

Value added tax (VAT): place of supply of services

2003/0329(CNS) - 20/07/2005 - Amended legislative proposal for reconsultation

Supplies between taxable persons were addressed in an earlier proposal submitted by the Commission (Please see the summary of 23/12/2003.) Although the changes proposed applied to supplies to taxable persons only, the proposal nevertheless included a new set of rules to replace the existing rules on the place of supply of services. To bring about the second and final part of the reform of the rules on place of supply, covering services supplied by taxable persons to non-taxable customers, the proposal - which is yet to be adopted by the Council - would need to be amended.

General rule: currently, the general rule is taxation at the place where the supplier is established. In most cases, this rule leads to taxation at the place of actual consumption. While taxation at the place of consumption would best be achieved by taxing services at the place where they are actually used or enjoyed, experience shows that, in many cases, it is very difficult to determine where the service is used or enjoyed. Although this is possibly the most correct rule to apply in order to comply fully with the character of VAT as a consumption tax, it is not considered appropriate to use as a general rule, mainly because of the practical problems linked to determination of this place in cases where the service is used or enjoyed in different jurisdictions. This would also create an unnecessary administrative burden for the business. The proposal is to maintain the place of establishment of the supplier as the general rule.

Specific rules: Although in most cases the main rule does lead to taxation at the place of actual consumption, there are, nevertheless, a number of areas where specific rules are needed. These are areas where continuation with the existing rules would cause practical difficulties for businesses if the proposed treatment of B2B services were adopted without a corresponding change for B2C; or where the existing rules could be held to be inadequate or impractical; or where the current rules fail to comply with the principle of taxation at the place of consumption in an area of major financial importance. The Commission has identified the following cases where there must be exceptions to the general rule for both administrative and policy reasons:

- Immovable property: A first exception would need to be to maintain the current rule in respect of services relating to immovable property. As the Commission has already proposed, in the B2B proposal, to maintain this exception, covering supplies to both taxable and non-taxable persons, no further changes are necessary.

- Passenger transport: Passenger transport services are currently, as an exception, taxed in proportion to the distances covered. To apply this rule on an internal market without fiscal frontiers is impractical and difficult.

As it was very difficult to address the issue for taxable persons only, without taking into account services of this type to non-taxable persons, this problem was not tackled in the initial B2B proposal. Instead, it was left for a future proposal on B2C to deal with this question. The proposal examines the possibility of taxing passenger transport services, irrespective of the means used, at the place of departure. It concludes that it is better to retain the current rules until the Commission puts forward a proposal not only tackling the place of supply of passenger transport services but also eliminating the current distortions of competition between the different means of transport in terms of VAT rates and exemptions currently applied by Member States in this sector.

- Intra-Community transport of goods: The current rule is that the place of supply, in the case of intra-Community transport of goods services provided to persons not identified for VAT purposes, is the place of departure. Although this is recognised as quite burdensome for the traders involved, the preference is for maintaining this exception, to which operators are now used. The principal inconvenience of this rule is that it forces removal companies to fulfil all the VAT obligations in every Member State from where they start a removal. This problem could, however, largely be solved by applying the one-stop mechanism, which would allow these companies to centralise these obligations at one place.

- Restaurant and catering services: These services - which are tangible in nature and supplied for immediate consumption at a readily identifiable location - should, as an exception, be taxed where the service is physically carried out. While this is often the same as the place where the supplier is established, which is currently the determining factor when taxing such services, this is not always so, especially in the case of catering services. Where that is not the case, the rule that the place of supply is the place where the service is physically carried out better reflects the reality of where such services are, for all intents and purposes, consumed. It also ensures a level playing field between suppliers of such services. However, this rule will not apply to the supply of restaurant or catering services on board ships, aircraft or trains during a passenger transport service as it would be very difficult to determine where the service is physically carried out. Instead, such services should, in line with on-board supplies of goods, be taxed at the place of departure of the passenger transport service.

- Hiring of means of transport: Hiring of means of transport is deemed to have been supplied not at the place of use of the means of transport but at the place where the supplier has established his business. Since means of transport can easily cross frontiers, this rule does not properly ensure that VAT accrues to the Member State of consumption. To address this issue, it is necessary to regulate it separately. In the B2B proposal, this problem was tackled by moving the place of taxation, in the case of long-term leasing of means of transport, to the place where the customer is established under the general rule. For short-term hiring only, the place of supply under the B2B proposal would be the place where the supplier is established insofar as the means of transport is used in the same Member State. In practice this implies taxation at the place where the taxable customer takes possession of the means of transport, unless the supplier is established in another Member State. It would not be desirable to have a different set of rules for the hiring of means of transport, depending whether the customer is a taxable person or not. To be consistent, it would be logical to align the rules on B2C on the treatment proposed for B2B. It is therefore proposed to stipulate that the place of supply in the case of long-term leasing to non-taxable customers will be the place where the customer is established, has his permanent address or usually resides. For short-term hiring the place of supply would be the place where the means of transport is actually placed at the disposal of the non-taxable person. There is also a definition of long-term leasing.

- Exhibitions, fairs, cultural events, valuation of and work on tangible movable property: the current rule provides for taxation at the place where such services are physically provided. While the current rule should be left unchanged, it must be ensured that only services requiring some human presence are covered by this rule. Otherwise, suppliers of services which can be supplied without any human presence, notably training or

teaching provided at a distance, could relocate to Member States which apply more favourable VAT rates to such services, especially when they are supplied to customers with no right to deduct the input VAT. These services should, therefore, be taxed at the place where the customer is located, in the same way as other services which can be supplied remotely.

- Services which can be supplied at a distance: Electronically supplied services, telecommunication services and radio and television broadcasting services as well as distance teaching are often supplied to non-taxable persons at a distance. Financial services are also increasingly supplied in this way. When supplied to taxable persons, these services are taxed in the Member State of the customer, a rule retained

in the new B2B proposal. When supplied to non-taxable persons, these services are taxed at the place where the supplier is established. For these types of services provided to non-taxable persons, the place of taxation should be changed from the place where the supplier is established to the place where the customer who receives the service is located. At this stage this exception should not, however, cover financial services, most of which are currently exempt. Instead, treatment of these services should be dealt with in the global proposal on the taxation of financial services. With this rule, the supplier would have to charge VAT in the Member States where his customers are established or domiciled, using the VAT rate applicable in each specific Member State. The Commission strongly believes that this proposal can only achieve the full scale of its simplification when accompanied by the one-stop mechanism. This rule would apply to all suppliers, irrespective whether they are established inside or outside the EU. In order to allow traders to continue to use the current rules determining the place of taxation of services supplied electronically to non-taxable customers, the Commission proposes that these rules enter into force on 1 July 2006 at the latest.

- Services provided by intermediaries: When intermediaries supply services to final consumers who are not identified for VAT purposes, these services are taxed at the place where the principal transaction to which they relate (supply of goods or services or intra-Community acquisition) is taxed. The Commission discusses the disadvantages and benefits of this rule and proposes to maintain the current place of supply of services by intermediaries to non-taxable customers.

- Suppliers and recipients established in a non-EU country: When services falling under the current Article 9(2)(e) are supplied to customers not established within the Community, the place of supply is currently situated outside the Community. This situation will be maintained.

- Anti-avoidance provision: Current rules enable Member States to override any of the rules applying to the place of supply if there is a need to avoid double taxation or non-taxation or to address distortion of competition. The scope of this rule is limited as it only covers supplies governed by Article 9(2)(e). However, the B2B proposal already envisaged extending this rule to all the provisions on place of supply, including both taxable and non-taxable persons. No further changes are, therefore, necessary.

- Exchange of information using the VAT Information Exchange System (VIES): In its original proposal, the Commission proposed introducing the obligation for taxable persons to include services in their recapitulative statements, thereby allowing the information to be exchanged between Member States using the VIES exchange of information with effect from 1 January 2008. This date is changed to 1 January 2006.

- Finally, a number of technical changes are necessary in order to clarify the wording of the provisions as well as the cross-references to Articles amended by this proposal.