

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

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

Appendix 5: Qualitative impact assessment
supply of gas through the natural gas system,
supply of electricity and of heat or cooling
energy

23 December 2011

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1. Purpose of the special regime¹

- 1 The Council Directive 2003/92/EC changed the place of supply rules for gas and electricity².
- 2 The liberalisation of the gas and electricity sector entailed an increase in cross-border transactions between the 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.
- 3 Therefore, in order to avoid double taxation or no taxation and to attain a genuine internal market free of barriers linked to the VAT regime, there was a need to reconsider the place of supply rules for those types of goods³. In this respect, it was decided to no longer follow the physical flow of gas and electricity to determine the VAT treatment.
- 4 As the 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 as from 1 January 2011⁴. For gas, the special scheme was extended for 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.

2. Summary of the provisions

- 5 Under the current rules, the place of supply of gas through a natural gas system situated within the territory of the EU or any network connected to such a system, the supply of electricity, or the supply of heat or cooling energy through heating or cooling networks to a taxable dealer, before the goods reach the final stage of consumption, is the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.
- 6 The supply of gas through a natural gas system situated within the territory of the EU or any network connected to such a system, the supply of electricity, or the supply of heat or cooling energy through heating or cooling networks in the final stage (from traders and distributors to the final consumer), is defined to take place where the customer, not a taxable dealer, effectively uses and consumes the goods in scope. This is normally the place where the meter of the customer is located.

¹ Terra, B., Kajus, J., Chapter 5.2.4.4. –Supply of goods through distribution systems – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap05.html?WT.z_na;

Terra, B., Kajus, J., Chapter 4.3.4. –Electricity, gas, heat, cooling energy and the like – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap04.html?WT.z_na.

² Council Directive 2003/92/EC of 2 October 2003 amending Directive 77/388/EEC as regards the rules on the place of supply of gas and electricity.

³ Point 19 of the preamble to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

⁴ Council Directive 2009/162/EC of 22 December 2009 amending Directive 2006/112/EC as regards the rules on the place of supply of gas and electricity.

- 7 These rules are laid down in articles 38 and 39 of the VAT Directive.
- 8 Furthermore, article 17(2)(d) of the VAT Directive provides that the transfer for the purpose of the supply of gas, electricity or heating or cooling energy in accordance with the conditions laid down in articles 38 and 39 of the VAT Directive is a non-transfer.
- 9 A further simplification with respect to the person liable for payment of VAT (to avoid a VAT registration in other EU Member States) was also adopted. More specifically, the VAT registered customer is liable for payment of VAT in the EU Member State where the supply takes place pursuant to articles 38 and 39 of the VAT Directive if the supply is carried out by a taxable person not established within that EU Member State (article 195 of the VAT Directive).
- 10 In order to avoid double taxation in the EU, an exemption 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, was introduced (article 143(1)(l) of the VAT Directive).

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

3.1. Supplies of gas, of electricity and of heat or cooling energy to a taxable dealer

3.1.1. Description of scenarios

- 11 The supplier and the taxable dealer are not established in the same country. The taxable dealer is always established within the EU. The supplier is either established in the EU or outside the EU.
- 12 The group concerned is G1.
- 13 The taxable dealer and the supplier are established in the same EU Member State.
- 14 The group concerned is G2.
- 15 The goods are located in the EU or outside the EU.
- 16 The transactions concerned are local supplies of goods, cross-border supplies of goods in the EU or exports.

3.1.2. Comparison of VAT treatment

- 17 The VAT treatment “as is” corresponds for all scenarios to the VAT treatment “to be” where it concerns the supplies to taxable dealers. However, there will be a change where the new B2B localisation rule will apply for supplies to all B2B customers.

18 This can be visualised by the following examples:

Figure 5.1: Local supply of goods

Diagram 64
GROUP G1 – Scenario 1

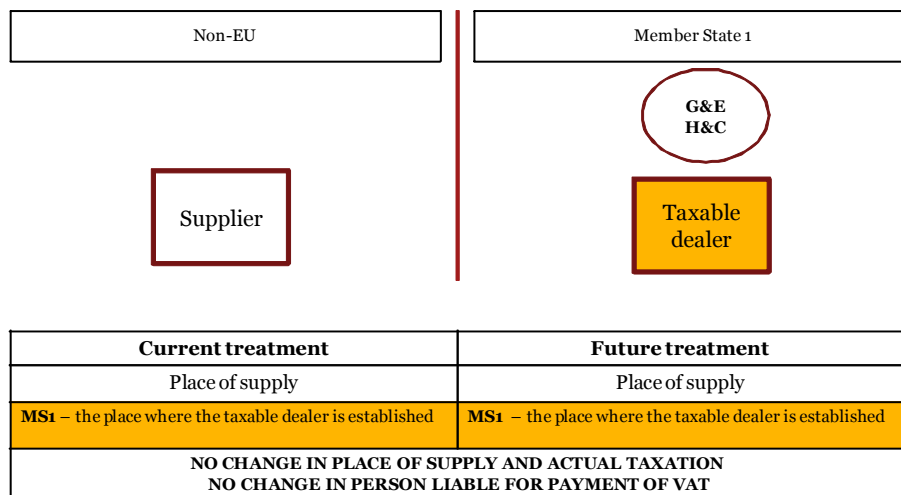


Figure 5.2: Cross-border supply of goods within the EU

Diagram 65
GROUP G1 – Scenario 2

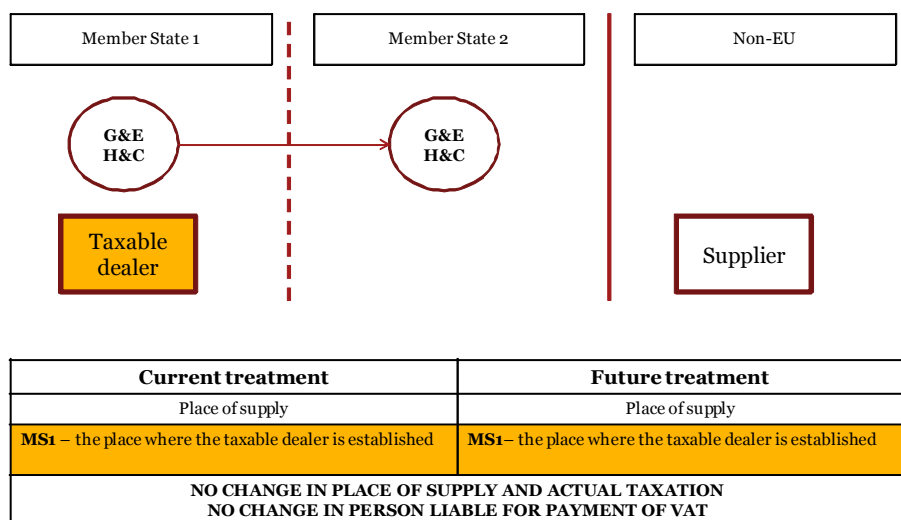
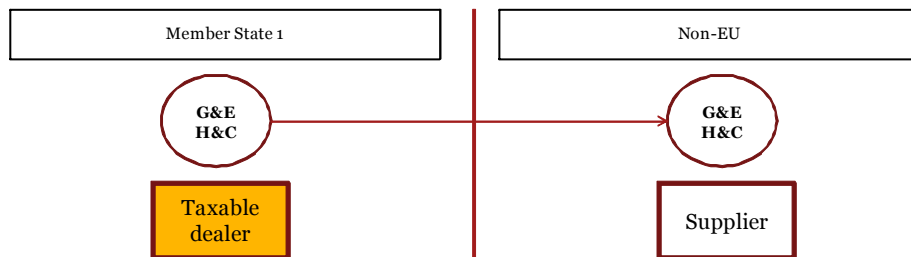


Figure 5.3: Export of goods outside the EU

Diagram 66
GROUP G1 – Scenario 3



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	

3.1.3. Issues

- 19 We want to draw the attention to scenarios 7, 8, 18 and 19 of Group G1 and scenarios 26 and 27 of Group G2.
- 20 It concerns supplies of gas located outside the EU but supplied through a distribution network connected to a natural gas distribution system situated within the EU. For electricity or heat or cooling energy, it concerns supplies of electricity or heat or cooling energy located outside the EU at the time of the supply without the intent to import them into the EU.
- 21 The goods are located outside the EU but give rise to EU taxation in the “as is” and “to be” situation as the taxable dealer is established within the EU.
- 22 They can be visualised by the following examples:

Figure 5.4: Supply of goods outside the EU

Diagram 67
GROUP G1 – Scenarios 7 and 8

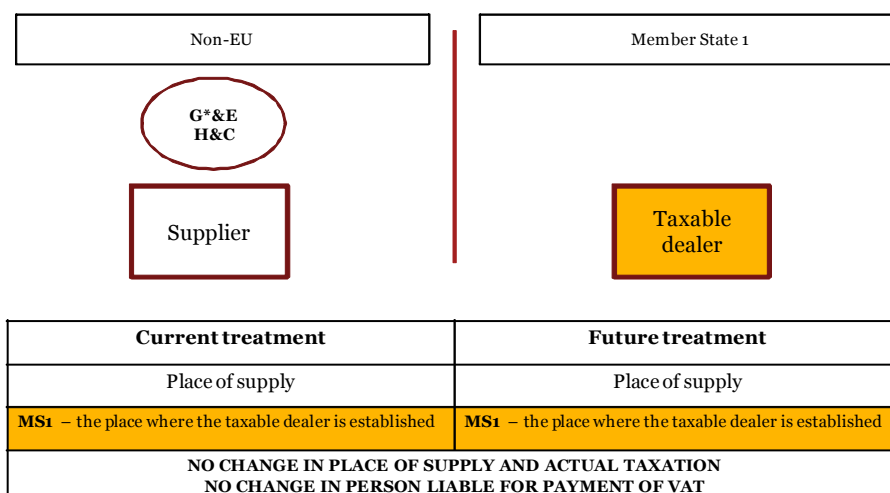
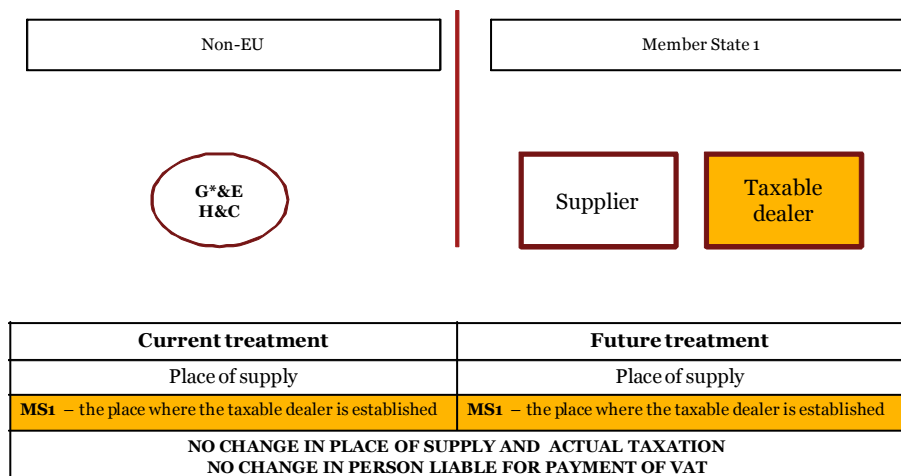


Figure 5.5: Supply of goods outside the EU

Diagram 71
GROUP G2 – Scenarios 26 and 27



3.1.4. Conclusions

- 23 The fact that EU taxation occurs for non-EU goods is not in line with the general assumption of the Study that no taxation should occur for goods located outside the EU. This could also lead to double taxation should the supply of the gas, electricity or heat or cooling energy within the non-EU country concerned give rise to taxation.

3.2. Supplies of gas, of electricity and of heat or cooling energy to a non-EU taxable dealer

3.2.1. Description of scenarios

- 24 The taxable dealer is established outside the EU. The supplier is either established in the EU or outside the EU.
- 25 The goods are located in the EU or outside the EU.
- 26 The transactions concerned are local supplies of goods, cross-border supplies of goods in the EU or exports.
- 27 The group concerned is G4.

3.2.2. Comparison of VAT treatment

- 28 The VAT treatment “as is” corresponds for all scenarios to the VAT treatment “to be” where it concerns the supplies to taxable dealers. However, there will be a change where the new localisation rule will apply for supplies to all B2B customers.
- 29 This can be visualised by the following examples:

Figure 5.6: Cross-border supply of goods in the EU

Diagram 74

GROUP G4– Scenario 33

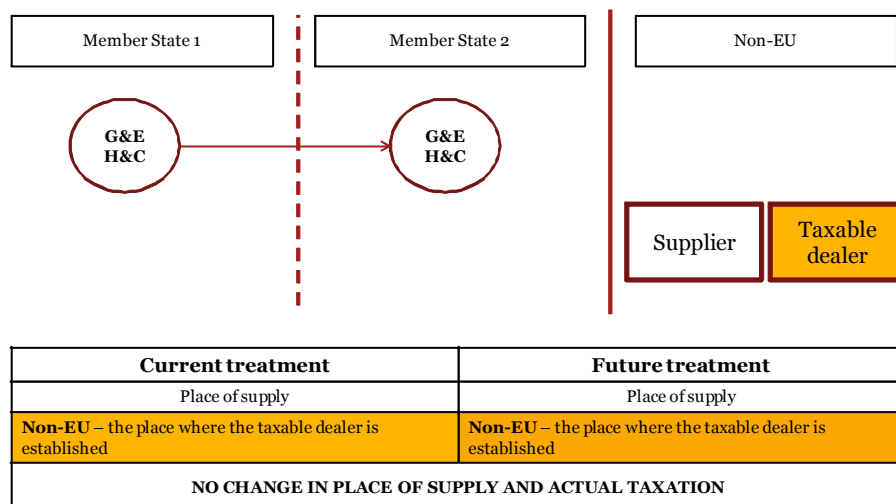
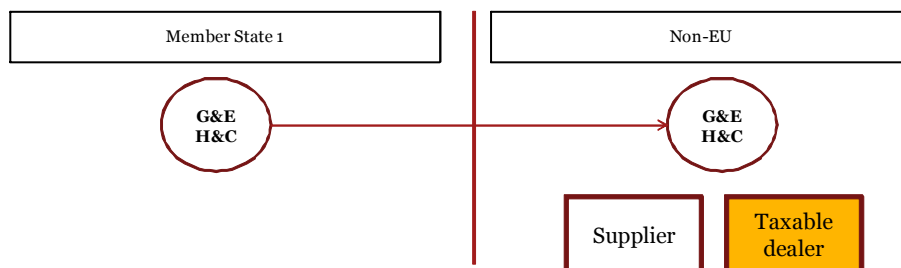


Figure 5.7: Export of goods outside the EU

Diagram 75
GROUP G4 – Scenario 34



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	

3.2.3. Conclusions

- 30 Where the goods are situated within the EU, the result in the “to be” situation is not in line with our general principle of the Study that taxation should occur for goods located in the EU. Note that this was already the case in the “as is” situation where a subsequent “final” supply to an EU established customer would again give rise to EU taxation.

3.3. Importation of gas, of electricity and of heat or cooling energy by a taxable dealer

3.3.1. Description of scenarios

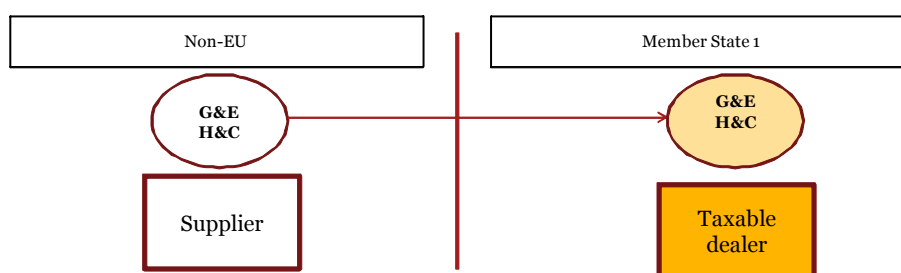
- 31 The goods are dispatched or transported from outside the EU to the EU and are imported for VAT and customs purposes within the EU.
- 32 The taxable dealer acts as importer of record upon importation of the goods and he is either established in the EU Member State of importation or not.
- 33 The supplier and the taxable dealer are either established in the same country or not.
- 34 The groups concerned are GIM1 to GIM4.

3.3.2. Comparison of VAT treatment

- 35 The VAT treatment “as is” corresponds for all scenarios to the VAT treatment “to be” where it concerns the supplies to taxable dealers. However, there will be a change where the new localisation rule will apply for supplies to all B2B customers.
- 36 This can be visualised by the following examples:

Figure 5.8: Import of goods in the EU

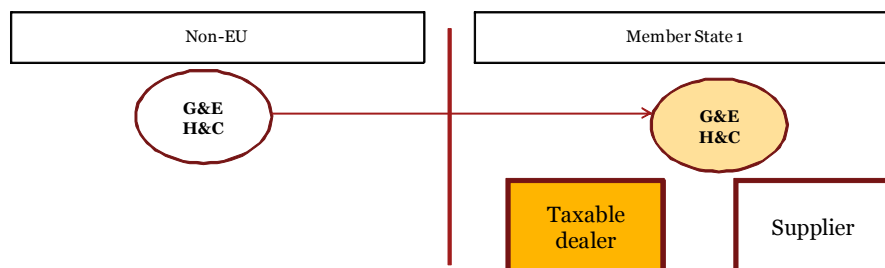
*Diagram 77
GROUP GIM1 – Scenario 1*



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
MS1 – the place where the importation takes place	MS1 – the place where the importation takes place
NO CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION NO CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT	

Figure 5.9: Import of goods in the EU

Diagram 78
GROUP GIM2 – Scenario 3



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
MS1 – the place where the importation takes place	MS1 – the place where the importation takes place
NO CHANGE IN PLACE OF SUPPLY AND ACTUAL TAXATION NO CHANGE IN PERSON LIABLE FOR PAYMENT OF VAT	

3.3.3. Issues

- 37 The straightforward application of the new B2B localisation principle will lead to double taxation, within the EU, of the taxable dealer. On the one hand, EU tax will be charged on the supply of the goods in the Member State where the taxable dealer is established. On the other hand, EU tax will be charged on importation of the goods in the Member State of importation.

3.3.4. Qualitative impact assessment

3.3.4.1. Impact in country of taxation

Figure 5.10: Impact in country of taxation

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

Impact in country of taxation (“as is”)

38 No impact.

Impact in country of taxation (“to be”)

39 No impact.

3.3.4.2. Impact on taxable person

Figure 5.11: Impact on taxable person

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

Impact on supplier (“to be”)

40 No impact.

Impact on customer (“to be”)

41 No impact.

3.3.5. Conclusions

42 The application of the new B2B localisation principle will lead to double taxation, within the EU, of the taxable dealer.

3.4. Conclusions

43 As the VAT treatment of supplies of gas through a natural gas system, of electricity and of heat or cooling energy through heating and cooling networks to taxable dealers is already in line with the new B2B place of supply principle, there is no impact. In this respect, we also assume that the exemption upon importation of gas, of electricity of heat or cooling energy remains applicable.

44 In the case that the electricity, gas or heat or cooling energy is located outside the EU, the straightforward application of the new B2B localisation principle is not in line with the general principle that no EU taxation should occur for goods located outside the EU. In the case that the goods are located in the EU and the taxable dealer is established outside the EU, no taxation will occur in the EU. Both situations are not in line with the general principle of the Study: taxation should occur for goods located in the EU and no taxation should occur if the goods are located outside the EU.

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

4.1. Supplies of gas located outside the EU through a network that is not connected with a natural gas system within the territory of the EU

4.1.1. Description of scenarios

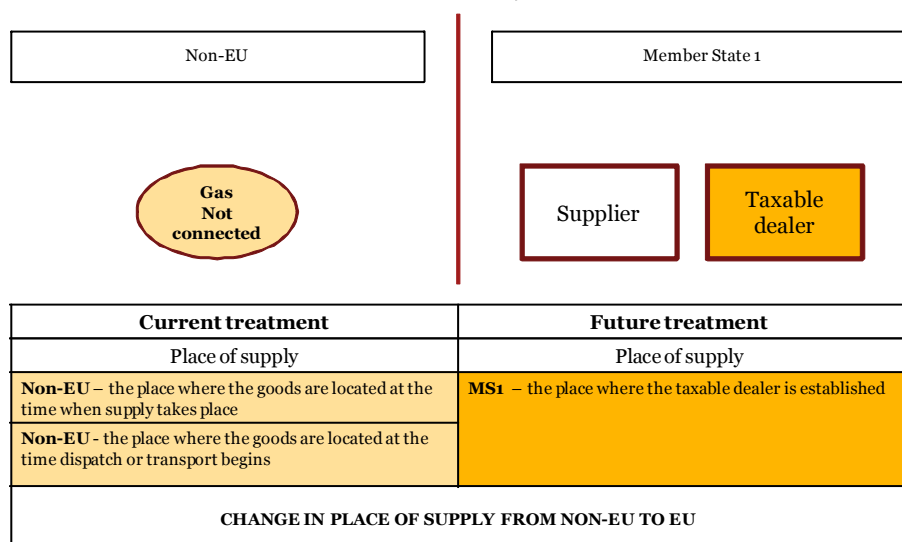
- 45 It concerns supplies of gas located outside the EU through a network that is not connected with a natural gas system within the territory of the EU.
- 46 Neither the supplier nor the taxable dealer has the intention to import the gas concerned into the EU.
- 47 The supplier and the taxable dealer are established in the EU.
- 48 The group concerned is G3.

4.1.2. Comparison of VAT treatment

- 49 The VAT treatment “as is” differs from the VAT treatment “to be”.
- 50 This can be visualised by the following example:

Figure 5.12: Gas not connected

Diagram 72
GROUP G3 – Scenarios 28 and 29



- 51 The supply of gas outside the EU through a network that is not connected is not covered by article 38 of the VAT Directive. The place of supply will be located outside the EU (application of articles 31 and 32 of the VAT Directive).

In the “as is” situation, there is no taxation within the EU. In the “to be” situation, there will be taxation within the EU.

4.1.3. Issues

- 52 The gas is located outside the EU but gives rise to EU taxation in the “to be” situation as the taxable dealer is established within the EU.
- 53 The fact that EU taxation occurs for goods not located in the EU is not in line with the general principle of the Study that no taxation should occur for goods situated outside the EU. This will lead to situations of double taxation should the supply of the gas within the non-EU country concerned also give rise to taxation.

4.1.4. Qualitative impact assessment

4.1.4.1. Impact in country of taxation

Figure 5.13: Impact in country of taxation

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

Impact in country of taxation (“as is”)

- 54 As the “as is” country of taxation is outside the EU, this impact is not considered.

Impact in country of taxation (“to be”)

Positive or no cash-flow impact:

- 55 In the case that the supplier and the taxable dealer are established in the same Member State, VAT will be payable by the supplier to the tax authorities. There would be pre-financing of VAT (time between payment of VAT to the local tax authorities by the supplier and VAT deduction/refund in the hands of the taxable dealer).

- 56 In the case that the supplier and the taxable dealer are not established in the same EU Member State, VAT will be payable by the customer to the tax authorities and there would be no impact.

Positive revenue impact:

- 57 There would be an increase in revenue where the taxable dealer does not have a full right to deduct VAT (i.e. taxable person with limited right to deduct VAT).

Negative impact on ease of administration and cost of collection:

- 58 There would be additional administrative work for tax authorities in terms of supervision and inspection for collection of VAT.

4.1.4.2. Impact on taxable person

Figure 5.14: Impact on taxable person

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

Impact on supplier (“to be”)

Negative or no budgetary impact:

- 59 In the case that the supplier and the taxable dealer are established in the same Member State, there would be pre-financing of VAT (time between payment of VAT to the tax authorities and payment of the invoice by the customer).
- 60 In the case that the supplier and the taxable dealer are established in the same Member State, there would be an increased risk of pre-financing VAT on bad debts.
- 61 In the case that the supplier and the taxable dealer are not established in the same Member State, there would be no impact.

Negative impact on legal certainty and simplicity:

- 62 Currently, there is no EU VAT due for supplies of gas physically located outside the EU (shift of taxation from outside the EU to inside the EU).

Shift of liability:

- 63 In the case that the supplier and the taxable dealer are established in the same Member State, the supplier becomes liable for payment of EU VAT where, in the past, no EU VAT was due on supplies of gas physically located outside the EU (shift of taxation from outside the EU to inside the EU).
- 64 In the case that the supplier and the taxable dealer are not established in the same Member State, the customer becomes liable for payment of EU VAT.

Negative impact on cost of implementation and compliance:

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

Impact on customer (“to be”)

Negative or no budgetary impact:

- 66 In the case that the supplier and the taxable dealer are established in the same Member State, there would be pre-financing of VAT (time between payment of the invoice by the customer and input VAT deduction/refund in the hands of the customer).
- 67 In the case that the supplier and the taxable dealer are not established in the same Member State, there would be no cash-flow impact.
- 68 There would be an increased cost if the taxable dealer does not have a full right to deduct VAT (i.e. taxable person with limited right to deduct VAT).
- 69 There would be double taxation in the case that goods supplied are already taxed in the non-EU country where they are located.

Negative impact on legal certainty and simplicity:

- 70 Currently, there is no EU VAT due for supplies of gas physically located outside the EU (shift of taxation from outside the EU to inside the EU).
- 71 There would be risk of double taxation in the case that goods supplied are already taxed in the non-EU country where they are located.

Shift in liability:

- 72 In the case that the supplier and the taxable dealer are not established in the same Member State, the latter becomes liable for payment of EU VAT where, in the past, no EU VAT was due on supplies of gas physically located outside the EU (shift of taxation from outside the EU to inside the EU).
- 73 In the case that the supplier and the taxable dealer are established in the same Member State, the supplier becomes liable for payment of EU VAT.

Negative impact on cost of implementation and compliance:

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

4.1.5. Conclusions

- 75 The shift in the place of supply from non-EU to EU clearly leads for this scenario to a negative impact for both the supplier and the customer for nearly all assessment criteria.
- 76 The fact that EU taxation occurs for goods not located in the EU is not in line with the general principle of the Study that no taxation should occur for goods situated outside the EU. This will lead to situations of double taxation should the supply of the gas within the non-EU country concerned also give rise to taxation.

5. Qualitative impact assessment of transactions upon final consumption for which the current VAT treatment does not change

5.1. Supplies of gas, of electricity and of heat or cooling energy upon final consumption

5.1.1. Description of scenarios

- 77 The supplier and the customer are not established in the same country. The customer is always established within the EU. The supplier is either established in the EU or outside the EU.
- 78 The group concerned is GC1.
- 79 The customer and the supplier are established in the same EU Member State and final consumption occurs in that Member State.
- 80 The group concerned is GC4 – scenarios 20 & 21.
- 81 The customer and the supplier are either established in the same country or not. The customer is always established outside the EU. The supplier is either established in the EU or outside the EU.
- 82 The group concerned is GC7.
- 83 The goods are located in the EU or outside the EU.
- 84 The transactions concerned are local supplies of goods, cross-border supplies of goods in the EU or exports.

5.1.2. Comparison of VAT treatment

- 85 The VAT treatment “as is” corresponds for all scenarios to the VAT treatment “to be”.

86 This can be visualised by the following examples:

Figure 5.15: Local supply of goods

Diagram 79

GROUP GC1 – Scenario 1

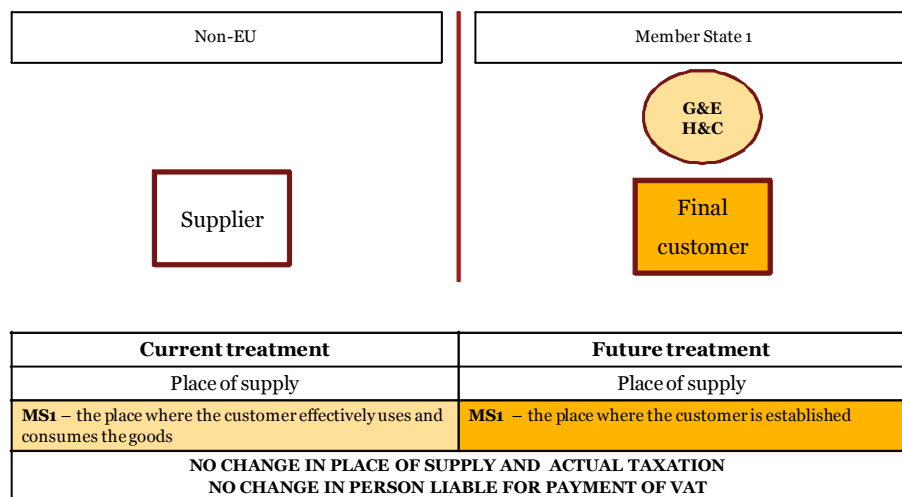


Figure 5.16: Cross-border supply of goods in the EU

Diagram 87

GROUP GC4 – Scenario 21

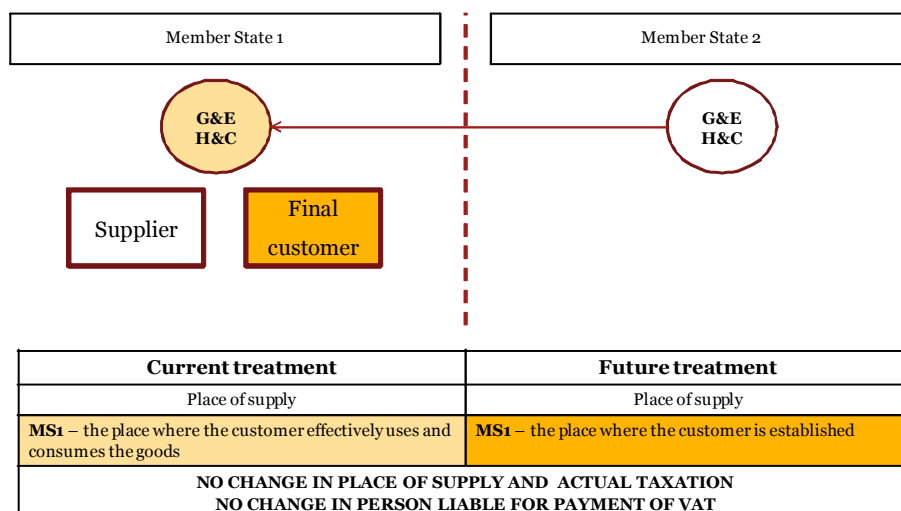
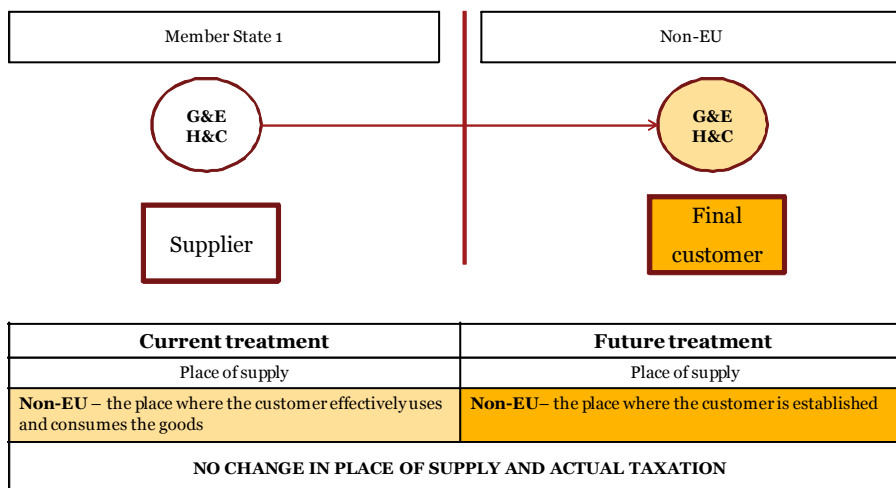


Figure 5.17: Export of goods outside the EU

Diagram 93
GROUP GC7 – Scenario 34



5.2. Importation of gas, of electricity and of heat or cooling energy by final consumer

5.2.1. Description of scenarios

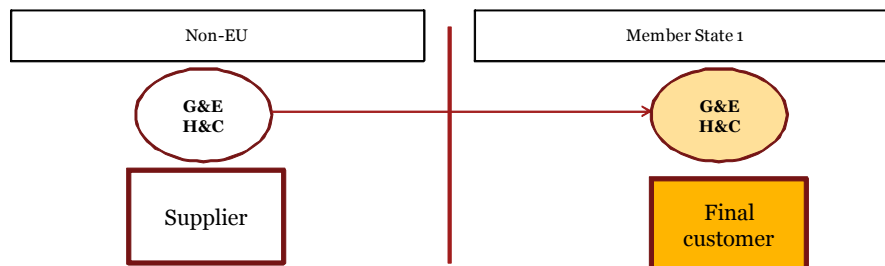
- 87 The goods are dispatched or transported from outside the EU to the EU and are imported for VAT and customs purposes within the EU. The customer acts as importer of record upon importation of the goods.
- 88 The supplier and the customer are not established in the same country.
- 89 The customer is always established in the EU Member State of importation.
- 90 The group concerned is GCIM1.
- 91 The goods are dispatched or transported from outside the EU to the EU and are imported for VAT and customs purposes within the EU. The customer acts as importer of record upon importation of the goods.
- 92 The supplier and customer are established in the EU Member State of importation.
- 93 The group concerned is GCIM2.

5.2.2. Comparison of VAT treatment

- 94 The VAT treatment “as is” is equal to the VAT treatment “to be”.
- 95 This can be visualised by the following example:

Figure 5.18: Import of goods in the EU

Diagram 96
GROUP GCIM1 – Scenario 1



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the customer effectively uses and consumes the goods	MS1 – the place where the customer is established
MS1 – the place where the importation takes place	MS1 – the place where the importation takes place
NO CHANGE IN PLACE OF TAXATION AND ACTUAL TAXATION NO CHANGE IN PERSON LIABLE TO PAY VAT	

5.2.3. Issues

- 96 The straightforward application of the new B2B localisation principle will lead to double taxation, within the EU, of the customer. On the one hand, EU tax will be charged on the supply of the goods in the Member State where the customer is established. On the other hand, EU tax will be charged on importation of the goods in the Member State of importation.

5.2.4. Qualitative impact assessment

5.2.4.1. Impact in country of taxation

Figure 5.19: Impact in country of taxation

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

Impact in country of taxation (“as is”)

Budgetary impact:

97 No impact.

Positive impact on ease of administration and cost of collection:

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

99 There would be a decrease in administrative work for tax authorities in terms of supervision and inspection as the new B2B localisation rule is easier than the current localisation rule for which the place where the customer is effectively consuming the goods needs to be defined.

Impact in country of taxation (“to be”)

100 The country of taxation “as is” is equal to the country of taxation “to be”.

5.2.4.2. Impact on taxable person

Figure 5.20: Impact on taxable person

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

Impact on supplier (“to be”)

Budgetary impact:

101 No impact.

Positive impact on legal certainty and simplicity:

102 The administration is easier in a day-to-day practice than under the current localisation rule for which the place where the customer is effectively consuming the goods needs to be defined.

103 It would always be clear that VAT is due in the EU Member State where the customer is established.

No shift of liability:

104 The supplier will not become liable to pay VAT.

Positive impact on cost of implementation and compliance:

105 There would be a possibility for full automation leading to a decrease in time spent (the VAT determination logic is based on the place of establishment of the customer).

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

Impact on customer (“to be”)

Budgetary impact:

- 107 No impact.

Positive impact on legal certainty and simplicity:

- 108 The administration is easier in a day-to-day practice than under the current localisation rule.
- 109 It would always be clear that VAT is due in the EU Member State where he is established.

Shift of liability:

- 110 The customer remains liable for payment of VAT.

Positive impact on cost of implementation and compliance:

- 111 There would be possibility for full automation, leading to a reduction in time spent.
- 112 There would be limited changes to processes/systems/technologies in order to comply with the new VAT treatment of the supply.

5.3. Conclusions

- 113 There is no change in VAT treatment. However, both the EU Member State of taxation and the taxable persons (supplier and customer) have the benefit of a more clear and easy-to-handle B2B localisation principle.
- 114 The application of the new B2B localisation principle will lead to double taxation, within the EU, of the customer.

6. Qualitative impact assessment of transactions upon final consumption for which the current VAT treatment changes

6.1. Change in place of supply in the EU and person liable for payment

6.1.1. Description of scenarios

- 115 The customer and the supplier are not established in the same country. The customer is always established within the EU. The supplier is either established in the EU or outside the EU.
- 116 The goods are located in the EU.
- 117 The transactions concerned are local supplies of goods in the EU, cross-border supplies of goods in the EU or importation of goods into the EU.
- 118 The group concerned is GC2 and GCIM4.

6.1.2. Comparison of VAT treatment

- 119 The VAT treatment “as is” differs from the VAT treatment “to be”.
- 120 The place of consumption (“as is”) differs from the place of establishment of the customer (“to be”) and the customer and supplier are not established in the same country.
- 121 This can be visualised by the following examples:

Figure 5.21: Local supply of goods

Diagram 82
GROUP GC2 – Scenario 8

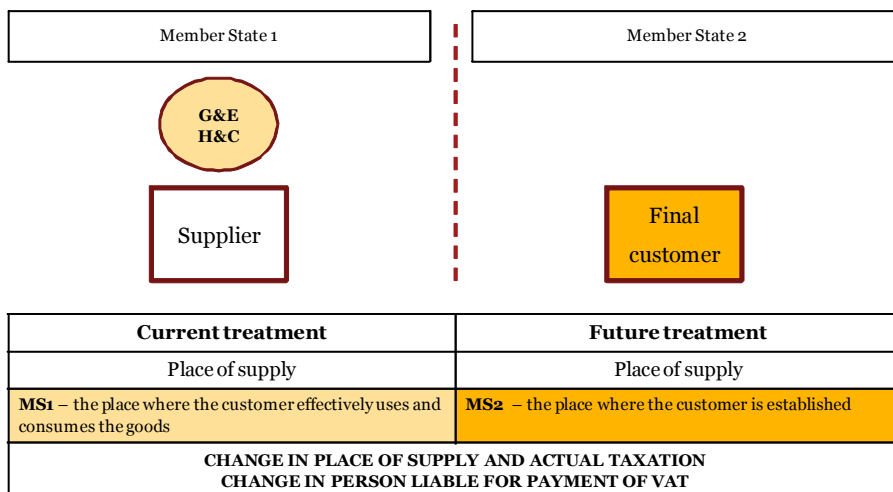


Figure 5.22: EU cross-border supply of goods

Diagram 81
GROUP GC2– Scenario 5

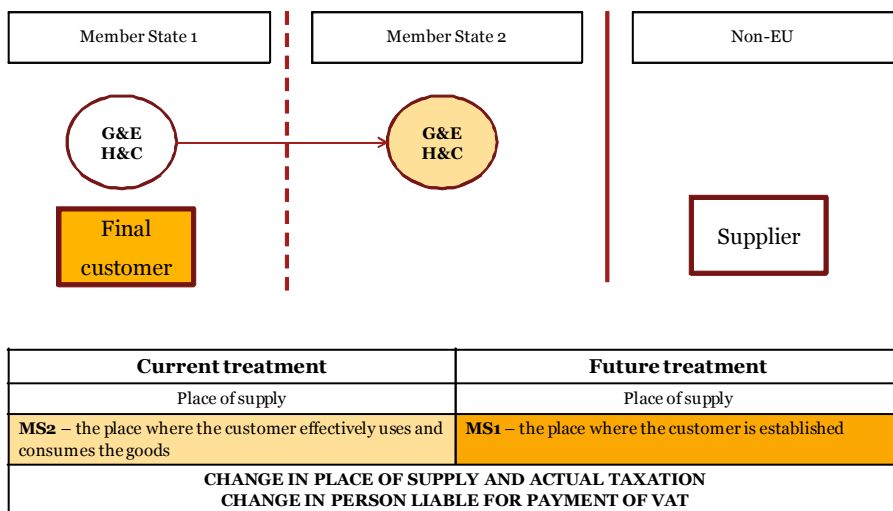
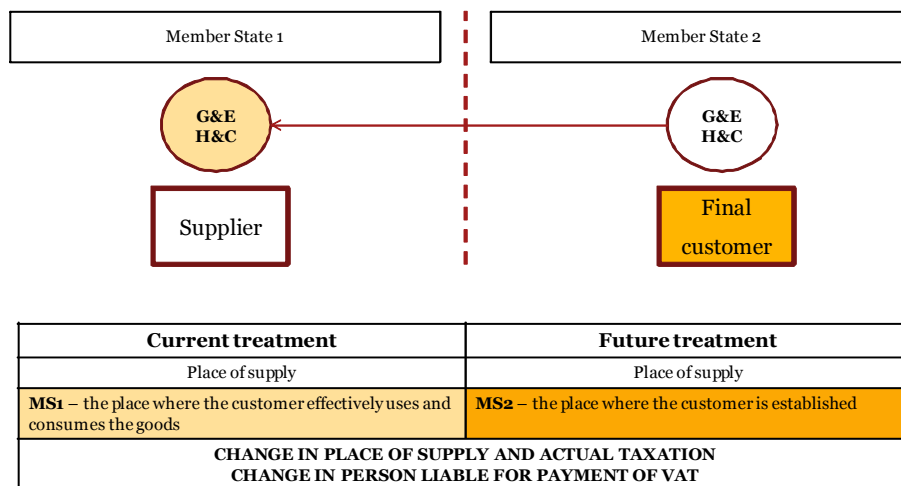


Figure 5.23: EU cross-border supply of goods

Diagram 83
GROUP GC2 – Scenario 9



- 122 To the extent that the supplier is not established in the EU Member State of consumption, he needs a VAT registration in that EU Member State in the “as is” situation for the goods supplied.

6.1.3. Qualitative impact assessment

6.1.3.1. Impact in country of taxation

Figure 5.24: Impact in country of taxation

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

Impact in country of taxation (“as is”)

Negative cash-flow impact:

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

Negative revenue impact:

- 124 Due to the shift of country of taxation, there will be a decrease in revenue if the customer does not have a full right to deduct VAT (i.e. customer with limited or no right to deduct VAT).

Positive impact on ease of administration and cost of collection:

- 125 There would be a decrease in administrative work in terms of managing registrations and processing data from VAT returns and listings as, for some scenarios, there will no longer be any need for VAT registration of the supplier.
- 126 There would be a decrease in administrative work as the customer no longer needs to obtain VAT deduction/refund, and decrease in work in terms of supervision and inspection as there is no longer collection of VAT.
- 127 It would always be clear that the place of supply is where the customer is established, which should reduce the potential for disputes.

Impact in country of taxation (“to be”)

Cash-flow impact:

- 128 No impact (as the customer becomes liable for payment of VAT).

Positive revenue impact:

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

Negative impact on ease of administration and cost of collection:

- 130 There would be need for additional VAT registrations of the customer in the country of taxation (if not yet registered), meaning more administrative work in terms of managing registrations and processing data from VAT returns and listings. This might be the case for non-taxable legal persons, small enterprises, taxable persons without a right to deduct VAT and farmers subject to the flat-rate scheme who were until now not identified for VAT purposes.
- 131 There would be additional work for tax authorities in terms of supervision and inspection due to collection of VAT.

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

- 132 In the case that liability for payment of VAT shifts from the supplier outside the EU to the customer established and VAT registered in the country of taxation ("to be"), the new principle will better safeguard the tax revenue of the EU Member States and enhance auditability of the transaction.

6.1.3.2. Impact on taxable person

Figure 5.25: Impact on taxable person

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

Impact on supplier ("to be")

Positive budgetary impact:

- 133 There would no longer be pre-financing of VAT (time between payment of VAT to the tax authorities and payment of the invoice by the customer).
- 134 There would no longer be an increased risk of pre-financing VAT on bad debts.

Positive impact on legal certainty and simplicity:

- 135 The administration is easier in day-to-day practice than under the current localisation rule for which the place where the customer is effectively consuming the goods needs to be defined.
- 136 It is always clear that VAT is due in the EU Member State where the customer is established.

Shift in liability:

- 137 The customer becomes liable for payment of VAT.

Positive impact on cost of implementation and compliance:

- 138 It would be easier to administer in day-to-day practice since there would no longer be any need for additional VAT registrations.
- 139 There would be possibility for full automation, leading to a reduction in time spent (VAT determination logic is based on place of establishment of the customer).
- 140 There would be limited changes to processes/systems/technologies and limited need to train staff in order to comply with the new VAT treatment of the supply.

Impact on customer (“to be”)

Positive, no impact or negative budgetary impact:

- 141 The overall budgetary impact would depend on the overall VAT position of the customer in the “as is” country of taxation, being payable or refundable, on the payment terms with the supplier and the time when the VAT is paid to the VAT authorities in his EU Member State of establishment.

Positive impact on legal certainty and simplicity:

- 142 The administration is easier in day-to-day practice than under the current localisation rule.
- 143 It is always be clear that VAT is due in the EU Member State where he is established.

Shift in liability:

- 144 The customer becomes liable for payment of VAT.

Positive impact on cost of implementation and compliance:

- 145 There would be possibility for full automation, leading to a reduction in time spent.
- 146 There would be limited changes to processes/systems/technologies in order to comply with the new VAT treatment of the supply.
- 147 There would be no longer need to apply for VAT deduction/refund in another EU Member State of consumption than the EU Member State of establishment.

6.1.4. Conclusions

- 148 Both for the supplier and the customer, there is a clear benefit.
- 149 For the country of taxation “as is” and “to be”, the respective negative or positive impact on the budget is compensated by a positive or negative impact on the ease of administration and cost of collection. Some prevention of fraud on an EU level can be expected in the case of suppliers established outside the EU.

6.2. Change in place of supply in the EU but no change in person liable for payment

6.2.1. Description of scenarios

- 150 The customer and the supplier are established in the same Member State.
- 151 The goods are located in the EU.
- 152 The transactions concerned are local supplies of goods in the EU, cross-border supplies of goods in the EU or importation of goods into the EU.
- 153 The group concerned is GC4 - scenarios 22 & 23 and GCIM3.

6.2.2. Comparison of VAT treatment

- 154 The VAT treatment “as is” differs from the VAT treatment “to be”.
- 155 The place of consumption (“as is”) differs from the place of establishment of the customer (“to be”) and the customer and supplier are established in the same Member State.
- 156 To the extent that the supplier is not established in the EU Member State of consumption, he needs a VAT registration in that EU Member State in the “as is” situation for the goods supplied.

6.2.3. Qualitative impact assessment

6.2.3.1. Impact in country of taxation

Figure 5.26: Impact in country of taxation

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

Impact in country of taxation (“as is”)

Negative cash-flow impact:

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

Negative revenue impact:

- 158 Due to the shift of country of taxation, there will be a decrease in revenue if the customer does not have a full right to deduct VAT (i.e. customer with limited or no right to deduct VAT).

Positive impact on ease of administration and cost of collection:

- 159 There would be a decrease in administrative work in terms of managing registrations and processing data from VAT returns and listings as, for some scenarios, there will no longer be any need for VAT registration of the supplier.
- 160 There would be a decrease in administrative work as the customer no longer needs to obtain VAT deduction/refund, and decrease in work in terms of supervision and inspection as there is no longer collection of VAT.
- 161 It would always be clear that the place of supply is where the customer is established, which should reduce the potential for disputes.

Impact in country of taxation (“to be”)

Positive cash-flow impact:

- 162 In the case that the supplier and the customer are established in the same Member State, VAT will be payable by the supplier to the tax authorities. There would be pre-financing of VAT (time between payment of VAT to the local tax authorities by the supplier and VAT deduction/refund in the hands of the customer).

Positive revenue impact:

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

Negative impact on ease of administration and cost of collection:

- 164 There would be need for additional VAT registrations of the customer in the country of taxation (if not yet registered), meaning more administrative work in terms of managing registrations and processing data from VAT returns and listings. This might be the case for non-taxable legal persons, small enterprises, taxable persons without a right to deduct VAT and farmers subject to the flat-rate scheme who were until now not identified for VAT purposes.
- 165 There would be additional work for tax authorities in terms of supervision and inspection due to collection of VAT.

6.2.3.2. Impact on taxable person

Figure 5.27: Impact on taxable person

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

Impact on supplier (“to be”)

Positive, no impact or negative budgetary impact:

- 166 The overall budgetary impact will depend on the overall VAT position of the supplier 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.

Positive impact on legal certainty and simplicity:

- 167 The administration is easier in day-to-day practice than under the current localisation rule for which the place where the customer is effectively consuming the goods needs to be defined.
- 168 It is always clear that VAT is due in the EU Member State where the customer is established.

Shift in liability:

- 169 No impact.

Positive impact on cost of implementation and compliance:

- 170 It would be easier to administer in day-to-day practice since there would no longer be any need for additional VAT registrations.
- 171 There would be possibility for full automation, leading to a reduction in time spent (VAT determination logic is based on place of establishment of the customer).
- 172 There would be limited changes to processes/systems/technologies and limited need to train staff in order to comply with the new VAT treatment of the supply.

Impact on customer (“to be”)

Positive, no impact or negative budgetary impact:

- 173 The overall budgetary impact would depend on the overall VAT position of the customer in the “as is” country of taxation, being payable or refundable, on the payment terms with the supplier and the time when the VAT is paid to the VAT authorities in his EU Member State of establishment.

Positive impact on legal certainty and simplicity:

- 174 The administration is easier in day-to-day practice than under the current localisation rule.
- 175 It is always be clear that VAT is due in the EU Member State where the customer is established.

Shift in liability:

- 176 No impact.

Positive impact on cost of implementation and compliance:

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

- 178 There would be limited changes to processes/systems/technologies in order to comply with the new VAT treatment of the supply.
- 179 There would be no longer need to apply for VAT deduction/refund in another EU Member State of consumption than the EU Member State of establishment.

6.2.4. Conclusions

- 180 Both for the supplier and the customer, there is a clear benefit.
- 181 For the country of taxation “as is” and “to be”, the respective negative or positive impact on the budget is compensated by a positive or negative impact on the ease of administration and cost of collection.

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

6.3.1. Description of scenarios

- 182 The goods will be effectively consumed outside the EU.
- 183 The goods are already located outside the EU or are transported or dispatched from the EU to a destination outside the EU to be consumed.
- 184 The supplier and the customer are not established in the same country. The customer is always established within the EU.
- 185 The group concerned is GC3.
- 186 The supplier and the customer are established in the same EU Member State.
- 187 The group concerned is GC5.

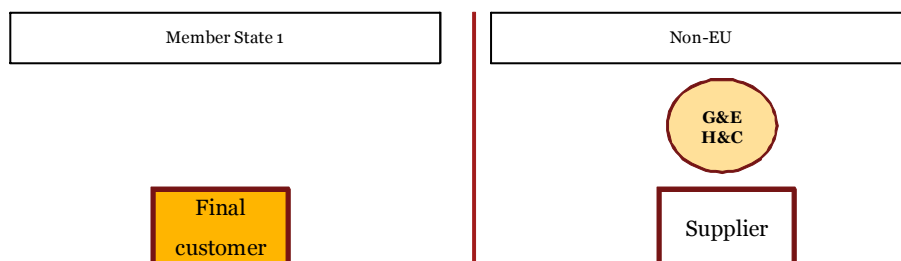
6.3.2. Comparison of VAT treatment

- 188 The VAT treatment “as is” differs from the VAT treatment “to be”.
- 189 The place of consumption (“as is”) differs from the place of establishment of the customer (“to be”) and the customer and supplier are not established in the same country.
- 190 This can be visualised by the following example:

Figure 5.28: Shift of place of supply from non-EU to EU

Diagram 85

GROUP GC3 – Scenarios 13 and 14



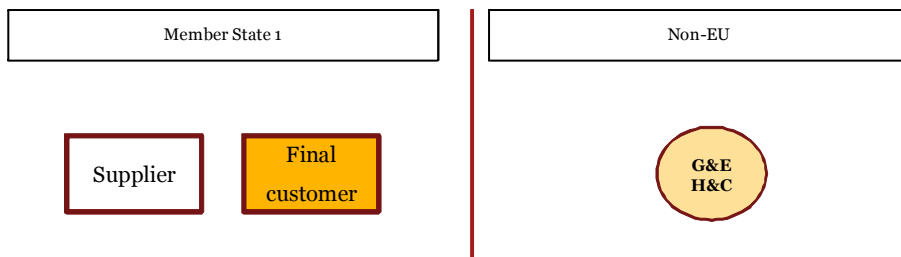
Current treatment	Future treatment
Place of supply	Place of supply
Non-EU – the place where the customer effectively uses and consumes the goods	MS1 – the place where the customer is established
CHANGE IN PLACE OF SUPPLY FROM NON-EU TO EU	

- 191 The same applies if the customer and the supplier are established in the same EU country.

192 This can be visualised by the following example:

Figure 5.29: Shift of place of supply from non-EU to EU

Diagram 89
GROUP GC5 – Scenarios 26 and 27



Current treatment	Future treatment
Place of supply	Place of supply
Non-EU – the place where the customer effectively uses and consumes the goods	MS1 – the place where the customer is established
CHANGE IN PLACE OF SUPPLY FROM NON-EU TO EU	

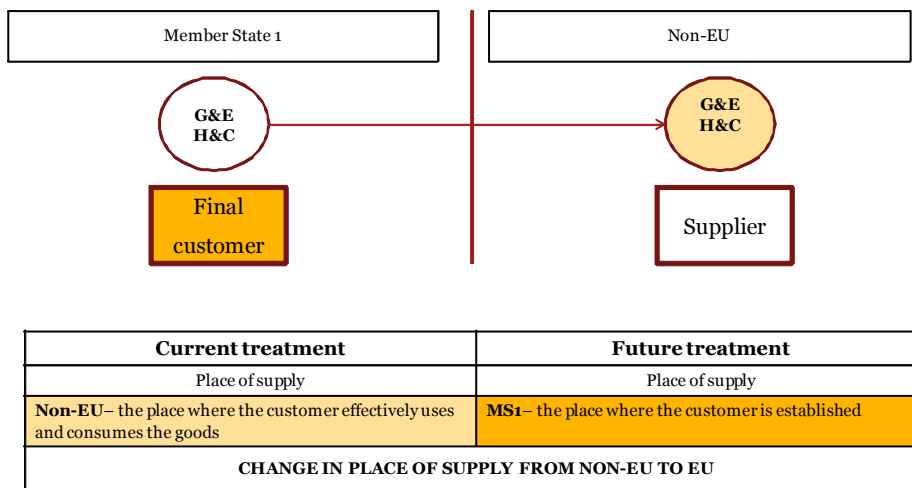
193 In the “as is” situation, there is no taxation within the EU.

194 In the “to be” situation, there will, in principle, be taxation within the EU. In this respect, we need to be aware that the exemption upon exportation (article 146 of the VAT Directive) will apply to the extent that the goods are exported outside the EU (being scenarios 11, 12, 15, 16, 17, 24 & 25).

195 This can be visualised by the following example:

Figure 5.30: Shift of place of supply from non-EU to EU

Diagram 84
GROUP GC3 – Scenario 11



6.3.3. Issues

- 196 For some of the scenarios (being scenarios 13, 14, 18, 19, 26 & 27), the electricity, gas or heat or cooling energy are located outside the EU but give rise to EU taxation in the “to be” situation as the customer is established within the EU. Moreover, no exemption would be available to the supplier or the customer, depending on who is liable for payment of VAT.
- 197 The fact that EU taxation occurs for goods located outside the EU is not in line with our general assumption that no taxation should occur for goods situated outside the EU. This could also lead to situations of double taxation should the supply of gas, of electricity and of heat or cooling energy within the non-EU country concerned also give rise to taxation.

6.3.4. Qualitative impact assessment

6.3.4.1. Impact in country of taxation

Figure 5.31: Impact in country of taxation

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

Impact in country of taxation (“as is”)

198 As the “as is” country of taxation is outside the EU, this impact is not considered.

Impact in country of taxation (“to be”)

Positive or no cash-flow impact:

199 In the case that the supplier and the customer are established in the same Member State, VAT will be payable by the supplier to the tax authorities. There would be pre-financing of VAT (time between payment of VAT to the local tax authorities by the supplier and VAT deduction/refund in the hands of the customer). However, if the export exemption applied, there would be no impact.

200 In the case that the supplier and the customer are not established in the same country, VAT will be payable by the customer to the tax authorities and there would be no impact.

Positive or no revenue impact:

201 There would be an increase in revenue if the customer does not have a full right to deduct VAT (i.e. customer with limited or no right to deduct VAT). If the export exemption applied, there would be no impact.

Negative impact on ease of administration and cost of collection:

- 202 In the case that the customer becomes liable for payment of VAT (as the supplier and the customer are not established in the same EU Member State), there would be need for additional VAT registrations of the customer in the country of taxation (if not yet registered), meaning more administrative work in terms of managing registrations and processing data from VAT returns and listings. This might be the case for non-taxable legal persons, small enterprises, taxable persons without a right to deduct VAT and farmers subject to the flat-rate scheme who were until now not identified for VAT purposes.
- 203 There would be additional work for tax authorities in terms of supervision and inspection due to shift of place of supply.

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

- 204 In the case that liability for payment of VAT shifts from the supplier outside the EU to the customer established and VAT registered in the country of taxation ("to be"), the new principle will better safeguard the tax revenue of the EU Member States and enhance auditability of the transaction.

6.3.4.2. Impact on taxable person

Figure 5.32: Impact on taxable person

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

Impact on supplier ("to be")

In case the customer becomes liable for payment of VAT:

Budgetary impact:

- 205 No impact.

Positive impact on legal certainty and simplicity:

- 206 The administration is easier in a day-to-day practice than under the current localisation rule for which the place where the customer is effectively consuming the goods needs to be defined.
- 207 It would always be clear that VAT is due in the EU Member State where the customer is established.

No shift in liability:

- 208 The supplier will not become liable to pay VAT.

Positive impact on cost of implementation and compliance:

- 209 There would be a possibility for full automation leading to a decrease in time spent (the VAT determination logic is based on the place of establishment of the customer).
- 210 There would be limited changes to processes/systems/technologies required and limited need to train staff in order to comply with the new VAT treatment of the supply.

In case the supplier becomes liable for payment of VAT:

Negative or no budgetary impact:

- 211 There would be pre-financing of VAT (time between payment of VAT to the tax authorities and payment of the invoice by the customer).
- 212 There would be an increased risk of pre-financing VAT on bad debts.
- 213 If the export exemption applied, there would be no impact.

Negative impact on legal certainty and simplicity:

- 214 Currently, there is no EU taxation with respect to goods effectively consumed outside the EU (shift of taxation from outside the EU to inside the EU).
- 215 If the export exemption applies, it will be the supplier claiming the VAT exemption upon exportation who has the burden of proof. The supplier will need to gather the necessary proof to support the exemption upon exportation, such as export document, transport document, bill of lading and payment documents.

Shift in liability:

- 216 The supplier becomes liable for payment of VAT.

Negative impact on cost of implementation and compliance:

- 217 There would be a need to adapt processes/systems/technologies and need to train staff in order to comply with the new VAT treatment of the supply.
- 218 If the export exemption applies, the supplier will have the burden of proof with respect to the application of the export exemption.

Impact on customer (“to be”)

Negative or no budgetary impact:

- 219 In the case that the supplier and the customer are established in the same Member State, there would be pre-financing of VAT (time between payment of the invoice by the customer and input VAT deduction/refund in the hands of the customer). If the export exemption applies, there would be no impact.

- 220 In the case that the supplier and the customer are not established in the same Member State, there would be no cash-flow impact.
- 221 There would be an increased cost if the customer does not have a full right to deduct VAT (i.e. taxable person with limited right to deduct VAT). If the export exemption applies, there would be no impact.
- 222 There would be double taxation in the case that goods supplied are already taxed in the non-EU country where they are located (unless the export exemption applies as in that case the customer will purchase the goods without EU VAT charge).

Negative or no impact on legal certainty and simplicity:

- 223 Currently, there is no EU taxation with respect to goods effectively consumed outside the EU (shift of taxation from outside the EU to inside the EU).
- 224 If the export exemption applies, it will be the customer claiming the VAT exemption upon exportation who has the burden of proof. The customer will need to gather the necessary proof to support the exemption upon exportation, such as export document, transport document, bill of lading and payment documents.
- 225 If the supplier liable for payment of the VAT claims the export exemption, there is no impact (as the customer will purchase the goods without EU VAT charge like in the “as is” situation).

Shift in liability:

- 226 In the case that the supplier and the customer are established in the same Member State, there is no impact as the supplier becomes liable for payment of EU VAT.
- 227 In the case that the supplier and the customer are not established in the same Member State, the latter becomes liable for payment of EU VAT where, in the past, no EU VAT was due (shift of taxation from outside the EU to inside the EU).

Negative impact on cost of implementation and compliance:

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

6.3.5. Conclusions

- 229 The shift of the place of supply from non-EU to EU, clearly leads to a negative impact for the country of taxation and the customer for most assessment criteria.
- 230 For the scenarios concerning an exportation of gas, of electricity or of heat or cooling energy outside the EU, the person claiming the VAT exemption upon exportation will have the burden of proof.
- 231 For the scenarios where the goods are already located outside the EU, the application of the new B2B localisation principle is not in line with the general principle of the Study that no EU taxation should occur for goods located outside the EU. This could also lead to situations of double taxation should the supply of the gas within the non-EU country concerned also give rise to taxation.

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

6.4.1. Description of scenarios

- 232 The goods will be effectively consumed within the EU.
- 233 The customer and the supplier are either established in the same country or not. The customer is always established outside the EU.
- 234 The transactions concerned are local supplies of goods, cross-border supplies of goods in the EU and importation of goods into the EU.
- 235 The groups concerned are GC6 en GCIM5.

6.4.2. Comparison of VAT treatment

- 236 The VAT treatment “as is” differs from the VAT treatment “to be”.
- 237 The place of consumption (“as is”) differs from the place of establishment of the customer (“to be”).
- 238 This can be visualised by the following examples:

Figure 5.33: Local supply of goods

Diagram 92

GROUP GC6 – Scenario 32

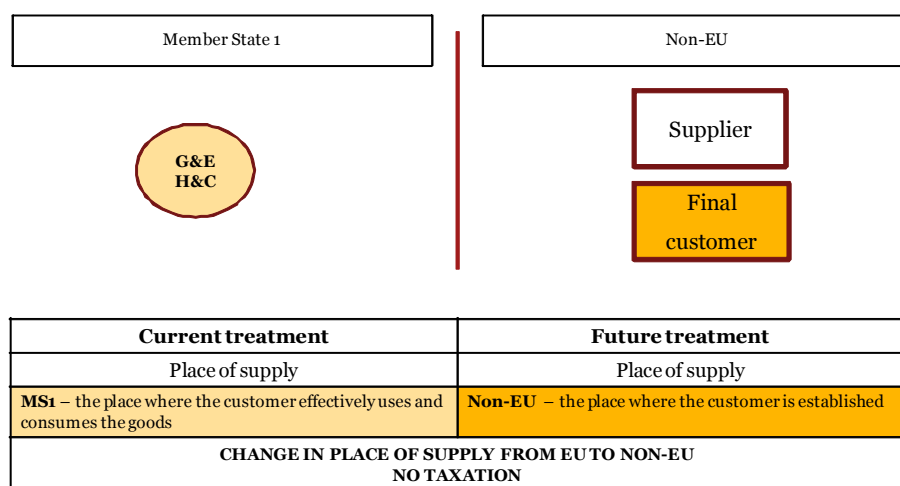
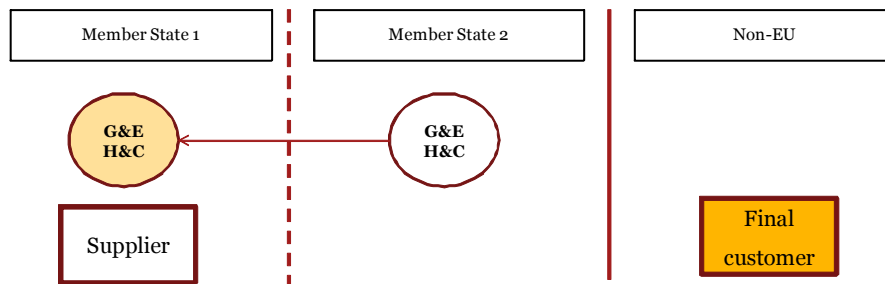


Figure 5.34: Cross-border supply of goods within the EU

Diagram 91

GROUP GC6– Scenario 29



Current treatment	Future treatment
Place of supply	Place of supply
MS1 – the place where the customer effectively uses and consumes the goods	Non-EU – the place where the customer is established
CHANGE IN PLACE OF SUPPLY FROM EU TO NON-EU NO TAXATION	

- 239 In the “as is” situation, there is taxation within the EU. In the “to be” situation, there will no longer be taxation within the EU.
- 240 To the extent that the supplier is not established in the EU Member State of consumption, he needs a VAT registration in that EU Member State in the “as is” situation for this type of supplies.

6.4.3. Qualitative impact assessment

6.4.3.1. Impact in country of taxation

Figure 5.35: Impact in country of taxation

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

Impact in country of taxation (“as is”)

Negative cash-flow impact:

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

Negative revenue impact:

- 242 Due to the shift of country of taxation, there will be a decrease in revenue if the customer does not have a full right to deduct VAT (i.e. customer with limited or no right to deduct VAT).

Positive impact on ease of administration and cost of collection:

- 243 There would be a decrease in administrative work in terms of managing registrations and processing data from VAT returns and listings as, for some scenarios, there will no longer be any need for VAT registration of the supplier.
- 244 There would be a decrease in administrative work as the customer no longer needs to obtain VAT deduction/refund, and decrease in work in terms of supervision and inspection as there is no longer collection of VAT.
- 245 It would always be clear that the place of supply is where the customer is established, which should reduce the potential for disputes.

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

- 246 In the case that the place of supply shifts from inside the EU (i.e. effective consumption in the EU) to the customer established outside the EU, the new principle will not safeguard the tax revenue of the EU Member States. Auditability of the transaction will be more difficult, even more in the case that also the supplier is not established in the EU.

Impact in country of taxation (“to be”)

- 247 As the “to be” country of taxation is outside the EU, this impact is not considered.

6.4.3.2. *Impact on taxable person*

Figure 5.36: Impact on taxable person

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

Impact on supplier (“to be”)

Positive budgetary impact:

- 248 There would no longer be pre-financing of VAT (time between payment of VAT to the tax authorities and payment of the invoice by the customer).
- 249 There would no longer be an increased risk of pre-financing VAT on bad debts.

Positive impact on legal certainty and simplicity:

- 250 The administration is easier in day-to-day practice than under the current localisation rule for which the place where the customer is effectively consuming the goods needs to be defined.
- 251 It is always clear that VAT is due in the EU Member State where the customer is established.

Shift in liability:

- 252 The supplier is no longer liable for payment of VAT.

Positive impact on cost of implementation and compliance:

- 253 It would be easier to administer in day-to-day practice since there would no longer be any need for additional VAT registrations.
- 254 There would be possibility for full automation, leading to a reduction in time spent (VAT determination logic is based on place of establishment of the customer).
- 255 There would be limited changes to processes/systems/technologies and limited need to train staff in order to comply with the new VAT treatment of the supply.

Impact on customer (“to be”)

Positive budgetary impact:

- 256 There would no longer be pre-financing of VAT (time between payment of the invoice to the supplier and VAT deduction/refund in the hands of the customer).
- 257 There would be a decrease in cost if the customer does not have a full right to deduct VAT (i.e. customer with limited or no right to deduct VAT).

Positive impact on legal certainty and simplicity:

- 258 The administration is easier in day-to-day practice than under the current localisation rule.
- 259 It is always be clear that VAT is due in the EU Member State where he is established.

No shift in liability:

- 260 No impact as shift from EU to non-EU.

Positive impact on cost of implementation and compliance:

- 261 There would be possibility for full automation, leading to a reduction in time spent.
- 262 There would be limited changes to processes/systems/technologies in order to comply with the new VAT treatment of the supply.
- 263 There would be no longer need to apply for VAT deduction/refund in the EU Member State of consumption.

6.4.4. Conclusions

- 264 Both for the supplier and the customer, there is a clear benefit. For the country of taxation, a negative impact on the budget is (partly) compensated with a positive impact on the ease of administration and cost of collection, but auditability of the transaction will be more or very difficult, even more in the case that, besides the customer, also the supplier is not established in the EU.
- 265 In the case that the electricity, gas or heat or cooling energy is consumed in the EU, the application of the new B2B localisation principle is not in line with the general principle of the Study that EU taxation should occur for goods located inside the EU. This could also lead to situations of no taxation should the supply within the non-EU country also not be taxed. Distortion of competition would occur due to the working of the VAT system as suppliers might be tempted using only non-EU customers in order to avoid taxation.

7. Overall conclusions and lessons learned

- 266 From an overall perspective, there will be no particular problems when applying the new B2B localisation principle to the supplies of gas, electricity or heat or cooling energy to taxable dealers and consumers.
- 267 For supplies to final business consumers, the new B2B localisation rule is easier to administer than the current localisation rule.
- 268 The main lessons learned from the qualitative impact assessment are the following:
- 269 In order to come to a correct result following the general principles of the Study, a correction mechanism will need to be introduced for supplies of EU goods to non-EU established customers. However, it needs to be further analysed whether this would result in a simple taxation mechanism (as simple as today) as gas, electricity or heat or cooling energy are very difficult to track physically.
- 270 In order to come to a correct result following the general principles of the Study, 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 and that there was no intention to import them into the EU. However, it needs to be further analysed whether this would result in a simple taxation mechanism (as simple as today) as gas, electricity or heat or cooling energy are difficult to track physically. The recent changes to articles 38 and 39 (i.e. gas system not in the EU or not connected to the EU) seems to indicate that such an approach would be necessary to avoid double taxation in the hands of EU established taxable dealers.
- 271 In the case of exports where the supplier or customer is liable for payment of VAT, it will be the supplier or the customer claiming the export exemption that will have to provide the necessary proof of exportation of the goods.
- 272 In order to avoid double taxation in the case of import of gas, electricity or heat or cooling energy, the existing exemption upon importation should remain applicable and should be extended to all B2B supplies of those products.