

Part II: Policy options

Contents

Part II: Policy options	112
1. Scope	117
2. Methodology – project steps	118
3. Identification and description of the main issues with the current VAT regime.....	122
4. Glossary of terms used	124
5. Qualitative assessment criteria.....	126
5.1. OECD principles and IMF recommendations	126
5.2. KPIs used to assess the different policy options.....	127
6. Assessment of the current place-of-supply rules without an optional VAT exemption.....	130
6.1. Approach.....	130
6.2. VAT technical sheet.....	131
6.3. Illustrative example.....	133
6.4. Qualitative assessment from a VAT technical perspective	137
6.4.1. Assessment of the current place-of-supply rules without the optional exemption against the KPIs .	137
6.4.2. Summary	140
6.5. Conclusion on the assessment of the current place-of-supply rules without an optional VAT exemption	141
7. Identification and description of policy options.....	142
8. Identification and description of mitigating measures	143
9. Stakeholders' consultation.....	146
9.1. Development of a matrix.....	146
9.2. Consultation	149
10. Assessment of the policy options.....	151
10.1. Approach.....	151
10.2. Assessment of policy option 1: Place of supply is place of actual consumption in the EU	154
10.2.1. VAT technical sheet	154

10.2.2.	Illustrative examples.....	155
10.2.3.	Impact assessment from a VAT technical perspective	159
10.2.3.1.	Impact of the policy option on the place of taxation.....	159
10.2.3.2.	Qualitative assessment	161
10.2.4.	Impact assessment from an industry perspective.....	165
10.2.4.1.	Ships (cruise and ferry).....	165
10.2.4.2.	Aircraft	170
10.2.4.3.	Trains	171
10.2.4.4.	Other (e.g. coaches).....	172
10.2.5.	Overall impact assessment	172
10.2.5.1.	Changes to the place of taxation	172
10.2.5.2.	Assessment of the change under the policy option from a VAT technical perspective.....	173
10.2.5.3.	Assessment of the change under the policy option from an industry perspective.....	174
10.2.5.4.	Comparison between the VAT technical and industry assessment of the policy option	175
10.2.5.5.	Conclusion	176
10.3.	Assessment of policy option 2: Place of supply is place of establishment of the supplier of the goods or services.....	177
10.3.1.	VAT technical sheet	177
10.3.2.	Illustrative examples.....	179
10.3.3.	Impact assessment from a VAT technical perspective	184
10.3.3.1.	Impact under the policy option on the place of taxation.....	184
10.3.3.2.	Qualitative assessment	189
10.3.4.	Impact assessment from an industry perspective.....	194
10.3.4.1.	Ships (cruise and ferry).....	194
10.3.4.2.	Aircraft	201
10.3.4.3.	Trains	202
10.3.4.4.	Other (e.g. coaches).....	203
10.3.5.	Overall impact assessment	203
10.3.5.1.	Changes to the place of taxation	203
10.3.5.2.	Assessment of the change under the policy option from a VAT technical perspective.....	204

10.3.5.3.	Assessment of the change under the policy option from an industry perspective.....	206
10.3.5.4.	Comparison between the VAT technical and industry assessment of the policy option	209
10.3.5.5.	Conclusion	211
10.4.	Assessment of policy option 3: Place of supply is place of establishment of the transport company.	212
10.4.1.	VAT technical sheet	212
10.4.2.	Illustrative examples.....	214
10.4.3.	Impact assessment from a VAT technical perspective	219
10.4.3.1.	Impact under the policy option on the place of taxation	219
10.4.3.2.	Qualitative assessment	224
10.4.4.	Impact assessment from an industry perspective.....	228
10.4.4.1.	Ships (cruise and ferry).....	229
10.4.4.2.	Aircraft	236
10.4.4.3.	Trains	237
10.4.4.4.	Other (e.g. coaches).....	238
10.4.5.	Overall impact assessment	239
10.4.5.1.	Changes to the place of taxation	239
10.4.5.2.	Assessment of the change under the policy option from a VAT technical perspective.....	240
10.4.5.3.	Assessment of the change under the policy option from an industry perspective.....	242
10.4.5.4.	Comparison between the VAT technical and industry assessment of the policy option	245
10.4.5.5.	Conclusion	247
10.5.	Assessment of policy option 4: Place of supply is point of departure of the transport operation for all transport sections	248
10.5.1.	VAT technical sheet	248
10.5.2.	Illustrative examples.....	249
10.5.3.	Impact assessment from a VAT technical perspective	253
10.5.3.1.	Impact under the policy option on the place of taxation	253
10.5.3.2.	Qualitative assessment	256
10.5.4.	Impact assessment from an industry perspective.....	260
10.5.4.1.	Ships (cruise and ferry).....	260
10.5.4.2.	Aircraft	267

10.5.4.3.	Trains	268
10.5.4.4.	Other (e.g. coaches).....	270
10.5.5.	Overall impact assessment	271
10.5.5.1.	Changes to the place of taxation	271
10.5.5.2.	Assessment of the change under the policy option from a VAT technical perspective.....	272
10.5.5.3.	Assessment of the change under the policy option from an industry perspective.....	273
10.5.5.4.	Comparison between the VAT technical and industry assessment of the policy option	275
10.5.5.5.	Conclusion.....	277
11.	Assessment of the need to apply mitigating measures.....	278
11.1.	Introduction.....	278
11.2.	Current place-of-supply rules without an optional VAT exemption	279
11.2.1.	Assessment of the current place-of-supply rules without an optional VAT exemption against KPIs	279
11.2.2.	Assessment of the current place-of-supply rules without an optional VAT exemption further to the implementation of the mitigating measures	281
11.2.3.	Conclusion.....	281
11.3.	Place of supply where the actual consumption takes place in the EU.....	282
11.3.1.	Assessment of the change in the place of supply (actual consumption) against KPIs.....	282
11.3.2.	Assessment of the change in the place of supply (actual consumption) further to the implementation of the mitigating measures.....	283
11.3.2.1.	Assessment from a VAT technical perspective.....	283
11.3.2.2.	Assessment from an industry perspective.....	284
11.3.3.	Conclusion.....	285
11.4.	Place of supply where the supplier of the goods or services is established.....	286
11.4.1.	Assessment of the change in the place of supply (establishment supplier of goods or services) against KPIs	286
11.4.2.	Assessment of the change in the place of supply (establishment supplier of goods or services) further to the implementation of the mitigating measures	287
11.4.2.1.	Assessment from a VAT technical perspective.....	287
11.4.2.2.	Assessment from an industry perspective.....	289
11.4.3.	Conclusion.....	291
11.5.	Place of supply where the transport company is established	292

11.5.1.	Assessment of the change in the place of supply (establishment transport company) against KPIs	292
11.5.2.	Assessment of the change in the place of supply (establishment transport company) further to the implementation of the mitigating measures	293
11.5.2.1.	Assessment from a VAT technical perspective.....	293
11.5.2.2.	Assessment from an industry perspective.....	295
11.5.3.	Conclusion.....	297
11.6.	Place of supply where the point of departure of the transport operation is situated.....	298
11.6.1.	Assessment of the change in the place of supply (point of departure) against KPIs	298
11.6.2.	Assessment of the change in the place of supply (point of departure) further to the implementation of the mitigating measures.....	299
11.6.2.1.	Assessment from a VAT technical perspective.....	299
11.6.2.2.	Assessment from an industry perspective.....	300
11.6.3.	Conclusion.....	304
12.	Assessment of the need to apply an exemption.....	305
12.1.1.	Assessment from a VAT technical perspective.....	305
12.1.2.	Assessment from an industry perspective.....	305
12.1.3.	Conclusion.....	307

1. *Scope*

449 In **Phase 2** of the Study, further to the collection of VAT and economic data, we define the main issues with regard to the current VAT regime and assess the ability of the current place-of-supply rules, without an optional VAT exemption, to allow for taxation of supplies of goods and services on board means of transport.

450 If we conclude that the current taxation rules are not robust enough, we should present alternative options for the taxation of supplies of goods and services on board means of transport.

451 The **activities carried out** in the second Phase of the Study are:

- definition of the main issues, description of their nature and assessment for which passenger transport operator(s) these main issues are especially true;
- development of a glossary of terms used;
- development of qualitative assessment criteria;
- assessment of the current place-of-supply rules without an optional VAT exemption;
- development of possible policy options to solve the main issues;
- development of mitigating measures to overcome weaknesses, if any are identified during the assessments;
- stakeholders' consultation;
- qualitative assessment of the different policy options from a VAT technical and from an industry perspective;
- assessment of the need to apply mitigating measures from a VAT technical and industry perspective;
- assessment of the need to apply an exemption (optional or obligatory, sectoral or general), including qualitative input from stakeholders in the passenger transport industry on the impact of ending the option to exempt the supply of goods for consumption by passengers on board ships, aircraft or trains;
- drafting the Final Report.

452 The following **activities** are **not in scope** of the second Phase of the Study:

- quantitative estimate of the potential impact of ending the option to exempt the supply of goods for consumption by passengers on board ships, aircraft or trains due to the lack of data in this respect;
- assessment of the potential budgetary impact of the different policy options and of ending the optional VAT exemption;
- other impacts not related to VAT (e.g. concurrence of the different policy options with excise duties and other taxes or charges);
- drafting amending provisions to the VAT Directive.

2. Methodology – project steps

453 In order to provide a qualitative assessment of the current place-of-supply rules and of the alternative taxation options, we have followed a **ten-step approach**.

Step 1 – Identification and description of the main issues with the current VAT regime

454 We identified and described the **main issues with the current VAT regime** (combination of place-of-supply rules with optional VAT exemption), including an assessment for which operator(s) these main issues are especially true (see chapter 3).

Step 2 – Development of a glossary of terms used

455 We developed a **glossary of terms** used in the matrix containing the policy options for the taxation of buy-on-board transactions (see chapter 4).

Step 3 – Development of qualitative assessment criteria

456 We identified **5 Key Performance Indicators** (“KPIs”) to evaluate the current place-of-supply rules and to benchmark each policy option against the current taxation rule, from both a VAT technical and an industry perspective (see chapter 5).

457 The KPIs used to evaluate each policy option are:

- simplicity;
- efficiency;
- certainty;
- non-distortionary; and
- effectiveness and fairness.

Step 4 – Assessment of the current place-of-supply rules without an optional VAT exemption

458 We assessed the **ability** of the current place-of-supply rules, without an optional VAT exemption, to allow for taxation of supplies of goods and services on board means of transport and we give our opinion on the robustness of those rules (see chapter 6).

Step 5 – Identification and description of policy options

459 We identified and described **4 alternative options for the taxation of buy-on-board transactions**, including a preliminary evaluation of the issues each policy option would solve and what possible issues may (continue to) exist compared to the current VAT regime (see chapter 7).

460 The policy options were presented to and discussed with the Commission Steering Group at a meeting held on 8 April 2011 and agreement was reached on 4 alternative options that could be used for defining the place of taxation for the supply of goods and services, including restaurant and catering services, for consumption on board means of transport, being:

- the place of actual consumption in the EU;
- the place of establishment of the supplier of the buy-on-board transactions;
- the place of establishment of the supplier of the transport services;

- the point of departure of the transport operation for all transport sections¹.

Step 6 – Identification and description of mitigating measures

- 461 We subsequently identified 4 **additional measures to mitigate the weaknesses of each policy option**, if any (see chapter 8).
- 462 These mitigating measures are:
- providing common, binding interpretation;
 - implementing a one-stop-shop system;
 - harmonising the VAT compliance requirements; and
 - applying a single VAT rate and single VAT return with a clearing mechanism.
- 463 As concerns the application of the 4 additional mitigating measures, their analysis has been made separately. In other words: first the analysis of the given policy option is made against the KPIs and the use of the 4 additional mitigating measures has only been considered to overcome the weaknesses of each policy options if any.
- 464 The need to apply an exemption (optional or obligatory, sectoral or general) is only considered where the 4 mitigating measures prove to be insufficient.

Step 7 – Stakeholders’ consultation

- 465 With a view to the stakeholders’ consultation, we have first developed a matrix regarding the policy options, which we have then shared with the stakeholders for their completion (see chapter 9).

Step 7.1 – Development of a matrix

- 466 We developed a matrix containing the application of the current rules without an optional VAT exemption and the 4 policy options in Excel format (see Appendix 6).
- 467 The **VAT technical part** of the matrix was completed by PwC before it was shared with the stakeholders.
- 468 We also developed a **glossary of terms** used in the matrix in Word format (see Appendix 7).
- 469 The matrix and the glossary of terms were shared and discussed with the Commission Steering Group and further fine-tuned based on the comments received.

Step 7.2 – Consultation

- 470 In the period between 27 April 2011 and 20 May 2011, the completed matrix, together with the glossary of terms was shared with the **stakeholders** (via e-mail correspondence).
- 471 The stakeholders consulted in the second Phase of the Study were **mainly umbrella industry-segment associations** from across the EU for the air, maritime (i.e. cruise and ferry), railway and long-distance bus & coach travel markets in order to maximise the input received. We agreed with these associations that they would forward the matrix to their members.

¹ “Domestic” transport section”, “intra-EU” transport section, “EU – non-EU” transport section and “non-EU – EU” transport section.

472 In order to make sure that the stakeholders evaluated each policy option, we had **face-to-face meetings and follow-up calls** with most of the associations and/or their members. From the feedback received from some stakeholders, we understand that, although complex, the matrix had the merit of taking them through options and leading to insights that they had not previously considered.

473 On the basis of the comparison between the current VAT regime and the VAT regime under each policy option as completed by PwC, the stakeholders in the passenger transport industry were asked to **assess** each policy option on its strengths and/or weaknesses **using the KPIs identified**.

Based on the impact assessment made by the stakeholders against the KPIs, the stakeholders could also **indicate or suggest additional measures** to mitigate the weaknesses of each policy option (if any).

474 Some of the stakeholders provided their input by completing the matrix while others provided a narrative submission outlining the advantages and disadvantages of each policy option and general conclusions on the way forward in the form of a position paper.

475 The majority of **input from stakeholders** was received in the period between 1 and 15 July 2011. We enclose their contributions – most of them anonymised as agreed with the stakeholders (see Appendices 8 to 18).

Step 8 – Assessment of the policy options

476 In order to perform an impact assessment of the 4 policy options, we have followed a **three-step approach** (see chapter 10).

Step 8.1 – Assessment from a VAT technical perspective

477 Firstly, we identified the **changes in the EU Member State of taxation** under each policy option in order to indicate which transport section, transport mode and type of on-board supply each policy option impacts.

478 Afterwards, we **evaluated** each policy option from a VAT technical point of view on its strengths and/or weaknesses using the KPIs identified.

Step 8.2 – Assessment from an industry perspective

479 Secondly, we collected the qualitative input from stakeholders in the passenger transport industry with respect to the **changes in the EU Member State of taxation** under each policy option. We collected the input per transport industry and per stakeholder in order to indicate any differences in the assessment cross-industry and within the industry.

480 We also captured **other qualitative feedback** from the stakeholders in the passenger transport industry in key messages.

481 Given the disparity of the detailed input received from the stakeholders and in order to make sure we captured all relevant positions, we **included** their **contributions** (most of them anonymised as agreed with the stakeholders) as enclosures (see Appendices 8 to 18).

Step 8.3 – Comparison of VAT technical and industry assessments and conclusion

- 482 Thirdly, we **compared** the VAT technical assessment with the assessment made by the stakeholders in the passenger transport industry.
- 483 Finally, we drew a **conclusion** for each policy option, allowing for a proper interpretation of the different sections of this step and showing a link between the various tables of this step.

Step 9 – Assessment of the need to apply mitigating measures

- 484 We have evaluated the need to use additional mitigating measures only where the **analysis of the given policy option** on the basis of the KPIs proved to be **insufficient** (see chapter 11).

Step 10 – Assessment of the need to apply an exemption

- 485 We have evaluated the need to use a VAT exemption, optional or obligatory, sectoral or general, only where **none of the alternative taxation options combined with mitigating measures** would be **sufficiently effective** (see chapter 12).
- 486 This section also includes **qualitative input from stakeholders** in the passenger transport industry **on the impact of ending the option** to exempt the supply of goods for consumption by passengers on board ships, aircraft or trains.

3. *Identification and description of the main issues with the current VAT regime*

487 In our review of the VAT treatment in the 27 EU Member States of the supply of goods and services, including restaurant and catering services, for consumption on board means of transport (Phase 1 of the Study - Part I of this Report), we identified **three main issues**:

- **With respect to the identification of the place of taxation: high complexity and divergent interpretations of the place-of-supply rules.**

The current place-of-supply rules differ according to the means of transport used (ships, aircraft and trains vs. other means of transport e.g. coaches), the travel itinerary (transport section in the EU vs. transport section outside the EU) and the nature of the on-board transaction (supply of goods vs. supply of restaurant and catering services vs. supply of other services).

There is also a lack of clarity and harmonisation in the definition of terms used to describe a travel itinerary (“stopover”, “point of departure”, “point of arrival”, “scheduled”, “embarkation”, “disembarkation”).

As a result, it is very difficult for passenger transport operators to implement suitable criteria in their business systems and, hence, correctly identify the place of taxation for their on-board supplies. This is especially true for transport operators in the maritime travel market (i.e. cruise and ferry) that operate flexible itineraries.

- **With respect to the level of taxation: multiple VAT rates and discordant application of the exemption (with a right to deduct the VAT paid at the preceding stage) for supplies of goods for consumption on board ships, aircraft or trains.**

14 EU Member States apply an exemption with a right to deduct VAT, but not in a harmonised way (we refer to Table 9 and Table 10 in the first Phase of the Study). This is due to the optional nature of the exemption and the lack of clear definitions of terms used to describe buy-on-board transactions (“supply of goods for consumption”, “supply of goods for take away”, “restaurant and catering services” and “other services”).

If no exemption applies, there is a large discrepancy between standard and reduced VAT rates within the 27 EU Member States.

As a result of the lack of clear definitions, the optional nature of the exemption and the multiple VAT rates, it is very difficult for international passenger transport operators to correctly classify buy-on-board transactions, to implement all possible VAT rates and VAT exemptions in their business systems in order to be compliant.

This is especially true for international passenger transport operators in the air, maritime (i.e. cruise and ferry) and railway travel markets.

- **With respect to compliance requirements: multiple VAT registrations and divergent compliance requirements in the EU Member States.**

Because international passenger transport operators are very often liable to account for VAT in different EU Member States for (parts of) their buy-on-board transactions, they are faced with multiple VAT registrations.

Because of the divergent VAT obligations in the 27 EU Member States, it is very complex and costly for them to implement all these requirements correctly in their business systems.

This is especially true for international passenger transport operators in the air, maritime (i.e. cruise and ferry) and railway travel markets that provide goods and/or services on board means of transport within the EU.

- 488 The above-mentioned main issues are especially true for passenger transport operators in the air, maritime (i.e. cruise and ferry) or railway travel markets that provide goods and/or services on board ships, aircraft or trains. Operators in the long-distance bus & coach travel market indicated (in the first Phase of the Study) that no or few difficulties have been experienced in applying the current VAT rules. They indicated that, in practice, supplies of goods and/or services do not occur very often on board buses and coaches.

4. *Glossary of terms used*

489 The terms used in the matrix under the 4 policy options for the supply of goods and services, including restaurant and catering services, for consumption on board means of transport are **defined** as follows.

- **N/A:** not applicable.
- **Place of actual consumption**²: the place where the on-board supply physically takes place.
- **Place of establishment of the supplier/transport company**³: the place where the functions of the business's central administration are carried out.⁴

In order to determine this place, account shall be taken of the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located and the place where management meets.

Where these criteria do not allow the place of establishment of a business to be determined with certainty, the place where essential decisions concerning the general management of the business are taken shall take precedence.⁵

The mere presence of a postal address may not be taken to be the place of establishment of a business of a taxable person.⁶

Please note that this concept should not be confused with the concept of a “fixed establishment”.

A “fixed establishment” shall be any establishment, other than the place of establishment of a business referred to in article 10 of the Council Implementing Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it:

- for the purpose of Article 44 of Directive 2006/112/EC: to receive and use the services supplied to it for its own needs;
- for the purpose of Article 45 of Directive 2006/112/EC: to provide the services which it supplies.⁷

² Please note that the wording was slightly modified compared to the definition used in the glossary of terms sent to the stakeholders but the change has no impact on the definition.

³ Please note that the wording was slightly modified compared to the definition used in the glossary of terms sent to the stakeholders but the change has no impact on the definition.

⁴ Article 10(1) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁵ Article 10(2) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁶ Article 10(3) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁷ Article 11 of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

- **Point of departure of the passenger transport operation (all transport sections):** the first point of departure of the passenger transport operation is the first scheduled point of passenger embarkation.⁸

The first point of departure of the passenger transport operation is determined by the journey of the means of transport and not by the journey completed by each of the passengers.⁹

- **PoS:** place of supply.
- **Return leg:** in the case of a return trip, the return leg is regarded as a separate transport operation.¹⁰
- **Supplier:** supplier of goods, restaurant and catering services or other services on board means of transport.
- **Transport company**¹¹: the transport company is the supplier providing the passenger transport services irrespective of:
 - offering or pricing (e.g. in package deal); and
 - contractual arrangements between the transport company and the third party for performing buy-on-board transactions (if any).

⁸ Cf. articles 37(2) and 57(2) of VAT Directive 2006/112/EC of 28 November 2006.

⁹ Cf. article 35 of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

¹⁰ Articles 37(2) and 57(2) of VAT Directive 2006/112/EC of 28 November 2006.

¹¹ Please note that the wording was slightly modified compared to the definition used in the glossary of terms sent to the stakeholders but the change has no impact on the definition.

5. Qualitative assessment criteria

5.1. OECD principles and IMF recommendations

490 To select qualitative assessment criteria to **evaluate** the effectiveness of each policy option, we reviewed which OECD principles and recommended best practices by the IMF could be used.

Table 1 – OECD principles¹²

Principles ¹³	Key results for both the business community and the tax authorities (governments)
Neutrality	Taxation should seek to be neutral and equitable between forms of commerce. Business decisions should be motivated by economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation.
Efficiency	Compliance costs for taxpayers and administrative costs for the tax authorities should be minimized as far as possible.
Certainty and simplicity	The tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences of a transaction, including knowing when, where and how the tax is to be accounted for.
Effectiveness and fairness	Taxation should produce the right amount of tax at the right time. The potential for tax evasion and avoidance should be minimized while keeping counter-acting measures proportionate to risks involved.
Flexibility	The systems for taxation should be flexible and dynamic to ensure that they keep pace with technological and commercial developments.

¹² Ottawa framework taxation conditions contained in the OECD “International VAT/GST Guidelines” report of February 2006, <http://www.oecd.org/dataoecd/16/36/36177871.pdf>.

¹³ Although the principles in the field of consumption taxes were designed in the context of e-commerce taxation, they remain valid for the more global interaction of consumption tax systems and broadly reflect the philosophy of the existing tax rules in most countries and are used by the OECD to assess tax legislation in general.

491 The **IMF**¹⁴ has recommended the following best practices:

- a single rate rather than multiple rates;
- a single, relatively high exemption threshold regarding turnover;
- a broad base with minimum exemptions to avoid distortion of purchase (input) decisions and to provide transparency;
- use the destination principle whereby exports are zero-rated and imports are taxed;
- use of the invoice credit method whereby output VAT remitted is reduced by input VAT paid on purchases and imports; and
- the timely provision of input credits for the purchase of capital goods.

5.2. *KPIs used to assess the different policy options*

492 Based on the above OECD principles and the recommended best practices by the IMF, we **defined qualitative assessment criteria** for evaluating the effectiveness of each policy option.

493 However, we only **selected those criteria** that **relate** to the **main issues identified during the first Phase of the Study** and are relevant taking into account the **common objectives of the policy options** (see chapter 7).

494 Based on the above, we identified **5 Key Performance Indicators (KPIs)** to evaluate the current place-of-supply rules for on-board supplies and the 4 policy options.

495 They are:

- simplicity;
- efficiency;
- certainty;
- non-distortionary; and
- effectiveness and fairness.

496 The 5 KPIs retained to assess the current place-of-supply rules and the 4 policy options for on-board supplies (which in itself is a limited segment of the market) are of a general nature and are not targeting this sector only. Many elements are of a broad nature and apply to the functioning of the VAT system as such.¹⁵

497 In the **left-hand column** of the table below, we identify and describe the **key results** to be achieved for the KPI to be met for both passenger transport operators in the air, maritime, railway and long-distance bus & coach travel markets that provide goods and/or services on board means of transport and for the tax authorities (governments).

¹⁴ Ebrill, Keen, Bodin and Summers, "The Modern VAT", Washington: International Monetary Fund, 2001; see also Ebrill, Keen, Bodin and Summers, "The Allure of the Value-Added-Tax, Finance and Development", in IMF Quarterly Magazine (ed.), 2002, Volume 39, No. 2.

¹⁵ Green paper on the future of VAT – Towards a simpler, more robust and efficient VAT system, COM(2010) 695 final, http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_11_future_vat_en.htm and Communication from Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market, http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/communications/index_en.htm.

498 In the **right-hand column** of the table below, we identify **some of the practical issues** that have been pointed to by stakeholders in the passenger transport industry during the first Phase of the Study under the current VAT regime. These issues are used to assess if the policy option(s) identified would overcome those, thus satisfying (or not satisfying) the related KPI.

Table 2 – Overview of the KPIs used to evaluate the different policy options

Key results	Practical issues identified during the first Phase of the Study
SIMPLICITY	
<ul style="list-style-type: none"> - Easy implementation and application of the place-of-supply rules (so that industry can anticipate the tax consequences in advance of a transaction) - No or limited need for guidance or rulings by EU Member States 	<ul style="list-style-type: none"> - Difficult to apply the current place-of-supply rules in practice: lack of uniform, practical solutions to applying these rules - Difficult to identify the part of the supply that is subject to a country's VAT regime - Different place-of-supply rules depending on the journey: VAT burden (deal with different rules) and increased risk of errors and incorrect application of VAT rules - Difficult to comply with different sets of rules in different countries and identify when certain rules apply
EFFICIENCY	
<ul style="list-style-type: none"> - Low cost of VAT compliance for industry: limited VAT obligations (e.g. liability to pay VAT, registration, invoicing, accounting, VAT return filing, recapitulative statements) - High voluntary VAT compliance by industry (low cost of collection for governments) - Low VAT Gap and non-taxed transactions (i.e. efficient collection by government) 	<ul style="list-style-type: none"> - Disproportionate costs when having to collect VAT in different EU Member States - Use of cash registers to record buy-on-board transactions: technical requirements defined per EU Member State, difficulties in programming and no possibility to use two or three different VAT rates - VAT registration obligation and related costs - VAT compliance requirements and costs: obligation to issue invoices and cash receipts and need to engage local advisers - Difficulties in price setting

Key results	Practical issues identified during the first Phase of the Study
CERTAINTY	
<ul style="list-style-type: none"> - Application of uniform place-of-supply rules for determining the place of taxation - Unambiguous terminology (the same interpretation of rules in all EU Member States) - Limited need for litigation 	<ul style="list-style-type: none"> - Complex and no “single EU” definition leading to misinterpretation and differing interpretations - Impact of unscheduled stopovers on the VAT treatment of on-board transactions is unclear - Unclear definition of VAT treatment of services that are usually supplied on board means of transport - “Other services” may be seen as ancillary to the transport services - Provision of certain services on board means of transport may create a fixed establishment according to the interpretation of some EU Member States - Place of establishment of the supplier: on-shore or on-board?
NON-DISTORTIONARY	
<ul style="list-style-type: none"> - Taxation should seek to be neutral and equitable - No distortion of competition between the different means of transport - No distortion of competition between buy-on-board transactions and buy-off-board transactions 	<ul style="list-style-type: none"> - Business decisions should be motivated by economic rather than tax considerations - Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation - Market distortions: EU vs. non-EU suppliers, distortion of competition and risk of relocation (e.g. establishment in “0% EU Member State”) - Possible double taxation or non-taxation
EFFECTIVENESS AND FAIRNESS	
<ul style="list-style-type: none"> - Taxation should produce the right amount of tax at the right time 	<ul style="list-style-type: none"> - Taxpayers have difficulties to understand and apply the VAT rules of different EU Member States and local tax practice of several jurisdictions (need to engage local advisors)

6. ***Assessment of the current place-of-supply rules without an optional VAT exemption***

6.1. ***Approach***

- 499 We start out by making a VAT technical analysis of the current place-of-supply rules without an optional VAT exemption. This is done in the **VAT technical sheet**. We highlight the differences from the current VAT regime using a colour in the section of the sheet to indicate the change.
- 500 We assumed that the recipients of the buy-on-board transactions are **private individuals (B2C)**.
- As it is practically impossible to identify the capacity of the recipients of the buy-on-board transactions, i.e. B2B (taxable persons) vs. B2C (private individuals), we opine that the recipient's capacity should not be a differentiator for defining the place-of-supply rules for those buy-on-board transactions.
- 501 Next, we give an **illustrative example** to indicate the place of supply with respect to a specific situation.
- We re-used the example included in Table 4 of the first Phase of the Study and the matrix (containing the application of the current rules without an optional VAT exemption), to visualise the passenger transport operation and explain in table format the place of supply according to the current provisions of the VAT Directive.
- 502 Then, we assess the strengths and weaknesses on **the basis of the 5 selected KPIs** of the current place-of-supply rules without an optional VAT exemption and from a VAT technical perspective.
- 503 Please note that this chapter does not include a qualitative assessment from an industry perspective.
- 504 The stakeholders in the passenger transport industry were asked to assess the 4 policy options on its strengths and/or weaknesses using the KPIs selected. We did not provide the stakeholders with a separate sheet to assess the current place-of-supply rules without an optional VAT exemption using the 5 KPIs.

- 505 The stakeholders did however compare the current place-of-supply rules without an optional VAT exemption (“as is” situation) with the place-of-supply rules under the 4 proposed policy options (“to be” situation) by completing the stakeholder matrix.
- 506 Furthermore the stakeholders were asked to explicitly assess for each policy option a variant whereby the optional VAT exemption is kept which allowed us to compare that input with their assessments where no such exemption is provided for.
- 507 As a result, the stakeholders did also indirectly assess the current rules on the place of supply without an optional VAT exemption when assessing policy option 1 (place of supply is place of actual consumption in the EU) and policy option 4 (place of supply is point of departure of the transport operation for all transport sections), which accord with the current place-of-supply rules.

6.2. VAT technical sheet

Taxable transactions in scope	<p>All buy-on-board transactions on ships, aircraft, trains or other means of transport (e.g. coaches), i.e.:</p> <ul style="list-style-type: none"> - Supply of goods for consumption on board - Supply of goods to take away (no consumption on board) - Supply of restaurant and catering services on board - Supply of other services on board (we assume B2C services qualifying as (ancillary to) cultural, artistic, sporting, scientific, educational, entertainment or similar activities)
Place of supply	<p>SUPPLY OF GOODS FOR CONSUMPTION ON BOARD AND TO TAKE AWAY:</p> <ul style="list-style-type: none"> - <u>Ships, aircraft or trains:</u> <ul style="list-style-type: none"> o During section of a passenger transport operation effected within the EU: country of point of departure of the passenger transport operation¹⁶; o During section of a passenger transport operation effected outside the EU: country where the goods are located at the time when the supply takes place¹⁷ (i.e. transfer of the right to dispose of the goods as owner¹⁸). - <u>Other means of transport (e.g. coaches):</u> country where the goods are located at the time when the supply takes place (i.e. transfer of the right to dispose of the goods as owner¹⁹).

¹⁶ Article 37(1) of VAT Directive 2006/112/EC of 28 November 2006.

¹⁷ Article 31 of VAT Directive 2006/112/EC of 28 November 2006.

¹⁸ Article 14(1) of VAT Directive 2006/112/EC of 28 November 2006.

¹⁹ Ibid.

	<p>SUPPLY OF RESTAURANT AND CATERING SERVICES:</p> <ul style="list-style-type: none"> - <u>Ships, aircraft or trains:</u> <ul style="list-style-type: none"> o During section of a passenger transport operation effected within the EU: country of the point of departure of the passenger transport operation²⁰; o During section of a passenger transport operation effected outside the EU: country where the services are physically carried out²¹. - <u>Other means of transport (e.g. coaches):</u> country where the services are physically carried out. <p>SUPPLY OF OTHER SERVICES ON BOARD OF ALL MEANS OF TRANSPORT:</p> <ul style="list-style-type: none"> - B2C cultural, artistic, sporting, scientific, educational, entertainment or similar activities: country where those activities are physically carried out.^{22 23}
Exemption	No
Chargeable event	Time when the goods are supplied or the service is completed ²⁴
Rate	VAT rate of EU Member State of place of supply
Person liable	Supplier of the buy-on-board transactions

²⁰ Article 57(1) of VAT Directive 2006/112/EC of 28 November 2006.

²¹ Article 55 of VAT Directive 2006/112/EC of 28 November 2006.

²² Article 54(1) of VAT Directive 2006/112/EC of 28 November 2006.

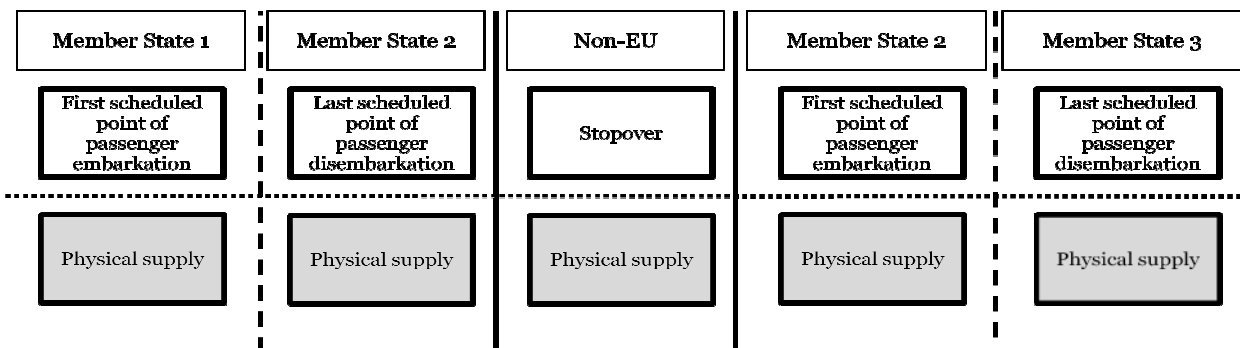
²³ It is not always clear from the guidelines of national VAT authorities how the place of supply of services, other than restaurant and catering services, usually supplied on board ships, aircraft or trains should be defined in a B2C-relationship. In this respect, we refer to section 4.1.1.4 in the first Phase of the Study where we have seen amongst others that all the EU Member States apply article 54(1) of the VAT Directive 2006/112/EC of 28 November 2006 if activities qualify as a supply of cultural, artistic, sporting, scientific, educational, entertainment or similar activities where they are supplied on board ships, aircraft or trains to non-taxable persons during the section of a passenger transport operation effected within the Community. On this basis, we have reasonably assumed that the services, other than restaurant and catering services, would fall within the scope of article 54(1) of the VAT Directive 2006/112/EC of 28 November 2006 as, in our opinion, it qualifies as an entertainment or a similar activity or event where the leisure aspect is predominant in the entire transaction compared to the single result or benefit of the services rendered, e.g. beauty parlour or wellness services on board a (luxury) cruise. In this respect, we have applied the principles of the European Court of Justice in its judgment of 10 March 2011 (Judgment of the ECJ of 10 March 2011, joined cases C-497/09, C-499/09, C-501/09 and C-502/09). Also, if we assume that all services, other than restaurant and catering services, are paid one-off at the end of the passenger transport operation, it could be a factor to decide that all those services supplied would fall within the scope of article 54(1) of the VAT Directive 2006/112/EC of 28 November 2006 if the total price paid for the entertainment or similar activities or events is the most compared to the total payment due for all other services.

²⁴ Article 63 of VAT Directive 2006/112/EC of 28 November 2006.

6.3. Illustrative example

508 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise **goods and/or services** physically supplied on board **ships, aircraft, trains or on coaches** in EU Member States 1, 2 and 3 as well as in a non-EU country. Passengers embark and disembark as scheduled during the journey.

Figure 1 – Supplies on board ships, aircraft, trains or coaches: Transport from EU Member State 1 to EU Member State 3 with a non-EU transport section



- 509 In the tables below, we indicate the VAT treatment for the supplies on board means of transport during the different transport sections illustrated in Figure 1 according to the current provisions of the VAT Directive.
- 510 The table shows that, for **supplies on board ships, aircraft or trains**, the current place-of-supply rules **differ** according to the travel itinerary (transport section in the EU vs. transport section outside the EU) and the nature of the on-board transactions (supply of goods for consumption on board and to take away vs. supply of restaurant and catering services vs. supply of other services).

Table 3 – Supplies of goods and/or restaurant and catering services on board ships, aircraft or trains: Current VAT treatment without an optional VAT exemption

Transport section	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	
		Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Provisions of the VAT Directive
Current place of supply rules without an optional VAT exemption											
Intra-EU (EU1 - EU2)	EU1	x	x	x		x	x	x		EU1	Article 37 or 57
Intra-EU (EU1-EU2)	EU2	x	x	x		x	x	x		EU1	Article 37 or 57
EU - non EU (EU2 - non-EU)	EU2	x	x	x		x	x	x		EU2	Article 31 or 55
Non-EU - EU (non-EU - EU2)	Non-EU	x	x	x		x	x	x		Non-EU	Article 31 or 55
Non-EU - EU (non-EU - EU2)	EU2	x	x	x		x	x	x		EU2	Article 31 or 55
Intra-EU (EU2 - EU3)	EU2	x	x	x		x	x	x		EU2	Article 37 or 57
Intra-EU (EU2- EU3)	EU3	x	x	x		x	x	x		EU2	Article 37 or 57

Table 4 – Supplies of other services on board ships, aircraft or trains: Current VAT treatment without an optional VAT exemption

Transport section	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	
		Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Provisions of the VAT Directive
Current place of supply rules without an optional VAT exemption											
Intra-EU (EU1 - EU2)	EU1	x	x	x					x	EU1	Article 54(1)
Intra-EU (EU1-EU2)	EU2	x	x	x					x	EU2	Article 54(1)
EU - non EU (EU2 - non-EU)	EU2	x	x	x					x	EU2	Article 54(1)
Non-EU - EU (non-EU - EU2)	Non-EU	x	x	x					x	Non-EU	Article 54(1)
Non-EU - EU (non-EU - EU2)	EU2	x	x	x					x	EU2	Article 54(1)
Intra-EU (EU2 - EU3)	EU2	x	x	x					x	EU2	Article 54(1)
Intra-EU (EU2- EU3)	EU3	x	x	x					x	EU3	Article 54(1)

- 511 The table below shows that, for **supplies on board other means of transport (e.g. coach)**, the current place-of-supply rules **differ** according to the nature of the on-board transactions (supply of goods for consumption on board and to take away vs. supply of restaurant and catering services vs. supply of other services).

Table 5 – Supplies of goods and/or services on board other means of transport (e.g. coach): Current VAT treatment without an optional VAT exemption

Transport section	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	
		Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Provisions of the VAT Directive
Current place of supply rules without an optional VAT exemption											
Intra-EU (EU1 - EU2)	EU1				x	x	x	x	x	EU1	Article 31, 54(1) or 55
Intra-EU (EU1-EU2)	EU2				x	x	x	x	x	EU2	Article 31, 54(1) or 55
EU - non EU (EU2 - non-EU)	EU2				x	x	x	x	x	EU2	Article 31, 54(1) or 55
Non-EU - EU (non-EU - EU2)	Non-EU				x	x	x	x	x	Non-EU	Article 31, 54(1) or 55
Non-EU - EU (non-EU - EU2)	EU2				x	x	x	x	x	EU2	Article 31, 54(1) or 55
Intra-EU (EU2 - EU3)	EU2				x	x	x	x	x	EU2	Article 31, 54(1) or 55
Intra-EU (EU2- EU3)	EU3				x	x	x	x	x	EU3	Article 31, 54(1) or 55

6.4. Qualitative assessment from a VAT technical perspective

6.4.1. Assessment of the current place-of-supply rules without the optional exemption against the KPIs

- 512 We have assessed the current place-of-supply rules without the optional exemption against the 5 selected KPIs.

Simplicity

- 513 The current place-of-supply rules **differ** according to the means of transport used (ships, aircraft and trains vs. other means of transport e.g. coach), the travel itinerary (transport section in the EU vs. transport section outside the EU) and the nature of the on-board transaction (supply of goods vs. supply of restaurant and catering services vs. supply of other services).

As a result, it is **highly complex** for passenger transport operators to **apply the current place-of-supply rules in practice and correctly identify the place of taxation**.

Efficiency

- 514 It is **difficult** for passenger transport operators to **set prices** for buy-on-board transactions as the place of taxation can be in anyone of the 27 EU Member States and consequently multiple VAT rates have to be taken into account.

VAT inclusive prices have to be listed (B2C supplies) which is difficult to do in view of the large discrepancy between standard and reduced VAT rates within the 27 EU Member States.

- 515 It is **difficult** for passenger transport operators to **implement and maintain all those possible VAT rates in their business systems** in order to be compliant.

- 516 As the current optional VAT exemption would be abolished, passenger transport operators would have an **obligation to register** in each EU Member State of departure and/or where a supply takes place. The divergent compliance requirements in the EU Member States lead to a **high compliance cost** for businesses, especially in using cash registers to record buy-on-board transactions as the different rules and rates of the different EU Member States of taxation have to be complied with.

- 517 It is **difficult** for the tax authorities to **audit** buy-on-board transactions of which the place of taxation is where the supply takes place (cf. Article 31, 54(1) or 55 of the VAT Directive). This is especially true when the transport goes across different countries.

Certainty

- 518 It is **difficult** for operators involved in the supply of buy-on-board transactions on international passenger routes (with a transport section outside the EU), **to identify with certainty** the place where the supply physically takes place. This is especially true when the transport goes across different countries.

- 519 There is a **lack of clarity and harmonisation in the definition of terms used to describe a travel itinerary** (“stopover”, “point of departure”, “point of arrival”, “scheduled”, “embarkation”, “disembarkation”).

Consequently, the **divergent interpretations** of the current place-of-supply rules make it **difficult** for the passenger transport operators to **correctly identify the place of taxation**.

- 520 Furthermore and due to the **lack of clear definitions of terms related to buy-on-board transactions** (“supply of goods for consumption”, “supply of goods for take away”, “restaurant and catering services” and “other services”), it is difficult for passenger transport operators to correctly identify these transactions and identify their tax treatment (e.g. applicable VAT rate).
- 521 As a result of the lack of clear definitions, it is **difficult** for passenger transport operators to **implement suitable criteria in their business systems** (with respect to the terms used to describe a travel itinerary) and to **correctly classify buy-on-board transactions in their systems** in order to be compliant.

Non-distortionary

- 522 As regards the taxation of supplies on board vessels during intra-EU passenger routes, buy-on-board transactions which are physically supplied or carried out during a stop in a third territory/on the **high seas**²⁵ can be **taxed** if it does not conflict with the jurisdiction of other States²⁶.
- 523 There is **no equal treatment** for buy-on-board transactions on board the different means of transport. There is **distortion of competition** for supplies on board different means of transport (e.g. the current place-of-supply rules differ according to the means of transport used).
- 524 There is also no equal treatment between buy-on-board and buy-off-board transactions.
- 525 Supplies of which the place of taxation is in a **low-tax EU Member State are advantaged** compared to supplies of which the place of taxation is in a high-tax EU Member State. Thus a market distortion exists between low-tax and high-tax EU Member States to the extent that the nature of the travel allows the consumer to effectively choose between paying tax in the low-tax or high-tax EU Member State.
- 526 In our opinion, the place of supply where the actual consumption takes place in the EU could lead to a situation whereby passenger transport operators will only start supplying goods and/or services on board after, say, leaving the EU (distortionary compared to the sale of these goods and/or services off board).
- 527 In other words, under this policy option **business decisions** will be motivated by **tax** rather than economic **considerations**, which is distortionary and also a practical issue identified by the stakeholders during the first Phase of the Study.

²⁵ International waters, i.e. waters falling outside the sovereignty or jurisdiction of any State.

²⁶ Judgment of the ECJ of 15 September 2005, Antje Köhler v. Finanzamt Düsseldorf-Nord, Case C-58/04, paras 24-26.

- 528 As mentioned in the European Commission's Communication on the future of VAT²⁷, when tax rules influence the decision on where to buy or sell goods and services, the economic neutrality of VAT is no longer guaranteed and the functioning of the single market is severely undermined. For this reason, the place of supply where actual consumption takes place will not satisfy this KPI.
- 529 If the purpose of the transport is only to get to a specific destination without delay (which is the especially true for aircraft, trains and coaches), the departure points will not compete. Only if the leisure aspect during the transport is more important (which is especially true on board cruises), the departure points will compete and a market distortion will exist.

Effectiveness and fairness

- 530 Under the current place-of-supply rules, only the supplies of goods and restaurant and catering services on board ships, aircraft or trains within the EU are taxed in the EU Member State of departure. In all other cases, buy-on-board transactions are taxed where the supply takes place.
- 531 With respect to the country of departure rule, there is a **disconnection** between the EU Member State of taxation and the EU Member State of consumption where the place of departure is not the place of consumption. Taxation at the place of departure only taxes the actual consumption if the goods supplied are consumed where the transport departs.
- 532 Furthermore, some passenger transport operators are currently **not best placed to comply with the rules of each country** as it is likely that they do not have a presence in the different countries of taxation.

²⁷ Communication from Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market, http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/communications/index_en.htm.

6.4.2. Summary

533 In the table below, we score our assessment using a “+”, “o” or “-” for **each KPI**, whereby:

- “+” means that the current place-of-supply rules without an optional VAT exemption satisfy the related KPI;
- “o” means that the current place-of-supply rules without an optional VAT exemption are neutral with respect to the related KPI;
- “-” means that the current place-of-supply rules without an optional VAT exemption do not satisfy the related KPI.

Table 6 – Assessment of the current place-of-supply rules without an optional VAT exemption against KPIs

KPIs	Assessment
SIMPLICITY	-
EFFICIENCY	-
CERTAINTY	-
NON-DISTORTIONARY	-
EFFECTIVENESS AND FAIRNESS	-

534 The above table shows that the overall assessment of the application of the current place-of-supply rules without an optional exemption is negative. **None of the KPIs is satisfied.**

6.5. *Conclusion on the assessment of the current place-of-supply rules without an optional VAT exemption*

- 535 The current place-of-supply rules without an optional VAT exemption are **not robust enough** due to:
- highly complexity and divergent interpretations of the place-of-supply rules;
 - multiple VAT rates; and
 - multiple VAT registrations and divergent compliance requirements in the EU Member States.
- 536 Therefore, we propose **4 policy options** to change the current place-of-supply rules allowing for taxation of the supplies of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport.
- 537 We will compare the impact of each policy option with the assessment of the current place-of-supply rules without an optional VAT exemption (i.e. **benchmark**) to review whether the given policy option improves the current rules allowing for taxation of the buy-on-board transactions or not.

7. *Identification and description of policy options*

- 538 The policy options have to solve the main issues identified of the current VAT system (see chapter 3).
- 539 This requires the adoption of common rules on the VAT treatment of buy-on-board transactions and creates certainty and avoids double or non-taxation. Such common rules should also ensure smooth functioning of the internal market by avoiding distortions created by shortcomings in the existing EU legislation and the different types of tax treatment adopted by EU Member States. They should be easy to apply in practise.
- 540 We identified **4 alternative policy options** for defining the place of taxation for the supply of goods and services, including restaurant and catering services, for consumption on board means of transport.
- **Place of actual consumption in the EU:** taxation in the country where the supply physically takes place (see ‘VAT technical sheet’ in chapter 10, section 10.2.1, hereafter).
 - **Place of establishment of the supplier:** taxation in the country where the supplier of the goods (for consumption on board and to take away), the restaurant and catering services or the other services has established his business (see ‘VAT technical sheet’ in chapter 10, section 10.3.1, hereafter).
 - **Place of establishment of the transport company:** taxation in the country where the supplier of the transport services has established his business irrespective of the country of establishment of the supplier of the goods or services and where different to the supplier of the transport services (see ‘VAT technical sheet’ in chapter 10, section 10.4.1, hereafter).
 - **Point of departure of the transport operation for all transport sections²⁸:** taxation in the country of the first scheduled point of passenger embarkation (each transport leg considered separately) (see ‘VAT technical sheet’ in chapter 10, section 10.5.1, hereafter).
- 541 The **common objectives** of these policy options are:
- to define a uniform place of supply from a VAT perspective regardless of the transport mode (ships, aircraft and trains vs. other means of transport e.g. coaches), the travel destination (transport section in the EU vs. transport section outside the EU) and the nature of the on-board transaction (supply of goods vs. supply of restaurant and catering services vs. supply of other services) so as to provide clarity and legal certainty;
 - removing VAT-induced distortion of competition;
 - minimizing the VAT compliance obligations for stakeholders leading to higher voluntary VAT compliance at a low(er) cost.

²⁸ “Domestic” transport section”, “intra-EU” transport section, “EU – non-EU” transport section and “non-EU – EU” transport section.

8. *Identification and description of mitigating measures*

542 We defined **4 additional measures** to mitigate the weaknesses of each policy option if any have been identified. These mitigating measures are aimed to overcome the **issues identified during the first Phase of the Study** which do not allow the **common objectives** of the policy options to be met (as mentioned in chapter 7 above).

543 The mitigating measures proposed are of a general nature linked with the functioning of the VAT system as such and are not specifically targeted to buy-on-board supplies only.²⁹

544 The suggested mitigating measures are **defined** as follows.

- **Provide binding interpretation:** uniform, binding interpretation in the 27 EU Member States of the terms surrounding the place-of-supply rules and/or VAT exemptions (if any) for the different means of transport and/or types of buy-on-board transactions.

This mitigating measure should be considered in case there is **no** binding interpretation of (one of) these terms in the current law and/or administrative practice or in case the binding interpretation of (one of) these terms provided for in the current law and/or administrative practice is **unclear**.

- **Implement a one-stop-shop system:** this system should be in line with the anticipated provisions concerning the one-stop-shop for non-established taxable persons providing telecommunication services, radio, television and broadcasting services and electronically supplied services to consumers who are required to be identified for VAT in other EU Member States (B2C 2015 VAT changes).

EU Member States should allow this system to be used **by any taxable person performing** buy-on-board transactions not established in the EU Member State of consumption where a VAT registration would be required.³⁰

For the taxable transactions carried out under this system, a taxable person established in the EU making use of it should only be identified for VAT purposes in the EU Member State of identification. For that purpose the EU Member State should use the individual VAT identification number already allocated to the taxable person in respect of his obligations

²⁹ Green paper on the future of VAT – Towards a simpler, more robust and efficient VAT system, COM(2010) 695 final, http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_11_future_vat_en.htm and Communication from Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market, http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/communications/index_en.htm.

³⁰ Cf. article 369b of Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services.

under the internal system.³¹ A taxable person not established in the EU would have a VAT registration in a single EU Member State of his option.

Taxable persons not established in the EU Member State of consumption should submit (via a single electronic portal) an electronic VAT return for each calendar quarter to the EU Member State of identification, whether or not buy-on-board transactions have been performed.³²

The VAT return should show the identification number and, for each EU Member State of consumption in which VAT is due, the total value exclusive of VAT, of buy-on-board transactions carried out during the tax period and the total amount per rate of the corresponding VAT.³³

The VAT revenue collected would then be redistributed by the EU Member State of VAT registration to the different EU Member States in which buy-on-board transactions are supplied.

- **Harmonise VAT compliance requirements:** harmonised VAT compliance requirements in the 27 EU Member States means that EU Member States impose 100% identical obligations regarding e.g.:
 - the requirements (including format) for issuing invoices to taxable persons or non-taxable legal persons for supplies of goods and services, including restaurant and catering services, for consumption on board means of transport³⁴;
 - the requirements (including format) for issuing cash receipts to non-taxable private individuals for the supply of goods and services, including restaurant and catering services, for consumption on board means of transport and the technical requirements for the use of cash registers;
 - the filing of VAT returns (including format) and the payment of any VAT due; and
 - the requirements regarding purchase and sales ledgers, accounting, fixed assets, etc.
- **Single VAT rate and single VAT return with clearing mechanism:** application of a moderate single VAT rate in the 27 EU Member States and a single VAT return for all supplies made throughout the EU.

This would require a clearing mechanism for redistribution of the VAT receipts to the EU Member States where the transactions are to be taxed/consumption takes place.

545 In the table below, we indicate (some of) the **weaknesses** that will be **solved** by each of the above-mentioned mitigating measures.

³¹ Cf. article 369d of VAT Directive 2008/8/EC of 12 February 2008.

³² Cf. article 369f of VAT Directive 2008/8/EC of 12 February 2008.

³³ Cf. article 369g of VAT Directive 2008/8/EC of 12 February 2008.

³⁴ In this respect, we refer to Council Directive 2010/45/EU of 13 July 2010 amending Directive 2006/112/EC on the common system of value added tax as regards the rules on invoicing.

Table 7 – Weaknesses solved by the mitigating measures

Mitigating measure	Weaknesses solved
Provide binding interpretation	<ul style="list-style-type: none"> - Difficulties relating to the correct identification of the place of supply - Difficulties relating to the correct classification of buy-on-board transactions and identification of their tax treatment (e.g. applicable VAT rate)
Implement a one-stop-shop system	<ul style="list-style-type: none"> - Multiple VAT registrations - Difficulties in using cash registers to record buy-on-board transactions
Harmonise VAT compliance requirements	<ul style="list-style-type: none"> - Divergent compliance requirements in EU Member States - Difficulties in using cash registers to record buy-on-board transactions
Single VAT rate and single VAT return with clearing mechanism	<ul style="list-style-type: none"> - Risk of relocation of EU suppliers to EU Member States with reduced VAT rates

9. Stakeholders' consultation

9.1. Development of a matrix

546 With a view to the stakeholders' consultation, we developed a matrix containing the application of the current rules without an optional VAT exemption and the 4 policy options in Excel format (see Appendix 6).

547 In order to compare the impact of the policy options, the matrix contains **4 sheets**, i.e. one for each type of transport section:

- “domestic” transport section,³⁵ including 272 transaction lines: 68 per transport mode (4 in total);
- “intra-EU” transport section,³⁶ including 304 transaction lines: 76 per transport mode (4 in total);
- “EU – non-EU” transport section,³⁷ including 304 transaction lines: 76 per transport mode (4 in total); and
- “non-EU – EU” transport section,³⁸ including 304 transaction lines: 76 per transport mode (4 in total).

The matrix does not contain a sheet for the “non-EU – non-EU” transport section³⁹.

548 For each type of transport section, the matrix contains an overview per transport mode and per type of on-board supply of the current VAT regime (“**as is**” **situation**, which is policy option 5 in the matrix) and the VAT regime under each policy option (“**to be**” **situation**, i.e. policy option 1 to 4 in the matrix).

549 The **VAT technical part** of the matrix was completed by PwC before it was shared with the stakeholders.

³⁵ Transport operation within one EU Member State (e.g. France).

³⁶ Transport operation from one EU Member State to another EU Member State (e.g. from France to Germany).

³⁷ Transport operation from an EU Member State to a non-EU country (e.g. from France to the USA).

³⁸ Transport operation from a non-EU country to an EU Member State (e.g. from the USA to France).

³⁹ Transport operation from a non-EU country to another non-EU country (e.g. from the USA to Switzerland).

Table 8 – Extract matrix – VAT technical part

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS									
Transaction typology		Benchmark: current VAT regime ('as is')			Policy option	Comparison: VAT regime under policy option ('to be')			Change under policy option?
Transport mode	Type of on-board supply	VAT Place of Supply	VAT exemption	Input VAT deduction		VAT Place of Supply	VAT exemption	Input VAT deduction	
Policy option 1: Change VAT PoS rule to place of actual consumption (without optional VAT exemption)									
Policy option 1bis: Change VAT PoS rule to place of actual consumption (with optional VAT exemption)									
Policy option 2: Change VAT PoS rule to place of establishment of supplier (without optional VAT exemption)									
Policy option 2bis: Change VAT PoS rule to place of establishment of supplier (with optional VAT exemption)									
Policy option 3: Change VAT PoS rule to place of establishment of transport company (without optional VAT exemption)									
Policy option 3bis: Change VAT PoS rule to place of establishment of transport company (with optional VAT exemption)									
Policy option 4: Change VAT PoS rule to point of departure of transport operation (all transport sections) (without optional VAT exemption)									
Policy option 4bis: Change VAT PoS rule to point of departure of transport operation (all transport sections) (with optional VAT exemption)									
Policy option 5: Keep existing VAT regime (combination PoS rules + option to exempt the supply of goods for consumption on board ships, aircraft or trains)									

- 550 A **change** under the policy option means that the actual taxation regime (EU Member State of taxation and/or optional VAT exemption) changes compared to the current situation. **No change** under the policy option means that the actual EU Member State of taxation remains unchanged compared to the current situation, notwithstanding the change in the place-of-supply rule.
- 551 Furthermore, each policy option has a variant in the matrix ("**bis**" **version**) whereby the **optional VAT exemption is kept** in order to collect qualitative input from the stakeholders with respect to the existing optional VAT exemption.
- 552 In view of the **assessment from an industry perspective**, the matrix also contains the 5 KPIs identified to assess each policy option as well as the suggested additional measures to mitigate weaknesses of each policy option if any.

Table 9 – Extract matrix – Impact assessment by the stakeholders using the KPIs identified

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS					
Impact assessment compared to current VAT regime (Key Performance Indicators)					
Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					
Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Comments/Additional information (if any)

553 For each policy option, the stakeholders could apply a **specific score**, i.e. weighting points ranging from “+2” to “-2”, **to each KPI** in the matrix, whereby:

- “+2” means the policy option has a very positive impact compared to the current VAT regime;
- “+1” means the policy option has a positive impact compared to the current VAT regime;
- “0” means the policy option is neutral compared to the current VAT regime;
- “-1” means the policy option has a negative impact compared to the current VAT regime;
- “-2” means the policy option has a very negative impact compared to the current VAT regime.

554 For each policy option, the stakeholders could provide additional information or comments.

Table 10 – Extract matrix – Suggested additional measures to mitigate weaknesses of each policy option

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS					
Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime					
Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism	Harmonize exemption	Other suggestions (if any)

555 For each policy option, the stakeholders could indicate or suggest **additional measures** to mitigate the weaknesses of each policy option if any compared to the current VAT regime.

9.2. Consultation

556 On the basis of the comparison between the current VAT regime and the VAT regime under each policy option as completed by PwC, the stakeholders in the passenger transport industry were asked to **assess** each policy option on its strengths and/or weaknesses **using the KPIs identified**.

Based on the impact assessment made by the stakeholders against the KPIs, the stakeholders could also **indicate or suggest additional measures** to mitigate the weaknesses of each policy option (if any).

557 Some of the stakeholders provided their input by completing the matrix while others provided a narrative submission outlining the advantages and disadvantages of each policy option and general conclusions on the way forward in the form of a position paper.

558 Below, we provide an overview of the **stakeholders invited to contribute** to the first ('Data Collection') and/or second ('Policy options') Phases of the Study and the number of inputs received, split by industry segment.

559 As shown in the table below, there is a difference between the number of stakeholders consulted in the first and the second Phase of the Study. The reason for this difference is that, for the second Phase, we only consulted stakeholders that had actively contributed during the first Phase of the Study.

560 Furthermore, under the column "Industry associations invited" for the second Phase of the Study the number of all invited stakeholders is smaller than those who actually provided input. The reason for this is that the stakeholders who actually provided input were consulted via their industry-segment associations. The industry-segment associations invited their members to comment.

561 The first number in the column "Input provided" for the second Phase of the Study represents the industry segment association ('1'). The second number represents the members that participated in the consultation via their industry segment association and gave input.

562 The column total for the second Phase of the Study represents the number of contributions we received per industry segment.

Table 11 – Total number of industry associations and stakeholders consulted

Sector	Total number of stakeholders consulted							
	First Phase of the Study				Second Phase of the Study			
	<i>Invited</i>	<i>Input provided</i>	<i>No input provided</i>	<i>Total</i>	<i>Industry associations invited</i>	<i>Input provided (Industry association /Members)</i>	<i>No input provided</i>	<i>Total</i>
Ships (Cruise)	10	7	3	10	1	1/30	0	1
Ships (Ferry)	10	7	3	10	1	1/5	0	5
Aircraft	9	4	5	9	3	1/36	2	1
Trains	10	5	5	10	1	1/3	0	3
Other (e.g. coaches)	5	1	4	5	2	1/1	1	1
Other travel associations	4	0	4	4	0	0/0	0	0
Grand Total	48	24	24	48	8	5/75	3	11

10. Assessment of the policy options

10.1. Approach

563 For each policy option, we started out by giving a description of the policy option (i.e. the **VAT technical sheet**). The differences from the current VAT regime are highlighted using a colour in the section of the sheet to indicate the change.

564 We assumed that the recipients of the buy-on-board transactions are **private individuals (B2C)**.

As it is practically impossible to identify the capacity of the recipients of the buy-on-board transactions, i.e. B2B (taxable persons) vs. B2C (private individuals), we opine that the recipient's capacity should not be a differentiator for defining the place-of-supply rules for those buy-on-board transactions.

565 Next, we gave illustrative examples to compare the current place of supply and the place of supply under the policy option with respect to a specific situation.

We re-used Table 4 of the first Phase of the Study and the matrix (containing the application of the current rules without an optional VAT exemption) to visualise the passenger transport operation and explain in table format the place of supply according to the current provisions of the VAT Directive and according to the policy option.

These examples do not indicate all possible changes in the EU Member State of taxation under the policy option.

566 Afterwards, we **compared** the place of supply under the policy option with the current place-of-supply rules without an optional VAT exemption, which is our benchmark. We then **qualitatively assessed** whether the policy option improves the current rules allowing for taxation of the buy-on-board transactions.

567 In order to do this, we have followed a **three-step approach**.

Step 1 – Assessment from a VAT technical perspective

568 We indicated in an overview for which transport section, transport mode and type of buy-on-board transaction the place of taxation **changes** under the policy option compared to the current place-of-supply rules.

569 Through a drilldown of the matrix, we then showed in table format in **detail** the nature of those changes per transport mode.

570 Afterwards, we **assessed** the policy option from a qualitative point of view on its strengths and/or weaknesses **on the basis of the 5 selected KPIs**. For each KPI, we score our assessment using a “+”, “o” or “-”, whereby:

- “+” means that the policy option satisfies the related KPI;

- “o” means that the policy option is neutral with respect to the related KPI;
- “-” means that the policy option does not satisfy the related KPI.

- 571 In our assessment from a VAT technical perspective, we assumed that there will be **common EU definitions**. Those will have to be provided for either in the EU VAT Directive itself or in a Council Implementing Regulation. This would be the case for the **place-of-supply rule** under each policy option and for the **terms related to buy-on-board transactions** (“supply of goods for consumption”, “supply of goods for take away”, “restaurant and catering services” and “other services”).
- 572 We did **not consider** the budgetary impact of a potential shift of VAT revenue from one EU Member State to another under each policy option in our assessment from a VAT technical perspective as this is not in scope of this study.

Step 2 – Assessment from an industry perspective

- 573 For the **6 stakeholders** (mostly industry-segment associations representing a number of members) that provided input by **completing the matrix**, we included in table format the specific scores given by them to the lines of the matrix where the place of supply is changing under the policy option as well as the mitigating measures indicated by them (if any). We also mentioned any additional comments from these stakeholders in key messages.
- 574 For the **5 stakeholders** (mostly industry-segment associations representing a number of members) that provided their input with respect to the policy option **in a paper**, we mentioned their (more general) input with respect to the changes under the policy option using the 5 selected KPIs.
- 575 We also captured **other qualitative feedback from the stakeholders** in key messages, e.g. with respect to the lines of the matrix where the place of supply is not changing under the policy option, excise duties and other taxes or charges, etc.
- 576 We attributed a **reference number** to each stakeholder, whereby:
- the maritime (i.e. cruise and ferry) travel market is represented by stakeholder 01 (comprising 30 cruise companies – please see Appendix 8) and stakeholders 02 to 06 (comprising a number of ferry companies – please see Appendices 9 to 13);
 - the air travel market is represented by stakeholder 07 (which brings together 36 established European network carriers) (please see Appendix 14);
 - the railway travel market is represented by stakeholders 08 to 10 (please see Appendices 15 to 17); and
 - the long-distance bus & coach travel market is represented by stakeholder 11 (please see Appendix 18).

Step 3 – Comparison of assessments and conclusion

- 577 Firstly, we summarized which transport section, transport mode and type of on-board supply the **policy option impacts**.
- 578 Secondly, we compared from a **VAT technical perspective** the current place-of-supply rules without an optional VAT exemption and as envisaged by the policy option.
- 579 Thirdly, we indicated from an **industry** perspective whether the policy option satisfies (or not) the related KPI.

- 580 Finally, we assessed the policy option with a **comparison** of the VAT technical assessment with the assessment made by the stakeholders in the passenger transport industry and drew a **conclusion** on each policy option.

10.2. Assessment of policy option 1: Place of supply is place of actual consumption in the EU

10.2.1. VAT technical sheet

Taxable transactions in scope	<p>All buy-on-board transactions on ships, aircraft, trains or other means of transport (e.g. coaches), i.e.:</p> <ul style="list-style-type: none"> - Supply of goods for consumption on board - Supply of goods to take away (no consumption on board) - Supply of restaurant and catering services on board - Supply of other services on board (we assume B2C services qualifying as (ancillary to) cultural, artistic, sporting, scientific, educational, entertainment or similar activities)
Place of supply⁴⁰	<p>Country where the supply physically takes place, being:</p> <ul style="list-style-type: none"> - <u>For supplies of goods (for consumption on board and to take away):</u> country where the goods are located at the time when the supply takes place (i.e. transfer of the right to dispose of the goods as owner⁴¹). - <u>For the supply of restaurant and catering services and other services on board:</u> country where the services are physically carried out. <p>As a principle, buy-on-board transactions which are physically supplied or carried out outside the territories of the EU Member States⁴² are not in scope of EU VAT.</p>
Exemption	No
Chargeable event	Time when the goods are supplied or the service is completed ⁴³
Rate	VAT rate of EU Member State where the supply physically takes place (where applicable)
Person liable	Supplier of the buy-on-board transactions

⁴⁰ We assume that there will be **common EU definitions** for the terms related to both the place-of-supply rule and the buy-on-board transactions. We did not consider the budgetary impact of a potential shift of VAT revenue from one EU Member State to another as this is not in scope of this Study.

⁴¹ Article 14(1) of VAT Directive 2006/112/EC of 28 November 2006.

⁴² Article 5 of VAT Directive 2006/112/EC of 28 November 2006: "The VAT Directive applies to the territories of the Member States as defined in Article 5, point (2) of the VAT Directive, i.e. the territory of each Member State of the European Union to which the Treaty establishing the European Union is applicable, in accordance with Article 299 of that Treaty, with the exception of any territory referred to in Article 6 of the VAT Directive".

⁴³ Article 63 of VAT Directive 2006/112/EC of 28 November 2006.

10.2.2. Illustrative examples

581 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise goods and/or services physically supplied on board **ships, aircraft, trains or on coaches** in EU **Member State 2** during the **intra-EU transport section** (i.e. from EU Member State 1 to EU Member State 2).

The “as is” (current situation) and “to be” (situation where the place of supply is place of actual consumption in the EU) reflect information which might be needed to determine the place of supply of buy-on-board transactions.

Figure 2 – Supplies on board ships, aircraft, trains or coaches: Multiple transport sections – Physical supply in EU Member State 2

	Member State 1	Member State 2	Non-EU	Member State 2	Member State 3
	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation	Stopover	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation
AS IS		Physical supply			
TO BE		Physical supply			

582 In the table below, we have **indicated** the VAT treatment for the supplies on board means of transport during the transport illustrated in Figure 2 according to the current provisions of the VAT Directive compared to the VAT treatment under the place of supply where the actual consumption takes place in the EU.

**Table 12 – Supplies of goods and/or services on board ships, aircraft, trains or coaches:
Current VAT treatment vs. VAT treatment under the place of supply where the actual
consumption takes place in the EU**

Transport section	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	VAT treatment under policy option
		Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Place of Supply
Policy option: Change VAT PoS rule to place of actual consumption											
Intra-EU (EU1 - EU2)	EU2	x	x	x		x	x	x		EU1	EU2
Intra-EU (EU1 - EU2)	EU2	x	x	x					x	EU2	EU2
Intra-EU (EU1 - EU2)	EU2				x	x	x	x	x	EU2	EU2

583 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise goods and/or services physically supplied on board **ships, aircraft, trains or on coaches outside of the EU** during the **EU – non-EU transport section** (i.e. from EU Member State 2 to non-EU).

The “as is” (current situation) and “to be” (situation under the place of supply where the actual consumption takes place in the EU) reflect information which might be needed to determine the place of supply of buy-on-board transactions.

Figure 3 – Supplies on board ships, aircraft, trains or coaches: Multiple transport sections – Physical supply in a non-EU country

	Member State 1	Member State 2	Non-EU	Member State 2	Member State 3
	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation	Stopover	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation
AS IS			Physical supply		
TO BE			Physical supply		

- 584 In the table below, we **compare** for the example the VAT treatment under the current provisions of the VAT Directive with the VAT treatment under the place of supply where the actual consumption takes place in the EU.

Table 13 – Supplies of goods and/or services on board ships, aircraft, trains or coaches: Current VAT treatment vs. VAT treatment under the place of supply where the actual consumption takes place in the EU

Transport section	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	VAT treatment under policy option
		Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Place of Supply
Policy option: Change VAT PoS rule to place of actual consumption											
EU - non-EU (EU2 - non-EU)	non-EU	x	x	x	x	x	x	x	x	non-EU	non-EU

- 585 Unlike the current place-of-supply rules, the place of supply under this policy option is where the actual consumption takes place in the EU **irrespective** of the means of transport used (ships, aircraft and trains vs. other means of transport e.g. coaches), the travel itinerary (transport section in the EU vs. transport section outside the EU), the nature of the on-board transaction (supply of goods vs. supply of restaurant and catering services vs. supply of other services) and whether the supplier of the goods and/or services on board is the transport company or a third party.

10.2.3. Impact assessment from a VAT technical perspective

10.2.3.1. Impact of the policy option on the place of taxation

586 In the table below, we have indicated for which transport section, transport mode and type of buy-on-board transaction the place of taxation **changes** under the policy option compared to the current place of supply.

Table 14 – VAT technical analysis: Overview of changes under the policy option

PLACE OF ACTUAL CONSUMPTION IN THE EU					
Transport section	Transport mode	Type of on-board supply			
		Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services
Domestic	Ships, aircraft or trains	No	No	No	No
	Other (e.g. coaches)	No	No	No	No
Intra-EU	Ships, aircraft or trains	Yes	Yes	Yes	No
	Other (e.g. coaches)	No	No	No	No
EU - non-EU	Ships, aircraft or trains	No	No	No	No
	Other (e.g. coaches)	No	No	No	No
Non-EU - EU	Ships, aircraft or trains	No	No	No	No
	Other (e.g. coaches)	No	No	No	No

587 As shown in the table above, the place of supply will change for intra-EU supplies of goods and restaurant and catering services on board ships, aircraft and trains thus impacting those operators.

588 Operators involved in international passenger transport outside the EU or involved in the long-distance bus & coach travel market will not be impacted by this policy option.

589 The below table which is an extract from the matrix used for the stakeholder consultation, shows in **detail** the nature of those changes per transport mode.

Table 15 – VAT technical analysis: Detail of changes to the place of supply under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS														
Cross- ref. (1)	Transaction typology							Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Country where supply physically takes place	Transport mode	Type of on-board supply				Place of Supply	VAT exemption	Input VAT deduction	Place of Supply	VAT exemption	Input VAT deduction	
				Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to place of actual consumption														
17-19	Intra-EU (EU1 - EU2)	EU2	Ship	x	x	x		EU1	Yes (optional) for goods for consumption on- board	Yes	EU2	No	Yes	Yes
21-23	Intra-EU (EU1 - EU2)	EU2	Aircraft	x	x	x		EU1	Yes (optional) for goods for consumption on- board	Yes	EU2	No	Yes	Yes
25-27	Intra-EU (EU1 - EU2)	EU2	Train	x	x	x		EU1	Yes (optional) for goods for consumption on- board	Yes	EU2	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

590 The above table shows that the place of supply under this policy option will change if the country where the supply physically took place (which is the place of supply under policy option) **differs** from the point of departure of the passenger transport operation (which is the current place-of-supply rule under the VAT Directive).

10.2.3.2. Qualitative assessment

10.2.3.2.1. Assessment of the place of supply where the actual consumption takes place in the EU against the KPIs

- 591 We have assessed the place of supply where the actual consumption takes place in the EU against the 5 selected KPIs.

Simplicity

- 592 This policy option introduces a **uniform place-of-supply rule**. The rules are the same independent from the transport mode used, the travel destination and the nature of the on-board transaction.

This will **reduce** the **VAT burden** of passenger transport operators having to deal with different sets of rules in different countries. It will also **reduce** the **risks of errors** and **incorrect application of the VAT rules**.

- 593 It will, however, in practice be **difficult** for operators involved in the intra-Community and international passenger transport industry and providing goods and/or services on board means of transport to **identify with certainty** the place where the supply physically takes place and, hence, which country's VAT regime the supply is subject to. This will especially be true when the transport goes across different countries.

Efficiency

- 594 It will be **difficult** for those passenger transport operators to **set prices** for buy-on-board transactions as the place of taxation can be in anyone of the 27 EU Member States and consequently multiple VAT rates have to be taken into account.

VAT inclusive prices have to be listed (B2C supplies) which will be difficult to do in view of the large discrepancy between standard and reduced VAT rates within the 27 EU Member States.

- 595 It will be **difficult** for passenger transport operators to **implement and maintain all those possible VAT rates in their business systems and price lists** in order to be compliant.

- 596 Passenger transport operators will also have an **obligation to register** in each EU Member State where the supply takes place. This will lead to a **high cost for businesses** to comply with the divergent compliance requirements (e.g. the obligation to issue invoices and cash receipts) in the EU Member States, **especially in programming and using cash registers** to record buy-on-board transactions as the different technical requirements, rules and rates of the different EU Member States where the supply takes place will have to be complied with.

- 597 This will result in **low voluntary VAT compliance** by passenger transport operators and a **high cost of VAT collection** for governments.

- 598 The place of supply where the actual consumption takes place in the EU will also be **difficult** for the tax authorities to **audit**. This will especially be true when the transport goes across different countries.

- 599 Furthermore, **additional audit measures** could be introduced by tax authorities under the place of supply where the actual consumption takes place in the EU. Tax authorities could require operators to record details in a log with respect to the start and end point of supplying goods and/or services on board means of transport. This would however create additional administrative burden for operators.

Certainty

- 600 As we assumed a common **EU definition** of the term “**actual consumption in the EU**” would be provided for, the place-of-supply rule under this policy option will not be misinterpreted by passenger transport operators (limited need for litigation).
- 601 As it is also assumed that there exist **clear definitions** (avoiding misinterpretation) of **terms related to buy-on-board transactions** (“supply of goods for consumption”, “supply of goods for take away”, “restaurant and catering services” and “other services”), it will no longer be difficult for passenger transport operators to correctly classify these transactions and to define their applicable VAT rate in the country of taxation given that supplies might possibly be subject to different VAT rates in the 27 EU Member States.

Non-distortionary

- 602 As a principle, buy-on-board transactions which are physically supplied or carried out **within the territories of the EU Member States**⁴⁴ are in scope of **EU VAT**.

Unlike the interpretation given by the Court of Justice of the European Union that allows EU Member States to tax supplies on board vessels if such taxation does not conflict with the law of other countries⁴⁵, we assumed that buy-on-board transactions which are physically supplied or carried out on the **high seas**⁴⁶ will **not be taxed** under the place of supply where the actual consumption takes place in the EU.

The reason for this assumption is to **avoid risks of conflicts of jurisdiction with the tax systems of third countries**⁴⁷. For the maritime travel market, this risk is especially true due to the itinerant nature of vessels.

- 603 Supplies of which the place of taxation is in a **low-tax EU Member State** are **advantaged** compared to supplies of which the place of taxation is in a high-tax EU Member State. As a consequence, market distortions exist between low-tax and high-tax EU Member States, to the extent that the nature of the travel itinerary allows the consumer to effectively choose between paying tax in the low-tax or high-tax EU Member State.

⁴⁴ Article 5 of VAT Directive 2006/112/EC of 28 November 2006: “The VAT Directive applies to the territories of the Member States as defined in Article 5, point (2) of the VAT Directive, i.e. the territory of each Member State of the European Union to which the Treaty establishing the European Union is applicable, in accordance with Article 299 of that Treaty, with the exception of any territory referred to in Article 6 of the VAT Directive”.

⁴⁵ Judgment of the ECJ of 15 September 2005, Antje Köhler v. Finanzamt Düsseldorf-Nord, Case C-58/04, para 25.

⁴⁶ International waters, i.e. waters falling outside the sovereignty or jurisdiction of any State.

⁴⁷ Judgment of the ECJ of 15 September 2005, Antje Köhler v. Finanzamt Düsseldorf-Nord, Case C-58/04, paras 24 and 26.

- 604 There will be **equal treatment** for buy-on-board transactions on board the different means of transport. There will be **no distortion of competition** for supplies on board different means of transport. All passenger transport operators in similar situations carrying out similar transactions are subject to similar levels of taxation. The equal treatment is not absolute, taking into account the following comments regarding buy-on-board and buy-off-board transactions.
- 605 There will be **no equal treatment between buy-on-board and buy-off-board** transactions because the supplier of the buy-on-board transactions could choose to hold off any sale until the means of transport has left the territory of the EU Member State or the territory of the Community, e.g. the “closed shop option”. The “closed shop option” is more readily available on board vessels than on-board aircraft or trains, who typically have a fixed route from which they cannot deviate (“force majeure” excluded). It is obvious that a vessel is more likely to operate on the external borders of the Community.
- 606 In our opinion, the place of supply where the actual consumption takes place in the EU will lead to a situation whereby passenger transport operators will only start supplying goods and/or services on board after, say, leaving the EU (distortionary compared to the sale of these goods and/or services off board).
- 607 In other words, under this policy option **business decisions** will be motivated by **tax** rather than economic **considerations**, which is distortionary and also a practical issue identified by the stakeholders during the first Phase of the Study.
- 608 As mentioned in the Commission’s Communication on the future of VAT⁴⁸, when tax rules influence the decision on where to buy or sell goods and services, the economic neutrality of VAT is no longer guaranteed and the functioning of the single market is severely undermined. For this reason, the place of supply where actual consumption takes place will not fully satisfy this KPI.

Effectiveness and fairness

- 609 This policy option is as such in line with the principle that **VAT is a consumption tax**. VAT receipts will in principle go to the EU Member State where the consumption takes place.
- 610 Passenger transport operators will **not be best placed** under this policy option to understand and comply with the rules of each EU Member State and local tax practice of several jurisdictions (which is the key result to be achieved for this KPI) as it is likely that they will not have a presence in the different countries of taxation.

⁴⁸ Communication from Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market, http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/communications/index_en.htm.

10.2.3.2.2. Summary

- 611 In the table below, we score our assessment using a “+”, “o” or “-” for **each KPI**, whereby:
- “+” means that the place of supply where the actual consumption takes place in the EU satisfies the related KPI;
 - “o” means that the place of supply where the actual consumption takes place in the EU is neutral with respect to the related KPI;
 - “-” means that the place of supply where the actual consumption takes place in the EU does not satisfy the related KPI.

Table 16 – VAT technical analysis: Assessment of the place of supply where the actual consumption takes place in the EU against KPIs

KPIs	Assessment
SIMPLICITY	-
EFFICIENCY	-
CERTAINTY	+
NON-DISTORTIONARY	o
EFFECTIVENESS AND FAIRNESS	o

- 612 The above table shows that, under the place of supply where the actual consumption takes place in the EU, **only 1 of the 5 selected KPIs is satisfied.**
- 613 The impact is neutral for the KPI “non-distortionary” as it is only partially met. This is due to the possible unequal treatment of buy-on-board and buy-off-board transactions depending on the means of transport: vessels on the one hand and aircraft, trains and coaches on the other hand.
- 614 The impact is also neutral for the KPI “effectiveness and fairness” as it is only partially met. This is due to the fact that, just as under the current place-of-supply rules, passenger transport operators will not always be best placed under this policy option to comply with the rules of each country.
- 615 The main issues identified when applying the current place-of-supply rules without an optional VAT exemption (see chapter 6, section 6.5, above) will not be solved under this policy option.
- 616 Consequently, **additional measures** are **needed** from a VAT technical perspective to mitigate the weaknesses under this policy option.

10.2.4. Impact assessment from an industry perspective

617 For this policy option, we received **feedback** from 8 stakeholders. More specifically, 6 from the maritime travel market, 1 from the air travel market and 1 from the railway travel market.

10.2.4.1. Ships (cruise and ferry)

618 For the maritime travel market, we received feedback from **6 stakeholders** (mostly umbrella-segment associations representing a number of members) of which:

- 4 (from the ferry industry, i.e. stakeholders 02 to 05) provided input by completing the matrix; and
- 2 (one from the cruise industry, i.e. stakeholder 01, and one from the ferry industry, i.e. stakeholder 06) provided input in the form of a paper.

10.2.4.1.1. Qualitative input regarding changes under the policy option

A. Input received in the matrix: stakeholders 02 to 05 (maritime travel market – ferry industry)

619 In the table below, we have included the specific scores given by stakeholders 02 to 05 (maritime travel market – ferry industry) to the lines mentioned in Table 15, above.

Table 17 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross-ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators)					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortory	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 02 (maritime travel market - ferry industry) - Appendix 9													
17 19	x		x		-2	-1	-1	-2	-1				
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
17 19	x		x		-2	-2	-2	0	0	Yes	Yes	Yes	Yes
Stakeholder 04 (maritime travel market - ferry industry) - Appendix 11													
17 19	x		x		-2	-1	-1	-2	-1				
Stakeholder 05 (maritime travel market - ferry industry) - Appendix 12													
17 19	x		x		-2	-2	-2	0	-1				
18		x			-2	-1	-1	-2	-1				

Source: Appendices 9 to 12 (i.e. stakeholders 02 to 05: maritime travel market – ferry industry) – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendices 9 to 12)

620 The overall conclusion of stakeholders 02, 04 and 05 (maritime travel market – ferry industry) was that this policy option will **not** be **feasible** from a **commercial and practical point of view**.

- 621 Stakeholders 02 and 04 (maritime travel market – ferry industry) also indicated that operators that mainly supply goods and/or services on board ships on intra-Community passenger routes – i.e. in EU territorial waters of EU Member States - will be **disadvantaged** compared to operators that mainly supply on international passenger routes – i.e. outside EU. In this respect, stakeholders 04 and 05 (maritime travel market – ferry industry) also indicated that operators will be **tempted to only start supplying** goods and/or restaurant and catering services after reaching the **high seas**.
- 622 Stakeholder 05 (maritime travel market – ferry industry) also indicated that the **administrative burden** under this policy option will be **very onerous** (due to the lack of clear definitions of terms related to buy-on-board transactions and the multiple VAT rates in the 27 EU Member States). Furthermore, this policy option **scores** for this stakeholder **low on competitiveness** compared to the current situation.
- 623 With respect to the administrative burden, stakeholders 02 and 04 (maritime travel market – ferry industry) also stated that operators **might stop performing certain buy-on-board transactions** if the administrative burden and cost of change under this policy option were disproportionate compared to the profit margins on these transactions. This feedback relates in particular to the other services performed on board, but could just as much be applicable for the other buy-on-board transactions.

B. Input received by means of a paper: stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry)

- 624 Stakeholder 01 (maritime travel market – cruise industry; Appendix 8) provided a position paper with specific thoughts on the policy options. Stakeholder 01 also provided two other written documents (Appendices to the position paper): one with an in-depth analysis of the policy options and one with comments in relation to the use of KPIs.
- 625 Stakeholder 06 (maritime travel market – ferry industry; Appendix 13) provided input by means of a paper commenting on the policy options based on the KPIs.

Simplicity

- 626 Although this policy option avoids the complexity for operators to apply different place-of-supply rules according to the on-board supply, stakeholder 06 (maritime travel market – ferry industry) indicated that this policy option will be very **difficult** for operators to **administer** in practice and for tax authorities to **verify**.

Efficiency

- 627 Stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry) indicated that, under this policy option, there will be a need to register and account for VAT in multiple jurisdictions, creating **increased compliance costs** and **inefficiency**.
- 628 In this respect, stakeholder 01 (maritime travel market – cruise industry) also mentioned that this policy option will require **detailed knowledge to comply** with the **VAT rules** of several EU Member States and with the **local tax practice** of several jurisdictions. Furthermore, considerable **adjustments** will have to be made **to the payment systems on board**.
- 629 Therefore, the overall conclusion of stakeholder 01 (maritime travel market – cruise industry) with respect to this KPI was that this policy option will impose a **disproportionate administrative burden** on operators and/or national administrations.

Certainty

- 630 Stakeholder 01 (maritime travel market – cruise industry) indicated the **need for clear definitions** of terms related to buy-on-board transactions (especially for the notion of “**supply of goods for consumption**”) to avoid different interpretations in different EU Member States as regards the qualification of the transaction and the applicable VAT rates.
- 631 Stakeholder 06 (maritime travel market – ferry industry) indicated that, under this policy option, operators will **not** have the certainty of **determining** the place-of-supply rule and applicable taxation **in advance** (i.e. before departure of the passenger transport operation). Furthermore, operators will be exposed to discordant and potentially complex VAT rules in different EU Member States.

Non-distortionary

- 632 Stakeholder 01 (maritime travel market – cruise industry) indicated the **potential conflict** under this policy option with the **taxing jurisdiction of third countries** for supplies made on non-EU-flagged ships during transit of the high seas between EU ports and the necessity for **mitigating measures** in this respect (to exclude transactions on the high seas as out of the territory for taxation purposes).

More specifically, the itinerant nature of vessels and the control by the flag state can create serious challenges with respect to the actual or potential infringement of the taxing rights of other EU Member States and foreign countries.

Itineraries of transport over sea mostly include passing through the high seas. Primary jurisdiction over a vessel belongs to its country of registration or flag state⁴⁹. However, concurrent jurisdiction may be exercised over a vessel by a coastal or port state while the vessel is in its territorial water⁵⁰.

In European or international itineraries of cruise vessels, taxation on the high seas may create distortion of competition because it may determine taxation in a place different from the place of actual consumption (for example taxation may occur during a three months round the world cruise departing from a EU Member State on goods and services sold when the vessel is outside the territory of the EU Member State).

- 633 Stakeholder 01 (maritime travel market – cruise industry) also indicated a **negative impact on competition** under this policy option between EU operators and EU and non-EU operators providing goods and/or services on board means of transport.

Effectiveness and fairness

- 634 Stakeholder 06 (maritime travel market – ferry industry) indicated that operation of the “**where physically carried out**” rule is **not fair, effective or practicable**.

⁴⁹ Article 92 of the United Nations Convention on the Law of the Sea.

⁵⁰ E.g. articles 24 and 25 of the United Nations Convention on the Law of the Sea.

10.2.4.1.2. Other qualitative feedback

- 635 Stakeholder 01 (maritime travel market – cruise industry) and 05 (maritime travel market – ferry industry) mentioned the fact that **questions** often arise concerning **when a vessel is considered to be outside EU territorial waters** (due to the weather for example) on international passenger routes. For this policy option, stakeholder 05 (maritime travel market – ferry industry) suggested keeping the current practice, i.e. a vessel is considered as being outside EU territorial waters as soon as it leaves port.
- 636 Stakeholder 01 (maritime travel market – cruise industry) stated that **customs duties, excise taxes and VAT** are so interrelated that coordination is necessary in their application and administration. Stakeholder 01 indicated that their **application** under this policy option will be **inconsistent**.
- 637 Stakeholder 05 (maritime travel market – ferry industry) also mentioned that the **sale of cigarettes with tax seals** under this policy option will create additional administrative challenges.⁵¹
- 638 Based on the recognised fact that, in accordance with **general consumer behaviour**, consumption **moves to the place of lowest taxation**, stakeholder 05 (maritime travel market – ferry industry) stated that, under this policy option, customers will not want to make any purchases on international passenger routes until the vessel leaves EU territorial waters.

⁵¹ With respect to cigarettes with tax seals, stakeholder 05 (maritime travel market – ferry industry) stated that VAT and indirect taxes are currently paid in connection with the purchase of cigarettes in the country where operators take in supplies (e.g. in the Netherlands). If a sale is subsequently made on the route between e.g. the Netherlands and the UK and the place of actual consumption is the UK, UK VAT will have to be levied under this policy option. Consequently, Dutch VAT (included in the price of the tax seals) will have to be reclaimed in the Netherlands (additional administrative burden) and the pre-printed price of the Dutch tax seals will not correspond to the price at which the cigarettes are in fact sold.

10.2.4.2. Aircraft

- 639 For the air travel market, we received feedback from **1 stakeholder** (i.e. stakeholder 07), who provided input in the form of two papers (Appendix 14):
- paper regarding the review of the rules on the supplies of services and goods for consumption on board ships, aircraft or trains in accordance with Article 37 of the VAT Directive; and
 - paper with the response to the European Commission's Green Paper on the future of VAT.

10.2.4.2.1. Qualitative input regarding changes under the policy option

A. Input received by means of a paper: stakeholder 07 (air travel market)

Efficiency and non-distortionary

- 640 Stakeholder 07 (air travel market) indicated that, although it will avoid any distortion of competition, this (impractical) policy option will make **calculating VAT** a very **difficult** exercise.

Certainty

- 641 Stakeholder 07 (air travel market) also indicated the **need for consistency** across all EU Member States with respect to the terms used to describe buy-on-board transactions ("supply of goods for consumption", "supply of goods for take away", "restaurant and catering services" and "other services"), especially for the supply of food and the supply of restaurant and catering services on board.

10.2.4.2.2. Other qualitative feedback

- 642 Stakeholder 07 (air travel market) believes that the current **exemption** granted to international (and intra-EU) **air transport** should be **maintained**.

10.2.4.3. Trains

643 For the railway travel market, we received feedback from **1 stakeholder** (i.e. stakeholder 10), who provided input by completing the matrix.

10.2.4.3.1. Qualitative input regarding changes under the policy option

A. Input received in the matrix: stakeholder 10 (railway travel market)

644 In the table below, we have included the specific scores given by stakeholder 10 (railway travel market) to the lines mentioned in Table 15, above.

Table 18 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross-ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators)					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 10 (railway travel market) - Appendix 17													
25 27	x		x		-1	-1	-1	-1	-2				

Source: Appendix 17 (i.e. stakeholder 10: railway travel market) – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 17)

645 Stakeholder 10 (railway travel market) indicated that, under this policy option, the **prices** for providing goods and/or restaurant and catering services on board trains plying intra-Community passenger routes will **change multiple times** during the journey.

646 Stakeholder 10 (railway travel market) also indicated that this policy option will require **changes** to operators' **systems** in order to take into account the global positioning of the trains and that the **cost** of these changes will be **disproportionate** compared to the low profit margins on these supplies.

647 Therefore, the overall conclusion of stakeholder 10 (railway travel market) was that this policy option will **not** be **feasible** for the railway travel market from a **commercial and practical point of view**.

10.2.4.4. Other (e.g. coaches)

648 For the long-distance bus & coach travel market, we did not receive any feedback from stakeholders with respect to this policy option.

10.2.5. *Overall impact assessment*

10.2.5.1. Changes to the place of taxation

649 The overview of changes under the policy option (see Table 14, above) and the drilldown of the lines showing a change under the policy option in the matrix (see Table 15, above) show that this policy option will only **impact**:

- intra-EU supplies of goods and restaurant and catering services on board ships, aircraft and trains thus impacting those operators;
- where the supply physically takes place **differs** from the point of departure of the passenger transport operation;
- notwithstanding the changes in the place of supply for all operators.

650 This change will have a **significant impact** as all of the stakeholders that provided input on this policy option (i.e. in the maritime, air and railway travel market) indicated that they are active in supplying on-board goods and/or restaurant and catering services on intra-Community passenger routes.

10.2.5.2. Assessment of the change under the policy option from a VAT technical perspective

- 651 In the table below, we have **compared** the assessment of the current place-of-supply rules without an optional VAT exemption (see chapter 6, above) with the assessment of the place-of-supply rule under the policy option (place of actual consumption in the EU).

Table 19 – Comparison of VAT technical assessments: Current place-of-supply rules without an optional VAT exemption with the place of actual consumption in the EU

KPIs	Current place-of-supply rules without an optional VAT exemption	Place of actual consumption in the EU
	See Table 6	See Table 16
SIMPLICITY	-	-
EFFICIENCY	-	-
CERTAINTY	-	+
NON-DISTORTIONARY	-	0
EFFECTIVENESS AND FAIRNESS	-	0

- 652 The above table shows that, under the place of supply where actual consumption takes place in the EU, **only 1 of the 5 selected KPIs is satisfied** and for two KPIs the impact is neutral as it is only partially met. Hence, the key results for both passenger transport operators and the tax authorities will not be achieved under this policy option.
- 653 This also means that the **main issues** related to the current place-of-supply rules without an optional VAT exemption will **not be solved** when implementing the place of supply where the actual consumption takes place in the EU.

The issues with respect to the identification of the place of taxation (highly complex to correctly identify the place of taxation), the level of taxation (multiple VAT rates) and compliance requirements (multiple VAT registrations and divergent compliance requirements in the EU Member States) will remain to exist under the place of supply where the actual consumption takes place in the EU.

10.2.5.3. Assessment of the change under the policy option from an industry perspective

- 654 Based on the input from stakeholders on the lines of the matrix that will change under the place of supply where the actual consumption takes place in the EU, we have made a **total of the completed transaction lines**.

For these completed transaction lines, the below table shows the **total per weighting point** given by the stakeholders to each KPI.

We have shaded the KPIs in the below table of the transport sectors which did not provide input by completing the stakeholders' matrix.

Table 20 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the actual consumption takes place in the EU – Intra-EU transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE ACTUAL CONSUMPTION TAKES PLACE IN THE EU (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	9	9	-	-	-	-	4	5	-	-	-	4	5	-	-	-	5	-	4	-	-	-	7	2	-	-
Air travel market																										
Railway travel market	2	-	2	-	-	-	-	2	-	-	-	-	2	-	-	-	-	2	-	-	-	2	-	-	-	-
Long -distance bus & coach travel market																										

(1) Source: Table 17 in the second Phase of the Study for the maritime travel market and Table 18 in the second Phase of the Study for the railway travel market

(2) Total number of completed transaction lines

- 655 The above table shows that the stakeholders from the maritime and railway travel market have mostly given negative weighting points to each KPI and, hence, that **none of the KPIs is satisfied** under the place of supply where the actual consumption takes place in the EU.

10.2.5.4. Comparison between the VAT technical and industry assessment of the policy option

656 In the table below, we have compared the assessment of the place of supply where the actual consumption takes place in the EU from a VAT technical perspective (see Table 16, above) with the assessment from an industry perspective (see Table 20, above and the input given by stakeholders by means of a paper).

We have shaded the KPIs in the table for which we did not receive any feedback from the stakeholder(s).

Table 21 – Comparison of assessments: VAT technical with the industry assessment of the place of supply where the actual consumption takes place in the EU

KPIs	VAT technical assessment	Industry assessment			
		Ships	Aircraft	Trains	Other
SIMPLICITY	-	-		-	
EFFICIENCY	-	-	-	-	
CERTAINTY	+	-	-	-	
NON-DISTORTIONARY	0	-	+	-	
EFFECTIVENESS AND FAIRNESS	0	-		-	

657 The above table shows a **difference** between the assessment from a VAT technical and industry perspective with respect to the “certainty” KPI. The reason for this is that, unlike the stakeholders, we assumed in our assessment from a VAT technical perspective that there are common EU definitions. the term “actual consumption in the EU” and of the terms related to buy-on-board transactions. Those would be provided for either in the EU VAT Directive or in a Council Implementing Regulation. This would be the case for the term “actual consumption in the EU” and for the terms related to buy-on-board transactions.

658 Overall, we can conclude that the assessment from a VAT technical perspective is **mostly in line** with the assessment from an industry perspective.

10.2.5.5. Conclusion

- 659 This policy option will have a significant impact for passenger transport operators in the **air, maritime (i.e. cruises and ferries) and railway travel market** which are involved in the **intra-Community** passenger transport industry and provide goods and/or restaurant and catering services on board **within the EU**.
- 660 The assessment from a **VAT technical perspective** indicates that **only 1 of the 5 selected KPIs** under the place of supply where actual consumption takes place in the EU **is fully satisfied** and two are partially satisfied and, hence, that the **main issues** related to the current place-of-supply rules without an optional VAT exemption will **not** be **solved** if this policy option is implemented.
- More specifically, the issues with respect to identification of the place of taxation (highly complex to correctly identify the place of taxation), the level of taxation (multiple VAT rates) and compliance requirements (multiple VAT registrations and divergent compliance requirements in the EU Member States) will continue to exist under the place of supply where actual consumption takes place in the EU.
- 661 The assessment from a VAT technical perspective (only one KPI is satisfied under the place of supply where the actual consumption takes place in the EU) is **mostly in line** with the assessment from an **industry perspective** as the stakeholders in the maritime and railway travel market mostly gave negative weighting points to each KPI (none of the KPIs is satisfied under the place of supply where actual consumption takes place in the EU).
- 662 Consequently, **additional measures** are **needed** from a VAT technical and industry perspective to mitigate the weaknesses of this policy option (see chapter 8). Without these, this policy option will not improve the current place-of-supply rules without an optional VAT exemption.

10.3. *Assessment of policy option 2: Place of supply is place of establishment of the supplier of the goods or services*

10.3.1. *VAT technical sheet*

Taxable transactions in scope	<p>All buy-on-board transactions on ships, aircraft, trains or other means of transport (e.g. coaches), i.e.:</p> <ul style="list-style-type: none"> - Supply of goods for consumption on board - Supply of goods to take away (no consumption on board) - Supply of restaurant and catering services on board - Supply of other services on board (we assume B2C services qualifying as (ancillary to) cultural, artistic, sporting, scientific, educational, entertainment or similar activities)
Place of supply⁵²	<p>Country of establishment of the supplier of the goods (for consumption on board and to take away), the restaurant and catering services or the other services on board of means of transport.</p> <p>The place of establishment of the supplier shall be the place where the functions of the business's central administration are carried out.⁵³</p> <p>In order to determine this place, account shall be taken of the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located and the place where management meets.⁵⁴</p> <p>Where these criteria do not allow the place of establishment of a business to be determined with certainty, the place where essential decisions concerning the general management of the business are taken shall take precedence.⁵⁵</p> <p>The mere presence of a postal address may not be taken to be the place of establishment of a business of a taxable person.⁵⁶</p>

⁵² We assume that there will be **common EU definitions** for the terms related to both the place-of-supply rule and the buy-on-board transactions. We did not consider the budgetary impact of a potential shift of VAT revenue from one EU Member State to another as this is not in scope of this Study.

⁵³ Article 10(1) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁵⁴ Article 10(2) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁵⁵ Article 10(2) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁵⁶ Article 10(3) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

	<p>Please note that this concept should not be confused with the concept of a “fixed establishment”.</p> <p>Under this policy option, any on-shore fixed establishment of the supplier is disregarded for the determination of the place of supply.</p> <p>A “fixed establishment” shall be any establishment, other than the place of establishment of a business referred to in Article 10 of the Council Implementing Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it:</p> <ul style="list-style-type: none"> - for the purpose of Article 44 of Directive 2006/112/EC: to receive and use the services supplied to it for its own needs; - for the purpose of Article 45 of Directive 2006/112/EC: to provide the services which it supplies.⁵⁷
Exemption	No
Chargeable event	Time when the goods are supplied or the service is completed ⁵⁸
Rate	VAT rate of EU Member State where the supplier of the goods or services is established
Person liable	Supplier of the buy-on-board transactions

⁵⁷ Article 11 of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁵⁸ Article 63 of VAT Directive 2006/112/EC of 28 November 2006.

10.3.2. Illustrative examples

663 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise goods and/or services physically supplied on board **ships, aircraft, trains or on coaches** in EU **Member State 2** during the **intra-EU transport section** (i.e. from EU Member State 1 to EU Member State 2) by a supplier **established in EU Member State 1**.

The “as is” (current situation) and “to be” (situation where the place of supply is the place of establishment of the supplier of the goods or services) reflect information which might be needed to determine the place of supply of buy-on-board transactions.

Figure 4 – Supplies on board ships, aircraft, trains or coaches: Multiple transport sections – Supplier established in EU Member State 1

	Member State 1	Member State 2	Non-EU	Member State 2	Member State 3
	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation	Stopover	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation
AS IS		Physical supply			
TO BE	Establishment supplier	Physical supply			

664 In the table below, we have **indicated** the VAT treatment for the supplies on board means of transport during the transport illustrated in Figure 4 according to the current provisions of the VAT Directive compared to the VAT treatment under the place of supply where the supplier of the goods or services is established.

Table 22 – Supplies of goods and/or services on board ships, aircraft, trains or coaches: Current VAT treatment vs. VAT treatment under the place of supply where the supplier of the goods or services is established

Transport section	Establishment supplier	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	VAT treatment under policy option
			Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Place of Supply
Policy option: Change VAT PoS rule to place of establishment of supplier												
Intra-EU (EU1 - EU2)	EU1	EU2	x	x	x		x	x	x		EU1	EU1
Intra-EU (EU1 - EU2)	EU1	EU2	x	x	x					x	EU2	EU1
Intra-EU (EU1 - EU2)	EU1	EU2				x	x	x	x	x	EU2	EU1

665 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise goods and/or services physically supplied on board **ships, aircraft, trains or on coaches outside of the EU** during the **non-EU – EU transport section** (i.e. from a non-EU country to EU Member State 2) by a supplier **established in a non-EU country**.

The “as is” (current situation) and “to be” (situation where the place of supply is the place of establishment of the supplier of the goods or services) reflect information which might be needed to determine the place of supply of buy-on-board transactions.

Figure 5 – Supplies on board ships, aircraft, trains or coaches: Multiple transport sections – Supplier established in a non-EU country

	Member State 1	Member State 2	Non-EU	Member State 2	Member State 3
	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation	Stopover	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation
AS IS				Physical supply	
TO BE			Establishment supplier	Physical supply	

666 In the table below, we **compare** for the example the VAT treatment under the current provisions of the VAT Directive with the VAT treatment under the place of supply where the supplier of the goods or services is established.

Table 23 – Supplies of goods and/or services on board ships, aircraft, trains or coaches: Current VAT treatment vs. VAT treatment under the place of supply where the supplier of the goods or services is established

Transport section	Establishment supplier	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	VAT treatment under policy option
			Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Place of Supply
Policy option: Change VAT PoS rule to place of establishment of supplier												
Non-EU - EU (non-EU - EU2)	non-EU	EU2	x	x	x	x	x	x	x	x	EU2	non-EU

667 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise goods and/or services physically supplied on board **ships, aircraft, trains or on coaches** in EU **Member State 2** during the **intra-EU transport section** (i.e. from EU Member State 2 to EU Member State 3) by a supplier **established in EU Member State 3**.

The “as is” (current situation) and “to be” (situation where the place of supply is the place of establishment of the supplier of the goods or services) reflect information which might be needed to determine the place of supply of buy-on-board transactions.

Figure 6 – Supplies on board ships, aircraft, trains or coaches: Multiple transport sections – Supplier established in EU Member State 3

	Member State 1	Member State 2	Non-EU	Member State 2	Member State 3
	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation	Stopover	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation
AS IS				Physical supply	
TO BE				Physical supply	Establishment supplier

668 In the table below, we **compare** for the example the VAT treatment under the current provisions of the VAT Directive with the VAT treatment under the place of supply where the supplier of the goods or services is established.

Table 24 – Supplies on board ships, aircraft, trains or coaches: Current VAT treatment vs. VAT treatment under place of supply where the supplier of goods or services is established

Transport section	Establishment supplier	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	VAT treatment under policy option
			Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Place of Supply
Policy option: Change VAT PoS rule to place of establishment of supplier												
Intra-EU (EU2 - EU3)	EU3	EU2	x	x	x		x	x	x		EU2	EU3
Intra-EU (EU2- EU3)	EU3	EU2	x	x	x					x	EU2	EU3
Intra-EU (EU2 - EU3)	EU3	EU2				x	x	x	x	x	EU2	EU3

669 Unlike the current place-of-supply rules, the place of supply under this policy option is where the supplier of the goods or services is established **irrespective** of the means of transport used (ships, aircraft and trains vs. other means of transport e.g. coaches), the travel itinerary (transport section in the EU vs. transport section outside the EU), the nature of the on-board transaction (supply of goods vs. supply of restaurant and catering services vs. supply of other services) and whether the supplier of the goods or services on board is the transport company or a third party.

10.3.3. Impact assessment from a VAT technical perspective

10.3.3.1. Impact under the policy option on the place of taxation

670 In the table below, we have indicated for which transport section, transport mode and type of buy-on-board transaction the place of taxation **changes** under the policy option compared to the current place of supply.

Table 25 – VAT technical analysis: Overview of the changes under the policy option

PLACE OF ESTABLISHMENT OF THE SUPPLIER OF THE GOODS OR SERVICES					
Transport section	Transport mode	Type of on-board supply			
		Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services
Domestic	Ships, aircraft or trains	Yes	Yes	Yes	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes
Intra-EU	Ships, aircraft or trains	Yes	Yes	Yes	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes
EU - non-EU	Ships, aircraft or trains	Yes	Yes	Yes	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes
Non-EU - EU	Ships, aircraft or trains	Yes	Yes	Yes	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes

671 As shown in the table above, the place of supply will change for domestic, intra-EU and international supplies of goods and services on board ships, aircraft, trains and other means of transport (e.g. coaches) thus impacting those operators.

672 The below tables which are extracts from the matrix used for the stakeholder consultation, show in **detail** the nature of those changes per transport mode.

Table 26 – VAT technical analysis: Detail of changes to the place of supply under the policy option – Domestic transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS															
Cross-ref. (1)	Transaction typology								Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Establishment supplier	Country where supply physically takes place	Transport mode	Type of on-board supply				Place of Supply	VAT exemption	Input VAT deduction	Place of Supply	VAT exemption	Input VAT deduction	
					Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to place of establishment of supplier															
49-52	Domestic (EU1 - EU1)	EU27 (other than EU1)	EU1	Ship	x	x	x	x	EU1	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
53-56	Domestic (EU1 - EU1)	EU27 (other than EU1)	EU1	Aircraft	x	x	x	x	EU1	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
57-60	Domestic (EU1 - EU1)	EU27 (other than EU1)	EU1	Train	x	x	x	x	EU1	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
61-64	Domestic (EU1 - EU1)	EU27 (other than EU1)	EU1	Other (e.g. coach)	x	x	x	x	EU1	No	Yes	EU27 (other than EU1)	No	Yes	Yes
65-68	Domestic (EU1 - EU1)	non-EU	EU1	Ship	x	x	x	x	EU1	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
69-72	Domestic (EU1 - EU1)	non-EU	EU1	Aircraft	x	x	x	x	EU1	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
73-76	Domestic (EU1 - EU1)	non-EU	EU1	Train	x	x	x	x	EU1	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
77-80	Domestic (EU1 - EU1)	non-EU	EU1	Other (e.g. coach)	x	x	x	x	EU1	No	Yes	non-EU	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – Domestic transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

Table 27 – VAT technical analysis: Detail of changes to the place of supply under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS															
Cross- ref. (1)	Transaction typology								Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Establishment supplier	Country where supply physically takes place	Transport mode	Type of on-board supply				Place of Supply	VAT exemption	Input VAT deduction	Place of Supply	VAT exemption	Input VAT deduction	
					Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to place of establishment of supplier															
68	Intra-EU (EU1 - EU2)	EU1	EU1/EU2	Ship				x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
72	Intra-EU (EU1 - EU2)	EU1	EU1/EU2	Aircraft				x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
76	Intra-EU (EU1 - EU2)	EU1	EU1/EU2	Train				x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
77-80	Intra-EU (EU1 - EU2)	EU1	EU1/EU2	Other (e.g. coach)	x	x	x	x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
81-83	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Ship	x	x	x		EU1	Yes (optional) for goods for consumption on- board	Yes	EU27 (other than EU1)	No	Yes	Yes
84	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Ship				x	EU1/EU2	No	Yes	EU27 (other than EU1)	No	Yes	Yes
85-87	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Aircraft	x	x	x		EU1	Yes (optional) for goods for consumption on- board	Yes	EU27 (other than EU1)	No	Yes	Yes
88	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Aircraft				x	EU1/EU2	No	Yes	EU27 (other than EU1)	No	Yes	Yes
89-91	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Train	x	x	x		EU1	Yes (optional) for goods for consumption on- board	Yes	EU27 (other than EU1)	No	Yes	Yes
92	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Train				x	EU1/EU2	No	Yes	EU27 (other than EU1)	No	Yes	Yes
93-96	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Other (e.g. coach)	x	x	x	x	EU1/EU2	No	Yes	EU27 (other than EU1)	No	Yes	Yes
97-99	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Ship	x	x	x		EU1	Yes (optional) for goods for consumption on- board	Yes	non-EU	No	Yes	Yes
100	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Ship				x	EU1/EU2	No	Yes	non-EU	No	Yes	Yes
101-103	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Aircraft	x	x	x		EU1	Yes (optional) for goods for consumption on- board	Yes	non-EU	No	Yes	Yes
104	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Aircraft				x	EU1/EU2	No	Yes	non-EU	No	Yes	Yes
105-107	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Train	x	x	x		EU1	Yes (optional) for goods for consumption on- board	Yes	non-EU	No	Yes	Yes
108	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Train				x	EU1/EU2	No	Yes	non-EU	No	Yes	Yes
109-112	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Other (e.g. coach)	x	x	x	x	EU1/EU2	No	Yes	non-EU	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

Table 28 – VAT technical analysis: Detail of changes to the place of supply under the policy option – EU – non-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS															
Cross-ref. (1)	Transaction typology								Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Establishment supplier	Country where supply physically takes place	Transport mode	Type of on-board supply				VAT Place of Supply	VAT exemption	Input VAT deduction	Place of Supply	VAT exemption	Input VAT deduction	
					Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to place of establishment of supplier															
65-68	EU1 - non-EU	EU1	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
69-72	EU1 - non-EU	EU1	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
73-76	EU1 - non-EU	EU1	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
77-80	EU1 - non-EU	EU1	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	EU1	No	Yes	Yes
81-84	EU1 - non-EU	EU27 (other than EU1)	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
85-88	EU1 - non-EU	EU27 (other than EU1)	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
89-92	EU1 - non-EU	EU27 (other than EU1)	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
93-96	EU1 - non-EU	EU27 (other than EU1)	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	EU27 (other than EU1)	No	Yes	Yes
97-100	EU1 - non-EU	non-EU	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
101-104	EU1 - non-EU	non-EU	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
105-108	EU1 - non-EU	non-EU	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
109-112	EU1 - non-EU	non-EU	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	non-EU	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – EU – non-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

Table 29 – VAT technical analysis: Detail of changes to the place of supply under the policy option - Non-EU – EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS															
Cross-ref. (1)	Transaction typology								Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Establishment supplier	Country where supply physically takes place	Transport mode	Type of on-board supply				Place of Supply	VAT exemption	Input VAT deduction	Place of Supply	VAT exemption	Input VAT deduction	
					Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to place of establishment of supplier															
65-68	non-EU - EU1	EU1	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
69-72	non-EU - EU1	EU1	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
73-76	non-EU - EU1	EU1	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
77-80	non-EU - EU1	EU1	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	EU1	No	Yes	Yes
81-84	non-EU - EU1	EU27 (other than EU1)	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
85-88	non-EU - EU1	EU27 (other than EU1)	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
89-92	non-EU - EU1	EU27 (other than EU1)	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
93-96	non-EU - EU1	EU27 (other than EU1)	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	EU27 (other than EU1)	No	Yes	Yes
97-100	non-EU - EU1	non-EU	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
101-104	non-EU - EU1	non-EU	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
105-108	non-EU - EU1	non-EU	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
109-112	non-EU - EU1	non-EU	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	non-EU	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – Non-EU – EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

- 675 The above tables show that the place of supply under this policy option will change if the country where the supplier of the goods or services is established (which is the place of supply under policy option) **differs** from the point of departure of the passenger transport operation or the country where the supply physically takes place (which are the current place-of-supply rules under the VAT Directive).

10.3.3.2. Qualitative assessment

10.3.3.2.1. Assessment of the place of supply where the supplier of the goods or services is established against the KPIs

676 The following two situations could occur:

- The transport company is the supplier of the buy-on-board transactions.
- The transport company is not the supplier of the buy-on-board transactions.

677 Hereafter, we have assessed the place of supply where the supplier is established against the 5 selected KPIs. We have not distinguished in the below VAT technical impact assessment between the two situations whether or not the supplier is the transport company. The distinction is only relevant for the third policy option (the place of supply is the place of establishment of the transport company).

Simplicity

678 This policy option introduces a **uniform place-of-supply rule**. The rules are the same independent from the transport mode, the travel destination and the nature of the on-board transaction.

This will **reduce** the **VAT burden** on buy-on-board suppliers of dealing with different sets of rules in different countries. It will also **reduce** the **risks of errors** and **incorrect application of the VAT rules**.

679 As the place-of-supply rule under this policy option is closely linked to the general B2C rule for the supply of services to a non-taxable person,⁵⁹ suppliers will already be **familiar** with the place of supply where the supplier of the goods or services is established.

680 Consequently, the place of supply where the supplier of the goods or services is established can **easily be applied in practice** by suppliers providing goods and/or services on board means of transport. The operator will not have to verify the physical location of the supply or the status of the customer (B2B taxable person or B2C private person).

Efficiency

681 It will be **easy** for these suppliers to **set prices** for buy-on-board transactions as they will be able to determine in advance the place of supply and applicable taxation.

Hence, it will be easy to list VAT-inclusive prices (B2C supplies).

682 It will be **easy** for suppliers to **implement and maintain the applicable VAT rate in their business systems and price lists** in order to be compliant.

⁵⁹ Article 45 of VAT Directive 2006/112/EC of 28 November 2006.

- 683 Suppliers will only have an **obligation to register** for supplies on board in the country where the supplier of the goods or services is established. This will lead to a **reduced cost of compliance for businesses** and **the programming and use of cash registers** to record buy-on-board transactions will be easy as only the technical requirements, rules and rates of the country of establishment of the supplier will have to be complied with.
- 684 This will result in **high voluntary VAT compliance** by suppliers and a **low cost of VAT collection** for governments.
- 685 The place of supply where the supplier of the goods or services is established will also be **easy** for the tax authorities to **audit**.

Certainty

- 686 A **uniform binding interpretation** applies in all EU Member States of the term “establishment⁶⁰ of the supplier” further to the Council Implementing Regulation. This will allow suppliers to determine with certainty the correct place of supply under this policy option (limited need for litigation).

It will overcome the issue identified by the stakeholders regarding the risk in some EU Member States that the means of transport is considered to be a fixed establishment of the supplier of certain services.

- 687 As **clear definitions** (avoiding misinterpretation) of **terms related to buy-on-board transactions** (“supply of goods for consumption”, “supply of goods for take away”, “restaurant and catering services” and “other services”) are assumed to exist, it will no longer be difficult for suppliers to correctly classify these transactions and to define their applicable VAT rate owing to the supplies possibly being subject to different VAT rates in the country of taxation.

Non-distortionary

- 688 As a principle, buy-on-board transactions which are physically supplied or carried out **within the territories of the EU Member States**⁶¹ are within the scope of **EU VAT**. Buy-on-board transactions which are physically supplied or carried out **outside the territories of the EU Member States** are **not** within the scope of **EU VAT**.

We assumed that buy-on-board transactions that are physically supplied or carried out on board vessels on the **high seas**⁶² will **not be taxed** under the place of supply where the supplier of the goods or services is established unless such taxation does not conflict with the law of other countries.⁶³

⁶⁰ Article 10(2) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁶¹ Article 5 of VAT Directive 2006/112/EC of 28 November 2006: “The VAT Directive applies to the territories of the Member States as defined in Article 5, point (2) of the VAT Directive, i.e. the territory of each Member State of the European Union to which the Treaty establishing the European Union is applicable, in accordance with Article 299 of that Treaty, with the exception of any territory referred to in Article 6 of the VAT Directive”.

⁶² International waters, i.e. waters falling outside the sovereignty or jurisdiction of any State.

⁶³ Judgment of the ECJ of 15 September 2005, Antje Köhler v. Finanzamt Düsseldorf-Nord, Case C-58/04, para 25, which allows EU Member States to tax supplies on board vessels if such taxation does not conflict with the law of other countries.

The reason for this assumption is to **avoid the risk of conflicts of jurisdiction with the tax systems of third countries**⁶⁴ and, hence, possible double taxation. For the maritime travel market, this risk is especially true due to the itinerant nature of vessels.

- 689 Supplies of which the place of taxation is in a **low-tax EU Member State are advantaged** compared to supplies of which the place of taxation is in a high-tax EU Member State. As a consequence, there is a possible market distortion between low-tax and high-tax EU Member States to the extent that the nature of the travel itinerary allows the consumer to effectively choose between paying tax in the low-tax or high-tax EU Member State. For example, a leisure (luxury) cruise where the consumer could choose between multiple EU Member States to start his holiday because we assume that there is a high elasticity of demand for this type of travel.
- 690 There will be **equal treatment** for buy-on-board transactions on board the different means of transport. There will be **no distortion of competition** for supplies on board different means of transport. All suppliers in similar situations carrying out similar transactions are subject to similar levels of taxation.
- 691 There will be **no equal treatment between buy-on-board and buy-off-board** transactions as different place-of-supply rules would apply.
- 692 This policy option will lead to **market distortions** as suppliers established in EU Member States with reduced VAT rates or in non-EU countries will have a taxation advantage. Consequently, there will be a **risk of relocation** of suppliers to EU Member States with reduced VAT rates (i.e. distortion of competition between EU suppliers) or to non-EU countries (i.e. distortion of competition of EU vs. non-EU suppliers).
- 693 For example, the **risk of relocation** is **high** where a company implements a centralised or regional business model for financial, economic and/or organisational reasons. A centralised business model could involve the establishment of a head office, running the business's central administration and carrying out the essential functions in the organisation, and establishing several branches in charge of operations in the "operational" countries. The head office could easily be established in a non-EU country because that country has a favourable corporate income tax regime. Under this policy option, a supplier could continue to carry out its operational activities in the EU Member States, while the place of taxation is shifted to a non-EU country. We assume indeed that the on-shore fixed establishment of the supplier should be disregarded under this policy option, as explained in the VAT technical sheet above.
- 694 The place of supply where the supplier of the goods or services is established could lead to **possible double taxation** (because the EU Member State of establishment of the supplier taxes the goods or services supplied on board means of transport outside the EU).

This policy option could also lead to **possible non-taxation of consumption in the EU** (because the supplier of the goods or services is established in a non-EU country that does not tax the goods or services consumed on board means of transport within the EU).

⁶⁴ Judgment of the ECJ of 15 September 2005, Antje Köhler v. Finanzamt Düsseldorf-Nord, Case C-58/04, paras 24 and 26.

Effectiveness and fairness

- 695 The suppliers will be **best placed** under this policy option to understand and comply with the rules of the country of taxation (i.e. country of establishment of the supplier of the goods or services), which is the key result to be achieved for this KPI.
- 696 The place of supply where the supplier of the goods or services is established links buy-on-board transactions to the general B2C rule for the supply of services to a non-taxable person.⁶⁵ It also **reflects the principle of taxation at the place of consumption** for the on-board supply of goods and restaurant and catering services.

For example, in principle, a supplier of on-board goods and restaurant and catering services loads the provisions on board the means of transport in his country of establishment, which we assume is equal to the first scheduled point of passenger embarkation (e.g. cruise home port). We assume such practice is needed or required according to the nature of the goods: i.e. fast-moving consumer goods that require due diligence in handling by specialised, trained personnel in the country of establishment of the supplier. In more broad terms, the provisions are loaded in the country of establishment of the supplier due to applicable legislation, liabilities or requirements which are independent from any possible VAT advantage or disadvantage, for example, see our comments above regarding the risk of relocation.

Taking into account the fact that fast-moving consumer goods are perishable (in some cases in a matter of hours), it is not unreasonable to assume that the goods or services have been consumed on the spot in the country of establishment, creating the link between consumption and taxation.

⁶⁵ Article 45 of VAT Directive 2006/112/EC of 28 November 2006.

10.3.3.2.2. Summary

697 In the table below, we score our assessment using a “+”, “o” or “-” for **each KPI**, whereby:

- “+” means that the place of supply where the supplier of the goods or services is established satisfies the related KPI;
- “o” means that the place of supply where the supplier of the goods or services is established is neutral with respect to the related KPI;
- “-” means that the place of supply where the supplier of the goods or services is established does not satisfy the related KPI.

Table 30 – VAT technical analysis: Assessment of the place of supply where the supplier of goods or services is established against KPIs

KPIs	Assessment
SIMPLICITY	+
EFFICIENCY	+
CERTAINTY	+
NON-DISTORTIONARY	-
EFFECTIVENESS AND FAIRNESS	+

698 The above table shows that, under the place of supply where the supplier of the goods or services is established, **4 of the 5 selected KPIs are satisfied**. The main issues identified when applying the current place-of-supply rules without an optional VAT exemption (see chapter 6, section 6.4.1, above) will be solved under this policy option.

699 However, **additional measures are needed** from a VAT technical perspective to avoid the market distortions and, hence, possible relocation of suppliers as well as the possible double or non-taxation risk resulting from this policy option.

10.3.4. *Impact assessment from an industry perspective*

700 For this policy option, we received **feedback** from 8 stakeholders. More specifically, 6 from the maritime travel market, 1 from the air travel market and 1 from the railway travel market.

10.3.4.1. **Ships** (cruise and ferry)

701 For the maritime travel market, we received feedback from **6 stakeholders** (mostly umbrella-segment associations representing a number of members) of which:

- 4 (from the ferry industry, i.e. stakeholders 02 to 05) provided input by completing the matrix; and
- 2 (one from the cruise industry, i.e. stakeholder 01, and one from the ferry industry, i.e. stakeholder 06) provided input in the form of a paper.

10.3.4.1.1. Qualitative input regarding changes under the policy option

A. Input received in the matrix: stakeholders 02 to 05 (maritime travel market – ferry industry)

702 In the tables below, we have **included** the specific scores given by stakeholders 02 to 05 (maritime travel market – ferry industry) to the lines mentioned in Table 26, Table 27, Table 28 and Table 29, above.

Table 31 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option - Domestic transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
49 51	x		x		0	0	0	-2	-2	Yes	Yes	Yes	Yes
52				x	1	1	1	-2	-2	Yes	Yes	Yes	Yes
65	x				0	0	0	-2	-2	N/A	N/A	N/A	N/A
67 68			x	x	-1	-1	-1	-1	-1	Yes	N/A	N/A	N/A

Source: Appendix 10 (i.e. stakeholder 03: maritime travel market – ferry industry) – Domestic transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 10)

- 703 Stakeholder 05 (maritime travel market – ferry industry) indicated a **high risk of non-taxation** for domestic supplies if the supplier is established outside the EU.

Table 32 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators)					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-discriminatory	Effectiveness and fairness	Provides binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 02 (maritime travel market - ferry industry) - Appendix 9													
68				x	0	-1	0	-2	-2				
81 83	x		x		0	-1	0	-2	-2				
84				x	0	-1	0	-2	-2				
97 99	x		x		0	-1	0	-2	-2				
100				x	0	-1	0	-2	-2				
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
68				x	0	0	0	-2	-2	Yes	N/A	N/A	N/A
81 83	x		x		0	0	0	-2	-2	Yes	N/A	N/A	N/A
84				x	0	0	0	-2	-2	Yes	N/A	N/A	N/A
97	x				0	0	0	-2	-2	N/A	N/A	N/A	N/A
99			x		-2	-2	-2	0	0	Yes	Yes	Yes	Yes
100				x	-2	-2	-2	0	0	Yes	Yes	Yes	Yes
Stakeholder 04 (maritime travel market - ferry industry) - Appendix 11													
68				x	0	-1	0	-2	-2				
81 83	x		x		0	-1	0	-2	-2				
84				x	0	-1	0	-2	-2				
97 99	x		x		0	-1	0	-2	-2				
100				x	0	-1	0	-2	-2				
Stakeholder 05 (maritime travel market - ferry industry) - Appendix 12													
68				x	2	2	0	-2	-2				
81	x				2	2	0	-1	-2				
82 83		x	x		2	2	0	-2	-2				
84				x	2	2	0	-2	-2				
97	x				2	2	0	-1	-2				
98 99		x	x		2	2	0	-2	-2				
100				x	2	2	0	-2	-2				

Source: Appendices 9 to 12 (i.e. stakeholders 02 to 05; maritime travel market – ferry industry) – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendices 9 to 12)

- 704 Stakeholders 02, 04 and 05 (maritime travel market – ferry industry) indicated that this policy option will encourage **VAT shopping**. There will be a tax premium to relocate the business to EU Member States with reduced VAT rates or to non-EU countries.
- 705 The overall conclusion of stakeholder 05 (maritime travel market – ferry industry) was that this policy option **could not be realised either fiscally or politically** without the introduction of a correction mechanism to avoid distortion of competition and non-taxation of consumption in the EU if the supplier is established outside the EU.

Table 33 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – EU – non-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators)					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 05 (maritime travel market - ferry industry) - Appendix 12													
65-68	x	x	x	x	2	2	2	0	2				
81-84	x	x	x	x	2	2	2	0	2				
97-100	x	x	x	x	2	2	2	0	2				

Source: Appendix 12 (i.e. stakeholder 05: maritime travel market – ferry industry) – EU – non-EU transport section
(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 12)

- 706 Stakeholder 05 (maritime travel market – ferry industry) stated that there is no authority in civil law to levy taxes as soon as a vessel is outside EU territorial waters. The **sale of goods** will actually be **closed** as long as the vessel is in **EU territorial waters** (due to the prices, customers will not want to make any purchases until the vessel leaves EU territorial waters).

Table 34 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Non-EU – EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 05 (maritime travel market - ferry industry) - Appendix 12													
65-68	x	x	x	x	2	2	2	0	2				
81-84	x	x	x	x	2	2	2	0	2				
97-100	x	x	x	x	2	2	2	0	2				

Source: Appendix 12 (i.e. stakeholder 05: maritime travel market – ferry industry) – Non-EU – EU transport section
(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 12)

- 707 Stakeholder 05 (maritime travel market – ferry industry) stated that there is no authority in civil law to levy taxes as soon as a vessel is outside EU territorial waters. The **sale of goods** will actually be **closed** as long as the vessel is in **EU territorial waters** (due to the prices, customers will not want to make any purchases until the vessel leaves EU territorial waters).

B. Input received by means of a paper: stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry)

- 708 Stakeholder 01 (maritime travel market – cruise industry; Appendix 8) provided a position paper with specific thoughts on the policy options. Stakeholder 01 also provided two other written documents (Appendices to the position paper): one with an in-depth analysis of the policy options and one with comments in relation to the use of KPIs.
- 709 Stakeholder 06 (maritime travel market – ferry industry; Appendix 13) provided input by means of a paper commenting on the policy options based on the KPIs.

Efficiency

- 710 As this policy option will only require the supplier of the goods or services to register for VAT in its country of establishment, stakeholder 01 (maritime travel market – cruise industry) indicated that this will result in **lower compliance costs** as well as **fewer administrative burdens** (associated with programming cash registers).

Non-distortionary

- 711 In order to **avoid taxation of consumption outside the EU**, stakeholder 01 (maritime travel market – cruise industry) indicated that supplies on the high seas and in non-EU countries will have to be treated as non-taxable.
- 712 Stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry) also indicated the potential for **distortion of competition** between EU suppliers and EU vs. non-EU suppliers under this policy option and the need for mitigating measures.

Effectiveness and fairness

- 713 Stakeholder 01 (maritime travel market – cruise industry) indicated that **tourist-dependent EU Member States** such as Greece provide infrastructure for tourists but will not get significant VAT revenues under this (**unfair**) policy option⁶⁶.
- 714 Stakeholder 06 (maritime travel market – ferry industry) also indicated a **possible disconnection** under this policy option between the place of establishment of the supplier and the place of consumption.

⁶⁶ In this respect, we refer to Figure 9 ‘Turnover of the maritime passenger transport industry in 2008, millions of euro’ and Figure 10 ‘Turnover of the maritime passenger transport industry as a percentage of GDP, 2008’ in the first Phase of the Study.

10.3.4.1.2. Other qualitative feedback

- 715 In order to avoid artificial structures or the international shipping business not fitting in with the establishment rule, stakeholder 01 (maritime travel market – cruise industry) indicated that the place-of-supply rule under this policy option must **include the notion of ‘fixed establishment’** from where the on-board supply is effected on-shore.
- 716 Stakeholder 01 (maritime travel market – cruise industry) stated that **customs duties, excise taxes and VAT** are so interrelated that coordination is necessary in their application and administration. Stakeholder 01 indicated that their **application** under this policy option will be **inconsistent**.
- 717 Stakeholder 05 (maritime travel market – ferry industry) also indicated that countries will risk to **miss the direct taxation of income** originating from sales if businesses relocated to EU Member States with reduced VAT rates or to non-EU countries.

10.3.4.2. Aircraft

- 718 For the air travel market, we received feedback from **1 stakeholder** (i.e. stakeholder 07), who provided input in the form of two papers (Appendix 14):
- paper regarding the review of the rules on the supplies of services and goods for consumption on board ships, aircraft or trains in accordance with Article 37 of the VAT Directive; and
 - paper with the response to the European Commission's Green Paper on the future of VAT.

10.3.4.2.1. Qualitative input regarding changes under the policy option

A. Input received by means of a paper: stakeholder 07 (air travel market)

Non-distortionary

- 719 Although it will simplify the administrative process, stakeholder 07 (air travel market) also indicated that the place of supply where the supplier of the goods or services is established might create a **true distortion of competition** of airlines established in the EU vs. those established outside the EU or registered in a country applying a zero rate (taxation advantage).

10.3.4.3. Trains

720 For the railway travel market, we received feedback from **1 stakeholder** (i.e. stakeholder 10), who provided input by completing the matrix.

10.3.4.3.1. Qualitative input regarding changes under the policy option

A. Input received in the matrix: stakeholder 10 (railway travel market)

721 In the table below, we have **included** the specific scores given by stakeholder 10 (railway travel market) to the lines mentioned in Table 27, above.

Table 35 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 10 (railway travel market) - Appendix 17													
76				x	1	-1	-1	-2	-2				
89 91	x		x		1	-1	-1	-2	-2				
92				x	1	-1	-1	-2	-2				
105 107	x		x		1	-1	-1	-2	-2				
108				x	1	-1	-1	-2	-2				

Source: Appendix 17 (i.e. stakeholder 10: railway travel market) – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 17)

722 Stakeholder 10 (railway travel market) indicated that this policy option is merely to be seen as an **encouragement** for **subcontracting** to EU Member States with reduced VAT rates or to non-EU countries.

723 Furthermore, stakeholder 10 (railway travel market) indicated that the possibility of changing supplier should be retained but **commercial negotiations** should not be **influenced** by the **nationality of the supplier** and the related possible taxation advantage (depending on the location of the supplier). This will not be possible under this policy option.

10.3.4.4. Other (e.g. coaches)

- 724 For the long-distance bus & coach travel market, we did not receive any feedback from stakeholders with respect to this policy option.

10.3.5. *Overall impact assessment*

10.3.5.1. Changes to the place of taxation

- 725 The overview of changes under the policy option (see Table 25, above) and the drilldown of the lines showing a change under the policy option in the matrix (see Table 26, Table 27, Table 28 and Table 29, above) show that this policy option will impact:
- domestic, intra-EU and international supplies of goods and services on board ships, aircraft, trains and other means of transport (e.g. coaches) thus impacting those operators;
 - where the supplier of the goods and/or services is established **differs** from the point of departure of the passenger transport operation or the country where the supply physically takes place.
- 726 This change will have a **significant impact** as the stakeholders that provided input on this policy option (i.e. in the maritime, air and railway travel market) indicated that they are active in supplying on-board goods and/or services on intra-Community and/or international passenger routes.

10.3.5.2. Assessment of the change under the policy option from a VAT technical perspective

727 In the table below, we have **compared** the assessment of the current place-of-supply rules without an optional VAT exemption (see chapter 6, above) with the assessment of the place-of-supply rule under the policy option (place of establishment of the supplier of the good or services).

Table 36 – Comparison of VAT technical assessment: Current place-of-supply rules without an optional VAT exemption with the place of establishment of the supplier of the goods or services

KPIs	Current place-of-supply rules without an optional VAT exemption	Place of establishment of the supplier of the goods or services
	See Table 6	See Table 30
SIMPLICITY	-	+
EFFICIENCY	-	+
CERTAINTY	-	+
NON-DISTORTIONARY	-	-
EFFECTIVENESS AND FAIRNESS	-	+

728 Unlike for the current place-of-supply rules without an optional VAT exemption, the above table shows that under the place of supply where the supplier of the goods or services is established **4 of the 5 selected KPIs are satisfied**. Most of the key results for both suppliers and the tax authorities will be achieved under this policy option.

729 This means that the **main issues** related to the current place-of-supply rules without an optional VAT exemption will be **solved** when implementing the place of supply where the supplier of the goods or services is established:

- the issue with respect to the identification of the place of taxation is solved as this policy option introduces a place-of-supply rule which will be easy to apply in practice;
- the issue with respect to the level of taxation is solved as under this policy option only the VAT rate(s) of the country where the supplier of the goods and/or services is established will need to be taken into account;
- the issue with respect to the compliance requirements is solved as under this policy option the obligation to register for supplies on board will be limited to the country of establishment of the supplier of the goods and/or services which, in its turn, will result in a reduced cost of compliance for businesses.

730 However, the main issue with respect to this policy option is the fact that it will lead to market distortions between EU suppliers and EU vs. non-EU suppliers with a risk of relocation and possible double or non-taxation.

In other words: with respect to the “**non-distortionary**” **KPI**, this policy option has a **negative impact** compared to the current place-of-supply rules without an optional VAT exemption.

10.3.5.3. Assessment of the change under the policy option from an industry perspective

731 Based on the input from stakeholders on the lines of the matrix that will change under the place of supply where the supplier of the goods or services is established, we have made a **total of the completed transaction lines**.

For these completed transaction lines, the below table shows the **total per weighting point** given by the stakeholders to each KPI.

We have shaded the KPIs in the below table of the transport sectors which did not provide input by completing the stakeholders' matrix.

Table 37 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the supplier of the goods or services is established – Domestic transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE SUPPLIER OF THE GOODS OR SERVICES IS ESTABLISHED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	6	-	2	3	1	-	-	2	3	1	-	-	2	3	1	-	4	2	-	-	-	4	2	-	-	-
Air travel market																										
Railway travel market																										
Long -distance bus & coach travel market																										

(1) Source: Table 31 (maritime travel market)

(2) Total number of completed transaction lines

732 The above table shows that the stakeholders from the maritime travel market have mostly given **negative/neutral** weighting points to each KPI.

Table 38 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the supplier of the goods or services is established – Intra-EU transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE SUPPLIER OF THE GOODS OR SERVICES IS ESTABLISHED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	30	2	-	19	-	9	2	14	5	-	9	2	-	28	-	-	26	2	2	-	-	28	-	2	-	-
Air travel market																										
Railway travel market	7	-	-	-	7	-	-	7	-	-	-	-	7	-	-	-	7	-	-	-	-	7	-	-	-	-
Long -distance bus & coach travel market																										

(1) Source: Table 32 in (maritime travel market) and Table 35 (railway travel market)

(2) Total number of completed transaction lines

733 The above table shows that the stakeholders from the maritime and railway travel market have mostly given **negative/neutral** weighting points to each KPI.

Table 39 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the supplier of the goods or services is established – EU – non-EU transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE SUPPLIER OF THE GOODS OR SERVICES IS ESTABLISHED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	12	-	-	-	-	12	-	-	-	-	12	-	-	-	-	12	-	-	12	-	-	-	-	-	-	12
Air travel market																										
Railway travel market																										
Long -distance bus & coach travel market																										

(1) Source: Table 33 in (maritime travel market)

(2) Total number of completed transaction lines

734 The above table shows that the stakeholders from the maritime travel market have mostly given **positive** weighting points to each KPI.

Table 40 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the supplier of the goods or services is established – Non-EU – EU transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE SUPPLIER OF THE GOODS OR SERVICES IS ESTABLISHED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	12	-	-	-	-	12	-	-	-	-	12	-	-	-	-	12	-	-	12	-	-	-	-	-	12	
Air travel market																										
Railway travel market																										
Long -distance bus & coach travel market																										

(1) Source: Table 34 in (maritime travel market)

(2) Total number of completed transaction lines

- 735 The above table shows that the stakeholders from the maritime travel market have mostly given **positive** weighting points to each KPI.
- 736 Based on these overviews and the input given by the stakeholders by means of a paper, we will indicate whether the place of supply where the supplier of the goods or services is established satisfies (or not satisfies) the 5 selected KPIs from an industry perspective (see Table 41 of the second Phase of the Study).

10.3.5.4. Comparison between the VAT technical and industry assessment of the policy option

737 In the table below, we have **compared** the assessment of the place of supply where the supplier of the goods or services is established from a VAT perspective (see Table 30 of the second Phase of the Study) with the assessment from an industry perspective (based on Table 37, Table 38, Table 39 and Table 40 of the second Phase of the Study and the input given by stakeholders by means of a paper).

We have shaded the KPIs in the table for which we did not receive any feedback from the stakeholder(s).

Table 41 – Comparison of assessments: VAT technical with the industry assessment of the place of supply where the supplier of the goods or services is established

KPIs	VAT technical assessment	Industry assessment			
		Ships	Aircraft	Trains	Other
SIMPLICITY	+	o/+		+	
EFFICIENCY	+	o/+		-	
CERTAINTY	+	o/+		-	
NON-DISTORTIONARY	-	-/o	-	-	
EFFECTIVENESS AND FAIRNESS	+	-/+		-	

738 The **VAT technical assessment** shows that under the place of supply where the supplier of the goods or services is established the “simplicity”, “efficiency”, “certainty” and “effectiveness and fairness” KPIs will be satisfied. The main issue with respect to this policy option relates to the “non-distortionary” KPI due to the market distortions and, hence, possible relocation of suppliers as well as the possible double or non-taxation risk.

739 With respect to the domestic and intra-EU transport section, the **most remarkable difference** between the VAT technical and industry assessment relates to the negative assessment by the stakeholders of the **“effectiveness and fairness” KPI**.

740 According to some stakeholders, the place of supply where the supplier of the goods or services is established will not satisfy the “effectiveness and fairness” KPI *inter alia* due to possible disconnection under this policy option between the place of establishment of the supplier and the place of actual consumption.

- 741 In this respect, we note that the preamble to Directive 2008/8/EC indeed recites that for all supplies of services the place of taxation should, in principle, be the place where the actual consumption takes place. However, it also states that if the general rule for the place of supply of services were to be altered in this way, it would still be necessary to utilise certain exceptions to this general rule for both administrative and policy reasons. Therefore, where services are supplied to non-taxable persons, the general rule continues to be that the place of supply of services is the place where the supplier has established his business.
- 742 With respect to the EU – non-EU and non-EU – EU transport sections, the VAT technical assessment is in line with the industry assessment for the “simplicity”, “efficiency”, “certainty” and “effectiveness and fairness” KPI. The main **difference** between both assessments relates to the “**non-distortionary**” KPI.
- 743 Some stakeholders indicated that the place of supply where the supplier of the goods or services is established will be neutral with respect to the “non-distortionary” KPI as sales will only be made outside EU territorial waters during the EU – non-EU and non-EU – EU transport sections.
- 744 The above table also shows a **difference** between the assessment from a VAT technical and industry perspective with respect to the “**certainty**” KPI. The reason for this is that, unlike the stakeholders, we assumed in our assessment from a VAT technical perspective that there are common EU definitions of the terms related to buy-on-board transactions. Those would be provided for either in the EU VAT Directive or in a Council Implementing Regulation.

10.3.5.5. Conclusion

- 745 The place of supply where the supplier of the goods or services is established will have a change for the **domestic, intra-EU and international supplies of goods and services on board ships, aircraft, trains and other means of transport (e.g. coaches)** thus impacting those operators.
- 746 The assessment from a **VAT technical perspective** indicates that **4 of the 5 selected KPIs** under the place of supply where the supplier of the goods or services is established **are satisfied** and that the **main issues** related to the current place-of-supply rules without an optional VAT exemption will be **solved** under this policy option:
- the issue with respect to identification of the place of taxation is solved as this policy option introduces a place-of-supply rule that will be easy to apply in practice;
 - the issue with respect to the level of taxation is solved as, under this policy option, only the VAT rate(s) of the country where the supplier of the goods and/or services is established will need to be taken into account;
 - the issue with respect to compliance requirements is solved as, under this policy option, the obligation to register for supplies on board will be limited to the country of establishment of the supplier of the goods and/or services which, in turn, will result in a reduced cost of compliance for business.
- 747 The main issue with respect to this policy option, however, is the fact that it will lead to **market distortions** among EU suppliers and between EU and non-EU suppliers, with a **risk of relocation** and **possible double or non-taxation**.
- 748 The assessment from a VAT technical perspective is **not fully in line** with the assessment from an industry perspective. In this respect, we refer to section 10.3.5.4 in the second Phase of the Study.
- 749 One stakeholder in the maritime travel market stated that the place of supply where the supplier of the goods or services is established will **not be realistic from an economic, fiscal or political point of view** due to the distortion of competition and possible double or non-taxation risk.
- 750 Consequently, **additional measures** are **needed** from a VAT technical and industry perspective to mitigate the above-mentioned weaknesses of this policy option (see chapter 8).

10.4. *Assessment of policy option 3: Place of supply is place of establishment of the transport company*

10.4.1. *VAT technical sheet*

Taxable transactions in scope	<p>All buy-on-board transactions on ships, aircraft, trains or other means of transport (e.g. coaches), i.e.:</p> <ul style="list-style-type: none"> - Supply of goods for consumption on board - Supply of goods to take away (no consumption on board) - Supply of restaurant and catering services on board - Supply of other services on board (we assume B2C services qualifying as (ancillary to) cultural, artistic, sporting, scientific, educational, entertainment or similar activities)
Place of supply⁶⁷	<p>Country of establishment of the supplier of the passenger transport services irrespective of:</p> <ul style="list-style-type: none"> - offering or pricing (e.g. in package deal); and - contractual arrangements between the transport company and a third party for performing buy-on-board transactions (if any). In case of outsourcing (whereby the third party performing the buy-on-board transactions differs from the transport company), the place of supply is also determined by the country of establishment of the transport company. <p>The place of establishment of the transport company shall be the place where the functions of the business's central administration are carried out.⁶⁸</p> <p>In order to determine this place, account shall be taken of the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located and the place where management meets.⁶⁹</p>

⁶⁷ We assume that there will be **common EU definitions** for the terms related to both the place-of-supply rule and the buy-on-board transactions. We did not consider the budgetary impact of a potential shift of VAT revenue from one EU Member State to another as this is not in scope of this Study.

⁶⁸ Article 10(1) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁶⁹ Article 10(2) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

	<p>Where these criteria do not allow the place of establishment of a business to be determined with certainty, the place where essential decisions concerning the general management of the business are taken shall take precedence.⁷⁰</p> <p>The mere presence of a postal address may not be taken to be the place of establishment of a business of a taxable person.⁷¹</p> <p>Please note that this concept should not be confused with the concept of a “fixed establishment”.</p> <p>Under this policy option, any on-shore fixed establishment of the supplier is disregarded for the determination of the place of supply.</p> <p>A “fixed establishment” shall be any establishment, other than the place of establishment of a business referred to in Article 10 of the Council Implementing Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it:</p> <ul style="list-style-type: none"> - for the purpose of Article 44 of Directive 2006/112/EC: to receive and use the services supplied to it for its own needs; - for the purpose of Article 45 of Directive 2006/112/EC: to provide the services which it supplies.⁷²
Exemption	No
Chargeable event	Time when the goods are supplied or the service is completed ⁷³
Rate	VAT rate of EU Member State where the supplier of the passenger transport services is established
Person liable	Supplier of the buy-on-board transactions

⁷⁰ Article 10(2) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁷¹ Article 10(3) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁷² Article 11 of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

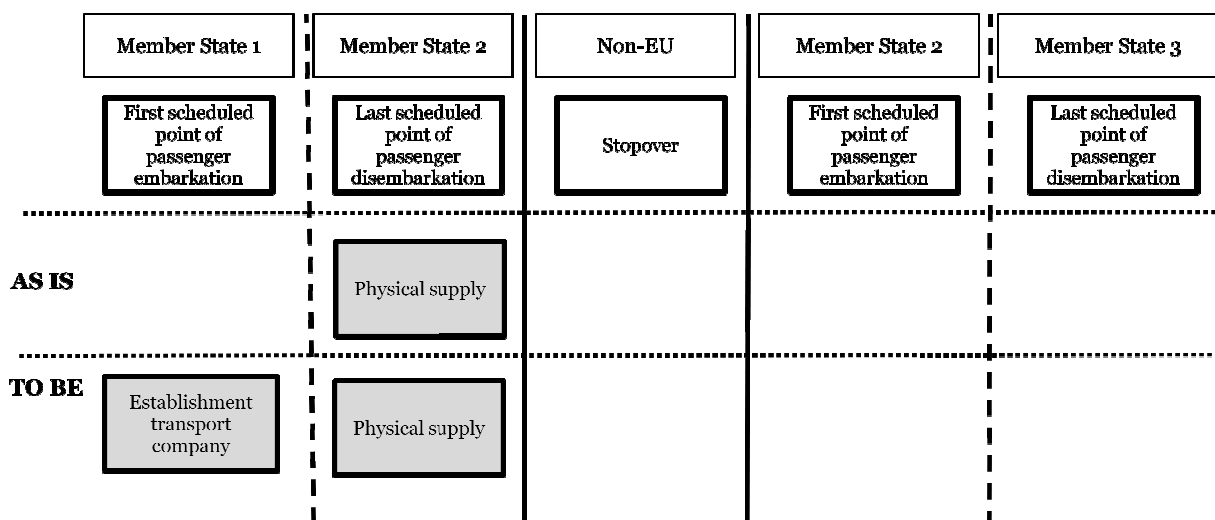
⁷³ Article 63 of VAT Directive 2006/112/EC of 28 November 2006.

10.4.2. Illustrative examples

751 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise goods and/or services physically supplied on board **ships, aircraft, trains or on coaches** in **EU Member State 2** during the **intra-EU transport section** (i.e. from EU Member State 1 to EU Member State 2) by a transport company **established in EU Member State 1**.

The “as is” (current situation) and “to be” (situation where the place of supply is the place of establishment of the transport company) reflect information which might be needed to determine the place of supply of buy-on-board transactions.

Figure 7 – Supplies on board ships, aircraft, trains or coaches: Multiple transport sections – Transport company established in EU Member State 1 (no outsourcing)



752 In the table below, we have **indicated** the VAT treatment for the supplies on board means of transport during the transport illustrated in Figure 7 according to the current provisions of the VAT Directive compared to the VAT treatment under the place of supply where the transport company is established.

Table 42 – Supplies of goods and/or services on board ships, aircraft, trains or coaches: Current VAT treatment vs. VAT treatment under the place of supply where the transport company is established

Transport section	Establishment transport company	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	VAT treatment under policy option
			Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Place of Supply
Policy option: Change VAT PoS rule to place of establishment of tranport company												
Intra-EU (EU1 - EU2)	EU1	EU2	x	x	x		x	x	x		EU1	EU1
Intra-EU (EU1 - EU2)	EU1	EU2	x	x	x					x	EU2	EU1
Intra-EU (EU1 - EU2)	EU1	EU2				x	x	x	x	x	EU2	EU1

753 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise goods and/or services physically supplied by a **third party** (established in EU Member State 2) on board **ships, aircraft, trains or on coaches in EU Member State 2** during the **non-EU – EU transport section** (i.e. from a non-EU country to EU Member State 2). The transport is organised by a transport company **established in a non-EU country**.

The “as is” (current situation) and “to be” (situation where the place of supply is the place of establishment of the transport company) reflect information which might be needed to determine the place of supply of buy-on-board transactions.

Figure 8 – Supplies on board ships, aircraft, trains or coaches: Multiple transport sections – Transport company established in a non-EU country (outsourcing)

	Member State 1	Member State 2	Non-EU	Member State 2	Member State 3
	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation	Stopover	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation
AS IS				Physical supply	
TO BE			Establishment transport company	Physical supply	

754 In the table below, we **compare** for the example the VAT treatment under the current provisions of the VAT Directive with the VAT treatment under the place of supply where the transport company is established.

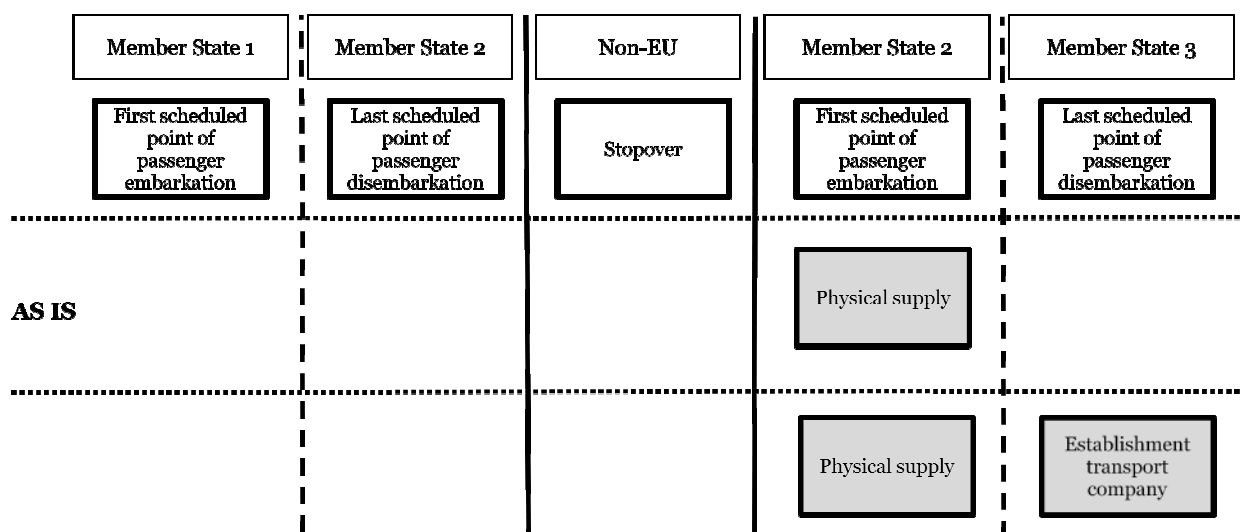
Table 43 – Supplies of goods and/or services on board ships, aircraft, trains or coaches: Current VAT treatment vs. VAT treatment under the place of supply where the transport company is established

Transport section	Establishment transport company	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	VAT treatment under policy option
			Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Place of Supply
Policy option: Change VAT PoS rule to place of establishment of tranport company												
Non-EU - EU (non-EU - EU2)	non-EU	EU2	x	x	x	x	x	x	x	x	EU2	non-EU

755 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise goods and/or services physically supplied on board **ships, aircraft, trains or on coaches** in EU **Member State 2** during the **intra-EU transport section** (i.e. from EU Member State 2 to EU Member State 3) by a transport company **established in EU Member State 3**.

The “as is” (current situation) and “to be” (situation where the place of supply is the place of establishment of the transport company) reflect information which might be needed to determine the place of supply of buy-on-board transactions.

Figure 9 – Supplies on board ships, aircraft, trains or coaches: Multiple transport sections – Transport company established in EU Member State 3 (no outsourcing)



756 In the table below, we **compare** for the example the VAT treatment under the current provisions of the VAT Directive with the VAT treatment under the place of supply where the transport company is established.

Table 44 – Supplies of goods and/or services on board ships, aircraft, trains or coaches: Current VAT treatment vs. VAT treatment under the place of supply where the transport company is established

Transport section	Establishment transport company	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	VAT treatment under policy option
			Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Place of Supply
Policy option: Change VAT PoS rule to place of establishment of tranport company												
Intra-EU (EU2 - EU3)	EU3	EU2	x	x	x		x	x	x		EU2	EU3
Intra-EU (EU2- EU3)	EU3	EU2	x	x	x					x	EU2	EU3
Intra-EU (EU2- EU3)	EU3	EU2				x	x	x	x	x	EU2	EU3

757 Unlike the current place-of-supply rules, the place of supply under this policy option is where the transport company is established **irrespective** of the means of transport used (ships, aircraft and trains vs. other means of transport e.g. coaches), the travel itinerary (transport section in the EU vs. transport section outside the EU), the nature of the on-board transaction (supply of goods vs. supply of restaurant and catering services vs. supply of other services) and the place of establishment of the supplier of the buy-on-board transactions if this would not be the transport company (outsourcing).

10.4.3. Impact assessment from a VAT technical perspective

10.4.3.1. Impact under the policy option on the place of taxation

758 In the table below, we have indicated for which transport section, transport mode and type of buy-on-board transaction the place of taxation **changes** under the policy option compared to the current place of supply.

Table 45 – VAT technical analysis: Overview of the changes under the policy option

PLACE OF ESTABLISHMENT OF THE TRANSPORT COMPANY					
Transport section	Transport mode	Type of on-board supply			
		Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services
Domestic	Ships, aircraft or trains	Yes	Yes	Yes	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes
Intra-EU	Ships, aircraft or trains	Yes	Yes	Yes	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes
EU - non-EU	Ships, aircraft or trains	Yes	Yes	Yes	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes
Non-EU - EU	Ships, aircraft or trains	Yes	Yes	Yes	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes

759 As shown in the table above, the place of supply will change for domestic, intra-EU and international supplies of goods and services on board ships, aircraft, trains and other means of transport (e.g. coaches) thus impacting those operators.

760 The below tables which are extracts from the matrix used for the stakeholder consultation, show in **detail** the nature of those changes per transport mode.

Table 46 – VAT technical analysis: Detail of changes to the place of supply under the policy option – Domestic transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS															
Cross- ref. (1)	Transaction typology								Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Establishment transport company	Country where supply physically takes place	Transport mode	Type of on-board supply				Place of Supply	VAT exemption	Input VAT deduction	Place of Supply	VAT exemption	Input VAT deduction	
					Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to place of establishment of transport company															
145-148	Domestic (EU1 - EU1)	EU27 (other than EU1)	EU1	Ship	x	x	x	x	EU1	Yes (optional) for goods for consumption on- board	Yes	EU27 (other than EU1)	No	Yes	Yes
149-152	Domestic (EU1 - EU1)	EU27 (other than EU1)	EU1	Aircraft	x	x	x	x	EU1	Yes (optional) for goods for consumption on- board	Yes	EU27 (other than EU1)	No	Yes	Yes
153-156	Domestic (EU1 - EU1)	EU27 (other than EU1)	EU1	Train	x	x	x	x	EU1	Yes (optional) for goods for consumption on- board	Yes	EU27 (other than EU1)	No	Yes	Yes
157-160	Domestic (EU1 - EU1)	EU27 (other than EU1)	EU1	Other (e.g. coach)	x	x	x	x	EU1	No	Yes	EU27 (other than EU1)	No	Yes	Yes
161-164	Domestic (EU1 - EU1)	non-EU	EU1	Ship	x	x	x	x	EU1	Yes (optional) for goods for consumption on- board	Yes	non-EU	No	Yes	Yes
165-168	Domestic (EU1 - EU1)	non-EU	EU1	Aircraft	x	x	x	x	EU1	Yes (optional) for goods for consumption on- board	Yes	non-EU	No	Yes	Yes
169-172	Domestic (EU1 - EU1)	non-EU	EU1	Train	x	x	x	x	EU1	Yes (optional) for goods for consumption on- board	Yes	non-EU	No	Yes	Yes
173-176	Domestic (EU1 - EU1)	non-EU	EU1	Other (e.g. coach)	x	x	x	x	EU1	No	Yes	non-EU	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – Domestic transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

Table 47 – VAT technical analysis: Detail of changes to the place of supply under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS															
Cross-ref. (1)	Transaction typology								Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Establishment transport company	Country where supply physically takes place	Transport mode	Type of on-board supply				Place of Supply	VAT exemption	Input VAT deduction	Place of Supply	VAT exemption	Input VAT deduction	
					Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to place of establishment of transport company															
164	Intra-EU (EU1 - EU2)	EU1	EU1/EU2	Ship				x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
168	Intra-EU (EU1 - EU2)	EU1	EU1/EU2	Aircraft				x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
172	Intra-EU (EU1 - EU2)	EU1	EU1/EU2	Train				x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
173-176	Intra-EU (EU1 - EU2)	EU1	EU1/EU2	Other (e.g. coach)	x	x	x	x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
177-179	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Ship	x	x	x		EU1	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
180	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Ship				x	EU1/EU2	No	Yes	EU27 (other than EU1)	No	Yes	Yes
181-183	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Aircraft	x	x	x		EU1	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
184	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Aircraft				x	EU1/EU2	No	Yes	EU27 (other than EU1)	No	Yes	Yes
185-187	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Train	x	x	x		EU1	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
188	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Train				x	EU1/EU2	No	Yes	EU27 (other than EU1)	No	Yes	Yes
189-192	Intra-EU (EU1 - EU2)	EU27 (other than EU1)	EU1/EU2	Other (e.g. coach)	x	x	x	x	EU1/EU2	No	Yes	EU27 (other than EU1)	No	Yes	Yes
193-195	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Ship	x	x	x		EU1	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
196	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Ship				x	EU1/EU2	No	Yes	non-EU	No	Yes	Yes
197-199	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Aircraft	x	x	x		EU1	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
200	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Aircraft				x	EU1/EU2	No	Yes	non-EU	No	Yes	Yes
201-203	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Train	x	x	x		EU1	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
204	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Train				x	EU1/EU2	No	Yes	non-EU	No	Yes	Yes
205-208	Intra-EU (EU1 - EU2)	non-EU	EU1/EU2	Other (e.g. coach)	x	x	x	x	EU1/EU2	No	Yes	non-EU	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy option' – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

Table 48 – VAT technical analysis: Detail of changes to the place of supply under the policy option – EU – non-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS															
Cross-ref. (1)	Transaction typology								Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Establishment transport company	Country where supply physically takes place	Transport mode	Type of on-board supply				Place of Supply	VAT exemption	Input VAT deduction	Place of Supply	VAT exemption	Input VAT deduction	
					Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to place of establishment of transport company															
161-164	EU1 - non-EU	EU1	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
165-168	EU1 - non-EU	EU1	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
169-172	EU1 - non-EU	EU1	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
173-176	EU1 - non-EU	EU1	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	EU1	No	Yes	Yes
177-180	EU1 - non-EU	EU27 (other than EU1)	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
181-184	EU1 - non-EU	EU27 (other than EU1)	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
185-188	EU1 - non-EU	EU27 (other than EU1)	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
189-192	EU1 - non-EU	EU27 (other than EU1)	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	EU27 (other than EU1)	No	Yes	Yes
193-196	EU1 - non-EU	non-EU	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
197-200	EU1 - non-EU	non-EU	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
201-204	EU1 - non-EU	non-EU	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
205-208	EU1 - non-EU	non-EU	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	non-EU	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – EU – non-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

Table 49 – VAT technical analysis: Detail of changes to the place of supply under the policy option – Non-EU – EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS															
Cross-ref. (1)	Transaction typology								Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Establishment transport company	Country where supply physically takes place	Transport mode	Type of on-board supply				Place of Supply	VAT exemption	Input VAT deduction	Place of Supply	VAT exemption	Input VAT deduction	
					Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to place of establishment of transport company															
161-164	non-EU - EU1	EU1	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
165-168	non-EU - EU1	EU1	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
169-172	non-EU - EU1	EU1	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
173-176	non-EU - EU1	EU1	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	EU1	No	Yes	Yes
177-180	non-EU - EU1	EU27 (other than EU1)	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
181-184	non-EU - EU1	EU27 (other than EU1)	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
185-188	non-EU - EU1	EU27 (other than EU1)	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU27 (other than EU1)	No	Yes	Yes
189-192	non-EU - EU1	EU27 (other than EU1)	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	EU27 (other than EU1)	No	Yes	Yes
193-196	non-EU - EU1	non-EU	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
197-200	non-EU - EU1	non-EU	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
201-204	non-EU - EU1	non-EU	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
205-208	non-EU - EU1	non-EU	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	non-EU	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – Non-EU – EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

- 761 The above tables show that the place of supply under this policy option will change if the country where the transport company is established (which is the place of supply under policy option) **differs** from the point of departure of the passenger transport operation or the country where the supply physically takes place (which are the current place-of-supply rules under the VAT Directive).

10.4.3.2. Qualitative assessment

10.4.3.2.1. Assessment of the place of supply where the transport company is established against the KPIs

- 762 For the qualitative assessment of this policy option, we made two assumptions:
- **First assumption:** the transport company is the supplier of the buy-on-board transactions. In this respect, we refer to the VAT technical assessment of the place of supply where the supplier of the goods or services is established (second policy option).
 - **Second assumption:** the transport company is not the supplier of the buy-on-board transactions.
- 763 Hereafter, we have assessed the place of supply where the transport company is established in the case where the transport company is not the supplier of the buy-on-board transactions (second assumption) against the 5 selected KPIs.

Simplicity

- 764 This policy option introduces a **uniform place-of-supply rule**. The rules are the same independent from the transport mode, travel destination and the nature of the on-board transaction.
- This will **reduce** the **VAT burden** on suppliers of dealing with different sets of rules in different countries. It will also **reduce** the **risks of errors** and **incorrect application of the VAT rules**.
- 765 Furthermore, the place of supply where the transport company is established can **easily be applied in practice** by suppliers (not being the transport company) providing goods and/or services on board means of transport. The supplier will not have to verify the physical location of the supply or the status of the customer (B2B taxable person or B2C private person) but only the location of the establishment of the transport company.
- 766 The place of supply where the transport company is established can be **verified** by suppliers via the **VIES database**. In this respect, it should be noted that information to check the validity of the associated name and address is not available for all EU Member States at the moment (currently, it only confirms whether or not a specific EU VAT number is valid).

Efficiency

- 767 It will be **easy** for those suppliers (not being the transport company) to **set prices** for buy-on-board transactions as they will be able to determine in advance the place of supply and applicable taxation.
- Hence, it will be easy to list VAT-inclusive prices (B2C supplies).
- 768 It will be easy for suppliers to implement and maintain the applicable VAT rate in their business systems and price lists in order to be compliant if the supplier is established in the same country as the transport company.

- 769 Suppliers will be under an **obligation to register** for on-board supplies limited to the country where the transport company is established. This will lead to a **reduced cost of compliance for businesses** and **programming and using cash registers** to record buy-on-board transactions will be easier as only the technical requirements, rules and rates of the country of establishment of the transport company will have to be complied with.
- 770 This will result in **higher voluntary VAT compliance** by suppliers and a **lower cost of VAT collection** for governments.
- 771 The downside of this policy option is that suppliers need to be **correctly informed** of where the **transport company is established**.
- In this respect and in order for suppliers to charge the correct VAT, their IT systems will need to be set up to comply with the VAT obligations of the country where the transport company is established. This implies **additional IT requirements** for suppliers and costs if the supplier is not established in the same country as the transport company.
- 772 The place of supply where the transport company is established will also be **relatively easy** for tax authorities to **audit**.

Certainty

- 773 A **uniform binding interpretation** applies in all EU Member States of the term “establishment⁷⁴ of the transport company” further to the Council Implementing Regulation. This will allow suppliers to determine with certainty the correct place of supply under this policy option (limited need for litigation).
- It will overcome the issue identified by the stakeholders regarding the risk in some EU Member States of the means of transport being considered a fixed establishment of the supplier of certain services.
- 774 As it is assumed there are **clear definitions** (avoiding misinterpretation) of **terms related to buy-on-board transactions** (“supply of goods for consumption”, “supply of goods for take away”, “restaurant and catering services” and “other services”), it will no longer be difficult for suppliers to correctly classify these transactions and identify their applicable VAT rate owing to the supplies possibly being subject to different VAT rates in the country of taxation.
- 775 In order to have legal certainty, the supplier will need to include in its contractual arrangement/client acceptance procedure with the transport company that the latter will need to immediately bring to the attention of the supplier any changes relating to his place of establishment (additional point for suppliers to beware of).

⁷⁴ Article 10(2) of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

Non-distortionary

- 776 As a principle, buy-on-board transactions which are physically supplied or carried out **within the territories of the EU Member States**⁷⁵ are within the scope of EU VAT. Buy-on-board transactions which are physically supplied or carried out **outside the territories of the EU Member States** are **not** within the scope of EU VAT.

We assumed that buy-on-board transactions that are physically supplied or carried out on board vessels on the **high seas**⁷⁶ will **not be taxed** under the place-of-supply rule where the transport company is established unless such taxation does not conflict with the law of other countries.⁷⁷

The reason for this assumption is to **avoid risks of conflicts of jurisdiction with the tax systems of third countries**⁷⁸ and, hence, possible double taxation. For the maritime travel market, this risk is especially true due to the itinerant nature of vessels.

- 777 Supplies of which the place of taxation is in a **low-tax EU Member State are advantaged** compared to supplies of which the place of taxation is in a high-tax EU Member State. As a consequence, a market distortion exists between low-tax and high-tax EU Member States to the extent that the nature of the travel allows the consumer to effectively choose between paying tax in the low-tax or high-tax EU Member State. For example, a leisure (luxury) cruise where the consumer could choose between multiple EU Member States to start his holiday because we assume that there is a high elasticity of demand for this type of travel.
- 778 There will be **equal treatment** for buy-on-board transactions on board the different means of transport. There will be **no distortion of competition** for supplies on board different means of transport. All passenger transport operators in similar situations carrying out similar transactions are subject to similar levels of taxation.
- 779 There will be **no equal treatment between buy-on-board and buy-off-board** transactions as different place-of-supply rules would apply.

⁷⁵ Article 5 of VAT Directive 2006/112/EC of 28 November 2006: "The VAT Directive applies to the territories of the Member States as defined in Article 5, point (2) of the VAT Directive, i.e. the territory of each Member State of the European Union to which the Treaty establishing the European Union is applicable, in accordance with Article 299 of that Treaty, with the exception of any territory referred to in Article 6 of the VAT Directive".

⁷⁶ International waters, i.e. waters falling outside the sovereignty or jurisdiction of any State.

⁷⁷ Judgment of the ECJ of 15 September 2005, Antje Köhler v. Finanzamt Düsseldorf-Nord, Case C-58/04, para 25 that allows EU Member States to tax supplies on board vessels if such taxation does not conflict with the law of other countries.

⁷⁸ Judgment of the ECJ of 15 September 2005, Antje Köhler v. Finanzamt Düsseldorf-Nord, Case C-58/04, paras 24 and 26.

780 In order to evaluate this KPI from a VAT technical perspective, we analysed two possible scenarios.

- **First situation:** the transport company is established within the EU.

The place of supply where the transport company is established could, under the first situation, lead to **market distortions** as transport companies established in EU Member States with reduced VAT rates or in non-EU countries will have a taxation advantage. Consequently, there will be a **risk of relocation** of transport companies to EU Member States with reduced VAT rates (i.e. distortion of competition between EU transport companies) or to non-EU countries (i.e. distortion of competition of EU vs. non-EU transport companies).

For example, the **risk of relocation** is **high** where a company implements a centralised or regional business model for financial, economic and/or organisational reasons. A centralised business model could involve the establishment of a head office, running the business's central administration and carrying out the essential functions in the organisation, and establishing several branches in charge of operations in the "operational" countries. The head office could easily be established in a non-EU country because that country has a favourable corporate income tax regime. Under this policy option, a supplier could continue to carry out its operational activities in the EU Member States, while the place of taxation is shifted to a non-EU country. We assume indeed that the on-shore fixed establishment of the supplier should be disregarded under this policy option, as we have seen in the VAT technical sheet above.

The place of supply where the transport company is established can also lead to **multiple VAT registrations** for the supplier. This will depend on the place of establishment of the different transport companies the supplier has contractual relations with.

The place of supply where the transport company is established could lead to **possible double taxation** (because the EU Member State of establishment of the transport company taxes the goods or services supplied on board means of transport outside the EU).

- **Second situation:** the transport company is established outside the EU.

The place of supply where the transport company is established could lead to **possible non-taxation of consumption in the EU** (because the transport company is established in a non-EU country which does not tax the goods or services consumed on board means of transport within the EU).

Effectiveness and fairness

781 Whether the suppliers will be best placed under this policy option to understand and comply with the rules of each country of taxation will depend on their presence (if any) in the country of establishment of the different transport companies they have contractual relations with.

782 If the supplier is not established in the country of establishment of the transport company, this will lead to an additional VAT registration obligation and additional IT arrangements for the supplier in order for him to comply with the VAT-compliance requirements of the country where the transport company is established. In this case, it will be difficult for the supplier to understand and comply with the rules of each country of taxation.

10.4.3.2.2. Summary

783 In the table below, we score our assessment using a “+”, “o” or “-” for **each KPI**, whereby:

- “+” means that the place of supply where the transport company is established satisfies the related KPI;
- “o” means that the place of supply where the transport company is established is neutral with respect to the related KPI;
- “-” means that the place of supply where the transport company is established does not satisfy the related KPI.

Table 50 – VAT technical analysis: Assessment of the place of supply where the transport company is established against KPIs

KPIs	Assessment
SIMPLICITY	+
EFFICIENCY	o/+
CERTAINTY	+
NON-DISTORTIONARY	-
EFFECTIVENESS AND FAIRNESS	o

784 The above table shows that, under the place of supply where the transport company is established, **2 of the 5 selected KPIs are fully satisfied**. The main issues identified when applying the current place-of-supply rules without an optional VAT exemption (see chapter 6, section 6.5, above) will not all be solved under this policy option.

785 As, in our opinion, it is **not to be excluded** that the supplier will be established outside the country of establishment of the transport company, we have only given a **neutral/positive assessment to the KPI “efficiency” and neutral assessment to the KPI “effectiveness and fairness”**.

786 **Additional measures are needed** from a VAT technical perspective to avoid market distortions and, hence, possible relocation of transport companies as well as the possible double or non-taxation risk resulting from this policy option.

10.4.4. Impact assessment from an industry perspective

787 For this policy option, we received **feedback** from 6 stakeholders. More specifically, 5 from the maritime travel market and 1 from the railway travel market.

10.4.4.1. Ships (cruise and ferry)

788 For the maritime travel market, we received feedback from **5 stakeholders** (mostly umbrella-segment associations representing a number of members) of which:

- 4 (from the ferry industry, i.e. stakeholders 02 to 05) provided input by completing the matrix; and
- 1 (from the cruise industry, i.e. stakeholder 01) provided input in the form of a paper.

10.4.4.1.1. Qualitative input regarding changes under the policy option

A. Input received in the matrix: stakeholders 02 to 05 (maritime travel market – ferry industry)

789 In the tables below, we have **included** the specific scores given by stakeholders 02 to 05 (maritime travel market – ferry industry) to the lines mentioned in Table 46, Table 47, Table 48 and Table 49, above.

Table 51 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Domestic transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
145	x				0	0	0	-2	-2	Yes	Yes	Yes	Yes
147 148			x	x	0	0	0	0	0	Yes	Yes	Yes	Yes
161	x				0	0	0	-2	-2	Yes	N/A	N/A	N/A
163			x		0	0	0	0	0	Yes	N/A	N/A	N/A
164				x	1	1	1	0	0	Yes	N/A	N/A	N/A

Source: Appendix 10 (i.e. stakeholder 03: maritime travel market – ferry industry) – Domestic transport section
(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 10)

790 Stakeholder 03 (maritime travel market – ferry industry) considered that a transport company cannot operate a **domestic ferry service** without having a fixed establishment in the EU Member State(s) concerned⁷⁹. Therefore, the impact assessment made by stakeholder 03 assumes that the reference point of taxation⁸⁰ will be a **fixed establishment of the transport company** based in the EU Member State(s) concerned (and not the place of establishment of the transport company).

Such a fixed establishment could be used as a reference point to determine the place of supply. We note however that the above needs to be further investigated from a legal point of view (which is not in scope of the Study).

791 Stakeholder 05 (maritime travel market – ferry industry) indicated a **high risk of non-taxation** for domestic supplies if the transport company is established outside the EU.

⁷⁹ See judgment on the ECJ of 20 February 1997, Case Commissioners of Customs and Excise v. DFDS A/S, C-260/95.

⁸⁰ Article 45 of VAT Directive 2006/112/EC of 28 November 2006.

Table 52 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Clarity	Non-discrimination	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 02 (maritime travel market - ferry industry) - Appendix 9													
164				x	0	-1	-1	-2	-2				
177 179	x		x		0	-1	-1	-2	-2				
180				x	0	-1	-1	-2	-2				
193 195	x		x		0	-1	-1	-2	-2				
196				x	0	-1	-1	-2	-2				
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
164				x	0	0	0	-2	-2	Yes	N/A	N/A	N/A
177 179	x		x		0	0	0	-2	-2	Yes	N/A	N/A	N/A
180				x	0	0	0	-2	-2	Yes	N/A	N/A	N/A
193 195	x		x		0	0	0	-2	-2	Yes	N/A	N/A	N/A
196				x	0	0	0	-2	-2	Yes	N/A	N/A	N/A
Stakeholder 04 (maritime travel market - ferry industry) - Appendix 11													
164				x	0	-1	-1	-2	-2				
177 179	x		x		0	-1	-1	-2	-2				
180				x	0	-1	-1	-2	-2				
193 195	x		x		0	-1	-1	-2	-2				
196				x	0	-1	-1	-2	-2				
Stakeholder 05 (maritime travel market - ferry industry) - Appendix 12													
164				x	2	2	0	-2	-2				
177	x				2	2	0	-1	-2				
178 179		x	x		2	2	0	-2	-2				
180				x	2	2	0	-2	-2				
193	x				2	2	0	-1	-2				
194 195		x	x		2	2	0	-2	-2				
196				x	2	2	0	-2	-2				

Source: Appendices 9 to 12 (i.e. stakeholders 02 to 05: maritime travel market – ferry industry) – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendices 9 to 12)

- 792 Stakeholders 02, 04 and 05 (maritime travel market – ferry industry) indicated that a number of EU ferry companies will be disadvantaged under this policy option (i.e. **distortion of competition** among EU, and as between EU and non-EU, ferry companies) unless they **relocate** to EU Member States with reduced VAT rates or to non-EU countries.
- 793 Stakeholder 04 (maritime travel market – ferry industry) also questioned how this policy option will be applied to vending machines that do not belong to the ferry operator.
- 794 Stakeholder 03 (maritime travel market – ferry industry) considered that a transport company cannot operate an **intra-EU ferry service** without having a fixed establishment in the EU Member State(s) concerned⁸¹. Therefore, the impact assessment made by stakeholder 03 assumes that the reference point of taxation⁸² will be a **fixed establishment of the transport company** based in the EU Member State(s) concerned (and not the place of establishment of the transport company).
- 795 The overall conclusion of stakeholder 05 (maritime travel market – ferry industry) was that this policy option cannot **be realised either fiscally or politically** without the introduction of a correction mechanism to avoid distortion of competition and non-taxation of consumption in the EU if the transport company is established outside the EU.

⁸¹ See judgment on the ECJ of 20 February 1997, Case Commissioners of Customs and Excise v. DFDS A/S, C-260/95.

⁸² Article 45 of VAT Directive 2006/112/EC of 28 November 2006.

Table 53 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – EU – non-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 05 (maritime travel market - ferry industry) - Appendix 12													
161-164	x	x	x	x	2	2	2	0	2				
177-180	x	x	x	x	2	2	2	0	2				
193-196	x	x	x	x	2	2	2	0	2				

Source: Appendix 12 (i.e. stakeholder 05: maritime travel market – ferry industry) – EU – non-EU transport section
(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 12)

796 Stakeholder 05 (maritime travel market – ferry industry) stated that there is no authority in civil law to levy taxes as soon as a vessel is outside EU territorial waters. The **sale of goods** will actually be **closed** as long as the vessel is in **EU territorial waters** (due to the prices, customers will not want to make any purchases until the vessel leaves EU territorial waters).

Table 54 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Non-EU – EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortory	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 05 (maritime travel market) - Appendix 12													
161-164	x	x	x	x	2	2	2	0	2				
177-180	x	x	x	x	2	2	2	0	2				
193-196	x	x	x	x	2	2	2	0	2				

Source: Appendix 12 (i.e. stakeholder 05: maritime travel market – ferry industry) – Non-EU – EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 12)

- 797 Stakeholder 05 (maritime travel market – ferry industry) stated that there is no authority in civil law to levy taxes as soon as a vessel is outside EU territorial waters. The **sale of goods** will actually be **closed** as long as the vessel is in **EU territorial waters** (due to the prices, customers will not want to make any purchases until the vessel leaves EU territorial waters).

B. Input received by means of a paper: stakeholder 01 (maritime travel market – cruise industry)

- 798 Stakeholder 01 (maritime travel market – cruise industry; Appendix 8) provided a position paper with specific thoughts on the policy options. Stakeholder 01 also provided two other written documents (Appendices to the position paper): one with an in-depth analysis of the policy options and one with comments in relation to the use of KPIs.

Efficiency

- 799 As this policy option will only require VAT registration in the country of establishment of the transport company, stakeholder 01 (maritime travel market – cruise industry) indicated that this will result in **lower compliance costs** as well as **fewer administrative burdens** (associated with programming cash registers).

Non-distortionary

- 800 In order to **avoid taxation of consumption outside the EU**, stakeholder 01 (maritime travel market – cruise industry) indicated that supplies on the high seas and in non-EU countries will have to be treated as non-taxable.
- 801 Stakeholder 01 (maritime travel market – cruise industry) also indicated the potential for **distortion of competition** between EU transport companies and EU vs. non-EU transport companies under this policy option and the need for mitigating measures.

Effectiveness and fairness

- 802 Stakeholder 01 (maritime travel market – cruise industry) indicated that **tourist-dependent EU Member States** such as Greece provide infrastructure for tourists but will not get significant VAT revenues under this (**unfair**) policy option.⁸³

⁸³ In this respect, we refer to Figure 9 ‘Turnover of the maritime passenger transport industry in 2008, millions of euro’ and Figure 10 ‘Turnover of the maritime passenger transport industry as a percentage of GDP, 2008’ in Part I of this Report.

10.4.4.1.2. Other qualitative feedback

- 803 Stakeholder 01 (maritime travel market – cruise industry) indicated that it is **not consistent** with the **system of EU VAT** to make the place of supply of the company supplying goods and/or services on board means of transport the place where the transport company is established. Under the principles of EU VAT, mixing basic parameters of two different and independent companies to identify the place of supply cannot be justified.
- 804 In order to avoid artificial structures or the international shipping business not fitting in with the establishment rule, stakeholder 01 (maritime travel market – cruise industry) indicated that the place-of-supply rule under this policy option must **include** the **notion of ‘fixed establishment’** from where the on-board supply is effected on-shore.
- 805 Stakeholder 01 (maritime travel market – cruise industry) stated that **customs duties, excise taxes and VAT** are so interrelated that coordination is necessary in their application and administration. Stakeholder 01 indicated that their **application** under this policy option will be **inconsistent**.
- 806 Stakeholder 05 (maritime travel market – ferry industry) also indicated that countries will **miss the direct taxation of income** originating from sales if businesses relocated to EU Member States with reduced VAT rates or to non-EU countries.

10.4.4.2. Aircraft

- 807 For the air travel market, we did not receive any feedback from stakeholders with respect to this policy option.

10.4.4.3. Trains

808 For the railway travel market, we received feedback from **1 stakeholder** (i.e. stakeholder 10), who provided input by completing the matrix.

10.4.4.3.1. Qualitative input regarding changes under the policy option

809 In the table below, we have **included** the specific scores given by stakeholder 10 (railway travel market) to the lines mentioned in Table 47, above.

A. Input by completing the matrix: stakeholder 10 (railway travel market)

Table 55 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 10 (railway travel market) - Appendix 17													
172				x	1	-1	-1	-2	-2				
185 187	x		x		1	-1	-1	-2	-2				
188				x	1	-1	-1	-2	-2				
201 203	x		x		1	-1	-1	-2	-2				
204				x	1	-1	-1	-2	-2				

Source: Appendix 17 (i.e. stakeholder 10: railway travel market) – Intra EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 17)

810 Stakeholder 10 (railway travel market) stated that most international railway connections are operated under an **international consortium of transport operators**. This means that a train has multiple subsequent transport operators (e.g. for a Thalys train from Paris to Brussels, the transport services will be performed by French (SNCF) and Belgian (SNCB/NMBS) train operators).

- 811 Therefore, stakeholder 10 (railway travel market) indicated that this policy option will have the same **complexities and difficulties** as the place of supply where the actual consumption takes place in the EU (first policy option). According to stakeholder 10, this policy option will require a clear definition of the **notion of “transport company”**, i.e. which entity provides the passenger transport.
- 812 In this respect, we remark that this is **not an issue as the customer can only contract with one party** (i.e. single reference point). In this case either with the international consortium of transport operators or with one single transport operator.

10.4.4.4. Other (e.g. coaches)

- 813 For the long-distance bus & coach travel market, we did not receive any feedback from stakeholders with respect to this policy option.

10.4.5. Overall impact assessment

10.4.5.1. Changes to the place of taxation

- 814 The overview of changes under the policy option (see Table 45) and the drilldown of the lines showing a change under the policy option in the matrix (see Table 46, Table 47, Table 48 and Table 49, above) show that this policy option will **impact**:
- domestic, intra-EU and international supplies of goods and services on board ships, aircraft, trains and other means of transport (e.g. coaches) thus impacting those operators;
 - where the supplier of the passenger transport services is established **differs** from the point of departure of the passenger transport operation or the country where the supply physically takes place.
- 815 This change will have a **significant impact** as the stakeholders that provided input on this policy option (i.e. in the maritime and railway travel market) indicated that they are active in supplying on-board goods and/or services on intra-Community and/or international passenger routes.

10.4.5.2. Assessment of the change under the policy option from a VAT technical perspective

816 In the table below, we have **compared** the assessment of the current place-of-supply rules without an optional VAT exemption (see chapter 6 above) with the assessment of the place-of-supply rule under the policy option (place of establishment of the transport company).

Table 56 – Comparison of VAT technical assessment: Current place-of-supply rules without an optional VAT exemption with the place of establishment of the transport company

KPIs	Current place-of-supply rules without an optional VAT exemption See Table 6	Place of establishment of the transport company See Table 50
SIMPLICITY	-	+
EFFICIENCY	-	o/+
CERTAINTY	-	+
NON-DISTORTIONARY	-	-
EFFECTIVENESS AND FAIRNESS	-	o

817 The above table shows that, under the place of supply where the transport company is established, **2 of the 5 selected KPIs are satisfied**. Hence, the key results for both passenger transport operators and the tax authorities will not all be achieved under this policy option.

818 This means that the **main issues** related to the current place-of-supply rules without an optional VAT exemption will only be **partly solved** when implementing the place of supply where the transport company is established:

- the issue with respect to identification of the place of taxation is solved as this policy option introduces a place-of-supply rule that will be easy to apply in practice. However, suppliers will need to make the necessary IT arrangements to comply with the VAT-compliance requirements of the country where the transport company is established if the supplier is not established in the country of establishment of the transport company;
- the issue with respect to the level of taxation (multiple VAT rates) is solved under this policy option in case the transport company is the supplier of the buy-on-board transactions. Whether this issue is solved in case the transport company is not the supplier of the buy-on-board transactions will depend on the place of establishment of the different transport companies the supplier has contractual relations with;

- the issue with respect to the compliance requirements is mitigated under this policy option as the obligation to register for supplies on board will be limited to the country where the transport company is established which, in its turn, will result in a reduced cost of compliance for businesses.

819 Like for the place of supply where the supplier of the goods or services is established, the main issue with respect to this policy option is the fact that it will lead to market distortions between EU transport companies and EU vs. non-EU transport companies with a risk of relocation and possible double or non-taxation.

In other words: with respect to the “**non-distortionary**” **KPI**, this policy option has a **negative impact** compared to the current place-of-supply rules without an optional VAT exemption.

10.4.5.3. Assessment of the change under the policy option from an industry perspective

820 Based on the input from stakeholders on the lines of the matrix that will change under the place of supply where the transport company is established, we have made a **total of the completed transaction lines**.

For these completed transaction lines, the below table shows the **total per weighting point** given by the stakeholders to each KPI.

We have shaded the KPIs in the below table of the transport sectors which did not provide input by completing the stakeholders' matrix.

Table 57 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the transport company is established – Domestic transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE TRANSPORT COMPANY IS ESTABLISHED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	6	-	-	5	1	-	-	-	5	1	-	-	-	5	1	-	2	-	4	-	-	2	-	4	-	-
Air travel market																										
Railway travel market																										
Long -distance bus & coach travel market																										

(1) Source: Table 51 (maritime travel market)

(2) Total number of completed transaction lines

821 The above table shows that the stakeholders from the maritime travel market have mostly given **neutral** weighting points to each KPI.

Table 58 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the transport company is established – Intra-EU transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE TRANSPORT COMPANY IS ESTABLISHED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	30	-	-	21	-	9	-	14	7	-	9	-	14	16	-	-	28	2	-	-	-	30	-	-	-	-
Air travel market																										
Railway travel market	7	-	-	-	7	-	-	7	-	-	-	-	7	-	-	-	7	-	-	-	-	7	-	-	-	-
Long -distance bus & coach travel market																										

(1) Source: Table 52 (maritime travel market) and Table 55 (railway travel market)

(2) Total number of completed transaction lines

822 The above table shows that the stakeholders from the maritime travel market and railway travel market have mostly given **negative/neutral** weighting points to each KPI.

Table 59 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the transport company is established – EU – non-EU transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE TRANSPORT COMPANY IS ESTABLISHED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	12	-	-	-	-	12	-	-	-	-	12	-	-	-	-	12	-	-	12	-	-	-	-	-	12	
Air travel market																										
Railway travel market																										
Long -distance bus & coach travel market																										

(1) Source: Table 53 (maritime travel market)

(2) Total number of completed transaction lines

823 The above table shows that the stakeholders from the maritime travel market have mostly given **positive** weighting points to each KPI.

Table 60 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the transport company is established – Non-EU – EU transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE TRANSPORT COMPANY IS ESTABLISHED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	12	-	-	-	-	12	-	-	-	-	12	-	-	-	-	12	-	-	12	-	-	-	-	-	12	
Air travel market																										
Railway travel market																										
Long -distance bus & coach travel market																										

(1) Source: Table 54 (maritime travel market)

(2) Total number of completed transaction lines

824 The above table shows that the stakeholders from the maritime travel market have mostly given **positive** weighting points to each KPI.

825 Based on these overviews and the input given by the stakeholders by means of a paper, we will indicate whether the place of supply where the transport company is established satisfies (or not satisfies) the 5 selected KPIs from an industry perspective (see Table 61, below).

10.4.5.4. Comparison between the VAT technical and industry assessment of the policy option

826 In the table below, we have **compared** the assessment of the place of supply where the transport company is established from a VAT perspective (see Table 50, above) with the assessment from an industry perspective (based on Table 57, Table 58, Table 59 and Table 60, above and the input given by the stakeholders by means of a paper).

We have shaded the KPIs in the table for which we did not receive any feedback from the stakeholder(s).

Table 61 – Comparison of assessments: VAT technical with the industry assessment of the place of supply where the transport company is established

KPIs	VAT technical assessment	Industry assessment			
		Ships	Aircraft	Trains	Other
SIMPLICITY	+	o/+		+	
EFFICIENCY	o/+	o/+		-	
CERTAINTY	+	o		-	
NON-DISTORTIONARY	-	-/o		-	
EFFECTIVENESS AND FAIRNESS	o	-/+		-	

827 The **VAT technical assessment** shows that, compared to the place of supply where the supplier of the goods or services is established, the place of supply where the transport company is established will not fully satisfy the “efficiency” and “effectiveness and fairness” KPIs due to the dependence of suppliers of buy-on-board transactions on the place of establishment of the different transport companies they have contractual relations with.

In this respect, it is **quite strange** from a VAT perspective that the place of supply of a transaction will be dependent on the place of establishment of another party, the transport company under this policy option, who is not the supplier of the buy-on-board transactions.

828 The main **issue** with respect to the place of supply where the transport company is established relates to the “**non-distortionary**” KPI due to the market distortions and, hence, possible relocation of transport companies as well as the possible double or non-taxation risk.

The **industry assessment** of the place of supply where the transport company is established is **similar** to the industry assessment of the place of supply where the supplier of the goods or services is established.

- 829 The **most remarkable difference** between the industry assessment and the VAT technical assessment relates to the “**certainty**” and “**effectiveness and fairness**” KPIs.
- 830 The reason for the difference with respect to the “certainty” KPI is that, unlike the stakeholders, we assumed in our assessment from a VAT technical perspective that there are common EU definitions of the terms related to buy-on-board transactions. Those would be provided for either in the EU VAT Directive or in Council Implementing Regulation.
- 831 With respect to the difference for the “effectiveness and fairness” KPI, we note that the preamble to Directive 2008/8/EC indeed recites that for all supplies of services the place of taxation should, in principle, be the place where the actual consumption takes place. However, it also states that if the general rule for the place of supply of services were to be altered in this way, it would still be necessary to utilise certain exceptions to this general rule for both administrative and policy reasons. Therefore, where services are supplied to non-taxable persons, the general rule continues to be that the place of supply of services is the place where the supplier has established his business.

10.4.5.5. Conclusion

- 832 The place of supply where the transport company is established will introduce a change for **domestic, intra-EU and international supplies of goods and services on board ships, aircraft, trains and other means of transport (e.g. coaches)**, thus impacting those operators.
- 833 The assessment from a **VAT technical perspective** indicates that **2 of the 5 selected KPIs** under the place of supply where the transport company is established **are satisfied** and that the **main issues** related to the current place-of-supply rules without an optional VAT exemption will only be **partly solved** under this policy option:
- the issue with respect to identification of the place of taxation is solved as this policy option introduces a place-of-supply rule that will be easy to apply in practice. However, suppliers will need to make the necessary IT arrangements to comply with the VAT-compliance requirements of the country where the transport company is established if the supplier is not established in the country of establishment of the transport company;
 - the issue with respect to the level of taxation (multiple VAT rates) is solved under this policy option if the transport company is the supplier of the buy-on-board transactions. Whether this issue is solved where the transport company is not the supplier of the buy-on-board transactions will depend on the place of establishment of the different transport companies the supplier has contractual relations with;
 - the issue with respect to the compliance requirements is mitigated under this policy option as the obligation to register for supplies on board will be limited to the country where the transport company is established, which, in turn, will result in a reduced cost of compliance for businesses.
- 834 The main issue with respect to this policy option, however, is the fact that it will lead to **market distortions** among EU transport companies and between EU vs. non-EU transport companies with a **risk of relocation** and **possible double or non-taxation**.
- 835 The assessment from a VAT technical perspective is **not fully in line** with the assessment from an industry perspective. In this respect, we refer to section 10.4.5.4 in the second Phase of the Study.
- 836 One stakeholder in the maritime travel market stated that this place-of-supply rule will **not be realistic from an economic, fiscal and political point of view** due to the distortion of competition and possible double or non-taxation risk.
- 837 Consequently, **additional measures** are **needed** from a VAT technical and industry perspective to mitigate the weaknesses of this policy option (see chapter 8).
- 838 However, due to the additional complexity of linking the place of supply of the transaction to the establishment of the transport company, this policy option is in our opinion **less recommended** than the place of supply where the supplier of the goods or services is established.

10.5. *Assessment of policy option 4: Place of supply is point of departure of the transport operation for all transport sections*

10.5.1. *VAT technical sheet*

Taxable transactions in scope	<p>All buy-on-board transactions on ships, aircraft, trains or other means of transport (e.g. coaches), i.e.:</p> <ul style="list-style-type: none"> - Supply of goods for consumption on board - Supply of goods to take away (no consumption on board) - Supply of restaurant and catering services on board - Supply of other services on board (we assume B2C services qualifying as (ancillary to) cultural, artistic, sporting, scientific, educational, entertainment or similar activities)
Place of supply⁸⁴	<p>Country of the first scheduled point of passenger embarkation⁸⁵ (each transport leg considered separately).</p> <p>The first point of departure of the passenger transport operation is determined by the journey of the means of transport and not by the journey completed by each of the passengers.⁸⁶</p> <p>In the air travel market for example, a flight number identifies a particular passenger transport operation (e.g. transport service from Brussels, point of departure, to London, point of arrival).</p>
Exemption	No
Chargeable event	Time when the goods are supplied or the service is completed ⁸⁷
Rate	VAT rate of EU Member State where the point of departure of the transport operation is situated
Person liable	Supplier of the buy-on-board transactions

⁸⁴ We assume that there will be **common EU definitions** for the terms related to both the place-of-supply rule and the buy-on-board transactions. We did not consider the budgetary impact of a potential shift of VAT revenue from one EU Member State to another as this is not in scope of this Study.

⁸⁵ Cf. articles 37(2) and 57(2) of VAT Directive 2006/112/EC of 28 November 2006.

⁸⁶ Cf. article 35 of Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011.

⁸⁷ Article 63 of VAT Directive 2006/112/EC of 28 November 2006.

10.5.2. Illustrative examples

839 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise goods and/or services physically supplied on board **ships, aircraft, trains or on coaches** in EU **Member State 2** during the **intra-EU transport section** (i.e. from EU Member State 1 to EU Member State 2) with **EU Member State 1 as point of departure** of the transport operation.

The “as is” (current situation) and “to be” (situation where the place of supply is the point of departure of the transport operation) reflect information which might be needed to determine the place of supply of buy-on-board transactions.

Figure 10 – Supplies on board ships, aircraft, trains or coaches: Multiple transport sections – Point of departure of the transport operation in EU Member State 1

	Member State 1	Member State 2	Non-EU	Member State 2	Member State 3
	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation	Stopover	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation
AS IS		Physical supply			
TO BE	Point of departure	Physical supply			

840 In the table below, we have **indicated** the VAT treatment for the supplies on board means of transport during the transport illustrated in Figure 10 according to the current provisions of the VAT Directive compared to the VAT treatment under the place of supply where the point of departure of the transport operation is situated.

Table 62 – Supplies of goods and/or services on board ships, aircraft, trains or coaches: Current VAT treatment vs. VAT treatment under the place of supply where the point of departure of the transport operation is situated

Transport section	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	VAT treatment under policy option
		Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Place of Supply
Policy option: Change VAT PoS rule to point of departure transport operation (all transport sections)											
Intra-EU (EU1 - EU2)	EU2	x	x	x		x	x	x		EU1	EU1
Intra-EU (EU1 - EU2)	EU2	x	x	x					x	EU2	EU1
Intra-EU (EU1 - EU2)	EU2				x	x	x	x	x	EU2	EU1

841 In the figure below we re-use the example of Table 4 of Part I of this Report. We visualise goods and/or services physically supplied on board **ships, aircraft, trains or on coaches** in EU **Member State 2** during the **non-EU – EU transport section** (i.e. from a non-EU country to EU Member State 2) with a **non-EU country as point of departure** of the transport operation.

The “as is” (current situation) and “to be” (situation where the place of supply is the point of departure of the transport operation) reflect information which might be needed to determine the place of supply of buy-on-board transactions.

Figure 11 – Supplies on board ships, aircraft, trains or coaches: Multiple transport sections – Point of departure of the transport operation in a non-EU country

	Member State 1	Member State 2	Non-EU	Member State 2	Member State 3
	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation	Stopover	First scheduled point of passenger embarkation	Last scheduled point of passenger disembarkation
AS IS				Physical supply	
TO BE			Point of departure	Physical supply	

842 In the table below, we **compare** for the example the VAT treatment under the current provisions of the VAT Directive with the VAT treatment under the place of supply where the point of departure of the transport operation is situated.

Table 63 – Supplies of goods and/or services on board ships, aircraft, trains or coaches: Current VAT treatment vs. VAT treatment under the place of supply where the point of departure of the transport operation is situated

Transport section	Country where supply physically takes place	Transport mode				Type of on-board supply				Current VAT treatment	VAT treatment under policy option
		Ship	Aircraft	Train	Other (e.g. coach)	Goods for consumption on-board	Goods for take away	Restaurant and catering services	Other services	Place of Supply	Place of Supply
Policy option: Change VAT PoS rule to point of departure transport operation (all transport sections)											
Non-EU - EU (non-EU - EU2)	EU2	x	x	x	x	x	x	x	x	EU2	non-EU

843 Unlike the current place-of-supply rules, the place of supply under this policy option is where the point of departure of the transport operation is situated **irrespective** of the means of transport used (ships, aircraft and trains vs. other means of transport e.g. coaches), the travel itinerary (transport section in the EU vs. transport section outside the EU), the nature of the on-board transactions (supply of goods vs. supply of restaurant and catering services vs. supply of other services) and whether the supplier of the goods and/or services on board is the transport company or a third party.

10.5.3. Impact assessment from a VAT technical perspective

10.5.3.1. Impact under the policy option on the place of taxation

844 In the table below, we have indicated for which transport section, transport mode and type of buy-on-board transaction the place of taxation **changes** under the policy option compared to the current place of supply.

Table 64 – VAT technical analysis: Overview of the changes under the policy option

POINT OF DEPARTURE OF THE TRANSPORT OPERATION FOR ALL TRANSPORT SECTIONS					
Transport section	Transport mode	Type of on-board supply			
		Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services
Domestic	Ships, aircraft or trains	No	No	No	No
	Other (e.g. coaches)	No	No	No	No
Intra-EU	Ships, aircraft or trains	No	No	No	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes
EU - non-EU	Ships, aircraft or trains	Yes	Yes	Yes	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes
Non-EU - EU	Ships, aircraft or trains	Yes	Yes	Yes	Yes
	Other (e.g. coaches)	Yes	Yes	Yes	Yes

845 As shown in the table above, the place of supply will change for intra-EU supplies of other services on board ships, aircraft and trains as well as for intra-EU supplies of goods and services on board other means of transport (e.g. coaches) thus impacting those operators.

846 The place of supply will also change for international supplies of goods and services on board ships, aircraft, trains and other means of transport (e.g. coaches) thus impacting those operators.

847 The below tables which are extracts from the matrix used for the stakeholder consultation, show in **detail** the nature of those changes per transport mode.

Table 65 – VAT technical analysis: Detail of changes to the place of supply under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS														
Cross-ref. (1)	Transaction typology							Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Country where supply physically takes place	Transport mode	Type of on-board supply				Place of Supply	VAT exemption	Input VAT deduction	Place of Supply	VAT exemption	Input VAT deduction	
				Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to point of departure of transport operation (all transport sections)														
260	Intra-EU (EU1 - EU2)	EU1/EU2	Ship				x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
264	Intra-EU (EU1 - EU2)	EU1/EU2	Aircraft				x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
268	Intra-EU (EU1 - EU2)	EU1/EU2	Train				x	EU1/EU2	No	Yes	EU1	No	Yes	Yes
269-272	Intra-EU (EU1 - EU2)	EU1/EU2	Other (e.g. coach)	x	x	x	x	EU1/EU2	No	Yes	EU1	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

Table 66 – VAT technical analysis: Detail of changes to the place of supply under the policy option – EU – non-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS														
Cross-ref. (1)	Transaction typology							Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Country where supply physically takes place	Transport mode	Type of on-board supply				VAT Place of Supply	VAT exemption	Input VAT deduction	VAT Place of Supply	VAT exemption	Input VAT deduction	
				Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to point of departure of transport operation (all transport sections)														
257-260	EU1 - non-EU	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
261-264	EU1 - non-EU	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
265-268	EU1 - non-EU	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	EU1	No	Yes	Yes
269-272	EU1 - non-EU	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	EU1	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – EU – non-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

Table 67 – VAT technical analysis: Detail of changes to the place of supply under the policy option – Non-EU – EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS														
Cross-ref. (1)	Transaction typology							Benchmark: current VAT regime ('as is')			Comparison: VAT regime under policy option ('to be')			Change under policy option?
	Transport section	Country where supply physically takes place	Transport mode	Type of on-board supply				VAT Place of Supply	VAT exemption	Input VAT deduction	VAT Place of Supply	VAT exemption	Input VAT deduction	
				Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services							
Policy option: Change VAT PoS rule to point of departure of transport operation (all transport sections)														
257-260	non-EU - EU1	EU27/non-EU	Ship	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
261-264	non-EU - EU1	EU27/non-EU	Aircraft	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
265-268	non-EU - EU1	EU27/non-EU	Train	x	x	x	x	EU27/non-EU	Yes (optional) for goods for consumption on-board	Yes	non-EU	No	Yes	Yes
269-272	non-EU - EU1	EU27/non-EU	Other (e.g. coach)	x	x	x	x	EU27/non-EU	No	Yes	non-EU	No	Yes	Yes

Source: Appendix 6 'Matrix regarding the policy options' – Non-EU – EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix (Appendix 6 'Matrix regarding the policy options')

- 848 The above tables show that the place of supply under this policy option will change if the country where the point of departure of the transport operation is situated (which is the place of supply under policy option) **differs** from the country where the supply physically takes place (which is the current place-of-supply rules under the VAT Directive).

10.5.3.2. Qualitative assessment

10.5.3.2.1. Assessment of the place of supply where the point of departure of the transport operation is situated against the KPIs

- 849 We have assessed the place of supply where the point of departure of the transport operation is situated against the 5 selected KPIs.

Simplicity

- 850 This policy option introduces a **uniform place-of-supply rule**. The rules are the same independent from the transport mode, the travel destination and the nature of the on-board transaction.

This will **reduce** the **VAT burden** on passenger transport operators of dealing with different sets of rules in different countries. It will also **reduce** the **risks of errors** and **incorrect application of the VAT rules**.

- 851 As the place-of-supply rule under this policy option is already a current place-of-supply rule,⁸⁸ passenger transport operators will already be **familiar** with the place of supply where the point of departure of the transport operation is situated.

- 852 Furthermore, the place of supply where the point of departure of the transport operation is situated can **easily be applied in practice** by passenger transport operators providing goods and/or services on board means of transport. The operator will not have to verify the physical location of the supply or the status of the customer (B2B taxable person or B2C private person).

Efficiency

- 853 It is difficult for passenger transport operators to set prices for buy-on-board transactions as the place of taxation can be in anyone of the 27 EU Member States and consequently multiple VAT rates have to be taken into account.

VAT inclusive prices have to be listed (B2C supplies) which is difficult in view of the large discrepancy between standard and reduced VAT rates within the 27 EU Member States.

- 854 Passenger transport operators will have an **obligation to register** in each EU Member State where a point of departure of the transport operation is situated. This will lead to a **high cost for businesses** to comply with the divergent compliance requirements (e.g. the obligation to issue invoices and cash receipts) in the EU Member States, **especially in programming and using cash registers** to record buy-on-board transactions as the different technical requirements, rules and rates of the different EU Member States where a point of departure of the transport operation is situated will have to be complied with.

Hence, it will be **difficult** for passenger transport operators to **implement and maintain all possible VAT rates in their business systems and price lists** in order to be compliant.

⁸⁸ Articles 37(1) and 57(1) of VAT Directive 2006/112/EC of 28 November 2006.

- 855 This will result in a **low voluntary VAT compliance** by passenger transport operators and a **high cost of VAT collection** for governments.
- 856 The place of supply where the point of departure of the transport operation is situated will be **relatively easy** for the tax authorities to **audit**.

Certainty

- 857 As we assumed a common **EU definition** of the term **“point of departure”**, the place-of-supply rule under this policy option will not be misinterpreted by passenger transport operators (limited need for litigation).
- 858 As also **clear definitions** (avoiding misinterpretation) of **terms related to buy-on-board transactions** (“supply of goods for consumption”, “supply of goods for take away”, “restaurant and catering services” and “other services”) are assumed to exist, it will no longer be difficult for suppliers to correctly classify these transactions and to define their applicable VAT rate in the country of taxation because of supplies might possibly be subject to different VAT rates in the 27 EU Member States.
- 859 Furthermore, the current **difficulties** regarding the interpretation **of the term “stopover” outside the EU will be eliminated** under this policy option.

Non-distortionary

- 860 As a principle, buy-on-board transactions which are physically supplied or carried out **within the territories of the EU Member States**⁸⁹ are within the scope of **EU VAT**. Buy-on-board transactions which are physically supplied or carried out **outside the territories of the EU Member States** are **not** within the scope of **EU VAT**.

We assumed that buy-on-board transactions which are physically supplied or carried out on the **high seas**⁹⁰ will **not be taxed** under the place of supply where the point of departure of the transport operation is situated unless such taxation does not conflict with the law of other countries.⁹¹

The reason for this assumption is to **avoid risks of conflicts of jurisdiction with the tax systems of third countries**⁹² and, hence, possible double taxation. For the maritime travel market, this risk is especially true due to the itinerant nature of vessels.

- 861 There will be **equal treatment** for buy-on-board transactions on board the different means of transport. There will be **no distortion of competition** for supplies on board different means of transport. All passenger transport operators in similar situations carrying out similar transactions are subject to similar levels of taxation.

⁸⁹ Article 5 of VAT Directive 2006/112/EC of 28 November 2006: “The VAT Directive applies to the territories of the Member States as defined in Article 5, point (2) of the VAT Directive, i.e. the territory of each Member State of the European Union to which the Treaty establishing the European Union is applicable, in accordance with Article 299 of that Treaty, with the exception of any territory referred to in Article 6 of the VAT Directive”.

⁹⁰ International waters, i.e. waters falling outside the sovereignty or jurisdiction of any State.

⁹¹ Judgment of the ECJ of 15 September 2005, Antje Köhler v. Finanzamt Düsseldorf-Nord, Case C-58/04, para 25 that allows EU Member States to tax supplies on board vessels if such taxation does not conflict with the law of other countries.

⁹² Judgment of the ECJ of 15 September 2005, Antje Köhler v. Finanzamt Düsseldorf-Nord, Case C-58/04, paras 24 and 26.

862 There will be **no equal treatment between buy-on-board and buy-off-board** transactions as different place-of-supply rules would apply.

863 Supplies of which the place of taxation is in a low-tax EU Member State of departure will be advantaged compared to supplies of which the place of taxation is in a high-tax EU Member State of departure.

Whether a market distortion exists between passenger routes departing from high-tax and low-tax EU Member States will depend on the nature of the transport.

If the purpose of the transport is only to get to a specific destination without delay (which is the especially true for aircraft, trains and coaches), the departure points will not compete. Only if the **leisure aspect during the transport is more important** (which is especially true on board cruises), the departure points will compete and a **market distortion** will exist.

864 The place of supply where the point of departure of the transport operation is situated could lead to **non-taxation of consumption in the EU** if the point of departure of the transport operation is situated in a non-EU country and the goods or services are supplied on board means of transport within the EU.

In other words, there will be **no taxation** of on-board supplies **in the EU** during a transport operation from a non-EU country, e.g. the USA (point of departure), to an EU Member State, e.g. France (even if supplied within the EU). There will, however, be **taxation** of on-board supplies **in the EU** during the return trip, which is to be regarded as a separate transport operation (even if supplied outside the EU).

865 For this reason and because of the market distortions between low-tax and high-tax EU Member States of departure, but only if these points compete, we have given a **neutral assessment to the “non-distortionary” KPI**.

Effectiveness and fairness

866 Whether the passenger transport operators will be best placed under this policy option to understand and comply with the rules of each country of taxation, will depend on their presence (if any) in the countries of departure of the transport operation.

10.5.3.2.2. Summary

867 In the table below, we score our assessment using a “+”, “o” or “-“ **for each KPI**, whereby:

- “+” means that the place of supply where the point of departure of the transport operation is situated satisfies the related KPI;
- “o” means that the place of supply where the point of departure of the transport operation is situated is neutral with respect to the related KPI;
- “-” means that the place of supply where the point of departure of the transport operation is situated does not satisfy the related KPI.

Table 68 – VAT technical analysis: Assessment of the place of supply where the point of departure of the transport operation is situated against KPIs

KPIs	Assessment
SIMPLICITY	+
EFFICIENCY	-/o
CERTAINTY	+
NON-DISTORTIONARY	o
EFFECTIVENESS AND FAIRNESS	o

868 The above table shows that, under the place of supply where the point of departure of the transport operation is situated, **2 of the 5 selected KPIs are satisfied**. The main issues identified when applying the current place-of-supply rules without an optional VAT exemption (see chapter 6, section 6.5, above) will not all be solved under this policy option.

869 As it is **unlikely** in our opinion that a passenger transport operator will be established in each EU Member State where a point of departure of his transport operations is situated, we have given a **negative/neutral assessment to the “efficiency” KPI and neutral assessment to the “effectiveness and fairness” KPI**.

870 **Additional measures are needed** from a VAT technical perspective in order to meet the “efficiency” and “effectiveness and fairness” KPIs.

10.5.4. *Impact assessment from an industry perspective*

871 For this policy option, we received **feedback** from 10 stakeholders. More specifically, 6 from the maritime travel market, 1 from the air travel market, 2 from the railway travel market and 1 from the long-distance bus & coach travel market.

10.5.4.1. **Ships** (cruise and ferry)

872 For the maritime travel market, we received feedback from **6 stakeholders** (mostly umbrella-segment associations representing a number of members) of which:

- 4 (from the ferry industry, i.e. stakeholders 02 to 05) provided input by completing the matrix; and
- 2 (one from the cruise industry, i.e. stakeholder 01, and one from the ferry industry, i.e. stakeholder 06) provided input in the form of a paper.

10.5.4.1.1. Qualitative input regarding changes under the policy option

A. Input received in the matrix: stakeholders 02 to 05 (maritime travel market – ferry industry)

873 In the tables below, we have **included** the specific scores given by stakeholders 02 to 05 (maritime travel market – ferry industry) to the lines mentioned in Table 65, Table 66 and Table 67, above.

Table 69 – Stakeholders input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 02 (maritime travel market - ferry industry) - Appendix 9													
260				x	-2	-2	-1	-1	-1				
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
260				x	-1	-1	-1	0	0	Yes	Yes	Yes	Yes
Stakeholder 04 (maritime travel market - ferry industry) - Appendix 11													
260				x	-2	-2	-1	-1	-1				
Stakeholder 05 (maritime travel market - ferry industry) - Appendix 12													
260				x	0	-1	0	-1	-1				

Source: Appendices 9 to 12 (i.e. stakeholders 02 to 05: maritime travel market –ferry industry) – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendices 9 to 12)

- 874 Stakeholders 02 and 04 (maritime travel market – ferry industry) indicated that, under this policy option it will be **commercially difficult** to manage how prices are displayed (due to the VAT rate differences between different places of departure).
- 875 Furthermore, stakeholders 02 and 04 (maritime travel market – ferry industry) indicated that this policy option will put **travelling in Europe** (journeys with an EU point of departure) at a greater **fiscal disadvantage** compared to travelling outside Europe (journeys with a non-EU point of departure).
- 876 Stakeholder 05 (maritime travel market – ferry industry) also stated that ferry companies will **drag sales** on intra-Community passenger routes **away** from **high-tax** to **low-tax countries** (prices will be relatively lower in low-tax countries). Furthermore, stakeholder 05 mentioned that the **administrative burden** under this policy option will be **heavy** for cargo vessels (as nowadays most of them do not have systems to handle the taxation that varies according to the sailing destination).

Table 70 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – EU – non-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortory	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 05 (maritime travel market – ferry industry) - Appendix 12													
257-260	x	x	x	x	0	0	0	-1	-1				

Source: Appendix 12 (i.e. stakeholder 05: maritime travel market – ferry industry) – EU – non-EU transport section
(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 12)

- 877 Stakeholder 05 (maritime travel market – ferry industry) indicated that the **administrative burden** will be **very heavy** as the country of departure and the country of arrival can and will apply different and differentiated VAT rates (due to the wording of the VAT rules and administrative practice).
- 878 Stakeholder 05 (maritime travel market – ferry industry) stated that there is no authority in civil law to levy taxes as soon as a vessel is outside EU territorial waters. The **sale of goods** will actually be **closed** as long as the vessel is in **EU territorial waters** (due to the prices, customers will not want to make any purchases until the vessel leaves EU territorial waters).

Table 71 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Non-EU – EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortory	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 05 (maritime travel market – ferry industry) - Appendix 12													
257-260	x	x	x	x	0	0	0	-1	-1				

Source: Appendix 12 (i.e. stakeholder 05: maritime travel market –ferry industry) – Non-EU – EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 12)

- 879 Stakeholder 05 (maritime travel market – ferry industry) indicated that the **administrative burden** will be **very heavy** as the country of departure and the country of arrival can and will apply different and differentiated VAT rates (due to the wording of the VAT rules and administrative practice).
- 880 Stakeholder 05 (maritime travel market – ferry industry) stated that there is no authority in civil law to levy taxes as soon as a vessel is outside EU territorial waters. The **sale of goods** will actually be **closed** as long as the vessel is in **EU territorial waters** (due to the prices, customers will not want to make any purchases until the vessel leaves EU territorial waters).

B. Input received by means of a paper: stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry)

- 881 Stakeholder 01 (maritime travel market – cruise industry; Appendix 8) provided a position paper with specific thoughts on the policy options. Stakeholder 01 also provided two other written documents (Appendices to the position paper): one with an in-depth analysis of the policy options and one with comments in relation to the use of KPIs.
- 882 Stakeholder 06 (maritime travel market – ferry industry; Appendix 13) provided input by means of a paper commenting on the policy options based on the KPIs.

Simplicity

- 883 As the point of departure rule is already a current place-of-supply rule⁹³, stakeholder 06 (maritime travel market – ferry industry) indicated that passenger transport operators are already **familiar** with it. Furthermore, this policy option will be **relatively easy to apply in practice** as accounting systems and processes will already be set up to implement and manage the point of departure rule.
- 884 In this respect, stakeholder 01 (maritime travel market – cruise industry) nonetheless said that current commercial reality makes it **difficult** to **identify the port of departure** for all itineraries. Even where identified, using the port of departure as the reference point for taxation creates distortion.

Efficiency

- 885 Stakeholder 06 (maritime travel market – ferry industry) said that, under the place of supply where the point of departure of the transport operation is situated, the **compliance requirements** will mainly be confined to countries with an operational base where there were **human resources** present to **facilitate** these requirements.
- 886 Stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry) also said that the **compliance costs** and **administrative burdens** under this policy option will **depend** on the number of **places of departure** an operator has.
- 887 In this respect, stakeholder 01 (maritime travel market – cruise industry) already mentioned that this policy option might require **several VAT registrations** and **compliance** with the **VAT rules** of several EU Member States and with the **local tax practice** of several jurisdictions (imposing a disproportionate administrative burden on operators and/or tax authorities).

Certainty

- 888 Stakeholder 01 (maritime travel market – cruise industry) indicated the **lack of clear definitions** of terms used to describe buy-on-board transactions (“supply of goods for consumption”, “supply of goods for take away”, “restaurant and catering services” and “other services”, especially for the notion of “**supply of goods for consumption**”).

⁹³ Articles 37(1) and 57(1) of VAT Directive 2006/112/EC of 28 November 2006.

- 889 Stakeholder 06 (maritime travel market – ferry industry) indicated that the **uniform place-of-supply rule** under this policy option is **clear** to operators and tax authorities, **immediately verifiable** and **not open to interpretation or argument** (assuming that there is a clear and consistent definition of the terms “point of departure” and “return leg”).
- 890 Furthermore, stakeholder 06 (maritime travel market – ferry industry) mentioned that operators will have **certainty** to determine the applicable taxation in advance and, hence, be able to **set prices with greater certainty**. Also, operators will have certainty of there being only **one EU Member State with taxing rights**.

Non-distortionary

- 891 In this respect, stakeholder 06 (maritime travel market – ferry industry) indicated that the **same VAT rules and rates** will operate **for each journey** irrespective of the nationality of the supplier of the goods and/or services on board (place-of-supply rule under the second policy option) or the transport company (place-of-supply rule under the third policy option). As a result, **all operators** (both EU and non-EU) will be **obliged to register** and account for VAT for journeys departing in the EU.
- 892 However, stakeholder 06 (maritime travel market – ferry industry) stated that, in theory, this policy option might encourage **greater use of EU Member States with reduced VAT rates or non-EU countries** as places of departure (leading to distortion⁹⁴). In practice, there are major commercial considerations and potential increases in operational costs that will need to be taken into account before any passenger routes were switched.
- 893 Stakeholder 01 (maritime travel market – cruise industry) also indicated a **negative impact on competition** under this policy option among vessels departing from EU ports (high-tax EU Member States vs. low-tax EU Member States) and vessels departing EU vs. non-EU ports (VAT charge vs. no VAT charge).
- 894 In order to avoid both non-taxation of consumption in the EU and taxation of consumption outside the EU, stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry) indicated that this policy option will require a simple and clearly defined **correction mechanism to achieve the right fiscal result**.
- 895 Furthermore, stakeholder 01 (maritime travel market – cruise industry) indicated the **potential conflict** under this policy option with the **taxing jurisdiction of third countries** for supplies made on non-EU-flagged ships during transit of the high seas between EU ports and the necessity for **mitigating measures** in this respect.

Effectiveness and fairness

- 896 According to stakeholder 06 (maritime travel market – ferry industry), operators will be **best placed** under this policy option to **understand and apply the VAT rules** of several EU Member States and **local tax practice** of several jurisdictions as it is likely that they will have a presence in the countries of departure.

⁹⁴ For example, a ship could depart from a country outside the EU, such as Gibraltar rather than Spain, and would therefore not be liable to charge VAT on goods and/or services purchased on board. Alternatively, a ship could depart from a Member State applying an exemption or a relatively low VAT-rate to take advantage of being able to charge less VAT.

10.5.4.1.2. Other qualitative feedback

- 897 Stakeholder 01 (maritime travel market – cruise industry) stated that **customs duties, excise taxes and VAT** are so interrelated that coordination is necessary in their application and administration. Stakeholder 01 indicated that their **application** under this policy option will be **inconsistent**.
- 898 Furthermore, stakeholder 01 (maritime travel market – cruise industry) mentioned that this policy option will be **unacceptable** as its impact will differ depending on the itinerary.
- 899 Stakeholder 06 (maritime travel market – ferry industry) indicated that it will be necessary to **ensure** that countries did **not operate force-of-attraction rules** where companies are required to register in countries where they have no establishment.

10.5.4.2. Aircraft

- 900 For the air travel market, we received feedback from **1 stakeholder** (i.e. stakeholder 07), who provided input in the form of two papers (Appendix 14):
- paper regarding the review of the rules on the supplies of services and goods for consumption on board ships, aircraft or trains in accordance with Article 37 of the VAT Directive; and
 - paper with the response to the European Commission's Green Paper on the future of VAT.

10.5.4.2.1. Qualitative input regarding changes under the policy option

A. Input received by means of a paper: stakeholder 07 (air travel market)

Efficiency

- 901 Stakeholder 07 (air travel market) indicated that the level of **VAT** will be much **easier to calculate** under this policy option.

Certainty

- 902 On the other hand, stakeholder 07 (air travel market) indicated the **need for consistency** across all EU Member States with respect to the terms used to describe buy-on-board transactions ("supply of goods for consumption", "supply of goods for take away", "restaurant and catering services" and "other services"), especially for the supply of food and the supply of restaurant and catering services on board.

Effectiveness and fairness

- 903 Stakeholder 07 (air travel market) stated that the country of departure formula will go **against** the widely accepted principle among OECD countries that a **tax should be proportionate to consumption**.
- 904 In this respect, stakeholder 07 (air travel market) stated that the country of departure formula will enshrine a new principle of taxation not currently adopted by the vast majority of OECD countries and will probably **necessitate the revision of many existing Conventions**, a very long and unpredictable process.

10.5.4.3. Trains

905 For the railway travel market, we received feedback from **2 stakeholders** (i.e. stakeholders 09 and 10), who provided input by completing the matrix.

10.5.4.3.1. Qualitative input regarding changes under the policy option

A. Input received in the matrix: stakeholders 09 to 10 (railway travel market)

906 In the table below, we have **included** the specific scores given by stakeholders 09 to 10 (railway travel market) to the lines mentioned in Table 65, above.

Table 72 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortory	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 09 (railway travel market) - Appendix 16													
268				x	2	1	1	0	-1		Yes		Yes
Stakeholder 10 (railway travel market) - Appendix 17													
268				x	-2	-1	-1	-2	-1				

Source: Appendices 16 to 17 (i.e. stakeholders 09 to 10: railway travel market) – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendices 16 and 17)

907 The overall conclusion of stakeholder 10 (railway travel market) was that this policy option seems **commercially negative** and will be **incomprehensible** to passengers (they might receive a cash receipt including VAT of a country that they did not travel through and might not be able to recover this VAT amount) as well as **disproportionate** to the volume and margins involved.

Table 73 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – EU – non-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 09 (railway travel market) - Appendix 16													
265-266	x	x			2	2	1		-1				Yes
267-268			x	x	2	2	2		-1				Yes

Source: Appendix 16 (i.e. stakeholder 09: railway travel market) – EU –non-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 16)

Table 74 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Non-EU – EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 09 (railway travel market) - Appendix 16													
265-266	x	x			2	2	1		-1				Yes
267-268			x	x	2	2	2		-1				Yes

Source: Appendix 16 (i.e. stakeholder 09: railway travel market) – Non-EU – EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 16)

10.5.4.4. Other (e.g. coaches)

- 908 For the long-distance bus & coach travel market, we received feedback from **1 stakeholder** (i.e. stakeholder 11), who provided input in the form of a paper.

10.5.4.4.1. Qualitative input regarding changes under the policy option

A. Input by means of a paper: stakeholder 11 (long-distance bus & coach travel market)

Simplicity

- 909 Stakeholder 11 (long-distance bus & coach travel market) stated that it does not supply goods on board. As this might change in the future, stakeholder 11 made **two suggestions**.
- 910 As the applicable VAT rate currently depends on the country where the supply physically takes place⁹⁵ for the long-distance bus and coach industry, operators have to take into account the multiple VAT rates in the 27 EU Member States when driving across different countries (i.e. impractical). In this respect, stakeholder 11 (long distance bus & coach travel market) suggested a **single VAT rate** for all goods supplied on board coaches.
- 911 If this is not possible, stakeholder 11 (long distance bus & coach travel market) suggested the place of supply should be where the point of departure of the transport operation is situated as an **alternative**. Under it, the VAT rate of the country where the coach journey starts will be applicable.

⁹⁵ Article 31 of VAT Directive 2006/112/EC of 28 November 2006.

10.5.5. Overall impact assessment

10.5.5.1. Changes to the place of taxation

- 912 The overview of changes under the policy option (see Table 64, above) and the drilldown of the lines showing a change under the policy option in the matrix (see Table 65, Table 66 and Table 67, above) show that this policy option will only **impact**:
- intra-EU supplies of other services on board ships, aircraft and trains as well as intra-EU supplies of goods and services on board other means of transport (e.g. coaches) thus impacting those operators;
 - international supplies of goods and services on board ships, aircraft, trains and other means of transport (e.g. coaches) thus impacting those operators;
 - where the point of departure of the transport operation is situated **differs** from the country where the supply physically takes place.
- 913 This change will have a **significant impact** as the stakeholders that provided input on this policy option (i.e. in the maritime, air and railway travel market) indicated that they are active in supplying on-board goods and/or services on intra-Community and/or international passenger routes.

10.5.5.2. Assessment of the change under the policy option from a VAT technical perspective

914 In the table below, we have **compared** the assessment of the current place-of-supply rules without an optional VAT exemption (see chapter 6) with the assessment of the place-of-supply rule under the policy option (point of departure of the transport operation for all transport sections).

Table 75 – Comparison of VAT technical assessments: Current place-of-supply rules without an optional VAT exemption with the point of departure of the transport operation for all transport sections

KPIs	Current place-of-supply rules without an optional VAT exemption	Point of departure of the transport operation for all transport sections
	See Table 6	See Table 68
SIMPLICITY	-	+
EFFICIENCY	-	-/0
CERTAINTY	-	+
NON-DISTORTIONARY	-	0
EFFECTIVENESS AND FAIRNESS	-	0

915 The above table shows that under the place of supply where the point of departure of the transport operation is situated **2 of the 5 selected KPIs are satisfied**. Hence, the key results for both passenger transport operators and the tax authorities will not all be achieved under this policy option.

916 This means that the main issues related to the current place-of-supply rules without an optional VAT exemption will only be **partly solved** when implementing the place of supply where the point of departure of the transport operation is situated:

- assuming there is a single EU definition of the term “point of departure”, the issue with respect to the identification of the place of taxation is solved as this policy option introduces a place-of-supply rule which will be easy to apply in practice;
- the issue with respect to the level of taxation (multiple VAT rates) is not solved under this policy option as it is likely that the VAT rates of the different countries of departure will have to be taken into account;

- the issue with respect to the compliance requirements is not solved under this policy option as it is likely that operators will be obliged to register in each country of departure of the passenger transport operation which, in its turn, will result in a high cost of compliance for businesses.

917 Besides the issues with respect to the level of taxation and the compliance requirements, this policy option could also lead to market distortions between low-tax and high-tax Member States of departure if these points compete.

10.5.5.3. Assessment of the change under the policy option from an industry perspective

918 Based on the input from stakeholders on the lines of the matrix that will change under the place of supply where the point of departure of the transport operation is situated, we have made a **total of the completed transaction lines**.

For these completed transaction lines, the below table shows the total per weighting point given by the stakeholders to each KPI.

We have shaded the KPIs in the below table of the transport sectors which did not provide input by completing the stakeholders' matrix.

Table 76 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the point of departure of the transport operation is situated – Intra-EU transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE POINT OF DEPARTURE OF THE TRANSPORT OPERATION IS SITUATED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	4	2	1	1	-	-	2	2	-	-	-	-	3	1	-	-	-	3	1	-	-	-	3	1	-	-
Air travel market																										
Railway travel market	2	1	-	-	-	1	-	1	-	1	-	-	1	-	1	-	1	-	1	-	-	-	2	-	-	-
Long -distance bus & coach travel market																										

(1) Source: Table 69 (maritime travel market) and Table 72 (railway travel market)

(2) Total number of completed transaction lines

919 The above table shows that the stakeholders from the maritime travel market and railway travel market have mostly given **negative/neutral** weighting points to each KPI.

Table 77 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the point of departure of the transport operation is situated – EU – non-EU transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE POINT OF DEPARTURE OF THE TRANSPORT OPERATION IS SITUATED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	4	-	-	4	-	-	-	-	4	-	-	-	-	4	-	-	-	4	-	-	-	-	4	-	-	-
Air travel market																										
Railway travel market	4	-	-	-	-	4	-	-	-	-	4	-	-	-	2	2						-	4	-	-	-
Long -distance bus & coach travel market																										

(1) Source: Table 70 (maritime travel market) and Table 73 (railway travel market)

(2) Total number of completed transaction lines

920 The above table shows that the stakeholders from the maritime travel market and railway travel market have mostly given **neutral/positive** weighting points to the “simplicity”, “efficiency” and “certainty” KPIs and **negative** weighting points to the “non-distortionary” and “effectiveness and fairness” KPIs.

Table 78 – Stakeholder input: Total per weighting point given to each KPI under the place of supply where the point of departure of the transport operation is situated – Non-EU – EU transport section

OVERVIEW OF THE WEIGHTING POINTS GIVEN TO EACH KPI WITH RESPECT TO THE LINES OF THE MATRIX THAT WILL CHANGE UNDER THE PLACE OF SUPPLY WHERE THE POINT OF DEPARTURE OF THE TRANSPORT OPERATION IS SITUATED (1)																										
Transport sector	Total lines (2)	Simplicity					Efficiency					Certainty					Non distortionary					Effectiveness and fairness				
		-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2	-2	-1	0	+1	+2
		Total					Total					Total					Total					Total				
Maritime travel market	4	-	-	4	-	-	-	-	4	-	-	-	-	4	-	-	-	4	-	-	-	-	4	-	-	-
Air travel market																										
Railway travel market	4	-	-	-	-	4	-	-	-	-	4	-	-	-	2	2						-	4	-	-	-
Long -distance bus & coach travel market																										

(1) Source: Table 71 (maritime travel market) and Table 74 (railway travel market)

(2) Total number of completed transaction lines

- 921 The above table shows that the stakeholders from the maritime travel market and railway travel market have mostly given **neutral/positive** weighting points to the “simplicity”, “efficiency” and “certainty” KPIs and **negative** weighting points to the “non-distortionary” and “effectiveness and fairness” KPIs.
- 922 Based on these overviews and the input given by the stakeholders by means of a paper, we will indicate whether the place of supply where the point of departure of the transport operation is situated satisfies (or not satisfies) the 5 selected KPIs from an industry perspective (see Table 79, below).

10.5.5.4. Comparison between the VAT technical and industry assessment of the policy option

- 923 In the table below, we have **compared** the assessment of the place of supply where the point of departure of the transport operation is situated from a VAT perspective (see Table 68, above) with the assessment from an industry perspective (based on Table 76, Table 77 and Table 78, above and the input given by stakeholders by means of a paper).

We have shaded the KPIs in the comparison table for which we did not receive any feedback from the stakeholder(s).

Table 79 – Comparison of assessments: VAT technical with the industry assessment of the place of supply where the point of departure of the transport operation is situated

KPIs	VAT technical assessment	Industry assessment			
		Ships	Aircraft	Trains	Other
SIMPLICITY	+	-/0		0/+	+
EFFICIENCY	-/0	-/0	+	0/+	
CERTAINTY	+	-/0	-	0/+	
NON-DISTORTIONARY	0	-		-/0	
EFFECTIVENESS AND FAIRNESS	0	-	-	-	

- 924 The **VAT technical assessment** shows that under the place of supply where the point of departure of the transport operation is situated the “simplicity” and “certainty” KPIs will be satisfied. The main issues identified with respect to this policy option relate to the “efficiency” KPI due to the likelihood of multiple VAT registrations and high cost of compliance for businesses and the “effectiveness and fairness” KPI as it is likely that passenger transport operators will not be best placed under this policy option to understand and comply with the rules of each country of taxation.

Furthermore, this policy option could also lead to market distortions between low-tax and high-tax Member States of departure if these points compete.

- 925 Unlike the VAT technical assessment, the industry assessment is **rather neutral** with respect to the “**simplicity**” KPI, *inter alia* due to the fact that the commercial reality will make it difficult to identify the point of departure.
- 926 The reason for the difference with respect to the “**certainty**” KPI is that, unlike the stakeholders, we assumed in our assessment from a VAT technical perspective that there are common EU definitions. Those would be provided for either in the EU VAT Directive or in Council Implementing Regulation. This would be the case for the term “point of departure” and for the terms related to buy-on-board transactions.
- 927 The industry assessment is **negative/neutral** with respect to the “**non-distortionary**” KPI, *inter alia* due to the negative impact on competition and the potential conflict under this policy option with the taxing jurisdiction of third countries in the maritime travel market.
- 928 However, one stakeholder in the maritime travel market indicated that this will be the only policy option – if the optional VAT exemption will be kept – that provides the **necessary levels of certainty, practical simplicity and efficiency** for which it is striving.

10.5.5.5. Conclusion

- 929 The place of supply will introduce a change for **intra-EU supplies of other services on board ships, aircraft and trains, intra-EU supplies of goods and services on board other means of transport (e.g. coaches) and international supplies of goods and services on board ships, aircraft, trains and other means of transport** thus impacting those operators.
- 930 The assessment from a **VAT technical perspective** indicates that **2 of the 5 selected KPIs** under the place of supply where the point of departure of the transport operation is situated **are satisfied** and that the **main issues** related to the current place-of-supply rules without an optional VAT exemption will only be **partly solved** under this policy option:
- assuming there is a single EU definition of the term “point of departure”, the issue with respect to identification of the place of taxation is solved as this policy option introduces a place-of-supply rule that it will be easy to apply in practice;
 - the issue with respect to the level of taxation (multiple VAT rates) is not solved under this policy option as it is likely that the VAT rates of the different countries of departure will have to be taken into account;
 - the issue with respect to the compliance requirements is not solved under this policy option as it is likely that operators will be obliged to register in each country of departure of the passenger transport operation which, in turn, will result in a high cost of compliance for businesses.
- 931 The main issue with respect to this policy option is that it will **not solve the issue with respect to the level of taxation (multiple VAT rates) and the compliance requirements**. Besides, this policy option could also lead to **market distortions** between low-tax and high-tax Member States of departure if these points compete.
- 932 The assessment from a VAT technical perspective is **not fully in line** with the assessment from an industry perspective. In this respect, we refer to section 10.5.5.4 in the second Phase of the Study.
- 933 The industry assessment indicated that this policy option will amongst others result in a **disproportionate administrative burden** and will require the introduction of **mitigating measures** to avoid possible double or non-taxation.
- 934 Consequently, **additional measures** are **needed** from a VAT technical and industry perspective to mitigate the aforementioned weaknesses of this policy option (see chapter 8).

11. Assessment of the need to apply mitigating measures

11.1. Introduction

- 935 The assessment of the current place-of-supply rules without an optional VAT exemption (see chapter 6) and the different changes in the place of supply (see chapter 10, section 10.2 to 10.5) show that **only some or none of the 5 selected KPIs is satisfied** from a VAT technical and/or industry perspective.
- 936 This means that the current place-of-supply rules without an optional VAT exemption and the different options to change the place of supply do not give satisfactory results with respect to the improvement of the current rules (which are not robust enough) for allowing taxation of the buy-on-board transactions.
- 937 Therefore, 4 mitigating measures (see chapter 8) will be tested from a VAT technical and industry perspective to determine whether the weaknesses identified with respect to the current place-of-supply rules without an optional VAT exemption and the 4 policy options to change the place of supply can be mitigated.

11.2. Current place-of-supply rules without an optional VAT exemption

938 This section does not include a qualitative assessment from an industry perspective. During the consultation, the stakeholders were not asked to assess the current place-of-supply rules without an optional VAT exemption on the basis of the 5 selected KPIs as such.

939 The stakeholders in the passenger transport industry were asked to assess the 4 policy options on its strengths and/or weaknesses using the KPIs selected. We did not provide the stakeholders with a separate sheet to assess the current place-of-supply rules without an optional VAT exemption using the 5 KPIs.

The stakeholders did however compare the current place-of-supply rules without an optional VAT exemption (“as is” situation) with the place-of-supply rules under the 4 proposed policy options (“to be” situation) by completing the stakeholder matrix.

Furthermore the stakeholders were asked to explicitly assess for each policy option a variant whereby the optional VAT exemption is kept which allowed us to compare that input with their assessments where no such exemption is provided for.

As a result, the stakeholders did also indirectly assess the current rules on the place of supply without an optional VAT exemption when assessing policy option 1 (place of supply is place of actual consumption in the EU) and policy option 4 (place of supply is point of departure of the transport operation for all transport sections), which accord with the current place-of-supply rules.

11.2.1. Assessment of the current place-of-supply rules without an optional VAT exemption against KPIs

940 In the table below, we provide an **overview** of the assessment of the current place-of-supply rules without an optional VAT exemption on the basis of the 5 selected KPIs.

Table 80 – VAT technical analysis: Assessment of the current place-of-supply rules without an optional VAT exemption against KPIs

KPIs	Assessment
SIMPLICITY	-
EFFICIENCY	-
CERTAINTY	-
NON-DISTORTIONARY	-
EFFECTIVENESS AND FAIRNESS	-

- 941 The above table shows that, under the current place-of-supply rules without an optional VAT exemption, **none of the 5 selected KPIs is satisfied** from a VAT technical perspective.
- 942 Consequently, **additional measures** are **needed** to mitigate the weaknesses of the current place-of-supply rules without an optional VAT exemption.

11.2.2. Assessment of the current place-of-supply rules without an optional VAT exemption further to the implementation of the mitigating measures

943 In the table below, we **indicated** which of the 4 additional measures are needed from a VAT technical perspective to mitigate the weaknesses of the current place-of-supply rules without an optional VAT exemption.

We also mentioned other suggested measures in key messages. In this respect, we ticked the box 'Other suggestions (if any)'.

Table 81 – VAT technical analysis: Assessment of the current place-of-supply rules without an optional VAT exemption further to the implementation of the mitigating measures

KPI's	Assessment against the KPI's	Suggested additional measures to mitigate the weaknesses of the current place of supply rules without an optional VAT exemption					Assessment further to the implementation of the mitigating measures
		Provide binding interpretation	Implement a one-stop-shop system	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism	Other suggestions (if any)	
SIMPLICITY	-						-
EFFICIENCY	-		x	x	x		+
CERTAINTY	-	x					+
NON-DISTORTIONARY	-				x		-
EFFECTIVENESS AND FAIRNESS	-			x			+

944 The “non-distortionary” KPI is **not solved** due to the **unequal treatment** for buy-on-board transactions between the different transport modes and as (in our opinion) the place of supply where the actual consumption takes place in the EU (i.e. current place-of-supply rule) could still lead to a situation whereby passenger transport operators will **only start supplying** goods and/or services on board **after leaving the EU**.

11.2.3. Conclusion

945 By introducing the foregoing **numerous stringent** mitigating measures with respect to the current place-of-supply rules without an optional VAT exemption, **3 of the 5 selected KPIs are satisfied** from a VAT perspective.

- 946 In order to resolve difficult application of the current place-of-supply rules (“simplicity” KPI) and the unequal treatment for buy-on-board transactions between the different transport modes (“non-distortionary” KPI), a **uniform place-of-supply rule** will need to be defined regardless of transport mode, travel itinerary and the nature of the buy-on-board transaction, i.e. proposed policy options.
- 947 Below, we indicate for each of the proposed policy options the additional measures needed to mitigate their weaknesses.

11.3. *Place of supply where the actual consumption takes place in the EU*

11.3.1. *Assessment of the change in the place of supply (actual consumption) against KPIs*

- 948 In the table below, we provide an **overview** of the assessment of the current place-of-supply rules without an optional VAT exemption and the change in the place of supply on the basis of the 5 selected KPIs.

Table 82 – Overview of assessments: Current place-of-supply rules without an optional VAT exemption and the place of supply where the actual consumption takes place in the EU against KPIs

KPIs	Current place-of-supply rules without an optional VAT exemption	Place of supply where the actual consumption takes place in the EU				
	VAT technical assessment	VAT technical assessment	Industry assessment			
			Ships	Aircraft	Trains	Other
SIMPLICITY	-	-	-		-	
EFFICIENCY	-	-	-	-	-	
CERTAINTY	-	+	-	-	-	
NON-DISTORTIONARY	-	0	-	+	-	
EFFECTIVENESS AND FAIRNESS	-	0	-		-	

- 949 The above table shows that, under the place of supply where actual consumption takes place in the EU, **only 1 of the 5 selected KPIs is satisfied** from a VAT technical perspective. However, this assessment is not fully in line with the assessment made by the stakeholders.
- 950 The **main issues** identified when applying the current place-of-supply rules without an optional VAT exemption will **remain** to exist under the proposed change in the place of supply and **new issues** will result from this change compared to the current situation (see chapter 10, section 10.2).
- 951 Therefore, **additional measures** are **needed** from a **VAT technical and industry perspective** to mitigate the weaknesses of the place of supply where actual consumption takes place in the EU.

11.3.2. Assessment of the change in the place of supply (actual consumption) further to the implementation of the mitigating measures

11.3.2.1. Assessment from a VAT technical perspective

- 952 In the table below, we **indicated** which of the 4 additional measures are needed to mitigate the weakness of the place of supply where the actual consumption takes place in the EU.

We also mentioned other suggested measures in key messages. In this respect, we ticked the box 'Other suggestions (if any)'.

Table 83 – VAT technical analysis: Assessment of the place-of-supply rule where the actual consumption takes place in the EU further to the implementation of the mitigating measures

KPI's	Assessment against the KPI's	Suggested additional measures to mitigate the weaknesses of the place of supply where the actual consumption takes place in the EU					Assessment further to the implementation of the mitigating measures
		Provide binding interpretation	Implement a one-stop-shop system	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism	Other suggestions (if any)	
SIMPLICITY	-						-
EFFICIENCY	-		x	x	x		+
CERTAINTY	+	x					+
NON-DISTORTIONARY	0				x		0
EFFECTIVENESS AND FAIRNESS	0			x			+

- 953 The "simplicity" KPI is **not solved** as it will be **difficult** for passenger transport operators to **identify** with certainty the **place where the supply physically takes place in practice**.

- 954 The “non-distortionary” KPI is **not fully solved** as (in our opinion) this policy option could still lead to a situation whereby passenger transport operators will **only start supplying** goods and/or services on board **after leaving the EU**.

11.3.2.2. Assessment from an industry perspective

11.3.2.2.1. Ships (cruise and ferry)

A. Input received in the matrix: stakeholder 03 (maritime travel market – ferry industry)

- 955 In the table below, we included the additional measures indicated by stakeholder 03 (maritime travel market – ferry industry) to the lines mentioned in Table 15, above.

Table 84 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross-ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
17 19	x		x		-2	-2	-2	0	0	Yes	Yes	Yes	Yes

Source: Appendix 10 (i.e. stakeholders 03: maritime travel market – ferry industry) – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 10)

B. Input received by means of a paper: stakeholder 01 (maritime travel market – cruise industry)

- 956 Using the 5 selected KPIs, we **mentioned** the input from stakeholder 01 (maritime travel market – cruise industry) with respect to the additional measures needed to mitigate the weaknesses of the place of supply where the actual consumption takes place in the EU.

Efficiency

- 957 In order to make compliance possible at reasonable cost, stakeholder 01 suggested implementing a **one-stop-shop system** combined with **harmonised VAT rates and application rules of the country of VAT registration**.

11.3.3. Conclusion

- 958 By introducing the mitigating measures as indicated in Table 83 with respect to the place of supply where actual consumption takes place in the EU, **3 of the 5 selected KPIs are satisfied** from a VAT perspective.
- 959 The “simplicity” KPI is not solved as it will be **difficult** for passenger transport operators to **identify** with certainty the **place where the supply physically takes place in practice**.
- 960 The “non-distortionary” KPI is **not fully solved** as (in our opinion) this policy option could still lead to a situation whereby passenger transport operators will **only start supplying** goods and/or services on board **after leaving the EU**.
- 961 As still not all of the 5 selected KPIs are satisfied, the place of supply where the actual consumption takes place in the EU **cannot be retained** from a VAT technical perspective.

11.4. Place of supply where the supplier of the goods or services is established

11.4.1. Assessment of the change in the place of supply (establishment supplier of goods or services) against KPIs

963 In the table below, we provide an **overview** of the assessment of the current place-of-supply rules without an optional VAT exemption and the change in the place of supply on the basis of the 5 selected KPIs.

Table 85 – Overview of assessments: Current place-of-supply rules without an optional VAT exemption and the place of supply where the supplier of the goods or services is established against KPIs

KPIs	Current place-of-supply rules without an optional VAT exemption	Place of supply where the supplier of the goods or services is established				
	VAT technical assessment	VAT technical assessment	Industry assessment			
			Ships	Aircraft	Trains	Other
SIMPLICITY	-	+	o/+		+	
EFFICIENCY	-	+	o/+		-	
CERTAINTY	-	+	o/+		-	
NON-DISTORTIONARY	-	-	-/0	-	-	
EFFECTIVENESS AND FAIRNESS	-	+	-/+		-	

964 The above table shows that, under the place of supply where the supplier of the goods or services is established, **4 of the 5 selected KPIs are satisfied** from a VAT technical perspective. This assessment is however not in line with the assessment made by the stakeholders.

965 The **main issues** identified when applying the current place-of-supply rules without an optional VAT exemption will be **solved** under the proposed change in the place of supply. However, **new issues** will result from this change compared to the current situation (see chapter 10, section 10.3).

966 Therefore, **additional measures** are **needed** from a **VAT technical and industry perspective** to mitigate the weaknesses of the place of supply where the supplier of the goods or services is established.

11.4.2. Assessment of the change in the place of supply (establishment supplier of goods or services) further to the implementation of the mitigating measures

11.4.2.1. Assessment from a VAT technical perspective

967 In the table below, we **indicated** which of the 4 additional measures are needed to mitigate the weakness of the place of supply where the supplier of the goods or services is established.

We also mentioned other suggested measures in key messages. In this respect, we ticked the box 'Other suggestions (if any)'.

Table 86 – VAT technical analysis: Assessment of the place-of-supply rule where the supplier of the goods or services is established further to the implementation of the mitigating measures

KPI's	Assessment against the KPI's	Suggested additional measures to mitigate the weaknesses of the place of supply where the supplier of the goods or services is established					Assessment further to the implementation of the mitigating measures
		Provide binding interpretation	Implement a one-stop-shop system	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism	Other suggestions (if any)	
SIMPLICITY	+						+
EFFICIENCY	+						+
CERTAINTY	+	x					+
NON-DISTORTIONARY	-				x	x	-
EFFECTIVENESS AND FAIRNESS	+						+

968 With respect to the “non-distortionary” KPI and more specifically the **risk of relocation of EU suppliers to EU Member States with reduced VAT rates**, a possible measure will be to introduce a **moderate single VAT rate** applicable in all 27 EU Member States.

We remark however that the introduction of a single VAT rate in all 27 EU Member States for buy-on-board transactions as a mitigating measure (i.e. if it not introduced as a general measure) will result in a **distortion of competition** between supplies on board and off board as competing products would be sold at different VAT rates.

969 To avoid the **risk of relocation of EU suppliers to non-EU countries** and hence the risk of non-taxation of EU consumption, a **correction mechanism via binding use & enjoyment provisions** will need to be introduced.

Under these provisions, EU Member States will need to consider the place of supply to be situated within the EU if effective consumption takes place within the EU (which is difficult to identify with certainty) or alternatively by proxy if the point of departure of the transport operation is situated within the EU.

This means that suppliers established outside the EU will be under an **obligation to register** in the EU via the implementation of a one-stop-shop system. The “voluntary” character of such scheme will not be sufficient to enforce these place-of-supply rules.

- 970 Conversely, **to avoid taxation of consumption outside the EU by a EU supplier**, a **correction mechanism via binding use & enjoyment provisions** will also need to be introduced. There are no unique use & enjoyment parameters available to solve this issue, as we have also seen in the first phase of the Study (see chapter 6, section 6.5. above).
- 971 Based on the above, we **concluded in a negative assessment** for the “non-distortionary” KPI as the necessary, and in our opinion stringent, mitigating measures will lead to a complex situation in practice. It will throw up new issues as for instance distortion of competition between supplies on board and off board will arise if a single VAT rate would be introduced in all 27 EU Member States but limited in scope to “buy-on-board” transactions.

11.4.2.2. Assessment from an industry perspective

11.4.2.2.1. Ships (cruise and ferry)

A. Input received in the matrix: stakeholder 03 (maritime travel market – ferry industry)

972 In the table below, we **included** the additional measures indicated by stakeholder 03 (maritime travel market – ferry industry) to the lines mentioned in Table 26 and Table 27.

Table 87 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Domestic transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
49 51	x		x		0	0	0	-2	-2	Yes	Yes	Yes	Yes
52				x	1	1	1	-2	-2	Yes	Yes	Yes	Yes
65	x				0	0	0	-2	-2	N/A	N/A	N/A	N/A
67 68			x	x	-1	-1	-1	-1	-1	Yes	N/A	N/A	N/A

Source: Appendix 10 (i.e. stakeholder 03: maritime travel market – ferry industry) – Domestic transport section
(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 10)

973 With respect to the domestic transport section, stakeholders 03 and 05 (maritime travel market – ferry industry) mentioned that a **correction mechanism** will have to be introduced under the place of supply where the supplier of the goods or services is established to avoid non-taxation of consumption in the EU.

Table 88 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
68				x	0	0	0	-2	-2	Yes	N/A	N/A	N/A
81 83	x		x		0	0	0	-2	-2	Yes	N/A	N/A	N/A
84				x	0	0	0	-2	-2	Yes	N/A	N/A	N/A
97	x				0	0	0	-2	-2	N/A	N/A	N/A	N/A
99			x		-2	-2	-2	0	0	Yes	Yes	Yes	Yes
100				x	-2	-2	-2	0	0	Yes	Yes	Yes	Yes

Source: Appendix 10 (i.e. stakeholder 03: maritime travel market – ferry industry) – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 10)

- 974 With respect to the EU – non-EU and non-EU – EU transport sections, stakeholders 03 and 05 (maritime travel market – ferry industry) mentioned that a **correction mechanism** will have to be introduced to avoid taxation of consumption outside the EU if the supplier is established in the EU.

B. Input received by means of a paper: stakeholder 01 (maritime travel market – cruise industry)

975 Using the 5 selected KPIs, we **mentioned** the input from stakeholder 01 (maritime travel market – cruise industry) with respect to the additional measures needed to mitigate the weaknesses of the place of supply where the supplier of the goods or services is established.

Non-distortionary

976 In order to avoid distortion of competition, stakeholder 01 (maritime travel market – cruise industry) suggested the following **corrective measures**:

- companies established within the EU will be deemed to be established outside the EU for the purpose of supplies of goods and/or services on the high seas/non-EU territories or supplies in these locations will be universally exempt from VAT; and
- companies established outside the EU will have to register with a deemed establishment in the EU pursuant to a special regulation.

977 Nevertheless, stakeholder 01 (maritime travel market – cruise industry) stated that the necessary corrective measures will lead to a system quite similar to the place of supply where the actual consumption takes place in the EU with the same **complexities and difficulties**.

11.4.3. Conclusion

978 By introducing **stringent** mitigating measures as indicated in Table 86 with respect to the place of supply where the supplier of the goods or services is established, **4 of the 5 selected KPIs continue to be satisfied** from a VAT perspective.

979 We upheld the negative assessment for the “non-distortionary” KPI as the necessary mitigating measures will lead to a **complex situation in practice and throw up new issues**.

980 Therefore, and because it is still the case that not all of the 5 selected KPIs are satisfied, the place of supply where the supplier of the goods or services is established **cannot be upheld** from a VAT technical perspective.

11.5. Place of supply where the transport company is established

11.5.1. Assessment of the change in the place of supply (establishment transport company) against KPIs

981 In the table below, we provide an **overview** of the assessment of the current place-of-supply rules without an optional VAT exemption and the change in the place of supply on the basis of the 5 selected KPIs.

Table 89 – Overview of assessments: Current place-of-supply rules without an optional VAT exemption and the place of supply where the transport company is established against KPIs

KPIs	Current place-of-supply rules without an optional VAT exemption	Place of supply where the transport company is established				
	VAT technical assessment	VAT technical assessment	Industry assessment			
			Ships	Aircraft	Trains	Other
SIMPLICITY	-	+	o/+		+	
EFFICIENCY	-	o/+	o/+		-	
CERTAINTY	-	+	o		-	
NON-DISTORTIONARY	-	-	-/o		-	
EFFECTIVENESS AND FAIRNESS	-	o	-/+		-	

982 The above table shows that, under the place of supply where the transport company is established, **2 of the 5 selected KPIs are satisfied** from a VAT technical perspective. However, this assessment is not in line with the assessment made by the stakeholders.

983 The **main issues** identified when applying the current place-of-supply rules without an optional VAT exemption will **not all be solved** under the proposed change in the place of supply and **new issues** will result from this change compared to the current situation (see chapter 10, section 10.4).

984 Therefore, **additional measures** are **needed** from a **VAT technical and industry perspective** to mitigate the weaknesses of the place of supply where the transport company is established.

11.5.2. Assessment of the change in the place of supply (establishment transport company) further to the implementation of the mitigating measures

11.5.2.1. Assessment from a VAT technical perspective

985 In the table below, we **indicated** which of the 4 additional measures are needed to mitigate the weakness of the place of supply where the transport company is established.

We also mentioned other suggested measures in key messages. In this respect, we ticked the box 'Other suggestions (if any)'.

Table 90 – VAT technical analysis: Assessment of the place-of-supply rule where the transport company is established further to the implementation of the mitigating measures

KPI's	Assessment against the KPI's	Suggested additional measures to mitigate the weaknesses of the place of supply where the transport company is established					Assessment further to the implementation of the mitigating measures
		Provide binding interpretation	Implement a one-stop-shop system	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism	Other suggestions (if any)	
SIMPLICITY	+					x	+
EFFICIENCY	0/+		x	x	x		+
CERTAINTY	+	x					+
NON-DISTORTIONARY	-				x	x	-
EFFECTIVENESS AND FAIRNESS	0			x			+

986 With respect to the “simplicity” KPI and in order for the suppliers to **determine** with certainty the **correct place of supply**, the place of supply where the transport company is established could be verified via the **VIES database**.

987 With respect to the “non-distortionary” KPI and more specifically the **risk of relocation of EU transport companies to EU Member States with reduced VAT rates**, a possible measure will be to introduce a **moderate single VAT rate** applicable in all 27 EU Member States.

We remark however that the introduction of a single VAT rate in all 27 EU Member States for buy-on-board transactions as a mitigating measure (i.e. it is not introduced as a general measure) will result in a **distortion of competition** between supplies on board and off board as competing products would be sold at different VAT rates.

- 988 To avoid the **risk of relocation of EU transport companies to non-EU countries** and hence the risk of non-taxation of EU consumption, a **correction mechanism via binding use & enjoyment provisions** will need to be introduced.

Under these provisions, EU Member States will need to consider the place of supply to be situated within the EU if the effective consumption takes place within the EU (which is difficult to identify with certainty) or alternatively by proxy if the point of departure of the transport operation is situated within the EU.

This means that where transport companies are established outside the EU, the supplier of the goods or services will be under an **obligation to register** in the EU (via implementation of a one-stop-shop system). The “voluntary” character of such scheme will not be sufficient to enforce these place-of-supply rules.

- 989 Conversely, **to avoid taxation of consumption outside the EU by a EU supplier**, a **correction mechanism via binding use & enjoyment provisions** will also need to be introduced. There are no unique use & enjoyment parameters available to solve this issue, as we have also seen in the first phase of the Study (see chapter 6, section 6.5. above).
- 990 Based on the above, we **upheld the negative assessment** for the “non-distortionary” KPI as the necessary, and in our opinion stringent, mitigating measures will lead to a complex situation in practice. It will throw up new issues as for instance distortion of competition between supplies on board and off board will arise if a single VAT rate would be introduced in all 27 EU Member States but limited in scope to “buy-on-board” transactions (just as for the place of supply where the supplier of the goods or services is established).

11.5.2.2. Assessment from an industry perspective

11.5.2.2.1. Ships (cruise and ferry)

A. Input received in the matrix: stakeholders 03 and 05 (maritime travel market – ferry industry)

991 In the table below, we **included** the additional measures indicated by stakeholder 03 (maritime travel market – ferry industry) to the lines mentioned in Table 46 and Table 47, above.

Table 91 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Domestic transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
145	x				0	0	0	-2	-2	Yes	Yes	Yes	Yes
147 148			x	x	0	0	0	0	0	Yes	Yes	Yes	Yes
161	x				0	0	0	-2	-2	Yes	N/A	N/A	N/A
163			x		0	0	0	0	0	Yes	N/A	N/A	N/A
164				x	1	1	1	0	0	Yes	N/A	N/A	N/A

Source: Appendix 10 (i.e. stakeholder 03: maritime travel market – ferry industry) – Domestic transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 10)

Table 92 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
164				x	0	0	0	-2	-2	Yes	N/A	N/A	N/A
177 179	x		x		0	0	0	-2	-2	Yes	N/A	N/A	N/A
180				x	0	0	0	-2	-2	Yes	N/A	N/A	N/A
193 195	x		x		0	0	0	-2	-2	Yes	N/A	N/A	N/A
196				x	0	0	0	-2	-2	Yes	N/A	N/A	N/A

Source: Appendix 10 (i.e. stakeholder 03: maritime travel market – ferry industry) – Intra-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 10)

- 992 With respect to the EU – non-EU and non-EU – EU transport sections, stakeholder 05 (maritime travel market – ferry industry) mentioned that a **correction mechanism** will have to be introduced to avoid taxation of consumption outside the EU if the transport company is established in the EU.

B. Input received by means of a paper: stakeholder 01 (maritime travel market – cruise industry)

- 993 Using the 5 selected KPIs, we **mentioned** the input from stakeholder 01 (maritime travel market – cruise industry) with respect to the additional measures needed to mitigate the weaknesses of the place of supply where the transport company is established.

Non-distortionary

- 994 In order to avoid distortion of competition, stakeholder 01 (maritime travel market – cruise industry) suggested the following **corrective measures**:
- companies established within the EU will be deemed to be established outside the EU for the purpose of supplies of goods and/or services on the high seas/non-EU territories or supplies in these locations will be universally exempt from VAT; and
 - companies established outside the EU will have to register with a deemed establishment in the EU pursuant to a special regulation.
- 995 Nevertheless, stakeholder 01 (maritime travel market – cruise industry) stated that the necessary corrective measures will lead to a system quite similar to the place of supply where the actual consumption takes place in the EU with the same **complexities and difficulties**.

11.5.3. Conclusion

- 996 By introducing stringent mitigating measures as indicated in Table 90 with respect to the place of supply where the transport company is established, **4 of the 5 selected KPIs are satisfied** from a VAT perspective.
- 997 Just as for the place of supply where the transport company is established, we upheld the negative assessment for the “non-distortionary” KPI as the necessary mitigating measures will lead to a **complex situation in practice and throw up new issues**.
- 998 Therefore and as it is still not so that all of the 5 selected KPIs are satisfied, the place of supply where the transport company is established **cannot be upheld** from a VAT technical perspective.

11.6. Place of supply where the point of departure of the transport operation is situated

11.6.1. Assessment of the change in the place of supply (point of departure) against KPIs

999 In the table below, we provide an **overview** of the assessment of the current place-of-supply rules without an optional VAT exemption and the change in the place of supply on the basis of the 5 selected KPIs.

Table 93 – Overview of assessments: Current place-of-supply rules without an optional VAT exemption and the place of supply where the point of departure of the transport operation is situated against KPIs

KPIs	Current place-of-supply rules without an optional VAT exemption	Place of supply where the point of departure of the transport operation is situated				
	VAT technical assessment	VAT technical assessment	Industry assessment			
			Ships	Aircraft	Trains	Other
SIMPLICITY	-	+	-/0		0/+	+
EFFICIENCY	-	-/0	-/0	+	0/+	
CERTAINTY	-	+	-/0	-	0/+	
NON-DISTORTIONARY	-	0	-		-/0	
EFFECTIVENESS AND FAIRNESS	-	0	-	-	-	

1000 The above table shows that, under the place of supply where the point of departure of the transport operation is situated, **2 of the 5 selected KPIs are satisfied** from a VAT perspective.

1001 The **main issues** identified when applying the current place-of-supply rules without an optional VAT exemption will **not all be solved** under the proposed change in the place of supply and **new issues** will result from this change compared to the current situation (see chapter 10, section 10.5).

1002 Therefore, **additional measures** are **needed** from a **VAT technical and industry perspective** to mitigate the weaknesses of the place of supply where the point of departure of the transport operation is situated.

11.6.2. Assessment of the change in the place of supply (point of departure) further to the implementation of the mitigating measures

11.6.2.1. Assessment from a VAT technical perspective

1003 In the table below, we **indicated** which of the 4 additional measures are needed to mitigate the weakness of the place of supply where the point of departure of the transport operation is situated.

We also mentioned other suggested measures in key messages. In this respect, we ticked the box 'Other suggestions (if any)'.

Table 94 – VAT technical analysis: Assessment of the place-of-supply rule where the point of departure of the transport operation is situated further to the implementation of the mitigating measures

KPI's	Assessment against the KPI's	Suggested additional measures to mitigate the weaknesses of the place of supply where the point of departure of the transport operation is situated					Assessment further to the implementation of the mitigating measures
		Provide binding interpretation	Implement a one-stop-shop system	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism	Other suggestions (if any)	
SIMPLICITY	+						+
EFFICIENCY	-/0		x	x	x		+
CERTAINTY	+	x					+
NON-DISTORTIONARY	0				x		0
EFFECTIVENESS AND FAIRNESS	0			x	x		+

1004 With respect to the “non-distortionary” KPI, and more specifically the **risk of relocation** of EU transport companies to EU Members States with reduced VAT rates, a possible measure could be to introduce a **moderate single VAT rate** applicable in all 27 EU Member States.

However, even if a single VAT rate would be applied in all 27 EU Member States, it could lead to **non-taxation of consumption in the EU** if the point of departure of the transport operation is situated in a non-EU country and the goods or services are materially supplied on board means of transport within the EU. The choice of the passenger between EU or non-EU departure points would mainly exist if the **leisure aspect is predominant**, which is especially true on board of cruises.

- 1005 We retained the **neutral** assessment for the “non-distortionary” KPI as the mitigating measures will not solve the **possible non-taxation of consumption in the EU** and the existence of the **choice of the passenger between EU or non-EU departure points** if the leisure aspect is predominant.
- 1006 With respect to the “effectiveness and fairness” KPI, a possible measure will be to **harmonise the VAT compliance**, from a business perspective.

11.6.2.2. Assessment from an industry perspective

11.6.2.2.1. Ships (cruise and ferry)

A. Input received in the matrix: stakeholder 03 (maritime travel market – ferry industry)

- 1007 In the table below, we **included** the additional measures indicated by stakeholder 03 (maritime travel market – ferry industry) to the lines mentioned in Table 65 of the second Phase of the Study.

Table 95 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Intra-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortional	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 03 (maritime travel market - ferry industry) - Appendix 10													
260				x	-1	-1	-1	0	0	Yes	Yes	Yes	Yes

Source: Appendix 10 (i.e. stakeholder 03: maritime travel market –ferry industry) – Intra-EU transport section
(1) The numbers in the first left-hand column refer to the lines in the stakeholders’ matrix regarding the policy options (Appendix 10)

B. Input received by means of a paper: stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry)

- 1008 Using the 5 selected KPIs, we **mentioned** the input from stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry) with respect to the additional measures needed to mitigate the weaknesses of the place of supply where the point of departure of the transport operation is situated.

Certainty

- 1009 Stakeholder 01 (maritime travel market – cruise industry) indicated the **need for clear definitions** of terms used to describe buy-on-board transactions (“supply of goods for consumption”, “supply of goods for take away”, “restaurant and catering services” and “other services”, especially for the notion of “**supply of goods for consumption**”) to avoid different interpretations in different EU Member States as regards the qualification of the transaction and the applicable VAT rates.

Non-distortionary

- 1010 Stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry) indicated that the place of supply where the point of departure of the transport operation is situated will require a simple and clearly defined **correction mechanism to achieve the right fiscal result**.
- 1011 Furthermore, stakeholder 01 (maritime travel market – cruise industry) indicated the need for **corrective measures to avoid the potential conflict with the taxing jurisdiction of third countries**.

Table 97 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – EU – non-EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 09 (railway travel market) - Appendix 16													
265-266	x	x			2	2	1		-1				Yes
267-268			x	x	2	2	2		-1				Yes

Source: Appendix 16 (i.e. stakeholder 09: railway travel market) – EU –non-EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 16)

Table 98 – Stakeholder input: Qualitative input in the lines of the matrix where the place of supply is changing under the policy option – Non-EU – EU transport section

DG TAXUD EXPERT STUDY ON SUPPLIES ON BOARD MEANS OF TRANSPORT POLICY OPTIONS													
Cross ref. (1)	Type of on-board supply				Impact assessment compared to current VAT regime (Key Performance Indicators) Weighting points: 2 Very positive impact / 1 Positive impact / 0 Neutral / -1 Negative impact / -2 Very negative impact					Suggested additional measures to mitigate weaknesses of policy option compared to current VAT regime			
	Supply of goods for consumption on-board	Supply of goods for take away	Restaurant and catering services	Other services	Simplicity	Efficiency	Certainty	Non-distortionary	Effectiveness and fairness	Provide binding interpretation	Implement One-Stop-Shop	Harmonize VAT compliance requirements	Single VAT rate and single VAT return with clearing mechanism
Stakeholder 09 (railway travel market) - Appendix 16													
265-266	x	x			2	2	1		-1				Yes
267-268			x	x	2	2	2		-1				Yes

Source: Appendix 16 (i.e. stakeholder 09: railway travel market) – Non-EU – EU transport section

(1) The numbers in the first left-hand column refer to the lines in the stakeholders' matrix regarding the policy options (Appendix 16)

11.6.3. Conclusion

- 1013 By introducing the mitigating measures as indicated in Table 94 with respect to the place of supply where the point of departure of the transport operation is situated, **4 of the 5 selected KPIs are satisfied** from a VAT perspective.
- 1014 We retained the neutral assessment for the “non-distortionary” KPI as the mitigating measures will not solve the possible non-taxation of consumption in the EU and the existence of the choice of the passenger between EU or non-EU departure points if the leisure aspect is predominant.
- 1015 Furthermore, the **mitigating measures** under the place of supply where the point of departure of the transport operation is situated are **less stringent** than the mitigating measures indicated under the other proposed place-of-supply changes.
- 1016 This means that the place of supply where the point of departure of the transport operation is situated combined with the suggested mitigating measures will give satisfactory results and can be considered as an **alternative** for the taxation of the supply of goods or services on board means of transport.

12. Assessment of the need to apply an exemption

12.1.1. Assessment from a VAT technical perspective

- 1017 As mentioned in the European Commission's Communication on the future of VAT⁹⁶ with respect to passenger transport services, where the **exemption does not apply**, the **complexity of the current place-of-supply rules increases the compliance costs** of businesses operating in several EU Member States and **could result in mistakes**.
- 1018 In our review of the VAT treatment in the 27 EU Member States of the supply of goods and services, including restaurant and catering services, for consumption on board means of transport, we came to the conclusion that there are **issues** with the **current place-of-supply rules** but that these are **largely mitigated through broad application of the optional VAT exemption** of article 37(3) of the VAT Directive (we refer to Table 9 and Table 10 in the first Phase of the Study).
- 1019 The assessments made from a **VAT technical perspective** in chapter 11 show that **one change in the place of supply gives satisfactory results** with respect to improvement of the current rules (which are not robust enough) for allowing taxation of the buy-on-board transactions **without the need to apply an exemption**: place of supply where the point of departure of the transport operation is situated (for all transport sections) combined with mitigating measures.
- 1020 From a **VAT technical perspective**, application of an exemption, optional or obligatory, sectoral or general, does not contribute to a more effective taxation regime.

12.1.2. Assessment from an industry perspective

- 1021 By contrast, those stakeholders that were consulted ask for the **optional VAT exemption to be maintained**, not only for VAT reasons but also for reasons outside VAT (e.g. application of other indirect taxes in the tourism industry).
- 1022 From an **industry perspective**, we received the below input if the current optional VAT exemption would be abolished.

⁹⁶ Communication from Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market, http://ec.europa.eu/taxation_customs/taxation/vat/key_documents/communications/index_en.htm.

Maritime travel market (i.e. stakeholders 01 to 06)

- 1023 All consulted stakeholders from the maritime travel market (cruise and ferry) indicated to **keep the optional VAT exemption**.
- 1024 Stakeholders 01 (maritime travel market – cruise industry), 03, 05 and 06 (maritime travel market – ferry industry) indicated that the abolition of the optional VAT exemption would be a substantive change with a **negative economic** (increase in costs), **social** (impact on employment opportunities) and **environmental** (increase in costs could lead to a modal shift from sea to road with an increase in emission levels) **impact**.
- 1025 Stakeholders 01 (maritime travel market – cruise industry) and 06 (maritime travel market – ferry industry) indicated that an **impact assessment** will be required if the optional VAT exemption would be abolished.
- 1026 Stakeholder 06 (maritime travel market – ferry industry) indicated that the abolition of the optional VAT exemption would result in an **increase in compliance costs** as well as **administrative burdens** as passenger transport operators would be required to register and account for VAT in numerous countries. We remark however that this weakness could be solved by implementing a one-stop-shop system.
- 1027 With respect to the optional VAT exemption, stakeholder 03 (maritime travel market – ferry industry) stated that ferry companies have effectively been encouraged to **factor this long-standing practice into their future investment programmes and current fare tariffs and on-board pricing structures** since there has never been any formal indication of its early withdrawal.

Air travel market (i.e. stakeholder 07)

- 1028 Stakeholder 07 (air travel market) stated that introducing taxation would have a **negative economic** (increase in costs), **social** (aviation as recognised economic enabler) and **environmental** (decrease of investments in new, more environmentally-friendly technologies) **impact**.

Railway travel market (i.e. stakeholders 08 to 10)

- 1029 All consulted stakeholders, except one, from the railway travel market indicated to **keep the optional VAT exemption**.

Long-distance bus & coach travel market (i.e. stakeholder 11)

- 1030 Stakeholder 11 (long-distance bus & coach travel market) did **not provide any input** with respect to the optional VAT exemption as this exemption only applies for the supplies of goods for consumption on board ships, aircraft or trains.

12.1.3. Conclusion

- 1031 From a VAT technical perspective, the application of an exemption, optional or obligatory, sectoral or general, does not contribute to a more effective taxation regime under the 4 policy options.
- 1032 Most of the stakeholders indicated that is desirable to keep the optional VAT exemption.
- 1033 Based on the above, we recommend keeping the current optional VAT exemption pending the improvement of the current place-of-supply rules and the alignment as between the different transport modes.