

***Expert study on the issues arising from
taxing the supply of goods and the
supply of services, including restaurant
and catering services, for consumption
on board means of transport***

Specific Contract No. 3,
TAXUD/2010/DE/326

**Identification and high-level assessment of possible
policy options**

GLOSSARY OF TERMS USED IN THE MATRIX

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1. Overview of policy options for place of supply rule (hereafter PoS rule)

<i>Policy option</i>	<i>Short description of the policy option</i>
The place of actual consumption in the EU (avoiding taxation of consumption outside the EU)	<p>1. Change VAT PoS rule to place of actual consumption in the EU + abolish existing option to exempt the supply of goods for consumption on board ships, aircraft or trains</p> <p>1bis. Change VAT PoS rule to place of actual consumption in the EU + keep existing option to exempt the supply of goods for consumption on board ships, aircraft or trains</p>
The place of establishment of the supplier of goods and services, including restaurant and catering services (*)	<p>2. Change VAT PoS rule to place of establishment of the supplier + abolish existing option to exempt the supply of goods for consumption on board ships, aircraft or trains</p> <p>2bis. Change VAT PoS rule to place of establishment of the supplier + keep existing option to exempt the supply of goods for consumption on board ships, aircraft or trains</p>
The place of establishment of the transport company, i.e. the supplier of the transport services (*)	<p>3. Change VAT PoS rule to place of establishment of the transport company + abolish existing option to exempt the supply of goods for consumption on board ships, aircraft or trains</p> <p>3bis. Change VAT PoS rule to place of establishment of the transport company + keep existing option to exempt the supply of goods for consumption on board ships, aircraft or trains</p>
The point of departure of the transport operation (for all transport sections) (*)	<p>4. Change VAT PoS rule to point of departure of the transport operation (all transport sections) + abolish existing option to exempt the supply of goods for consumption on board ships, aircraft or trains</p> <p>4bis. Change VAT PoS rule to point of departure of the transport operation (all transport sections) + keep existing option to exempt the supply of goods for consumption on board ships, aircraft or trains</p>
Keep existing VAT regime	5. Keep existing VAT regime (combination current PoS rules + option to exempt the supply of goods for consumption on board ships, aircraft or trains)

(*) Please note that these options have to be combined with corrective measures in order to avoid both non-taxation of consumption in the EU and taxation of consumption outside the EU. These corrective measures are currently not introduced in the matrix.

2. Description of terminology and concepts used in the matrix

A. General

<i>Notion</i>	<i>"AS IS" definition</i>
PoS = Place of supply	Place of taxation
"Buy-on-board" transactions	<p>Transaction that is not included in the price of the transport operation and that consists of one of the following supplies to passengers on board a means of transport:</p> <ul style="list-style-type: none"> - Supply of goods for consumption on board - Supply of goods to take away (no consumption on board), i.e. take away after leaving the means of transport - Supply of restaurant and catering services - Supply of other services
High seas	<p>International waters, i.e. waters falling outside the sovereignty or jurisdiction of any State.</p> <p>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 Community to which the Treaty establishing the European Community 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.</p> <p>Article 5 of the VAT Directive</p>

2. Description of terminology and concepts used in the matrix

B. PoS under current rules for the supply of goods, restaurant and catering services on board ships, aircraft or trains

<i>Notion</i>	<i>"AS IS" definition</i>
Place of supply during the section of a passenger transport operation effected within the Community	Taxation at the point of departure of the passenger transport operation Article 37(1) and 57(1) of the VAT Directive
Section of a passenger transport operation effected within the Community	Section of the operation effected, without a stopover outside the Community, between the point of departure and the point of arrival of the passenger transport operation Article 37(2) and 57(2) of the VAT Directive
Point of departure of a passenger transport operation	The first scheduled point of passenger embarkation within the Community, where applicable after a stopover outside the Community Article 37(2) and 57(2) of the VAT Directive
Point of arrival of a passenger transport operation	The last scheduled point of disembarkation within the Community of passengers who embarked in the Community, where applicable before a stopover outside the Community Article 37(2) and 57(2) of the VAT Directive
Return leg	In the case of a return trip, the return leg shall be regarded as a separate transport operation Article 37(2) of the VAT Directive
Stopover	Stops made by a [ship, aircraft or train] in the [ports] of a third country during which passengers may leave the [ship, aircraft or train], even for a short period, are 'stops in a third country' within the meaning of [Article 37(2) and 57(2) of the VAT Directive] Case C-58/04, Antje Köhler v. Finanzamt Düsseldorf-Nord
Place of supply under current situation during the section of a passenger transport operation not effected within the Community	Taxation at the place where the goods are located at the time when the supply takes place or taxation at the place where the restaurant and catering services are physically carried out Article 31 and 55 of the VAT Directive

2. Description of terminology and concepts used in the matrix

C. PoS under current rules for the supply of goods, restaurant and catering services on board other means of transport (e.g. coach)

<i>Notion</i>	<i>"AS IS" definition</i>
Place of supply	<p>Taxation at the place where the goods are located at the time when the supply takes place or taxation at the place where the restaurant and catering services are physically carried out</p> <p>Article 31 and 55 of the VAT Directive</p>

D. PoS under current rules for the supply of “other services” on board ships, aircraft, trains and other means of transport

<i>Notion</i>	<i>"AS IS" definition</i>
Other services	<p>Any services other than restaurant and catering services supplied on board means of transport.</p> <p>Assumption: supply of other services to non-taxable private individuals (B2C) and services qualifying as (ancillary to) cultural, artistic, sporting, scientific, educational, entertainment or similar activities</p>
Place of supply where the recipient of the service is a taxable person or a non-taxable legal person (B2B)	<p>General place of supply rule: taxation where the customer has established his business.</p> <p>Article 44 of the VAT Directive</p> <p>Services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events and of ancillary services related to the admission: taxation at the place where those events actually take place.</p> <p>Article 53 of the VAT Directive</p>
Place of supply where the recipient of the service is a non-taxable private individual (B2C)	<p>General place of supply rule: taxation where the supplier has established his business.</p> <p>Article 45 of the VAT Directive</p> <p>Services relating to cultural, artistic, sporting, scientific, educational, entertainment or similar activities: taxation at the place where those activities are physically carried out.</p> <p>Article 54(1) of the VAT Directive</p>

2. Description of terminology and concepts used in the matrix

E. Transport type

<i>Notion</i>	<i>"AS IS" definition</i>
"Domestic"	Transport operation within one EU Member State (e.g. France)
"Intra-EU"	Transport operation from an EU Member State to another EU Member State (e.g. from France to Germany)
"EU - non-EU"	Transport operation from an EU Member State to a non-EU Member State (e.g. from France to the US)
"Non-EU - EU"	Transport operation from a non-EU Member State to an EU Member State (e.g. from the US to France)

2. Description of terminology and concepts used in the matrix

F. Definition of terminology used in the different policy options for the supply of goods or restaurant and catering services or other services on board of all means of transport

<i>Notion</i>	<i>"SHOULD BE" definition</i>
Place of passenger transport	Place of passenger transport proportionate to the distances covered
Supplier	Supplier of goods or restaurant and catering services or other services
Transport company	The transport company is the supplier of the actual transport services (if supplied in a package deal, one should consider the actual transporter).
Place of establishment of the supplier / transport company	The place of establishment of the supplier is 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
	Article 10(2) of the Implementation Regulation
	Please note that this should not be confused with the notion '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 Implementation Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it: - for the application of Article 44 of Directive 2006/112/EC: to receive and use the services supplied to it for its own needs; - for the application of Article 45 of Directive 2006/112/EC: to provide the services which it supplies. Article 11 of the Implementation Regulation.

2. Description of terminology and concepts used in the matrix

F. Definition of terminology used in the different policy options for the supply of goods or restaurant and catering services or other services on board of all means of transport (cont'd)

<i>Notion</i>	<i>"SHOULD BE" definition</i>
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 within the Community.
	The first point of departure of the passenger transport operation shall be determined by the journey of the means of transport and not by the journey completed by each of the passengers
	Article 35 of the Implementation Regulation
	The fact that a passenger would embark in a place other than the first point of departure would not affect the place of supply
Return leg	In the case of a return trip, the return leg shall be regarded as a separate transport operation

2. Description of terminology and concepts used in the matrix

G. Additional measures to mitigate weaknesses of policy options compared to current VAT regime

<i>Notion</i>	<i>Definition</i>
Provide binding interpretation	Uniform binding interpretation in the 27 Member States such as "stopover", "point of departure", "point of arrival", "scheduled", "embarkation", "disembarkation", etc. in order to identify the correct place of supply for the different means of transport in the same manner.
Implement One-Stop-Shop	<p>Suppliers would use a single VAT number for all supplies made throughout the EU and would file one VAT return reporting all transactions made in the 27 Member States. The VAT returns filed to a single electronic portal would then be submitted automatically to the different Member States in which goods or services are supplied.</p> <p>Under a VAT "One-Stop-Shop" system, a supplier established in the EU could fulfil all its EU VAT obligations in the Member State in which he is established; a supplier not established in the EU would have a VAT registration in one country.</p>
Harmonize VAT compliance requirements	<p>Harmonized VAT compliance requirements in the 27 Member States mean that Member States impose 100% identical obligations regarding: e.g.</p> <ul style="list-style-type: none"> - the requirements (including format) to issue invoices to taxable persons or non-taxable legal persons for supplies of goods, restaurant and catering services for consumption on board means of transport; - the requirements (including format) to issue cash receipts to non-taxable private individuals for the supply of goods, restaurant and catering services for consumption on board means of transport and the technical requirements for the use of cash registers; - the filing of the VAT return (including format) and (if applicable) the payment of the VAT due; - the requirements regarding purchase and sales ledgers.

2. Description of terminology and concepts used in the matrix

G. Additional measures to mitigate weaknesses of policy options compared to current VAT regime (cont'd)

<i>Notion</i>	<i>Definition</i>
Single VAT rate and single VAT return with clearing mechanism	<p>Application of a (common) single VAT rate in the 27 Member States and a single VAT return for all supplies made throughout the EU</p> <p>This will require a clearing mechanism for the redistribution of the VAT receipts to the Member States where the transaction should be taxed / consumption takes place</p>
Harmonize exemption	<p>Harmonized application of the exemption with a right to deduct VAT irrespective of the means of transport</p> <p>If required, the VAT exemption can also be extended to other types of on-board supplies</p>

3. Description of Key Performance Indicators used

The different policy options need to be benchmarked against Key Performance Indicators. In the left column, we identify and describe key results to be achieved for both the industry (businesses) and the tax authorities (governments). In the right column, we have identified some of the practical issues that have been identified by the Industry during the first stakeholder consultation under the current place of supply rules. Those issues can be used to assess if the policy option(s) studied would allow to overcome those, thus meeting (or not meeting) the related KPI.

<i>Identification of the Key Performance Indicators (“KPI’s”) and the key results for both the industry (businesses) and the tax authorities (governments)</i>	<i>Reference to the practical issues identified by industry during the first stakeholder consultation (Ships, Aircraft, Trains and other (e.g. coach)) to be solved</i>
SIMPLICITY	
- Easy implementation and application of the VAT place of supply rules (so that industry can anticipate the tax consequences in advance of a transaction)	- Difficulty to apply the (two different sets of) place of supply rules in practice: lack of uniform and practical solutions to apply these rules
- No (limited) need for guidance or rulings by Member States	- Difficulty to identify the part of the supply that is subject to VAT
	- 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
	- Difficulties to comply with different sets of rules in different countries and identifying when certain rules apply
EFFICIENCY	
- Low cost of VAT compliance for industry: limited VAT obligations (e.g. liability to pay VAT, registration, invoicing, accounting, VAT return filing, recapitulative statements).	- Disproportionate cost when having to collect VAT in different Member States
- High voluntary VAT compliance by industry (low cost of collection for governments)	- Difficulties in programming the cash registers used to register buy-on-board transactions
- Low VAT Gap and non-taxed transactions (i.e. efficient collection)	- VAT registration obligation and related costs
	- VAT compliance obligations and costs: obligation to issue invoices and cash receipts and need to engage local advisors
	- Use of cash registers: technical requirements defined per Member State and no possibility to use two or three different VAT rates
	- Difficulties in price setting

3. Description of Key Performance Indicators used

<i>Identification of the Key Performance Indicators ("KPI's") and the key results for both the industry (businesses) and the tax authorities (governments)</i>	<i>Reference to the practical issues identified by industry during the first stakeholder consultation (Ships, Aircraft, Trains and other (e.g. coach)) to be solved</i>
CERTAINTY	
- Application of uniform place of supply rules for determining the place of taxation	- Complex and no "single EU" definition: misinterpretation and differing interpretations
- Unambiguous terminology (the same interpretation of rules in EU-27)	- Impact of unscheduled stopovers on the VAT treatment of on-board transactions is unclear
- Limited need for litigation	- 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 Member States
	- Place of establishment of the supplier: on-shore or on-board?
	- Difficulties in applying the different places of taxation for the supply of alcoholic drinks
NON-DISTORTIONARY	
- Taxation should seek to be neutral and equitable. Business decision 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.	- Possible double taxation or non-taxation
- No distortion of competition between the different means of transport	- Market distortions: Non-EU vs EU suppliers, distortion of competition and risk of relocation (e.g. establishment in "0% Member State")
- No distortion of competition between "buy-on-board" transactions and "buy-off-board" transactions	
EFFECTIVENESS AND FAIRNESS	
- Taxation should produce the right amount of tax at the right time	