

GUIDELINES RESULTING FROM MEETINGS OF THE VAT COMMITTEE

Up until 15 November 2018

This document has to be read together with the INDEX which shows COMMENTS as well as the ARTICLES referred to and which is also published on the DG TAXUD Website

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CONTEXT

The VAT Committee was set up under Article 398 of the VAT Directive (Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax) to promote the uniform application of the provisions of the VAT Directive. It consists of representatives of Member States and of the Commission.

Because it is an advisory committee only and has not been attributed any legislative powers, the VAT Committee cannot take legally binding decisions. It can give guidance on the application of the Directive which is not, however, in any way binding on the European Commission nor on Member States.

The guidance takes the form of guidelines agreed by the VAT Committee by varying majority: unanimously, almost unanimously or by large majority.

Majority is constituted as follows:

	unanimously/all	almost unanimously	a large majority
→ 55 th meeting	–	–	–
55 th → 75 th meeting	<i>15 Member States</i>	<i>14-13 Member States</i>	<i>12-10 Member States</i>
76 th → 81 st meeting	<i>25 Member States</i>	<i>24-22 Member States</i>	<i>21-17 Member States</i>
82 nd → 98 th meeting	<i>27 Member States</i>	<i>26-24 Member States</i>	<i>23-18 Member States</i>
99 th meeting →	<i>28 Member States</i>	<i>27-24 Member States</i>	<i>23-19 Member States</i>

Guidelines agreed result from the discussion of a specific issue raised before the VAT Committee but do not necessarily cover all aspects of the issue mentioned by the heading.

Some guidelines have been transformed into legally binding implementing measures based on the procedure laid down in Article 397 of the VAT Directive. Those measures can be found in the VAT Implementing Regulation (Council Implementing Regulation (EU) No 282/2011 of 15 March 2011).

Certain guidelines may have been overtaken by time. As some date back quite many years, they can have been rendered obsolete by one or the other event (legislation, case-law ...). They should therefore be taken with all the necessary precaution.

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I. QUESTIONS RAISED ON THE INTERPRETATION OF THE SIXTH DIRECTIVE

1. Questions raised by the United Kingdom delegation

[1)] Is it possible to apply a standard value in respect of the importation and supply of racehorses and is it possible to exempt racehorse training fees?

[a)] The Committee endorsed **unanimously**: the position of the Commission's staff on the questions raised

- on importation, the application of a standard value would be compatible with Article 11(B)(2) of the Sixth Directive only where this did not involve a systematic reduction of the taxable amount;
- for internal supplies, as for imports, the application of a standard value could not be justified by using Article 27 of the Sixth Directive unless this was genuinely a case of a simplification procedure, with no significant impact on the tax due at the final consumption stage.

In this connection it was argued that Article 27 could be invoked to simplify the procedure for charging the tax on imports or successive supplies, using as a basis the value which the horse would have on final consumption, i.e. the carcass value. However, the **majority** of the delegations questioned the compatibility of this interpretation with the above mentioned provisions of the Directive.

[b)] The Committee also felt that the exemption of racehorse training fees could not be justified by Article 13 (Exemptions within the territory of the country). However, **certain** delegations, subject to carrying out an examination in greater depth, would not be opposed to the idea that the provisions of Article 28(3)(b) (Transitional provisions) could, if necessary, permit such an exemption to be retained where racehorse training was regarded as a profession.

[c)] The **majority** of the delegations were doubtful as to the compatibility with the Directive of arrangements permitting application of the scheme for farmers to racehorse training.

[2)] Right to exempt supplies of gold coins

Further consideration of this point will be necessary. Many participants felt that under the Sixth Directive all gold coins were taxable, but it was also found that certain Member States were interpreting Annex F to mean that it permitted Member States which applied the exemption to continue to do so under existing conditions.

[3] Scope of the right of option provided for in Article 13(C) and Annex G to the Sixth VAT Directive with respect to clubs and associations

It was not possible to examine this point owing to lack of time.

2. Question sent in by the office of the Italian Permanent Representative

Tax treatment of monetary compensatory amounts (MCAs)

Discussion provided an opportunity for several delegations to outline the legal, administrative and common agricultural policy problems posed by the inclusion of MCAs in the taxable amount. However, a tentative examination of the question made it clear that even when these amounts were taxable and taxed in the Member States, the dangers of distortion of competition were virtually nil when the transaction was a sale to a taxable person, though this might not be the case for non-taxable persons or flat-rate farmers.

The Committee will re-examine this question in the light of the arguments put forward on the subject at this meeting.

I. QUESTIONS RAISED ON THE INTERPRETATION OF THE SIXTH DIRECTIVE

4. Question from the United Kingdom delegation concerning the scope of the right of option in Article 13(C) and Annex G to the Sixth Directive with regard to clubs and associations

It was noted that, during the transitional period, the situations could vary from one Member State to another with regard to the activities of clubs and associations referred to in Article 13(A)(1) at (f) and (m), because they were covered both by Annex E (possibility of continuing to tax) and by Annex G (possibility of retaining the right of option), but that for those activities coming under letters (l) and (o), there was only one possibility, since exemption must be provided for as soon as the directive was implemented.

In addition, with regard to the treatment, on the basis of Article 13(A)(1)(l), of employers' associations, it was noted that this question linked up with that concerning the interpretation of the words "of trade union nature" used in this clause of the directive, a question which would be on the agenda of the next meeting.

5. Problems in connection with the application of the common method for calculating the VAT rate in agriculture (Article 25 of the Sixth Directive and Annexes A, B and C)

- a) Terms used for the method of calculation:

The Committee agreed that the definitions used in the SOEC's agricultural accounts should be those used for the method of calculation.

- b) Services supplied listed in Annex B:

There was **near unanimity** in the Committee in favour of the exclusion from data research – solely for the purposes of the implementation of the common method of calculation – of data concerning "hiring out for agricultural purposes, of equipment normally used in agricultural, forestry or fisheries undertakings" and "technical assistance".

- c) Nature of packing and storage services for agricultural products:

The Committee agreed **unanimously** that the nature of the services in connection with Annex B should be determined on the basis of the following distinctions:

1. Packing and storage by the farmer of agricultural products belonging to him: services included in the delivery price of agricultural produce;
2. Packing and storage by the farmer on behalf of others but using facilities related to his own requirements: agricultural services;

3. Same supplies of services on behalf of others but with facilities exceeding those normally used by the farmer: this work would not constitute supplies of services.

d) References to the activities defined in Annexes A and B

The Committee agreed **unanimously** that final production and total inputs referred to in Point I(1) and (2) of Annex C, were, as for gross fixed asset formation, those in connection with the activities listed in Annexes A and B.

e) Products deriving from the processing activities referred to in Point V of Annex A and referred to again in Annex C(I)(1)

Nearly all the members of the Committee acknowledged the difficulty of identifying the production in question.

f) Accounting data concerning fishing

A **majority** of the delegations stated that there was no problem in their respective countries concerning these data, either because the data could be supplied or because the normal scheme was applied in this sector.

II. QUESTIONS FROM THE FRENCH DELEGATION CONCERNING THE TAXABLE AMOUNT FOR TRAVEL AGENTS

The French delegation raised the problem of how to interpret Article 26 as regards determining the taxable amount for the supply of services by travel agents.

II. MATTERS RAISED CONCERNING THE INTERPRETATION OF THE SIXTH DIRECTIVE

Matters raised by the Belgian delegation concerning the interpretation of the concept “of a trade-union nature” referred to in Article 13(A)(1)(1)

Most of the delegations preferred a broad interpretation of the concept that covered both workers’ and employers’ associations.

As for the general scope of the exemption provided for in Article 13(A)(1)(1), the Committee was of the **unanimous** opinion that this would not ipso facto confer the status of taxable person on the bodies referred to, the only criterion determining their tax status being that set out in Article 4, which stipulates that, to be regarded as a taxable person, a person has to carry out an economic activity.

However, the Committee had to acknowledge that reference to the concept of economic activity resulted in non-taxation of the services referred to in Article 13(A)(1)(1), and this in various ways depending on whether the concept was interpreted in a broader or narrower fashion by the Member States and whether it covered all or only some of the activities of the bodies referred to.

In view of the position adopted by **several** delegations it was agreed to pursue examination of this item with the aid of a memorandum.

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II. MATTERS RAISED CONCERNING THE INTERPRETATION OF THE SIXTH DIRECTIVE

1. Matters raised by Denmark concerning the exemptions referred to in Article 15(10): exemptions granted under diplomatic arrangements

In order to permit an exchange of information and to establish whether there was a need for harmonisation in this field, the Chairman asked the different delegations to furnish him with replies to a questionnaire which will be drawn up with this end in mind.

2. Matter raised concerning the taxable person status of lawyers, etc.

The question had been raised, in the context of own resources, as to whether certain professions whose members had power to draw up documents in the exercise of a public office (e.g. lawyers) were taxable persons (with or without exemption) for the purposes of VAT.

Most delegations felt that the persons concerned were members of the liberal professions and were therefore subject to VAT in respect of all their activities. However, services supplied by them could be exempted during the transitional period pursuant to Article 28 and Annex F.

3. Matter raised by the United Kingdom delegation concerning the services of consultants, engineers, etc and data processing and the supplying of information (third indent of Article 9(2)(e))

Virtually all the delegations were of the opinion that the mention of consultants, etc. under this provision did not mean that the services referred to had to be supplied by persons who were members of such professions.

On the second matter of whether or not the supplying of information was necessarily linked to data processing, **virtually all** of the delegations again replied in the negative. Consequently, any services relating to the supplying of information for consideration must be subject to tax by virtue of the provisions of Article 9(2)(e).

4. Matter raised by the French delegation concerning the hiring of stands at exhibitions

Almost all the delegations decided that the hiring of stands at exhibitions should be considered as such for the purposes of Article 9 (place of supply of services).

5. Matter raised by the Italian delegation concerning the tax treatment in Member States of the purchase or importation of vessels intended for breaking up

In view of the positions adopted by the delegations, it was agreed to continue discussion of this matter at a later meeting.

I. MATTERS RAISED CONCERNING THE INTERPRETATION OF THE SIXTH DIRECTIVE

- A. Matters raised, in the context of determining the VAT base for own resources purposes, concerning
- a) the scope of the exemptions laid down in Article 13(A)(1)(m) and (n) (“certain services closely linked to sport” and “certain cultural services”)

The conclusions drawn by the Committee were as follows:

1. the services exempted under Article 13(A)(1)(m) and (n) are indeterminate;
 2. under points 4 and 5 of Annex E to the Directive, Member States may, during the transitional period referred to in Article 28(4), subject to tax the services exempted under Article 13(A)(1)(m), and (n);
 3. it will therefore be impossible to lay down any parameter allowing financial compensations to be determined so long as there is no list of exempt services.
- b) the scope of the exemptions laid down in Article 13(A)(1)(b) comparable social conditions

The conclusions drawn following discussion of this matter were as follows:

1. under Article 13, the services supplied by “public” hospitals are in any case exempt;
2. the services supplied by “private sector” bodies providing care under social conditions comparable to those of the public sector are also exempt; such conditions should be determined for each Member State – on the basis of answers to a questionnaire, for example – if it is wished to establish precisely what private sector services qualify for exemption;
3. other services should be subject to VAT, but may be exempted pursuant to Article 28(3)(b) and Annex F.

c) The system applying in Member States regarding the private use of passenger cars

So as to allow the Committee on Own Resources to obtain a more accurate picture of the situation in Member States in this area and to seek a Community solution for determining the own resources basis, possibly by fixing a standard percentage to convert the private use of passenger cars forming part of a company's assets, the delegations were asked to telex the Directorate-General for Budgets, by 15 February at the latest, a brief outline of the arrangements in force in their respective countries for taxing the private use of such cars and the relevant proportion of fuel, stating the approximate percentage put on private use in relation to such expenses as a whole.

d) Taxation of transactions concerning gold other than gold for industrial use

During the first exchange of views the Committee reached the following conclusions:

1. Gold pieces

Several Member States exempt the supply of gold pieces which are legal tender in their country of origin because they took the view that these represented gold for investment purposes covered by point 26 of Annex F. One delegation wondered if collectors' items could be exempted under Article 32.

Most of the delegations were, however, in favour of taxing such transactions basing their interpretation on a strict application of Article 13(B)(d)(4).

2. System applicable to agents

The conclusion was drawn that those Member States availing themselves of the option provided for in Article 28(3)(e), which allows derogation from Article 5(4)(c) in particular, should only tax the agents', commission even where it concerns transactions which are exempt or are carried out by non-taxable persons.

3. Double charge to VAT

The Committee found that, where a private person sold gold acquired VAT-paid to a taxable person who then resold it to another private person, a double charge to VAT could indeed result, but that this particular situation should rather be regarded as a distortion of competition. The Committee was obliged to conclude, however, that gold transactions should in all cases be taxed in accordance with the Sixth Directive, with the possibility of maintaining the exemption provided for in point 26 of Annex F. The possibility of regarding resold gold as second-hand goods was raised, although the proposal for a Seventh Directive did not cover such transactions.

e) Scope of point 19 of Annex F (supplies of some capital goods after the expiry of the adjustment period for deductions)

Almost all the delegations took the view that supplies of movable capital goods after the adjustment period should be made subject to the tax and that exemption could be granted only within the framework of Annex F. **Two** delegations, however, felt that supplies of such goods could come under Article 32.

The Committee also stated its position on the more general problem of what legal basis should be applied for the purposes of own resources and in particular of financial compensations where two provisions of the Directive could be used as a legal basis to cover the same situation and where only one of the two provisions gave rise to compensation. **Almost all** the delegations stated that, in such circumstances, it would seem equitable to apply the legal basis that gave rise to compensation, which in this particular instance meant Article 28 and the Annexes relating to it.

B. Matter raised by the Italian delegation concerning the tax treatment in Member States of the purchase or importation of vessels for breaking up

Almost all the delegations took the view that, under the provisions of Article 15(4) and (5), supplies of vessels for breaking up could be exempted, stating that such exemption was granted de facto if not de jure in their own countries.

The Chairman reserved the Commission's position regarding, firstly, the rules to be applied to such supplies, which in his view (he announced that he intended to consult the Legal Service on this question) should be taxed in accordance with the Sixth Directive and, secondly, the possibility of granting exemption on the basis of Article 27 (simplification procedures).

- C. Matters raised by the Danish delegation concerning the amendment of Article 11(B)(2) so as to take account of the new Regulation on the valuation of goods for customs purposes

Several delegations felt that this problem should be examined by Working Party No 1 on the basis of a Commission staff paper and the draft of the new Regulation on the valuation of goods for customs purposes. However, they stated from the outset that, for legal reasons, the reference to Regulation No 803/68 could be amended only by a new Directive applying solely to VAT.

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I. MATTERS RAISED CONCERNING THE INTERPRETATION OF THE SIXTH DIRECTIVE

The scope of the exemptions laid down in Article 13(A)(1)(l)

The Committee drew the following conclusions

1. **All** the delegations were theoretically in favour of taxing individualisable transactions carried out on behalf of a member rather than in the collective interest.
2. The **majority** of delegations considered that the activities of such organisations which had the protection of collective professional interest as their aim were outside of the scope. But it was stressed that there was no right to deduct in respect of these “out-of-scope” transactions and that goods acquired by organisations for realisation would therefore carry the full weight of the tax.

The **other** delegations stated that for practical and control reasons they preferred to include all these transactions within the scope even if they were then exempted under Article 13.

3. After hearing the opinion of the Commission’s Legal Service which states that the idea of “trade union” in Article 13(A)(1)(l) should be interpreted in a broad fashion to include workers, employers and professional associations, the **large majority** of the delegations expressed the same view.

The Committee noted however that there were differences between the various language versions of the text and that those differences could lead to different literal interpretations. It was also pointed out that any Member State who had allowed organisations to opt for taxation under Annex G of the Sixth Directive could maintain this system until 1 January 1981.

II. QUESTIONS RAISED CONCERNING THE INTERPRETATION OF THE SIXTH DIRECTIVE

- a) The system of VAT applicable to transactions concerning gold, and payments to professional agents
- i) The Committee stated that several Member States tax transactions concerning gold ingots or bars whilst others exempt such transactions under the transitional provisions of Article 28; two Member States have no gold market;
- ii) The Committee **unanimously** agreed on the inevitable consequences of the application of the transitional provisions of the 6th Directive in respect of agents, acknowledging that the remuneration of such agents should either be included in the taxable amount of the transaction in respect of which they are acting (under Article 5(4)(c)) or taxed separately on the basis of Article 28(3)(e). In addition the **large majority** of Member States considered that they could give exemption under Annex F(26) if the principal transaction itself is covered by this provision.
- b) The interpretation of the directive in respect of repairs carried out under guarantee

The Committee considered that this problem is solved by the 8th Directive.

- c) The application of VAT to competitions for architects

The Committee reached the following conclusions

- i) the delegations were **unanimously** in favour of taxing the consideration paid for competitions by invitation as well as payments made to the architects' professional body if it ranks as a taxable person for VAT purposes, in the sense of Article 4 of the 6th Directive.
- ii) the **majority** of delegations also agree that the value of prizes awarded in open competitions should be taxed but bearing in mind the conditions laid down for each competition. From this point of view the problem is whether the prize constitutes a taxable supply or should be treated solely as a "gift" with no supply given in return, and therefore out of the scope of the tax.

- d) Indication by the supplier of a service of the VAT rate in force in the country of a person to whom services in the sense of Article 9(2)(c) of the 6th Directive are supplied by a taxable person established abroad

The **majority** of the delegations considered that where the tax has to be paid in the country of the person to whom the services are supplied that person should remain the principal person liable to pay the tax, and the supplier established in another country cannot be compelled to show the tax on the invoice.

Some delegations pointed out that, at least legally speaking, they preferred to retain the possibility, by means of joint and several liability, of obliging the supplier to indicate the tax at the rate applicable in the country of the person receiving the services. Although the solutions retained by Member States are based on different legal analyses the Committee considers that both conform with the corresponding provisions of the 6th Directive.

- e) Application of VAT to slot machines etc.

The Committee reached the following conclusions

- i) **nearly all** the delegations agree that the “activity” of the person who allows these machines to be installed should be taxed as a supply of services;
- ii) the **large majority** of delegations consider that Article 13(B)(f) does not apply to the machine owners, given that the machines in question are not solely games of chance or games for money;
- iii) the **majority** of delegations agree that the amount put into the slot machine should form the taxable amount corresponding moreover to the ides of turnover. This turnover can be established most effectively by applying a coefficient to the amount remaining in the machine.
- f) Common VAT arrangements applicable to “travel and entertainment cards” issued by certain organisations

It was decided to defer any decisions on this point to a future meeting.

g) The place where advertising services are supplied

The Committee **unanimously** decided that newspaper announcements in respect of private individuals are not affected by the provisions of Article 9(2)(e), but that these provisions do apply in respect of all “commercial” announcements place by taxable persons. The restriction also applies in respect of property advertisements.

h) System of deductions to be applied in banking and financial fields

An initial exchange of views was made; the Committee will take up the point again during a future meeting.

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I. QUESTIONS RAISED CONCERNING THE INTERPRETATION OF THE 6TH DIRECTIVE

a) The system of deductions to be applied in banking and financial fields

The Committee continued the examination of this point but did not, however, arrive at any guideline to enable those delegations who so wished to study the schemes which had been outlined more closely and to make any necessary contact with their governments and other interested parties.

b) Common VAT arrangements applicable to “travel and entertainment cards” issued by certain organisations

The Committee was in favour of exempting under Article 13(B)(d)(1) (granting of credit) of the 6th Directive those services supplied by the issuing organisation to the card holder.

The **large majority** of delegations were also in favour of exempting under Article 13(B)(d)(2) (guarantee of payment) supplies of services between issuing organisations and dealers.

The Committee did however state that option under Article 13(C) might result in inevitable distortions.

c) The consequences of defining gold coins eligible for exemption under point (26) of Annex F of the 6th Directive

The delegations of those Member States who tax gold coins considered that it was both necessary and sufficient when referring to the exemption in Annex F(26) to keep to the provisions of Article 28(3)(b) and exempt only those transactions relating to coins which were already exempted when the 6th Directive came into force. This point of view means therefore that it is impossible to determine a uniform scope for those transactions relating to gold coins referred to in Annex F(26).

d) The connection between Article 9 and Article 21(1)(a) of the 6th Directive in the case of a taxable person established abroad

The Committee **unanimously** agreed that Article 21(1)(a) could only be applied in respect of supplies of goods effected by a taxable person established abroad and those services envisaged in Article 9(2)(a), (b), (c) and (d) of the 6th Directive.

e) The place where auction services are supplied

The Committee **almost unanimously** considered that the place where an auctioneer's services are supplied should be determined in accordance with the general rule laid down in the first paragraph of Article 9 of the 6th Directive.

f) A definition of the territory of the Community

All delegations agreed with the analysis that those territories in Article 3 of the 6th Directive should be treated as third countries in applying both that directive and the 8th which refers to the refund of value added tax to taxable persons not established in the territory of the country. However they acknowledged that problems still remained regarding the application of the "travellers allowances", "small consignments" directives and these difficulties will be brought up by the Committee at a later date.

g) The data to be taken into account for the calculation of the flat-rate compensation percentages in agriculture

Whilst taking into account the problems which could arise in practice, the Committee **unanimously** considered that in determining flat-rate compensation percentages in agriculture, statistical data for the three years preceding the current year should be taken into account in order to reach an average figure for the three years. However, where such data is not yet available, statistics for the last three available years should be used.

II. QUESTIONS RAISED ON THE INTERPRETATION OF THE 6TH DIRECTIVE

a) The system of deductions to be applied in banking and financial fields

Most delegations agreed that, for credit transactions, the total amount of interest received should be included in the denominator of the fraction in calculating the deductible proportion for banks.

Delegations **almost unanimously** agreed that as far as sales of shares where a bank acts as an agent are concerned, the gross margin (i.e. the difference between the sale price and the purchase price) arising from such transactions should be included in the denominator of the fraction.

The Committee went on to discuss other factors which might be used to calculate the deductible proportion but did not reach a final conclusion; discussion will therefore be resumed at the next meeting.

b) The place where auction services are supplied and the taxable amount to be taken into account

The Committee **almost unanimously** agreed that where the auctioneer is acting in the name and for the account of the vendor, the taxable amount is the total amount of commission received by the auctioneer but that if the vendor is a taxable person, the taxable amount is the total amount (not including VAT) paid by the purchaser including the total amount of commission received by the auctioneer.

c) Definition of the term “means of transport” used in Article 15(2)

The Committee was **unanimously** in favour of a broad interpretation of “means of transport for private use” (Article 15(2) of the 6th Directive) to include means of transport used for non-business purposes by persons other than natural persons such as associations and bodies governed by public law within the meaning of Article 4(5) of the 6th Directive.

d) Tax arrangements applicable to the hiring out of containers

The Committee considered **unanimously** that the hiring of containers constitutes an equipment hiring service unrelated to the supply of transport services and that consequently the tax arrangements to be applied should be based either on Article 9(1) if containers are deemed to be means of transport, or on Article 9(2) if they are not considered as such, With Article 15(13) or 16(1) making it possible in many cases to solve these problems in the form of exemption of the service in the case of exports.

- e) The authority competent to stamp invoices or other supporting evidence certifying the exportation of goods contained in the personal luggage of travellers bound for third countries

The **majority** of delegations took a negative view of the possibility of replacing the customs authority stamp with a stamp by the captain or purser of an international ferry, and considered that the responsibility for checking should remain with the custom's authorities.

- f) i) Derogation from the provisions of the Sixth Directive in respect of agreements between Member States and third countries

The Committee **unanimously** agreed that an agreement concerning international road transport of goods established by a Member State with a third country cannot contain any provision to exclude from the taxable amount for importation for import transactions other than those covered by Article 14(1) and 16(A) of the directive, those transport costs corresponding to the transport effected between the place of entry of the goods into the territory of that Member State and the first place of destination as defined by Article 11(B)(3)(b). Derogations should be allowed only pursuant to Article 30 of the 6th Directive.

- ii) Definition of the first place of destination within the meaning of Article 11(B)(3)(b) of the 6th Directive

The Committee was **unanimously** in favour of adopting the following definitions to establish the first place of destination within a country

- either the place shown on the road transport document made out abroad under cover of which the goods are brought into the country,
- or, where the place shown on the road transport document differs from the destination the destination itself,
- or in the absence of such details the first transfer of cargo in the country by a road vehicle.

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I. QUESTIONS RAISED ON THE INTERPRETATION OF THE 6TH DIRECTIVE

a) The interpretation of Article 16(2) of the Sixth Directive

(i) The extent of the option

As far as the extent of the option was concerned, the Committee **almost unanimously** agreed that where a Member State opts for the use of Article 16(2) then all relevant exporters should be allowed (under certain conditions) to benefit from the provision

(ii) Persons covered by the provisions of Article 16(2)

The Committee **unanimously** agreed that Article 16(2) can only be used in respect of the taxable persons actually exporting the goods and should not be used to apply an exemption at an earlier stage.

In addition where Member States have applied Article 28(3) to derogate from Article 5(4) of the 6th Directive then the provisions of Article 16(2) cannot be applied to the person supplying the exporting agent.

(iii) Goods and services which can benefit from Article 16(2)

The **majority** of the Committee considered that the phrase “as they are or after processing” should be interpreted to include not only goods in their natural state or after processing but also goods which contribute to the processing operation. As far as the suspension of tax in respect of services was concerned, however, the Committee was in favour of a relatively restrictive interpretation, limited to those services directly linked with the goods being exported.

b) The meaning of the term “means of transport” used in Articles 9 and 15 of the Sixth Directive

The Committee was **unanimously** agreed that motor vehicles and other equipment and devices which might be pulled or drawn by such vehicles and which are normally used for carrying out a transport contract should be regarded as means of transport within the meaning of Article 9 and 15 of the Sixth Directive.

The **large majority** of delegations were also in favour of treating the following items as means of transport;

- containers;
 - private motor vehicles, pleasure craft, trailers and caravans actually used as vehicles;
 - vehicles for military, surveillance or civil defence purposes used for the movement of goods or persons;
 - cycles (including delivery tricycles);
 - mechanically propelled invalid carriages;
 - saddle horses.
- c) Questions on arrangements for the refund of value added tax in the context of the Eighth Directive – authorisation given by a taxable person to his representative to submit the application for refund and/or to receive payment of the refund

The Committee **unanimously** agreed that in the case of such services, the place of supply should be determined by the 3rd indent of Article 9(2)(e) of the 6th Directive (covering services of accountants and other similar services) i.e. the place where the customer (the principal) has established his business.

II. QUESTIONS RAISED ON THE INTERPRETATION OF THE 6TH DIRECTIVE

a) Application of point (2) of Annex F to the activity of colour-scheme consultant

The Committee concluded that the temporary exemption provided in Article 28(3)(b) could only apply in respect of exemptions which were already in existence when the 6th Directive was introduced.

b) Incidence of certain banking transactions on the right to deduct VAT

1. Interest on credit transactions

The Committee was **almost unanimously** in favour of taking the gross amount of interest into account in the denominator of the deductible proportion.

2. Transactions in shares

The Committee **unanimously** agreed that where the bank acts as an agent in the name of a third party the total remuneration received by the bank for its services as an agent should be taken into account in the deductible proportion.

The Committee also **almost unanimously** agreed that, where the bank acts in its own name, the difference between the sale price and the purchase price should be taken into account in the deductible proportion.

3. Exchange transactions

This matter was discussed in detail and guidelines will be agreed at a later date.

4. Problem of interpreting Article 17(5)(c)

The **majority** of the Committee was in favour of using Article 17(5)(c) on the basis of strictly objective criteria.

c) Application of mutual assistance (inspection of taxable person)

The **large majority** of the Committee considers that mutual assistance should be developed where there exists a possibility of evasion and that information should be supplied to a Member State on request from another Member State. The Committee agreed that under Article 4(1)(a) of the directive dated 19/12/77 concerning mutual assistance, Member States agreed to undertake spontaneous exchanges of information where the competent authority of one Member State has grounds for supposing that there may be a loss of tax in another Member State.

I. QUESTIONS RAISED ON THE INTERPRETATION OF THE 6TH DIRECTIVE

a) Territorial scope of the 6th VAT Directive

The Committee agreed **unanimously** that the principality of Monaco, Principality of Andorra, Republic of San Marino, Channel Islands and the Isle of Man are excluded from the territorial scope of the 6th Directive.

b) Eight Directive refunds of VAT incurred on expenditure associated with the installation of goods

A **large majority** of the Committee agreed that the normal provisions of the 6th Directive should be applied to allow deduction or refund of input tax paid on expenditure incurred by a person established in one Member State and carrying out installation operations in another Member State. The provisions of the 8th Directive not being applicable in respect of such cases. The Committee agreed to continue examining this question in order to solve practical problems.

c) Credit cards

The Committee reaffirmed its **almost unanimous** view that the service between the card company and the retailer should be exempt under Article 13(B)(d) of the 6th Directive and in particular under paragraphs 2 and 3 of that Article, since the principal activity is a financial one, all other aspects being of a secondary nature.

d) Taxation of hotel and restaurant services

The Committee is for reasons of principle **unanimously** opposed to exempting restaurant and overnight stay services which, the Committee considers, should be taxed in the country in which they are supplied whether or not the person receiving the service is established in that country.

I. QUESTIONS ON THE INTERPRETATION OF THE SIXTH DIRECTIVE

a) Incidence of certain banking transactions on the right to deduct VAT: Exchange transactions

The **majority** of the Committee considers that, with regard to exchange transactions, the total remuneration (margin, commission and costs) should be taken into account in the pro-rate calculation.

b) Pleasure boats: Place at which certain hiring-out transactions are taxed (interpretation of Article 9(1))

The **majority** of the Committee considers that the hiring-out of a pleasure boat may be taxed only in the country in which the actual head office of an economic activity is situated or in which there is a permanent establishment from which the services are supplied.

c) Telephone calls on board ships on the high seas

A **large majority** of the Committee took the view that the services offered by a shipowner in permitting members of the crew to use such telephones for private calls should be considered to be outside the territorial scope of the tax.

d) VAT arrangements applicable to transactions involving foreign participants at fairs and exhibitions

A **large majority** of the Committee decided that in all cases the taxation of services supplied by the organisers of fairs and exhibitions should occur in the country where these events are held whether on the basis of Article 9(2)(c).

e) Definition of “fixed establishment” for the purposes of applying the common system of VAT

A **large majority** of the Committee considers that fixed establishment must be defined as settled premises, without reference to the capacity to effect taxable transactions.

- f) Interpretation of Article 15(2) of the Sixth Directive and Article 6 of Directive 69/169/EEC, as amended, relating to tax-free allowances for travellers

A **large majority** of the Committee considers that Article 6 of Directive 69/169/EEC also applies to equipment for means of private transport use and that exemption must be granted by the exporting country if the conditions provided for by the above mentioned Article are fulfilled.

II. REFUND OF VAT TO GREEK FIRMS UNDER THE EIGHTH VAT DIRECTIVE

The Committee **unanimously** agreed that the provisions of the Eighth VAT Directive should apply to Greek firms provided that the Greek tax authorities were able to certify that such firms carried out business activities and were subject to turnover tax.

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II. QUESTIONS ON THE INTERPRETATION OF THE SIXTH DIRECTIVE

a) Place of taxation of international telecommunications services supplies

The Committee held **unanimously** that the place of supply of international telecommunications services is in the country of the person paying for the communication (rule of the place where the supplier has established his business).

b) Taxable amount for certain passenger transport operations

A **large majority** of the Committee felt for practical reasons that, where, in the case of passengers travelling by sea or air between departure and arrival points situated in the same Member State, part of the journey is made through international waters or above the territory of another State, such journeys should be deemed to take place entirely within the Member State concerned.

c) Place of taxation of the hiring of railway wagons

The Committee **unanimously** considered that, in accordance with Article 9(1) of the Sixth Directive, the hiring of railway wagons must be taxed in the place where the supplier of the service had physically and effectively established his business. It also took the view that where the lessor invoiced for VAT a lessee established in another Member State, the Eighth Directive was applicable.

d) Territorial scope of VAT in respect of certain services supplied by travel agents acting as intermediaries: application of Article 9 of the Sixth Directive

On the specific case of an owner of a holiday home situated in Member State A who lets it to a travel agent in Member State B, with the agent acting as intermediary and receiving his commission from the owner, the **overwhelming majority** of the Committee considered that, as VAT law stood at present, Article 9(2)(a) must apply. The Committee also agreed to determine the scope of Article 26 and of associated problems which might follow in connection with Article 9, and if necessary to re-examine the situation.

e) Application of the Eighth Directive

The **great majority** of the Committee took the view that the Member States could opt for a procedure parallel to that of the Eighth Directive in order to refund the tax, in respect of all cases to which Article 21(1)(a) of the Sixth Directive applied whether occasional activities or not.

II. QUESTIONS RAISED ON THE INTERPRETATION OF THE SIXTH DIRECTIVE

a) Tax-free importation of tax stickers for motorway users sold on behalf of the Swiss Confederation

The Committee held **unanimously** that the importation of Swiss Confederation tax stickers for motorway users should not be taxed because these stickers did not correspond to a taxable transaction within the country of importation.

The Committee was **unanimously** in favour of exempting the commission on the sale of such stickers on the basis of Article 15(14) (or 15(10)) of the Sixth Directive.

b) Personal services supplied to ship passengers. Application of Article 9 of the Sixth Directive

The **great majority** considered that, for practical reasons, all services supplied on board ships sailing in internal waters and occasionally using international waters should be taxed, while the same services supplied on board ships sailing in international waters and using territorial waters for a short part of their journey should be exempt.

Two delegations reserved their position.

c) Application of Article 13(B)(d)(6) of the Sixth Directive to “special investment funds”

The Committee held **unanimously** that only the activities of undertakings with a contractual structure could give rise to a chargeable event for VAT purposes and hence to the application of Article 13(B)(d)(6).

d) Tax treatment of the hiring of railway wagons between railway undertakings in the Member States

The Committee was **almost unanimous** in considering that Article 15(13) should be applied to the hiring of goods wagons.

- e) Place of taxation of certain insurance loss adjustment services. Application of Article 9 of the Sixth Directive

The **great majority** of the Committee held that services supplied by independent experts to insurance companies in respect of immovable property, movable tangible property and intangible property were covered by Article 9(2)(a), Article 9(2)(c) and Article 9(2)(e) respectively.

- f) Taxable amount. Application of Article 11(A)(2)(b) of the Sixth Directive to incidental expenses

With regard to the commission charge by a carrier for collecting the payment for goods carried, **all** the delegations considered it impossible merely to extend the Court judgment in Case 126/78 to the context of Article 11(A)(2)(b) of the Sixth Directive, and that only examination of the terms of the contract concluded between consignor and carrier would reveal whether or not this commission was an incidental expense.

With regard to price supplements charged by vendors on credit sales, the **majority** of the delegations considered that if there were no real loan agreement, such price supplements must be included in the taxable amount for supplies of goods. The Committee agreed to continue its examination of this question.

- g) Scope of Article 26 of the Sixth Directive: special scheme for travel agents

The Committee held **unanimously** that Article 26 must apply where the following conditions obtain

- the agency must act in its own name and
- use at least one service supplied by another taxable person in the provision of travel facilities.

The Committee also held that the principle applied to travel agents of taxing the margin does not preclude determination of the margin for all transactions on the basis of the same formula during a specific period.

(The Committee further held that where a package includes an amount which represents the consideration for transactions for which the agency is to be taxed separately in another Member State, this amount should not be taken into account in determining the margin.)

h) Applicability of VAT to automobile associations

The **majority** of the delegations stated that subscriptions charged by motoring organisations must be taxed where they represent the consideration for individualisable services offered to their members. The Committee agreed, at this stage not to reach a definite conclusion.

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II. QUESTIONS ON THE INTERPRETATION OF THE SIXTH DIRECTIVE

a) Application of Article 13(B)(d)(4) of the Sixth Directive to “platinum nobles”

The Committee held **unanimously** that, irrespective of whether they were regarded as collectors' items or as an investment medium, “platinum nobles” should be taxed.

b) Charging of VAT on unlawful transactions

A **large majority** of the Committee felt that transactions carried out within the territory of the country and involving goods that were the subject of a prohibition on marketing fell outside the scope of VAT, subject to the conditions and within the limits that could be deduced from the judgment delivered by the Court of Justice in Case 294/82.

c) Treatment of subsidies for VAT purposes

A **majority** of the Committee agreed with the interpretation of Article 11(A)(1)(a) of the Sixth Directive proposed by the Commission, namely, that a subsidy was taxable only if three conditions were met:

- it constituted the consideration (or part of the consideration);
- it was paid to the supplier;
- it was paid by a third party.

As regards the option provided for in the second indent of Article 19(1), a **large majority** of the Committee favoured its retention in order to prevent any fraudulent deductions.

d) Taxation of software on importation

The Committee agreed **unanimously** on the following guideline:

- 1) In the case of “normalised” software, there is a single import of goods and the whole value must therefore be taxed at importation;
- 2) In the case of “non normalised” (i.e. specific) software, there is an import of goods (the physical support) and a supply of services (the data). In intra-Community trade between taxable persons, the medium will be treated as an accessory to the data and both supplies will be taxed within the country of the user as a single supply of services in accordance with the criteria laid down in the third indent of Article 9(2)(e). In order to avoid double taxation the physical support will not be taxed at import.
- 3) The Committee will study the problem concerning the importations from non-Member countries and non-taxable persons.

II. QUESTIONS ON THE INTERPRETATION OF THE SIXTH DIRECTIVE

a) Taxation of transport services; application of Articles 14(1)(i) and 15(13) of the Sixth Directive

As things stood, the Committee states that a very large majority of Member States exempted from taxation the portion of the journey undertaken in the country of departure for the purposes of an international removal of goods. In other words, the Member States took Article 15(13) to mean that all transport services linked to the export of goods were exempt even where there was no remission of tax on goods leaving the country.

As the situation in the importing country, most Member States, in line with the interpretation placed on Article 14(1)(i), exempted the portion of the journey undertaken there.

A **majority** of the Committee would be prepared, in the context of future harmonisation, to alter the present arrangements so that the entire journey undertaken for the purposes of an intra-Community removal operation was taxed in the country of departure. This would ensure consistency with the taxation of passenger transport provided for in Article 28(5) of the Sixth Directive.

b) Tax treatment of Community subsidies paid out under the common organisation of the market in milk and milk products

A **large majority** of the Committee felt that the Community subsidies intended for the financing of publicity measures for milk products do not represent remuneration in respect of services supplied to the Commission and are not liable to VAT when they contribute to the payment of publicity expenses incurred by an intermediary body.

II. QUESTIONS ON THE INTERPRETATION OF THE SIXTH DIRECTIVE

a) Tax treatment applicable to activities closely related to hospital and medical care
Article 13(A)(1)(b)

A **large majority** of the Committee agreed to exemption for:

- activities associated with the lodging of patients (accommodation and meals) and with the supply of medicines as part of medical care;
- the supply of prostheses surgically fitted in a hospital;
- activities associated with the lodging of hospital staff and persons living-in with patients and for such persons in so far as their lodging cannot be compared with a stay in a hotel;
- the supply by the hospital of meals and beverages in a restaurant open to the public in so far as the operating conditions are not likely to cause distortion of competition;
- the sale within hospital premises of small objects made, in a therapeutic scope, by patients.

b) Treatment of the supply of services by musicians and other performing artists

The Committee **unanimously** agreed that it was not possible to lay down a system of Community tax treatment applicable to all artists' services which are subject to contractual provisions in view of the wide variety of clauses that might be included in the contract (working conditions, remuneration, relationship of employer and employee, etc.).

c) Application of Article 26 to the organisation of language study trips

The Committee **unanimously** agreed that, under the terms of Article 26:

- 1) all transactions performed by the travel agent in respect of a journey are to be treated as a single service supplied by the travel agent to the traveller;
- 2) the single service is taxable in the Member State in which the travel agent has established his business or has a fixed establishment from which the travel agent has provided the services;
- 3) the taxable amount is the travel agent's margin.

Since the terms of Article 26 do not allow a particular type of journey to be excluded, the Committee **unanimously** agreed that language study trips are also covered by the article.

I. QUESTIONS ON THE INTERPRETATION OF VAT DIRECTIVES

a) Interpretation of Article 9(2)(b) of the Sixth Directive

The Committee held **unanimously** that Article 9(2)(b) of the Sixth Directive was as a rule applicable to all transport operations and that VAT system laid down in the Sixth Directive applied to transport between a place within the territory of a Member State and a place within the territory of a third country.

b) Tax arrangements applicable to public radio and television bodies

For reasons of simplification and to avoid non or double taxation the Committee was **almost unanimously** in favour of uniform application in all Member States of Article 9(2)(e) to any public radio and television body irrespective of its tax status (exempt from VAT or falling outside its scope), whenever one of the services referred to in the aforementioned provision was supplied to it.

c) Interpretation of the 17th VAT Directive which determines the scope of Article 14(1)(c) of the Sixth Directive

A **large majority** of the Committee felt that an extension of the period of temporary importation could not be granted automatically to an entire sector, but only in the light of the specific circumstances in each case.

I. QUESTIONS ON THE INTERPRETATION OF VAT DIRECTIVES

a) International leasing (hiring – financing – leasing)

The Committee was **unanimously** in favour of taxing leasing transactions other than the leasing of means of transport in the Member State of the customer (lessee) whenever the supplier (lessor) did not have a fixed establishment in that State. In the case where the customer is a taxable person, the refund of VAT paid on the purchase, in the Member State of the customer, of the equipment hired should be done via the Eighth VAT Directive (supplier established in the territory of the Community) or the Thirteenth VAT Directive (supplier established in a non-member State) (Article 1(b) of the Eighth and the Thirteenth Directives).

b) Application of Article 9(1) of the Sixth Directive to the international leasing of company cars

Most of the delegations took the view that a leasing transaction for means of transport could be taxed in the country in which the means of transport had been bought and hired out by the supplier only if the supplier had his place of business or fixed establishment there. In the case of the supply of a service made by a supplier in a third country, the Committee was **unanimously** of the opinion that such supplies should be taxed in the Member State of hire (use), a large majority based this view on Article 9(3)(b), a minority based it on Article 9(1).

c) Treatment for tax purposes of capital contributions made in cash

The Committee was **unanimous** in its opinion that cash contributions should not be liable to VAT, either because they were considered as being outside the field of application of the Sixth Directive, or because they were exempted under Article 13(B)(d)(5).

d) Interpretation Article 26. The problem of reimbursement of VAT contained in the remuneration of an agent acting from a tour operator established abroad

A **large majority** of the delegations were of the opinion that the agent's commission be deducted when calculating the margin, but that there were no grounds for applying the Eighth Directive, since the commission should be exempted under Article 15(14).

e) Tax treatment of supplies of telecommunications service

The Committee was **unanimous** in its support for

1. application of Article 15(8) to telecommunications services supplied to sea-going vessels;
2. for reasons of simplification:
 - (a) exemption, similar to the one planned for transactions classed with exports, of services supplied by public telecommunication companies in connection with the use of their networks by other States;
 - (b) exclusion of telecommunications services provided on board vessels sailing in international waters and using territorial waters for a short part of their journey.

f) Tax arrangements applicable to control and support services to air navigation

1. **Almost all** delegations were in favour of application of VAT to the services provided in the airport zone (the services being taxed or exempted on the basis of Article 15(9)).
2. The **majority** of the Committee were in favour of treatment as non-applicable persons of those providing the services in the approach and take-off zone, pursuant to Article 4(5), first subparagraph.
3. The **vast majority** of the Committee were in favour of treatment as non-taxable persons of those providing the services in upper and lower air space, pursuant to Article 4(5), first subparagraph.
4. The Committee was **unanimously** in favour of Eurocontrol being treated as a non-taxable person, both for its en-route navigation control services and for the calculation, collection and redistribution of fees levied on airline companies.

g) Tax arrangements applicable to tourist assistance operations

Most of the delegations considered that services consisting in the cover of the risks concerned (reimbursement of medical expenses; costs resulting from necessary extension of stay; repatriation of the insured on medical grounds and of an accompanying relative; travel expenses of the insured in the event of the death of a member of his family; repatriation of the insured; charges for towing, repatriating or abandoning a vehicle; dispatch of spare parts) and supplied by an organisation other than an automobile club should be regarded as insurance services coming under Article 13(B)(a) and that the contribution collected by these organisations by way of consideration for those services should be exempted on the basis of that provision.

The Committee was **unanimous** in its opinion that services supplied by the “assister” to the “insurer” fell within the field of application of the tax and could be taxed or exempted depending on the nature of the service.

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I. QUESTIONS ON THE INTERPRETATION OF COMMUNITY VAT LEGISLATION

a) Treatment for tax (VAT) purposes of shares issued bar companies to increase their capital

The Committee agreed **unanimously** that such operations should either remain outside the scope of VAT or should be exempt as financial transactions.

The **great majority** of delegations took the view that the issuing company's inputs connected with the issue, such as legal or accountancy services, were part of the company's general activity and that therefore the corresponding VAT should be treated in the normal way.

(...)

b) Application of Article 26 of the Sixth Directive

1. The delegations agreed **unanimously** that a travel agency, insofar as it directly supplied its services by its own means, was no longer acting as an agency (Article 26) but was carrying out an economic activity which was subject to the general principles of the Sixth Directive. Each operation would be taxed entirely, or exempted entirely, in the Member State in which the activity was carried out.

If the above conditions are met, the operations connected with the provision of camping facilities and of educational courses, would be subject to the provisions of Article 9(2)(a) and Article 9(2)(c) respectively.

2. The **great majority** of the delegations took the view that the difference in tax treatment between travel agencies established within the Community and those established outside for tours carried out inside the Community (only the margin of the first being taxed) was an inevitable consequence of the territoriality principle laid down in Article 26.
3. The delegations were **unanimous** in recognizing that, under the definitive arrangements, Article 26 did not permit tax to be charged on the margin or part of the margin of a travel agent established in the Community which related to tours to be carried out in non-Community countries.

I. INTERPRETATION OF COMMUNITY PROVISIONS ON VAT

a) Article 22 of Directive 83/181/EEC of 28 March 1983

All delegations considered that the term “total value”, as used in Article 22 of Directive 83/181/EEC, does not include incidental expenses.

As regards the tax arrangements applying to incidental expenses, a **large majority** of delegations considered that, taking into account the problems involved in calculating these expenses, for expediency these expenses too should be exempt if the total value of the goods did not exceed the limits laid down in Article 22 of Directive 83/181/EEC.

b) Place of taxation of supplies of services of translators and interpreters debt collection services and management fees

1. Services of translators and interpreters

A **majority** of delegations considered that the services of translators and interpreters should be regarded as “other similar services” within the meaning of the third indent of Article 9(2)(e) of the Sixth Directive and therefore taxable, when the customer is a taxable person established in the Community, at the place where he has established his business. If the customer is a non-taxable person established in the Community, the general rule at Article 9(1) applies.

2. Debt collection services

A **large majority** of delegations considered that debt collection services should be regarded as financial transactions within the meaning of the fifth indent of Article 9(2)(e) and therefore taxable, when the customer is a taxable person established in the Community, at the place where he has established his business. If the customer is a non-taxable person established in the Community, the general rule at Article 9(1) applies.

3. Management fees

A **large majority** of delegations considered that management fees should be regarded as “other similar services” within the meaning of the third indent of Article 9(2)(e) and therefore taxable, when the customer is a taxable person established in the Community, at the place where he has established his principal place of business. If the customer is a non-taxable person established in the Community, the general rule at Article 9(1) applies.

c) Making available a recording studio

A **large majority** of delegations considered that the making available of a recording studio together with its equipment and staff should be regarded as a supply of services within the meaning of Article 6(1) of the Sixth Directive. In accordance with Article 9(1) of that Directive, the place where the services are supplied should be regarded as the place where the supplier is established.

If the good produced, that is the recording, is imported into another Member State, the taxable base would be the total value of the good (value of the actual medium plus the cost of the services supplied).

The Committee also agreed to consider at a future meeting the question of possible double taxation if the good were imported by a buyer who does not have the right to deduct input tax.

d) Exercise of the right to deduct for holding companies

A **large majority** of delegations considered that holding companies not carrying out taxable transactions (all transactions being either exempt or falling outside the scope of VAT) should have no right to deduct.

If a holding company also carries out taxable transactions, the right to deduct should be determined in accordance with the general rules of the Sixth Directive.

II. QUESTIONS RAISED ON THE INTERPRETATION OF THE COMMUNITY PROVISIONS ON VAT

1. Arrangements applicable to payments to farmers who agree to abandon milk production

A **majority** of delegations considered that the farmer's commitment to abandon milk production, whether voluntary or as a result of a legal obligation, constituted a supply of services under the second indent of Article 6(1) of the Sixth Directive and so was liable to VAT in accordance with Articles 2 and 11 of that Directive.

2. Taxation of travel agents' services in respect of international flights

In view of the difficulties experienced in the taxation of the services of travel agents in accordance with Article 26(3) of the Sixth Directive in respect of flights between the Member States even with no intermediate landings other than technical stops and of flights to non-member countries, the **majority** of delegations considered for reasons of simplicity that in the first case the entire margin should be taxed and in the second case the entire margin should be exempt. Such a measure of simplification does not exclude travel agencies proceeding in conformity with Article 26(3)

3. Taxation of travel agents' services in connection with, and ancillary to, cruises

3.1. A **large majority** of delegations considered that cruises are in principle covered by Article 26 of the Sixth Directive and that accordingly the sale of tickets for cruises by tour operators established in the Community is covered by the provisions of that Article.

3.2. A **large majority** of delegations considered that, where the cruise is offered directly to passengers by a company organising cruises on board its own vessels, ancillary services, particularly those relating to excursions or hotel accommodation provided by other taxable companies to the cruise company for re-sale to passengers, are covered by Article 26 and that accordingly the service as a whole should be broken down by distinguishing those services from the main services which, in this case, follow the general rule for the taxation of the supply of services.

- 3.3. In view of the difficulties experienced in the taxation of travel agents in respect of the organisation of cruises under Article 26(3) of the Sixth Directive, the **majority** of delegations considered that, for reasons of simplicity, since the supply of transport remained the main service provided by the cruise, one of the following three schemes would be applicable, depending on where the cruise took place
- a) where the cruise is carried out exclusively between Community ports, the transaction is to be regarded as taking place entirely within the Community and the agents margin should be taxed in accordance with Article 26(2);
 - b) where the cruise leaves a Community port for one in a non-member country, the transaction should be regarded as taking place entirely outside the Community and so the whole of the agents margin should be exempt in accordance with Article 26(3);
 - c) where the cruise calls at ports in and outside the Community, only the portion of the agents services relating to transactions taking place outside the Community should be exempt in accordance with Article 26(3).

Such a measure of simplification does not exclude travel agencies from proceeding in conformity with Article 26(3).

4. Taxation of travel agents' services in respect of the organisation of travel to the Canary Islands and to Ceuta and Melilla

The Committee **unanimously** considered that travel agencies which organise travel to the Canary Islands and to Ceuta and Melilla, using services provided by other taxable persons, are supplying services which, in accordance with Article 26(3), can be regarded as those of an intermediary exempted under Article 15(14).

a) Tax arrangements for actuarial services

1. The Committee **unanimously** agreed that actuarial services (e.g. calculations of probability and of premiums) were not covered by the exemption provided for in Article 13(B)(a) of the Sixth Directive.
2. The **great majority** of the delegations considered that the place of supply for those services was, as a rule, the place where the customer was established pursuant to Article 9(2)(e) of the Sixth Directive.

b) Tax arrangements for joint associations in the field of industrial medicine

The **great majority** of the delegations thought that transactions carried out by inter-company associations for occupational healthcare should either be exempted under Article 13(A)(1)(c) and (g) of the Sixth Directive, or considered to be outside the scope of the tax.

II. QUESTIONS CONCERNING THE INTERPRETATION OF COMMUNITY LAW ON VAT

1. Arrangements applicable to the operation by youth clubs of canteens and premises for the supply of drink
 - a) The **large majority** of delegations took the view that the supplies referred to in Article 13(A)(1)(h) should be closely linked to the attainment of the provisions objective, i.e. the protection of children and young persons; accordingly, such supplies could not qualify for exemption if they were not indispensable to the performance of the exempted activities. It was for the Member States to decide what was indispensable in the light of the social protection objective and the type of protection offered by the organisation concerned.
 - b) The **majority** of delegations thought that the words “in connection with events” in Article 13(A)(1)(o) of the Sixth Directive should be interpreted restrictively, so that the exemption was applied in exceptional circumstances only to the operation by youth clubs of canteens and premises for the supply of drink and that, consequently, it related only to transactions in connection with a limited number of events in a given year which therefore were neither continuous nor long-term.
2. Taxable amount in the case of transactions involving the use of slot machines

The **majority** of delegations took the view that the taxable amount in the case of transactions involving the use of slot machines consisted, where such transactions were not exempt from VAT under Article 13(B)(f) of the Sixth Directive, of the total amount effectively staked by the player. This amount corresponded to the total stake including any winnings which were restaked without first being paid out.

3. Paperless invoicing of one taxable person by another in the context of Article 22 of the Sixth Directive

The **large majority** of delegations took the view that Article 22 of the Sixth Directive did not preclude the introduction of paperless invoicing.

Such invoicing would nevertheless require prior authorisation which a Member State could make conditional on compliance with the obligations necessary for ensuring that tax was properly collected. It could, in particular, lay down that the issue of paper invoices should be retained, albeit provisionally, during a trial period.

4. Tax treatment of the repair, maintenance and renovation of housing used exclusively for private purposes

The **large majority** of delegations considered that tax on expenditure on the purchase, repair, maintenance and renovation of housing was not deductible, where such housing was used by employees, directors or members of the taxable business or by sole traders themselves, provided that such expenditure was (exclusively) intended to meet domestic housing needs, and where it was linked to the provision of housing, itself exempt.

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II. QUESTIONS CONCERNING THE INTERPRETATION OF THE COMMUNITY RULES ON VAT

1. Interpretation of the concept of work made up from a customer's materials within the meaning of Article 5(5)(a) of the Sixth Directive

The **great majority** of delegations considered that Article 5(5)(a) can also be applied when the provider of the make up work replaces the customer's materials with materials of the same kind. In accordance with Article 11(A)(1)(a) **all** delegations considered that the taxable amount of the transaction is limited to the remuneration for the make up work.

2. Interpretation of Article 9(2)(c) with regard to distance-learning educational services (correspondence courses and electronic transmission of educational data)

The **great majority** of the delegations was of the opinion that, in accordance with Article 9(2)(c) of the Sixth Directive, the place of supply of services constituting correspondence courses was the place where those services were physically carried out.

As far as electronic transmission of educational data is concerned, the **majority** view was that the place of supply could be determined only after examining the facts of the case. In determining whether such transmissions constituted services within the meaning of Article 9(2)(c), such examination should reveal the role played by the educational activities, and in particular their intellectual content and whether or not they followed an organised pattern.

3. Interpretation of Article 20(2) of the Sixth Directive with regard to adjustment of the tax levied on capital goods in use

The **great majority** of the delegations took the view that Article 20(2) of the Sixth Directive conferred on exempted taxable persons whose transactions subsequently became subject to tax the right to adjust deduction of the tax in respect of their capital goods in use. Adjustment should relate to the years remaining to be covered within the period laid down by Article 20(2).

4. Interpretation of Article 11(A)(1)(a) and Article 19(2) of the Sixth Directive with regard to the tax treatment of financial transfers to a commercial or industrial sector operated by a body governed by public law

The **majority** view was that financial transfers from the general budget of a body governed by public law to its sector or one of its sectors subject to VAT did not constitute price-linked subsidies. Such transfers were therefore not taxable under Article 11(A)(1)(a), but could be included in the denominator for the purposes of calculating the deductible proportion, as provided for by the second indent of the first subparagraph of Article 19(1).

5. Interpretation of Article 17 of the Sixth Directive with regard to deductibility of the tax levied on costs associated with a transfer of shares

The delegations were **unanimous** in the view that VAT levied on costs incurred in connection with a transfer of shares was not deductible, since those costs related to transactions that were exempted under Article 13(B)(d)(5).

I. QUESTIONS RAISED CONCERNING THE INTERPRETATION OF THE COMMUNITY RULES ON VAT

1. Tax treatment of sales by restaurants on board ferries

With regard to the legal definition of the supply of meals, **most** Member States took the view that this constituted the provision of a service whereas a **minority** thought that this involved the supply of goods. Irrespective of whether these transactions should be deemed to constitute a supply of goods or the provision of a service, **virtually all** the Member States considered the place where they were taxable as being the place where the meals were served.

However, in the interests of simplification the **majority** of Member States do not charge tax since consumption in their territorial waters is minimal.

2. Interpretation of Article 17(6) concerning deduction of tax on leisure and recreational activities

The **great majority** of the delegations considered that the provision contained in the second sentence of paragraph 6 of Article 17 was not at present binding. Therefore Article 17(2) should be taken as the basis for deciding the deductibility of an item of expenditure. This can only be established by an examination of the facts of the particular case.

In practice, the **great majority** of the Member States already excludes, in various circumstances and degrees, the deduction of VAT on expenditure covered by the final sentence of the first subparagraph of Article 17(6).

II. QUESTIONS CONCERNING THE INTERPRETATION OF THE COMMUNITY RULES ON VAT

Tax arrangements applicable to control and support services to air navigation

1. **Almost all** delegations were in favour of application of VAT to the services provided in the airport zone (the services being taxed or exempted on the basis of Article 15(9).
2. The **majority** of the Committee were in favour of treatment as non-taxable persons of those providing the services in the approach and take-off zone pursuant to Article 4(5), first subparagraph, where those suppliers were bodies governed by public law.
3. The **majority** of the Committee were in favour of treatment as non-taxable persons of those providing the services in upper and lower air space pursuant to Article 4(5), first subparagraph, where those suppliers were bodies governed by public law.
4. The Committee was **unanimously** in favour of Eurocontrol being treated as a non-taxable person both for its en route navigation control services and for the calculation, collection and redistribution of fees levied on airline companies.

These guidelines cancel and replace those agreed at the Committee's 22nd meeting on 19 and 20 March 1987 (doc. XXI/889/87 final).

I. QUESTIONS RAISED CONCERNING THE INTERPRETATION OF THE COMMUNITY RULES ON VAT

1. Place of taxation of laboratory analyses of pharmaceutical samples carried out to ascertain whether products meet the technical specifications in force

A **large majority** of delegations took the view that laboratory analyses of pharmaceutical samples carried out to ascertain whether products meet the technical specifications in force should be taxed at the place where the customer is established in accordance with the third indent of Article 9(2)(e) of the Sixth Directive.

2. Interpretation of Article 13(B)(a) of the Sixth Directive

Almost all the delegations considered that the supply by insurance brokers and agents of services which consisted in looking after the physical management of claims (informing the policy-holder as to the extent of his rights, organising his defence, arranging a lawyer or expert for him, etc.) was not covered by the exemption provided for in Article 13(B)(a) of the Sixth Directive.

A **large majority** of delegations took the view that the services supplied by average brokers in the field of marine insurance – such as the appointment of claims experts, the investigation of fraudulent claims, and similar services – should be taxed unless they were exempted under Article 15(8) of the Sixth Directive.

A **large majority** of Member States considered that services associated with an overall group life assurance policy and invoiced separately to an employer (such as the preparation of an actuarial study, the compilation of individual record sheets for each employee, and other similar services) could not be exempted under Article 13(B)(a) of the Sixth Directive.

Almost all the Member States felt that the exemption provided for in Article 13(B)(a) did not apply where an insurance company took over the management of another insurance company's portfolio and where what was involved was not the transfer of the portfolio but only its management.

3. Interpretation of Article 13(A)(1)(c) of the Sixth Directive – hospital and medical care

With regard to certain care services supplied to patients by companies employed to do so by a hospital, **almost all** the delegations took the view that such services were covered by the exemption provided for in Article 13(A)(1)(c) of the Directive irrespective of the recipient of the invoice but provided that the services in question were of a typically medical nature as defined by each Member State. A **large majority** of delegations considered that this exemption applied to general care services also of typically medical nature provided at home on behalf of an institution. In the opinion of **all** the delegations, medical research was not covered by the exemption.

4. VAT arrangements applicable to transactions linked to the additional guarantee offered when durable goods are sold

The delegations were **unanimous** in their view that an additional guarantee offered by a seller of durable goods was not covered by the exemption provided for in Article 13(B)(a) of the Sixth Directive. The sum paid by the purchaser for the additional guarantee had to be taxed either by including it as an incidental expense in the taxable amount for the product sold in accordance with Article 11(A)(2)(b) or as a separate service provided under a maintenance contract. A repair carried out by the seller under an additional guarantee was not subject to VAT since it had already been taxed when the product was sold or when the maintenance contract was concluded.

5. Application of Article 13(B)(d)(6) of the Sixth Directive to collective investment undertakings with a corporate structure or constituted under statute

Most of the delegations took the view that the exemption provided for in Article 13(B)(d)(6) of the Sixth Directive could also be applied to portfolio management services supplied by an outside enterprise to undertakings with a corporate structure or constituted under statute.

**I. QUESTIONS RAISED CONCERNING THE INTERPRETATION OF THE
COMMUNITY RULES ON VAT**

Invoices issued by Eurocontrol in the context of the collection of charges for air-navigation services

The **large majority** of delegations consider that the respecting of the provisions concerning invoicing and the right of deduction of VAT can, under the present conditions, be ensured by the mention on the invoices of the fact that these are issued by Eurocontrol in the name and on behalf of the national air navigation control organisations.

The delegations also expressed the wish to pursue the examination of this question and to look for a longer term solution, in particular by the enlargement of point 4 of Annex D of the Sixth Directive.

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II. QUESTIONS CONCERNING THE INTERPRETATION OF THE COMMUNITY RULES ON VAT

1. VAT arrangements applicable to European Economic Interest Groupings (EEIGs)

The delegations **unanimously** considered that European Economic Interest Groupings were subject to VAT in respect of their dealings with both third parties and their members where they supplied goods or services for a consideration. However, **most** of the delegations took the view that an EEIG was not subject to VAT merely because it had received capital contributions.

The delegations agreed that such transactions should follow the tax rules laid down in the Sixth Directive, particularly those relating to the place of taxation; this meant that, where payment for a number of differing services was calculated together, a distinction should be made by appropriately subdividing the invoice between the portion that was taxable at the supplier's place of establishment and the portion linked to another place of taxation. These transactions might be exempted on the basis of Article 13 provided that the relevant conditions were fulfilled.

2. Conditions applicable to transfers of footballers

All the delegations took the view that the fee paid when a footballer was transferred from one club to another was the consideration for a supply of services within the meaning of Article 2 of the Sixth Directive and should be subject to tax. However, sums paid as compensation for breach of contract and to penalise the failure to fulfil an obligation by one of the parties did not fall within the scope of VAT as they were not a consideration for services supplied.

Most delegations considered that such a fee should be taxed at the place where the purchaser was established, in accordance with either the first or the sixth indent of Article 9(2)(e).

3. Interpretation of Article 9 of the Sixth Directive (supply of services by veterinary surgeons)

A **majority** of delegations considered that the supply of services by veterinary surgeons should be regarded as work on movable tangible property within the meaning of Article 9(2)(c) of the Sixth Directive and should be taxed at the place where the services were physically carried out.

II. QUESTIONS RAISED ON THE INTERPRETATION OF THE COMMUNITY VAT PROVISIONS

VAT treatment of software

The VAT Committee agreed **unanimously** the following guideline:

1. Definition of normalized and specific software

Normalized products, as opposed to specific software, are mass produced items which are freely available to all customers and usable by them independently after installation and limited training in a standard form to carry out the same applications or functions. They are made up of a coherent set of programs and support material and often include the service of installation, training and maintenance. Personal computer software, home computer software and game packages are in this category. Also included are standard packages adapted at the supplier's instigation to include security or similar devices.

2. Tax treatment

Cession of standardized software shall not be considered as the supply of goods when:

- the transfer of the right to dispose of the property as owner cannot be established;
- the goods are not tangible as there is no support or when the subject of the contract is the transfer of the copyright.
 - i) In the case of normalized software (other than the case mentioned above), there is a single import of goods and the taxable amount on importation is the whole value.
 - ii) In the case of specific software, there is an import of the physical support and a supply of services (the cession of data). Where the recipient is a taxable person the physical support will be treated as an accessory to the data (ancillary service to the cession of data) and both elements of the service will be taxed within the Member State of the recipient as a single supply of services in accordance with the criteria laid down in the third indent of Article 9(2)(e). In order to avoid double taxation the physical support will not be taxed at import.

- iii) Purchases of specific software by non-taxable persons in other Member States are the Member state of the recipient, because the service is subject to tax in the Member State of the supplier of the service under Article 9(1).
- iv) Purchases by non-taxable persons from third countries of specific software should be treated as services made use of in the Member State of consumption by application of Article 9(3)(b) and, accordingly, subject to VAT there. However, for practical reasons they may instead be treated as the import of goods, but the whole value invoiced, support plus data, must be included in the taxable amount

This guideline cancels and replaces the guideline agreed at the 18th meeting of the VAT Committee held on 8 and 9 March 1985 (Document XV/199/85 Final 3).

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II. QUESTION CONCERNING THE INTERPRETATION OF THE COMMUNITY RULES ON VAT

Tax arrangements applicable to tangible movable property presented to game-show winners

The delegations agreed **unanimously** that private television companies were taxable persons within the meaning of Article 4(1) of the Sixth Directive with respect to all their activities.

In the case of a private television company which, as part of a televised game-show organised jointly with a number of commercial businesses, presented winners with items of tangible movable property donated or to be donated by the businesses concerned, the delegations were **unanimously** of the view that two taxable transactions took place: the supply of an advertising service the consideration for which was the goods provided and possibly money, and the supply of those goods, such supply being taxable in the hands of the business.

A **large majority** of the delegations took the view that presentation of the goods to the winner ranked as an application within the meaning of Article 5(6) that was taxable in so far as there was a right to deduct input tax.

- a) Tax arrangements for defective goods¹ which are refused by the taxable purchaser in the Member State of destination (MS2) and for goods returned to the Member State of origin (MS1) for repair (doc. XXI/273/94, No 170)

The Committee **unanimously** took the view that, if a supplier in MS1 supplies goods to a taxable customer in MS2, the following arrangements apply:

- 1) The permanent return of goods by the customer in MS2 to his supplier in MS1 before accepting them, i.e. without there being any transfer of the right to dispose of the goods as their owner, may be considered equivalent to a temporary movement of goods and, therefore, be covered by the final indent of Article 28a(5)(b). Since this would constitute a non-taxable transfer, the supplier is not required to identify himself in MS2.
- 2) However, if the goods are not returned to MS1 but either remain in MS2 or are dispatched or transported to another country, the supplier will be deemed to have carried out a taxable transfer and must identify himself in MS2. However, if a short time has elapsed between the first dispatch and the supply to a new purchaser, the first refused supply can be ignored.
- 3) The return of goods by the customer in MS2 to his supplier in MS1 after the right to dispose of them as their owner has been transferred must be regarded as a cancellation of the initial transaction (supply/purchase). Thus, it does not give rise to a supply of goods from MS2 to MS1.
- 4) However, if the goods are not returned to MS2 but either remain in MS1 or are dispatched to another country, the supplier will be deemed to have carried out a taxable transfer and must identify himself in MS2. However, if a short time has elapsed between the first dispatch and the supply to a new purchaser, the first refused supply can be ignored.

¹ The term “defective goods” is meant to cover not only goods inappropriate for use by the recipient, but also goods which are refused by purchasers because they do not correspond to their expectations (e.g. quality, size, design ...).

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- 5) The return of goods by the customer in MS2 to MS1 for the purposes of their repair under a guarantee is carried out in order for a service to be provided and is therefore covered by the fifth indent of Article 28a(5)(b), irrespective of whether the service is provided for valuable consideration or free of charge. Since the transfer is non-taxable, the customer is not required to identify himself in MS 1, to which the goods have been returned temporarily for repair.
- b) Application of Article 13(A)(1)(n) of the Sixth Directive to services supplied by soloists (doc. XXI/234/94, No 169)

The Committee **unanimously** took the view that the exemption laid down by Article 13(A)(1)(n) of the Sixth Directive concerning certain cultural services supplied by, bodies governed by public law or by other cultural bodies recognized by the Member State concerned cannot apply to services supplied by individual artists. As the Court of Justice has recalled on several occasions, since exemptions must be interpreted restrictively, the concept of services supplied by public or recognized bodies cannot be widened to cover services supplied individually by artists.

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I. QUESTIONS RAISED ON THE INTERPRETATION OF THE COMMUNITY'S VAT PROVISIONS

Question raised by the German delegation on the implementation of Article 15(10) of the Sixth Directive (XXI/1824/94, No 176)

The Committee **unanimously** took the view that, for the purposes of defining an international organisation within the meaning of Article 15(10), it is sufficient for States or international organisations to agree to set up an organisation, even if this is not based on a traditional convention under international law (negotiation of a text, signing and/or ratification).

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II. QUESTIONS RAISED ON THE INTERPRETATION OF THE COMMUNITY'S VAT PROVISIONS

Question raised by the Dutch delegation on the application of Article 13(A)(1)(i) of the Sixth Directive to vocational training or retraining (XXI/1906/95, No 178)

The Committee **unanimously** took the view that the concepts of vocational training or retraining for the purposes of applying the exemption provided for in Article 13(A)(1)(i) covered not only instruction relating directly to a trade or profession but also any instruction aimed at acquiring or updating knowledge for vocational purposes. In this respect, the duration of a course was not a determining factor in assessing the eligibility of an application. If, in accordance with Article 13(A)(1)(i), it was up to the Member States to define which bodies could be deemed to have objects similar to those of public education, they were obliged to lay down clear criteria which would permit such bodies to be recognized as such.

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II. QUESTIONS CONCERNING THE INTERPRETATION OF COMMUNITY VAT PROVISIONS

- 1. Question from the French delegation concerning the rate applicable to the hiring-out of tents, caravans and mobile homes at camping sites (doc. XXI/343/95, No 186)**

Virtually all the delegations considered that the hiring-out of tents, caravans and mobile homes at camping sites constituted supplies of holiday accommodation as referred to in point 11 of Annex H to Directive 92/77/EEC of 19 October 1992, which lists the goods and services which may be subject to reduced rates of VAT.

- 2. Question from the French delegation concerning the right to deduct VAT on expenditure incurred in connection with an indemnity (doc. XXI/390/95, No 181)**

All the delegations took the view that an indemnity received by a taxable person and intended to make good a loss did not constitute the consideration for a service and did not fall within the scope of the Sixth Directive.

**II. QUESTIONS CONCERNING THE INTERPRETATION OF THE COMMUNITY
VAT PROVISIONS**

1. Question from the Commission departments and the French delegation

Article 14(1)(i) and Article 11(B)(3)(b)

**Tax arrangements applicable to transport of movable property and personal effects
imported into the Community in connection with a change of residence**

(doc. XXI/242/95, No 179)

Virtually all the delegations considered that transport services connected with the importation of movable property carried out as part of a change of residence [importation qualifying for exemption under Article 14(1)(d)] were exempt from tax under Article 14(1)(i) of the Sixth Directive.

2. Question from the Danish delegation

Article 13(B)(b)(2)

Letting of land berths for laying up boats

(doc. XXI/1587/95, No 183)

A **majority** of delegations held the view that the letting of land berths for laying up boats was not exempt from tax under Article 13(B)(b) of the Sixth Directive, since such transactions did not qualify for exemption under Article 13(B)(b)(2).

II. QUESTIONS CONCERNING THE INTERPRETATION OF THE COMMUNITY VAT PROVISIONS

5.2 Article 16

Removal from tax-warehousing arrangements and person liable for payment (Doc. XXI/2094/95 – Working Paper No 184)

Large majority of the delegations confirmed the conclusions agreed by Working Party No 1 at its meeting of 18 and 19 May 1992 and took the view that the fact of goods being removed from warehousing arrangements did not in itself constitute a taxable transaction. Nevertheless, when goods were removed from warehousing arrangements, it should be checked that the amount of value added tax due on the stored goods was the same as if exemption had not applied.

In the event of the goods having been resold successively in the warehouse, the delivery resulting in their being removed from warehousing arrangements no longer qualified for exemption under Article 16; application of the normal taxation or exemption rules for this delivery makes any other corrective measures superfluous.

However, in cases where removal from warehousing arrangements was unconnected to the delivery of the stored goods, corrective measures should be implemented where the goods remained on the territory of the Member State which authorised the warehouse. Subject to the VAT Committee being consulted, the Member States were competent to take appropriate measures which with view of a **large majority** of delegations could, however, under no circumstances consist in making the fact of removing goods from warehousing arrangements a taxable transaction in itself.

5.3 Article 16(1)(B)(e)

Goods likely to be placed under warehousing arrangements other than customs warehousing (Doc. XXI/2024/95 – Working Paper No 185)

All delegations took the view that goods subject to excise duties could not give rise to exclusive placing under the VAT tax-warehousing arrangements provided for in Article 16(1)(B)(e). However, the Member States agreed that places which were approved as warehouses pursuant to Directive 92/12/EEC on excise duties could be recognized in parallel as VAT warehouses.

II. QUESTIONS WHICH CONCERN THE APPLICATION OF COMMUNITY VAT PROVISIONS

1. 5.1

Article 16(1)(B)(e)

Goods to which warehousing arrangements other than customs warehousing apply

(Doc. XXI/2024/95 – Working Paper No 185)

(1st part of the document approved at the 47th meeting – Doc. XXI/1279/96)

EXCLUSION OF THE GOODS INTENDED TO BE SUPPLIED AT THE RETAIL STAGE

The Committee considers **almost unanimously** that, in order to preserve the general VAT principle of taxation at each stage of production/marketing, recourse to warehousing arrangements other than customs warehousing should not be automatic.

In this respect, the condition provided under paragraph 1(e) according to which goods may not have been “intended to be supplied at the retail stage” should be interpreted not only with regard to the nature of the goods but also taking account of the possible different destinations of the goods such as whether they are intended for export or use in a production process as opposed to being destined for distribution for retail sale. The result is that the nature of the goods alone is not sufficient as the criterion to determine tax warehouse treatment but under no circumstances is it permissible for retail stock to be kept in a tax warehouse.

2. 5.2

Article 28a(5) and 28b(F)

Consolidated document on transactions, other than bilateral, involving work on movable tangible property (cases No 1 to 4.2)

(Doc. XXI/2118/95 Rev.2 – Working Paper No 188)

The Committee **unanimously** takes note of the up-dating work on the simplification of a number of contract work transactions already agreed by the Working Party No 1 at its meeting on 25 and 26 May 1993. The changes are made necessary (i) by the removal of the term “contract work” (deletion of Article 5(5)(a)) and the amendment of Article 28a(5), and (ii) by the insertion of a new section F in Article 28b in connection with the adoption of Council Directive 95/7/EC of 10 April 1995.

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The delegations agreed **unanimously** that:

1. All the simplification cases have the following elements in common:
 - the agreed simplification for applying tax consists in treating, in an identical manner, transactions which are similar from a tax and economic viewpoint;
 - the conditions governing the application of Section F of Article 28b are met as the goods, that have to undergo the work, are dispatched or transported outside the Member State where the services were physically carried out;
 - if the goods to be worked on are making temporary stops or are strictly speaking not subject of an expedition or re-expedition towards the principal, the finished products have, from the outset, a well known final destination: they are solely destined to the client/principal.
2. All simplifications are based on the **same interpretation**: the requirement that the finished products be returned to the Member State of initial departure, as foreseen in Article 28a paragraph 5 (b) 5th indent, is deemed to have been satisfied even where temporary stops occur. This presupposes that the **individual places in which the work is carried out are not regarded as places of arrival of the goods to be worked on.**

The simplification examples described constituted typical cases for which precise conditions have been laid down to enable simplifications to be made. Provided that other Community tax legislation was not affected and subject to the conditions laid down being observed, each of the simplifications envisaged could in practice be combined with any of the other simplifications.

The Committee **unanimously** considers that the document XXI/2118/95 Rev.2 could be published in order to make this information available to operators and to strengthen the coherence of the implementation of these simplifications within the Union.

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3. 5.10

Article 15(2)

Method of calculation of the 175 ECU threshold

(Doc. XXI/2117/95 – Working Paper No 187)

This guideline was adopted at the 51st meeting

The delegations are **unanimously** of the opinion that, for the application of the exemption according to Article 15(2), the threshold of ECU 175 (or the lower value specified by the Member State in which the supply is deemed to be located) can be ascertained by invoice: implying that the exemption can concern the delivery of several goods shown on a single invoice, issued by the same taxable person for the same customer. The threshold mentioned cannot refer to various invoices issued by one or by different taxable persons regarding deliveries carried out for one or more customers.

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II. ANY OTHER BUSINESS

1. 7.1

Article 15(10)

Common form for the application of the Article 15(10) exemption

(Doc. XXI/186/96 – Working Paper No 195)

All delegations agreed to the common VAT and excise duty exemption certificate for the application of Article 15(10) of the Directive as this had been amended following linguistic comments having been received from delegations.

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I. QUESTIONS WHICH CONCERN THE APPLICATION OF COMMUNITY VAT PROVISIONS

5.3.

Article 18 paragraph 1(b)

Customs import documents – Indications required to exercise the right to deduction of VAT payable on import

(Doc XXI/96/0801 – Working Paper No 214)

The Committee **unanimously** feels that Article 18 paragraph 1(b) of the Sixth Directive must be interpreted as meaning that the import “document” specifying the recipient or the importer of the goods and stating or permitting the calculation of the amount of tax due does not necessarily have to be an original paper copy of a certificate, but may take the form of electronic data insofar as the importing Member State has introduced a system allowing customs formalities to be completed by computer.

In this case, it falls to the importing Member State, which lays down the rules for the making of the declarations and payments of VAT, to take the necessary measures to ensure that the import declaration system provides every opportunity for checking regarding the exercise of the right to deduction, e.g. via electronic means.

The **vast majority** of the Committee consider that in accordance with Article 3(a) of the Eighth Directive, the current legal situation is such that a taxable person may not obtain a refund of value-added tax if the original paper copies of the import documents are not attached to the application. However, this does not prevent the customs administration from certifying as original a printout of data transmitted electronically.

Indeed, regarding application of the Eighth Directive, it must be taken into account that the person applying for a refund does not keep in the refunding Member State any records which include the originals and which would permit checks to be carried out at a later date.

I. ANY OTHER BUSINESS

7.1.

Application of VAT on telecommunication services – Derogation based on the Article 27 of the Sixth Directive as approved at the ECOFIN Council on 17.3.1997

All the delegations are of the opinion that a uniform field of application of the derogation approved by the Council on 17 March includes in particular:

- standard connection, subscription and installation transfer charges allowing emission or reception of telecommunication;
- provision of access to a telecommunication network;
- the right to use a network of special lines;
- subscriptions for providing access to the Internet (connection, messaging systems).

Whereas the Committee considered that value added voice telephony services and provision of pay-TV programmes were not included.

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II. QUESTIONS CONCERNING THE INTERPRETATION OF THE COMMUNITY VAT PROVISIONS

5.1 ARTICLES 8 AND 9

Construction of buildings

(Document XXI/95/338 – Working Paper No 218)

This guideline was approved at the 53rd meeting

Virtually all the delegations considered that the construction of houses constituted a supply of services connected with immovable property which Member States however may, by virtue of Article 5(5) of the Sixth VAT Directive, consider to be a supply of goods.

Where construction of houses is classified as a supply of goods, **virtually all** the delegations took the view that the location of this supply is governed by the criteria of Article 8(1)(b) which means that it should be taxed where the work is carried out.

They agreed that the dispatch or transport of materials by the construction firm from one Member State in order for this to be used in the construction of a building in another Member State constitutes a transfer followed by an acquisition of goods. In this respect, the non-established firm must, pursuant to the third indent of Article 22(1)(c), register for VAT purposes in the Member State of acquisition and fulfil the obligations as stipulated. Member States may, under Article 21(1)(d), adopt arrangements whereby tax is payable by another person, inter alios a tax representative.

5.2 ARTICLE 13(A)(1)(Q)

Activities of public radio and television bodies

(Document XXI/1500/96 – Working Paper No 223)

This guideline was approved at the 53rd meeting, subject to linguistic reservations

Almost all the delegations took the view that the main element which serves to identify a television body as a public television body is public funding (public authority subsidies or licence fees). However, amongst other characteristics are special obligations such as a coverage of a certain territory or a linguistic area.

Virtually all the delegations were of the opinion that the broadcasting of programmes for which the radio or television body receives funding through license money and subsidies constitutes the only non-commercial activity of public radio and television bodies. On the other hand, they considered that the sale of television programmes must always be taxed even if the transaction takes place between public bodies.

5.4 ARTICLE 9

**Packages of services supplied in connection with trade fairs and similar exhibitions
(Document XXI/96/610 – Working Paper No 210)**

Cf. the minutes of the 55th meeting point 8.2

The Committee **unanimously** considers that, when in the framework of a fair or similar exhibition, an enterprise intervenes between the exhibitor and the owner or organiser of the exhibition and, for an all-in price, supplies to the exhibitor, a complex package of services comprising, in addition to the provision of a stand, a number of other, related services, the whole package is to be regarded as a single service comprising various components which cannot and need not to be itemised according to their own place of taxation.

As to the place of supply rules, delegations **unanimously** agree that the provision of a single compound service should be subject to taxation in the Member State where the fair or exhibition is located, either on the grounds of Article 9(2)(a) or based on Article 9(2)(c), first indent.

5.5 ARTICLE 9(2)(E)

Transfers of football players

(Document XXI/96/507 – Working Paper No 212 Rev. 1)

This guideline was approved at the 53rd meeting

A **large majority** of delegations confirm the initial guideline agreed by the Committee in its 34th meeting, namely that transfer fees are to be taxed according to Article 9(2)(e) at the place where the customer has established his business or has a fixed establishment to which the service is supplied.

5.6 ARTICLE 13(A)(1)(A)

Scope of the exemption applicable to deliveries by public postal services

(Document XXI/377/97 – Working Paper No 232)

This guideline was approved at the 53rd meeting

The delegations **unanimously** agreed that a member state's "public" postal service can only be treated as such when it operates within that country. A public postal service operating in a country other than its own should lose its status as a public service and, therefore, the right of exemption provided for under Article 13(A)(1)(a).

III. ANY OTHER BUSINESS

7.1 Practical application of Article 27 derogations on the telecommunication services

This guideline was approved at the 55th meeting

Article 9(3)(b) of the Directive is aimed at taxing services supplied by persons not established in the EU where the effective use and enjoyment of the services take place within the Union. **Nearly all** delegations consider that telecommunication services should only be treated as having been effectively “used and enjoyed” within the EU if the customer is resident in the EU, i.e. has his domicile there. Where it is clear from the general circumstances under which the service is supplied, one could have recourse to the billing address. Consequently, services provided by third-country telecommunication companies to tourists or visitors to Europe would not be taxed.

The delegations consider, on the other hand, that services supplied by Community telecommunications companies to EU tourists and visitors who go to countries outside the Community should be taxed, pursuant to Article 9(1) of the Directive. However, a Member State could apply Article 9(3)(a) to such services.

II. QUESTIONS CONCERNING THE INTERPRETATION OF THE COMMUNITY VAT PROVISIONS

5.2 ARTICLE 4

Services supplied by company directors
(Document XXI/97/1.424 – Working Paper No 239)
Cf. the minutes of the 56th meeting point 3.2

All delegations agreed that services supplied by a legal person as a member of a company's board of directors should be regarded as economic activities carried out independently within the meaning of Article 4(1) and (2) and that they should therefore be subject to VAT.

5.3 ARTICLE 9

Place of supply of services involving the tracing of heirs
(Document XXI/97/1.658 – Working Paper No 242)
Cf. the minutes of the 55th meeting point 8.2
This guideline was approved at the 56th meeting

The Committee unanimously agrees that the tracing of heirs falls within the scope of the third indent of Article 9(2)(e), either as a service similar to one of the activities referred to in that Article or as the supply of information.

5.4 ARTICLE 6

Transfers of football players
(Document XXI/97/1.687 – Working Paper No 241)
Cf. the minutes of the 55th meeting points 2.3 and 3
This guideline was approved at the 56th meeting

A large majority of delegations took the view that a payment made by a football club to a player's original club (a payment required by law and intended to compensate for expenditure incurred in training and developing the player) after the original contract had expired or had been terminated constituted a supply of services that was subject to VAT, even if the old club no longer had any rights over the player.

II. QUESTIONS CONCERNING THE INTERPRETATION OF THE COMMUNITY VAT PROVISIONS

5.3 ARTICLE 12(3) AND ANNEX H CATEGORY 4 Reduced rates on medical equipment and other appliances (Document XXI/97/1863 – Working Paper No 252)

The delegations **almost unanimously** agreed that Member States may apply a reduced VAT rate to products specifically designed for disabled people (medical equipment, aids and other similar appliances) which are normally purchased or used only by (permanently or temporarily) disabled people to alleviate or treat their complaints. Products normally used for other purposes (e.g. cordless telephones) are excluded by the provision, as are also medical equipment and aids designed for general use and not specifically for disabled people (e.g. x-ray equipment).

5.4 ARTICLE 4 Assignment of broadcasting rights in respect of international football matches by organisations established abroad (Document XXI/97/1.864 – Working Paper No 244) *This guideline was approved at the 55th meeting*

The Committee **unanimously** agrees that the assignment of TV broadcasting rights in respect of football matches by bodies established in third countries constitutes an economic activity taxable in the hands of the customer on the basis of Article 9(2)(e), first indent, of the Sixth Directive.

5.5 ARTICLE 9(2)(C) 4TH INDENT AND 28B(F) Application in cases of total or partial subcontracting (Document XXI/96/0.314 – Working Paper No 198 Rev.1) *This guideline was approved at the 55th meeting*

The Committee **unanimously** agrees that partial or total subcontracting of work on movable tangible property does not alter the intrinsic nature of the service supplied by the principal contractor in his relationship with his co-contractor customer and which therefore still ranks as work in respect of movable tangible property, even where the work is not “physically” carried out by the principal contractor who had undertaken to carry out the work, for which he bears full contractual responsibility vis-à-vis the customer.

In the case of partial subcontracting, provided that in the relationship between the principal contractor and the final customer the conditions under Article 28b(F) are not met, a **large majority** of the delegations considered that, in accordance with the fourth indent of Article 9(2)(c), the place of the supply of the service by the principal contractor (including the work carried out by the subcontractor or subcontractors) in its entirety is the place where his own part of the work is physically carried out.

5.6 ARTICLE 28B(B)

Distance selling

(Document XXI/97/2.034 – Working Paper No 247)

The Committee agrees **almost unanimously** that Article 28b(B) ensuring taxation at destination of distance sales does not apply to supplies carried out until such time as, in the course of the calendar year, the amount laid down by the Member State of arrival has been exceeded (except in the situations covered by the second indent of paragraph 2 or where the taxable person has exercised the option under paragraph 3).

Taxation at destination can apply only to supplies of goods which give rise to the overstepping of the threshold, subsequent supplies, and all sales transacted during the year following that in which the threshold was exceeded.

5.7 ARTICLE 28A

Purchasing a new car before moving to another Member State

(Document XXI/97/2.035 – Working Paper No 248)

This guideline was approved at the 55th meeting

The Committee agrees **unanimously** that the transfer of a vehicle which still satisfies the definition of “new means of transport” within the meaning of Article 28a(1a)(b), second subparagraph, is not a taxable transaction when made by a private individual on moving house. It also agrees that, similarly, the return of a vehicle initially supplied under the exemption provided for in Article 28c(A) cannot be regarded as a taxable transaction authorising Member States to demand that the owner pay the VAT not collected when the initial supply was exempted.

The Committee also agrees **unanimously** that only the initial supply should be checked to ascertain whether the conditions for exemption by reason of transport outside the Member State of departure are met: to this end, registration of the vehicle with normal plates may be sufficient criterion for ruling out definitively any exemption in the Member State of purchase; conversely, registration of the vehicle under “transit” plates may indicate that the supply in fact concerns a new means of transport sent or transported to the buyer outside the territory of the Member State of departure but within the Community.

5.8 ARTICLE 28A(1A)(B)

Exceeding the threshold for acquisitions of goods

(Document XXI/97/2.036 – Working Paper No 249)

This guideline was approved at the 55th meeting

Where the rules on the place at which taxable transactions are carried out have been incorrectly applied, the Committee **unanimously** agrees that:

- Each Member State must exercise its powers of taxation, irrespective of events elsewhere (Member State or third country);
- The Member State which collected the VAT incorrectly invoiced must return it to the person liable for the tax (the supplier of the goods or services) in accordance with its own domestic rules. Refunding the sum thus recovered to the final customer depends entirely on the contractual relations between the supplier and his customer.

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II. QUESTIONS CONCERNING THE INTERPRETATION OF THE COMMUNITY VAT PROVISIONS

6.2 ARTICLE 28C(B)(A)

Scope of exemption

(Document XXI/98/587 – Working Paper No 258)

A **large majority** of delegations were of the opinion that the exemptions without a right to deduct input VAT mentioned under Article 13 of the Sixth VAT Directive continue to apply when the goods are dispatched or transported from the Member State of the supplier to another Member State and are subject to an intra-Community acquisition according to Article 28a in the Member State of arrival.

This intra-Community acquisition will be exempted according to Article 28c(B)(a) of the Sixth VAT Directive.

6.4 ARTICLE 9(2)(E)

Concept of agent in Article 9(2)(e)

(Document XXI/98/1283 – Working Document No 266)

All delegations agreed that Article 9(2)(e), seventh indent of the Sixth VAT Directive covers supplies by agents who act both in the name and for the account of the buyer and in the name and for the account of the supplier of services referred to in Article 9(2)(e).

6.5 ARTICLE 9(1) AND (2)(E), LAST INDENT

The hiring out of movable tangible property, with the exception of all forms of transport (Document XXI/98/1127 – Working Document No 267)

All delegations agreed that trailers and semi-trailers should be considered means of transport for the application of Article 9(2)(e), eighth indent of the Sixth VAT Directive.

6. QUESTIONS CONCERNING THE INTERPRETATION OF THE COMMUNITY VAT PROVISIONS

- 6.1 Origin:** Denmark
References: Article 8(1)(c)
Subject: VAT rules applicable to sales of goods on board international means of transport following the abolition of tax-free sales
(Document XXI/98/1623 – Working Paper No 272)

As regards supplies on-board aircraft of goods to be carried away, the Committee **unanimously** agrees that, where the “part of a transport of passengers effected in the Community” referred to in Article 8(1)(c) includes stopovers between its point of departure and its point of arrival, this transport shall be regarded as a single journey on condition that, except in the case of force majeure, the means of transport used and the flight number remains the same throughout the journey and that each stopover is of a short duration.

8. NEW EC LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED COMMUNITY VAT PROVISIONS

- 8.1 Origin:** Commission
References: Council Directive 98/80/EC of 12 October 1998
Subject: Questions linked to the application of Council Directive 98/80/EC of 12 October 1998 (Special Scheme for Investment Gold)
(Document XXI/98/1930 – Working Paper No 274)

[1] Definitions (Point A of Article 26b)

All the delegations agree that, for the application of the definition in Article 26b(A)(i), the weights accepted by the bullion markets include at least the following weights:

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Unit	Weights traded
Kg	12,5/1
Gram	500/250/100/50/20/10/5/2,5/2/(1)
Ounce (1oz = 31,1035 g)	100/10/5/1 ¹ / ₂ / ¹ / ₄
Tael (1 tael = 1,913oz.) ¹	10/5/1
Tola (10 tolas = 3,75oz.) ²	10

All delegations agree to use the market value of gold coins and of the gold contained in them on 1 April of each year, to check compliance with the condition mentioned in the fourth indent of Article 26b(A)(ii).

[2] Special arrangements applicable to investment gold transactions (Point B of Article 26b)

[a] A **large majority** of delegations agree that the exemption of Article 26b(B), first paragraph, is restricted to supplies of goods and does not cover transactions qualifying as supplies of services. Accordingly, Article 8(1) determines the place of supplies of investment gold exempted under Article 26b(B).

[b] When investment gold represented by certificates for allocated or unallocated gold is physically located in another Member State than the Member State where the certificate is handed over to the buyer, **almost all** delegations consider that Article 22(9)(a), third indent, allows Member States to release the supplier from his obligations in the Member State where the gold is physically located, provided that he is carrying out in that Member State none of the transactions referred to in Article 22(4)(c).

¹ Tael = a traditional Chinese unit of weight. The nominal fineness of a Hong Kong tael bar is 990 but in Taiwan 5 and 10 tael bars can be 999,9 fine.

² Tola = a traditional Indian unit of weight for gold. The most popular sized bar is 10 tola, 999 fineness.

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II. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 6.1 Origin: Italy**
References: Articles 8(1)(a) and 28b(F) of the Sixth VAT Directive
Subject: Contracts concluded between two taxable persons in the Community without any supply of goods by the customer
(Document XXI/99/0637 – Working Paper No 282)

All delegations **unanimously** agree that that the supply of a machine, even if it is assembled following specific requirements of the customer, should be considered as a supply of a good. What the constituting elements of the produced machine are, has no influence on the qualification of the machine as a tangible good.

The place of taxation of this transaction is determined by Article 8(1)(a) when the goods are dispatched or transported or by Article 8(1)(b) if the goods are not dispatched or transported.

When the supplier produces the machine and installs or assembles this machine at the location requested by his client, the operation should be qualified as a supply of goods with installation or assembly, whereby the place of taxation is there where the goods are installed or assembled according Article 8(1)(a) of the Sixth VAT Directive.

However, the operation is considered to be a supply of a service if the supplier would only assemble the different parts of the machine provided to him by his customer. In this case, the place of taxation is covered by Article 9(2)(c) or Article 28b(F) of the Sixth VAT Directive.

4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 4.2 Origin: Netherlands**
References: Article 8 of the Sixth VAT Directive
Subject: Scope of the definition “goods installed or assembled”
(Document TAXUD/00/1810 – Working Paper No 294)

All delegations unanimously agree that for tiling, papering and parqueting the place of supply is there where the immovable property is situated. Some Member States reach this conclusion because they consider these operations as a supply of a service, to be taxed in accordance with the provisions of Article 9(2)(a) of the Sixth VAT Directive at the place where the immovable property is situated. However, other Member States make use of the option provided for under Article 5(5) of the Sixth VAT Directive, and consider these operations to be supplies of goods. In this case some Member States consider these operations to be supplies of goods with installation or assembly by or on behalf of the supplier, falling within the scope of Article 8(1)(a) of the Sixth VAT Directive, while other Member States consider this to be a supply of goods that takes place at the time the work is finished and therefore falling within the scope of Article 8(1)(b) of the Sixth VAT Directive. For intra-Community operations, the differences in the Member States’ interpretations (supply of goods or supply of services) lead to differences regarding the obligation to submit the recapitulative statement provided for in Article 22(6).

All delegations unanimously agree that the supply of a good, whereby the supplier also carries out certain services, such as the plugging in of a machine or connecting a water pipe to an existing tap and the drainpipe to the outlet, should be considered one single supply of a good without installation or assembly and that these accessory services should be considered as activities of minor importance. This remains, nevertheless, an analysis on an ad hoc basis, case by case.

- 4.3 Origin: Italy**
References: Article 15(2)
Subject: Exemption from VAT for persons domiciled or resident outside the European Community
(Document TAXUD/00/1815 – Working Paper No 296)

The great majority of the delegations take the view that personal luggage should be understood to mean the whole of the luggage which a traveller is in a position to submit to the customs authorities on his departure, as well as that which he has presented in advance to the customs authorities, subject to proof that such luggage was registered as accompanied luggage, at the time of his departure, with the company responsible for conveying him.

- 4.5 **Origin:** **Commission**
 References: **Articles 13, 15, 26b and 28c of the Sixth VAT Directive**
 Subject: **Scope of the exemptions**
 (Document TAXUD/00/1808 – Working Paper No 292)

The Member States agree **almost unanimously** that the exemption mentioned under Article 13 of the Sixth VAT Directive prevails over the exemptions mentioned under Articles 15 and 28c of the Sixth VAT Directive. This implies that supplies of goods that are mentioned under Article 13 of the Sixth VAT Directive are exempted on the basis of this Article, even if they are exported (Article 15) or supplied to a client registered for VAT in another Member State than the Member State of departure and the goods leave the territory of the Member State of departure to the Member States of arrival (Article 28c). The consequence is that for these supplies there is no right to deduct the relevant input VAT for the supplier.

Following the same line of reasoning, a **large majority** of the delegations agrees that the exemption of Article 26b(B) of the Sixth VAT Directive, that introduces a special exemption for supplies, intra-Community acquisitions and imports of investment gold, prevails over the exemptions of Article 15 and 28c of the Sixth VAT Directive, except in the case of the exemption provided for in Article 15(11) regarding supplies of gold to Central Banks. If, on the other hand, the supplier of investment gold opts for the taxation of his supplies, following the provision of Article 26b(C) of the Sixth VAT Directive, then the special exemption of Article 26b(B) is no longer applicable, and the other exemptions of Articles 15 and 28c of the Sixth VAT Directive are applicable if the conditions mentioned therein are fulfilled.

4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 4.2 Origin: Portugal**
References: Article 9 of the Sixth VAT Directive
Subject: Place of taxation of translators' and interpreters' services
(Document TAXUD/1873/00 – Working Paper No 302)

All delegations agree that translation services are among the services covered by Article 9(2)(e). The **great majority** of delegations agree that interpretation services are also among the services covered by Article 9(2)(e).

- 4.3 Origin: Commission**
References: Article 4(5) and Article 9
Subject: Services provided to public sector hospitals
(Document TAXUD/1872/00 – Working Paper No 303)

In exercising the option provided for in Article 4(5), a Member State may decide to regard activities which, according to the general principles, fall within the scope of VAT but are exempt under Article 13 (such as hospitalisation and medical care provided by bodies governed by public law) as being outside the scope of VAT.

All delegations take the view that this option affects the decision on the place of taxation of certain expenditure incurred by such bodies in public law. Consequently, research services provided by a taxable person established in a Member State to a hospital governed by public law in another Member State are to be taxed either in the Member State in which the public hospital is established (according to the general principles), or in the Member State in which the service provider is established (if the Member State in which the public hospital is established has waived the first option).

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4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

4.2 Originator: Commission

References: Articles 9 and 21

Subject: Place of supply when the supplier of the service is registered in the Member State of establishment of the client

(Document TAXUD/1962/00 – Working Paper No 310)

All the delegations believed that, according to Article 9(1) of the Sixth VAT Directive, the place of supply of a service should be deemed to be the place where the supplier had established his business or had set up a fixed establishment from which the service was supplied. The fixed establishment should be regarded as determining the place of supply of taxation only when it was obvious that the service was effectively supplied from that fixed establishment. If this condition was not fulfilled the principle of taxation at the place where the supplier had established his business should be maintained.

The question as to whether or not the branch in question took part in the supply of services, to what extent, and whether this intervention was of such a kind as to change the place of taxation, should be examined on a case-by-case basis.

Finally, the Committee accepted that, in order to simplify control procedures, Member States might create a rebuttable presumption (*juris tantum*) whereby once a foreign trader was established and registered with a VAT registration in their territory the supply was considered to take place from that establishment. Nevertheless, it is certain that the presumption could never reverse the principle laid down in Article 9(1) of the Sixth VAT Directive.

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4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT LEGISLATION

- 4.1 Originator: Commission**
References: Article 13(B)(d)
Subject: Tax treatment of options
(Document TAXUD/2409/01 – Working Paper No 304)

All the delegations considered that sales of options should be treated as services separate from the underlying operations to which they relate.

A **large majority** of the delegations took the view that transactions involving options negotiable on regulated markets were exempt from VAT under Article 13(B)(d) of the Sixth Directive.

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4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT LEGISLATION

4.4 Origin: Commission
References: Article 28b(B)
Subject: Distance sales
(Document TAXUD/2311/02 – Working paper No 341)

The delegations agree **unanimously** that Article 28b(B) which is aimed at ensuring taxation at destination of distance sales, does not apply to supplies carried out until such time as, in the course of the calendar year, the amount of turnover laid down by the Member State of arrival has been exceeded (except in the situations covered by the second indent of paragraph 2 or where the taxable person has exercised the option under paragraph 3).

Taxation at destination will apply to those supplies of goods which give rise to the threshold being exceeded, any subsequent supplies during that year, and all supplies made to customers in that Member State during the calendar year following that in which the threshold has been exceeded. Taxation will not apply retrospectively to the beginning of the year in which the threshold was exceeded.

(This guideline replaces the guideline agreed on this issue at the 54th meeting.)

4.5 Origin: Commission
References: Article 4(5)
Subject: Air traffic control services
(Document TAXUD/2313/02 – Working paper No 339)

The delegations agree **unanimously** that:

1. Air traffic control services provided in the airport zone are within the scope of VAT, being exempted on the basis of Article 15(9) provided that the conditions required for the application of this exemption are fulfilled.
2. Services related to aircraft activity in the approach and take-off zone are non-taxable services pursuant to the first subparagraph of Article 4(5) where the provider is a body governed by public law who carries out these activities as a public authority.

3. Services related to aircraft activity in upper and lower air space are non-taxable services, pursuant to the first subparagraph of Article 4(5), where the provider is a body governed by public law who carries out these activities as a public authority.
4. Eurocontrol is a non-taxable person both in respect of its en-route navigation control services and in respect of the calculation, collection and redistribution of fees levied on airline companies where these services are supplied to non-taxable persons.

(This guideline replaces the guideline agreed on this issue at the 30th meeting.)

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3. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 3.3 Origin: Belgium**
References: Articles 8 and 9
Subject: Place of supply of goods and services rendered by undertakers
(Document TAXUD/2359/02 – Working paper No 353)

Delegations agreed **almost unanimously** that the services supplied by the undertaker in the framework of organising a funeral should be considered as composite elements of a single service, although it still has to be determined on a case-by-case basis.

Furthermore delegations also agreed **unanimously** that the place of supply of this single service would be where the undertaker is established, in accordance with Article 9(1) of the 6th VAT Directive.

- 3.4 Origin: Spain**
References: Article 12(3)(a)
Subject: VAT rates applicable to CD-ROMs
(Document TAXUD/2358/02 – Working paper No 352)

The delegations **unanimously** agreed that electronic media including text or spoken word were not included in Annex H, category 6.

- 3.5 Origin: United Kingdom**
References: Articles 11 and 13(B)(d)(3)
Subject: Taxable amount when goods are purchased by credit card
(Document TAXUD/4646/02 – Working paper No 355)

All delegations agreed that in circumstances where goods are sold at a given price irrespective of how payment is to be made and where a customer paying by credit card was required to pay a card-handling fee to an associate of the retailer, this fee was, in principle, ancillary and subordinate to the main supply and would thus take on the same VAT liability.

4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

4.1 Origin: The Commission
References: Article 9 and Annex L
Subject: E-Commerce. Electronically supplied services
(Document TAXUD/2436/02 – Working paper No 372)

1. The delegations agree **unanimously** that a television or radio programme that is broadcast over the Internet or similar electronic network and is simultaneously broadcast over a traditional radio and television network (i.e., by wire or over the air, including by satellite) is radio and television broadcasting within the penultimate indent of Article 9(2)(e) of the Sixth Directive. Conversely, a program that is broadcast **only** over the Internet or similar electronic network, is an electronically supplied service under the last indent of Article 9(2)(e).
2. The delegations agree **unanimously** that distance teaching is an electronically supplied service within the meaning of the last indent of Article 9(2)(e) when it is automated and dependent on the Internet or similar electronic network to function and its supply requires little or no human involvement. Where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student (e.g., e-mail), this will not be viewed as an electronically supplied service.
3. The delegations agree **unanimously** that a non-established taxable person who is taxable under the special scheme provided for under Article 26c, may cease to qualify for the special scheme under that Article at anytime throughout a calendar quarter where any of the criteria for exclusion are satisfied. The non-established taxable person is required to submit any outstanding return up to the end of the calendar quarter in which they were excluded. The requirement to submit this return has no effect on the requirement, if any, for the non-established taxable person to register under the normal procedures in a Member State immediately upon exclusion from the special scheme.

4. The delegations agree **unanimously** that where a non-established taxable person declares and remits an amount of VAT to the Member State of Identification, who in turn distributes the amount to the Member State of Consumption, and the Member State of Consumption subsequently realises that the amount is too high, the Member State of Consumption will advise the Member State of Identification of the adjustment and send the overpayment directly to the non-established taxable person. The delegations also agree **unanimously** that where a non-established taxable person remits, in relation to the declaration, an overpayment of VAT to the Member State of Identification, this Member State will return the overpaid amount directly to the non-established person.
5. The delegations agree **unanimously** that each reporting period of a non-established taxable person to the Member State of Identification under the special scheme set out in Article 26c, is treated as an independent, closed reporting period.
6. The delegations agree **unanimously** that, in respect of returns made under the special scheme set out in Article 26c, the Directive does not permit the rounding of amounts to the nearest whole monetary unit (e.g., Euro) and that the exact amount of VAT must be reported and remitted in accordance with the Sixth Directive.
7. The delegations agree **unanimously** that where potential sellers obtain the right to list an item for sale on a website (e.g., an online market place) in exchange for a fee (e.g., a listing fee and/or a success fee), potential buyers bid for the item on the website via an automated process, the parties are notified by an automatically computer generated e-mail in the event of a completed sale and the buyer and the seller ultimately complete the sale, the service provided by the website operator (e.g., the operator of the online market place) is considered to be an electronically supplied service under the last indent of Article 9(2)(e). Such supplies may well constitute, at least in part, web-hosting services.
8. The delegations agree **unanimously** that the attached Guide to Interpretation and accompanying tables set out the guidance on what is meant by “electronically supplied services” for purposes of the last indent of Article 9(2)(e) of the Sixth VAT Directive.

“ELECTRONICALLY SUPPLIED SERVICES”

GUIDE TO INTERPRETATION

Introduction

This document sets out guidance on what is meant by “electronically supplied services” and will help businesses decide whether their services fall within the place of supply rules for such services (as per the last indent of Article 9(2)(e) of the Sixth VAT Directive). This document only addresses the place of supply issue.

The attached tables give examples of transactions that are either included or excluded from the definition of “electronically supplied services”. Supplies of goods or supplies of services that are excluded from the definition are treated in accordance with other place of supply rules.

What is an “electronically supplied service”?

An “electronically supplied service” is one that:

- in the first instance is delivered over the Internet or an electronic network¹ (i.e. reliant on the Internet or similar network for its provision); and then
- the nature of the service in question is heavily dependent on information technology for its supply (i.e., the service is essentially automated, involving minimal human intervention and in the absence of information technology does not have viability.).

Therefore, on the basis of this two step test, an “electronically supplied service” includes:

- *digitised products* generally, such as software and changes to or upgrades of software; or
- *a service* which provides, or supports a business or personal presence on an electronic network (e.g., web site or web page); or
- *a service automatically generated from a computer*, via the Internet or an electronic network, in response to specific data input by the customer; or

¹ Including electronic networks for providing digital content, such as telecommunications (fixed or mobile), intranets and extranets, whether private or public.

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- *services, other than those specifically mentioned in Annex L, which are automated and dependent on the Internet or an electronic network for their provision.*

Telecommunications and radio and television broadcasting services, covered respectively in the ninth and penultimate indents of Article 9(2)(e) of the Sixth VAT Directive, are not regarded as electronically supplied services for purposes of this Directive.

In general, the use of the Internet or other electronic networks by parties to communicate with respect to transactions or to facilitate trading does not, any more than the use of a phone or fax, affect the normal VAT rules that apply. For example, where parties simply use the Internet to convey information in the course of a business transaction (e.g., e-mail), this does not change the nature of that transaction. This differs from a supply that is completely dependent on the Internet in order to be carried out (e.g., searching and retrieving information from a database with no human intervention).

In all instances, electronically supplied services will be taxable at the standard rate established by a Member State (in accordance with Article 12(3)(a) of the Sixth Directive), unless an exempting provision in a Member State applies. For example, when considering the supply of gambling, if the supply in the traditional manner is exempt in a Member State, it would also be exempt if it constituted a supply of an electronically supplied service.

The attached tables illustrate the above approach by classifying a range of supplies to provide clear examples of those that are regarded as being electronically supplied services and those that are not. This Guidance is not intended to be exhaustive

Supplies shown as excluded are treated in accordance with other place of supply rules. Particular care should be taken where a service includes both electronic and other elements. Such composite transactions must generally be considered on a case-by-case basis.

TABLE 1

ANNEX L REFERENCE	SUPPLIES COVERED BY THE LEGAL TEXT	EXAMPLE OF A SERVICE THAT IS AN ELECTRONICALLY SUPPLIED SERVICE
Item 1	<i>A. Web site supply, web-hosting and distance maintenance of programmes and equipment</i>	• Web-site hosting and web-page hosting • Automated, on-line distance maintenance of programmes • Remote systems administration • On-line data warehousing (i.e., where specific data is stored and retrieved electronically) • On-line supply of on-demand disc space
Item 2	<i>A. Software and updating thereof</i>	• Accessing or downloading software (e.g., procurement/accountancy programmes, anti-virus software) plus updates • Banner blockers (software to block banner adverts showing) • Download drivers, such as software that interfaces PC with peripheral equipment (e.g., printers) • On-line automated installation of filters on web-sites • On-line automated installation of firewalls
Item 3	<i>A. Images</i>	• Accessing or downloading desktop themes • Accessing or downloading photographic or pictorial images or screensavers
	<i>B. Text and information</i>	• The digitised content of books and other electronic-publications • Subscription to on-line newspaper and journals • Weblogs and website statistics • On-line news, traffic information and weather reports • On-line information generated automatically by software from specific data input by the customer, such as legal and financial data (e.g., continually updated stock market data) • The provision of advertising space (e.g., banner ads on a web site/web page)
	<i>C. Making databases available</i>	• Use of search engines and Internet directories

ANNEX L REFERENCE	SUPPLIES COVERED BY THE LEGAL TEXT	EXAMPLE OF A SERVICE THAT IS AN ELECTRONICALLY SUPPLIED SERVICE
Item 4	<i>A. Music</i>	- Accessing or downloading of music onto PCs, mobile phones, etc. - Accessing or downloading of jingles, excerpts, ringtones, or other sounds
	<i>B. Films</i>	Accessing or downloading of films
	<i>C. Broadcasts and events – political, cultural, artistic, sporting, scientific and entertainment</i>	Web-based broadcasting that is only provided over the Internet or similar electronic network and is not simultaneously broadcast over a traditional radio or television network², as opposed to Item 4, Table 2
	<i>D. Games, including games of chance and gambling games</i>	- Downloads of games onto PCs, mobile phones, etc. - Accessing automated on-line games which are dependent on the Internet, or other similar electronic networks, where players are remote from one another
Item 5	<i>A. Distance teaching</i>	- Teaching that is automated and dependent on the Internet or similar electronic network to function, including virtual classrooms, as opposed to Item 2(b), Table 2. - Workbooks completed by pupil on-line and marked automatically, without human intervention
Item 6 Other services included:	<i>A. Those not explicitly listed in Annex L</i>	- On-line auction services (to the extent that they are not already considered to be web-hosting services under Item 1) that are dependent on automated databases and data input by the customer requiring little or no human intervention (e.g., an on-line market place or on-line shopping portals), as opposed to Item 3(f), Table 2. - Internet Service Packages (ISPs) in which the telecommunications component is an ancillary and subordinate part (i.e., a package that goes beyond mere Internet access comprising various elements (e.g., content pages containing news, weather, travel information; games fora; web-hosting; access to chat-lines etc.))

² By traditional means that the transmission is by cable or by radio, including satellite.

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TABLE 2

EXAMPLE OF A TRANSACTION NOT CONSIDERED TO BE A SUPPLY OF AN “ELECTRONICALLY SUPPLIED SERVICE”	RATIONALE
1) <i>A supply of . . .</i> <i>a) A good, where the order and processing is done electronically</i> <i>b) A CD-ROM, floppy disc and similar tangible media</i> <i>c) Printed matter such as a book, newsletter, newspaper or journal</i> <i>d) A CD, audio cassette</i> <i>e) A Video cassette, DVD</i> <i>f) Games on a CD-ROM</i>	• These are supplies of goods
2) <i>A supply of . . .</i> <i>a) services of lawyers and financial consultants, etc., who advise clients through e-mail</i> <i>b) interactive teaching services where the course content is delivered by a teacher over the Internet or an electronic network (i.e., via remote link)</i>	• This is a supply of service that relies on substantial human intervention and the Internet or electronic network is only used as a means of communication

EXAMPLE OF A TRANSACTION <u>NOT</u> CONSIDERED TO BE A SUPPLY OF AN “ELECTRONICALLY SUPPLIED SERVICE”	RATIONALE
3) <i>A supply of . . .</i> <i>a) Physical repair services of computer equipment</i> <i>b) Off-line data warehousing services</i> <i>c) Advertising services, such as in newspapers, on posters and on television</i> <i>d) Telephone helpdesk services</i> <i>e) Teaching services involving correspondence courses such as postal courses</i> <i>f) Conventional auctioneers’ services reliant on direct human intervention, irrespective of how bids are made (e.g., in person, Internet or telephone), as opposed to Item 6(a), Table 1</i>	These are supplies of services that are not delivered over the Internet and rely on substantial human intervention
4) <i>A supply of a radio and television broadcasting service provided over the Internet or similar electronic network simultaneous to the same broadcast being provided over traditional radio or television network, as opposed to Item 4(c), Table 1</i>	This is a supply of a radio and television broadcasting service, which is covered by the penultimate indent of Article 9(2)(e)

EXAMPLE OF A TRANSACTION <u>NOT</u> CONSIDERED TO BE A SUPPLY OF AN “ELECTRONICALLY SUPPLIED SERVICE”	RATIONALE
5) <i>A supply of . . .</i> <i>a) Videophone services (i.e., telephone services with a video component)</i> <i>b) Access to the Internet and World Wide Web</i> <i>c) Telephony (i.e., telephone service provided through the Internet)</i>	• These are supplies of telecommunication services and are covered by the place of supply rules for such services under the ninth indent of Article 9(2)(e)

4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 4.3 Origin: United Kingdom**
References: Articles 5(1) and (4) and 10(2)
Subject: Hire purchase schemes – Tax points
(Document TAXUD/2408/02 – Working paper No 362)

The delegations **almost unanimously** agreed that the question as to whether a supply was one of goods or services was a matter of fact to be determined on a case by case basis. There would always be a supply of goods when it was agreed between the parties, whether or not in writing, that the right to dispose of tangible property as owner would be transferred. The timing of the transfer of this right after the payment of the final instalment did not alter the fact that a supply of goods is one of goods.

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4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 4.3 Origin: The Commission**
References: Article 9
Subject: Radio and Television Broadcasting
(Document TAXUD/2337/03 Rev. 1 – Working paper No 390)

The delegations agree **unanimously** that the meaning of radio and television broadcasting services referred to in the penultimate indent of Article 9(2)(e) must be interpreted narrowly. Radio and television broadcasting services are transmissions by wire or air, including satellite, intended for reception by the public. The term radio and broadcasting services does not include cessions of broadcasting or transmission rights, the leasing of technical equipment or facilities utilised in providing a broadcast or any other ancillary services. Guideline 4.1.1 of the 67th meeting of the VAT Committee differentiates between radio and television broadcasting services and those services only broadcast over the Internet or similar network (i.e., an electronically supplied service).

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- 4.1 Member State: France**
References: Article 15(13)
Subject: Services directly connected with the exportation of goods
(Document TAXUD/2367/03 – Working paper No 392)

After having discussed the specific case in the light of similar cases and various sub-contracting scenarios, delegations agreed **unanimously** that specific services of assessing the conformity of manufactured goods with marketing standards of the third country of destination are not directly connected with the export of goods in the sense of Article 15(13) of the 6th Directive.

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- 4.2 Origin: France**
References: Article 4(5) and Article 9
Subject: Greenhouse gas emission allowances
(Document TAXUD/1625/04 Rev.1 – Working paper No 443 Rev.1)

The delegations agreed **unanimously** that the transfer of greenhouse gas emission allowances as described in Article 12 of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003, when made for consideration by a taxable person is a taxable supply of services falling within the scope of Article 9(2)(e) of Directive 77/388/EEC. None of the exemptions provided for in Article 13 of Directive 77/388/EEC can be applied to these transfers of allowances.

- 4.4 Origin: The Commission**
References: Articles 15(10) and Article 26c
Subject: Exemption of the electronic services
(Document TAXUD/1684/04 – Working paper No 462)

The delegations agree that Article 15(10) of Directive 77/388/EEC also applies to services provided by electronic means by taxable persons to whom the special scheme provided for in Article 26c of the Directive applies.

- 4.2 **Origin:** **Lithuania**
 References: **Title IV, Chapters 1 and 3 (*Articles 5 and 6*)**
 Title V, Chapters 1 and 3 (*Articles 8 and 9*)
 Subject: **Place of supply of printing services for the publishing of a**
 paper-format publication
 (Document TAXUD/1815/06 – Working Paper No 520 and Document TAXUD/1827/06 –
 Working Paper No 527)

1. Description of operation: supply of goods or provision of services

The Committee agreed **almost unanimously** that in order to categorise this operation, a distinction must be made between two situations:

- When the customer limits himself to providing an original (manuscript, CD, diskette, etc.) and employs a printer/publisher to undertake the printing and publishing, the latter is engaging in the supply of goods (books, brochures, etc.) within the meaning of Article 14 of the VAT Directive. This would appear to be the most common situation.
- On the other hand, when the customer provides the printer/publisher with the original and also provides it with the paper and/or other elements to be used in the printing and publishing of a book, brochure, etc., the latter is providing a service within the meaning of Article 24 of the VAT Directive.

It is up to each Member State to determine on a case-by-case basis the exact nature of the operation, basing itself on the information in the contract between the publisher and its customer.

2. Place of taxation

The Committee agreed **almost unanimously** that for operations that consist in the publication of books, brochures etc. between persons subject to VAT, the place of taxation is determined as follows:

Operation deemed to be a supply of goods

Where goods are dispatched or transported either by the supplier or by the person acquiring them or by a third person, the place of supply shall be deemed to be where the goods are located at the time the goods are dispatched or transported to the person acquiring the goods, in accordance with the first paragraph of Article 32 of the VAT Directive.

The delivery may be exempted in the Member State of departure if the goods represent an “intra-Community supply of goods”, i.e. they are transported out of the Member State under the conditions laid down in Article 138(1) of the VAT Directive.

In the latter situation, the place of the intra-Community acquisition of goods shall be deemed to be the place where the goods are at the time when dispatch or transport to the person acquiring them ends, in accordance with Article 40 of the VAT Directive.

Operation deemed to be a provision of services

The operation consisting in the publication of a book, brochure etc. using paper and/or other elements belonging to the customer is deemed to be work on movable tangible property and, in accordance with Article 52(c) of the VAT Directive, is deemed to be supplied at the place where the works are physically carried out.

However, by way of derogation from Article 52(c), Article 55 lays down that the place of the supply of services involving valuations or work on movable tangible property provided to customers identified for purposes of value added tax in a Member State other than that within the territory of which the services are physically performed, shall be deemed to be within the territory of the Member State which issued the customer with the value added tax identification number under which the service was rendered to him. This derogation shall not apply where the goods are not dispatched or transported out of the Member State where the services were physically performed.

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4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 4.5. Origin: France**
References: Articles 14 and 24
Subject: Qualification of digital photography processing operations
(Document TAXUD/2404/08 – Working Paper No 564)

The delegations **almost unanimously** agreed that the operation of digital photography processing, where printed photos are handed out to the customer, should be treated as a supply of goods.

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4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 4.4. Origin: Ireland**
Reference: Article 45
Subject: The meaning of the phrase “services connected with immovable property”
(Document TAXUD/2403/08 – Working Paper No 565)

The **large majority** of delegations agreed that legal services referring to immovable property shall only be considered as “connected with” immovable property within the meaning of Article 45 of the VAT Directive, and consequently taxed where the property is located when the purpose of the services in question is the legal or physical alteration of that immovable property¹.

This guideline has the following implications:

- (1) Legal services relating to the conveyance or the transfer of a title to immovable property, such as notary work, would fall within the scope of Article 45, since they have as their purpose the legal alteration of the immovable property.
- (2) The drawing up of a contract to sell or acquire immovable property would fall within the scope of Article 45, even if they form a supply distinct from the services mentioned in point (1).
- (3) When services aiming at the transfer of an item of immovable property are carried out, but the final transaction resulting in the alteration of that immovable property is not carried through, they would nevertheless fall within the scope of Article 45.
- (4) The supply of legal work mentioned in points (2) and (3) will, however, not fall within Article 45, when it focuses on different aspects connected to contracts, which in general terms may concern any kind of legal matter and they are therefore not specific to the transfer of an item of immovable property.

¹ The criterion developed in the Opinion of the Advocate General in relation to the case C-166/05 Heger Rudi GmbH (paragraphs 35 and 36 of the Opinion).

- (5) Legal services relating to advice given on the terms of a contract to transfer immovable property, or to enforce such a contract, or to prove the existence of such a contract would not be covered by Article 45, if their immediate goal is not the legal alteration of the immovable property but the legal dispute over a contract. That said where the aim of the legal work is the legal alteration of the immovable property then the supply falls within Article 45 e.g. legal advice on a contract prior to signing to change the ownership of a property.
- (6) In the situation where a more complex legal service (composed of different elements) is supplied, the overall final goal should be determined in order to assess whether Article 45 applies. This assessment would need to be done on a case-by-case basis.

4. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 4.2 Origin:** Slovakia
References: Articles 38, 39 and 195
Subject: Supplies of gas or electricity to dealers – concept of fixed establishment – determination of taxable person
(Document TAXUD/2404/09 – Working paper No 602)

The VAT Committee **almost unanimously** agrees that when natural gas or electricity is supplied by or to a company which has, in the Member State concerned, a licence in order to practise an economic activity in the natural gas or electricity sectors, including the purchase for resale of natural gas or electricity, the existence of this licence is not in itself sufficient to consider that the company has, in that Member State, a fixed establishment within the meaning of Articles 38 and 39 of the VAT Directive. For such a fixed establishment to exist, it is necessary that that company has, in that Member State, an establishment which is of a certain minimum size with permanently both the necessary human and technical resources.

5. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED COMMUNITY VAT PROVISIONS

- 5.1 Origin:** Commission
References: New Articles 55 and 57
Subject: Follow-up to the VAT package – definition of restaurant and catering services
(Document TAXUD/2408/09 – Working paper No 606)

The VAT Committee **almost unanimously** agrees that, similar to restaurant services, catering is characterised by a cluster of features and acts in which services largely predominate, and of which the provision of food and/or beverages is only one component. Restaurant services consist of the supply, rendered in the premises of the supplier, of prepared or unprepared food and/or beverages for human consumption, accompanied by a sufficient support service allowing for the immediate consumption thereof while catering services consist of the same supply, rendered off the premises of the supplier.

The place of supply of restaurant and catering services shall be determined on the basis of Articles 55 or 57 of the VAT Directive, in their wording in force as of 1 January 2010. Member States may apply a reduced rate to such services in accordance with category 12a of Annex III of the VAT Directive.

The following is to be considered neither as catering, nor as restaurant services:

- the mere supply of prepared or unprepared foods (for example take-away food from restaurants, supermarkets and the like);
- supplies consisting of the mere preparation and transport of food;
- in general, supplies consisting of the preparation and delivery of food and/or beverages without any other support service.

In these cases, the supply of food and/or beverages without accompanying services will be a supply of goods, the place of which shall be determined on the basis of Articles 31 to 37 of the VAT Directive. Member States may apply a reduced rate to the supply of food (including beverages, but excluding alcoholic beverages) in accordance with category 1 of Annex III of the VAT Directive.

When the provision of food and/or beverages is made by one taxable person, and the support services are provided to the same customer by a separate taxable person, the supply effected by each taxable person shall be assessed separately on its own merits, provided no evidence of abuse of law exists.

5.3 Origin: Commission
Reference: New Article 56
Subject: Follow-up to the VAT package – issues particular to the hiring of
means of transport
(Document TAXUD/2409/09 – Working paper No 607)

– **What is a means of transport?**

General definition of a means of transport

The VAT Committee **almost unanimously** agrees that vehicles, motorised or not, and other equipment and devices designed to transport goods or persons from one place to another, which might be pulled or drawn or pushed by vehicles and which are normally designed and actually capable to be used for carrying out transport of goods or persons shall be regarded as means of transport within the meaning of Articles 56 and 59 of the VAT Directive, in their wording in force as of 1 January 2010.

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Trailers, semi-trailers and railway wagons

The VAT Committee **unanimously** confirms that, in accordance with Article 10 of Regulation (EC) No 1777/2005, trailers and semi-trailers, as well as railway wagons, are means of transport for the purposes of Articles 56 and 59 of the VAT Directive, in their wording in force as of 1 January 2010.

Illustrative list of means of transport

In addition to Article 10 of Regulation (EC) No 1777/2005, the VAT Committee **almost unanimously** agrees that, subject to the general definition, the following items, in particular, shall be means of transport:

- motorised and non motorised land vehicles, such as cars, motor cycles, bicycles, tricycles, and caravans unless fixed to the soil;
- motorised and non motorised vessels;
- motorised and non motorised aircraft;
- vehicles specifically designed for the transport of sick or injured persons;
- agricultural tractors and other agricultural vehicles;
- non-combat military vehicles and vehicles for surveillance or civil defence purposes;
- mechanically or electronically propelled invalid carriages.

In consequence, the hiring of these goods shall fall under the rules applicable for hiring of means of transport.

Containers

The VAT Committee **unanimously** agrees that containers are not a means of transport for the purposes of Articles 56 and 59 of the VAT Directive, in their wording in force as of 1 January 2010. In consequence, the hiring of containers shall fall under the general rule provided for in Article 44, in its wording in force as of 1 January 2010 (if supplied to a taxable person) or in Article 45, in its wording in force as of 1 January 2010 (if supplied to a non-taxable person).

– **What is “continuous possession or use”?**

The VAT Committee **almost unanimously** agrees that, for the application of Article 56 of the VAT Directive, in its wording in force as of 1 January 2010, the duration of the continuous possession or use of a means of transport is a matter of facts. The duration of the possession or use shall be assessed on the basis of the contractual agreement between the parties involved, including any tacit agreement within that contract. The contract is a simple presumption only which may be rebutted by any means in fact or law in order to establish the actual duration of the continuous possession or use.

The VAT Committee is of the **almost unanimous** view that when two or more contracts for the hiring of the same means of transport follow each other with an interruption of 2 days or less, the first term of the contract shall be taken into account in the assessment of whether the second contract is regarded as short term or not.

The duration of each previous contract shall be taken into account when assessing the duration of subsequent contracts when made between the same parties for the same means of transport.

However, the duration of a short term contract, before a subsequent contract which qualifies as long term by dint of the previous contracts, shall not be reassessed retroactively, provided no evidence of abuse of law exists.

When a short term contract is subject to an extension which has the effect of causing it to exceed the 30 (90) days, a reassessment of the contract shall be required. However, when the prolongation is due to clearly established circumstances outside the control of the parties involved (force majeure), no reassessment of the contract shall take place.

If a short term contract is succeeded by another short term contract between the same parties but relating to separate means of transport, each contract will need to be examined separately in order to determine whether it is of a short duration or not, provided no evidence of abuse of law exists.

– **Where is a means of transport “actually put at the disposal of the customer”?**

The VAT Committee **unanimously** agrees that, for the application of Article 56(1), in its wording in force as of 1 January 2010, a means of transport shall be considered as “actually put at the disposal of the customer” at the place where the means of transport is when the customer actually takes physical control over it. Legal control (signature of contract, taking possession of the keys) is not in itself sufficient in this respect.

5.4 Origin: Commission
Reference: New Article 192a
Subject: Follow-up to the VAT package – person liable for payment of VAT –
concept of establishment not intervening in the supply
(Document TAXUD/2405/09 – Working paper No 605)

For the purposes of the application of Article 192a of the VAT Directive, in its wording in force as of 1 January 2010, the VAT Committee **almost unanimously** confirms that the presence of a fixed establishment that the supplier has within the territory of the Member State where the taxable supply of goods or services is made, does not in itself signify that this taxable person must be regarded as established within that Member State for the purposes of ascertaining who is the person liable for payment of VAT.

If the fixed establishment that the supplier has in the Member State where the taxable supply of goods or services is carried out in no way intervenes in that supply, i.e. the technical or human resources of the establishment are in no way used by him for the fulfilment of that supply, the supplier shall not, as far as that supply is concerned, be regarded as a taxable person who is established within that Member State for the purposes of ascertaining who is the person liable for payment of VAT.

The VAT Committee **almost unanimously** agrees that where the fixed establishment does intervene in the supply of goods or services before or during its fulfilment, or under the agreement it is envisaged that the establishment may intervene subsequently, via such as an after-sale service or the application of guarantee clauses, and this potential intervention does not constitute a separate supply for VAT purposes, the extent of the use of its technical and/or human resources relating to that supply is irrelevant as it shall always be regarded as intervening in the supply. In the case of an intervention in the supply, the taxable person shall be in any event, for the purposes of ascertaining who is the person liable for payment of VAT and as far as that supply is concerned, regarded as being established within the Member State where the tax is due.

Where the taxable person uses the technical and/or human resources of the fixed establishment only for administrative support tasks such as accounting, invoicing and collection of debt-claims, such use of these resources should not be considered as for the fulfilment of the supply but only for the enforcement of legal and accounting obligations related to this transaction. The fixed establishment shall in that case not be regarded as intervening in the supply.

For the purposes of control, considering that the invoice must contain the VAT identification number under which the taxable person has supplied the goods or services, where the invoice is issued under the VAT identification number of the taxable person attributed by the Member State of the fixed establishment, the fixed establishment shall be regarded as having intervened in the supply unless there is proof to the contrary.

- 5.6 Origin: Commission**
References: New Articles 43, 44 and 45 read in conjunction with recital 4 of Directive 2008/8/EC
Subject: Follow-up to the VAT package – how to determine the scope of either of the main rules – identification of a customer as a taxable person acting as such or as a non-taxable person
(Document TAXUD/2412/09 – Working paper No 609)

The VAT Committee **almost unanimously** agrees that the correct identification of the customer needed in order to apply Articles 44 and 45 of the VAT Directive, in their wording as of 1 January 2010, on the place of supply of services, shall require the supplier to respect several elements.

When it comes to the assessment of the status of the customer, the supplier is assumed to have acted in good faith when he has:

- (a) established whether the customer is a taxable person via the VAT number communicated to him or through any other proof presented to him to show that the customer is a taxable person or a non-taxable legal person identified for VAT purposes, and
- (b) obtained confirmation of the validity of the VAT number of the customer and carried out a reasonable level of verification via existing security procedures.

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It is accepted that in order to assess whether the service supplied is intended for the own personal use or that of the staff of a taxable person or a non-taxable legal person (identified for VAT purposes), who has communicated a VAT number or provided other proof to be a taxable person, the supplier must take account of the nature of the service. Only if the nature of the service makes it appropriate the supplier may be required to obtain a self-declaration from the customer on the planned purpose of the acquired service.

Where these conditions are met, the supplier is presumed to have been acting in good faith and is released from any further liability in the case of an incorrect assessment of the status of the customer, provided no evidence of abuse of law exists. Under such circumstances, the customer may, in accordance with Article 205, be designated as liable for payment of the VAT due in place of the supplier.

The VAT Committee **almost unanimously** agrees that where a service is intended in part for personal use or that of the staff of the customer and in part for professional use, including activities or transactions that are out of scope (as covered by Article 43 of the VAT Directive, in its wording as of 1 January 2010), the supply of that service will be treated as falling within the scope of Article 44 of the VAT Directive, in its wording as of 1 January 2010.

The assessment of the purpose to which each service will be put, which is necessary to determine the place of supply of that service, shall take into account only the circumstances present at the moment of supply. Any subsequent changes to the use of the service received shall therefore be without consequences for the place of taxation of that purchase, provided no evidence of abuse of law exists.

2. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 2.1 Origin: Commission**
References: Articles 143(g) and 151(1)(b)
Subject: European Research Infrastructures
(Document TAXUD/2419/09 – Working paper No 612)

The VAT Committee **unanimously** agrees that a European Research Infrastructure (ERI), as set up under Council Regulation [No xxx/2009 of xx 2009] qualifies as an international body for the purpose of Articles 143(g) and 151(1)(b) of the VAT Directive in so far as it has the following features:

- it has a distinct legal personality and has full legal capacity;
- it is set up under and is subject to Community law;
- its membership must consist of EU Member States and may in addition include third countries and inter-governmental organisations, but not private bodies;
- it has specific and legitimate objectives that are jointly pursued and essentially non-economic in nature.

To benefit from the exemption provided for in Articles 143(g) and 151(1)(b) of the VAT Directive, the ERI will need to be recognised as an international body by the host Member State. The limits and conditions of this exemption shall be laid down by an agreement between the members of the ERI or by a headquarters agreement. In the case where the goods are not dispatched or transported out of the Member State in which the supply takes place, and in the case of services, the exemption may be granted by means of a refund of the VAT.

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6. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED COMMUNITY VAT PROVISIONS

- 6.1 Origin:** Commission
References: New Articles 44, 45, 56, 58, 59 and 192a
Subject: Follow-up to the VAT package – notions associated with the place of establishment of the supplier or the customer
(Document taxud.d.1(2009)108658 – Working paper No 619)

Place of business

The VAT Committee **almost unanimously** confirms that to determine where the place of business of a taxable person is, it is necessary to take into account a series of factors, such as the registered office of the business, the place of its central administration, the place where the management meets and the place, usually identical, where the general policy of that business is determined. Other factors, such as the place of residence of the main managers, the place where general meetings are held, the place where administrative and accounting documents are kept, and the place where the business' financial, and particularly banking transactions mainly take place, may also be taken into account.

The VAT Committee **unanimously** agrees that the place of business is the place where the essential decisions concerning the general management of the business are adopted and where the functions of its central administration are carried out. The fact that the place from which the activities undertaken by the taxable person are actually exercised is not situated in the Member State shall not preclude the possibility of the taxable person having established his place of business there.

It is the **unanimous** view held by the VAT Committee that the presence of a letter box or brass plate company cannot be taken to be the place of business of a taxable person if it does not meet the conditions above.

Fixed establishment

The VAT Committee **unanimously** confirms that only if an establishment is of a minimum size and has both human and technical resources permanently present, it may be regarded as a fixed establishment.

It **almost unanimously** agrees that to qualify as a fixed establishment, the degree of permanence must be sufficient and the structure adequate in terms of human and technical resources, for the establishment supplying services covered by Article 45 of the VAT Directive, in its wording as of 1 January 2010, to be capable of providing those services or for the establishment receiving services covered by Article 44 of the VAT Directive, in its wording as of 1 January 2010, to be capable of receiving and making use of those services.

Permanent address

The VAT Committee **unanimously** agrees that, in so far as it reflects the realities, the permanent address of a natural person, whether or not a taxable person, is the address entered as such in the national population register or a similar public register or, in the absence of such a register, the address given to the tax authorities.

Usual residence

The VAT Committee **unanimously** agrees that the usual residence of a natural person whether a taxable person or not, is the place where, at the time the services are supplied, that person usually lives because of personal and occupational ties or, in the absence of occupational ties, because of personal ties which show close links between that person and the place where he is living.

6.2 Origin: Commission
References: New Articles 43, 44, 45 and 214
Subject: Follow-up to the VAT package – concept of taxable person –
obligation to identify suppliers and recipients of services –
implications for other intra-Community transactions
(Document taxud.d.1(2009)130169 – Working paper No 623)

The VAT Committee **almost unanimously** agrees that, for determining the scope of Article 44 of the VAT Directive, in its wording as of 1 January 2010, Title III of the VAT Directive is the only reference for defining the concept of “taxable person”. In consequence, other elements, such as the fact that the taxable person’s supplies are exempt from VAT, or the fact that he falls under a special scheme such as the one for small enterprises provided for by Articles 282 to 292 shall have no bearing on how the rules governing the place of supply of services must be applied when the taxable person supplies or receives services.

Where, as a result of point (d) or (e) of Article 214(1) of the VAT Directive in force as of 1 January 2010, a VAT identification number has been attributed to a taxable person who is entitled to benefit from non-taxation of his intra-Community acquisitions of goods other than new means of transport or products subject to excise duty, the VAT Committee **unanimously** considers that this shall not affect that entitlement if the value of those acquisitions does not exceed the threshold provided for under Article 3(2).

The VAT Committee **almost unanimously** agrees that the supply of services to a non-taxable legal person falls, as a general rule, under Article 45 of the VAT Directive, in its wording as of 1 January 2010, unless this person is already identified for VAT purposes because his intra-Community acquisitions of goods are subject to VAT. If that is the case, all the services supplied to that non-taxable legal person shall be covered, as a general rule, by Article 44 of the VAT Directive, in its wording as of 1 January 2010, and the non-taxable legal person will be liable to pay the tax, on the basis of Article 196, in all cases where the supplier is a taxable person regarded as non established in the Member State where the supply of services takes place.

6.3 Origin: Commission
References: New Article 44, new Article 56(2) (as from 1 January 2013), new Article 58, new Article 59
Subject: Follow-up to the VAT package – taxation at the place of the customer – where is the supply made to
(Document taxud.d.1(2009)132177 – Working paper No 620)

The VAT Committee **unanimously** considers that where services are taxable at the place of establishment of the customer, requiring the supplier to determine where the customer is established, this entails that the supplier must obtain the necessary information from his customer and carry out a reasonable level of verification of that information via existing security procedures. The information obtained from the customer may in the case of a taxable person consist in the VAT number communicated by the customer and in the case of a non-taxable person in factual information provided by the customer.

The VAT Committee **unanimously** agrees that where the taxable person to whom the supplier renders services falling under Article 44 of the VAT Directive, in its wording as of 1 January 2010, is established in more than one place, these services shall in principle be taxable at the place where the customer has established his business. Where they are provided to a fixed establishment of the taxable person located in another place, the services shall however be taxable at that place.

It is the **large majority** view of the VAT Committee that, unless there is evidence of abuse of law, only the taxable person receiving the services shall be responsible for determining where the services are supplied to. In assessing whether the services are actually provided to a fixed establishment, this taxable person shall pay particular attention as to whether:

- the contract and/or the order form identify the fixed establishment as the recipient of the services;
- the fixed establishment is the entity paying for the services or the cost is actually borne by this entity;
- the nature of the services if this allows for identifying the particular fixed establishment(s) to which the service is provided.

For the purposes of control, where the customer's VAT identification number mentioned on the invoice is that attributed by the Member State of the fixed establishment, the presumption is that the services are provided to that fixed establishment unless there is proof to the contrary.

A global contract is a business agreement which may cover all the services supplied to a taxable person. For services supplied under such a global contract which are to be used in several places, the VAT Committee at **large majority** confirms that these services shall also, as a starting point, be taxable at the place where the customer has established his business. Where services covered by such a contract are actually intended for the use of a fixed establishment and that fixed establishment bears the cost of those services, they shall however be taxable at the place where that fixed establishment is located.

With regard to services supplied to a non-taxable person which are taxable at the place of the customer, the VAT Committee takes the **almost unanimous** view that in determining the place of supply of those services where a non-taxable person is established in more than one place, priority shall be given to the establishment which best ensures taxation at the place of actual consumption.

The VAT Committee **almost unanimously** confirms that the provisions contained in Article 192a of the VAT Directive, in its wording in force as of 1 January 2010, do not apply to a taxable person who has established his place of business within the territory of the Member State where the VAT is due. That taxable person cannot, therefore, be regarded as a taxable person who is not established within that Member State for the purpose of applying the provisions of Section 1 of Chapter 1 of Title XI concerning persons liable for payment of VAT, even if that place of business does not intervene in the supply of goods or of services.

5. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED COMMUNITY VAT PROVISIONS

- 5.1 Origin:** Commission
References: New Articles 44, 46 and 47
Subject: Follow-up to the VAT package – services supplied by intermediaries – arranging of hotel accommodation
(Document taxud.d.1(2009)108646 – Working paper No 618)

The VAT Committee at **large majority** agrees that where services are supplied by intermediaries acting in the name and on behalf of another person, including services linked to hotel accommodation, be they the customer to whom the service is rendered or a third party, the supply shall – except for the services of experts and estate agents in connection with immovable property – fall under the general rule provided for in Article 44 of the VAT Directive, in its wording as of 1 January 2010 (if supplied to a taxable person) or under the particular rule provided for in Article 46 of the VAT Directive, in its wording as of 1 January 2010 (if supplied to a non-taxable person).

- 5.2 Origin:** Commission
References: New Articles 55 and 57
Subject: Follow-up to the VAT package – supply of restaurant and catering services on board ships, aircraft and trains – deferred from the 88th meeting
(Document taxud.d.1(2009)133359 – Working paper No 626)

- A) The VAT Committee **unanimously** agrees that to identify the section of the passenger transport effected within the Community (as defined in Article 57 of the VAT Directive in force from 1 January 2010) the means of transport is decisive and not the journey of individual passengers participating in it.

It means that there is a single section of the passenger transport effected in the Community (as defined in Article 57 of the VAT Directive in force from 1 January 2010), also when there are stopovers within the Community, if the journey is executed by one means of transport.

In particular a flight involving stopovers within the Community should be regarded as a single section of the passenger transport effected in the Community (as defined in Article 57 of the VAT Directive in force from 1 January 2010), when it has one flight number. For trains to identify the single section of a passenger transport the itinerary should be decisive.

For the application of Article 57 the places where individual passengers embark or disembark does not bear relevance.

- B) The VAT Committee **unanimously** agrees that the part of the supply of restaurant and catering services during the section of a passenger transport operation **not** effected within the Community (which does not fulfil the conditions in Article 57 of the VAT Directive in force from 1 January 2010) but still on the territory of one of the Member States shall be covered by the new Article 55 and taxed where they are physically carried out.
- C) The VAT Committee **almost unanimously** agrees that a single restaurant or catering service (partially supplied under a tax jurisdiction assessed in accordance with Article 55 and partially supplied under a tax jurisdiction assessed in accordance with Article 57) should be treated as a whole and taxed in a Member State identified in accordance with the rules in place at the moment when the service starts to be supplied.

5.3 Origin: Commission
References: New Article 44, new Article 56(2) (as from 1 January 2013), new Article 58 (as from 1 January 2015), new Article 59
Subject: Follow-up to the VAT package – taxation at the place of the customer – customers established outside the European Union
(Document taxud.d.1(2009)210693 – Working paper No 632)

The VAT Committee **unanimously** confirms that, without prejudice to the exercise of the option provided for under Article 59a, the supply of services covered by the new Article 44, in its wording as of 1 January 2010, shall fall outside the territorial scope of EU VAT when made to taxable persons established outside the Community. The same applies to the services listed in the new Article 59, in its wording as of 1 January 2010, including telecommunications, broadcasting and electronic services, and, as from 1 January 2013, to hiring, other than short-term hiring, of means of transport, insofar as it is taxable at the place where the customer is established, when supplied to non-taxable persons established outside the Community.

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With regard to the services listed in the new Article 59, including telecommunications, broadcasting and electronic services, and hiring other than short-term hiring of means of transport (services which, when supplied to a recipient established outside the Community are located at the place of the recipient, irrespective of his status), it is the unanimous view of the VAT Committee that these services fall outside the territorial scope of EU VAT and the supplier shall be entitled not to apply VAT whenever he is able to prove that the customer is established outside the Community. To that end, the supplier must obtain the necessary information from the customer and verify the accuracy of that information via existing security procedures.

For services which, when supplied to a recipient established outside the Community, are located at the place of the recipient only when this is a taxable person the VAT Committee almost unanimously considers that, in order for these services to fall outside the territorial scope of EU VAT and the supplier not to charge VAT, in addition to proof as to the place of establishment of the customer outside the Community, he must also furnish proof of the customer being a taxable person. To that end, the supplier must obtain sufficient evidence from his customer to show that he is a taxable person. This evidence may consist in the VAT number, or a similar number which is used to identify businesses, attributed to the customer by the country of establishment, or other relevant information such as information including print-outs, of any relevant website, obtained from the customer's competent tax authorities which confirm that the customer is a taxable person, the customer's order form containing his business address and trade registration number, or a print-out of the customer's website, to confirm that the customer is conducting an economic activity. A certificate issued by the customer's competent tax authorities as confirmation that he is engaged in economic activity in order to enable him to obtain a refund of VAT under the Thirteenth VAT Directive, may be used instead of a VAT number and other relevant information, but only if such certificate is already available.

5. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED COMMUNITY VAT PROVISIONS

- 5.4 Origin:** Commission
References: New Article 59a
Subject: Follow-up to the VAT package – effective use and enjoyment – how this rule may be applied
(Document taxud.d.1(2009)211327 – Working paper No 633)

The VAT Committee **unanimously** agrees that Article 59a gives an option to Member States that must be exercised in accordance with the general principles, in particular the principle of neutrality of the tax and the principle of proportionality. If, for well established objective reasons, it is impossible for certain types of services to identify the place of their effective use and enjoyment, the use of the option provided for under Article 59a shall be excluded.

It is the **unanimous** view of the VAT Committee that where a Member State decides to apply the rule on effective use and enjoyment, there is no requirement to use it to all of the services covered by the rule. It is clearly provided for under this rule that Member States may apply it to some or all of these services. It is therefore entirely possible to target certain specific services, to be identified by each Member State concerned.

The VAT Committee **unanimously** agrees that the exercise of the option given by Member States to tax services effectively used and enjoyed on their territory does not depend on the tax treatment that the services are subject to outside the Community. In particular, the fact that a service may be taxed in a third country under the national rules of that country shall not prevent a Member State from taxing that service if it is effectively used and enjoyed on the territory of that Member State.

The VAT Committee **unanimously** acknowledges that, while the final decision may depend upon facts, there is nevertheless a need to specify the elements on the basis of which services may be regarded as used and enjoyed within the Community.

The VAT Committee **unanimously** agrees that the notion of “effective use and enjoyment” must be seen as a Community concept. As to the use of that notion, it is accepted that one criterion may not be established for all services but the criterion used needs to match the service concerned.

The VAT Committee confirms by unanimity that the effective use and enjoyment of advertising services shall be regarded to take place at the place where the advertising is disseminated to the audience targeted, irrespective of where the recipient of the services is located. That shall normally be the country where the media used for the dissemination to the audience targeted operates regarding the specific services supplied.

The VAT Committee almost unanimously agrees that the effective use and enjoyment of telecommunications, radio and television broadcasting and electronic services shall be regarded to take place where the customer is actually able to use the service which is provided to him. Under normal circumstances, this shall be the physical place where the service is provided to:

Telecommunications services provided to a fixed line shall be regarded as effectively used and enjoyed at the place where the telephone of the person to whom the telecommunications services are supplied can be found. In the case of a mobile phone, the effective use and enjoyment shall be regarded to take place in the country where the SIM card is issued, unless there is evidence that the phone call has been made from another place.

Radio and television broadcasting services, enabling the customer to watch television or listen to the radio, shall be regarded as effectively used and enjoyed at the place where the apparatus of the person to whom the broadcasting services are supplied can be found, which shall, in most cases, be linked with an immovable property where the access is provided.

Electronic services shall be regarded as effectively used and enjoyed at the place where the customer is able to receive such services. This place shall be regarded to be where the customer has an internet access and has therefore an IP address, unless there is evidence that the service has been received in another place.

The VAT Committee almost unanimously agrees that the effective use and enjoyment of hiring of means of transport shall be regarded to take place where the means of transport is actually used, based on the distances covered in each of the Member States where the means of transport is used. In order to assess these elements of fact, the supplier must obtain the necessary information from the customer and verify the accuracy of that information via existing security procedures.

The VAT Committee almost unanimously agrees that the effective use and enjoyment of services consisting in the transport of goods shall be regarded to take place where the transport actually takes place, proportionate to the distances covered. The assessment of these elements of fact must be based on the normal accounts kept by the supplier and shall be verified by him via existing security procedures.

5. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED COMMUNITY VAT PROVISIONS

- 5.1 Origin:** Commission
References: New Articles 43, 44 and 214
Subject: Individual VAT identification number – VAT identification of a non-taxable legal person
(Document taxud.d.1(2009)333305 – Working paper No 646)

The VAT Committee **unanimously** confirms that a non-taxable legal person who is identified for VAT purposes within the meaning of the version of Article 43 of the VAT Directive that will come into force on 1 January 2010 is a person to whom a Member State has, under Article 214(1)(b) of the Directive, allocated an individual VAT identification number as specified in Article 215.

The VAT Committee **unanimously** confirms that pursuant to Article 214(1)(b) and Article 216 of the VAT Directive Member States must take the measures necessary to ensure that only non-taxable legal persons who make intra-Community acquisitions of goods subject to VAT or who have exercised the option to subject those acquisitions to VAT are identified by means of an individual number as specified in Article 215 of the Directive.

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4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.2 Origin: Commission

References: Articles 9, 25(a), 135(1)(b)-(g), (l) and (k)

Subject: The VAT treatment of transfers of payment entitlements under the
Common Agricultural Policy's Single Payment Scheme
(Document taxud.d.1(2009)188306 – Working paper No 630)

- *The transfer of payment entitlements by sale without land*

The VAT Committee, at **large majority**, agrees that given the nature of the payment entitlements, the transfer of such entitlements by sale without land must be regarded as an assignment of intangible property and be treated as a supply of services within the meaning of Article 25(a) of the VAT Directive.

The VAT Committee, at **large majority**, considers that the payment entitlements may not be regarded as an exempt financial transaction within the meaning of Article 135(1)(b)-(g) of the VAT Directive.

- *The transfer of payment entitlements by sale with land*

Where payment entitlements and land are sold together, it is the view of the **large majority** of the VAT Committee that while the transfer of payment entitlements may in many cases qualify as ancillary to the supply of the land and therefore be covered by the exemption in Article 135(1)(k) of the VAT Directive, the actual circumstances of the sale must nevertheless be examined in each case in order to determine whether in accordance with the settled case-law of the Court of Justice of the EU, the sale of the land and the sale of the payment entitlements must be regarded as two independent supplies or if instead, it shall be treated as a single transaction.

- *The transfer of payment entitlements by leasing with land*

The VAT Committee, at **large majority**, agrees that since under the Common Agricultural Policy's Single Payment Scheme the transfer of payment entitlements by lease or similar types of transaction is allowed only if the payment entitlements transferred are accompanied by the equivalent number of eligible hectares of land, the VAT treatment of such transfers must follow that of the underlying land transfer because the leasing of land and the transfer of payment entitlements go together. If the leasing of the land is exempt pursuant to Article 135(1)(l) of the VAT Directive, the transfer of the payment entitlements shall also be exempted.

6. CASE LAW – ISSUES ARISING FROM RECENT JUDGMENTS OF THE EUROPEAN COURT OF JUSTICE

6.3 Origin: Commission
Reference: Article 132(1)(a)
Subject: Case C-357/07 (TNT Post UK limited)
(Document taxud.d.1(2009)326553 – Working paper No 643)

- *As regards the scope of the exemption*

The VAT Committee **almost unanimously** confirms that the exemption provided for in Article 132(1)(a) of the VAT Directive for the “public postal services” must be applied to any universal service provider, irrespective of whether it is a public or private operator, but limited to the services falling under the “universal service” as provided for in Article 3 of Directive 97/67/EC, as amended by Directives 2002/39/EC and 2008/6/EC.

- *As regards the meaning of “an operator who undertakes to provide [...] the universal postal service”, notably to whom the word “undertake” refers to*

The VAT Committee is of the **almost unanimous** view that to be regarded as an operator who undertakes to provide the universal service, the postal operator must supply postal services under a specific legal regime provided for pursuant to Article 3 of Directive 97/67/EC, as amended by Directives 2002/39/EC and 2008/6/EC, which is substantially different to that under which other postal operators provide such services.

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6. CASE LAW – ISSUES ARISING FROM RECENT JUDGMENTS OF THE EUROPEAN COURT OF JUSTICE

6.3 Origin: Commission
Reference: Article 132(1)(a)
Subject: Case C-357/07 (TNT Post UK limited)
(Document taxud.d.1(2009)326553 – Working paper No 643)

- *Supplies “for which the terms have been individually negotiated” are not covered by the exemption in Article 132(1)(a)*

The VAT Committee **almost unanimously** agrees that the exemption provided for in Article 132(1)(a) of the VAT Directive shall not apply to the supply of postal services, and the supply of goods incidental thereto, by a universal service provider, which are dissociable from the service of public interest, including services which meet the special needs of the customer or customers concerned as such supplies are not provided in the public interest.

In any case, the supply of postal services, and the supply of goods incidental thereto, by a universal service provider, for which the terms have been individually negotiated is regarded as meeting the special needs of the customer or customers concerned and shall therefore be excluded from the scope of the exemption provided for in Article 132(1)(a) of the VAT Directive.

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6. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED COMMUNITY VAT PROVISIONS

6.1 Origin: Commission
References: New Articles 53 and 54
Subject: Admission to cultural, artistic, sporting, scientific, education, entertainment or similar events – concept of admission
(Document taxud.d.1(2010)140174 – Working paper No 660)

1) The VAT Committee **almost unanimously** agrees that the admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events as referred to in Article 53 of the VAT Directive (in its wording as of 1 January 2011), covers services consisting in granting right of entry in return for a ticket or a fee, to an event and that only services whose essential features consist in the granting of such entry, are to be regarded as admission to an event within the meaning of that provision.

2) The VAT Committee **unanimously** confirms that the concept of “activities” provided for in Article 54 of the VAT Directive (in its wording as of 1 January 2011) also includes events as covered by Article 53 of that Directive (in its wording as of 1 January 2011).

3) The VAT Committee **almost unanimously** agrees that the following services, in particular, are covered as admission to an event:

- (a) the right of entry to shows, theatre plays, circus performances, fairs, entertainment, concerts, exhibitions and similar events, including where such entry is covered by season tickets;
- (b) the right of entry to sporting events such as matches or competitions, including where such entry is covered by season tickets;
- (c) the right of entry to educational or scientific events such as conferences and seminars.

4) The VAT Committee **unanimously** agrees that the use of facilities such as a gym or the like in exchange for membership fees is not covered by the concept of admission to an event.

5) With regard to ancillary services, the VAT Committee **almost unanimously** confirms that only services provided to the person attending an event as a separate supply for consideration paid by him, in relation to the admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events are covered by Article 53 of the VAT Directive (in its wording as of 1 January 2011). This includes in particular the use of cloakroom and sanitary facilities but excludes the mere mediation in the sale of tickets.

5. QUESTIONS CONCERNING THE APPLICATION OF COMMUNITY VAT PROVISIONS

- 5.2 Origin: Hungary**
References: Article 199(1)(d) and Annex VI
Subject: Optional reverse charge for waste and scrap batteries
(Document taxud.d.1(2010)146307 – Working paper No 663)

The VAT Committee **unanimously** agrees that waste batteries and accumulators, as defined in point 7 of Article 3 of Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, are covered by Article 199(1)(d) of Directive 2006/112/EC.

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5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.8 Origin: Commission**
References: Articles 9 and 13
Subject: VAT treatment of greenhouse gas emission allowances auctioned by the Member States
(Document taxud.d.1(2010)156868 – Working paper No 665)

The VAT Committee **almost unanimously** agrees that the auctioning of allowances by Member States under the revised EU Emission Trading Scheme¹ shall constitute an economic activity within the meaning of Article 9 of the VAT Directive and that the supply of such allowances shall be regarded as a supply of services.

The VAT Committee **almost unanimously** agrees that where a public body is acting as the seller (auctioneer) in an auction, such an activity shall, given the risk of significant distortion of competition, fall under the second subparagraph of Article 13(1) of the VAT Directive and the supply of allowances shall therefore be subject to VAT.

¹ Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).

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5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.6 Origin:** Commission
References: Articles 44, 85, 86, 88 and 144
Subject: Importation or re-importation of goods processed outside the EU
(Document taxud.d.1 (2010)131310 – Working paper No 656)

The VAT Committee, with a **large majority**, confirms that, in the case of the temporary exportation of goods in order to process (work on) them outside the EU followed by their re-importation, an adjustment of the taxable amount, in accordance with Article 88 of the VAT Directive, shall take place at the moment of their re-importation. The adjustment shall be assured regardless of whether the goods are re-imported into the territory of the Member State from which the temporary exportation took place or into the territory of another Member State. However, where the recipient of the service is a taxable person established within the EU and is liable to pay VAT on that service, any increase in the value of the goods resulting from the costs of the processing carried out outside the EU shall not be included in the taxable amount upon their re-importation, pursuant to Article 88.

At the same time the VAT Committee **almost unanimously** confirms that neither Article 88 nor Article 144 may serve as the basis for an exemption of processing services physically carried out outside the EU but taxable within the EU.

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6. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 6.7 Origin:** Commission
References: Article 98 and Annex III
Subject: Meaning of the term “books on all physical means of support”
(Document taxud.c.1(2010)688984 – Working paper No 677)

The VAT Committee **unanimously** confirms that the concept of “books on all physical means of support” mentioned in category 6 of Annex III of the VAT Directive following the adoption of Directive 2009/47/EC only covers traditional books printed on paper, as well as the content of books on physical means of support such as cassettes, diskettes, CDs, DVDs, CD-ROMs, USB memory sticks, etc. that predominantly reproduces the same information content as printed books.

The VAT Committee also **unanimously** confirms that the supply of books in electronic format, usually called “e-books” (e.g.: in PDF files) or virtual books, which have to be downloaded from a Web site to be viewed on a desktop computer, laptop, Smartphone, e-book reader or any other reading system, as well as the supply of on-line newspapers and on-line periodicals, does not fall within the scope of category 6 of Annex III of the VAT Directive. The supply of e-books as well as the supply of on-line newspapers and on-line periodicals qualifies as electronically supplied services to which the reduced rates shall not apply according to the second subparagraph of Article 98(2) of the VAT Directive.

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6. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 6.4 Origin:** Commission
References: Articles 44, 45, 50 and 56
Subject: Transport services versus hiring of means of transport
(Document taxud.c.1(2010)646769 – Working paper No 671)

The VAT Committee, with a **large majority**, agrees that where a supplier puts a means of transport at the disposal of his customer, with or without sufficient staff for its operation, with a view of allowing the customer to carry out a transport service, and where the supplier assumes no responsibility for the execution of the transport but is only responsible for making the means of transport available, the service shall be qualified as the hiring of a means of transport.

However, where a means of transport, along with sufficient staff for its operation, is put at the disposal of the customer, it is the view of the **large majority** of the VAT Committee that the supplier shall be presumed to have assumed responsibility for the execution of the transport and supplied a transport service. The presumption that the supply is a transport service may be rebutted by any means in fact or law in order to establish the actual nature of the service.

The VAT Committee **almost unanimously** agrees that where, in addition to making the means of transport available, the supplier undertakes to transport the customer or any person designated by him and/or his goods to any place, the service shall be qualified as a transport service (of passengers and/or of goods). This shall also be the case where the supplier fully organises and schedules the transport programme for his customer but part or all of the services necessary for him to provide his service to his customer is materially carried out by subcontractors rendering those services to him.

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6. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

6.1 Origin: Romania
References: Articles 2 and 9
Subject: Treatment of the sale of real estate on a continuing basis
(Document taxud.c.1(2010)645210 – Working paper No 672)

1. The VAT Committee **almost unanimously** agrees that, where a natural person takes active steps, for the purpose of concluding sales of real estate (buildings or building land) on a regular basis of which he is an owner, to market the property by mobilising resources similar to those deployed by a producer, a trader or a person supplying services within the meaning of the second subparagraph of Article 9(1) of the VAT Directive, that person must be regarded as carrying out an “economic activity” within the meaning of that article and shall, therefore, be regarded as a taxable person for the purposes of VAT.
2. The VAT Committee **by a large majority** confirms that, where sales of real estate constitute the mere exercise of the right of ownership by its holder, without mobilising resources as mentioned in paragraph 1, that natural person shall not be regarded as a taxable person and the supply of his property shall not be subject to VAT, regardless of whether the Member State has made use of the option provided for in Article 12(1) of the VAT Directive.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.2 Origin: Commission
Reference: Article 47
Subject: Guidance on the scope of the rule governing services connected with immovable property
(Document taxud.c.1(2011)319672 – Working paper No 688)

1. The VAT Committee **almost unanimously** agrees that for the purposes of the VAT Directive, immovable property shall mean the following:
 - a) any specific part of the earth, on or below its surface, over which title and possession can be created;
 - b) any building or construction fixed to or in the ground above or below sea level which cannot be easily dismantled or moved;
 - c) any item making up an integral part of a building or construction without which the building or construction is incomplete, such as doors, windows, roofs, staircases and lifts;
 - d) any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction.
2. The VAT Committee **unanimously** notes that only transactions qualifying as supplies of services shall fall under Article 47 of the VAT Directive. Where certain interests in immovable property or rights *in rem* are treated as tangible property pursuant to Article 15(2) of the VAT Directive or where the handing over of construction work is regarded as a supply of goods pursuant to Article 14(3) of the VAT Directive, Article 47 shall therefore not apply.
3. The VAT Committee is of the **unanimous** view that services connected with immovable property under Article 47 of the VAT Directive shall only include those services that have a sufficiently direct connection with that property.

The VAT Committee unanimously considers that services shall be regarded as having a sufficiently direct connection with immovable property in the following cases:

- a) where they are derived from an immovable property and that property makes up a constituent element of the service and is central and essential for the services supplied;
- b) where they are provided to, or directed towards, an immovable property having as their object the legal or physical alteration of that property.

4. The VAT Committee is of the unanimous view that the following services, in particular, shall be covered by Article 47:

- a) the construction of a building on land as well as construction and demolition work performed on a building or parts of a building;
- b) surveying and assessment of the risk and integrity of immovable property;
- c) the valuation of immovable property, including where such service is needed for insurance purposes, to determine the value of a property as collateral for a loan or to assess risk and damages in disputes;
- d) the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, including the right to stay in a specific place resulting from the conversion of timeshare usage rights and the like;
- e) the maintenance, renovation and repair of a building or parts of a building, including work such as cleaning, tiling, papering and parqueting;
- f) property management other than portfolio management of investments in real estate covered by paragraph 7(d), consisting in the operation of commercial, industrial or residential real estate by or on behalf of the owner of the property;
- g) intermediation in the sale or leasing or letting of immovable property as well as in certain interests in immovable property or rights in rem treated as tangible property, other than the intermediation covered by paragraph 7(b).

5. In addition, the VAT Committee considers, **almost unanimously**, that the following services, in particular, shall be covered by Article 47:
- a) the drawing up of plans for a building or parts of a building designated for a particular plot of land regardless of whether or not the building is erected;
 - b) the provision of on-site supervision or security services;
 - c) the construction of permanent structures on land as well as construction and demolition work performed on permanent structures such as pipeline systems for gas, water, sewerage and the like;
 - d) the maintenance, renovation and repair of permanent structures such as pipeline systems for gas, water, sewerage and the like;
 - e) work on land, including agricultural services such as tillage, sowing, watering and fertilization;
 - f) the installation or assembly of machines or equipment which, upon installation or assembly, qualify as immovable property;
 - g) the maintenance and repair, inspection and supervision of machines or equipment if those machines or equipment qualify as immovable property;
 - h) legal services relating to the conveyance or the transfer of a title to immovable property as well as certain interests in immovable property or rights in rem treated as tangible property, such as notary work, or the drawing up of a contract to sell or acquire such property, even if the underlying transaction resulting in the legal alteration of the property is not carried through.
6. The VAT Committee also considers, by **large majority**, that the following services, in particular, shall be covered by Article 47:
- a) the leasing or letting of immovable property other than that covered by paragraph 9, including the storage of goods for which a specific part of the property is assigned for the exclusive use of the customer;

- b) the assignment and transmission of rights other than those covered by paragraph 4(d) and point (a) of this paragraph to use the whole or parts of an immovable property, including the licence to use part of a property, such as the granting of fishing and hunting rights or access to lounges in airports, or the use of an infrastructure for which tolls are charged, such as a bridge or tunnel.
7. The VAT Committee is of the **unanimous** view that the following services, in particular, shall not be covered by Article 47:
- a) the drawing up of plans for a building or parts of a building if not designated for a particular plot of land;
 - b) intermediation in the provision of hotel accommodation or accommodation in sectors with a similar function, such as holiday camps or sites developed for use as camping sites where supplied by an intermediary acting in the name and on behalf of another person;
 - c) the installation or assembly, the maintenance and repair, the inspection or the supervision of machines or equipment which is not, or does not become, part of the immovable property;
 - d) portfolio management of investments in real estate;
 - e) legal services other than those covered by paragraph 5(h), connected to contracts, including advice given on the terms of a contract to transfer immovable property, or to enforce such a contract, or to prove the existence of such a contract, where such services are not specific to a transfer of a title on an immovable property.
8. In addition, the VAT Committee considers, **almost unanimously**, that the following services, in particular, shall not be covered by Article 47:
- a) the storage of goods in an immovable property where no specific part of the immovable property is assigned for the exclusive use of the customer;

- b) the provision of a stand location on a fair or exhibition site together with other, related services to enable the exhibitor to display items such as design of the stand, transport and storage of the items, provision of machines, cable laying, insurance, and supply of publicity material.
9. The VAT Committee also considers, by **large majority**, that, in particular, the provision of advertising, even if it involves the use of immovable property shall not be covered by Article 47.
10. The VAT Committee **almost unanimously** agrees that where a supplier puts equipment at the disposal of his customer, with or without accompanying staff, with a view of allowing the customer to carry out work on immovable property such as that for example provided for under paragraphs 4(a) to (c) and (e) and 5(c) to (g), and where the supplier assumes no responsibility for the execution of the work but is only responsible for making the equipment available, the service shall be qualified as the hiring of a movable tangible property.

However, where the equipment, along with sufficient staff for its operation, is put at the disposal of the customer, the VAT Committee is of the **almost unanimous** view that the supplier shall be presumed to assume responsibility for the execution of the work and to have supplied work on immovable property. The presumption that the supply is work on immovable property may be rebutted by any means in fact or law in order to establish the actual nature of the service.

11. These guidelines shall replace guidelines agreed at the 16th, 17th, 23rd, 52nd, 60th and 83rd meetings of the VAT Committee insofar as they concern the place of supply of services.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.3 Origin:** Commission
References: Articles 44 and 45 of the VAT Directive
Article 19 of the VAT Implementing Regulation
Subject: Services susceptible to be for private use
(Document taxud.c.1(2011)419903 – Working paper No 691)

Where services whose nature is highly indicative of private use are supplied, the VAT Committee **almost unanimously** agrees that the supplier shall not be able, as provided for in the second paragraph of Article 19 of the VAT Implementing Regulation, to rely solely on the individual VAT identification number communicated by the customer but shall also hold information sufficient to corroborate business use by that customer.

In the case where the customer is established outside the Community and the nature of the services provided is highly indicative of private use, the VAT Committee **almost unanimously** agrees that the supplier shall obtain from the customer not only the information referred to in Article 18(3) of the VAT Implementing Regulation but shall also, pursuant to the first paragraph of Article 19 of that Regulation, hold information sufficient to corroborate that the services are not exclusively for private use of that customer. No such information shall however be required to be held by the supplier in respect of the services referred to in Article 59 of the VAT Directive.

The VAT Committee **almost unanimously** agrees that to be proportionate, the supplier of such services may not be asked to hold information beyond that which is necessary to corroborate the intended use of the services concerned.

The VAT Committee **almost unanimously** agrees that it is for the Member State of the supplier to determine which information shall be required to be held. In this respect, a statement by the customer in the contract or on an order form, confirming that the services are intended for his business use, or other corroborating elements already in the possession of the supplier, shall normally be regarded as sufficient.

The VAT Committee **almost unanimously** considers that the supplies in question shall include, in particular, the following:

- (a) hospital and medical care;
- (b) services supplied by dentists and dental technicians;
- (c) personal and domestic care services;
- (d) services linked to welfare and social security work;
- (e) services linked to the protection of children and young persons;
- (f) provision of children's or young people's education, school or university education;
- (g) tuition given privately by teachers and covering school or university education;
- (h) services linked to sport, including the use of facilities such as gymnastics halls and suchlike in exchange for the payment of a fee;
- (i) betting, lotteries and other forms of gambling;
- (j) downloading of films and music;
- (k) digitised contents of books which are not specialist literature;
- (l) subscription to online newspapers and journals which are not specialist literature;
- (m) online news and traffic information and weather reports;
- (n) legal services dealing with family-related issues and domestic relations;
- (o) consultancy services dealing with personal income tax and social security issues.

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5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.1 Origin:** United Kingdom, Sweden
References: Articles 28, 44 and 45
Subject: Electronic services supplied by service providers using the network of telecommunications providers
(Document taxud.c.1(2011)441570 – Working paper No 692)
(Document taxud.c.1(2011)604319 – Working paper No 692 Addendum (EN only))

The VAT Committee is of the **almost unanimous** view that to establish the place of supply of an electronic service which the final consumer receives, online or via other telecommunications networks from an electronic service provider through an intermediary or a third party intervening in the supply, there is a need to determine who the supplier of the electronic service is.

Where an electronic service is supplied through an intermediary or a third party intervening in the supply (a telecommunications network provider or another provider), the VAT Committee **almost unanimously** agrees that the service shall be deemed to have been supplied to the final consumer by:

- (a) the intermediary where, in supplying the electronic service, he acts in his own name but on behalf of the electronic service provider, as provided for under Article 28 of the VAT Directive;
- (b) the electronic service provider where, in supplying the electronic service, the intermediary acts in the name and on behalf of the electronic service provider;
- (c) the third party intervening in the supply where, in supplying the electronic service, the third party acts in his own name and on his own behalf.

The VAT Committee is of the **almost unanimous** view that in providing the electronic service to the final consumer the intermediary or the third party intervening in the supply shall be presumed to have acted in their own name unless, in relation to the final consumer, the electronic service provider is explicitly indicated as the supplier of the electronic service.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.6 Origin:** Commission
References: Articles 85, 86, 143 and 144 of the VAT Directive
Article 23 of Directive 2009/132/EC
Article 1 of Directive 2006/79/EC
Subject: VAT exemption of incidental expenses related to the importation of small consignments
(Document taxud.c.1(2011)216053 – Working paper No 686)

The VAT Committee, at **large majority**, confirms that the VAT exemption for goods imported in small consignments as provided for in Article 1 of Directive 2006/79/EC and Article 23 of Directive 2009/132/EC also applies to the ancillary services the expense of which is included in the taxable amount of such goods in accordance with Article 86(1)(b) of the VAT Directive.

The VAT Committee, at **large majority**, agrees that Article 144 of the VAT Directive shall apply to the supply of ancillary services relating to the importation of goods exempt from VAT on the basis of Article 1 of Directive 2006/79/EC and Article 23 of Directive 2009/132/EC where the value of such services is included in the taxable amount in accordance with Article 86(1)(b) of the VAT Directive.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.7 Origin: Latvia
Reference: Article 148(c)
Subject: Scope of exemptions related to international transport – repair on vessels performed by sub-contractors
(Document taxud.c.1(2011)474497 – Working paper No 696)

1. The VAT Committee **almost unanimously** agrees that the VAT exemption provided for in Article 148(c) of the VAT Directive shall apply to repair services rendered exclusively on the vessels used for (i) navigation on the high seas and carrying passengers for reward, (ii) commercial, industrial and fishing activities on the high seas, (iii) rescue or assistance at sea, and (iv) inshore fishing, in situations where a main contractor supplies a service or a set of services directly to the ship-owner or another person entitled to the actual exploitation of such vessels (such as charterer or hirer), further to applicable laws.
2. The VAT Committee **almost unanimously** agrees that the exemption provided for in Article 148(c) of the VAT Directive cannot be extended to any services linked to the repair supplied at an earlier stage in the commercial chain, in particular to the services of sub-contractors rendered on the basis of a contract between a main contractor of the ship-owner (or another person entitled to the actual exploitation of such vessels, further to applicable laws) and his sub-contractors.

6. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

6.6 Origin: Commission
Reference: Article 2
Subject: International agreement – Second Line of Defense
(Document taxud.c.1(2011)864736 – Working paper No 705)

The VAT Committee **almost unanimously** acknowledges that, without prejudice to Article 351 of the Treaty on the Functioning of the European Union, where an international agreement provides for an exemption from VAT, such an exemption may only be granted within the VAT system if there is a legal basis in the VAT Directive or if such a basis is provided for through the procedure laid down in Article 396 of the VAT Directive. However, where such a basis does not exist in the VAT Directive, the VAT Committee **almost unanimously** considers that the Member States may provide, outside the VAT system, for a mechanism for compensation of the amount levied as VAT, provided that such a mechanism complies with the basic principles of the internal market, respects the rules on state aid and does not lead to a reduction in the VAT base used for the calculation of own resources.

The VAT Committee **almost unanimously** agrees that when assessing whether there is a VAT exemption or not, the source of funding of a taxable transaction is irrelevant. In particular, the fact that the transactions concerned are paid with Government funds of EU Member States or non-EU countries cannot be taken into account.

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6. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 6.2 Origin:** Lithuania
Reference: Article 132(1)(b) and (c)
Subject: Exemption for the provision of medical care in the exercise of the medical and paramedical professions – VAT treatment of plastic surgery – deferred from the 93rd meeting
(Document taxud.c.1(2011)407293 – Working paper No 690)

The VAT Committee, with a **large majority**, agrees that for VAT exemption to be granted pursuant to Article 132(1)(c) of the VAT Directive to operations of plastic surgery, it is not sufficient that the surgery is performed by a qualified medical practitioner.

The VAT Committee, with a **large majority**, confirms that to qualify as medical care within the meaning of Article 132(1)(b) and (c) of the VAT Directive, surgery must be undertaken for a therapeutic aim which is considered necessary for the purpose of preventing, treating and curing diseases, including of a psychological nature, or other health disorders. Where undertaken only for cosmetic purposes, the VAT Committee, with a **large majority**, agrees that plastic surgery shall not qualify as medical care.

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6. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 6.4 Origin:** Denmark
References: Articles 168, 178 and 201
Subject: Deduction of import VAT paid by representatives – deferred from the 93rd meeting
(Document taxud.c.1(2011)545815 – Working paper No 700)

The VAT Committee **almost unanimously** confirms that a taxable person designated as liable for the payment of import VAT pursuant to Article 201 of the VAT Directive shall not be entitled to deduct it if both of the following conditions are met:

- (1) he does not obtain the right to dispose of the goods as owner;
- (2) the cost of the goods has no direct and immediate link with his economic activity.

This shall be the case even if that taxable person holds a document fulfilling the conditions for exercising the right of deduction laid down in Article 178(e) of that Directive.

It is noted that this guideline shall be without prejudice to situations where the importation is related to the supply of goods covered by Article 14(2)(c) of the VAT Directive.

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6. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 6.5 Origin:** Commission
References: Articles 62, 63, 65, 67, 220, 262-271
Subject: Recapitulative statements in connection with payments on account – deferred from the 93rd meeting
(Document taxud.c.1(2011)475454 – Working paper No 698)

1. With regard to the submission of recapitulative statements, the VAT Committee **almost unanimously** confirms that in determining when VAT becomes chargeable on goods supplied VAT-exempt to another Member State in accordance with the conditions laid down in Article 138 of the VAT Directive, Article 67 of the VAT Directive is a specific provision to be read in conjunction with Article 28d(4) of the Sixth VAT Directive.

The VAT Committee **almost unanimously** agrees that a taxable person who receives a total or partial payment on account linked to a supply of goods supplied VAT-exempt by him in accordance with the conditions laid down in Article 138 of the VAT Directive, shall not be obliged to submit a recapitulative statement pursuant to Articles 262-271 of the VAT Directive reporting the receipt of that payment.

The VAT Committee **almost unanimously** also agrees that a taxable person who issues an invoice for a total or partial payment on account that is linked to a supply of goods which is exempt under Article 138 of the VAT Directive before that supply is made by him, shall not be obliged to submit a recapitulative statement pursuant to Articles 262-271 of the VAT Directive reporting the issuance of that invoice.

2. The VAT Committee **almost unanimously** agrees that a taxable person who receives a total or partial payment on account linked to a supply of services to be made by him in respect of which VAT is payable by the customer pursuant to Article 196 of the VAT Directive, shall be obliged to submit a recapitulative statement pursuant to Articles 262-271 of the VAT Directive reporting the receipt of that payment.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.3 Origin:** Belgium
Reference: Article 146(1)(c)
Subject: Supplies of goods to approved humanitarian bodies in one Member State for subsequent exportation from another Member State
(Document taxud.c.1(2012)104912 – Working paper No 721)

The VAT Committee **unanimously** confirms that for the purposes of Article 146(1)(c) of the VAT Directive, an 'approved body' shall mean a body approved by any Member State for its humanitarian, charitable or teaching activities.

An approved body shall, according to the view **unanimously** held by the VAT Committee, be identified for VAT purposes in the Member State in which it makes intra-Community acquisitions of goods as soon as it reaches the threshold laid down in Article 3(2) of the VAT Directive or, as the case may be, where it opts for the general scheme provided for in Article 2(1)(b)(i) of that Directive.

The VAT Committee **almost unanimously** agrees that

- (1) where goods are supplied to an approved body identified for VAT purposes in the Member State of intra-Community acquisition of goods with a view to being subsequently exported as part of its humanitarian, charitable or teaching activities outside the EU, such a supply shall be exempt pursuant to Article 138 of the VAT Directive;
- (2) where goods are supplied to an approved body not identified for VAT purposes in the Member State of intra-Community acquisition of goods with a view to being subsequently exported as part of its humanitarian, charitable or teaching activities outside the EU, such a supply shall be exempt on the basis of Article 146(1)(c) of the VAT Directive either through a direct exemption or, if the Member State from which the goods are dispatched or transported has exercised the option provided for in Article 146(2) of the VAT Directive, by means of a refund of the VAT.

The VAT Committee **almost unanimously** agrees that to be able to exempt the supply of goods to an approved body not identified for VAT purposes, the supplier needs to obtain proof from the approved body of its status and of the destination and use of the goods.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.4 Origin:** Italy
References: Article 148(c), (d), (f) and (g)
Subject: VAT treatment of supply of services to meet the direct needs of vessels, aircraft and their cargoes following the changes to the rules governing the place of supply of services
(Document taxud.c.1(2012)161447 – Working paper No 724)

The VAT Committee **unanimously** confirms that where services exempted under Article 148(c), (d), (f) and (g), fall under the general rule provided for in Article 44 of the VAT Directive, the place of supply shall be the place where the customer is established, irrespective of the place where the supplier is established or where the service is physically rendered. However, where such services are supplied to a taxable person located outside the European Union but are effectively used and enjoyed within the territory of a Member State, or conversely are supplied to a taxable person located within the territory of a Member State but the effective use and enjoyment takes place outside the European Union, the VAT Committee **unanimously** agrees that the place of supply shall be the place where the services are effectively used and enjoyed if the Member State concerned has made use of the option laid down in Article 59a of the VAT Directive.

The VAT Committee is of the **unanimous** view that the only authorities able to assess whether the conditions for the exemption provided for in Article 148(c), (d), (f) and (g) of the VAT Directive are fulfilled, will be the authorities of the Member State in which the services are deemed to take place by virtue of the applicable localisation rule. If the option laid down in Article 59a(b) of the VAT Directive is used, the competent authorities will be those of the Member State where the services are effectively used and enjoyed.

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5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.1 Origin: Belgium
Reference: Article 9(1)
Subject: Interpretation of the term ‘economic activity’
(Document taxud.c.1(2012)74855 – Working paper No 718)

The VAT Committee is of the **almost unanimous** view that a supply shall only be subject to VAT if there is a direct link between the supply of goods or services provided and the consideration received within the meaning of Article 2(1)(a) and (c) of the VAT Directive.

The VAT Committee is of the **almost unanimous** view that

- (1) for such a condition to be fulfilled, it does not require that the consideration reflects the market value of the supply, nor should it have to cover the costs of making the supply;
- (2) such a condition does not necessarily mean that an activity which is mainly but not exclusively financed by general subsidies not closely linked to the supplies carried out shall always be regarded as being outside the scope of VAT.

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5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.2 Origin: Germany
References: Articles 28, 44, 45, 53 and 54
Subject: Tickets for sports events supplied by an intermediary acting in his own name and on his own behalf
(Document taxud.c.1(2012)905726 – Working paper No 737)

1. The VAT Committee **unanimously** confirms that where tickets granting a right to access a cultural, artistic, sporting, scientific, educational, entertainment or similar event are distributed through an intermediary acting in the name and on behalf of the organiser, for VAT purposes:
 - (i) the organiser makes a supply of services consisting of granting access to the event through the sale of the ticket to the purchaser, the place of supply of which is the place where the event actually takes place, as provided for in Articles 53 and 54 of the VAT Directive;
 - (ii) the intermediary makes a supply of mediation services to the organiser, the place of supply of which shall be determined in accordance with Article 44 of the VAT Directive.
2. Where such tickets are distributed through an intermediary acting in his own name but on behalf of the organiser, the VAT Committee **unanimously** agrees that in that case, for VAT purposes:
 - (i) the organiser is deemed to make a supply of services to the intermediary consisting of granting access to the event, the place of supply of which is the place where the event actually takes place, as provided for in Article 53 of the VAT Directive;
 - (ii) the intermediary is, according to Article 28 of the VAT Directive, deemed to make a supply of services consisting of granting access to the event through the sale of the ticket to the purchaser, the place of supply of which is the place where the event actually takes place, as provided for in Articles 53 and 54 of the VAT Directive.
3. Where such tickets are distributed through a third party, other than the organiser, acting on his own behalf, or acting in his own name and on his own behalf, the VAT Committee **unanimously** agrees that in selling those tickets the third party shall be regarded as having supplied a service consisting of granting access to the event, the place of supply of which is the place where the event actually takes place, as provided for in Articles 53 and 54 of the VAT Directive.

4. The VAT Committee **unanimously** agrees that the sale of tickets delivered over the Internet or an electronic network, whether sold directly by the organiser or distributed through an intermediary or another third party, shall not be regarded as a supply of electronic services covered by Article 58 of the VAT Directive.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.3. Origin:** France
References: Articles 44, 53 and 54
Article 132(1)(i)
Subject: Place of taxation and exemption for the provision of education and training
(Document taxud.c.1(2012)970429 – Working paper No 738)

1. The VAT Committee **almost unanimously** confirms that the provision of education or training delivered by a teacher over the Internet or an electronic network (namely via a remote link) shall be covered by Article 44 of the VAT Directive if supplied to a taxable person (B2B) or by Article 54 of the VAT Directive when supplied to a non-taxable person (B2C).

When supplied to a non-taxable person, the training shall be deemed to actually take place at the place where the teacher is established unless the teacher is shown to provide his services from a place other than that of his main place of business or a fixed establishment: in such case, the training shall be deemed to take place in the country from which the service is actually provided.

2. The VAT Committee **unanimously** agrees that the Member State which shall lay down the conditions for the application of the exemption provided for in Article 132(1)(i) of the VAT Directive, shall be the Member State in which the place of supply of the training or education is situated pursuant to Articles 44, 53 or 54 of the VAT Directive.

Where the service provider is not established in the Member State in which the service is taxable, the exemption shall apply insofar as he fulfils the conditions laid down by that Member State. The person liable for payment of VAT to the tax authorities shall establish by any means of fact or of law that the conditions required for the supply to fall under the exemption in the Member State of supply are met.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.6 Origin: Poland
Reference: Article 16
Subject: Foodstuffs donated to the poor
(Document taxud.c.1(2012)831197 – Working paper No 735)

The VAT Committee **unanimously** agrees that the donation of foodstuffs to the poor, made by a taxable person free of charge, shall be treated as a supply of goods for consideration, in accordance with the first paragraph of Article 16 of the VAT Directive, unless this donation meets the conditions laid down by the Member State to be considered as a gift of small value within the meaning of the second paragraph of Article 16 of the VAT Directive.

The VAT Committee also agrees **unanimously** that, in cases where such a donation must be treated as a supply of goods for consideration, the taxable amount shall be the purchase price of the goods (or of similar goods or, in the absence of a purchase price, the cost price of the goods) donated, adjusted to the state of those goods at the time when the donation takes place, as provided for in Article 74 of the VAT Directive.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.3 Origin:** Belgium
References: Articles 38 and 39
Subject: Concept of taxable dealer
(Document taxud.c.1(2013)141524 – Working paper No 757)

The VAT Committee **unanimously** agrees that to be regarded as a taxable dealer within the meaning of Article 38(2) of the VAT Directive, it is necessary that the activity of the taxable person consists of selling exactly the same product (from those included in Article 38(2) of the VAT Directive) as that previously bought without any transformation and with no own consumption, unless that own consumption may be qualified as negligible.

Where the activity of a taxable person implies consumption of one of the products listed in Article 38(2) of the VAT Directive in order to produce another of the products listed, the VAT Committee **unanimously** considers that, when selling that product, the taxable person may not be regarded as a taxable dealer and unanimously agrees accordingly that the applicable rule to determine the place of supply shall in that case be Article 39 of the VAT Directive.

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5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.5 Origin:** Belgium
References: Article 151 of the VAT Directive
Article 51 of the VAT Implementing Regulation
Subject: Issues relating to the exemption and its application
(Document taxud.c.1(2013)59183 – Working paper No 755)

1. The VAT Committee **almost unanimously** agrees that where goods or services are acquired by the headquarters of an international body, or by one of its dependent entities, the only authorities competent to stamp the exemption certificate shall be those of the host Member State of the international body, according to Article 51(2) of the VAT Implementing Regulation, irrespective of where the use of the goods or services will be taking place.

However, when goods or services are directly acquired by an independent entity of an international body, located in a Member State other than the Member State hosting the international body, for its own needs or to comply with the tasks entrusted to it, the VAT Committee **almost unanimously** agrees that the authorities competent to stamp the exemption certificate shall be those of the Member State where that independent entity has its seat.

The VAT Committee by a **large majority** agrees that, with a view to applying the exemption laid down in Article 151(1) of the VAT Directive, an entity making up part of an international body shall be regarded as independent only where it has its own staff and financial and material resources enabling it to independently carry out the tasks and duties that constitute its object.

2. Where the recipient of goods or services eligible for exemption under Article 151(1) of the VAT Directive submits an exemption certificate to its host Member State for stamping as provided for in Article 51(2) of the VAT Implementing Regulation, the VAT Committee **almost unanimously** agrees that the Member State concerned shall notify the recipient of its decision to approve or refuse validation within a period not exceeding three months from the date on which the fully completed exemption certificate was presented for stamping to the host Member State.

3. Where the recipient of the goods or services is unable to deliver an exemption certificate upon the supply of goods or services which are exempted under Article 151(1) of the VAT Directive, and for which direct exemption is applied, the VAT Committee **almost unanimously** agrees that, unless another exemption applies, the supplier shall be liable to account for VAT on the supply but, once the duly filled certificate is delivered to that supplier by the recipient, the supplier shall be entitled to make the necessary adjustments subject to the general limits and conditions laid down by the legislation of the Member State concerned regarding correction or modification of invoices.

The VAT Committee **almost unanimously** agrees that to avoid any unjustified advantage, the Member State concerned may make the adjustment by the supplier conditional on the tax having been refunded to the recipient of the goods or services.

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5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.6 Origin: Commission

References: Articles 9(1) and 13

Annex I

Subject: Status of international bodies if and when involved in economic activity

(Document taxud.c.1(2013)56116 – Working paper No 754)

1. The VAT Committee **almost unanimously** confirms that the concept of a body governed by public law provided for under Article 13 of the VAT Directive shall also include a body set up by an international agreement or convention or by an existing international body, provided that the body which is set up is governed by public international law.

To qualify as a body governed by public international law, the VAT Committee **almost unanimously** agrees that it shall be irrelevant whether the body is an international body recognised as such by its host Member State pursuant to Article 151(1)(b) of the VAT Directive.

2. The VAT Committee **almost unanimously** agrees that where a body governed by public international law carries out activities or transactions under a special legal regime (normally made up by or derived from the international agreement or convention by which it is set up) and not under the same legal conditions as those that apply to private traders, the body shall be regarded as acting as a public authority pursuant to Article 13(1) of the VAT Directive.
3. It is the **almost unanimous** view of the VAT Committee that a body governed by public international law carrying out economic activities in which it engages as a public authority must, in accordance with Article 13(1) of the VAT Directive, be regarded as a non-taxable person except
 - where its treatment as a non-taxable person would lead to significant distortions of competition;
 - in respect of activities listed in Annex I to the VAT Directive provided that those activities are not carried out on such a small scale as to be negligible.

4. Where activities carried out by a body governed by public international law in which it does not engage as a public authority are exempt, the VAT Committee **almost unanimously** agrees that, in accordance with Article 13(2) of the VAT Directive, those activities may be regarded as activities that the body engages in as a public authority.
5. The VAT Committee **almost unanimously** agrees that the qualification of individual activities or transactions carried out by a body governed by public international law shall be dependent on the situation, and subject to the assessment of, the Member State where the place of supply is.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.9 Origin: United Kingdom and Greece
Reference: Article 148(e) and (f)
Subject: Case C-33/11 *A Oy*
(Document taxud.c.1(2013)98712 – Working paper No 758)

1. The VAT Committee **almost unanimously** agrees that the exemption laid down in Article 148(f) of the VAT Directive shall be applicable to the supply of an aircraft to a taxable person when the aircraft is acquired by the taxable person with a view to allowing exclusive use of it by an airline, or several airlines each operating for reward chiefly on international routes.

This exemption shall also, according to the **almost unanimous** view of the VAT Committee, be applicable to the subsequent sale of the aircraft by the taxable person having acquired it provided that the exclusive use of that aircraft remains for airlines operating for reward chiefly on international routes.

In any case, the VAT Committee **almost unanimously** agrees that the exemption shall not, under any circumstances, cover supplies made at an earlier stage in the commercial chain than the supply made to the taxable person acquiring the aircraft with a view to allowing its exclusive use by an airline, or several airlines each operating for reward chiefly on international routes.

Further, the VAT Committee **almost unanimously** agrees that the exemption shall apply to the chartering and hiring of an aircraft if the recipient of those services is an airline, or several airlines each operating for reward chiefly on international routes or if that recipient allows for exclusive use of the aircraft by one or several of such airlines.

The VAT Committee **almost unanimously** agrees that this exemption shall also apply to the modification, repair and maintenance of the aircraft referred to above and the supply, hiring, repair and maintenance of equipment incorporated or used therein.

2. The VAT Committee **almost unanimously** agrees that the exemption laid down in Article 148(e) of the VAT Directive, referring to the supply of goods for the fuelling and provisioning of aircraft, will also apply when made in relation to aircraft belonging to a taxable person (i) who allows exclusive use of the aircraft to airlines operating for reward chiefly on international routes and (ii) who acquired that aircraft with a view to allowing that exclusive use. However, the VAT Committee **almost unanimously** agrees that the exemption would only apply to the supply of goods directly made to the airline operating the aircraft, and not cover supplies rendered at an earlier stage in the commercial chain.
3. The VAT Committee **almost unanimously** agrees that, for the exemptions laid down in Article 148(e) and (f) of the VAT Directive to apply, the aircraft must be used by the airline operating for reward chiefly on international routes exclusively for its commercial activities. Where the use of the aircraft is shared with users who are not airlines operating for reward chiefly on international routes, or if it is used for purposes other than the commercial activities of the airline, the VAT Committee is of the **almost unanimous** view that exemption shall be denied.
4. The VAT Committee is of the **almost unanimous** view that an airline operating for reward chiefly on international routes does not use an aircraft exclusively for its commercial activities and the exemption shall be denied when the owner of the aircraft, or any related person, has the right to claim use of the aircraft, unless there is clear commercial evidence that such use is only granted on the same basis as for any other client of the airline.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.5 Origin: Romania
Reference: Articles 65 and 90
Subject: VAT treatment of the purchase of airplane tickets
(Document taxud.c.1(2013)1798047 – Working paper No 774)

1. The VAT Committee **unanimously** agrees that the payment made by a customer during the process of booking an airplane ticket shall be deemed to constitute a payment on account according to Article 65 of the VAT Directive, on which VAT becomes chargeable at the moment when the airline receives the payment. The VAT Committee **unanimously** agrees that this qualification shall not be affected by the possibility given to the customer to cancel the ticket, or to change the date or the route of the travel.
2. When a customer pays the price of the ticket but does not take the flight without cancelling the booking, the VAT Committee **unanimously** agrees that the price paid by the customer and withheld by the airline cannot be qualified as a deposit retained as compensation for a loss but shall be regarded as constituting the consideration for a service provided by the airline which is, as such, subject to VAT.
3. In the case of a total or partial reimbursement of the ticket price by the airline to the customer, due to cancellation or a change in the original booking, the VAT Committee **almost unanimously** notes that the taxable amount shall be reduced in accordance with Article 90(1) of the VAT Directive.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.2 Origin:** Latvia and Germany
Reference: Article 132(1)(d)
Subject: Interpretation of the terms ‘blood’ and ‘human organs’
(Document taxud.c.1(2013)1678440 – Working paper No 771)

The VAT Committee **almost unanimously** agrees that the supply of ‘blood’ pursuant to Article 132(1)(d) of the VAT Directive shall – besides the supply of whole blood – also encompass the supply of single blood components such as blood plasma or blood cells of human origin.

However, the VAT Committee is of the **almost unanimous** view that the supply of ‘blood’ and – accordingly – the VAT exemption provided for in Article 132(1)(d) of the VAT Directive shall not cover the supply of products derived from human blood by mixing different blood components or by mixing blood components with other substances or synthetic products, such as plasma products prepared from mixtures of human blood plasma (*e.g.* albumin and immunoglobulins).

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3. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

3.2 Origin: Commission
Reference: Article 2 of Council Implementing Regulation (EU) No 1042/2013
Subject: Transitional measures on the rules on the place of supply of telecommunications, broadcasting and electronically supplied services

(Document taxud.c.1(2014)325214 – Working paper No 795)

For supplies of telecommunications, broadcasting and electronically supplied services, made by a supplier established within the European Union to a non-taxable person who is established, has his permanent address or usually resides in the European Union, the VAT Committee **almost unanimously** agrees that when a payment is made on account prior to 1 January 2015, VAT shall become chargeable in the Member State where the supplier is established, on receipt of the payment and on the amount received, in accordance with Article 65 of the VAT Directive.

When a payment on account has been made before 1 January 2015 and where the chargeable event of the service concerned takes place on or after 1 January 2015, the VAT Committee **almost unanimously** agrees that according to Article 2(b) of Council Implementing Regulation (EU) No 1042/2013, VAT shall become chargeable in the Member State where the customer is established, has his permanent address or usually resides, but only on any amount not paid before 1 January 2015 provided, however, that payment on account was made according to the normal commercial practice of the supplier.

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4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.5 Origin:** Commission
References: Articles 30, 33 and 143(1)(b) of the VAT Directive
Article 23 of Directive 2009/132/EC
Subject: Small consignment exemptions provided for under the VAT Directive
(Document taxud.c.1(2014)205292 – Working paper No 787)

The VAT Committee **almost unanimously** is of the view that pursuant to Article 33(2) of the VAT Directive two separate taxable events shall occur when goods in commercial consignments are sold and sent from a third territory or a third country to private persons in cases where such goods are imported by the supplier into a different Member State than that of their final destination and then transported or dispatched to the Member State of their destination.

The VAT Committee with **a large majority** agrees that, for the purposes of applying Article 33(2) of the VAT Directive, in the case of mail order goods dispatched or transported from a third territory or a third country to a private person, those goods shall be deemed as having been imported from a VAT perspective by the supplier irrespective of the contractual terms to which the private person may have subscribed.

The VAT Committee also agrees **almost unanimously** that the first taxable event shall be the importation of goods pursuant to Article 30 of the VAT Directive, which may benefit from the exemption on small consignments provided that the conditions laid down in Title IV of Council Directive 2009/132/EC are met.

Further, the VAT Committee agrees **almost unanimously** that the second taxable event shall be the supply of such goods from the Member State of importation to the Member State of their destination, based on Article 33(2) of the VAT Directive.

The VAT Committee is finally of the **almost unanimous** view that the exemption provided for in Article 23 of Directive 2009/132/EC for the importation of small consignments cannot be extended to apply to the second taxable event, i.e. the supply of goods within the EU.

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4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.6 Origin: Commission
Reference: Article 148
Subject: Case C-33/11 *A Oy*, follow-up
(Document taxud.c.1(2014)204931 – Working paper No 788)

1. The VAT Committee **almost unanimously** agrees that the exemption laid down in Article 148(c) of the VAT Directive shall be applicable to the supply of a vessel to a taxable person acquiring that vessel with a view to allowing another taxable person to use it for commercial activities on the high seas but only if the acquisition is for the immediate hire of that vessel.

This exemption shall also, according to the **almost unanimous** view of the VAT Committee, be applicable to the subsequent sale of the vessel by the taxable person having acquired it provided that the exclusive use of that vessel remains for a taxable person using it for commercial activities on the high seas.

In any case, the VAT Committee **almost unanimously** agrees that this exemption shall not, under any circumstances, apply to supplies made at an earlier stage in the commercial chain than the supply made to the taxable person acquiring the vessel with a view to its immediate hire.

Further, the VAT Committee **almost unanimously** agrees that the exemption shall apply to the chartering and hiring of a vessel but only if the recipient of those services himself uses the vessel for commercial activities on the high seas and not in situations where that recipient allows other taxable persons to use it for such activities.

The VAT Committee **almost unanimously** agrees that this exemption shall also apply to the modification, repair and maintenance of the vessel and the supply, hiring, repair and maintenance of equipment incorporated or used therein provided, however, that the conditions required to apply the exemption on the acquisition, or on the chartering and hiring, are met.

2. The VAT Committee **almost unanimously** agrees that the exemption laid down in Article 148(a) of the VAT Directive, referring to the supply of goods for the fuelling and provisioning of vessels, will also apply when made in relation to a vessel belonging to a taxable person (i) who allows exclusive use of the vessel to a taxable person using it for commercial activities on the high seas, (ii) who acquired that vessel with a view to allowing that exclusive use, and (iii) whenever the acquisition is for the immediate hire of that vessel.

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However, the VAT Committee **almost unanimously** agrees that the exemption shall only apply to the supply of goods made directly to the taxable person operating the vessel, and shall not cover supplies made at an earlier stage in the commercial chain.

The VAT Committee also **almost unanimously** agrees that the exemption in Article 148(a) shall not apply to supplies made to a taxable person, different from the vessel operator, who undertakes economic activities on board a vessel.

3. The VAT Committee **almost unanimously** agrees that, for the exemptions laid down in Article 148(a) and (c) of the VAT Directive to apply, the vessel must be used by the taxable person operating it, exclusively for his commercial activities. Where the use of the vessel is shared with other users who are not using it exclusively for their commercial activities, or if it is used for purposes other than the commercial activities of the taxable person, the VAT Committee is of the **almost unanimous** view that the exemption shall be denied.

Irrespective of any shared use of a vessel, the VAT Committee **almost unanimously** agrees that where goods for the fuelling and provisioning of the vessel are supplied directly to the taxable person who uses the vessel for commercial activities on the high seas, the exemption provided for in Article 148(a) of the VAT Directive shall nevertheless be applicable.

4. The VAT Committee is of the **almost unanimous** view that where a taxable person does not use a vessel exclusively for his commercial activities on the high seas, the exemption shall be denied when the owner of the vessel, or any related person, has the right to own use of the vessel, unless there is clear commercial evidence that such use is only granted on the same basis as for any other client of the taxable person.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.7 Origin: Commission
Reference: Article 59(c)
Subject: Air navigation services supplied by Eurocontrol
(Document taxud.c.1(2014) 2573330 – Working paper No 809)

The VAT Committee is of the unanimous view that air navigation services consisting in air traffic, communication, navigation, surveillance, meteorological and aeronautical information services, which are supplied as a whole by national air navigation service providers to non-taxable persons who are established or have their permanent address or usually reside outside the European Union, and invoiced by Eurocontrol on behalf of those providers, do not fall within the scope of Article 59(c) of the VAT Directive.

Consequently, the VAT Committee unanimously agrees that the place of supply of such services shall be determined in accordance with the general rule laid down in Article 45 of the VAT Directive.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.1 Origin:** Commission
References: Article 369j of Directive 2006/112/EC and Article 8(1)(e) of Directive 2008/9/EC
Subject: VAT refund in case of a taxable person registered for MOSS
(Document taxud.c.1(2014)2761330 – Working paper No 816)

Notwithstanding Article 8(1)(e) of the VAT Refund Directive and without prejudice to the second paragraph of Article 369j of the VAT Directive, the VAT Committee **unanimously** agrees that, as the right of deduction is a fundamental right of taxable persons and a core principle of the EU VAT system, a taxable person established within the EU but not in the Member State of consumption and who is supplying telecommunications, broadcasting or electronic services in the Member State of consumption (hereinafter, “the taxable person”) for which he is registered under the special scheme provided for in Article 369b of the VAT Directive, shall be entitled to a refund under the VAT Refund Directive regarding the deductible VAT borne in the Member State of consumption.

As regards the situation described above, the VAT Committee **unanimously** agrees that the taxable person shall tick the box in the VAT refund application to confirm that he has not supplied services in the Member State of consumption, and that this shall be without prejudice to his right to obtain a refund from that Member State under the VAT Refund Directive.

It is **unanimously** agreed by the VAT Committee that with a view to clarify his special position, the taxable person shall be allowed in the empty box (if any) of the same VAT refund application, to include a reference indicating that he is registered for the MOSS.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.13 Origin:** Germany
Reference: Article 11
Subject: Cases C-85/11, *Commission vs. Ireland* and C-480/10, *Commission vs. Sweden*
(Document taxud.c.1(2014)2773566 – Working paper No 813)

The VAT Committee **almost unanimously** agrees that although Article 11 of the VAT Directive does not preclude non-taxable persons from being included in a VAT group, a Member State availing of this option shall not be obliged to admit non-taxable persons as members of a VAT group but may restrict the application of the VAT group scheme by excluding such persons as members provided that the principle of neutrality is respected.

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4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.11 Origin: Commission
References: Articles 143(1)(g) and 151(1)(b)
Subject: Exemption granted to members of an ERIC
(Document taxud.c.1(2014)1252433 – Working paper No 800)

1. The VAT Committee **almost unanimously** agrees that the supply of goods or services to a member of an ERIC may only benefit from VAT exemption pursuant to Articles 143(1)(g) and 151(1)(b) of the VAT Directive if and when all of the following conditions are fulfilled:
 - (a) the statutes of the ERIC provide for its members, as defined in Article 9(1) of Council Regulation (EC) No 723/2009 of 25 June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), to benefit from the exemption granted to the ERIC;
 - (b) the acquisition of goods or services made by the member respects the limits and conditions laid down in the statutes of the ERIC;
 - (c) the goods or services acquired by the member are necessary for the ERIC to fulfil the objectives assigned to it and intended for the exclusive use in achieving the tasks that constitute the purpose of the ERIC;
 - (d) those goods or services are not shared in use with other bodies or used for tasks of the ERIC other than those constituting its purpose.

Further, the VAT Committee **almost unanimously** agrees that with a view to ensuring the correct and straightforward application of those exemptions as required under Article 131 of the VAT Directive, only goods or services allocated directly for the exclusive use in achieving the tasks that constitute the purpose of the ERIC, without any further processing, can benefit from exemption.

2. The VAT Committee **almost unanimously** agrees that the public entities or private entities with a public service mission by which any Member State, associated country or third country may be represented (“representing entities”) and to which Article 9(4) of Council Regulation (EC) No 723/2009 refers, cannot be regarded as members of the ERIC.

The VAT Committee is of the **almost unanimous** view that goods or services acquired by those representing entities shall not benefit from VAT exemption pursuant to Articles 143(1)(g) and 151(1)(b) of the VAT Directive, not even if the goods or services are acquired with a view to be delivered to the ERIC as an in-kind contribution.

According to the **almost unanimous** view of the VAT Committee, VAT exemption shall only be possible if goods or services supplied to a representing entity are acquired by that entity in the name and on behalf of the ERIC.

3. When goods or services are acquired by a member of an ERIC in a Member State other than that in which the ERIC is established, and the transaction fulfils all the conditions for benefiting from VAT exemption under Articles 143(1)(g) or 151(1)(b) of the VAT Directive as provided for under paragraph 1 of these guidelines, the VAT Committee is of the **almost unanimous** view that the VAT exemption certificate shall specify that the goods or services are acquired by the member but for the sole purpose of the ERIC.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.5 Origin:** France
References: Articles 17, 21, 38, 39, 140 and 143
Subject: Rules applying to the transportation of gas within the EU without transfer of ownership
(Document taxud.c.1(2014)3186700 – Working paper No 817)

1. The VAT Committee **almost unanimously** agrees that the dispatch or transport, without transfer of ownership, of gas through a natural gas system situated within the territory of the Community or any network connected to such a system, of electricity or of heat or cooling energy through heating or cooling networks, to a Member State, through the territories of other Member States, shall not constitute a transfer within the meaning of Article 17(1) of the VAT Directive provided that the dispatch or transport is made for the purposes of any of the transactions foreseen under Article 17(2)(d) of the VAT Directive.
2. Where the above-mentioned conditions are met, the VAT Committee **almost unanimously** agrees that the dispatch or transport of these goods shall not be treated as a supply of goods for consideration and shall therefore not be required to comply with the declaration and registration obligations applying to supplies of goods exempted pursuant to Article 138(2)(c) of the VAT Directive and to intra-Community acquisitions of goods pursuant to Article 21 of the VAT Directive.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.2** **Origin:** **Commission**
 Reference: **Articles 14(2)(c), 28, 46, 58 and 306-310 of the VAT Directive**
 Articles 7(3)(u) and 31 of the VAT Implementing Regulation
 Subject: **Treatment of online supplies made by a travel agent to final**
 consumers
 (Document taxud.c.1(2014)2806510 – Working paper No 814)

In regard to the special scheme for travel agents as laid down by Articles 306 to 310 of the VAT Directive, the VAT Committee by **large majority** agrees that transactions carried out by a travel agent acting in his own name for taxable or non-taxable persons, shall only be covered by that special scheme if the travel agent has established his business within the European Union or has a fixed establishment there from which he has carried out the supply of the services in question.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.4 Origin:** Commission
References: Articles 26 and 45-59b
Subject: Place of supply of services consisting in the use of goods forming part of the assets of a business for the private use of staff
(Document taxud.c.1(2014)3211789 – Working paper No 818)

with account also taken of discussions during the 100th meeting:

- 4.1 Origin:** Luxembourg
References: Articles 2, 26, 45 and 56
Subject: Use of goods forming part of the assets of a business for the private use of staff
(Document taxud.c.1(2014)61098 – Working paper No 792)

1. The VAT Committee by **a large majority** agrees that the use of goods forming part of the assets of a business by its staff for his private use shall be regarded as a service supplied for consideration and be subject to VAT under Article 2(1)(c) of the VAT Directive where, in order to access to such use the member of staff has to:
- (a) make a payment; or
 - (b) give up part of his cash remuneration; or
 - (c) choose between different benefits offered by the employer, according to an agreement between the parties whereby the right to use those goods implies renouncing other benefits.

The VAT Committee is of the **almost unanimous** view that neither the fact that the employee provides work to the employer, nor the fact that the use is considered to be income for the employee according to the respective national income tax law, shall imply that use is made for consideration.

Where in the case of means of transport forming part of the assets of a company, use is made by its staff for consideration, the VAT Committee, by **a large majority**, is of the view that the use shall be qualified as hiring of means of transport, the place of supply of which is governed by Article 56 of the VAT Directive.

2. The VAT Committee **almost unanimously** agrees that the use of goods forming part of the assets of a business for the private use of its staff shall be treated as a supply of services for consideration according to Article 26(1)(a) of the VAT Directive, whenever the VAT on such goods was wholly or partially deductible, except in the following circumstances:
 - (a) where the use of the business assets by its staff is made for consideration;
 - (b) where in respect of the use of the assets in question, the Member State has been granted a derogation from Article 26(1)(a) of the VAT Directive;
 - (c) where in the case of immovable property or, if so specified by the Member State concerned, other goods forming part of the business assets, used for mixed purposes, VAT has been deducted only up to the proportion of the property's use for purposes of the taxable person's business in accordance with Article 168a of the VAT Directive, and changes in that proportion during the adjustment period are taken into account in accordance with the principles provided for in Articles 184 to 192 of the VAT Directive, as applied in the respective Member State.
3. The VAT Committee by **a large majority** agrees that as regards the place of supply of services consisting in the use of goods, the rule to apply shall be the same irrespective of whether the service is supplied for consideration or taxed according to Article 26(1)(a) of the VAT Directive.

In the case of the use by staff of means of transport forming part of the business assets, where the VAT was wholly or partly deductible, the VAT Committee, by **a large majority**, is of the view that the place of supply shall be determined according to Article 45 of the VAT Directive, except where that use can be qualified as hiring the place of supply of which is determined according to Article 56 of the VAT Directive.
4. When a taxable person supplies services to his staff, without receiving any compensation according to an agreement between the parties, the VAT Committee **almost unanimously** agrees that this supply shall be treated as a supply of services for consideration pursuant to Article 26(1)(b) of the VAT Directive.
5. The VAT Committee, by **a large majority**, is of the view that as regards the place of supply, the rule to apply shall be the same irrespective of whether the service is supplied for consideration or taxed according to Article 26(1)(b) of the VAT Directive.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.12 Origin: Commission
References: Articles 2, 151 and 174
Subject: Treatment of payments under EU Framework Programmes – follow-up
(Document taxud.c.1(2014)2265889 – Working paper No 808)

The VAT Committee **almost unanimously** agrees that in the case of funding, other than public procurement, provided to participants for their research and innovation activities under EU Framework Programmes (Horizon 2020¹ or previously FP7²) and where no transfer of ownership to the Commission is envisaged, the grant received by the participant shall be regarded as a subsidy not linked to the price of a supply of goods or services.

In the event that exceptionally the Commission assumes ownership of results generated by activities funded under the said EU Framework Programmes, the VAT Committee **almost unanimously** agrees that the link between the transfer of ownership of results by a participant having received a grant and the grant provided to that participant shall not be regarded as sufficiently direct for payment of that grant to be regarded as consideration for that transfer.

¹ Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020)

² Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007-2013) and the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007-2011)

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4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.2 Origin:** Spain
Reference: Article 132(1)(b) and (c)
Subject: Scope of the exemption for medical services
(Document taxud.c.1(2015)674117 – Working paper No 842)

The VAT Committee **almost unanimously** agrees that the supply of an operating theatre by a hospital to a private medical practitioner for consideration shall not be exempt under Article 132(1)(c) since it is physically and economically dissociable from the medical care exempted under that provision and cannot in itself be regarded as the provision of medical care.

The VAT Committee **almost unanimously** agrees that the supply of an operating theatre with surgical staff by a hospital to a private medical practitioner for consideration shall not be exempt under Article 132(1)(c) since it is physically and economically dissociable from the medical care exempted under that provision and cannot in itself be regarded as the provision of medical care.

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4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.4 Origin: Commission
References: Articles 143(1)(g) and 151(1)(b)
Subject: VAT treatment of the European groupings of territorial cooperation (EGTCs)
(Document taxud.c.1(2015)315137 – Working paper No 834)

1. The VAT Committee is of the **unanimous view** that European groupings of territorial cooperation (EGTCs), as a class or category, shall not, for the purposes of Articles 143(1)(g) and 151(1)(b) of the VAT Directive, be regarded as international bodies as they may be set up without the participation of two States and/or existing international bodies, their membership may include private bodies and their objectives may also cover the carrying out of economic activities.
2. The VAT Committee **almost unanimously** agrees that to determine whether a particular EGTC may possibly be regarded as an international body and benefit from the VAT exemptions provided for in Articles 143(1)(g) and 151(1)(b) of the VAT Directive an assessment shall be made on a case-by-case basis, considering all the features of that EGTC.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.6 Origin: Commission
Reference: Article 315
Subject: Special arrangements for works of art
(Document taxud.c.1(2015)152263 – Working paper No 833)

The VAT Committee **almost unanimously** agrees that Article 315 of the VAT Directive shall not allow for the adoption of a rule or administrative practice according to which in relation to all works of art that have been in the possession of a taxable dealer for more than a certain number of years the profit margin is deemed to be a set percentage (30% or more) of the selling price, irrespective of whether the actual purchase price is known or not.

The VAT Committee, on the other hand, is of the **almost unanimous view** that as regards situations whereby, even if the national law provisions relating to the obligation of keeping records are complied with, the purchase price cannot be determined, the application of a presumption that the profit margin amounts to a set percentage (30% or more) of the selling price, may be considered in line with the spirit and purpose of Article 315 of the VAT Directive, provided that the percentage chosen reflects the market reality in the sector of activity in the Member State concerned.

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3. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

3.1 Origin: Belgium
References: Article 58 and Annex II of the VAT Directive
Article 7 and Annex I of the VAT Implementing Regulation
Subject: VAT 2015: Scope of the notion of electronically supplied services
(Document taxud.c.1(2015)694775 – Working paper No 843)

1. The VAT Committee **unanimously** acknowledges that the definition of electronically supplied services from Article 7(1) of the VAT Implementing Regulation consists of the four following elements: (1) a service is delivered over the Internet or an electronic network, (2) the nature of the service is that it is essentially automated, (3) the nature of the service is that it involves minimal human intervention, and (4) the nature of the service is such that it is impossible to ensure in the absence of information technology. The VAT Committee **unanimously** agrees that in the assessment of whether a service qualifies as an electronically supplied service all these four elements are equally important.
2. The VAT Committee **almost unanimously** agrees that for the assessment of the notion of ‘minimal human intervention’ included in the definition of ‘electronically supplied services’, focus shall be on the involvement on the side of the supplier without any regard to the level of human intervention on the side of the customer. In cases where each individual supply requires human intervention on the part of the supplier, the VAT Committee **almost unanimously** considers that the supply shall be seen as involving more than minimal intervention. In particular, the VAT Committee **almost unanimously** agrees that providing non-standardised PDF files via e-mails shall be seen as involving more than minimal human intervention.
3. The VAT Committee **unanimously** agrees that the service shall be regarded as requiring only a ‘minimal human intervention’ in situations where the supplier initially sets up a system needed for the supply, regularly maintains the system or repairs it in cases of problems linked with its functioning.

4. The VAT Committee **almost unanimously** agrees that in order to determine whether a service qualifies as an electronically supplied service one shall proceed in the following way:
 - first check if the service is mentioned in Annex II of the VAT Directive or under Article 7(2) or Annex I of the VAT Implementing Regulation as being covered by the definition;
 - secondly, if not mentioned there, examine whether the service is mentioned under Article 7(3) of the VAT Implementing Regulation as not being covered by the definition;
 - finally, if the service cannot be found on any of these lists, verify whether it meets criteria set out under Article 7(1) of the VAT Implementing Regulation for being covered by the definition.
5. The VAT Committee **almost unanimously** considers that although services supplied using information technology (online) and in more traditional ways (offline) may have similar features and be comparable by having some or many elements in common, a service supplied online and a service supplied offline cannot be regarded as identical. The VAT Committee **almost unanimously** agrees that in relation to such comparable services (supplied online and offline), only the services fulfilling all the conditions of the definition of electronically supplied services shall be found to be covered by it.
6. The VAT Committee **unanimously** agrees that to determine whether a given supply is taxed or exempt, the place of supply of the service in question must first be identified, and that an objective assessment of the nature of the service shall be required in order to establish whether the supply is covered by a particular rule or by one of the general rules. Only after establishing the correct place of supply of a given supply of a service can the correct VAT rate or VAT exemption be identified.
7. The VAT Committee **almost unanimously** agrees that where a service is susceptible to be covered by more than one of the particular rules governing the place of supply, the rule which best ensures taxation at the place of actual consumption of the service shall prevail. In particular, in the context of electronically supplied services, this approach is relevant in establishing whether Articles 47, 58 and 59 of the VAT Directive apply.

3. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

- 3.2 Origin:** Commission
References: Articles 73, 135(1)(i) and 401
Subject: VAT 2015: VAT treatment of online gambling services
(Document taxud.c.1(2015)1619349 – Working paper No 844 REV)

with account also taken of discussions during the 105th meeting:

- 5.2 Origin:** Commission
References: Article 73 of the VAT Directive
Article 7 of the VAT Implementing Regulation
Subject: VAT 2015: VAT treatment of online gambling services (follow-up)
(Document taxud.c.1(2015)4459580 – Working paper No 882)

1. The VAT Committee **unanimously** confirms that, in line with point (4)(e) of Annex I of the VAT Implementing Regulation, online gambling which is automated shall be covered by Article 58 of the VAT Directive when provided to a non-taxable person. The VAT Committee **unanimously** agrees that other gambling services, including betting, provided to a non-taxable person shall also be regarded as covered by Article 58 of the VAT Directive if they fulfil the conditions from the definition of electronically supplied services provided for in Article 7(1) of the VAT Implementing Regulation.
2. The VAT Committee is of the **almost unanimous** view that services supplied by operators of games of chance where players compete against each other for a prize fund shall be considered to be gambling services.
3. The VAT Committee **almost unanimously** agrees that, provided that the principle of fiscal neutrality is respected, Article 135(1)(i) of the VAT Directive shall allow Member States to decide which gambling activities are exempted from VAT and which are taxed and to lay down the requirements which have to be met by gambling companies in order to be allowed to perform those activities in the relevant Member State.
4. The VAT Committee **almost unanimously** agrees that the services supplied by a taxable person acting in his own name but on behalf of a gambling company, covered by Article 28 of the VAT Directive, shall be exempted when such services consist of a gambling service exempted under Article 135(1)(i) of the VAT Directive.

5. The VAT Committee **unanimously** agrees that, in line with Article 401 of the VAT Directive, Member States may apply a special national tax both on games of chance that are exempted from VAT and on games that are VAT-taxed, provided that that tax cannot be characterised as a turnover tax, and insofar as all other conditions laid down in the said Article 401 are fulfilled.
6. The VAT Committee **almost unanimously** agrees that in gambling activities where the players compete against each other for a prize fund, and the gambling operator only receives as remuneration for his services a commission or fee from the players, the taxable amount shall be determined by the total amount of the commission or fees received by the operator and not by the total amount of the stakes placed by the players.
7. The VAT Committee is of the **almost unanimous** view that where the gambling company is obliged by legal or statutory provisions, or by any other obligation that can be enforced in the Member State where the transaction is taxable, to return to the players as winnings a certain amount of the total sum received from them, the amounts paid out as winnings must be deducted from the total sum received from the players in order to determine the consideration obtained by the gambling company from its players which, pursuant to Article 73 of the VAT Directive, constitutes the taxable amount of the gambling services supplied.
8. The VAT Committee is of the **almost unanimous** view that where the gambling company is not obliged by legal or statutory provisions, or by any other obligation that can be enforced in the Member State where the transaction is taxable, to return to the players as winnings a certain amount of the total sum received from them, the total sum received from the players shall constitute the consideration obtained by the gambling company from its players for the gambling services supplied pursuant to Article 73 of the VAT Directive, with no deduction of winnings permitted.
9. The VAT Committee is of the **almost unanimous** view that bonuses and credits given for free to players shall be seen as discounts not to be included in the taxable amount of the supply according to point (b) of the first paragraph of Article 79 of the VAT Directive.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.3 Origin: Commission**
References: Articles 2(1)(b) and (c), 65, 73 and 135(1)(b) and (f)
Subject: VAT treatment of crowdfunding
(Document taxud.c.1(2015)576037 – Working paper No 836)

1. The VAT Committee **unanimously** agrees that reward-based crowdfunding, where the person giving funds to a crowdfunding campaign (“the contributor”) receives in exchange for a contribution a non-financial reward in the form of goods or services from the person receiving funds from contributors through a crowdfunding campaign (“the entrepreneur”), shall constitute a taxable transaction for VAT purposes, provided that there is a direct link between the supply of goods or services and its corresponding consideration collected by way of crowdfunding, and that the entrepreneur is a taxable person acting as such.

Where reward-based crowdfunding constitutes a taxable transaction and accounting for the fact that a contribution is typically given by the contributor before any goods or services are supplied in exchange, the VAT Committee **unanimously** agrees that the contribution may be regarded as a payment made on account of those goods or services on which VAT shall become chargeable upon receipt of the payment pursuant to Article 65 of the VAT Directive, provided that the goods or services to be supplied are precisely identified when the payment on account is made.

Given that transactions are subject to VAT pursuant to Article 2 of the VAT Directive if goods or services are supplied by a taxable person for consideration, and that that “consideration” has been defined by the Court of Justice of the European Union as being a subjective value and not the open market value, the VAT Committee **unanimously** agrees that although the open market value of the goods or services supplied by the entrepreneur to the contributor may be lower than the amount of the contribution received, such transactions shall in principle fall within the scope of VAT.

The VAT Committee however **almost unanimously** agrees that where the open market value of the goods or services supplied by the entrepreneur in return for the contribution given is lower than the amount of the contribution received, crowdfunding may be assimilated to a donation but only in cases where the benefit received by the contributor is negligible or totally unrelated to the amount of the contribution. In such circumstances, where the benefit received by the contributor consists of goods forming part of the business assets of the entrepreneur other than goods applied for business use as samples or as gifts of small value, or of services that the entrepreneur carries out, the VAT Committee concurs **almost unanimously** that the application of those goods or the carrying out of those services shall be subject to VAT in accordance with Articles 16 or 26 of the VAT Directive.

2. As to crowd-investing, where the financial reward received by the contributor of a crowdfunding campaign from the entrepreneur takes the form of participation in future profits by means of intellectual property rights, the VAT Committee **unanimously** agrees that the transfer of such intellectual property rights shall constitute a taxable supply, provided that the conditions laid down in Article 2 of the VAT Directive are met. On the other hand, if the financial reward received by the contributor of a crowdfunding campaign from the entrepreneur takes the form of securities, such as shares or bonds, the VAT Committee **unanimously** agrees that its supply may be exempt under Article 135(1)(f) of the VAT Directive, depending on the type of security.
3. Regarding crowd-lending, where the financial reward received by the contributor of a crowdfunding campaign from the entrepreneur takes the form of interests on loans, the VAT Committee **unanimously** agrees that insofar as the contributor is a taxable person, the granting of credit to the entrepreneur shall be a taxable transaction exempt pursuant to Article 135(1)(b) of the VAT Directive.
4. The VAT Committee **unanimously** agrees that, for VAT purposes the activity of crowdfunding platforms supplying services to entrepreneurs shall constitute an economic activity. The VAT Committee further **almost unanimously** agrees that the supply of such services shall fall within the scope of VAT and must be taxed unless what is provided consists in financial services exempted under Article 135(1) of the VAT Directive.

5. CASE LAW – ISSUES ARISING FROM RECENT JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

5.2 Origin: Denmark
References: Articles 169, 174(1) and 175(1)
Subject: CJEU Case C-388/11 Le Crédit Lyonnais: Allocation of turnover and deduction
(Document taxud.c.1(2015)663614 – Working paper No 841)

1. In calculating the deductible proportion of VAT referred to in Article 174 of the VAT Directive applicable to an establishment (principal establishment or branch) of a taxable person located in a Member State (hereinafter ‘establishment A₁’), the VAT Committee almost unanimously confirms that the consideration received by establishment A₁ for services supplied by it in another Member State or in a third country shall only be included in the turnover of establishment A₁ and cannot be allocated to another establishment of the same taxable person (hereinafter ‘establishment A₂’) in another country even if establishment A₂ is located in the country where the services are supplied.
2. In calculating the deductible proportion of VAT, referred to in Article 174 of the VAT Directive, the VAT Committee almost unanimously confirms that the turnover deriving from supplies of services made by an establishment (principal establishment or branch) of a taxable person located in a Member State or in a third country (hereinafter ‘establishment A₁’) cannot be partly allocated to an establishment of the same taxable person located in another country (hereinafter ‘establishment A₂’), even if establishment A₂ would have provided services without consideration (internal services) to establishment A₁ allowing establishment A₁ to provide its services to its customers.
3. The VAT Committee almost unanimously agrees that for the purpose of applying Article 169, point (a), of the VAT Directive, a taxable person established in a Member State and making supplies of services outside that Member State that would entitle him to a right of deduction had those services been supplied in his Member State of establishment, shall maintain his right of deduction of the VAT due or paid in this Member State even though, in the country where the supply of services takes place, the provision of similar services would not entitle him to a right of deduction.

2. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

2.2 Origin: Italy
Reference: Article 148(a), (c) and (d)
Subject: Vessels used for navigation on the high seas
(Document taxud.c.1(2015)630069 – Working paper No 840)

1. The VAT Committee **unanimously** agrees that to benefit from the exemptions provided for in Article 148(a), (c) and (d) of the VAT Directive, the condition of being ‘used for navigation on the high seas’ shall apply to both vessels carrying passengers for reward and vessels used for the purpose of commercial, industrial and fishing activities but not to vessels for rescue or assistance at sea or to vessels for inshore fishing.
2. The VAT Committee **almost unanimously** agrees that the concept of ‘high seas’ for the purpose of the VAT Directive must be seen as static and shall cover any part of the sea outside the territorial waters of any country that is beyond a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with the International Law of the Sea¹.
3. The VAT Committee is of the **almost unanimous** view that Member States shall be required to implement safeguards to guarantee that only vessels carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities which are effectively and predominantly used for navigation on the high seas benefit from the exemptions provided for in Article 148(a), (c) and (d) of the VAT Directive.

In that regard, the VAT Committee **almost unanimously** agrees that Member States cannot rely only on objective criteria, such as the length or the tonnage of the vessel, in order to determine that a vessel is effectively and predominantly used for navigation on the high seas, unless they have been authorised to apply a simplification measure pursuant to the procedure laid down in Article 394 of the VAT Directive. However, the VAT Committee is of the **almost unanimous** view that objective criteria may be used to exclude from the scope of the exemption vessels that in any case do not meet the conditions required under Article 148(a), (c) and (d) of the VAT Directive for the exemption to apply.

¹ United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982.

4. The VAT Committee is of the **almost unanimous** view that when a vessel carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities qualifies as effectively and predominantly used for navigation on the high seas, the exemptions provided for in Article 148(a), (c) and (d) of the VAT Directive shall apply to all transactions in respect of that vessel in their entirety, subject however to the other conditions governing the exemptions being met.

Conversely, if the use of the vessel subsequently changes, so that it is no longer effectively and predominantly used for navigation on the high seas, the VAT Committee is of the **almost unanimous** view that the exemptions provided for in Article 148(a), (c) and (d) of the VAT Directive shall no longer be applicable to any transactions in respect of that vessel.

2. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

2.1 Origin: Commission
Reference: Article 5
Subject: Application of the VAT Directive when activities are carried out in the exclusive economic zone adjacent to the territorial sea of a Member State – follow-up
(Document taxud.c.1(2015)799403 – Working paper No 846)

1. The VAT Committee by **a large majority** notes that under the United Nations Convention on the Law of the Sea, the exclusive economic zone is an area beyond and adjacent to the territorial sea of a coastal country which shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured and comprising the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.
2. The VAT Committee by **a large majority** agrees that in respect of the supplies of goods and services related with activities in the exclusive economic zone on which the coastal Member State has sovereign rights, such a zone shall be regarded as part of the territory of that Member State as defined under point (2) of Article 5 of the VAT Directive.
3. The VAT Committee by **a large majority** agrees that, in the exclusive economic zone, the supplies of goods and services related to activities for which the rights of coastal countries are shared shall be regarded as being supplied outside the territory of the Community as defined under point (1) of Article 5 of the VAT Directive.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.1 Origin: Commission and Italy
References: Article 192a of the VAT Directive
Articles 11 and 53 of the VAT Implementing Regulation
Subject: Clarifications on the concept of fixed establishment
(Document taxud.c.1(2015)2177802 – Working paper No 857)

1. The VAT Committee **unanimously** confirms that when a taxable person transfers goods forming part of his business assets to another Member State for the purposes of his business (“intra-Community transfer of goods”), the transfer shall be treated as a taxable supply of goods under Article 17(1) of the VAT Directive in the Member State where the dispatch or transport begins and as a taxable intra-Community acquisition of goods by the taxable person himself under Article 21 of the VAT Directive in the Member State where the transport ends.
2. Consistent with Article 11 of the VAT Implementing Regulation according to which the fact of having a VAT identification number in a Member State shall not in itself be sufficient to consider that a taxable person has a fixed establishment in that Member State, the VAT Committee **unanimously** agrees that, in the case of intra-Community transfer of goods, the taxable person shall not, merely as a result of the transfer, be seen as established in the Member State where the transport ends.
3. The VAT Committee **unanimously** agrees that, in the case where goods are transported or dispatched to a taxable person or a non-taxable legal person who is liable for payment of VAT on the intra-Community acquisition under Article 200 of the VAT Directive, the mere existence, in the Member State to which the goods are transported or dispatched, of a fixed establishment or a warehouse of the supplier shall not of itself imply there being a transfer by the supplier to his fixed establishment or his warehouse followed by a domestic supply.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.3 Origin:** Italy
Reference: Article 135(1)(f)
Subject: Possible qualification of investment advice as negotiation in securities
(Document taxud.c.1(2015)1916276 – Working paper No 849)

1. The VAT Committee **almost unanimously** confirms that for the purposes of Article 135(1)(f) of the VAT Directive, and in accordance with settled case-law of the Court of Justice of the European Union (CJEU), the concept of “negotiation” shall be taken to refer to a service rendered by an intermediary as a distinct act of mediation, whose purpose is to do all that is necessary in order for two parties to enter into a contract, without the intermediary having any interest of his own in the terms of the contract.

The VAT Committee **almost unanimously** agrees that services consisting in the provision of investment advice in respect of securities shall only be seen as an activity of negotiation if the activity meets the conditions of being a distinct act of mediation as laid down by the CJEU.

2. The VAT Committee is of the **almost unanimous** view that an advisory service concerning investment in securities, where the provider of the advisory service is not involved in the negotiation and completion of the contract between the client and the party marketing the securities, shall not fall within the scope of Article 135(1)(f) of the VAT Directive.

4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

4.2 Origin: United Kingdom and Belgium
References: Articles 32, 33 and 34
Subject: Distance selling
(Document taxud.c.1(2015)2158321 – Working paper No 855)

1. The VAT Committee **almost unanimously** agrees that, for the purposes of Article 33 of the VAT Directive, goods shall be considered to have been “dispatched or transported by or on behalf of the supplier” in any cases where the supplier intervenes directly or indirectly in the transport or dispatch of the goods.
2. The VAT Committee **unanimously** agrees that the supplier shall be regarded as having intervened indirectly in the transport or dispatch of the goods in any of the following cases:
 - i) where the transport or dispatch of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer;
 - ii) where the dispatch or transport of the goods is provided by a third party but the supplier bears totally or partially the responsibility for the delivery of the goods to the customer;
 - iii) where the supplier invoices and collects the transport fees from the customer and further remits them to a third party that will arrange the dispatch or transport of the goods.

The VAT Committee further agrees **almost unanimously** that in other cases of intervention, in particular where the supplier actively promotes the delivery services of a third party to the customer, puts the customer and the third party in contact and provides to the third party the information needed for the delivery of the goods, he shall likewise be regarded as having intervened indirectly in the transport or dispatch of the goods.

3. The VAT Committee agrees **unanimously** that, for the purposes of Article 33 of the VAT Directive, goods shall not be considered to have been “dispatched or transported by or on behalf of the supplier” where the customer transports the goods himself.

The VAT Committee agrees **almost unanimously** that the goods shall also not be considered to have been “dispatched or transported by or on behalf of the supplier” where the customer arranges the delivery of the goods with a third person and the supplier does not intervene directly or indirectly in providing or helping organising the dispatch or transport of those goods.

7. CASE-LAW – ISSUES ARISING FROM RECENT JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

- 7.1 Origin:** Commission
References: Articles 2(1), 9 and 11
Subject: CJEU Case C-7/13 *Skandia America*: VAT grouping – the point of view of the VAT Expert Group
(Document taxud.c.1(2015)4389038 – Working paper No 879)

with account also taken of discussions during the 103rd meeting:

- 3.1 Origin:** Commission
References: Articles 2(1), 9 and 11
Subject: CJEU Case C-7/13 *Skandia America*: VAT group
(Document taxud.c.1(2015)747072 – Working paper No 845)

1. The VAT Committee by **a large majority** agrees that in case of a legal person comprising a main establishment (hereinafter “head office”) and a fixed establishment (hereinafter “branch”) within different territories, only the entity (head office or branch) physically present in the territory of a Member State that has introduced the VAT grouping scheme may be considered to be “established in the territory of that Member State” for the purposes of Article 11 of the VAT Directive, and thus able to join a VAT group there.

In that respect, **a large majority** of the VAT Committee is of the view that the branch of a company with its head office in a third country or another Member State may, independently of its head office, become a member of a VAT group in the Member State in which the branch is established. The VAT Committee also agrees at **large majority** that the head office of a company with its branch in a third country or another Member State may, independently of its branch, become a member of a VAT group in the Member State in which the head office is established.

2. The VAT Committee by **a large majority** confirms that by joining a VAT group pursuant to Article 11 of the VAT Directive, an entity (head office or branch) becomes part of a new taxable person for VAT purposes – namely the VAT group – irrespective of the legal person to which it belongs. **The large majority** of the VAT Committee also confirms that the treatment of a VAT group as a single taxable person precludes the members of the VAT group from continuing to operate, within and outside their group, as individual taxable persons for VAT purposes.

3. The VAT Committee, with **a large majority**, agrees that a supply of goods or services by one entity to another entity of the same legal person such as “head office to branch”, “branch to head office” or “branch to branch”, where only one of the entities involved in the transaction is a member of a VAT group or where the entities are members of separate VAT groups, shall constitute a taxable transaction for VAT purposes, provided that the conditions laid down in Article 2(1) of the VAT Directive are met.

In that regard, it is the view of **the large majority** of the VAT Committee that for such a transaction to be taxable, it is irrelevant whether the goods or services are supplied from a third country to a Member State or vice versa, or between two Member States.

4. The VAT Committee by **a large majority** agrees that a supply of goods or services between an entity of a legal person (head office or branch) established in a Member State irrespective of whether that Member State has introduced a VAT grouping scheme, and a VAT group in another Member State which includes another entity of the same legal person (branch or head office) shall constitute a taxable transaction for VAT purposes, provided that the conditions laid down in Article 2(1) of the VAT Directive are met.

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6. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

6.2 Origin: Commission

References: Articles 2(1)(b) and (c), 9, 10, 12, 132, 135(1)(b) and (f), 282 to 292

**Subject: VAT treatment of sharing economy
(Document taxud.c.1(2015)4370160 – Working paper No 878)**

1. For the purposes of the present guidelines “sharing economy platforms” shall mean VAT taxable persons who operate online market places enabling individual users of the platforms willing to supply goods or services and individual users of the platforms willing to acquire goods or services to get into contact.
2. The VAT Committee **unanimously** agrees that supplies of goods or services made by individuals to other users through sharing economy platforms for monetary consideration shall qualify as taxable transactions and be subject to VAT pursuant to Article 2 of the VAT Directive if the individual in supplying those goods or services carries out an economic activity qualifying him as a taxable person under Article 9 of the VAT Directive.
3. The VAT Committee **almost unanimously** agrees that supplies of goods or services made by individuals to other users through sharing economy platforms in exchange of other goods or services shall also qualify as taxable transactions pursuant to Article 2 of the VAT Directive if the individual in supplying those goods or services carries out an economic activity qualifying him as a taxable person under Article 9 of the VAT Directive.

In order for any such transaction to be subject to VAT under Article 2 of the VAT Directive, the VAT Committee is of the **almost unanimous** view that a direct link must be established between the transaction carried out by the individual and the remuneration in kind received by him in return. The VAT Committee **unanimously** recognises that the assessment of whether such a direct link exists shall be done on a case-by-case basis.

4. The VAT Committee is of the **almost unanimous** opinion that services provided by sharing economy platforms to their users shall constitute taxable transactions and be subject to VAT pursuant to Article 2 of the VAT Directive provided, however, that their supply is made for consideration. The VAT Committee **unanimously** considers that exemptions pursuant to Article 135(1) of the VAT Directive shall apply where these transactions constitute financial services falling under that provision.

6. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 6.4 Origin:** The Netherlands
References: Article 132(1)(e), 140(a) and (b) and 143(1)(a)
Subject: Interpretation of the terms ‘dental technician’, ‘services by dental technicians in their professional capacity’ and ‘dental prostheses’
(Document taxud.c.1(2015)4410196 – Working paper No 880)

Dental technicians

1. The VAT Committee is of the **almost unanimous** view that dental technicians within the meaning of Article 132(1)(e) of the VAT Directive shall comprise only those taxable persons who – independent of their legal form – possess the necessary professional qualifications to carry out essential activities in the field of prosthetic dentistry linked to the typical job description of a dental technician. The VAT Committee **almost unanimously** agrees that the essential activities of prosthetic dentistry shall not exclude activities resulting from specialisations. The VAT Committee **almost unanimously** concurs that the work of a dental technician may encompass – inter alia – the manufacturing of fixed prostheses (including crowns, bridges and implants), removable prostheses (including dentures and removable partial dentures), maxillofacial prostheses, and dental devices (e.g. orthodontic appliances and auxiliaries such as mouthguards).

Facilitation of the burden of proof for international transactions

2. The VAT Committee **almost unanimously** confirms that the intra-Community acquisition of dental prostheses or final importation of such goods shall be exempted only subject to meeting the requirements governing the tax exemption pursuant to Article 132(1)(e) of the VAT Directive. Notwithstanding the possible practical problems in determining whether the supplier of those prostheses qualifies as a dentist or dental technician, the VAT Committee is of the **almost unanimous** view that Member States shall not be entitled, in an attempt to alleviate the burden of proof, to apply a presumption according to which it is generally assumed that prostheses are supplied by dentists or dental technicians. The VAT Committee **almost unanimously** agrees that putting in place a presumption of such a general nature shall not be permitted as it renders the conditions contained in Article 132(1)(e), namely that the supply must be made by a dentist or a dental technician, inoperative.

Services by dental technicians in their professional capacity

3. The VAT Committee is of the **unanimous** view that services supplied by dental technicians in their professional capacity shall be those which are covered by the typical job description of a dental technician and, thus, constitute the specific nature of the activities of this profession. The VAT Committee **unanimously** confirms that such services may include the manufacturing of a 3D-scan required for the preparation of dental prostheses.

Dental prostheses

4. The VAT Committee **almost unanimously** agrees that the term ‘dental prostheses’ within the meaning of Article 132(1)(e) of the VAT Directive shall be seen as broad enough to also include the supply of parts of a dental prosthesis which are typically manufactured by dentists or dental technicians. According to the **almost unanimous** view of the VAT Committee it, however, shall not encompass the supply of dental devices and of material which is used to manufacture dental prostheses.

5. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

5.1 Origin: Commission
Reference: Article 9a of the VAT Implementing Regulation
Subject: VAT 2015: Harmonised application of the presumption (follow-up)
(Document taxud.c.1(2016)921938 – Working paper No 895)

1. The VAT Committee **almost unanimously** confirms that the rebuttable presumption provided for in Article 9a of the VAT Implementing Regulation shall apply to all taxable persons taking part in the supply chain, each of whom shall be deemed to have received and supplied the electronic (or internet telephone) service.
2. The VAT Committee **almost unanimously** acknowledges that when a taxable person provides services, other than processing of payment in relation to the services covered by Article 9a of the VAT Implementing Regulation, that taxable person shall be seen as taking part in the supply within the meaning of this provision unless he is only making his networks available for carrying the content or/and for processing payment.
3. The VAT Committee **almost unanimously** agrees that where all the conditions required in Article 9a(1) of the VAT Implementing Regulation in order to rebut the presumption provided for in that provision are fulfilled no further obligations can be imposed on the concerned taxable person rebutting this presumption.
4. In order for a taxpayer or a tax authority to determine whether a taxable person is covered by the presumption provided for in Article 9a of the VAT Implementing Regulation, the VAT Committee **almost unanimously** considers that the facts of the supply must be assessed and the nature of the contractual relations examined.

Where contractual arrangements do not describe in a sufficiently clear manner the way in which the taxable person takes part in the supply or there is a contradiction between the contractual arrangements and the economic reality the VAT Committee **almost unanimously** confirms that the economic reality shall prevail.

5. The VAT Committee **unanimously** agrees that a supplier in the chain cannot, contrary to the facts and relevant legal requirements, be entitled to decide that he is not taking part in the supply and that therefore he is not covered by Article 9a of the VAT Implementing Regulation.

6. The VAT Committee **unanimously** agrees that a clause in a contract excluding a taxable person from a chain of transactions, where this does not reflect economic reality, shall not be sufficient for that taxable person to be regarded as not having taken part in the supply as referred to in Article 9a of the VAT Implementing Regulation.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.1 Origin:** Commission
References: Articles 2(1), 9 and 135(1)
Subject: VAT treatment of greenhouse gas emission allowances
(Document taxud.c.1(2016)2049491 – Working paper No 901)

The VAT Committee unanimously agrees that the definition of emission allowances, consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC¹ (Emissions Trading Scheme), as financial instruments under the Markets in Financial Instruments Directive² (MiFID II) shall have no impact on the VAT treatment of such allowances as already agreed³. In particular, the VAT Committee is of the unanimous view that such classification for the purposes of the MiFID II shall not render the provisions laid down in Article 135(1) of the VAT Directive by which certain financial transactions are exempted from VAT applicable.

¹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community (OJ L 275, 25.10.2003, p. 32).

² Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (OJ L 173, 12.6.2014, p. 349), see in particular point 15 of Article 4(1), read in conjunction with point 11 of Section C of Annex I.

³ Guidelines resulting from the 75th meeting of 14 October 2004 – Document TAXUD/1607/05 – 480 (point 4.2) and the 91st meeting of 10-12 May 2010 – Document D – taxud.c.1(2011)280394 – 678 (point 5.8).

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6. CASE LAW – ISSUES ARISING FROM RECENT JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

6.2 Origin: Commission
References: Articles 14(1) and (2)(c), 24(1) and 148(a)
Subject: CJEU Case C-526/13 *Fast Bunkering Klaipėda*
(Document taxud.c.1(2016)3438314 – Working paper No 907)

Further to the decision of the Court of Justice of the European Union in case C-526/13 *Fast Bunkering Klaipėda*, the VAT Committee **unanimously** considers that insofar as the qualification of transactions involving goods supplied through intermediaries is concerned, the decision shall be seen as predicated on the specific facts of the case in question. The VAT Committee therefore **unanimously** agrees that this decision must be construed narrowly.

Where goods are being supplied through intermediaries (chain transactions) acting in their own name, the VAT Committee **unanimously** agrees that in qualifying each of the transactions involved consideration must, in addition to Article 14(1) of the VAT Directive, be given to Article 14(2)(c) according to which the transfer of goods pursuant to a contract under which commission is payable on purchase or sale shall be regarded as a supply of goods. Where there is a transfer of goods pursuant to such a contract, the VAT Committee is of the **unanimous** view that of the two ensuing transactions, the recipient of the first supply shall be the intermediary acting in his own name.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.2 Origin:** Commission
References: Articles 174, 175, 312 to 316, 319 and 322
Subject: Special arrangements for taxable dealers and their supply of works of art
(Document taxud.c.1(2016)4034805 – Working paper No 903 REV)

The VAT Committee agrees **almost unanimously** that the purchase price, as defined in point (2) of Article 312 of the VAT Directive, shall be taken to mean everything which constitutes the consideration obtained or to be obtained from the taxable dealer by his supplier, including subsidies directly linked to the transaction, taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the supplier to the taxable dealer.

With regard to promotional costs, such as the cost of presentations, repair and maintenance costs, transport and insurance costs, the cost of management of artistic projects etc., borne by a taxable dealer in connection with sales of works of art, the VAT Committee agrees **almost unanimously** that since they cannot be qualified as incidental expenses linked to the transaction, such costs may not be included as part of the purchase price. The VAT Committee further concurs **almost unanimously** that applying a presumption, as already agreed¹, by which the profit margin amounts to a set percentage of the selling price in situations where a taxable dealer bears promotional costs, but the purchase price can be determined, shall not be compatible with Article 315 of the VAT Directive.

The VAT Committee agrees **almost unanimously** that where a taxable dealer incurs costs in respect of repair or the like of goods for which the special scheme for second-hand goods, works of art, collectors' items and antiques applies and since such costs cannot be attributed to their purchase price, the taxable dealer shall be entitled to a right of deduction of the input VAT paid or due in accordance with the normal rules as laid down in Title X of the VAT Directive. The VAT Committee confirms **almost unanimously** that this shall also apply in regard to promotional costs which are related to sales of works of art.

¹ Guidelines resulting from the 102nd meeting of 30 March 2015 – Document C – 859 – taxud.c.1(2015)3130399.

4. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

- 4.1 Origin:** Commission
References: Articles 44, 46 and 58 of the VAT Directive
Article 7(3)(t) and (u) of the VAT Implementing Regulation
Subject: VAT 2015: Interaction between electronically supplied services and intermediation services and initial discussion on the scope of the concept of intermediation services when taken in a broader context
(Document taxud.c.1(2016)3297911 – Working paper No 906)

1. The VAT Committee **almost unanimously** agrees that intermediation services, provided in the name and on behalf of another person, relating to supplies of services of a tangible nature as listed under points (t) and (u) of Article 7(3) of the VAT Implementing Regulation, shall not be covered by those provisions.
2. The VAT Committee **almost unanimously** acknowledges that the place of supply of services qualified as intermediation services provided, in the name and on behalf of another person, to a non-taxable person shall be the place where the underlying transaction is supplied in accordance with Article 46 of the VAT Directive.
3. The VAT Committee **almost unanimously** agrees that to qualify as intermediation and therefore be covered by Article 46 of the VAT Directive, services provided in a digital environment shall require an active involvement of the intermediary which goes beyond the automated supply provided with the use of only minimal human intervention (within the meaning of Article 7(1) of the VAT Implementing Regulation).

In particular, where an individual supply requires non automated, human, distinct reactions on the side of the supplier, the VAT Committee **almost unanimously** agrees that the services shall be seen as requiring active involvement of the intermediary in the transaction.

4. The VAT Committee **almost unanimously** considers that the services of online platforms such as a marketplace, providing only passive automated services, requiring not more than minimal human intervention (within the meaning of Article 7(1) of the VAT Implementing Regulation), and allowing two parties to enter into contact with a view of obtaining separate goods or services, do not fulfil the conditions to be regarded as intermediation services and therefore shall not be covered by Article 46 of the VAT Directive.

For example, where a service consists of a supply automatically generated from a computer via the Internet or another electronic network, in response to specific data input by the recipient, the VAT Committee **almost unanimously** confirms that it shall be seen as a passive automated service.

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5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.1 Origin: Denmark
Reference: Article 132(1)(b) and (c)
Subject: VAT treatment of fertility treatments
(Document taxud.c.1(2017)751354 – Working paper No 916)

1. The VAT Committee **almost unanimously** confirms that fertility treatment shall be covered by the exemption laid down in Article 132(1)(b) and (c) of the VAT Directive when such treatment is performed to overcome infertility or reduced fertility (confirmed by medical diagnosis of a medical practitioner). For the application of this exemption, the VAT Committee **almost unanimously** agrees that it shall make no difference whether it is the woman or the man in a heterosexual couple who suffers from infertility or reduced fertility.
2. The VAT Committee **almost unanimously** agrees that fertility treatment provided to single women and women living in homosexual couples shall also be covered by the exemption laid down in Article 132(1)(b) and (c) of the VAT Directive where an issue of infertility or reduced fertility (confirmed by medical diagnosis of a medical practitioner) arises.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.2 Origin: France
Reference: Article 135(1)(b)
Subject: Possible qualification of advisory services by credit intermediaries as negotiation of credit
(Document taxud.c.1(2016)6870737 – Working paper No 912)

1. The VAT Committee **unanimously** confirms that for the purposes of Article 135(1)(b) of the VAT Directive, and in accordance with settled case-law of the Court of Justice of the European Union (CJEU), the concept of “negotiation” shall be taken to refer to a service rendered by an intermediary as a distinct act of mediation, whose purpose is to do all that is necessary in order for two parties to enter into a contract, without the intermediary having any interest of his own in the terms of the contract.
2. The VAT Committee **unanimously** agrees that services consisting in the provision of financial advice by a credit intermediary in respect of credits granted by a third party credit provider to a client (the potential borrower) shall only be seen as an activity of negotiation if the activity meets the conditions of being a distinct act of mediation as laid down by the CJEU.

The VAT Committee is of the **unanimous** view that the supply of an advisory service in respect of credits, where the provider of the advisory service is not involved in the negotiation of the credit agreement between the client (borrower) and the credit provider (lender), shall not fall within the scope of Article 135(1)(b) of the VAT Directive.

Where the supply of such an advisory service is ancillary to a principal supply consisting in the negotiation of credit exempted under Article 135(1)(b) of the VAT Directive, the VAT Committee is of the **unanimous** view that the advisory service shall also fall within the scope of that provision.

4. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

4.1 Origin: Commission
References: Article 58 and Annex II of the VAT Directive
Article 7 and Annex I of the VAT Implementing Regulation
Subject: VAT 2015: Scope of the notion of electronically supplied services;
minimal human intervention (second follow-up)
(Document taxud.c.1(2017)1270284 – Working paper No 919)

1. The VAT Committee **almost unanimously** agrees that as regards the scope of the definition of “electronically supplied services” as laid down in Article 7(1) of the VAT Implementing Regulation:
 - (a) the independent activity of a third person/party, to which the service being analysed relates, shall be irrelevant for the assessment of what is “minimal human intervention”;
 - (b) the activity of staff of the supplier of services, performed independently from any individual request to provide a particular service made by a customer, shall be seen as falling within the limits of “minimal human intervention”.
2. The VAT Committee **unanimously** agrees that where the human activity on the side of the supplier focuses on generic, non-specific adjustments to the system environment and not on individual requests made by customers, such activity shall be seen as not trespassing the “minimal human intervention” requirement included in the definition of electronically supplied services.

Therefore, the VAT Committee **unanimously** confirms that work of staff of a company providing online services on a system through which the services are delivered with a view to its constant update, customisation or improvement, shall be seen as falling within the limits of “minimal human intervention” where the work does not target individual requests of customers but refers to generic, non-specific changes of the system environment as such.

The VAT Committee also agrees **unanimously** that staff of a company running the system in real time with a view to preventing the system from breaking down as a result of actions taken by customers requesting the provision of a service, shall be seen as acting within the limits of “minimal human intervention”.

It is thus the **unanimous** view of the VAT Committee that the above kinds of arrangements shall be seen as an activity of the supplier comparable to the initial setting up of the system needed for the supply, its regular maintenance and repairs¹.

3. The VAT Committee **unanimously** recognises that for the assessment of the scope of the definition of electronically supplied services, account shall be taken of possible abusive practices aimed at circumventing the rules on the place of supply of services for VAT purposes.
4. The VAT Committee **unanimously** confirms that the assessment of whether bundled/composite services, when they also include electronically supplied services, qualify as a single supply or multiple supplies must be done on a case-by-case basis taking into account the criteria set by the Court of Justice of the European Union. When carrying out that assessment, the VAT Committee unanimously agrees that all the circumstances of the composite supply must be taken into consideration.
5. The VAT Committee **unanimously** agrees that in situations where one and the same supplier offers several different packages (i.e. supplies of services each containing certain different elements distinguishing one supply from the other) for the customer, each package has to be assessed separately for VAT purposes.

Where within the package the supplier is obliged to provide feedback by a staff member to the customer, even if this option is not used in practice by the customer, the VAT Committee **almost unanimously** acknowledges that such a supply shall be seen as involving more than just “minimal human intervention”.

6. The VAT Committee **unanimously** agrees that services shall qualify as electronically supplied where:
 - (i) such services are as a rule fully automated, and
 - (ii) at the same time within the system, *via* which these services are supplied, there is the possibility, in exceptional individual cases involving particular, more complex problems, for the programmes running that system to direct the customer to a staff member for resolution of those problems.

¹ Guidelines resulting from the 102nd meeting of 30 March 2015 – Document D – taxud.c.1(2015)4128689 – 862480 (point 3).

In essence, the VAT Committee **almost unanimously** considers that such exceptional interventions must be seen as activities assuring the smooth running of the system as such, and therefore not exceeding the “minimal human intervention” requirement included in the definition of electronically supplied services.

7. The VAT Committee **unanimously** agrees that the following shall be covered by the definition of electronically supplied services:

- (a) online access (time-limited or not) to template documents and software, without support by a staff member from the supplier, providing the customer with the tools allowing him to draft his own bespoke versions of required documents (letters, contracts, etc.);
- (b) online supply of legal contract templates which are customised to purchasers’ needs in an automated manner following data input by the purchaser;
- (c) digitised products (for example publications, programmes, design patterns and guidance on how to use them, etc.) supplied in an automated manner;
- (d) online access to portals providing a platform for virtual debates between its members;
- (e) online access to Internet platforms with automatic search and filter functions and no additional support by a staff member of the supplier;
- (f) online access to platforms providing a contact place for the supplier of goods or services and their customers and for peer-to-peer interaction (i.e. with no commercial purpose) where the service provided by the platform itself is automated and may include the organisation of payment arrangements;
- (g) online access to securities-trading platforms allowing investors to purchase and/or sell securities where running of the platform involves monitoring of trade and the possibility of intervening in a transaction but the platform provider only ensures the smooth running of the platform and does not provide investment advice to clients by a staff member;
- (h) remote monitoring of patients’ medical condition in real-time (e.g. glucose or blood pressure readings) through the use of technological devices, which transmit the relevant health information or reading to the service provider’s system which analyses it and generates an alert or notification to the patient;

- (i) remote maintenance of computer systems, such as system health-checks, maintenance tasks and fixes which are run by the supplier's system in an automated manner, for example, at pre-determined intervals or pursuant to an electronic request by the customer;
 - (j) online access to gambling platforms which enable players to play Random Number Generator games, whether against the "house" (such as casino-type games) or against other players (e.g. poker) where the players are geographically remote from one another, and where the entire process is automated and the service provider's staff cannot impact on the transaction nor intervene in the process;
 - (k) online access to bingo games with numbers generated by the system or to streamed conventional bingo games where players make their selection during the game by using the electronic system and winners are identified automatically;
 - (l) online access to horoscope/astrology platforms which generate insights, predictions or advice from a pre-populated database, in response to details inserted by the customer (e.g. the date of birth).
8. The VAT Committee **almost unanimously** agrees that the following shall be covered by the definition of electronically supplied services:
- (a) online access to seminars where only passive participation (no possibility of interacting with the provider of the seminar) is possible;
 - (b) online access to previously recorded seminars, events, etc.;
 - (c) online access to learning materials, courses, programmes, etc. where students have no possibility of interacting with a teacher.
9. The VAT Committee **unanimously** agrees that the following shall not be covered by the definition of electronically supplied services:
- (a) online supply of legal contract templates which are customised to the purchasers' needs where the service comprises a review of the contract for accuracy by staff acting for the supplier prior to delivering it to the customer, even if the final draft is delivered to the customer electronically;

- (b) remote monitoring of patients' medical condition in real-time (e.g. glucose or blood pressure readings) through the use of technological devices which transmit the relevant health information or reading to the service provider's system, where medical professionals are involved in the analysis of the information or readings;
 - (c) remote maintenance of computer systems, when health-checks, maintenance tasks and fixes, even if requested and supplied electronically, are run by staff who access the customer's system *via* remote desktops (i.e. non-automated);
 - (d) "Live Casino" services where players interact with a physical croupier so that the croupier responds to instructions received from the player, and the Internet is merely a means of streaming the live feed of the casino table to the player and a tool for communication between the croupier and the player;
 - (e) online access to horoscope/astrology platforms which generate insights, predictions or advice, where customers' information/requests received by the platform are analysed and processed by staff who generate a response (i.e. non-automated).
10. The VAT Committee **almost unanimously** agrees that the following shall not be covered by the definition of electronically supplied services:
- (a) online access (time-limited or not) to template documents and software providing the customer with the tools allowing him to draft his own bespoke versions of required documents accompanied by the possibility to have support by a staff member of the supplier;
 - (b) digitised products (for example publications, programmes, design patterns and guidance on how to use them, etc.) where each product supplied is sent to the customer individually, in a non-automated manner by the supplier and/or meeting the individual request of the customer;
 - (c) online access to seminars where there is a possibility to interact with the provider of the seminar, for example asking questions, receiving feedback, etc.;
 - (d) online access to learning materials, courses, programmes and similar where students have the possibility (regardless whether it is used or not) to interact with the teacher via e-mail, telephone, video conference, etc.;

- (e) online access to Internet platforms with automatic search and filter functions and the possibility of additional support by a staff member of the supplier (for example assessment and advice on the search results);
- (f) online access to securities-trading platforms allowing investors to purchase and/or sell securities where running of the platform involves monitoring of trade and the possibility of intervening in a transaction with a view to providing an individual investment advice to clients by the platform provider.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.3 Origin: Commission**
References: Articles 2(1)(c) and 135(1)(b) and (d)
Subject: VAT treatment of transactions involving non-performing loans (NPLs)
(Document taxud.c.1(2017)829746 – Working paper No 917)

1. Where a person (hereinafter the “transferor”) holding a non-performing loan (hereinafter “NPL”) transfers that NPL without retaining management of the loan to another person (hereinafter the “transferee”) who assumes the risk of the debt not being paid, and the transferor in return receives a payment below face value, the VAT Committee **almost unanimously** agrees that such a transfer shall constitute a taxable supply of services in accordance with Article 2(1)(c) of the VAT Directive.

In that regard, the VAT Committee **almost unanimously** agrees that a transaction consisting in the transfer of a NPL shall qualify as assignment of intangible property in accordance with Article 25(a) of the VAT Directive.

The VAT Committee further **almost unanimously** agrees that such a supply shall be exempt in accordance with Article 135(1)(d) of the VAT Directive because of it being a transaction concerning debt.

2. The VAT Committee **almost unanimously** confirms, in accordance with settled case-law of the Court of Justice of the European Union (CJEU), that the transfer of an NPL at a price below face value, where the difference between the face value of the NPL and the actual price paid reflects the actual economic value of the debt at the time of its assignment and therefore makes up no consideration for the transferee, shall not constitute a taxable supply of services by the transferee to the transferor consisting in assuming the risk of the debt not being paid.

The VAT Committee **almost unanimously** acknowledges that in such circumstances, the transferor of the NPL shall still be considered to have made a taxable supply exempted in accordance with Article 135(1)(d) of the VAT Directive, as set out in point 1.

3. The VAT Committee **almost unanimously** confirms, in accordance with settled case-law of the CJEU, that the transfer of an NPL at a price below face value, where the difference between the face value of the NPL and the actual price paid does not reflect the actual economic value of the debt at the time of its assignment but makes up consideration for the transferee, shall constitute a taxable supply of services by the transferee to the transferor consisting in assuming the risk of the debt not being paid.

The VAT Committee further **almost unanimously** confirms that such a supply may not be exempted in accordance with Article 135(1)(d) of the VAT Directive because of it being debt collection.

The VAT Committee **almost unanimously** acknowledges that in such circumstances, the transferor of the NPL shall still be considered to have made a taxable supply exempted in accordance with Article 135(1)(d) of the VAT Directive, as set out point 1.

4. The VAT Committee **almost unanimously** agrees that whether the difference between the face value of the NPL and the actual price paid reflects the actual economic value of the loan at the time of its assignment must be assessed on a case-by-case basis.
5. The VAT Committee **almost unanimously** confirms that NPL servicing services provided by a person other than the person granting the credit consisting of the management of the loan may not be exempted in accordance with Article 135(1)(b) of the VAT Directive.

The VAT Committee **almost unanimously** agrees that NPL servicing services consisting of the management of the loan and possibly involving multiple activities whose essential aim is the recovery and collection of debt, shall constitute a taxable supply of services qualifying as debt collection and therefore be excluded from the exemption laid down in Article 135(1)(d) of the VAT Directive.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

5.4 Origin: Commission
References: Articles 24 and 135(1)(b) and (d)
Subject: VAT treatment of cash pooling services
(Document taxud.c.1(2017)5897072 – Working paper No 931)

1. In the case of a cash pooling agreement involving actual transfers of funds between its participants, the VAT Committee **almost unanimously** agrees that in accordance with settled case-law of the Court of Justice of the European Union (CJEU) a cash pooling participant in a credit position transferring funds to the consolidated account and receiving remuneration in the form of interest shall be regarded as carrying out an economic activity with the meaning of Article 9(1) of the VAT Directive. The VAT Committee **almost unanimously** confirms that such an activity shall qualify as a taxable supply of services in accordance with Article 2(1)(c) of the VAT Directive.

The VAT Committee further **almost unanimously** agrees that such a supply of services shall be exempted in accordance with Article 135(1)(b) of the VAT Directive because of it being a transaction concerning credit.

2. The VAT Committee **unanimously** agrees that the activities performed by the pool leader of a cash pooling agreement such as that described above, which typically consist in managing the financial liquidity of the group, maintaining the consolidated account, monitoring and analysing the status of participants' liabilities and receivables, and representing participants before the bank, taking over participants' receivables towards the bank and the bank's receivables towards participants, as well as accruing interest and transferring it to other participants or charging them interest shall be regarded as economic activities within the meaning of Article 9(1) of the VAT Directive. The VAT Committee **unanimously** agrees that, where the pool leader in return for those activities receives remuneration in the form of an administrative fee or a commission, such activities shall qualify as a taxable supply of services in accordance with Article 2(1)(c) of the VAT Directive.

The VAT Committee further **unanimously** agrees that any such supply shall be exempt in accordance with Article 135(1)(d) of the VAT Directive on the grounds of being a supply of services concerning deposit and current accounts.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.5 Origin:** Commission, the Netherlands and Denmark
Reference: Article 135(1)(g)
Subject: Scope of the exemption for the management of special investment funds
(Document taxud.c.1(2017)6168695 – Working paper No 936)

Activity of management

1. The VAT Committee **almost unanimously** confirms that in accordance with settled case-law of the Court of Justice of the European Union (CJEU), services consisting in the provision of investment advice by a taxable person (“advisory company”) to a taxable person managing a special investment fund (“management company”) shall be exempt on the basis of Article 135(1)(g) of the VAT Directive, provided that such advisory services form a distinct whole and are specific to and essential for, the management of such special investment funds. Subject to a case-by-case assessment to substantiate that this condition is met, the VAT Committee further confirms **almost unanimously** that advisory services which consist in giving recommendations to purchase and sell assets shall qualify for the exemption, in line with settled case-law of the CJEU.

Qualification as a special investment fund

2. The VAT Committee **almost unanimously** agrees that not all investment funds may qualify as special investment funds for the purposes of Article 135(1)(g) of the VAT Directive.
3. The VAT Committee **almost unanimously** confirms that in accordance with settled case-law of the CJEU, funds which constitute Undertakings for Collective Investment in Transferable Securities (“UCITS”) within the meaning of Directive 2009/65/EC as amended¹ (“UCITS Directive”) qualify as special investment funds for the purposes of Article 135(1)(g) of the VAT Directive and that in consequence, management services provided in respect of any UCITS shall be exempted in accordance with that provision.

¹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

4. The VAT Committee **almost unanimously** confirms that in accordance with settled case-law of the CJEU, even if a fund does not qualify as a UCITS within the meaning of the UCITS Directive, any such fund may still qualify as a special investment fund for the purposes of Article 135(1)(g) of the VAT Directive if it displays characteristics identical to those of an UCITS and thus carries out the same transactions or, at least displays features that are sufficiently comparable for it to be in competition with such undertakings.

In this regard, the VAT Committee **by a large majority** agrees, based on case-law of the CJEU that for any such fund to be considered to be displaying features that are sufficiently comparable to a UCITS, all of the following conditions shall be met:

- a) the fund must be a collective investment;
- b) the fund must operate on the principle of risk-spreading;
- c) the return on the investment must depend on the performance of the investments, and the holders must bear the risk connected with the fund;
- d) the fund must be subject to State supervision;
- e) the fund must be subject to the same conditions of competition and appeal to the same circle of investors as UCITS.

Alternative Investment Funds

5. As regards Alternative Investment Funds (“AIFs”), which is a broad category including funds such as hedge funds, private equity funds, European Venture Capital funds (“EuVECAs”), European Social Entrepreneurship Funds (“EuSEFs”), European Long-Term Investment Funds (“ELTIFs”), and any other fund not qualifying as an UCITS within the meaning of the UCITS Directive, the VAT Committee by **a large majority** agrees that an AIF shall qualify as a special investment fund only if it meets all the conditions set out in point 4. Whether AIFs qualify as special investment funds must be determined on a case-by-case basis.

In particular, the VAT Committee is of the **large majority** view that where an AIF can be seen as not targeting the same circle of investors as UCITS because of the characteristics of its investment portfolio or because of the conditions under which the investors are allowed to participate in that fund, such an AIF shall not qualify as a special investment fund.

Pension funds

6. The VAT Committee **almost unanimously** confirms that in accordance with settled case-law of the CJEU pension funds which fall within the scope of the UCITS Directive qualify as special investment funds for the purposes of Article 135(1)(g) of the VAT Directive, as set out in point 3.
7. The VAT Committee also **almost unanimously** confirms in accordance with settled case-law of the CJEU that where a pension fund does not fall within the scope of the UCITS Directive, the pension fund may still qualify as a special investment fund for the purposes of Article 135(1)(g) of the VAT Directive, as set out in point 4.

The VAT Committee **almost unanimously** agrees that regardless of how it is classified for regulatory purposes such a pension fund shall qualify as a special investment fund only if it meets all the conditions set out in point 4. Whether pension funds qualify as special investment funds must be determined on a case-by-case basis.

In particular, the VAT Committee **almost unanimously** confirms that, in accordance with settled case-law of the CJEU, only pension funds where the investors themselves bear the risk connected with the pension fund (as opposed to that risk being borne by someone other than the investor) may be seen as sufficiently comparable to UCITS and, therefore, qualify as special investment funds for the purposes of Article 135(1)(g) of the VAT Directive.

The VAT Committee **almost unanimously** confirms that in accordance with settled case-law of the CJEU, defined-contribution pension funds (“DC pension funds”), where the contribution to be made to the pension fund is defined, but the retirement benefit to be received depends on the performance of the investment (the risk thus being borne by the investor), shall be seen as sufficiently comparable to UCITS and, therefore, qualify as special investment funds for the purposes of Article 135(1)(g) of the VAT Directive.

Furthermore, the VAT Committee **almost unanimously** confirms that in accordance with settled case-law of the CJEU, defined-benefit pension funds (“DB pension funds”), where the retirement benefit to be received by the investor is defined regardless of the contributions to be made to the fund (the risk thus not being borne by the investor), may not be seen as sufficiently comparable to UCITS and, therefore, they shall not qualify as special investment funds for the purposes of Article 135(1)(g) of the VAT Directive.

The VAT Committee is of the **almost unanimous** view that for hybrid pension funds containing elements of both DC and DB pension funds to be seen as sufficiently comparable to UCITS and, therefore, qualify as special investment funds for the purposes of Article 135(1)(g) of the VAT Directive, it must be required that the investors bear themselves a substantial part of the risk connected with the pension fund.

5. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 5.3 Origin: Romania**
References: Articles 44 and 47
Subject: VAT treatment of services in relation to waterways
(Document taxud.c.1(2017)6116515 – Working paper No 932)

The VAT Committee **almost unanimously** confirms that services connected with immovable property, as referred to in Article 47 of the VAT Directive, shall include services consisting of making available the navigational infrastructure of waterways for which a transit fee is charged (“transit services”), and the use of the port infrastructure of waterways for which an infrastructure usage fee is charged (“port services”).

6. CASE LAW – ISSUES ARISING FROM RECENT JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

- 6.1 Origin: Denmark**
References: Articles 14(1) and (2)(c), 24(1) and 148(a)
Subject: CJEU Case C-526/13 Fast Bunkering Klaipėda – follow-up
(Document taxud.c.1(2017) 6158402 – Working paper No 934)

The VAT Committee **almost unanimously** confirms that:

- a) the VAT exemption laid down in Article 148(a) of the VAT Directive shall as a rule be applicable only to the supplies made directly to the operator of a vessel meeting the conditions laid down in the provision, who uses the goods for the fuelling and provisioning of the vessel;
- b) supplies made to intermediaries acting in their own name shall therefore be excluded from the exemption;
- c) where it is proven that the transfer of the ownership of the goods under the applicable national law by a taxable person to the intermediary takes place no earlier than the time at which the operator of the vessel becomes entitled to dispose of those goods as owner, the supply by that taxable person shall be regarded as having been made directly to the operator of the vessel.

The VAT Committee **almost unanimously** confirms that in the particular situation referred to under point c) the intermediary, for VAT purposes, neither acquires nor supplies goods for the fuelling and provisioning of the vessel but he must instead be regarded as having supplied services in accordance with Article 24(1) of the VAT Directive.

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4. QUESTIONS CONCERNING THE APPLICATION OF EU VAT PROVISIONS

- 4.3 Origin: Romania**
References: Articles 2(1)(c) and 135(1)(b) and (c)
Subject: VAT treatment of certain services provided in relation to syndicated loans
(Document taxud.c.1(2018)1589480 – Working paper No 941)

1. Where a loan granted by a group of syndicated banks (hereinafter “syndicated loan”) to a borrower is being managed as a whole by only one of the syndicated banks (hereinafter “credit agent”) in exchange for consideration paid by the borrower, the VAT Committee **almost unanimously** agrees that the service consisting of the management of the syndicated loan shall constitute a single supply for VAT purposes.

In particular, the VAT Committee is of the **almost unanimous** opinion that the credit agent shall not be seen in such circumstances as supplying two separate services (consisting of the management of the part of the syndicated loan granted by the credit agent himself and of that granted by the other syndicated banks), given that such activities are so closely linked that they form, objectively, a single, indivisible economic supply which it would be artificial to split.

The VAT Committee **almost unanimously** agrees that the service consisting of the management of the syndicated loan provided by the credit agent shall constitute a supply of services subject to VAT under Article 2(1)(c) of the VAT Directive, regardless of whether the beneficiary of the service is the borrower, the syndicated banks, or both.

The VAT Committee further **almost unanimously** agrees that such a supply shall be exempt in accordance with Article 135(1)(b) of the VAT Directive because it qualifies as management of credit by the person granting it, given that the credit agent is one of the creditors of the loan (the syndicated banks).

2. Where credit guarantees have been provided in respect of a syndicated loan, and such guarantees are being managed as a whole by only one of the syndicated banks (hereinafter “guarantees agent”) in exchange for consideration paid by the borrower, the VAT Committee **almost unanimously** agrees that the service consisting of the management of the credit guarantees shall constitute a single supply for VAT purposes.

The VAT Committee **almost unanimously** agrees that the service consisting of the management of credit guarantees provided by the guarantees agent shall constitute a supply of services subject to VAT under Article 2(1)(c) of the VAT Directive, regardless of whether the beneficiary of the service is the borrower, the syndicated banks, or both.

The VAT Committee further **almost unanimously** agrees that such a supply shall be exempt in accordance with Article 135(1)(c) of the VAT Directive because it qualifies as management of credit guarantees by the person granting the credit, given that the guarantees agent is one of the creditors of the loan (the syndicated banks).