embedded in the sale price of the goods (i.e. tax-on-tax situation).

1076 The easiest (short term) solution, although it causes additional administrative burden for the supplier and the tax authorities, is for the Member State of the supplier to certify his VAT-exempt status, which shall not require extensive revision of the current exemptions. In this respect, an on-line check via the VIES database might be an option. A long term solution, which nonetheless requires more detailed research, is to consider this kind of supply of (capital) goods as a regular taxable supply. Special attention should be paid to the revision/adjustment rules for capital/non-capital goods.

- **Supplies by non-taxable legal persons**

1077 Where the non-taxable legal person and the customer are not established in the same EU Member State, it will be the customer liable for paying VAT who will have the burden of proving the supply is outside the scope of VAT. In this respect, there is an increased risk of double taxation.

1078 The easiest (short term) solution, although it causes additional administrative burden for the supplier and the tax authorities, is for the Member State of the supplier to certify the supplier's status as a non-taxable legal person which shall not require extensive revision of the current out of scope treatment. Also in this case an on-line check via the VIES database might be an option. A long term solution, which nonetheless requires more detailed research, is to consider non-taxable legal persons occasionally supplying goods as taxable persons entitled to a right to deduct VAT with respect to those supplies.

- **The special scheme for investment gold**

1079 It is possible to combine the new B2B localisation principle with the specific exemption for investment gold.

1080 However, as a prerequisite for properly applying the special scheme for investment gold under the new B2B localisation principle, a uniform definition of the goods falling within the scope of the special scheme should be introduced in all Member States.

1081 More problems will appear with respect to the taxation option for investment gold. More specifically, where the supplier and the customer are not established in the same Member State and the customer is liable for paying the VAT, it should be clear for the customer that taxable supplies of investment gold have been made.

1082 The option to tax for supplies of investment gold by taxable persons who produce investment gold or transform gold into investment gold and for traders in investment gold should therefore be repealed. Where the customer becomes liable for the VAT, its supplier should inform him of the option to tax so that he is able to comply. This is not workable for traders and Member States.

1083 The same goes for the taxation option for certain transactions on the regulated bullion market.

- **Legal structure of the customer and contractual arrangements: deemed supply**

1084 As the physical flow of the goods would no longer be followed for goods remaining or circulating within the EU, the supplier should be able determine the place of supply on the basis of contractual arrangements (especially for entities with multiple fixed establishments or other places of business).

1085 However, in order to ensure that VAT accrues to the Member State where the goods are actually used and to avoid VAT cash flow, VAT-rate and VAT-deduction planning, we recommend introducing the concept of "deemed supply". Theoretically, this concept seems to be the right answer but, in practice, there are a number of issues that need to be gone into, such as the valuation and timing of the supply, the use of goods without actual allocation of the costs, and reporting/audit/control measures.

- **Information in the VIES system**

1086 The supplier should be able to verify the status of its customer via the VIES database. However, the information needed to check the validity of the associated name and address is not available in all Member States at the moment. Furthermore, the VIES database should also provide information in the case of a non-EU customer with a VAT presence in the EU or regarding the VAT status of the supplier where the customer is liable for payment of VAT (such for farmers/VAT-exempt taxable persons/non-taxable legal persons).

1087 In order to ensure proper functioning of the new B2B principle, it is important for the VIES database to be adapted in this respect.

- **Alignment of B2B supply rules for goods with B2B supply rules for services**

1088 Uniformity of the localisation and liability rules for goods and services will enhance legal certainty for taxable persons and tax authorities. This will reduce conflicts among businesses, among tax authorities and between the two groups with respect to the applicable rules focusing on the correct taxation of the underlying transactions.

1089 For the tax authorities, this will also lead to a uniform control and audit methodology in respect of taxation of supplies of goods and services. This will require from the outset extensive revision of the current concepts.

1090 The need for alignment comes from the interaction between the new B2B localisation principle and the current rules for B2B supplies of services and the complications for suppliers supplying both goods and services to one B2B customer (composite/bundled supplies). To align the B2B localisation and liability rules for goods and services, the definition of business customer for supplies of goods and services should become the same.

1091 Furthermore, if the place of a supply of goods is determined on the basis of the contractual arrangements between the parties combined with the concept of a deemed supply, this should also become the case for the supply of services.

- **Use of the exemptions of article 146, 148, 156 and 157 in the VAT Directive**

1092 The supply of goods having "special customs/VAT status" in the Member State where they are located should be exempt in the Member State where the customer is established, even if that Member State has not adopted the relevant exemption. In that case, certification of the status of the goods is required and should be provided to the customer.

1093 Furthermore, we believe that the exemptions in articles 156 and 157 of the VAT Directive should in any case be open to EU traders and non-EU traders trading goods within the EU. This is necessary to provide sufficient simplification measures when goods are traded within the EU. Therefore, as the exemptions of articles 156 and 157 of the VAT Directive are optional for Member States, we suggest changing them from optional to obligatory in the long term (i.e. from "may" to "shall").

1094 It is however advisable to gain more insight in this respect and to know the exact impact for Member States when implementing or changing the application of the exemptions of articles 156 and 157 of the VAT Directive. Whilst reviewing the impact we would also suggest to review the alignment with the Modernised Customs Code to assess the impacts from a collection and control perspective for governments and a compliance cost perspective for traders.

- **Specific research**

1095 Furthermore, it became apparent that specific research will be needed in the following domains:

- **Impact on purchases by farmers, taxable persons who only carry out supplies of goods and services on which the VAT is not deductible and non-taxable legal persons**

1096 Under the new B2B localisation rule, farmers, taxable persons that only carry out supplies of goods and services on which the VAT is not deductible and non-taxable legal persons qualify as B2B customers. To the extent that they were not already required to account for VAT on their intra-Community acquisitions of goods, they will have an additional administrative burden and increased compliance costs in situations in which they become liable for paying VAT.

1097 Although we assume that the vast majority of these customers are already VAT registered for their intra-Community acquisitions of goods, it should be further investigated whether there would be a fundamental impact resulting from the new principle.

- **Supply of gas, electricity and heat or cooling energy**

1098 The same problems and possible solutions arise for supplies of these particular goods as for other goods when the new B2B localisation principle is implemented.

1099 However, as the rationale of the current localisation rules for supplies of gas, electricity, heat or cooling energy is to achieve simple taxation, especially in the trading phase, further investigation might be needed with respect to the recommended solutions. Nevertheless, for consistency purposes, it would be advisable to also apply the new B2B localisation principle and the defined solutions to the supply of gas, electricity, heat or cooling energy.

- **Special scheme for small enterprises**

1100 The new B2B localisation principle leads to double taxation and distortion of competition as the customer might stop purchasing goods from small enterprises due to a higher indirect tax burden.

1101 These issues surface where the small enterprise sells goods to B2B customers established in other Member States and/or where the goods supplied are located in other Member States. Therefore, in order to be able to make a sound evaluation of application of the new B2B localisation principle and find a proper solution to the issued defined (should this be necessary), it needs to be further investigated to what extent small enterprises are indeed involved in such supplies.

1102 The abolition of the special scheme for small enterprises is not an option in view of the increased administrative burden and higher compliance costs. Other options are to limit application of the special scheme to situations where both the small enterprise and the customer are established in the same Member State or to lay down a specific localisation criterion, i.e. where the small enterprise is established.

- **Special scheme for farmers**

1103 In essence, the main problem appears where the Member State of the customer needs to provide compensation for non-recoverable VAT incurred in another EU Member State by the flat-rate-scheme farmer.

1104 As the special scheme is transitional, it will be important to question whether the flat-rate scheme for farmers should remain in existence under the new B2B localisation principle.

1105 In this respect, it needs to be investigated whether there are sufficient grounds in the current market conditions to support the existence of a special scheme for farmers and not subject supplies of agricultural goods to the normal VAT regime (or the special regime for small enterprises if the farmer qualifies for that scheme).

- **Optional use of the exemptions of articles 146, 148, 156 and 157 in the VAT Directive**

1106 Bearing in mind that the physical flow of the goods would no longer be followed and because EU taxation should be imposed on EU goods, it might be questioned whether some exemptions (article 146, 148, 156 and 157 of the VAT Directive) should be made optional. It would be up to the supplier or customer to decide whether or not to use the exemption. Even if the supplier or customer did not make use of the exemption, they should still, for control purposes, hold the necessary proof with respect to the whereabouts and use of the goods. The impact of the latter should be investigated.

11 Recommendations for next steps

1107 Following activities can be recommended as next steps towards the implementation of a new B2B place of supply rule.

1108 We have put them in order of importance:

- assessing the compliance, administration or any other costs for change in the hands of businesses and tax authorities. A case study could be used in order to confirm the feasibility of the new B2B localisation and liability principles, including the proposed mitigating solutions or measures. One or more pilot companies, one or more Member States and the EU Commission should be involved. The proposed alignment between B2B supplies of goods and services, including the deemed supplies, should also be assessed. The treatment of the B2B supplies of goods under the new principle for each of the special regimes should be in scope and the impact of the proposed changes to those regimes should be assessed in detail too. The outcome of the feasibility study could also be used to define the methodology for a more detailed impact assessment if a Directive would be proposed;
- the B2C onward supplies of goods should be reviewed in depth. This should include an analysis if the place of B2C supply rules should be more aligned with the B2B supply rules (e.g. distance selling regime), and if so whether an alternative method to report and collect VAT could be used to mitigate risks of non-collection for the member States tax authorities and to ease the compliance for the B2C supplier;
- assessing the required changes in terms of quantifying their effects on VAT revenues in terms of receipts, on tax authorities' audit methodologies, including the common approach on a secured VAT data warehouse (SAF-T) maintained by the taxable person and accessible to the tax authorities, on potential fraud and avoidance risks, the additional or reduced costs of collection and compliance including an assessment of the (mini) one-stop-shop mechanism, as well as the impact on economic operators and the functioning of the Single Market;
- reviewing the interaction with other indirect tax legislation impacting the VAT treatment (e.g. customs, excise or any other relevant indirect tax legislation);
- if the concept of Single European Entities would be further considered together with new B2B place of supply rules for goods and amended place of supply rules for B2B services, the alignment of both changes should be assessed from a qualitative and legal perspective;
- drafting any new provisions and amendments to the VAT Directive;
- reviewing the impact on the implementing regulation.

12 Overview of appendices

Appendix 1: Scenarios

Appendix 1.1: General scenarios

Appendix 1.1.1: General scenarios - local supply of goods

Appendix 1.1.2: General scenarios - cross-border supply within EU

Appendix 1.1.3: General scenarios - exportation outside EU

Appendix 1.1.4: General scenarios -importation into EU

Appendix 1.2: Supply of gas, of electricity and of heating or cooling energy to taxable dealer

Appendix 1.2.1: Supply inside/outside EU of gas through a natural gas system, of electricity and of heating or cooling energy to taxable dealer

Appendix 1.2.2: Importation into EU of gas, of electricity and of heating or cooling by taxable dealer

Appendix 1.3: Supply of gas, of electricity and of heating or cooling energy to customers (final consumption)

Appendix 1.3.1: Supplies of gas through a natural gas system, of electricity and of heating or cooling energy through heating and cooling networks to customers (final consumption)

Appendix 1.3.2: Importation into EU of gas, of electricity and of heating or cooling by final customer

Appendix 1.4: Special scheme for small enterprises

Appendix 1.4.1: Special scheme for small enterprises - local supply of goods

Appendix 1.4.2: Special scheme for small enterprises - cross-border supply within EU

Appendix 1.4.3: Special scheme for small enterprises – exportation outside EU

Appendix 1.5: Flat-rate scheme for farmers

Appendix 1.5.1: Flat-rate scheme for farmers – local supply of goods

Appendix 1.5.2: Flat-rate scheme for farmers - cross-border supply within EU

Appendix 1.5.3: Flat-rate scheme for farmers – exportation outside EU

Appendix 1.6: Second-hand goods subject to the margin scheme

Appendix 1.6.1: Second-hand goods subject to the margin scheme – local supply of goods

Appendix 1.6.2: Second-hand goods subject to the margin scheme - cross-border supply within EU

Appendix 1.6.3: Second-hand goods subject to the margin scheme – exportation outside EU

Appendix 1.7: Exempt taxable person without right to deduct and non-taxable legal person

Appendix 1.7.1: Exempt taxable person without right to deduct and non-taxable legal person – local supply of goods

Appendix 1.7.2: Exempt taxable person without right to deduct and non-taxable legal person - cross-border supply within EU

Appendix 1.7.3: Exempt taxable person without right to deduct and non-taxable legal person – exportation outside EU

Appendix 2: Diagrams scenarios

Appendix 3: Diagrams onward B2C supplies of goods

Appendix 4: Qualitative impact assessment – supply of goods between taxable supplier and business customer: basis scenarios

Appendix 5: Qualitative impact assessment - supply of gas through the natural gas system, of electricity and of heating or cooling energy

Appendix 6: Qualitative impact assessment – special scheme for small enterprises

Appendix 7: Qualitative impact assessment - special flat-rate scheme for farmers

Appendix 8: Qualitative impact assessment - second-hand goods subject to the margin scheme

Appendix 9: Qualitative impact assessment - supplies by exempt taxable person and non-taxable legal persons and exempt supplies

Appendix 10: Qualitative impact assessment – special scheme for investment gold

Appendix 11: Qualitative impact assessment - onward B2C supplies of goods

Appendix 12: Identification of the rules that would need to be changed