



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax administration  
**VAT and other turnover taxes**

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**VALUE ADDED TAX COMMITTEE**  
**(ARTICLE 398 OF DIRECTIVE 2006/112/EC)**  
**WORKING PAPER NO 761**

**QUESTION**  
**CONCERNING THE APPLICATION OF EU VAT PROVISIONS**

**ORIGIN:** Italy

**REFERENCES:** Article 9(1) of the VAT Directive  
Articles 10 and 11 of the VAT Implementing Regulation

**SUBJECT:** Concept of fixed establishment and its definition

## **1. INTRODUCTION**

The Italian authorities have asked the opinion of the VAT Committee on whether the concept of fixed establishment, included in Article 11 of the VAT Implementing Regulation<sup>1</sup>, also applies to the exercise of crafts and professions.

The text of the question is annexed to this document.

## **2. SUBJECT MATTER**

Articles 44 and 45 of the VAT Directive<sup>2</sup> lay down the general rules applicable to the place of supply of services.

If the recipient of the service is a taxable person, Article 44 applies and the supply will be taxed at the place where that taxable person has established his business. However, Article 44 also provides that where those services are supplied to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located.

When the recipient of the service is a non-taxable person, Article 45 applies and the supply will be taxed at the place where the supplier has established his business. However, Article 45 provides that where those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located.

Both articles refer to the concept of "fixed establishment". This concept is not defined in the VAT Directive but in the VAT Implementing Regulation. Where services are supplied to the fixed establishment of a taxable person, Article 11(1) of the VAT Implementing Regulation states that "*a 'fixed establishment' shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs*".

Related to this, Article 10(1) of the VAT Implementing Regulation states that "*the place where the business of a taxable person is established shall be the place where the functions of the business's central administration are carried out*".

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<sup>1</sup> 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).

<sup>2</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

As these articles both refer, directly or indirectly, to "the business's central administration", the question is whether these articles, and therefore the concept of fixed establishment, could only be applied to the activities of an enterprise and not to the activities of crafts and professions.

### **3. THE COMMISSION'S OPINION**

Certain Member States distinguish between different types of economic activities when it comes to applying their rules on direct taxation and also for local taxes. In that classification, the activities of companies are usually separated from the activities of individuals carrying out professions. Other categories are often used, as is the case with artistic activities and crafts.

However, the VAT Directive does not make such a distinction. The VAT Directive uses the concept of "taxable person", which is defined in its Article 9(1) as "*any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity*".

Therefore, to be regarded as a "taxable person" it is necessary to carry out an economic activity, and this activity has to be carried out independently.

The term "economic activity" is defined in the following subparagraph as "*any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions*".

Thus, the purpose of the VAT Directive is to include under the scope of the term "economic activity" all activities that have an economic content, with no differences between them. Activities of companies that produce goods or services are covered, but also the activities of the professions, which are expressly included.

We can conclude then that insofar as it qualifies as an economic activity, not only the activity of companies but also that of individuals which exercise crafts and professions, fall within the scope of the concept "taxable person" as defined by the VAT Directive. The treatment given under the VAT Directive, as far as this notion is concerned, does depend neither on the type of economic activity that is being carried out, nor on the legal structure of the subject carrying out that activity.

Article 44 of the VAT Directive refers to "fixed establishment of the taxable person". Article 45 refers to "fixed establishment of the supplier". Again, there is no distinction between different types of taxable person or supplier. Therefore, the rules and concepts included in those articles apply to all taxable persons, irrespective of the fact that they are companies or individuals exercising crafts or professions.

Thus, any taxable person could have a fixed establishment. The only requirement for the taxable person to have a fixed establishment is that the conditions included in Article 11 of the VAT Implementing Regulation are met: the establishment has to be characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs, or to provide the services which it supplies.

Then, any professional, as in the case of a lawyer, could have an office in Member State A, where the general management of the business is located, and another office in Member State B, with a permanent structure and human and technical resources that allow that office to receive and supply services on its own. That office in Member State B should be considered a fixed establishment. Even though it belongs to an individual exercising a professional activity for whom the Member State concerned may, for other tax reasons, apply a different classification, the concept of fixed establishment still applies.

The wording in Article 10(1) of the VAT Implementing Regulation, which states that "*the place where the business of a taxable person is established shall be the place where the functions of the business's central administration are carried out*", cannot lead to the conclusion that this concept should only be applied to companies. The term "business" is used in the sense of a taxable person who exercises an economic activity and, as stated before, those concepts must be applied to companies as well as to individuals exercising crafts or professions.

Therefore, the Commission services conclude that the articles in the VAT Implementing Regulation governing the fixed establishment for VAT purposes also apply to the exercise of crafts and professions.

#### **4. DELEGATIONS' OPINION**

Delegations are invited to express their views on the matters raised by the Italian authorities and the observations made by the Commission.

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## **Question from Italy**

### **Fixed establishment for the exercise of crafts and professions.**

#### **1.1. Question**

The question concerns the possibility to apply the concept of fixed establishment, referred to in the combined provisions of Articles 10 and 11 of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 (hereafter “the Regulation”), to the exercise of crafts and professions.

In particular, Article 11 identifies the fixed establishment as any establishment, other than the place of establishment of a business referred to in Article 10, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs or to provide the services which it supplies.

Article 10 specifies that, for the application of Articles 44 and 45 of Directive 2006/112/EC, the place where the business of a taxable person is established is the place where the functions of the business’s central administration are carried out.

More in detail, such place where the business is established (in the Italian version: “sede dell’attività economica”; in the French version: “siège de l’activité économique”) is fixed in the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located and the place where management meets.

In view of the above, the literal wording of the provision would appear to envisage the application of the concept of fixed establishment only to the activities of an enterprise.

#### **1.2. Proposed solution**

The Italian Revenue Agency deems that the concept of fixed establishment could apply also to the exercise of crafts or professions.

Indeed, Article 11 of the Regulation, which includes the definition of fixed establishment, in its turn makes reference, to Articles 44 and 45 of Directive 2006/112/EC.

Such articles lie down rules on the place of supply of services rendered by a taxable person (Article 44) or a non-taxable person (Article 45), respectively.

Nevertheless, in both the above cases, the place of supply of services is closely connected to the place where the taxable person has established his business, whether he is a customer (Article 44) or a supplier (Article 45).

Thus, it follows that the existence of a fixed establishment is related to the exercise of an economic activity in general.

The concept of economic activity, referred to in Article 9 of the aforesaid Directive 2006/112/EC, indisputably includes, in addition to business activities, also those relating to the exercise of crafts and professions.

In view of the above, the Italian Revenue Agency is of the opinion that all the articles of the Regulation governing the fixed establishment for VAT purposes can be applied to the exercise of crafts and professions.