

***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 8: Qualitative impact assessment
second-hand goods subject to the margin
scheme

23 December 2011

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1. Purpose of the special regime¹

- 1 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 1994². 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 Directive³.
- 2 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.
- 3 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).

2. Summary of the provisions⁴

- 4 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.
- 5 The scope of these special arrangements is limited to taxable dealers, organisers of public auctions and principals of organisers of public auctions.
- 6 A difference should be drawn between taxable dealers and public auctions.
- 7 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.

¹ 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, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap12.html?WT.z_na.

² 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.

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

⁴ 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, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap12.html?WT.z_na.

- 8 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.
- 9 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.
- 10 The special arrangements shall apply to supplies made by a taxable dealer or an organiser of a sale by a 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 by another taxable dealer.
- 11 In respect of supplies that are made by taxable dealers to a destination outside the EU where the exemption under articles 146, 147, 148 or 151 is applicable, this exemption also applies to the margin scheme (article 321 of the VAT Directive).
- 12 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.
- 13 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.

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

3.1. Description of scenarios

- 14 The taxable dealer and the customer are established in the same EU Member State.
- 15 The second-hand goods, works of art, collectors' items and antiques ("second-hand goods") are (at the time of dispatch or transport) located within the EU Member State of the taxable dealer and the customer.
- 16 The transactions concerned are local supplies of goods, cross-border supplies of goods in the EU or exports.
- 17 The groups concerned are SHL3, SHEU3 and SHEX3.

3.2. Comparison of VAT treatment

- 18 The VAT treatment "as is" is equal to the VAT treatment "to be".
- 19 This can be visualised by the following examples:

Figure 8.1: Local supply of goods

Diagram 136
GROUP SH/L – Scenario 6

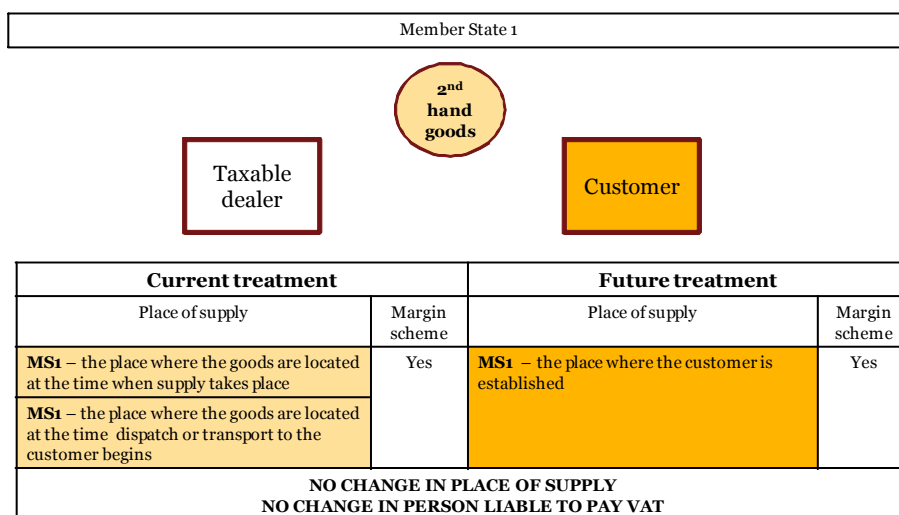
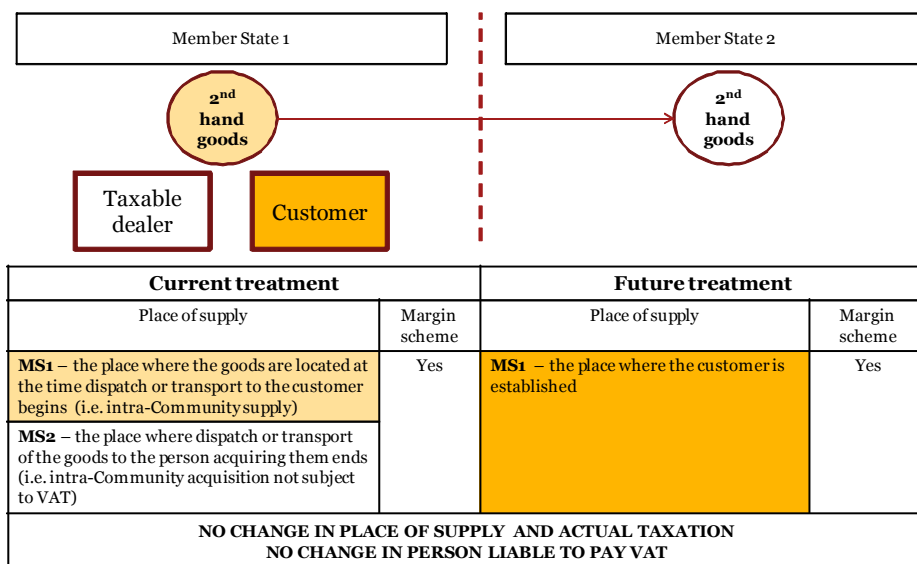


Figure 8.2: Cross-border supply of goods within the EU

Diagram 140
GROUP SH/EU – Scenario 6



3.3. Qualitative impact assessment

3.3.1. Impact in country of taxation

Figure 8.3: Impact in country of taxation

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

Impact in country of taxation (“as is”)

20 No impact.

Impact in country of taxation (“to be”)

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

3.3.2. Impact on taxable person

Figure 8.4: Impact on taxable person

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

Impact on supplier (“to be”)

22 No impact.

Impact on customer (“to be”)

23 No impact.

3.4. Conclusions

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

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

- 25 We only explain the specific impact of the new B2B localisation and liability principle with respect to application of the margin scheme for second-hand goods. We do not further elaborate on more general conclusions already dealt with in the qualitative impact assessment of the general scenarios.

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

4.1.1. Description of scenarios

- 26 The taxable dealer and the customer are not established in the same country. The customer is always established within the EU and the taxable dealer is established within the EU or outside the EU.
- 27 The second-hand goods are (at the time of dispatch or transport) located within the EU but not in the EU Member State of the customer.
- 28 The transactions concerned are local supplies of goods, cross-border supplies of goods in the EU or exports.
- 29 The groups concerned are SHL2, SHEU1 and SHEX2.

4.1.2. Comparison of VAT treatment

- 30 The VAT treatment “as is” differs from the VAT treatment “to be”.
- 31 The place of supply (“as is”) differs from the place of establishment of the customer (“to be”) and the customer and supplier are not established in the same EU Member State.
- 32 This can be visualised by the following examples:

Figure 8.5: Local supply of goods

Diagram 135
GROUP SH/L – Scenario 3

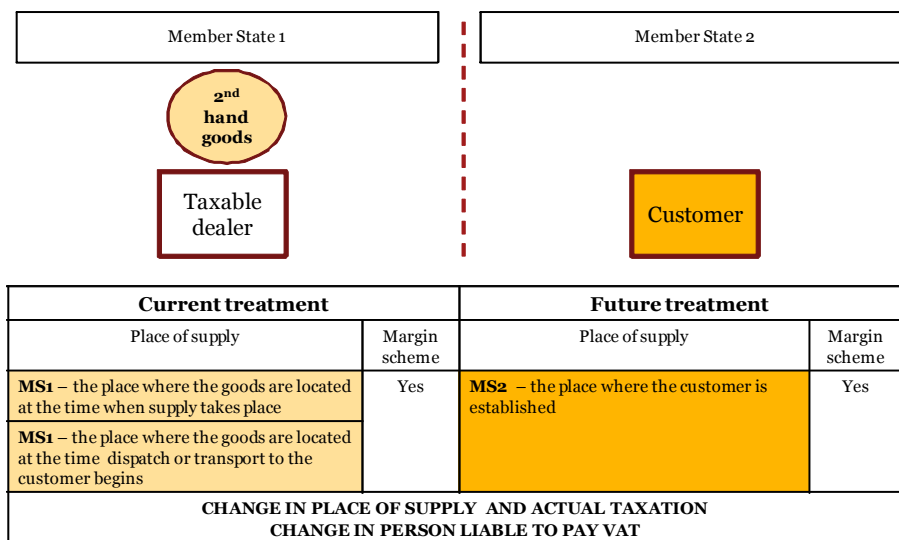


Figure 8.6: Cross-border supply of goods in the EU

Diagram 139
GROUP SH/EU– Scenario 1

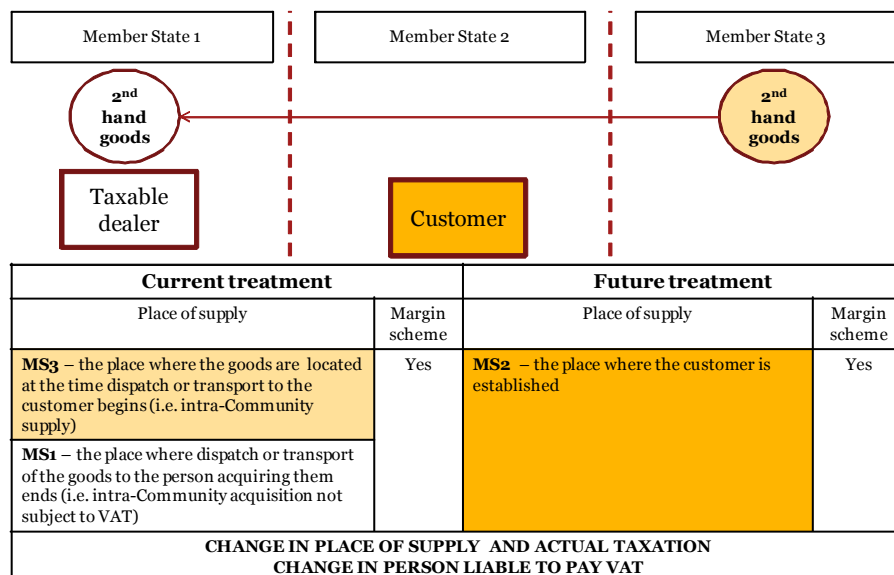
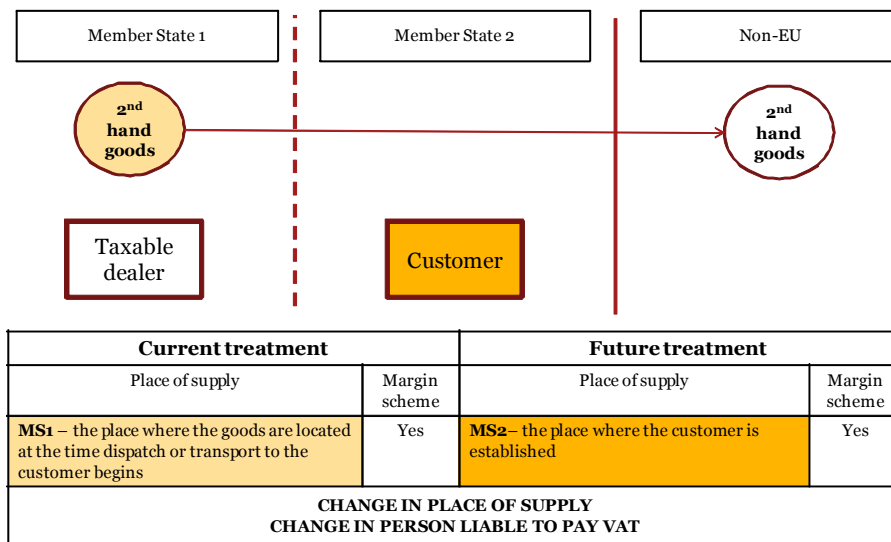


Figure 8.7: Export of goods outside the EU

Diagram 143
GROUP SH/EX– Scenario 3



- 33 If the taxable dealer is not established in the EU Member State of place of supply, he needs to register for VAT in that EU Member State in the “as is”-situation for this kind of supply.

4.1.3. Issues

- 34 Under the new B2B localisation and liability principles, it is the customer who would be liable for payment of the VAT in the EU Member State of establishment.
- 35 However, under the margin scheme, the taxable amount is the difference between the “selling price” and the “purchase price” less the amount of VAT relating to that margin. Only the taxable dealer has the necessary information in respect of the “purchase price”.
- 36 First, this means that in order for the taxable customer to be able to fulfil his obligations, he needs to know that the supplier is a taxable dealer, that the supply of goods is within the scope of the margin scheme in his EU Member State and the profit margin on the transaction. It can be assumed that a taxable dealer would not be willing to disclose his profit margin to his customer.
- 37 Second, in order for the taxable dealer to fulfil his obligations, he needs to know which second-hands goods are covered under the specific scheme and what the applicable VAT rate is in all EU Member States where customers are established.
- 38 The taxable dealer needs to know the applicable VAT rate in the EU Member State of the customer in order to calculate the taxable amount to be stated on the invoice (as the profit margin is VAT inclusive). Moreover, the gross profit actually earned by the taxable dealer will depend on the VAT rate applicable to second-hand goods in the EU Member State of the customer.

- 39 If the customer is established in an EU Member State where the VAT rate is higher than in the EU Member State of establishment of the supplier, the gross profit actually earned by the taxable dealer will be lower. In this respect, we assume that there is no impact on the selling price.
- 40 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 it to their customers. The margin scheme would become superfluous in intra-EU cross border relations in the “to be”-situation.
- 41 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).
- 42 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. This leads to a risk of abuse and distortions in the Single Market.

4.1.4. Qualitative impact assessment

4.1.4.1. Impact in country of taxation

Figure 8.8: 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
0	0	1	1	0	0	0	-1	-1	0
0	0	1	1	0	0	0	-1	-1	1

Impact in country of taxation (“as is”)

Negative or no cash-flow impact:

- 43 Due to the shift in the country of taxation, there would no longer be pre-financing of VAT. If the export exemption applied, there would be no impact.

Negative or no revenue impact:

- 44 Due to the shift in the country of taxation, there would be a decrease in revenue, as customers have no right to deduct VAT (i.e. purchase price inclusive of VAT). If the export exemption applied, there would be no impact.

Positive impact on ease of administration and cost of collection:

- 45 There would be a decrease in administrative work in terms of managing registrations and processing data from VAT returns and listings since, for some cases, there would no longer be need for a taxable dealer not established in the relevant Member State to register for VAT.
- 46 It would always be clear that the place of supply is where the customer is established, which should reduce the potential for disputes.
- 47 There would be decrease in work for the tax authorities in terms of supervision and inspection as shift in place of supply.

Impact in country of taxation (“to be”)

Cash-flow impact:

- 48 No impact as the customer would be liable for payment of the VAT.

Positive or no revenue impact:

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

Negative impact on ease of administration and cost of collection:

- 50 The customer would need to additionally register for VAT in the country of taxation (if he is not already registered there), 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 have not hitherto been identified for VAT purposes.
- 51 There would be additional work for the tax authorities in terms of supervision and inspections for the collection of VAT. This is fairly complex in the case of the margin scheme.

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

- 52 If liability for paying VAT shifted from a supplier established outside the EU to a customer established and VAT-registered in the country of taxation (“to be”), the new principle would better safeguard the tax revenue of the EU Member States and provide for better auditability of the transaction.

4.1.4.2. Impact on taxable person

Figure 8.9: 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
0	-1	1	1	0	-1	-1	-1

Impact on supplier (“to be”)

Positive or no budgetary impact:

- 53 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).
- 54 There would no longer be an increased risk of pre-financing VAT on bad debts.
- 55 If the export exemption applied, there would be no impact.

Negative impact on legal certainty and simplicity:

- 56 The taxable dealer would need to provide its customer with the following information: his status as a taxable dealer, the fact that the supply is subject to the margin scheme and the profit margin.
- 57 The taxable dealer would need to be aware of the specifics of the margin scheme in all EU Member States where customers are established in order to set his selling price (goods covered/VAT rate).
- 58 The taxable dealer would need to disclose his profit margin to the customer.

Shift in liability:

- 59 The customer would become liable for payment of the VAT.

Positive impact on cost of implementation and compliance:

- 60 It would be easier for a taxable dealer to administer in day-to-day practice since there would no longer be any need for additional VAT registrations.
- 61 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), though the taxable dealer would need to be aware of the specifics of the margin scheme in all EU Member States where customers are established in order to set his selling price (goods covered/VAT rate).

Impact on customer (“to be”)

No, positive or negative budgetary impact:

- 62 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.
- 63 If the export exemption applied, there would be no impact.

Negative impact on legal certainty and simplicity:

- 64 There would be additional administrative burden in the hands of the customer, as he needs to account VAT on the profit margin less the amount of VAT relating to the profit margin. In this respect, he would need to know that the supplier is a taxable dealer, that the supply of the goods is subject to the margin scheme and the profit margin.
- 65 The taxable dealer would not be willing to disclose the profit margin to his customer.

Shift in liability:

- 66 The customer would become liable for payment of the VAT.

Negative impact on cost of implementation and compliance:

- 67 The changes to processes/systems/technologies would be fairly complex and staff would need to be trained in order to comply with the new VAT treatment of the supply.

4.1.5. Conclusions

- 68 The new B2B localisation principle would not work in practice and taxable dealers would tend to opt for the normal VAT scheme in “to be” intra-EU relationships (since there would be no disclosure of their gross margin, an increased input VAT deduction and the tax burden would be shifted to the customer).
- 69 If the margin scheme applied, the customer would not have sufficient information with respect to second-hand goods subject to the margin scheme to be able to account for VAT due in his EU Member State of establishment. Furthermore, the supplier would need to know the goods covered and the VAT rates in all EU Member States where customers are established to be able to inform them accordingly.

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

4.2.1. Description of scenarios

- 70 The taxable dealer and the customer are established in the same EU Member State.
- 71 The goods are (at the time of dispatch or transport) located within the EU but not in the EU Member State of the taxable dealer and customer.
- 72 The transactions concerned are local supplies of goods, cross-border supplies of good in the EU and exports.
- 73 The groups concerned are SHL4, SHEU4 and SHEX4.

4.2.2. Comparison of VAT treatment

- 74 The VAT treatment “as is” differs from the VAT treatment “to be”.
- 75 The place of supply (“as is”) differs from the place of establishment of the customer (“to be”) and the taxable dealer and the customer are established in the same EU Member State.
- 76 This can be visualised by the following examples:

Figure 8.10: Local supply of goods

Diagram 137
GROUP SH/L – Scenario 7

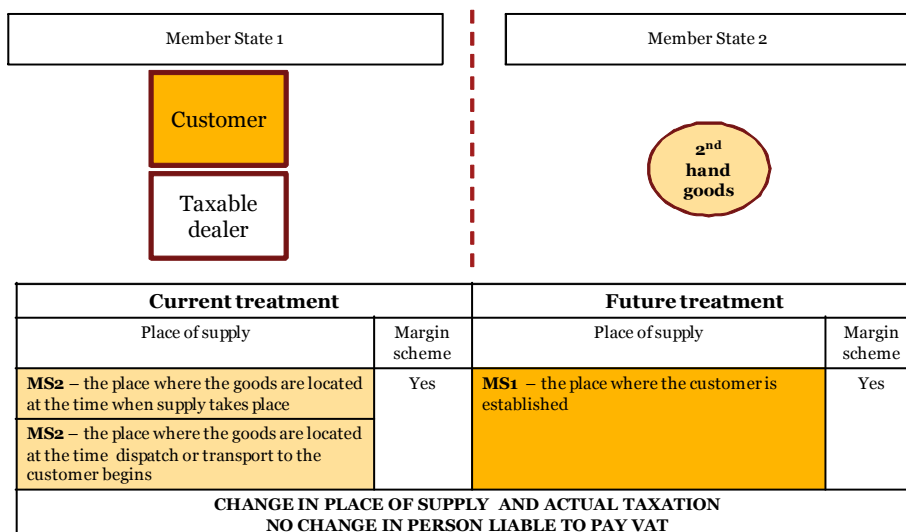
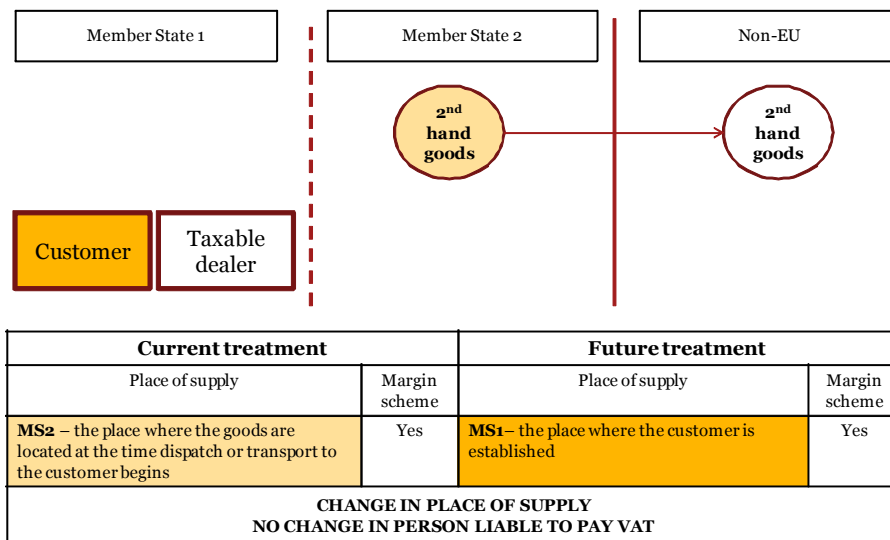


Figure 8.11: Export of goods outside the EU

Diagram 144
GROUP SH/EX– Scenario 7



77 As the taxable dealer is not established in the EU Member State of place of supply, he needs to register for VAT in that EU Member State in the “as is”-situation for this kind of supply.

4.2.3. Qualitative assessment

4.2.3.1. Impact in country of taxation

Figure 8.12: 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
0	0	1	1	0	0	0	-1	-1	0

Impact in country of taxation (“as is”)

78 The impact in the “as is”-country of taxation is equal to the impact as explained in point 4.1.4.1.

Impact in country of taxation (“to be”)

Positive or no cash-flow impact:

- 79 There would be pre-financing of VAT. If the export exemption applied, there would be no impact.

Positive or no revenue impact:

- 80 There would be an increase in revenue, as customers have no right to deduct VAT (i.e. purchase price inclusive of VAT). If the export exemption applied, there would be no impact.

Negative impact on ease of administration and cost of collection:

- 81 There would be additional work for the tax authorities in terms of supervision and inspections for the collection of VAT. This is fairly complex in the case of the margin scheme.

4.2.3.2. Impact on taxable person

Figure 8.13: 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	0	1	0	1
0	1	0	1	0	1	0	1

Impact on supplier (“to be”)

No, positive or negative budgetary impact:

- 82 The budgetary impact will depend on the overall VAT position of the supplier in the “as is” and “to be” countries of taxation, on any differences in applicable VAT rates, the payment terms with the customer and the time the VAT is paid to the VAT authorities.
- 83 If the export exemption applied, there would be no impact.

Positive impact on legal certainty and simplicity:

- 84 The administration is easier since the place of supply is the supplier’s own EU Member State of establishment.

No shift in liability:

- 85 The taxable dealer remains liable for payment of the VAT.

Positive impact on cost of implementation and compliance:

- 86 There are no or only limited changes to processes/systems/technologies and no or only limited need to train staff to comply with the new VAT treatment of the supply.

Impact on customer (“to be”)

Budgetary impact:

87 No impact.

Positive impact on legal certainty and simplicity:

88 The administration is easier since the place of supply is the customer’s own EU Member State of establishment.

No shift in liability:

89 The taxable dealer remains liable for payment of the VAT.

Positive impact on cost of implementation and compliance:

90 There are no or only limited changes to processes/systems/technologies and no or only limited need to train staff to comply with the new VAT treatment of the supply.

4.2.4. Conclusions

- 91 There are no specific obstacles with respect to the application of the new B2B principle, including application for the purposes of the export exemption.
- 92 For both the taxable dealer and the customer, there is a clear benefit. For the countries of taxation “as is” and “to be”, the negative or positive impacts on budget are compensated by respective positive or negative impacts on the ease of administration and cost of collection.

4.3. No change in place of supply in the EU but change in person liable for payment

4.3.1. Description of scenarios

- 93 The customer is always established within the EU. The taxable dealer is either established in the EU or outside, but never in the EU Member State of the customer.
- 94 The customer is established in the EU Member State where the goods are (at the time dispatch or transport) located.
- 95 The transactions concerned are local supplies of goods, cross-border supplies of goods in the EU and exports.
- 96 The groups concerned are SHL1, SHEU2 and SHEX1.

4.3.2. Comparison of VAT treatment

- 97 The VAT treatment “as is” differs from the VAT treatment “to be”.
- 98 The place of supply (“as is”) is equal to the place of supply (“to be”) but, because the taxable dealer and the customer are not established in the same country, liability to pay VAT shifts to the customer.
- 99 This can be visualised by the following examples:

Figure 8.14: Local supply of goods

Diagram 134

GROUP SH/L – Scenario 2

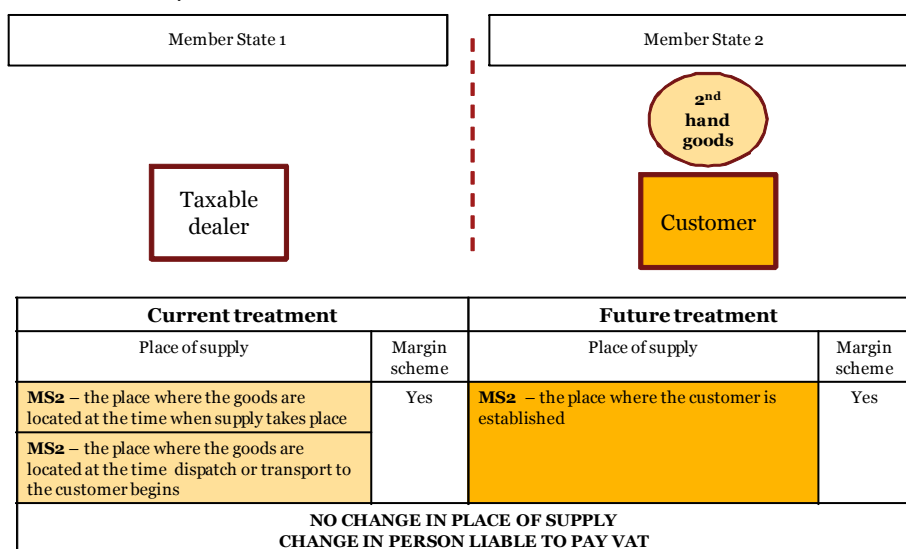
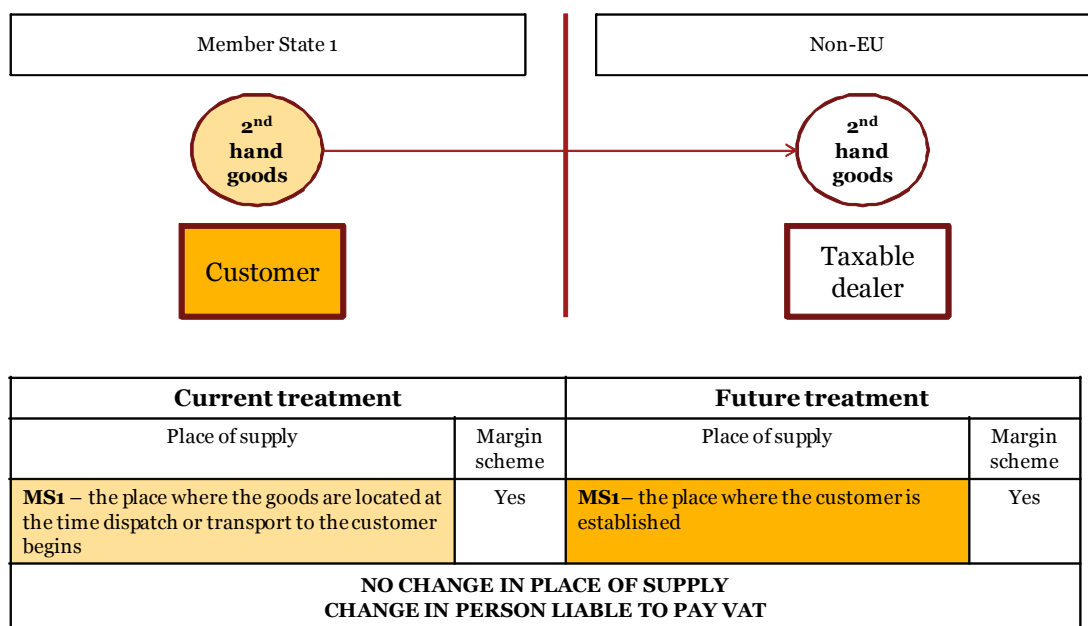


Figure 8.15: Exports of goods outside the EU

Diagram 142
GROUP SH/EX – Scenario 1a and 1b



- 100 As the taxable dealer is not established in the EU Member State of place of supply, he needs to register for VAT in that EU Member State in the “as is”-situation for this kind of supply.

4.3.3. Issues

- 101 The same issues as set out under point 4.1.3 are applicable for these kinds of supplies; thus these issues are also applicable to situations where the place of actual taxation does not change and there is only a shift in liability to pay EU VAT from the supplier to the customer.
- 102 Another issue “on top” relates to possible application of the export exemption. No EU Member State may exempt supplies of goods dispatched or transported to a destination outside the EU by or on behalf of a customer established within that Member State. If the customer is established in the EU Member State where the goods are located at the time dispatch or transport begins and he is responsible for the transport, the exemption upon exportation is not applicable.
- 103 What this all boils down to is providing sufficient proof of exportation of the goods outside the EU (export document, transport documents, bill of lading and payment documents). The person actually dispatching or transporting the goods to a destination outside the EU should no longer be of relevance.

4.3.4. Qualitative assessment

4.3.4.1. Impact in country of taxation

Figure 8.16: 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					
0	0	1	1	1					

Impact in country of taxation (“as is”)

- 104 The impact in the “as is”-country of taxation is equal to the impact as explained in point 4.1.4.1 .
- 105 Please note that there is a difference with respect to the budgetary impact as the place of supply “as is” equals the place of supply “to be”. Only a shift in the person liable to pay the VAT and the export exemption remain unaltered.

Impact in country of taxation (“to be”)

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

4.3.4.2. Impact on taxable person

Figure 8.17: 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
0	-1	1	1	0	-1	-1	-1

Impact on supplier (“to be”)

- 107 The impact for the supplier is equal to the impact as explained in point 4.1.4.2. As the exemption upon exportation is not applicable, the taxable dealer has the same impact as explained in point 4.1.4.2. Note that, if the export exemption applies, there will be no budgetary impact.

Impact on customer (“to be”)

- 108 The impact for the customer is equal to the impact as explained in point 4.1.4.2. As the exemption upon exportation is not applicable, the customer has the same impact as explained in point 4.1.4.2. If the export exemption applies, there will be no budgetary impact, but there will be less legal certainty and simplicity and an increase in the cost of implementation and compliance as the burden of proving eligibility for the export exemption will arise.

4.3.5. Conclusions

- 109 The new B2B localisation principle will not work in practice and taxable dealers will tend to opt for the standard VAT scheme in “to be” intra-EU relationships (due to there being no disclosure of gross margin, an increased input VAT deduction and the tax burden shifts to the customer).
- 110 If the margin scheme should still apply, the customer will not have sufficient information with respect to second-hand goods subject to the margin scheme to be able to account for VAT due in his EU Member State of establishment. Furthermore, the supplier needs to know the goods covered and the VAT rates in all EU Member States where customers are established.

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

4.4.1. Description of scenarios

- 111 The customer is always established outside the EU. The taxable dealer is either established in or outside the EU.
- 112 Irrelevant whether the taxable dealer is established in the EU Member State where the goods are located (at the time dispatch or transport) or elsewhere.
- 113 The transactions concerned are local supplies of goods, cross-border supplies of goods in the EU and exports.
- 114 The groups concerned are SHL5, SHEU5 and SHEX5.

4.4.2. Comparison of VAT treatment

- 115 The VAT treatment “as is” differs from the VAT treatment “to be”.
- 116 The place of supply (“as is”) is different from to the place of supply (“to be”) and is outside the EU as the customer is established outside the EU.
- 117 This can be visualised by the following examples:

Figure 8.18: Local supply of goods

Diagram 138
GROUP SH/L – Scenario 8

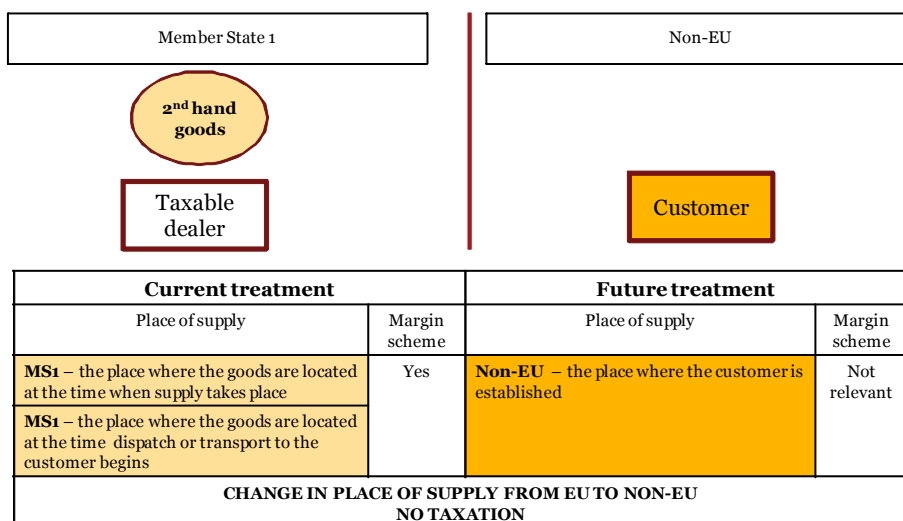


Figure 8.19: Cross-border supply of goods in the EU

Diagram 141
GROUP SH/EU– Scenario 8

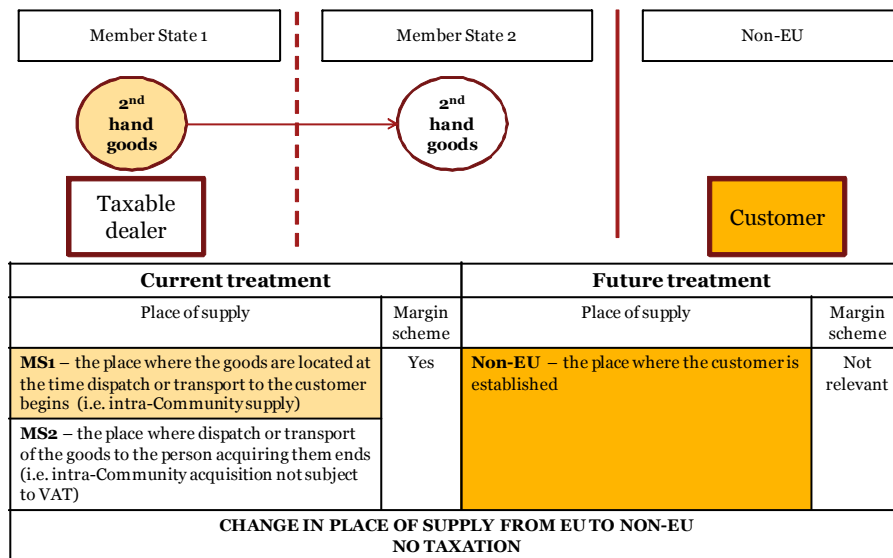
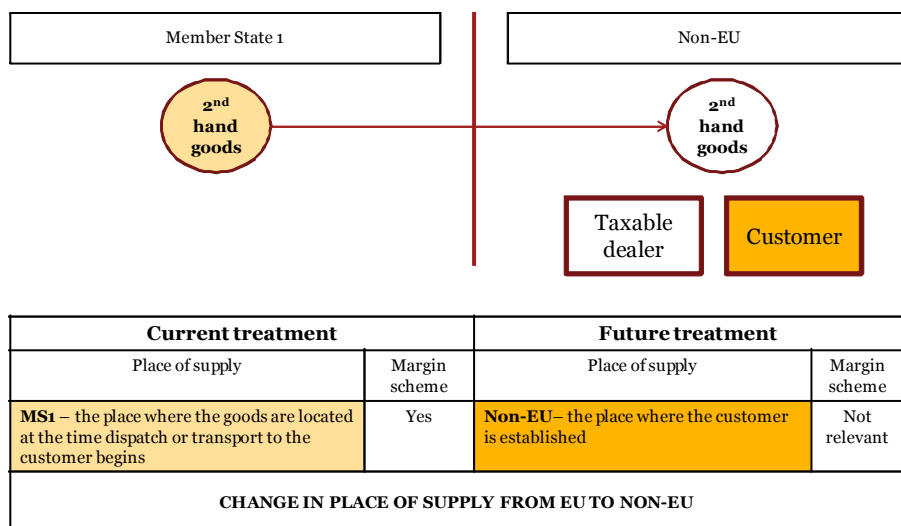


Figure 8.20: Exports of goods outside the EU

Diagram 145
GROUP SH/EX – Scenario 8



118 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.

- 119 If the taxable dealer is not established in the EU Member State of place of supply, he needs to register for VAT in that EU Member State in the “as is”-situation for this kind of supply.

4.4.3. Issues

- 120 As application of the margin scheme in the “as is” situation is linked to the EU Member State where the second-hand goods are located (with or without transport), it will no longer be applicable in the “to be” situation if the business customer is established outside the EU as the supply of goods will take place outside the EU.
- 121 *De facto* this will lead to a situation in which no VAT will be charged (as with the export exemption under the margin scheme) on the gross profit margin realised by the taxable dealer on transactions with non-EU customers, even though the second-hand goods are located in the EU and remain in the EU, except for the scenarios where the goods are exported. In the case of EU customers, VAT will be charged on the same kinds of supplies. The new B2B localisation principle would create distortion of competition.

4.4.4. Qualitative assessment

4.4.4.1. Impact in country of taxation

Figure 8.21: 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	
-1	-1	1	1	-1					
0	0	1	1	-1					

Impact in country of taxation (“as is”)

- 122 The impact for the “as is” country of taxation in the EU is equal to the impact as explained in point 4.1.4.1, but with a negative impact on the prevention of fraud and abuse on an EU level.

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

- 123 If the place of taxation shifts from inside the EU to the customer established outside the EU, the new principle will offer less safeguards for the tax revenue of the EU Member States. The transaction will be less auditable, especially if the supplier is also not established in the EU.

Impact in country of taxation (“to be”)

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

4.4.4.2. Impact on taxable person

Figure 8.22: 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	1	1	0	1	0	1

Impact on supplier (“to be”)

Positive or no budgetary impact:

- 125 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).
- 126 There would no longer be an increased risk of pre-financing VAT on bad debts.
- 127 If the export exemption applied, there would be no impact.

Positive impact on legal certainty and simplicity:

- 128 The administration is easier in day-to-day practice than under the current localisation rule and the margin scheme is no longer applicable.
- 129 It is always clear that no EU VAT is due, as the customer is established outside the EU.

Shift in liability:

- 130 The taxable dealer is no longer liable for EU VAT due to the place of supply of the second-hand goods being outside the EU.

Positive impact on cost of implementation and compliance:

- 131 It would be easier for a taxable dealer to administer in day-to-day practice since there would no longer be any need for additional VAT registrations and the margin scheme is no longer applicable.
- 132 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).

Impact on customer (“to be”)

Positive or no budgetary impact:

- 133 A positive impact is expected as the margin scheme would no longer apply unless the export exemption applied in the “as is” situation (no impact).

Positive impact on legal certainty and simplicity:

- 134 The administration is easier in day-to-day practice than under the current localisation rule.
- 135 It is for the customer always clear that no VAT is due in the EU.

Shift in liability:

- 136 No impact is expected as the customer does not become liable for payment of EU VAT due to the supply of the second-hand goods being located outside the EU.

Positive impact on cost of implementation and compliance:

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

4.4.5. Conclusions

- 139 There are several obstacles to applying the new B2B principle: there is no taxation of goods located in the EU, which is not in line with the general assumption of the new regime and leads to a loss of tax revenue in the EU; transactions will be more difficult to audit; and distortion of competition would occur due to the working of the VAT system.
- 140 Taxable dealers will tend to opt for the standard VAT scheme in the “to be” situation to generate higher input VAT deductions on their purchases and gain extra gross margins on these transactions. The margin scheme would become as good as superfluous in relations with customers established outside the EU.
- 141 This is again a barrier put up by the inappropriate working of the new VAT regime.

5. Overall conclusions and lessons learned

- 142 From an overall perspective, we see that the new B2B localisation principle will lead to distortion of competition between EU and non-EU established customers due the manner in which the new principles function. We also see that the margin scheme will no longer be the most appropriate scheme for taxable dealers to apply, which could lead to more situations where greater amounts of VAT would be irrecoverable for customers.
- 143 The main lessons learned from the qualitative impact assessment are:
- 144 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 EU Member State), an exception is needed to the new B2B localisation or liability principle due, in short, to “resistance” by taxable dealers to disclosing their gross profit margin on transactions and thus their opting to apply the standard VAT scheme.
- 145 If the taxable dealer remains liable for payment of the VAT (because the taxable dealer and customer are established in the same EU Member State), there are no particular problems to applying the new B2B localisation principle.
- 146 The exemption upon exportation should always be applicable irrespective of the EU Member State of establishment of the customer.
- 147 If the customer is established outside the EU, there will be no taxation of second-hand goods located in the EU. This will not be in line with the general assumption of the new B2B localisation principle.