

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.