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VAT EXPERT GROUP

VEG N° 057

Definitive VAT regime for intra-EU trade
First step
Issues to be examined

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1 BACKGROUND

Following on from the 2011 Communication *On the future of VAT — Towards a simpler, more robust and efficient VAT system tailored to the single market*¹ and the Council's conclusions of May 2012², the Commission entered into a broad-based and transparent dialogue with Member States and other stakeholders to examine in detail the possibilities for implementing the 'destination principle' in intra-EU trade³.

The Commission launched an expert study to assess the impacts of each option compared with the current situation. A final report was finalised and discussed in a joint-meeting with Member States representatives and VEG members in June 2015⁴. In November 2015, the VEG members discussed the issues which could arise if the options under which VAT was charged by the supplier while tracking the flow of the goods were implemented⁵.

In the Action Plan of April 2016⁶, the Commission set out its conclusion from this work. It indicated that the best option to reduce cross-border fraud and ensure consistent treatment of domestic and cross-border supplies along the entire chain of a production and distribution would be to tax B2B supplies of goods within the EU in the same way as domestic supplies, thus fixing the great flaw of the transitional arrangements while keeping the underlying features of the VAT system intact.

The intermediate and final consumption of the goods will continue to be taxed where the goods are transported to, which is a reliable proxy of the place of consumption. Such an objective criterion would make it difficult for taxable persons to engage in tax planning or commit fraud.

Some significant simplification measures would be taken to accompany this change. For instance, the One Stop Shop (OSS) that already exists for telecommunications, broadcasting and electronic services and which is due to be extended to all e-commerce transactions, would be even more widely implemented. Businesses would need to register for VAT purposes in the Member State(s) where they are established only.

As such a system would require more trust and cooperation between tax administrations and would also imply significant change for business, the Commission made it clear that any implementation should be gradual in order to ensure a smooth transition for business and allow all Member States to reach higher levels of cooperation and administrative capacity.

Therefore, the Commission proposed that as a first step, the principle of taxation of cross-border supplies would be re-established and the OSS extended to cover cross-

¹ COM(2011) 851, 6.12.2011.

² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/130257.pdf.

³ SWD(2014) 338, 29.10.2014 on the implementation of the definitive VAT regime for intra-EU trade.

⁴ http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/ey_study_destination_principle.pdf.

⁵ VEG No 050, 12 November 2015.

⁶ COM(2016) 148, 7.4.2016.

border B2B supplies of goods. However, compliant businesses, certified by their tax administrations, including SMEs, would continue to be liable for payment of the VAT due on goods purchased from other EU countries. As compliant businesses represent the vast majority of taxable persons involved in cross-border transactions, this would significantly reduce the amounts of VAT channelled through the OSS and would make it easier for businesses to adapt. A legislative proposal would be tabled in 2017.

As a second step, the definitive system would be fully implemented with taxation covering all cross-border supplies so all supplies in goods and services within the single market, either domestic or cross-border, would be treated the same way. This second step could however only be taken when Member States consider that the necessary qualitative leap in cooperation and joint enforcement tools to ensure mutual trust between tax administrations has been achieved.

2 COUNCIL CONCLUSIONS

In its conclusions of 25 May 2016 on the VAT Action Plan⁷, the Council took note of the intention of the Commission to present a proposal in 2017 and stressed that the work had to continue to set ground for the political choice to be made with regard to the definitive VAT system. At the same time, the Council stressed that improvements to the current system could be possible and necessary in the short term and took note that the cross-border reverse charge applied in the Member State of destination could still be analysed as an option to the proposed taxation.

3 NEXT STEPS

In the light of the technical and political discussions which took place in the Council and in other forums, the Commission has still the intention to table a legislative proposal in 2017 which would constitute the 1st step towards the definitive VAT system.

As regards the Council conclusions, the Commission services believe that the possible improvements to the current system already identified during the work on ‘option 1b’ with all stakeholders⁸ could also be included in the legislative proposal to the extent that they are compatible with the future system. The new concept of Certified Taxable Person (CTP) could for example address the Council’s suggestion on cross-border reverse charge as it would introduce such a mechanism for cross-border trade albeit in a more robust way as the use of reverse charge would be limited to trusted taxpayers.

On the whole, the Commission services believe that the legislative proposal to be tabled in 2017 should have the aim to drastically contain the impact of the new system on compliant businesses and tax administrations in terms of implementation costs while being able to significantly reduce the opportunity for cross-border fraud and reducing compliance costs in the years following implementation.

To this end, the Commission services believe that the proposal should include that all compliant taxable persons should have the possibility to be certified and should be able

⁷ <http://www.consilium.europa.eu/en/press/press-releases/2016/05/25-conclusions-vat-action-plan/>

⁸ VEG documents No 26, 27, 28 & 29.

to do so well before the entry into force of the new system under which the principle of taxation would be re-established and the OSS extended (1st step).

Moreover, the effect of certification on intra-EU supplies, once the 1st step implemented, should not be limited to supplies taxable in the Member State where the customer is established but should also cover cases where neither the supplier nor the customer are established in the Member State where the tax is due.

Therefore, during the first stage, nearly all intra-EU supplies would still be subject to the reverse charge and the use of the OSS with actual payment of VAT would be very limited as it would only cover supplies to non-certified businesses which would therefore no longer be able to purchase goods VAT-free and go missing.

The certification measure would also significantly reduce the amounts of VAT channelled through the OSS. It would also reduce the compliance costs of suppliers as they would not have to apply rates and exemption rules of a Member State where they are not established. The customers paying their purchases upfront would not have to finance VAT in advance before being able to deduct it.

With the certification measure in conjunction with the implementation of the OSS, businesses would never, neither as a supplier nor as a customer, have to register for VAT purposes in Member States where they are not established. Through this measure, issues relating to ‘chain transactions’ and ‘triangulation’ could also be addressed.

Before the entry into force of the 1st step, it could also be envisaged that a special scheme for call-off stocks and simplified rules on the burden of proof ensuring legal certainty be implemented along with the introduction of the CTP measure.

4 PURPOSE OF THE DOCUMENT

The purpose of the present document is to examine the main features of such a system and to identify and examine the issues which would arise and how to tackle them so as to prepare the drafting of the legislative proposal to be tabled in 2017. To this end, in the Annex the workings of such a system are described in more detail and some basic scenarios are outlined. A timetable is also proposed. This is a work in progress.

5 QUESTIONS TO THE EXPERTS

The experts are invited to express their views on:

- 1) the workings of such a regime, the issues identified and the possible ways forward to tackle them; and
- 2) whether they see other issues and measures that may need to be examined;
- 3) how they see that the further work could be organised e.g. whether setting up a mixed sub-group (with VEG & GFV members) would be appropriate.

ANNEX - DEFINITIVE VAT SYSTEM – 1ST STEP

1 TIMETABLE

The legislative proposals due to be tabled in 2017 (1st step towards the definitive VAT system for intra-EU trade)⁹ would feature a series of building blocks which would be implemented in a progressive way in order to ensure that the compliant traders be certified when the principle of taxation of intra-EU supplies of goods is re-established.

First stage:

1. Certified Taxable Person (CTP) concept;
2. Special scheme for call-off stocks arrangements between CTPs;
3. Harmonisation and simplification of the rules as regards the evidences to support the transport of goods to another Member State (with simplifications for CTPs).

Second stage:

1. Place of taxation in the Member State of arrival and single supply (abolition of the intra-EU acquisition concept);
2. Principle of taxation of intra-EU supplies (with reverse charge if the customer is a CTP);
3. Extension of the OSS for non-established taxable persons;
4. Harmonisation and simplification of the rules as regards ‘chain transactions’;
5. Abolition of recapitulative statements.

2 GENERAL RULES

2.1 Place of taxation

Where goods are dispatched or transported by the supplier, or by the customer, or by a third person, the place of supply to a taxable person or a non-taxable legal person would be the place where the goods are located at the time when dispatch or transport of the goods ends.

For the record, where goods are not dispatched or transported, the place of supply to a taxable person or a non-taxable legal person would continue to be the place where the goods are located at the time when the supply takes place.

2.2 Certified taxable person (CTP)

Only compliant taxable persons would still be allowed to purchase goods free of VAT in other Member States. The tax administrations would provide the relevant certification.

⁹ Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax as regards the definitive VAT system for cross-border trade within the single market and Proposal for a Council Regulation amending Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of value added tax as regards the definitive VAT system for cross-border trade within the single market.

If the supplier is not established in the Member State in which the tax is due and the customer is a taxable person who is certified for VAT purposes, VAT would be payable by the certified taxable person (CTP).

Other simplifications and benefits could be added when the supplier and/or the customer are certified (see below).

Requirements to qualify for CTP status

Taxable persons would be certified at their request¹⁰ by the Member State(s) where they are established and this status would be recognised by other Member States.

As allowing a taxable person to purchase goods without paying VAT would involve risks not only for the Member State of establishment but also for the other Member States¹¹ and as some taxable persons could be established in several Member States and would have therefore to go through the certification procedure in several Member States, a minimum set of common criteria should be laid down at EU level, bearing in mind the need to include SMEs and start-ups to the extent possible.

Such criteria should be objective and could be based on:

- the taxable person's compliance records for a certain period of time such as submission of correct VAT returns on time and corresponding payments and/or a positive tax audit; or
- the setting up of an internal control framework and the carrying out of risk self-assessments by the taxable person; or
- a positive risk assessment audit by independent external auditors; or
- proven financial solvency or guarantees from banks, insurance companies or other institutions such as VAT representatives or bank deposits.

Identification of CTPs

Certified taxable persons would be allocated an additional prefix to their VAT identification number by the Member State(s) in which they are established and which have certified them. Such a prefix (e.g. 'CTP') should enable suppliers to identify those of their foreign customers who are certified.

Mention of the certification and its dates of entry into force (and of expiration) would be added in the electronic database held by each Member State (VIES) so the suppliers could easily and in real time check the status of their customers.

¹⁰ As certification entails VAT reporting and payments obligations, non-taxable legal persons, taxable persons eligible for the exemption for small businesses or subject to the common flat-rate scheme for farmers, or those carrying out only supplies in respect of which VAT is not deductible would not be eligible. Their only VAT obligation would be to be allocated a VAT identification number (to be easily identified as taxable persons (or similar) by their suppliers).

¹¹ The CTP could purchase goods from non-established suppliers without VAT, then charge VAT not only of the Member State his establishment for local supplies but also of another Member State, for supplies taxed at destination there, and then could go missing (MTIC).

Duration and end of certification

Like the allocation of the VAT identification number, to reduce the administrative burden that a periodic renewal would entail, the CTP status should be granted for an indefinite period.

To retain such a status, the certified taxable person should continue to meet the requirements. The status should be withdrawn by the tax administration which has granted it as soon as the requirements are no longer met.

It would be up to the Member States to decide the conditions of the withdrawal and to the tax administrations to carry out the necessary checks even if best practices could be shared at EU level. However, any withdrawal should not be retroactive so as to avoid that the suppliers are permanently placed in a situation of legal uncertainty. Moreover the Member States should immediately update their electronic database (VIES) with the date of the end of the certification so that the suppliers are properly and timely informed about the status of their customers.

Such an update could be carried out once each day and the date of withdrawal should be the following day at the earliest so that the suppliers could take into account the change in their accounting system for future supplies.

2.3 General obligations

The guiding principle would be that a business, whether as a supplier or a customer, should never be obliged to register for VAT purposes in Member States where it is not established.

2.3.1 Liability/payment of VAT

In principle, VAT would be payable by any person carrying out a taxable supply of goods and would be reported in his VAT return in the Member State in which the tax is due.

Intra-EU supplies to CTPs

However, if the supplier is not established in the Member State in which the tax is due and his customer is certified, the reverse charge would apply and the customer would report the VAT in his VAT return.

If the customer is also not established in the Member State in which the tax is due, he could make use of the OSS in the Member State where he is established to fulfil his VAT reporting obligation.

Intra-EU supplies to non-CTPs

If the supplier is not established in the Member State in which the tax is due and his customer is NOT certified, the supplier who will then be liable could make use of the

OSS in the Member State where he is established to fulfil his VAT reporting and payment obligations.

2.3.2 Registration of taxable persons and non-taxable legal persons

All taxable persons and non-taxable legal persons would be allocated a VAT identification number by the Member State(s) in which they are established and from which they carry out their activities.

Therefore, a customer, whether a taxable person or a non-taxable legal person acquiring goods on an intra-EU basis would no longer be required to register in a Member State of arrival of the goods where he is not established. Neither would a supplier who is not established in the Member State of departure of the goods.

Suppliers who are not established within the EU would have to choose their Member State of registration. They would be allocated a VAT identification number by the Member State of registration and could make use of the OSS of this Member State for all their B2B supplies of goods within the EU (see below).

2.3.3 Chargeability/Invoicing rules

The only changes necessary would be minor adaptations to maintain harmonisation and standardisation of the rules as regards cross-border transactions.

In particular, rules would be adapted to ensure, as is the case at the moment, that invoicing would be subject to the rules of the Member State of establishment of the supplier when he is not established in the Member State of taxation (except for supplies subject to self-billing) and that an invoice is issued no later than on the fifteenth day of the month following the supply and that VAT becomes chargeable on issue of the invoice or on expiry of this time limit.

2.3.4 Extended One-stop shop

Taxable persons eligible and supplies covered

The special scheme for non-established taxable persons supplying telecommunications, broadcasting and electronic services applicable from 1 January 2015 would be extended to supplies of goods to non-CTPs and non-taxable legal persons and to transfers of own goods carried out by suppliers who are not established in the Member State where the tax is due¹².

The same working rules would apply. In particular, making use of the OSS would not be compulsory¹³. Suppliers not established within the EU would also be able to use the OSS.

¹² Such an approach is already envisaged as regards B2C supplies of goods such as ‘distance sales’ and services carried out by non-established suppliers. A legislative proposal will be tabled by the end of 2016.

¹³ However, in order to avoid a situation where the tax administrations manage and monitor non-established taxable persons liable for the payment of VAT under two different sets of rules (OSS and local registration), use of the OSS could conceivably be made compulsory.

If used, the OSS would apply in respect of all supplies of goods to non-CTPs and non-taxable legal persons, transfers of own goods located in the EU carried out by a supplier not established in the Member State where the tax is due and purchases made by CTPs not established in the Member State where the tax is due.

Input VAT

For the sake of the principle of neutrality of VAT, when a taxable person is liable for the payment of VAT in a Member State and he makes use of the OSS, he should be able immediately to deduct VAT due or paid in this Member State in the VAT return of the OSS (in particular in respect of ‘deemed supplies’, supplies for which as a certified customer he is liable for the payment of VAT (reverse charge), and ‘chain transactions’ in which he is involved).

The taxable person would thus be able to offset the amount of input VAT paid in one Member State against the output VAT payable in that same Member State for the same timeframe as he does under the current rules when he is liable for the payment of VAT in a Member State where he is not established and he has to register and submit VAT declarations there.

The scope of such a measure, in particular the timeframe, will have to be examined. For example, it could be envisaged that during the 1st stage, CTPs only could be able to deduct VAT in respect of ‘deemed supplies’ and acquisitions for which they are liable for the payment of VAT. In any event, given the lengthy processing times for refund applications and stringent requirements of Directive 2008/9/EC, and for the sake of the principle of neutrality, the scope of this Directive should not be extended to cover input VAT paid in a Member State where a non-established supplier is liable for the payment of VAT but the OSS should eventually manage these situations.

When the amount of input VAT exceeds the VAT due in the OSS for a particular Member State, harmonised rules would be needed as regards the requirements for getting a refund and the obligation to carry the excess forward to the following period.

2.3.5 Recapitulative statements

The requirement in respect of recapitulative statements for supplies of goods reported in the OSS would be abolished.

As regards supplies to CTPs subject to reverse charge, given the demanding requirements necessary for the customer to be granted the certified status, only an annual sales listing of significant transactions could be envisaged. To reduce the administrative burden, a common threshold should be set at EU level.

3 HARMONISATION AND SIMPLIFICATION OF THE RULES AS REGARDS SUPPORTING EVIDENCE OF GOODS HAVING BEEN TRANSPORTED TO ANOTHER MEMBER STATE

As the risk of fraud resulting from the current exemption of intra-EU supplies such as potential local consumption of goods supposedly supplied to another Member State, being free of VAT would be drastically reduced, it seems that the following approach to

establish the Member State of taxation and supports the application of the VAT of the Member State of arrival, whether the reverse charge applies (customer certified) or not, would be sufficiently balanced and proportionate:

(1) When the goods are transported or dispatched by or on behalf of the supplier, in the same vein as the measures advocated by the sub-group of the EU VAT Forum¹⁴ and the VEG sub-group team on the same topic¹⁵, inspired by the provisions of the VAT Implementing Regulation¹⁶ as regards Article 58 supplies¹⁷, the supplier should hold two non-contradictory normal commercial or payment documents certifying the transport or dispatch to another Member State.

If the supplier is certified, with these documents it would be presumed that the goods had been dispatched or transported to the other Member State's territory. A tax authority may rebut such presumption on the basis of evidence indicating that the goods were not dispatched or transported to the territory of this particular Member State.

(2) When the goods are transported or dispatched by or on behalf of the customer, the customer would be required to provide the supplier with the name of the Member State of arrival of the goods. To preserve the confidentiality of the customer's business, he would not have to disclose the exact destination of the goods (such as the postal address or name of the recipient).

This obligation could conceivably be fulfilled by any means, including electronically, and should be met within a certain period not exceeding the time limit for the supplier to draw up the invoice (see above) but not too tight so as to allow the customer to collect and transmit this information. No later than on the tenth day of the month following the supply could strike such a balance.

The information would be recorded by the supplier. It would constitute proof that the goods had been dispatched or transported to the other Member State's territory.

If the customer is certified, it would be presumed that the goods had been dispatched or transported to this Member State's territory. However, a tax authority may rebut such presumption on the basis of evidence indicating that the goods were not dispatched or transported to the territory of this particular Member State.

In any event, if the supplier does not hold this particular information but does hold two non-contradictory normal commercial or payment documents certifying the transport or dispatch to another Member State, such documents would constitute the proof of transport to another Member State. If the supplier is also certified, as is the case when he organises the transport or dispatch, the presumption would also apply.

¹⁴ VEG No 027, 13 January 2014.

¹⁵ VEG No 046 (31 August 2015) and VEG No 042 (18 March 2015).

¹⁶ Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (OJ L 77, 23.3.2011, p. 1).

¹⁷ See in particular Article 24a et seq.

These rules would have to be slightly adapted if they were to be implemented with the CTP concept before the entry into force of all building blocks of the 1st step, in particular before the abolition of the exemption of intra-EU supplies and of the concept of intra-EU acquisition (see above).

4 SPECIAL SCHEME FOR CALL-OFF STOCKS

The transfer by a taxable person of goods forming part of his business assets to another Member State would still be treated as a supply of goods for consideration. However, the place of supply would be located in the Member State where the transport or dispatch ends¹⁸ and no intra-EU acquisition would take place.

As proposed by the joint VEG/GFV sub-group¹⁹ on ‘Option 1B – Consignment stock’, a simplification measure regarding call-off stocks transferred from one Member State to another could apply where the buyer is known in advance.

Instead of a (deemed) intra-EU supply followed by a domestic supply²⁰, the cross-border transfer of goods and subsequent sale would be treated as a single intra-EU supply at the time that the buyer takes the goods from the stock.

Such a supply would take place in the Member State where the stock is located. Such a simplification scheme would be available to CTPs only.

Taxable transactions

The transfer of goods forming part of a CTP’s business assets to another Member State would not be treated as a supply of goods for consideration when they are to be made available to another known CTP whose right to dispose of those goods as owner will take effect only when the goods are removed from the stock.

A supply of goods for consideration would apply (and the buyer (CTP) would be liable for the VAT) when he removes the goods from the stock.

Place of taxation

When goods have been transported or dispatched to be made available to a CTP whose right to dispose of these goods as owner takes effect at the time the goods are removed from stock, the place of supply of the goods when they are taken from stock by the known buyer would be the place where the goods were located when their transport or dispatch ended i.e. the stock location.

¹⁸ For which the supplier would be liable for the payment of VAT. The reporting of this supply and the corresponding deduction would be carried out via the OSS.

¹⁹ VEG No 028.

²⁰ In any event, if the simplification measure does not apply, both transactions could be reported through the OSS (including the deduction of the input VAT regarding the transfer).

Time of supply/Chargeability/Invoicing

The chargeable event of the supply would occur at the time when the goods are taken from stock by the known buyer. As for intra-EU supplies of goods, an invoice should be issued no later than on the fifteenth day of the month following the supply and VAT would become chargeable on issue of the invoice or on expiry of this time limit.

For the known buyer, there would be no predetermined time limit within which the goods must be taken from stock.

Registers

The CTP supplying the goods would keep a register of all goods dispatched or transported to another Member State as well as the goods taken from stock under the conditions set out above. This register must also mention the address where the goods are located.

The CTP to whom the goods are transported or dispatched would keep accounts in sufficient detail to enable identification of these goods.

Miscellaneous

The rules would have to be slightly adapted if they were to be implemented with the CTP concept before the entry into force of all building blocks of the 1st step (see above).

5 HARMONISATION AND SIMPLIFICATION OF THE RULES AS REGARDS THE ‘CHAIN TRANSACTIONS’

A measure in the same vein as the ones advocated by the VEG/VEG sub-group on the ‘chain transactions’²¹ could clarify the rules and provides more legal certainty to CTPs.

The supply of goods with transport would be presumed to have been carried out by the certified taxable person who supplied the goods to the taxable person who then transported or dispatched them to another Member State if the latter provides the former with the name of the Member State of arrival of the goods as provided for by the new rules on the supporting evidence of transport of the goods.

If not, the supply of goods with transport would be presumed to have been carried out by the taxable person who actually transported or dispatched the goods to another Member State. The CTP who supplied the goods to this taxable person would then be deemed to have carried out a supply without transport.

Other requests from and issues identified by the sub-group would be addressed by the CTP measure combined with the OSS for non-established businesses (see diagrams No 7 & 6 (on ‘triangulations’)).

²¹ VEG No 29 (13 January 2014).

6 ANTI-AVOIDANCE AND ANTI-FRAUD MEASURES

6.1 Administrative cooperation

The rules on the OSS laid down in Regulation 904/2010²² would apply, including in terms of administrative cooperation between Member States tax administrations.

Therefore, the Member State of establishment would have the responsibility for auditing the supplier. However, the Member States of taxation could still have the option in particular to ask for specific investigations when they consider there is a need for them. The Member States of taxation could in any event be involved in the audit.

The Member States of taxation could also request information from the tax authorities of the Member State of the supplier or, with its assistance, notify the supplier of their decisions.

In the case of non-payment of the VAT by the supplier, the tax authorities could use the instruments of Directive 2010/24/EC²³ to recover their claim.

6.2 Special obligations on non-CTP customers

Special obligations on non-CTP customers would be standardised at EU level while remaining optional for Member States to apply.

Targeted purchases listings for supplies to non-CTPs

If the supplier has made use of the OSS to declare and pay the VAT on the supply, the (non-certified) customer could be required to mention in his VAT return the purchases for which he deducts the VAT together with the VAT identification number of his supplier.

It would allow the tax authorities wanting to do so to cross-check the payment of output VAT via the OSS with the deduction of input VAT made within their own territory by non-CTPs.

As it is done in certain Member States for domestic transactions, tax authorities could aim such a measure at high-risk transactions such as intra-EU supplies of certain categories of goods and/or at supplies above a certain threshold.

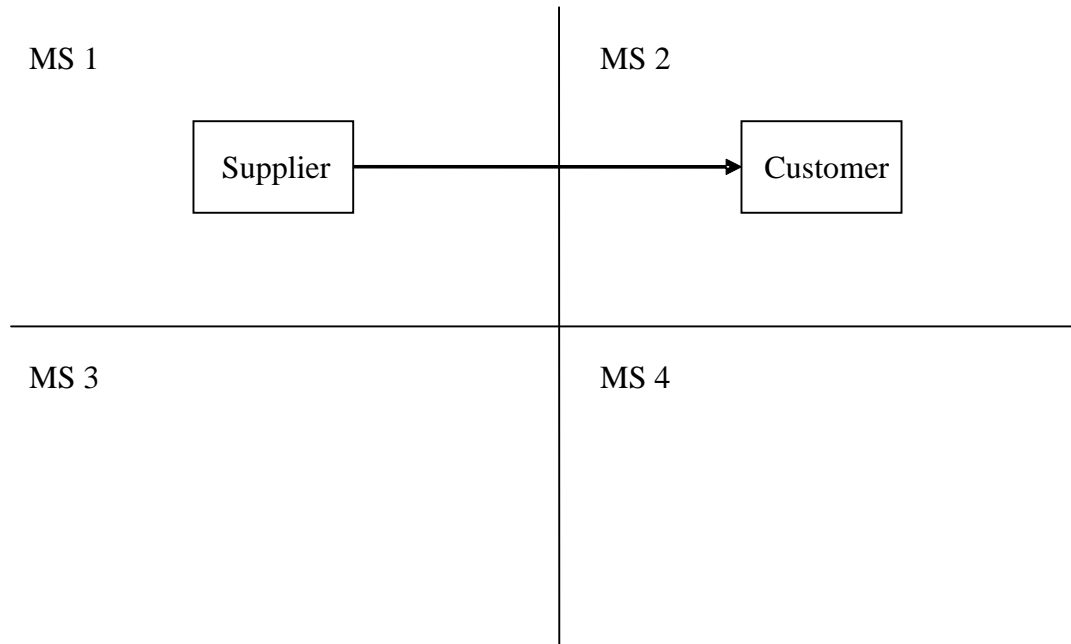
The listings could be shared with other tax administrations (automatic exchange).

²² Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p. 1).

²³ Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

7 DIAGRAMS

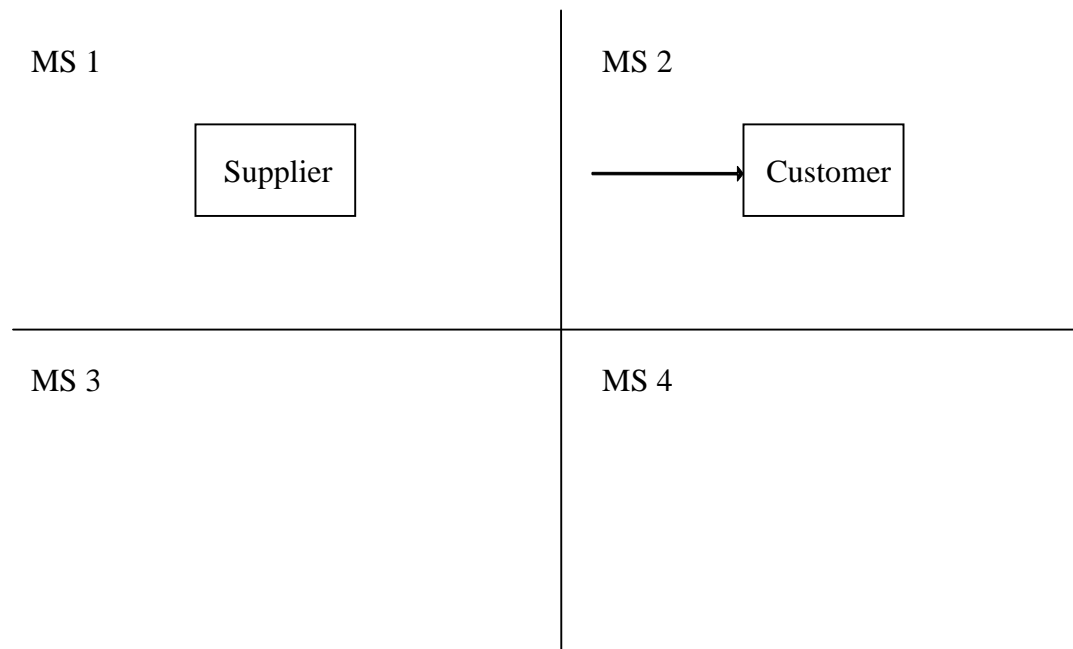
7.1 Diagram No 1



→ Flow of the goods

- 1) **Identification of supplier**: MS 1
- 2) **Identification of customer**: MS 2
- 3) **Place of taxation**: MS 2
- 4) **Person liable**: supplier or customer if he is certified
- 5) **Invoicing rules**: MS 1
- 6) **Reporting and payment of VAT**: by supplier via OSS in MS 1 or if the customer is certified, reporting by the customer in his VAT return in MS 2
- 7) **Deduction of input VAT by customer in MS2**: VAT return in MS 2
- 8) **Deduction of input VAT by supplier in MS 1**: VAT return in MS 1, offset against VAT paid to MS 2 via OSS possible
- 9) **Deduction of input VAT by supplier in MS 2**: OSS if he is liable or Directive 2008/9/EC

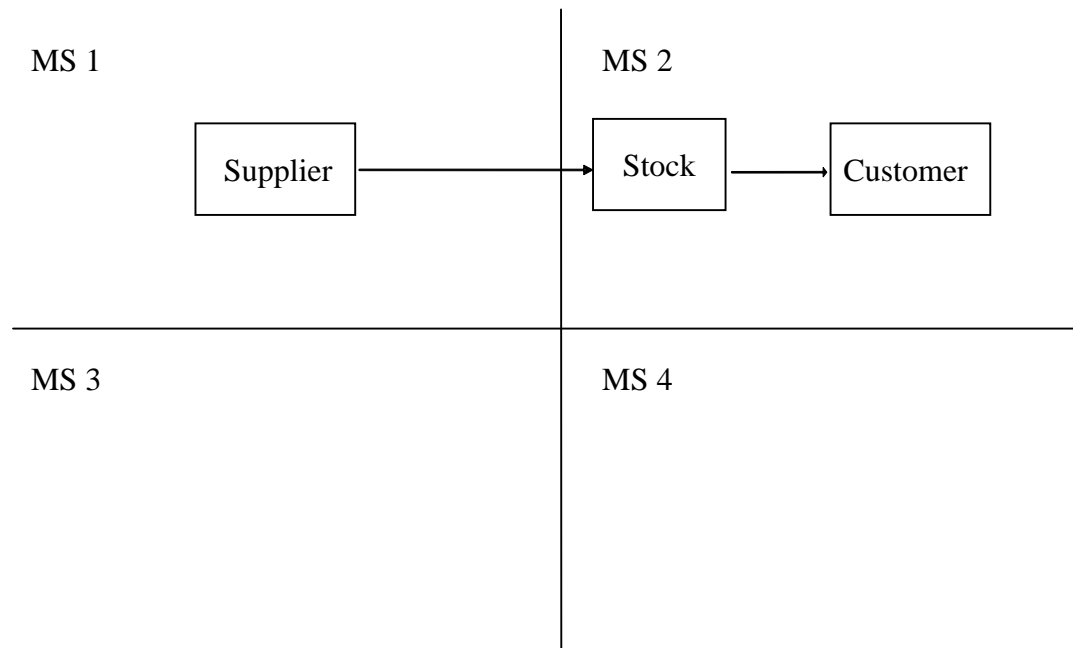
7.2 Diagram No 2



→ Flow of the goods

- 1) **Identification of supplier:** MS 1
- 2) **Identification of customer:** MS 2
- 3) **Place of taxation:** MS 2
- 4) **Person liable:** supplier or customer if he is certified
- 5) **Invoicing rules:** MS 1
- 6) **Reporting and payment of VAT:** by supplier via OSS in MS 1 or if the customer is certified, reporting by the customer in his VAT return in MS 2
- 7) **Deduction of input VAT by customer in MS2:** VAT return in MS 2
- 8) **Deduction of input VAT by supplier in MS 1:** VAT return in MS 1, offset against VAT paid to MS 2 via OSS possible
- 9) **Deduction of input VAT by supplier in MS 2:** OSS if he is liable or Directive 2008/9/EC

7.3 Diagram No 3 – call-off stocks



→ Flow of the goods

- 1) **Identification of supplier:** MS 1
- 2) **Identification of customer:** MS 2
- 3) **Place of taxation of deemed supply and local supply:** MS 2

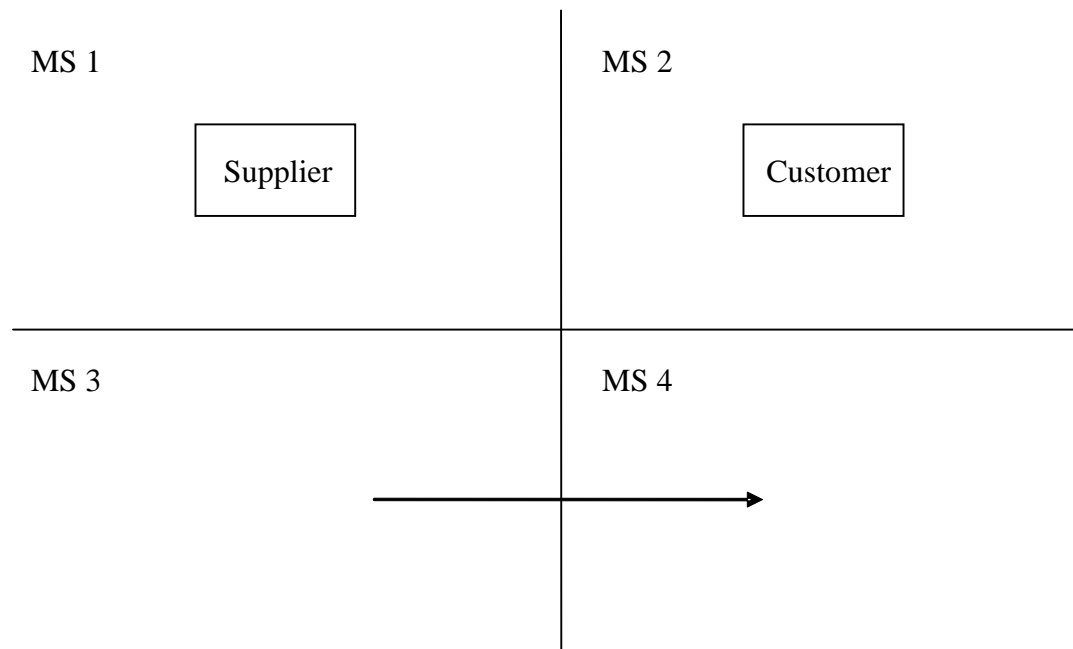
Variant with NO simplification scheme

- 4) **Reporting and payment of VAT on the deemed supply:** by supplier via OSS in MS 1
- 5) **Deduction of input VAT on the deemed supply by supplier in MS 2:** via OSS (supplier is liable for the payment of VAT in MS 2)
- 6) **Reporting and payment of VAT on the local supply (when the goods are removed from the stock):** by supplier via OSS in MS 1 or by customer if he is certified
- 7) **Deduction of input VAT on the local supply by customer in MS 2:** VAT return in MS 2

Variant with the simplification scheme (arrangements between CTPs)

- 8) **Reporting and payment of VAT on the deemed supply:** none
- 9) **Deduction of input VAT on the deemed supply by supplier in MS 2:** none
- 10) **Reporting and payment of VAT on the local supply (when the goods are removed from the stock):** by the certified customer in VAT return in MS2
- 11) **Deduction of input VAT on the local supply by customer in MS 2:** VAT return in MS 2

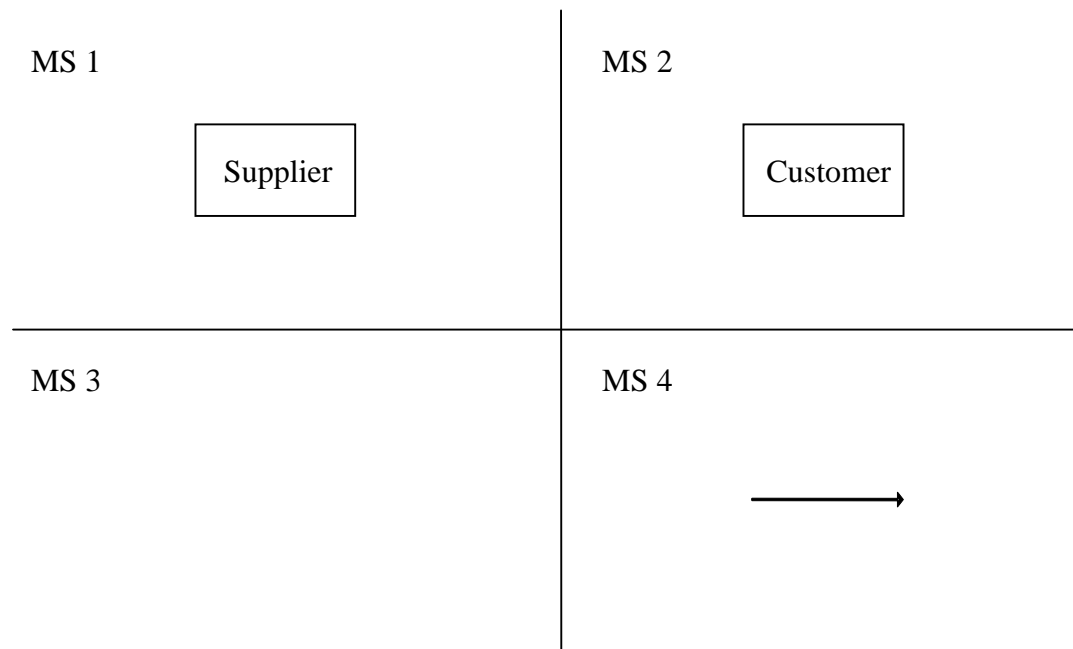
7.4 Diagram No 4



→ Flow of the goods

- 1) **Identification of supplier:** MS 1
- 2) **Identification of customer:** MS 2
- 3) **Place of taxation:** MS 4
- 4) **Person liable:** supplier or customer if he is certified
- 5) **Invoicing rules:** MS 1
- 6) **Reporting and payment of VAT:** by supplier (via OSS in MS1) or by customer if he is certified (via OSS in MS2)
- 7) **Deduction of input VAT by customer in MS4:** OSS if he is liable for the payment of VAT in MS 4 (he is certified and/or he carries out supplies therein for which he is liable) or Directive 2008/9/EC
- 8) **Deduction of input VAT by supplier in MS 1:** VAT return in MS 1, offset against VAT paid to MS 4 via OSS possible
- 9) **Deduction of input VAT by supplier in MS 3:** OSS if supplier is liable for the payment of VAT in MS 3 or Directive 2008/9/EC
- 10) **Deduction of input VAT by supplier in MS 4:** OSS if supplier is liable for the payment of VAT in MS 4 or Directive 2008/9/EC

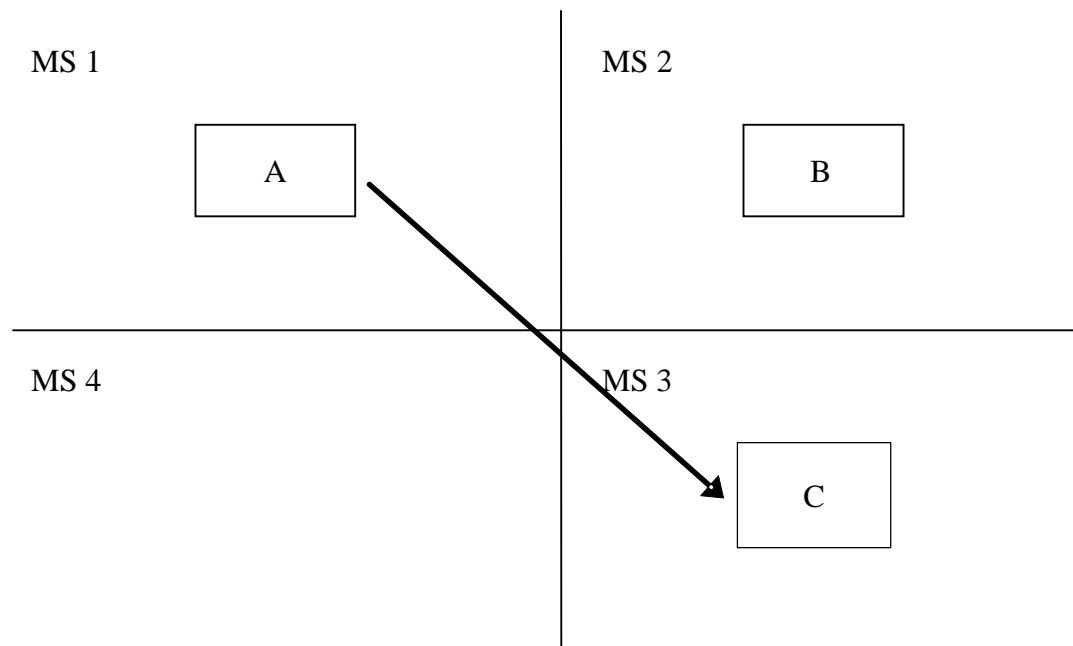
7.5 Diagram No 5



- 1) **Identification of supplier:** MS 1
- 2) **Identification of customer:** MS 2
- 3) **Place of taxation:** MS 4
- 4) **Person liable:** supplier or customer if he is certified
- 5) **Invoicing rules:** MS 1
- 6) **Reporting and payment of VAT:** by supplier (via OSS in MS1) or by customer if he is certified (via OSS in MS2)
- 7) **Deduction of input VAT by customer in MS4:** OSS if he is liable for the payment of VAT in MS 4 (he is certified and/or he carries out supplies therein for which he is liable) or Directive 2008/9/EC
- 8) **Deduction of input VAT by supplier in MS 1:** VAT return in MS 1, offset against VAT paid to MS 4 via OSS possible
- 9) **Deduction of input VAT by supplier in MS 4:** OSS if supplier is liable for the payment of VAT in MS 4 or Directive 2008/9/EC

7.6 Diagram No 6 – ‘triangulation’

B & C are certified



→ Flow of the goods

- 1) **Identification of A**: MS 1
- 2) **Identification of B**: MS 2
- 3) **Identification of C**: MS 3
- 4) **Place of taxation of supply to B**: MS 3
- 5) **Person liable and reporting for supply to B**: B (OSS)
- 6) **Deduction of input VAT by B in MS 3**: OSS
- 7) **Place of taxation of supply to C**: MS 3
- 8) **Person liable and reporting for supply to C**: C (VAT return)
- 9) **Deduction of input VAT by C in MS 3**: VAT return in MS 3

Variant No 1: B & C are NOT certified

- 10) **Person liable and reporting for supply to B**: A (OSS)
- 11) **Person liable and reporting for supply to C**: B (OSS)
- 12) **Deduction of input VAT by B in MS 3**: OSS

Variant No 2: B is certified & C is NOT certified

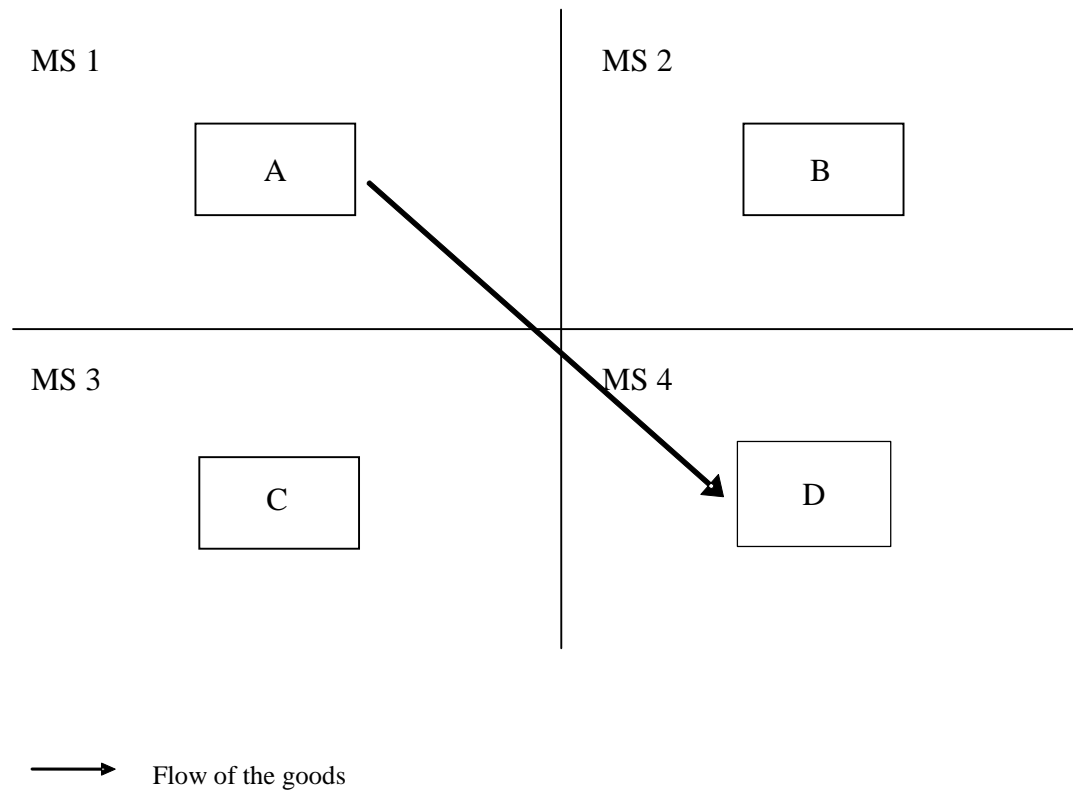
- 13) Person liable and reporting for supply to B: B (OSS)
- 14) Person liable and reporting for supply to C: B (OSS)
- 15) Deduction of input VAT by B in MS 3: OSS

Variant No 3: B is NOT certified & C is certified

- 16) Person liable and reporting for supply to B: A (OSS)
- 17) Person liable and reporting for supply to C: C (VAT return)
- 18) Deduction of input VAT by B in MS 3: Directive 2008/9/EC

7.7 Diagram No 7 – ‘chain transactions’

A supplies to B, B to C and C to D – all traders are certified – goods are transported by or on behalf of B



- 1) **Identification of A**: MS 1
- 2) **Identification of B**: MS 2
- 3) **Identification of C**: MS 3
- 4) **Identification of D**: MS 4

Variant No 1: B provides A with the name of the Member State of arrival of the goods (MS 4)

- 5) **Place of taxation of supply to B**: MS 4
- 6) **Person liable and reporting for supply to B**: B (OSS)
- 7) **Deduction of input VAT by B in MS 4**: OSS
- 8) **Place of taxation of supply to C**: MS 4
- 9) **Person liable and reporting for supply to C**: C (OSS)
- 10) **Deduction of input VAT by C in MS 4**: OSS
- 11) **Place of taxation of supply to D**: MS 4
- 12) **Person liable and reporting for supply to D**: D (VAT return)

13) **Deduction of input VAT by D in MS 4**: VAT return

Variant No 1: B does not provide A with the name of the Member State of arrival of the goods (MS 4)

14) **Place of taxation of supply to B**: MS 1

15) **Person liable and reporting for supply to B**: A (VAT return)

16) **Deduction of input VAT by B in MS 1**: OSS or Directive 2008/9/EC (if B is not liable in MS 1)

17) **Place of taxation of supply to C**: MS 4

18) **Person liable and reporting for supply to C**: C (OSS)

19) **Deduction of input VAT by C in MS 4**: OSS

20) **Place of taxation of supply to D**: MS 4

21) **Person liable and reporting for supply to D**: D (VAT return)

22) **Deduction of input VAT by D in MS 4**: VAT return

8 VARIOUS IMPACT OF THE NEW RULES ON THE CURRENT VAT SYSTEM

8.1 Place of taxation – new means of transport and supplies of goods with installation

The place of supply of new means of transport to non-taxable persons would be the place where the goods are located at the time when the dispatch or transport of the goods ends.

The place of supply to a taxable person or a non-taxable legal person in respect of goods to be installed or assembled would continue to be the place where the goods are installed or assembled²⁴.

8.2 Taxable transactions – Exemptions

As there would be only one transaction for VAT purpose for each cross-border supply²⁵, the concept of ‘intra-Community acquisition of goods’ as a transaction subject to VAT would cease to exist. This would mean in particular that whatever the volume of their intra-EU acquisitions (as currently defined), non-taxable legal persons, taxable persons eligible for the exemption for small businesses or subject to the common flat-rate scheme for farmers, or those carrying out only supplies in respect of which VAT is not deductible, would no longer have to report their intra-EU acquisitions of goods²⁶. Their suppliers would instead charge and be liable for the payment of VAT in the Member State of arrival of the goods (see above).

Consequently, the exemption of ‘intra-Community supply of goods’ and ‘intra-Community acquisition of goods’ would be abolished²⁷.

The special rules for ‘triangular transactions’ would be abolished as well (Articles 42, 141 and 197) as the abolition of the concept of intra-Community acquisition together with the implementation of the OSS and the CTP measure would tackle such situations (no registration and reporting obligations would be needed in the Member State of arrival of the goods for the business acting as an intermediary).

For the record, the transfer by a taxable person of goods forming part of his business assets to another Member State would still be treated as a supply of goods for consideration. However, the place of supply would be located in the Member State where

²⁴ The place of supply rules applicable to the following B2B supplies of goods would not be affected either: the supply of second-hand goods, works of art, collector’ items and antiques by taxable dealers (margin scheme) and by organisers of sales by public auction (special arrangements); the supply of second-hand means of transport by taxable dealers (transitional arrangements); the supply of gas, electricity, heat or cooling energy; supplies on board ships, aircraft or trains. Minor adaptations to those rules might be necessary though.

²⁵ Instead of an intra-EU B2B supply of goods within the meaning of Article 138 exempted in the Member State of departure and an ‘intra-Community acquisition’ taxed in the Member State of arrival.

²⁶ The same simplification would apply to the acquisition of new means of transport.

²⁷ For the record, the exemption rules for exports would remain unchanged. They would however no longer apply to B2B supplies of goods transported to a third country as, for VAT purposes, the place of supply would then be in that third country.

the transport or dispatch ends²⁸ and no intra-EU acquisition would take place. Furthermore, a simplification measure could apply as regards call-off stocks (see above).

The exemption of importations followed by a subsequent exempted intra-EU supply provided for in Article 143 (so-called ‘Customs procedure 4200’) would be adapted in order to exempt importations followed by a cross-border supply to a CTP with the reverse charge.

8.3 Liability/payment of VAT

The rule by which VAT is payable by any person carrying out a taxable supply of goods would also in principle cover supplies of goods carried out by taxable persons not established in the Member State where the tax is due (Article 194), supplies of gas, electricity, heat or cooling energy (Article 195) and triangular transactions (Article 197).

Therefore, Article 194 (optional reverse charge for supplies by non-established taxable persons) would be amended to exclude supplies of goods. Articles 195 (gas, electricity, heat or cooling) and 197 (triangulation) would be deleted.

However, where such supplies are made to CTPs, reverse charge would still apply.

9 ISSUES TO BE ADDRESSED IN ORDER TO IMPLEMENT THE 1ST STEP

9.1 Registration of non-taxable legal persons – possible simplification measures

Non-taxable legal persons acquiring goods dispatched or transported from another Member State would be allocated a VAT identification number by the Member States in which they are established and from which they carry out their activities.

To maintain the current simplification rules and avoid identification of non-taxable legal persons carrying out on an occasional basis cross-border acquisition of goods, a threshold (e.g. annual volume of cross-border purchase of goods) similar to the existing one for intra-EU acquisitions below which such non-taxable legal persons would not have to be registered and therefore they would be considered as ‘consumers’ by their suppliers, could be considered. Above the threshold or if they wish to opt, they would have to be registered. However, contrary to the current system, they would not be liable for the payment of VAT on their cross-border acquisitions any longer.

Impact on place of supply of services rules

If there is no threshold, as the non-taxable legal persons could have to be identified for VAT purposes because of a single cross-border acquisition of goods only, the purchase of services by non-taxable legal persons would more often be deemed to take place where they are established and they would be then more often liable for the payment of VAT on such services²⁹. Therefore, some adjustments to the supply of services rules may

²⁸ For which the supplier would be liable for the payment of VAT. The reporting of this supply and the corresponding deduction would be carried out via the OSS (see above).

²⁹ As pursuant to Articles 44 and 196.

need to be considered such as making the supplier liable for the payment of VAT on such cross-border services with the OSS (idem cross-border supplies of goods to non-CTPs).

9.2 Registration of taxable legal persons subject to the flat-rate scheme for farmers or who carry out only supplies in respect of which VAT is not deductible – possible simplification measures

All taxable persons would be allocated a VAT identification number by the Member States in which they are established and from which they carry out their activities. That would include taxable persons subject to the flat-rate scheme for farmers or who carry out only supplies in respect of which VAT is not deductible if they acquire goods dispatched or transported from another Member State.

Such an approach would be consistent with the rules applicable when such taxable persons receive services from non-established suppliers and for which they are liable for the payment of VAT pursuant to Article 196 and must be identified. However, for the purchase of goods, the supplier would be liable (OSS).

To maintain the current simplification rules, a threshold (e.g. annual volume of cross-border purchase of goods) similar to the existing one for intra-EU acquisitions below which such taxable persons would not have to be registered and therefore they would be considered as ‘consumers’ by their suppliers, could be considered. Above the threshold or if they wish to opt, they would have to be registered. However, contrary to the current system, they would not be liable for the payment of VAT on their cross-border acquisitions of goods any longer.

Some adjustments to the supply of services rules may need then to be considered such as:

1. a common threshold with cross-border services (below which the acquirer of services is considered as a ‘consumer’ i.e. no identification, no liability);
2. if there is no threshold for cross-border purchases of goods or, if there is such a threshold, but it has been reached, making the supplier liable for the payment of VAT on cross-border services with the OSS (idem cross-border supplies of goods to non-CTPs, thus only registration would be required from the customers).

9.3 Concept of ‘non-establishment in the Member State where the tax is due’

To ensure that a supplier is not denied use of the OSS or the reverse charge for supplies to CTPs when he has a fixed establishment in the Member State where the tax is due which does not intervene in the supply, the mitigation measure provided for in Article 192a could be adapted to take into account such situations.

Thus, a taxable person who has a fixed establishment there would be regarded as not established if this fixed establishment does not intervene in the supply or the transfer.

However, the concepts of ‘fixed establishment’ and of ‘intervention’ are often difficult to grasp in practice. So simpler and clearer rules could be considered such as holding the supplier liable whenever he is established, whether the fixed establishment intervenes or not. Adjustment to the liability rules applicable to services could then also be considered.

9.4 Specific OSS issues

Simplifications that could be optional for Member States but would be standardised at EU level

The following simplification measures could be left for the Member States to implement on a voluntary basis, depending on the choices made as regards the deduction of input VAT rules via the OSS:

(1) *Intra-EU and local supplies:* Suppliers could make use of the same scheme (same electronic declaration forms and periods and same payment terms) to declare both intra-EU and domestic supplies.

(2) *Compensation between credit positions in the Member State of taxation and debit positions in the Member State of establishment:* A taxable person can be in a credit position as regards domestic transactions and in debt in the OSS for a given period. That could be the case for a supplier selling most of his goods to non-CTPs in other Member States³⁰. In such cases, the taxable person would offset the net VAT due to the other Member States against the VAT to be refunded in the Member State where he is established. The Member State of establishment would then have to pay to the Member States of taxation the relevant amount of output VAT.

As one of the main objectives of the new rules is to implement equal treatment between domestic and intra-EU supplies, for the sake of neutrality, this measure could conceivably be made compulsory.

(3) *Compensation between credit and debit positions in the Member States where the taxable person is not established:* A taxable person can be in a credit position in the OSS for certain Member States where he is not established and in debt in others. In such cases, the net VAT due would be offset against the VAT to be refunded. The Member State of establishment would then have to receive from and pay to the other Member States the relevant amounts.

9.5 Bad debt relief

Harmonised rules and requirements would be needed for the reduction of the taxable amount in the case of total or partial non-payment of the invoice by non-CTPs. Such harmonisation could be reserved for supplies taking place in Member States where the supplier is not established and is liable for the payment of VAT.

9.6 Consistency with rules applicable to B2B supplies of services

For the sake of consistency between supplies of goods and supplies of services not covered by the reverse charge (such as supplies of services connected with immovable property) and to ensure that a supplier will not be required to register in a Member State where he is not established in order to report his supplies of services whilst at the same time using the OSS for his supplies of goods there to non-CTPs, the suppliers of services

³⁰ And consequently, under the current rules, the taxable person is in credit most of the time.

to taxable persons and non-taxable legal persons, liable for the payment of VAT³¹, could conceivably make use of the OSS.

Such an approach could also be followed as regards all B2B supplies of services. The principle would then be that VAT would be payable by any person carrying out a taxable supply of goods or services even if he is not established in the Member State in which the tax is due. However, in the latter case, he could make use of the OSS or the reverse charge would apply for supplies of goods and services made to certified taxable persons.

If so, the requirement to submit recapitulative statements for supplies of services would also be abolished. In addition, non-taxable legal persons, taxable persons eligible for exemption under the special regime for small businesses or subject to the common flat-rate scheme for farmers or those carrying out only exempted supplies would no longer have to report and pay VAT on their intra-EU purchases of services when their suppliers are not established in the Member State where the VAT is due.

10 ISSUES WHICH COULD BE ADDRESSED AT A LATER STAGE (IMPLEMENTATION OF THE 2ND STEP TOWARDS THE DEFINITIVE SYSTEM)

10.1 Limiting the cash-flow effects of having the supplier charging VAT on cross-border supplies

Making the VAT chargeable when the payment is received (Article 66, cash-accounting) for cross-border supplies of goods could be considered.

10.2 Special scheme for traders belonging to the same group of related companies

The reverse charge could also apply when the customer and the supplier belong to the same group of related companies.

They would be registered as such for VAT purposes by the Member State of the representative of the group (one of the companies which are member of the group).

However, all the members of the group could be held jointly and severally liable in the case of non-payment of VAT by the customer on acquisition of goods or on subsequent supply of the goods.

It might also be possible for such intra-EU supplies to be instead disregarded for VAT purposes as in the case of VAT grouping.

10.3 Special scheme for small businesses

There would be a need to review the provisions of the VAT Directive on a special scheme for small businesses³². Such a review is currently under way and it is necessary to await the outcome of that review before any decisions are taken. This said, it is not excluded that elements of the current system such as an exemption for small businesses

³¹ One could also consider that if the customer is certified there, the reverse charge would also apply.

³² Intra-EU B2B supplies of goods within the meaning of Article 138 carried out by small businesses below the threshold set by the Member States are under the current rules exempted.

or other simplification measures in respect of intra-EU B2B supplies of goods could be included as part of the definitive regime.

10.4 Standardisation and information on reduced VAT rates (web portal)

Definitions of the products eligible for a reduced rate would be standardised. This would cover all possible sub-categories of products that Member States may or may not include in the scope of their reduced rates.

A web portal could provide accurate, timely and binding information on the reduced VAT rates in place in each Member State. A list of the (standardised) products that are not covered by the standard rate in each Member State could be included in the web portal and regularly be updated by the Member States.

10.5 Mechanism to solve cross-border disputes

Lessons learnt from the ‘Cross Border Rulings’ pilot project and the ‘VAT double taxation – dialogue between tax administrations’ pilot case of the EU VAT Forum should pave the way for examining and implementing a compulsory cross-border dispute resolution mechanism in respect of double taxation. The VAT Committee should play a role in the event of disagreement between the Member States involved.

10.6 Other consignment stocks

The simplification scheme for call-off stocks could be extended to other consignment stock scenarios (when the buyer is unknown). Additional information might have to be provided by the supplier, such as details of the manager of the warehouse, its exact location, etc.

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