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VAT EXPERT GROUP

VEG NO 050

Definitive VAT regime for intra-EU trade
Options based on VAT being charged by the supplier while tracking the flow of the goods
Issues to be examined

CONTENTS

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 Council conclusions of May 2012[2], 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 trade.

Subsequent in-depth analytical work led to 13 potential solutions being identified and these were narrowed down to five options[3], each of which had merits and shortcomings that deserved careful assessment[4]. The Commission launched an expert study to assess the impacts of each option compared with the current situation. A final report was finalised in June 2015[5].

1.1 Main findings of the study

The study confirmed that VAT compliance costs are 11% higher in cross-border trade than in domestic trade. It also confirmed that high levels of VAT fraud represent a major cost to Member States through lost tax revenue, and potentially to any business that unwittingly becomes involved in a fraudulent supply chain. 'Missing trader intra-Community' (MTIC)[6] fraud alone is estimated to be responsible for a VAT revenue loss of between EUR 45 billion and EUR 53 billion annually in the EU.

The option of aligning with the rules governing the place of supply of services is believed to be capable of generating the most significant compliance cost savings for business. On average, the positive monetary impact across all businesses would be EUR 2.69 billion per year. Under three other options, the savings would be close to EUR 1 billion. The option of merely amending the current rules is seen as producing poor results.

The two options under which the supplier would charge the VAT of the Member State of destination and report and account for it via a one-stop shop (OSS) could reduce VAT fraud by EUR 41 billion (83%) a year in the EU[7]. The 'reverse charge' options are not

1 COM(2011) 851, 6.12.2011.
2 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/130257.pdf.
3 (1) Improving the current rules without modifying them fundamentally; (2) Adapting current rules whilst still following the flow of goods with the supplier charging the VAT of the Member State of destination; (3) Adapting current rules whilst still following the flow of goods with the reverse charge mechanism; (4) Aligning with the rules governing the place of supply of services with the reverse charge mechanism; and (5) Aligning with the contractual flow with the supplier charging the VAT of the Member State of destination.
4 SWD(2014) 338, 29.10.2014 on the implementation of the definitive VAT regime for intra-EU trade.
5 http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/ey_study_destination_principle.pdf.
6 MTIC fraud is encouraged by the current 'transitional system' for intra-EU supplies, which allows goods to be bought free of VAT.
7 France: EUR 10 billion, Italy: EUR 7 billion, UK: EUR 4 billion, Romania: 17% of current VAT revenue, Greece: 12%.

expected to involve significant change. It is considered that the option of aligning the rules with the place of supply of services could give rise to new exposure to fraud.

The two options under which the supplier would charge the VAT of the Member State of destination would have the biggest impact on the EU economy. Both were seen as capable of increasing EU GDP by EUR 18.5 billion over a three-year period (2014 to 2016), compared with the current arrangements.

1.2 GFV[8]/VEG joint meeting (24-25 June 2015)

The methodology and findings of the study were discussed in a joint meeting with Member State representatives and business, tax practitioners and academics from the VAT Expert Group (VEG). The findings were welcomed, although the discussions on methodology underlined the difficulty of obtaining more accurate data on compliance costs and VAT fraud.

The objective of the joint meeting was to have an open exchange of views on the future of the EU VAT arrangements, based on the findings of the study. The participants were unable to agree fully on the conclusions to be drawn and on possible directions for future work. In particular, it was clear that none of the options enjoyed universal support.

Some Member States made it clear that they would not accept an option whereby the flow of goods within the EU would no longer be tracked (as for services). Some participants pointed out that the place of destination of goods could be regarded as a fairly reliable proxy of the place of consumption and should therefore continue to be taken into account. Some Member States advocated studying further the option of taxing intra-EU supplies while still tracking the flow of the goods, since it offered huge potential for reducing VAT fraud.

The business representatives also differed as to their favoured option. Some requested that the option involving limited amendments to the current system be implemented in the short term while further exploring the other options.

1.3 Next steps

In the Commission's view, the findings of the study are detailed and robust enough for a decision to be taken now on the best option or, more likely, combination of options to be pursued for implementing the destination principle.

However, the discussions in the joint meeting in June showed that some issues require more in-depth examination before such a decision is taken.

Those options where the customer is liable for VAT mirror the current system to a large extent. The major changes and those which raise new questions come when the supplier is liable for VAT.

[8] Group on the Future of VAT (Member State representatives).

Therefore, the purpose of the present document is to identify and examine in the first place the issues which would arise and how to tackle them if the taxation of intra-EU[9] B2B supplies became the principle in the future, as for domestic supplies, while following the flow of goods with some significant simplification measures. In particular, businesses would never have to register for VAT purposes, either as a supplier or as a customer, in Member States where they are not established.

The main features of such a system, which could be the outcome of combining options 1, 2 and 3[10], are described below and some basic scenarios are outlined in Annex 1. This is a work in progress.

In particular the functioning of the 'enhanced' OSS, the concept of certified taxable person (CTP) with the reverse charge mechanism, a special scheme for call-off stocks and possible anti-evasion measures should be examined. When a particular issue is identified, various ways forward are proposed.

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[11].

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. 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 assembled[12].

2.2 Taxable transactions – Exemptions

As there would be only one transaction[13], 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

9 In this document, intra-EU supply means a supply of which the place of taxation is situated within the EU but in a Member State where the supplier is not established.

10 Options 1b, 2a and 2b in previous VEG documents.

11 In the same way, 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.

12 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.

13 Instead of an intra-EU B2B supplies of goods within the meaning of Art. 138 exempted in the Member State of departure and an intra-Community acquisition taxed in the Member State of arrival.

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 goods[14]. Their suppliers would instead charge and be liable for the payment of VAT in the Member State of arrival of the goods (see below).

Consequently, the exemption of 'intra-Community supply of goods' and 'intra-Community acquisition of goods' would be abolished[15].

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 the transport or dispatch ends[16] and no intra-EU acquisition would take place. Furthermore, a simplification measure could apply as regards call-off stocks (see below).

2.3 Obligations

2.3.1 Liability/payment of VAT

VAT would be payable by any person carrying out a taxable supply of goods[17].

However, if the taxable person is not established in the Member State in which the tax is due[18], he could make use of the OSS in the Member State where he is established to fulfil his VAT reporting and payment obligations[19] or, if his customer is established and certified in the Member State in which the tax is due (see below), the reverse charge would apply[20].

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

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

15 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.

16 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 below).

17 Including 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).

18 Or is deemed to be so if the establishment which the supplier has there does not intervene in that supply (see below as regards the application of the OSS and the reverse charge for supplies to certified customers).

19 Including for supplies of goods without transport or dispatch (in particular so-called 'chain transactions'), supplies of goods to be installed or assembled and supplies of gas, electricity, heat or cooling energy.

20 Article 194 (optional reverse charge) would be amended to exclude supplies of goods. Articles 195 (gas, electricity, heat or cooling) and 197 (triangulation) would be deleted.

2.3.2 Registration of taxable persons and non-taxable legal persons

All taxable persons[21] and non-taxable legal persons[22] would be allocated a VAT identification number by the Member States 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 they are not established. Neither would a supplier who is not established in the Member State of departure of the goods[23].

Suppliers who are not established within the EU would have to choose their Member State of registration. They would be allocated a VAT number 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 in particular to the content of the invoice and 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[24] (except for supplies subject to self-billing), 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 Recapitulative statements

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

2.3.5 Proof to support the transport of goods — Special obligation

As an end would be put to the inherent 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, it seems that the following approach to establish the Member State of taxation would be sufficiently balanced and proportionate:

[21] Including 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 (in the same way as when they receive services from non-established suppliers and for which they are liable for the payment of VAT pursuant to Article 196).

[22] If the non-taxable legal person acquires goods dispatched or transported from another Member State. As pursuant to Article 44, purchase of services by a non-taxable legal person so identified would then take place where he is established and he may be liable for the payment of VAT, some adjustments to the supply of services rules may need to be considered such as a threshold or making the supplier liable for the payment of VAT with the OSS.

[23] However, suppliers who do not want to make use of the OSS (see below) would be allocated a VAT identification number by the Member States in which they carry out their supplies of goods (i.e. the Member States of arrival of the goods) and for which they are liable for the payment of VAT (when the customer is not certified therein for VAT purposes, see below).

[24] or is deemed to be (see below).

(1) When the transport of goods is organised by or on behalf of the supplier, in the same vein as the measures advocated by the sub-group of the EU VAT Forum[25] and the VEG sub-group team on the same topic[26], inspired by the provisions of the VAT Implementing Regulation[27] as regards Article 58 supplies[28], the supplier should hold two non-contradictory normal commercial and payment documents certifying the transport or dispatch to another Member State. 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 transport of goods is not organised by or on behalf of the supplier, 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 below) but not too tight so as to allow the customer to collect this information. Ten working days could strike such a balance.

The information would be recorded by the supplier. It would constitute proof of transport which supports the charging of the VAT of the Member State of arrival. 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 a particular Member State.

In any event, if the supplier does not hold this particular information but does hold relevant documents establishing the name of the Member State where the goods have been dispatched or transported as is the case when he organises the transport or dispatch, the presumption would also apply.

(3) In both cases, if the reverse charge applies (the supplier is not established in the Member State where the tax is due and in which the customer is established and certified, see below), the requirement level as regards the proof of transport should not be upgraded as the customer has been certified and is therefore trusted by the tax administration where he is established.

[25] VEG No 027, 13 January 2014.
[26] VEG No 046 (31 August 2015) and VEG No 042 (18 March 2015).
[27] 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).
[28] See in particular Article 24a et seq.

3 SIMPLIFICATION AND LEGAL CERTAINTY MEASURES

3.1 Consignment stocks

3.1.1 Call-off stocks

As proposed by the joint VEG/GFV sub-group[29] 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 supply[30], 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 of the stock. The supplier would however have to report the commencement of such transfers before they take place.

Taxable transactions

The transfer of goods forming part of a taxable person'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 taxable person 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 supplier would, in principle, be liable for the VAT) when the buyer removes the goods from the stock.

Place of taxation

When goods have been transported or dispatched to be made available to a taxable person 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.

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.

[29] VEG No 028.

[30] 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, see below).

Registers

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

Notification to the tax authorities

The supplier and the customer would have to inform the tax authorities of the Member States of departure and arrival of the transfer of goods to be stocked so that it may be disregarded for VAT purposes until such time as the goods are removed from stock by the customer.

The supplier would inform the tax authorities of the Member State of departure by electronic means before the transport or dispatch of the goods begins. He would provide the tax authorities with the VAT identification number of his customer, the approximate date of commencement of transport or dispatch and the location of the stock.

The customer would inform the tax authorities of the Member State of arrival by electronic means before the transport or dispatch of the goods begins. He would provide the tax authorities with the VAT identification number of his supplier, the approximate date of commencement of transport or dispatch and the location of the stock.

Such information would be automatically exchanged between these Member States.

This notification would be done once only. The appropriate deadline for informing the Member States of departure and arrival will have to be determined. In any case it should not be more than 15 days before the beginning of the transport or dispatch of the goods.

3.1.2 Other consignment stocks

Such a scheme 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.

3.2 Special scheme – 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 taxable persons 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 due[31].

The same working rules would apply. In particular, making use of the OSS would not be compulsory[32]. Suppliers not established within the EU would also be able to use the OSS. If used, the OSS would apply in respect of all supplies of goods to taxable persons and non-taxable legal persons and transfers of own goods located in the EU carried out by a supplier not established in the Member State where the tax is due.

However, to ensure that a supplier is not denied use of the OSS when he has a fixed establishment in the Member State where the tax is due, the mitigation measure provided for in Article 192a could be adapted. 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.

Extension to B2B supplies not covered by the reverse charge

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, the suppliers of services to taxable persons and non-taxable legal persons, liable for the payment of VAT[33], could conceivably make use of the OSS[34].

Input 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' or 'chain transactions' for which he is the customer). 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 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.

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31 Such an approach is already envisaged as regards B2C supplies of goods such as distance sales and services carried out by non-established suppliers.

32 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.

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

34 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 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 their intra-EU purchases of services when their suppliers are not established in the Member State where the VAT is due.

The scope of such a measure will have to be examined[35]. 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 such input VAT and the OSS should 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.

Bad debt relief

Harmonised rules and requirements would be needed to reduce the taxable amount in the case of total or partial non-payment. In six Member States bad debt relief is not yet available. 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.

Simplifications that could be optional for Member States

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 and debit positions in the Member State of taxation and 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 (and vice versa). That could be the case for a supplier selling most of his goods to other Member States[36]. 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 or pay to the Member State of taxation the relevant amounts. 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

[35] Under the new rules the taxable persons would carry out supplies for which they would be liable for the payment of VAT in the Member State of arrival of the goods, but this should not have the immediate effect of considerably reducing the scope of Directive 2008/9/EC. However, going as far as what was done with Article 369j (no deduction pursuant to Article 168) does not seem an appropriate way to tackle in particular the problematic situation of 'chain transactions' and transfer of own goods. Therefore, one could envisage that eligibility to deduct VAT in a particular Member State via the OSS would apply to taxable persons carrying out local B2B supplies of goods in that Member State (i.e. places of departure and arrival, in case of transport, are located there), where they are not established and for which they are liable for the payment of VAT, and taxable persons carrying out a transfer of own goods to that Member State.

[36] And consequently, under the current rules, is in credit most of the time.

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.

3.3 Certified taxable person (CTP)

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. If applied widely, such a measure would significantly reduce the amounts of VAT charged on intra-EU supplies and paid through the OSS while combating fraud by preventing fraudulent businesses from buying VAT-free.

It would also reduce the suppliers' compliance costs 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. In conjunction with the implementation of the OSS, businesses would never, either as a supplier or as a customer, have to register for VAT purposes in the Member States where they are not established

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

Requirements to qualify for CTP status

Taxable persons would be certified at their request by the Member State(s) where they are established.

As allowing a taxable person to purchase goods without paying VAT would involve significant risks not only for the Member State of establishment but also for the other Member States[37], a minimum set of 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 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, a positive tax audit, the setting up of an internal control framework and the carrying out of risk self-assessments by the taxable person, guarantees from banks, insurance companies or other institutions such as VAT representatives and bank deposits.

The assessment by the tax authorities of requests by businesses to be certified should be carried out within a decent time frame.

Additional reporting obligations could also be required from CTPs such as the implementation of the Standard Audit File for Tax (SAFT).

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

Given the particular requirements and reporting obligations necessary for the customer to be granted certified status, the supplier should not be required to fill in recapitulative statements despite the application of the reverse charge mechanism. However, if the tax administrations feel they really need to be able to easily check the compliance of their CTPs as regards reverse charged intra-EU acquisitions despite their enforcement of the requirements, an annual sales listing of significant transactions could be envisaged.

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 date of entry into force would be added in the electronic database held by each Member State (VIES).

3.4 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 representatives 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.

3.5 Special scheme for small businesses

There would be a need to review the provisions of the VAT Directive on a special scheme for small businesses[38]. 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 or other simplification measures in respect of intra-EU B2B supplies of goods could be included as part of the definitive regime.

3.6 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.

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

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 updated by the Member States.

3.7 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.

4 ANTI-AVOIDANCE AND ANTI-FRAUD MEASURES

4.1 Administrative cooperation

The rules on the OSS laid down in Regulation 904/2010[39] 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 business. However, Member States of taxation could still have in particular the option 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.

In the case of non-payment of the VAT by the supplier, the tax authorities could use the instruments of Directive 2010/24/EC[40] to recover their claim.

For proper collection tasks and control visits, financial incentives such as the Member State of establishment retaining a percentage of any undeclared VAT that it has recovered, could be implemented. As regards control visits, the appropriate percentage could be established by each tax administration on the basis of its national statistics (e.g. total costs of VAT audits and of recovery of evaded VAT / total evaded VAT recovered). A ceiling could be agreed upon by the Member States.

4.2 Special obligations on customers and suppliers

Measures could be standardised at EU level while remaining optional for Member States.

Targeted purchase listings

The 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 when this VAT number has not been allocated by the Member State from which the deduction is

[39] 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).

[40] 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).

requested (i.e. the supplier has made use of the OSS to declare and pay the VAT on the supply).

As 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.

It would allow the tax authorities willing 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.

In the case of non-payment of VAT by the supplier, the tax authorities could use the instruments of administrative cooperation to recover their claim[41]. They could also[42] request information from the tax authorities of the Member State of the supplier or, with their assistance, notify the supplier of their decisions or request an administrative inquiry[43].

If the customer does not mention a purchase in his VAT return contrary to the requirement, the tax authorities could apply the usual penalties.

In the case of non-payment of VAT by the supplier where the customer did not mention the purchase in his VAT return contrary to the requirement, the outright prohibition on deducting the input VAT would not appear proportionate in relation to the principle of neutrality of VAT.

However, a presumption could be a possible way forward: it would be presumed that the customer knew or should have known that by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT. Therefore to avoid being denied his right of deduction by the tax authorities or being held jointly and severally liable for the payment of VAT, the customer would have to give evidence to the contrary. In fact the burden of proof of the so-called 'knowledge test' would be reversed.

However, if the customer did mention the purchase in his VAT return as required, the tax authorities would have to prove that the customer knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT as is the case at the moment.

Joint and several liabilities in case of wrong Member State of destination

If the supplier, on the basis of incorrect information provided by the customer about the Member State of destination, does not charge and pay the VAT of the Member State of actual arrival of the goods, the tax authorities of this Member State should have the option of holding the customer jointly and severally liable for the payment of VAT.

If the supplier knew or should have known that the information provided was incorrect and therefore that he was participating in a transaction connected with fraudulent evasion

41 Directive 2010/24/EC.
42 Regulation 904/2010.
43 With or without the presence of their own officials.

of VAT, the tax authorities of the Member State of arrival should also have the option of holding him jointly and severally liable for the payment of VAT.

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 possible ways forward to tackle them; and

2) whether they see other issues and measures that may need to be examined.

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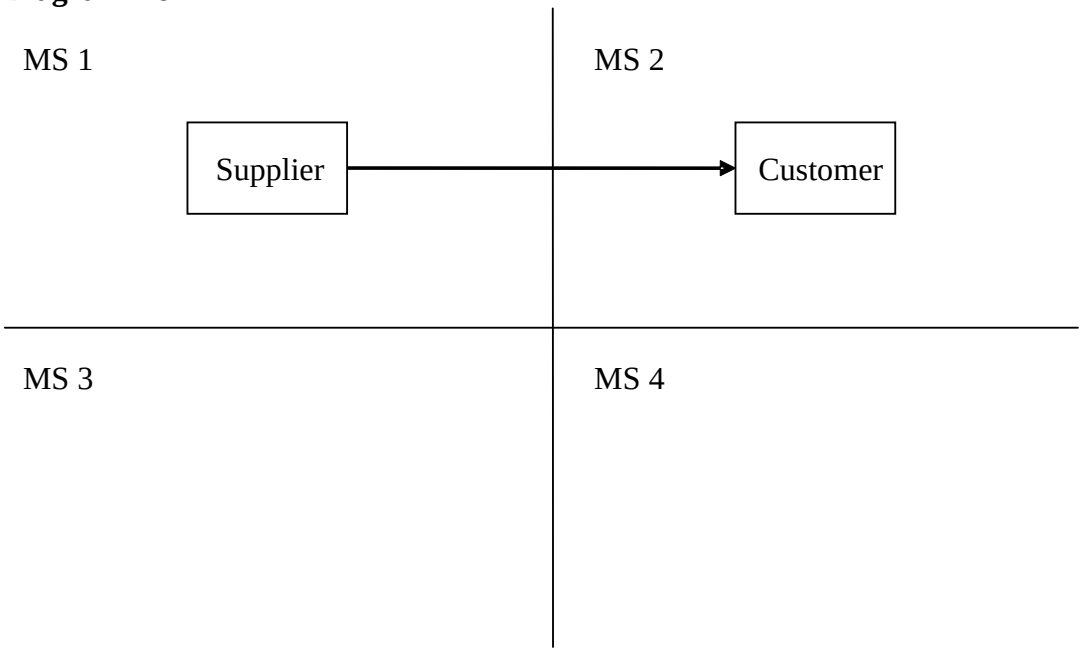
Annex I

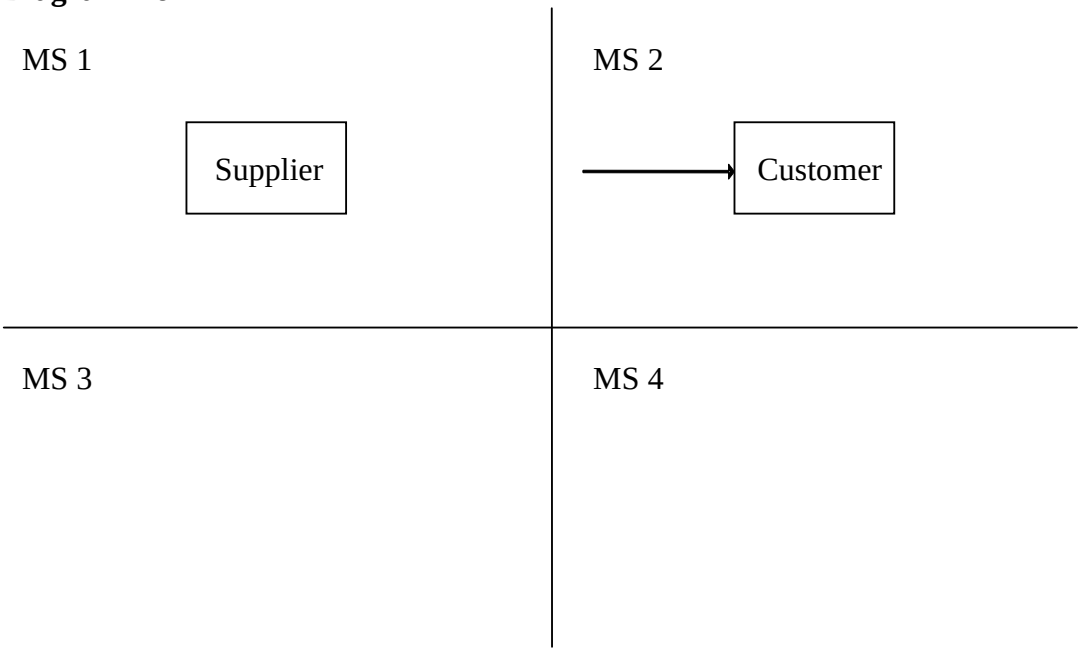
Diagram No 1



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 (customer if he is certified)
5) Invoicing rules: MS 1
6) Reporting and payment of VAT: by supplier via OSS in MS 1 (if the customer is certified, reporting by the customer in his VAT return in MS 2)
7) Deduction of input VAT by customer: 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: Directive 2008/9/EC

Diagram No 2

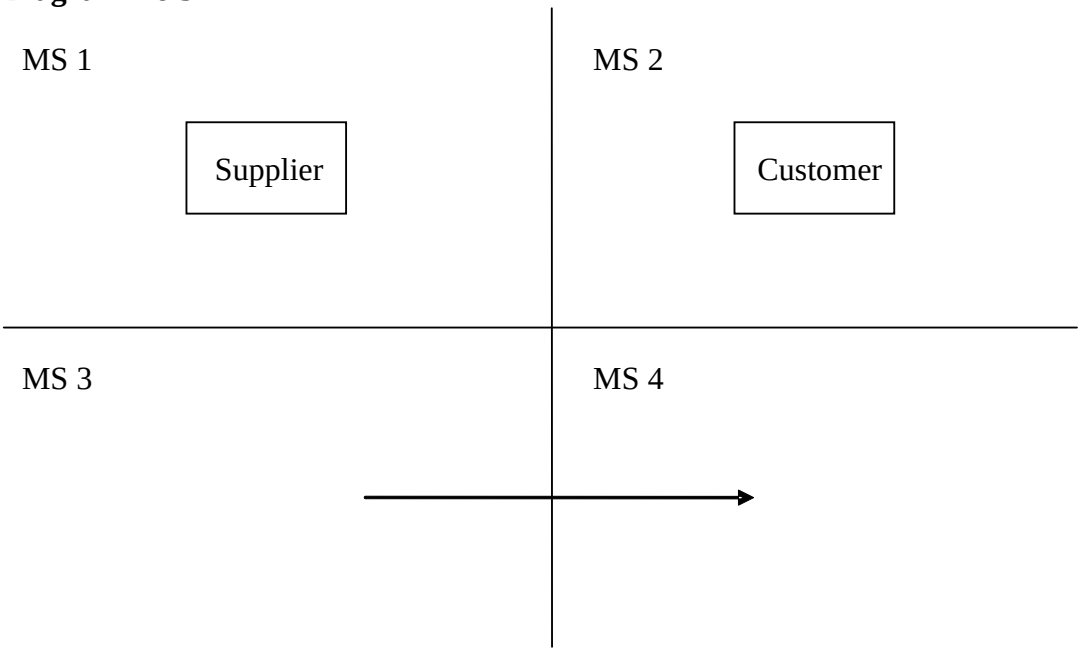


1) Identification of supplier: MS 1
2) Identification of customer: MS 2
3) Place of taxation: MS 2
4) Person liable: supplier (customer if he is certified)
5) Invoicing rules: MS 1
6) Reporting and payment of VAT: by supplier via OSS in MS 1 (if the customer is certified, reporting by the customer in his VAT return in MS 2)
7) Deduction of input VAT by customer: 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 (customer is liable for the payment of VAT in MS 2 and he carries out domestic supplies)

Variant with an initial transfer of goods to MS 2 by the supplier (no simplification scheme)

10) Reporting and payment of VAT on the deemed supply: by supplier via OSS in MS 1
11) Deduction of input VAT on the deemed supply by supplier in MS 2: via OSS (customer is liable for the payment of VAT in MS 2 and he carries out a transfer of own goods)

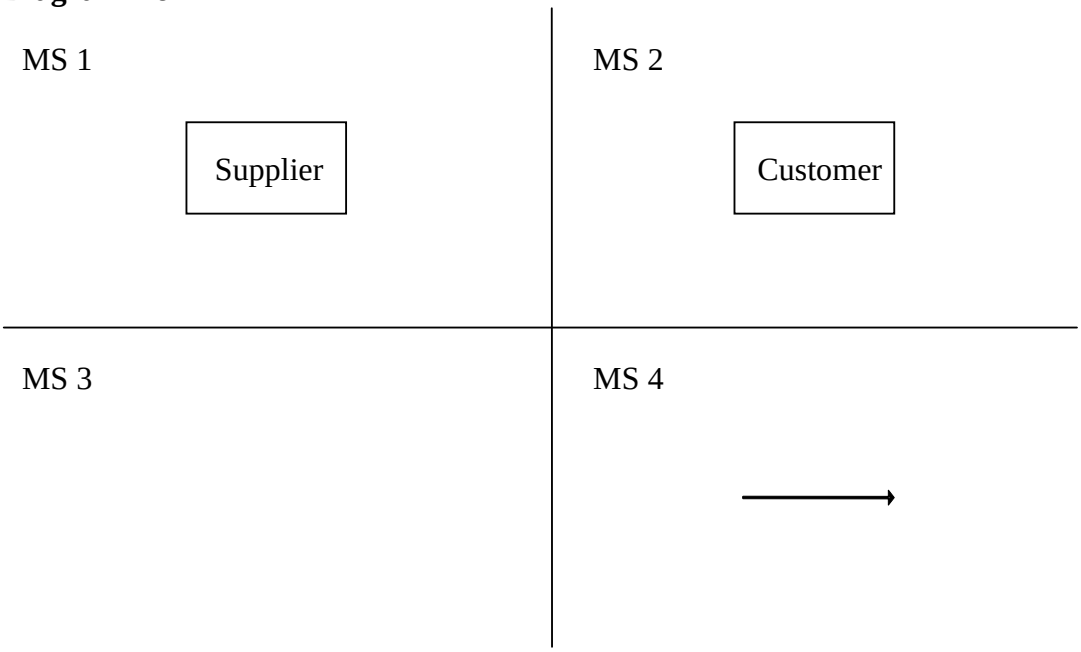
Diagram No 3



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
5) Invoicing rules: MS 1
6) Reporting and payment of VAT: by supplier via OSS in MS 1
7) Deduction of input VAT by customer: Directive 2008/9/EC or OSS if customer is liable for the payment of VAT in MS 4 and he carries out domestic supplies
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 2: Directive 2008/9/EC or OSS if supplier is liable for the payment of VAT in MS 2 and he carries out domestic supplies
10) Deduction of input VAT by supplier in MS 3: Directive 2008/9/EC or OSS if supplier is liable for the payment of VAT in MS 3 and he carries out domestic supplies
11) Deduction of input VAT by supplier in MS 4: Directive 2008/9/EC or OSS if supplier is liable for the payment of VAT in MS 4 and he carries out domestic supplies

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
5) Invoicing rules: MS 1
6) Reporting and payment of VAT: by supplier via OSS in MS 1
7) Deduction of input VAT by customer: Directive 2008/9/EC or OSS if customer is liable for the payment of VAT in MS 4 and he carries out domestic supplies
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 2: Directive 2008/9/EC or OSS if supplier is liable for the payment of VAT in MS 2 and he carries out domestic supplies
10) Deduction of input VAT by supplier in MS 4: OSS (supplier is liable for the payment of VAT in MS 4 and he carries out domestic supplies)