

Council Directive 2006/112/EC of 28 November
2006 on the common system of value added tax

TITLE V

PLACE OF TAXABLE TRANSACTIONS

CHAPTER 1

Place of supply of goods

Section 1

Supply of goods without transport

Article 31

Where goods are not dispatched or transported, the place of supply shall be deemed to be the place where the goods are located at the time when the supply takes place.

Section 2

Supply of goods with transport

Article 32

Where goods are dispatched or transported by the supplier, or by the customer, or by a third person, the place of supply shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer begins.

However, if dispatch or transport of the goods begins in a third territory or third country, both the place of supply by the importer designated or recognised under Article 201 as liable for payment of VAT and the place of any subsequent supply shall be deemed to be within the Member State of importation of the goods.

Article 33

1 By way of derogation from Article 32, the place of supply of goods dispatched or transported by or on behalf of the supplier from a Member State other than that in which dispatch or transport of the goods ends shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer ends, where the following conditions are met:

- a the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;
- b the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

2 Where the goods supplied are dispatched or transported from a third territory or a third country and imported by the supplier into a Member State other than that in which dispatch or

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transport of the goods to the customer ends, they shall be regarded as having been dispatched or transported from the Member State of importation.

Article 34

1 Provided the following conditions are met, Article 33 shall not apply to supplies of goods all of which are dispatched or transported to the same Member State, where that Member State is the Member State in which dispatch or transport of the goods ends:

- a the goods supplied are not products subject to excise duty;
- b the total value, exclusive of VAT, of such supplies effected under the conditions laid down in Article 33 within that Member State does not in any one calendar year exceed EUR 100 000 or the equivalent in national currency;
- c the total value, exclusive of VAT, of the supplies of goods, other than products subject to excise duty, effected under the conditions laid down in Article 33 within that Member State did not in the previous calendar year exceed EUR 100 000 or the equivalent in national currency.

2 The Member State within the territory of which the goods are located at the time when their dispatch or transport to the customer ends may limit the threshold referred to in paragraph 1 to EUR 35 000 or the equivalent in national currency, where that Member State fears that the threshold of EUR 100 000 might cause serious distortion of competition.

Member States which exercise the option under the first subparagraph shall take the measures necessary to inform accordingly the competent public authorities in the Member State in which dispatch or transport of the goods begins.

3 The Commission shall present to the Council at the earliest opportunity a report on the operation of the special EUR 35 000 threshold referred to in paragraph 2, accompanied, if necessary, by appropriate proposals.

4 The Member State within the territory of which the goods are located at the time when their dispatch or transport begins shall grant those taxable persons who carry out supplies of goods eligible under paragraph 1 the right to opt for the place of supply to be determined in accordance with Article 33.

The Member States concerned shall lay down the detailed rules governing the exercise of the option referred to in the first subparagraph, which shall in any event cover two calendar years.

Article 35

Articles 33 and 34 shall not apply to supplies of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), nor to supplies of second-hand means of transport, as defined in Article 327(3), subject to VAT in accordance with the relevant special arrangements.

Article 36

Where goods dispatched or transported by the supplier, by the customer or by a third person are installed or assembled, with or without a trial run, by or on behalf of the supplier, the place of supply shall be deemed to be the place where the goods are installed or assembled.

Where the installation or assembly is carried out in a Member State other than that of the supplier, the Member State within the territory of which the installation or assembly

is carried out shall take the measures necessary to ensure that there is no double taxation in that Member State.

Section 3

Supply of goods on board ships, aircraft or trains

Article 37

1 Where goods are supplied on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, the place of supply shall be deemed to be at the point of departure of the passenger transport operation.

2 For the purposes of paragraph 1, 'section of a passenger transport operation effected within the Community' shall mean the section of the operation effected, without a stopover outside the Community, between the point of departure and the point of arrival of the passenger transport operation.

'Point of departure of a passenger transport operation' shall mean the first scheduled point of passenger embarkation within the Community, where applicable after a stopover outside the Community.

'Point of arrival of a passenger transport operation' shall mean the last scheduled point of disembarkation within the Community of passengers who embarked in the Community, where applicable before a stopover outside the Community.

In the case of a return trip, the return leg shall be regarded as a separate transport operation.

3 The Commission shall, at the earliest opportunity, present to the Council a report, accompanied if necessary by appropriate proposals, on the place of taxation of the supply of goods for consumption on board and the supply of services, including restaurant services, for passengers on board ships, aircraft or trains.

Pending adoption of the proposals referred to in the first subparagraph, Member States may exempt or continue to exempt, with deductibility of the VAT paid at the preceding stage, the supply of goods for consumption on board in respect of which the place of taxation is determined in accordance with paragraph 1.

Section 4

Supply of goods through distribution systems

Article 38

1 In the case of the supply of gas through the natural gas distribution system, or of electricity, to a taxable dealer, the place of supply shall be deemed to be the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

2 For the purposes of paragraph 1, 'taxable dealer' shall mean a taxable person whose principal activity in respect of purchases of gas or electricity is reselling those products and whose own consumption of those products is negligible.

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Article 39

In the case of the supply of gas through the natural gas distribution system, or of electricity, where such a supply is not covered by Article 38, the place of supply shall be deemed to be the place where the customer effectively uses and consumes the goods.

Where all or part of the gas or electricity is not effectively consumed by the customer, those non-consumed goods shall be deemed to have been used and consumed at the place where the customer has established his business or has a fixed establishment for which the goods are supplied. In the absence of such a place of business or fixed establishment, the customer shall be deemed to have used and consumed the goods at the place where he has his permanent address or usually resides.

CHAPTER 2

Place of an intra-Community acquisition of goods

Article 40

The place of an intra-Community acquisition of goods shall be deemed to be the place where dispatch or transport of the goods to the person acquiring them ends.

Article 41

Without prejudice to Article 40, the place of an intra-Community acquisition of goods as referred to in Article 2(1)(b)(i) shall be deemed to be within the territory of the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that VAT has been applied to that acquisition in accordance with Article 40.

If VAT is applied to the acquisition in accordance with the first paragraph and subsequently applied, pursuant to Article 40, to the acquisition in the Member State in which dispatch or transport of the goods ends, the taxable amount shall be reduced accordingly in the Member State which issued the VAT identification number under which the person acquiring the goods made the acquisition.

Article 42

The first paragraph of Article 41 shall not apply and VAT shall be deemed to have been applied to the intra-Community acquisition of goods in accordance with Article 40 where the following conditions are met:

- (a) the person acquiring the goods establishes that he has made the intra-Community acquisition for the purposes of a subsequent supply, within the territory of the Member State identified in accordance with Article 40, for which the person to whom the supply is made has been designated in accordance with Article 197 as liable for payment of VAT;
- (b) the person acquiring the goods has satisfied the obligations laid down in Article 265 relating to submission of the recapitulative statement.

CHAPTER 3

Place of supply of services

Section 1

General rule

Article 43

The place of supply of services shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.

Section 2

Particular provisions

Subsection 1

Supply of services by intermediaries

Article 44

The place of supply of services by an intermediary acting in the name and on behalf of another person, other than those referred to in Articles 50 and 54 and in Article 56(1), shall be the place where the underlying transaction is supplied in accordance with this Directive.

However, where the customer of the services supplied by the intermediary is identified for VAT purposes in a Member State other than that within the territory of which that transaction is carried out, the place of the supply of services by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

Subsection 2

Supply of services connected with immovable property

Article 45

The place of supply of services connected with immovable property, including the services of estate agents and experts, and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the property is located.

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Subsection 3

Supply of transport

Article 46

The place of supply of transport other than the intra-Community transport of goods shall be the place where the transport takes place, proportionately in terms of distances covered.

Article 47

The place of supply of intra-Community transport of goods shall be the place of departure of the transport.

However, where intra-Community transport of goods is supplied to customers identified for VAT purposes in a Member State other than that of the departure of the transport, the place of supply shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

Article 48

‘Intra-Community transport of goods’ shall mean any transport of goods in respect of which the place of departure and the place of arrival are situated within the territories of two different Member States.

‘Place of departure’ shall mean the place where transport of the goods actually begins, irrespective of distances covered in order to reach the place where the goods are located.

‘Place of arrival’ shall mean the place where transport of the goods actually ends.

Article 49

The transport of goods in respect of which the place of departure and the place of arrival are situated within the territory of the same Member State shall be treated as intra-Community transport of goods where such transport is directly linked to transport of goods in respect of which the place of departure and the place of arrival are situated within the territory of two different Member States.

Article 50

The place of the supply of services by an intermediary, acting in the name and on behalf of another person, where the intermediary takes part in the intra-Community transport of goods, shall be the place of departure of the transport.

However, where the customer of the services supplied by the intermediary is identified for VAT purposes in a Member State other than that of the departure of the transport, the place of the supply of services by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

Article 51

Member States need not apply VAT to that part of the intra-Community transport of goods taking place over waters which do not form part of the territory of the Community.

Subsection 4

Supply of cultural and similar services, ancillary transport services or services relating to movable tangible property

Article 52

The place of supply of the following services shall be the place where the services are physically carried out:

- (a) cultural, artistic, sporting, scientific, educational, entertainment or similar activities, including the activities of the organisers of such activities and, where appropriate, ancillary services;
- (b) ancillary transport activities, such as loading, unloading, handling and similar activities;
- (c) valuations of movable tangible property or work on such property.

Article 53

By way of derogation from Article 52(b), the place of supply of services involving activities ancillary to the intra-Community transport of goods, supplied to customers identified for VAT purposes in a Member State other than that in the territory of which the activities are physically carried out, shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

Article 54

The place of the supply of services by an intermediary, acting in the name and on behalf of another person, where the intermediary takes part in the supply of services consisting in activities ancillary to the intra-Community transport of goods, shall be the place where the ancillary activities are physically carried out.

However, where the customer of the services supplied by the intermediary is identified for VAT purposes in a Member State other than that within the territory of which the ancillary activities are physically carried out, the place of supply of services by the intermediary shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

Article 55

By way of derogation from Article 52(c), the place of supply of services involving the valuation of movable tangible property or work on such property, supplied to customers identified for VAT purposes in a Member State other than that in the territory of which the services are physically carried out, shall be deemed to be within the territory of the Member State which issued the customer with the VAT identification number under which the service was rendered to him.

The derogation referred to in the first paragraph shall apply only where the goods are dispatched or transported out of the Member State in which the services were physically carried out.

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Subsection 5

Supply of miscellaneous services

Article 56

1 The place of supply of the following services to customers established outside the Community, or to taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment for which the service is supplied, or, in the absence of such a place, the place where he has his permanent address or usually resides:

- a transfers and assignments of copyrights, patents, licences, trade marks and similar rights;
- b advertising services;
- c the services of consultants, engineers, consultancy bureaux, lawyers, accountants and other similar services, as well as data processing and the provision of information;
- d obligations to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this paragraph;
- e banking, financial and insurance transactions, including reinsurance, with the exception of the hire of safes;
- f the supply of staff;
- g the hiring out of movable tangible property, with the exception of all means of transport;
- h the provision of access to, and of transport or transmission through, natural gas and electricity distribution systems and the provision of other services directly linked thereto;
- i telecommunications services;
- j radio and television broadcasting services;
- k electronically supplied services, such as those referred to in Annex II;
- l the supply of services by intermediaries, acting in the name and on behalf of other persons, where those intermediaries take part in the supply of the services referred to in this paragraph.

2 Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service for the purposes of point (k) of paragraph 1.

3 Points (j) and (k) of paragraph 1 and paragraph 2 shall apply until 31 December 2006.

Article 57

1 Where the services referred to in point (k) of Article 56(1) are supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the service is supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, the place of supply shall be the place where the non-taxable person is established, or where he has his permanent address or usually resides.

2 Paragraph 1 shall apply until 31 December 2006.

Subsection 6

Criterion of effective use and enjoyment

Article 58

In order to avoid double taxation, non-taxation or distortion of competition, Member States may, with regard to the supply of the services referred to in Article 56(1) and with regard to the hiring out of means of transport:

- (a) consider the place of supply of any or all of those services, if situated within their territory, as being situated outside the Community, if the effective use and enjoyment of the services takes place outside the Community;
- (b) consider the place of supply of any or all of those services, if situated outside the Community, as being situated within their territory, if the effective use and enjoyment of the services takes place within their territory.

However, this provision shall not apply to the services referred to in point (k) of Article 56(1), where those services are rendered to non-taxable persons.

Article 59

1 Member States shall apply Article 58(b) to telecommunications services supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community.

2 Until 31 December 2006, Member States shall apply Article 58(b) to radio and television broadcasting services, as referred to in point (j) of Article 56(1), supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or who has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community.

CHAPTER 4

Place of importation of goods

Article 60

The place of importation of goods shall be the Member State within whose territory the goods are located when they enter the Community.

Article 61

By way of derogation from Article 60, where, on entry into the Community, goods which are not in free circulation are placed under one of the arrangements or situations referred to in Article 156, or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the place of importation of such goods shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.

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Similarly, where, on entry into the Community, goods which are in free circulation are placed under one of the arrangements or situations referred to in Articles 276 and 277, the place of importation shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.