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

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**VALUE ADDED TAX COMMITTEE
(ARTICLE 398 OF DIRECTIVE 2006/112/EC)**

GUIDANCE

WORKING PAPER NO 634 FINAL

**88TH MEETING OF THE VAT COMMITTEE
– 13 AND 14 JULY 2009 –**

GUIDELINES FROM THE MEETING

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.

- 6.4 Origin: Commission**
Reference: New Article 192a
Subject: Follow-up to the VAT package – person liable for payment of VAT – supplier having established his business in the Member State where the tax is due
(Document taxud.d.1(2009)131558 – Working paper No 624)

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 I 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.