

**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 88<sup>th</sup> 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.

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.