

**MEMENTO** **PRÁCTICO**  
FRANCIS LEFEBVRE

# VAT and International Trade

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This work is the result  
of a technical study assigned  
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This work is the result of the strictly personal reflections of the authors on EU regulations and case-law in relation to VAT and the international trade.  
The comments made therein constitute the personal opinion of the authors, derived from the study of the EU provisions related to VAT and the corresponding jurisprudence; consequently, they should not be considered official opinion of any administrative body or professional firm or organization.  
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# Principal Abbreviations

<b>B2B:</b>	Business to business
<b>B2C:</b>	Business to consumer
<b>EU:</b>	European Union
<b>FE:</b>	Fixed establishment
<b>ICS2:</b>	Import control system 2
<b>IOSS:</b>	Import one stop shop
<b>NI:</b>	Northern Ireland
<b>Non Eu:</b>	Countries outside the European Union
<b>OSS:</b>	One stop shop
<b>UK:</b>	United Kingdom
<b>VAT:</b>	Value added tax

## CHAPTER 1

## Introduction

That the world is flat as a famous journalist named it is out of question. Supply chains are scattered through countries and companies constantly trade in international markets. **100**

All these companies struggle with the application of the different taxes applicable to these international flows because of the complexity associated with characterizing every flow and keeping abreast of the new legislative changes. This difficulty is common to direct taxes and general sales taxes, such as VAT, as well.

As it is well known, **VAT taxes consumption**, through the application of the tax to goods and services that reach final consumers by requiring taxable persons who provide said goods and services to collect the tax. This tax is specified in the different taxable events: supplies of goods and services, intra-community operations and imports. The application of VAT to international operations goes through the determination, for each of these operations, of the corresponding taxing conditions. In this regard, the distinction between operations with tangible and intangible goods becomes essential.

In **operations with tangible goods**, the application of VAT has traditionally been based on customs controls, so that, in any exchange between different countries, the competent customs certified the departure from the State of origin and, to at the same time, they controlled the entry into the State of destination of the goods, demanding the corresponding VAT. And it continues to be the case with **imports and exports**. **102**

The introduction in 1993 of the Internal Market in the EU put an end to this system of control and taxation of operations, by abolishing customs checks of trade between the different EU Member States. The need to maintain the "status quo", as far as collection is concerned, led the States of the Union to replace the import and export regime in force until then by another system in which the exemption is offered in the State of origin, where an **intra-Community** supply is made and taxing the goods in the State of destination, where upon arrival of the products, the purchase is classified as an intra-Community acquisition of goods.

In any of the situations described, the application of VAT is linked to the **physical destination** of the goods, controlled through the customs of entry or exit, in the case of operations with origin or destination outside the EU, or through the information provided to the tax authorities by traders in the case of intra-community transactions.

In international flows with intangibles or **supplies of services**, there is no entry or exit of goods to which any type of fiscal consequence can be linked. The application of VAT to these operations, therefore, requires a different technique, for which the place of supply rules are used, provisions that, for each specific transaction, directly establish the place where the services are deemed to have been carried out and the State with VAT taxing rights. **104**

The foregoing aspects are specified in different provisions, for the traders to follow and for the Authorities to control upon.

On the whole, these provisions are part of the legal system of the different States; however, since **VAT** is a tax with a high degree of **harmonization** within the EU, and with the undoubted international significance that any differences between States may have, Eu community rules regulate all these issues with a high level of detail.

In the same way, it is not surprising, with the internationalization of Western economies and the financial needs of public administrations, that the controversies arising in its application are numerous, which on many occasions have ended up in the courts of justice and, even in front of the Court of Justice of the European Union.

- 106** Europe has recently been shaking up with the departure of the United Kingdom from the European Union, also referred to as **BREXIT**. The VAT implications of BREXIT in terms of the automatic requalification of some of the operations carried out with origin or destination in the United Kingdom and the protocol with Northern Ireland are also quite significant.
- 108** The other recent development, of great practical relevance, is the introduction of a new VAT package on **electronic commerce** effective from 1-7-2021. The rationale for such a reform has to do with the exponential growth of purchases of goods through Internet.
- The tax authorities all over the world, and particularly those in the EU, have been sensitive to this growth, which could produce important distortions in the market under the previous rules both in terms of loss of taxing revenues and the unfair treatment to the retailers that pay their fair amount of taxes in the respective jurisdictions where consumers are located.
- These new EU VAT rules on E-commerce pursue a **double purpose**: guarantee the **taxation at destination** of goods that are marketed through the Internet and offer the traders tools to allow them to comply with their tax obligations in the simplest way possible. The new distance sales regime within the EU and the new configuration of the role of electronic platforms or interfaces through which many supplies of goods are marketed respond to this dual objective. Similarly, one stop shop systems, which already existed and have been greatly expanded, are the mechanisms designed to facilitate the **compliance** of traders and platforms with their tax obligations in the simplest way possible.
- This book analyzes, in great detail, each and every one of the previous considerations and aspects, studying exhaustively the different areas in which the taxation of the different flows to which international trading of goods and services may give rise crystallizes.
- To this end, the applicable EU law regulations, the case law issued to interpret it and often, the application of the rules in various EU Member states are explained. The above is completed with numerous **practical and graphic examples** to ease the understanding of the VAT implications to the international trade.

## CHAPTER 2

## Place of supply of goods

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**General considerations** The VAT analysis of international trade of goods must start with a reference to the place of supply of goods to determine where the supplies are VAT taxable. **230**

With the rules regarding the place of supply of goods it can be ensured that the consumption of goods is taxed where it effectively occurs, avoiding situations of conflict between tax administrations and leading to VAT being paid in the tax jurisdictions where the consumption occurs.

**Notes**

These previous considerations can be completed to the comments in the beginning of chapter 5, on International trade of services and VAT.

**Supplies of goods without dispatch or transport** The Dir 2006/112 art.31, states that supplies of goods that are not subject to dispatch or transport are understood to have been carried out at the place where the goods are located at the time of delivery. **232**

**Example** A private individual goes to a department store located in the rainy city of Paris and acquires an umbrella, which is taken home. The price of the umbrella is 50 €. This is a typical operation governed by art.31 is deemed to be taxed in the place where the goods are made available to the acquirer, in this case, where the department stores in which the goods are put at the disposal of the customer in Paris **234**

**Supplies of goods with dispatch or transport** According to Dir 2006/112 art.32, in the cases in which the goods delivered are **dispatched or transported** by the supplier, by the acquirer, or by a third party, the place where the goods are located at the time of start of the dispatch or transport to the acquirer is the place where the transaction is understood to have been carried out. **236**

**Examples** 1) A furniture manufacturer who carries out his activity in the province of Valencia, Spain, sells a batch of furniture to an entrepreneur of Italian nationality, obliging himself to put the furniture, at his own risk, in the client's premises, at which point the transfer of the power of disposal over them takes place. For the transport of goods, this company has contracted the services of a transport company. **238**

This operation is a supply of goods with **dispatch or transport**. To the extent that such dispatch or transport begins in the Spanish VAT territory, the operation must be understood to have been carried out in that territory, notwithstanding the zero rate of VAT Dir. art.138.

- 240** 2) The same company in the previous case sells another consignment of furniture this time to a French company, although the latter requests its supplier to leave the furniture in **storage** for a period of up to 3 months, pending a decision as to its final destination. Two months after the delivery, the French company communicates that the furniture will be definitively sent to France.  
In this case the supply of the goods is done **without shipment or transport**, since this circumstance is alien to the operation. Consequently, the applicable place of supply rule would be that corresponding to the supplies of goods without shipment or transport, contained. Both rules lead to consideration of the operation carried out in the Spanish VAT territory, although the way in which this operation is configured means that the zero rate from the intra-Community supply of goods is not applicable. The transport of this furniture to France is a circumstance that has occurred, unknown at the date of delivery, so there is no zero rate from the intra-Community supply of goods.
- 242** 3) A cheese manufacturer that has its facilities in the north of France sells part of its production to a Belgian wholesaler who then distributes it throughout Europe. The wholesaler takes care of the goods at the premises of its supplier, the cheese manufacturer, and from there dispatches them to its premises, located in the south of Belgium.  
The transaction described above may be classified as an intra-Community supply of goods, and may be zero rated, even if the goods are made available to their purchaser on the premises of the French seller.
- 
- 244** By **way** of derogation from the foregoing, Dir 2006/112 art.32, 2nd paragraph 2, states that when the place of departure of the dispatch or transport of the goods is in a third **territory**, the place of delivery by the importer, as well as the place of any subsequent deliveries, is considered to be located in the Member State of import of the goods.  
The aforementioned rule is that corresponding to those known as **successive or chain imports**, according to which the supplies of goods made by the importer and successive purchasers relating to goods to be imported into a Member State are subject to taxation in that very same Member State.
- 
- 246** **Example** Goods are imported in France by a Paris based vendor to be resold to French and Italian companies although the goods are delivered to warehouses rented by these customers within the French VAT territory. The place of supply of both the import and the subsequent supplies is deemed to be France, based on VAT Directive, art.32.2
- 
- 248** **Supplies of goods with installation or assembly** The Dir 2006/112 art.36, provides that *"where goods dispatched or transported by the supplier, by the customer or by a third person are installed or assembled, with or without a trial run, by or on behalf of the supplier, the place of supply shall be deemed to be the place where the goods are installed or assembled. Where the installation or assembly is carried out in a Member State other than that of the supplier, the Member State within the territory of which the installation or assembly is carried out shall take the measures necessary to ensure that there is no double taxation in that Member State."*  
Related to this place of supply rule the taxable event deemed intra-Community acquisition of goods does not occur due to the arrival at the goods at the Member State of destination where they are going to be subject to the installation or assembly. Same as when the goods are exported from a Non-EU country to an EU Member State where the deemed import is disregarded and on the contrary, where goods enter the EU Customs territory as importations (see no. 1506).
- 
- 250** **Examples** 1) In a warehouse of Do it yourself products located in Extremadura, Spain, kitchen furniture is delivered to a Portuguese customer, who removes it by his own means, also taking care of its **assembly** in Lisbon. There is no doubt that in this case the rule cannot be applied, so the general rule will have to be applied, notwithstanding the



possible exemption of the operation as intra-Community supply of goods if the requirements set forth, for such a transaction are met.

**2)** In the same case that has been raised in the previous example, the DIY warehouse makes available to its customers the service of assembly and installation of the products it sells. However, it is stated in the contract that they will be charged separately. As in the previous example, it is not correct to apply the supply with installation rule, since the installation or assembly of the goods takes place **after** the goods are made available to their recipient. **252**

**3)** A company that is dedicated to the sale of kitchen furniture assumes both the **assembly** of the same and any responsibility that **derives from the damages** suffered by the furniture or the non-adaptation of the same to the measures that were taken, etc., producing the availability of the acquirer after the installation. This time, the conditions of this example fit perfectly into the cases that the supply of goods with installation contemplate. **254**

**4)** A German company sells a complex industrial facility to a Spanish company. It is an oven for cooking ceramics, which will be installed in the Spanish VAT territory, which is where the acquiring company develops its activity. The price of the operation is € 600,000. For the installation of the furnace, 3 workers are moved from Germany. The cost of the installation work amounts to € 8,000. This transaction falls under the place of supply rule envisaged for supplies of goods with installation. **256**

By reference to the deemed **intra-Community transactions, both in the Member state of dispatch and that of arrival**, these stock transfers are disregarded based on the technical design of this provision that aims at taxing the goods where they are being installed or assembled. These supplies are treated as domestic supplies subject to the reverse charge mechanism, assuming the supplier is not established in the Member State of installation. **258**

**Examples** **1)** A Swedish company sells a ceramic cooking oven to a company based in Italy. The price of the oven is € 250,000. For its installation, certain works are required to be carried out by the employees of the Swedish company. In this case, **the installation and assembly of** the furnace involves its immobilization. Consequently, the application of the location rule contained in the Dir 2006/112 36 makes this delivery understood to be made in the place where said installation or assembly is completed. The **arrival of the goods** that are received in the Italian VAT territory to carry out this operation is what is excluded from the consideration of intra-Community acquisition of goods subject to tax. This **exclusion** means that this operation does not have to be included in the recapitulative statement of intra-Community transactions of either the buyer or the seller of the furnace. Assuming that the Swedish company that delivers the furnace lacks facilities in the Italian VAT territory, the reverse charge would have to be applied to this operation, so it would be the acquiring company that would self-recover the corresponding VAT. **260**

**2)** A company based in Barcelona, Spain, sells industrial machinery to another company which activity is carried out in Bordeaux, France. The price of the operation is € 400,000. This machinery has to be installed at the customer's seat of business. The **installation** is carried out by the employees of the company that manufactured it. The cost of installation or assembly operations amounts to €15,000. The place of supply will be France and reverse charge shall be applicable to this transaction insofar as the customer is VAT registered in that country. **262**

**Summary case** EQUIPAMIENTOS, S.A. is an entity dedicated to the manufacture of specialized industrial equipment. The company's facilities are located in the outskirts of Madrid, from where the equipment is served to customers. In any case, the equipment supplied is delivered once installed at the customer's headquarters, and the installation works are carried out by the employees of EQUIPAMIENTOS, with or without the help of other people. Installation costs range from 4 to 8% of each of the operations. **264**

For operations in year N, the following information is available:

## Revenue

a) The equipment that has been sold throughout the year and installed in the Spanish VAT territory have represented a revenue of € 14,680,000. Out of this amount, it is known that € 659,400 are for payments on account of future deliveries and the rest for deliveries made during the year.

Customers are offered the possibility to defer payment of the price, in which case they are charged 6% annual interest. The income obtained by this concept has amounted to € 320,000.

b) Outside the Spanish VAT territory, supplies of goods amounting to €16,890,000 have been made, which are distributed among Romania, Bulgaria, Slovenia, Croatia and Serbia. For reasons of logistical organization, EQUIPAMIENTOS has a stock of merchandise in Bucharest, from which most of the equipment sold in this area of Europe is served. It is known that the value of the stock sent to Bucharest throughout the year has amounted to € 8,420,000.

c) In addition to the previous operations, compensation of € 450,000 has been obtained from a customer who, after having commissioned the manufacture of a certain equipment, withdrew from the contract, for which a consideration of € 880,500 was foreseen.

To the above amount must be added the litigation costs, ruled by the court that heard the case, and that meant an additional income of € 24,200.

d) For maintenance services to customers have been charged € 1,420,500, € 684,560 from customers established in the Spanish VAT territory and the rest of customers established outside it.

## Expense

a) The main item of cost is the acquisition of raw material, for which a total of € 6,480,000 has been paid.

b) A significant amount is also invested in the Research and Development center, in which there are 14 employees dedicated to the development of new models, all of them employed and costing the company in payroll € 885,450. This center also takes in a cost of raw material and equipment of € 489,500, as well as additional expenses in external consultancy for € 68,560.

c) A part of the equipment that is manufactured has certain parts manufactured in Portugal from the raw materials sent by EQUIPAMIENTOS. The Portuguese manufacturer that carries out these tolling services has charged throughout the year for them a total of € 129,400, also knowing that the value of the components received from Portugal, once the transformation works have been carried out, amounts to € 547,800.

d) The rest of the expenses subject to VAT and incurred in the production amounted to € 2,341,450.

To this amount the expenses incurred in contracting auxiliary services for the installation of equipment outside the Spanish VAT territory must be added: € 846,750. Out of this amount, it is known that at least for two supplies of services the VAT of the country of carrying out the works has been paid representing: € 66,500

e) In addition, and as infrastructure costs, €225,000 have been paid, including legal aid relating to the lawsuit that has given rise to the compensation referred to above.

**266 Solution**

## Revenue

The € 14,680,000 obtained for sales of equipment will be consideration for operations ordinarily subject to the tax for which EQUIPMENT will have to pass on and pay the tax, whose tax will amount to € 3,082,800 (21% of € 14,680,000). This amount includes the advance payment received from customers, the receipt of which gives rise to the accrual of the tax.

As for interest for deferment, they may be excluded from the tax base insofar as they are specified separately on the invoice, are calculated at arm's length and correspond to periods after the accrual of the operations.

Transactions outside the Spanish VAT territory shall constitute supplies of goods which will not be located in the Spanish VAT territory, but in the States in which they are carried out.

In this regard, two issues need to be clarified, which are as follows:

a) In the case of the EU Member States in which supplies are made, which are Romania, Bulgaria, Slovenia and Croatia, it can be expected that the transposition into national law of the VAT Directive will be equivalent to that of Spain, so the analogical application to which we have referred should be correct. In any case, this should be contrasted with the internal legislation of these countries and their interpreting criteria.

b) As for Serbia, which is not part of the EU, there is no certainty of the existence of a similar rule on supplies with installation so this aspect cannot be clarified by taking any assumptions that this country has adopted comparable or equivalent rules.

The place of supply at destination indicated should be accompanied by the non-taxation in any other way of the arrival of the goods in the states of reference.

From the Spanish point of view, it would be necessary to analyze the shipment of goods to Romania, from where all these operations are supplied, which would involve a transfer of goods or intra-Community deemed supply.

EQUIPAMIENTOS must obtain a VAT identification number in Romania to fulfill its tax obligations in this country and thanks to being VAT registered and shipping the goods from Spain to Romania, the zero rating of the supply can be justified.

Of the following two amounts, none can be considered consideration for operations subject to tax since:

a) The compensation for damages paid by one of the customers to the company for withdrawing from the contract amounting to € 880,500 cannot be considered as the price of any supply of goods or services.

b) The same applies to the litigation costs which the winning party is entitled to be reimbursed of.

The last item relates to the income obtained by EQUIPAMIENTOS for the supply of maintenance services to taxable persons not established in the Spanish VAT territory and therefore, the services will not be located in this jurisdiction.

On the contrary, for the services provided to the clients established in the Spanish VAT territory, € 143,745 will have to be accounted for (21% of €684,500).

Expense

The purchase of raw material will result in a VAT paid by the company of € 1,360,800 (21% of € 6,480,000).

In the Research and Development center the only expenses subject to VAT will be those related to the acquisition of raw materials and consultancy services, for which, altogether, €117,192.60 will be borne (21% of €558,060; €558,060 = €489,500 + €68,560).

The tolling services require, for the determination of its taxation regime, a previous exercise, such as its qualification, which will redirect to the supplies of services, taking into account that the aforementioned works are made from the material that is sent from Spain by EQUIPAMIENTOS.

In these terms, the aforementioned services must be considered located in the Spanish VAT territory (general B2B rule), being taxable of the corresponding tax to them the recipient entity, that is, EQUIPMENT. The VAT thus due, which will be deductible for the company, will amount to € 27,174 (21% of € 129,400).

The rest of the expenses related to the production will give rise to VAT quotas for EQUIPMENT in the amount of € 491,704.50 (21% of € 2,341,450).

The auxiliary services will be subject to VAT in accordance with the general place of supply rule in the Spanish VAT territory, which is where EQUIPMENT is established. This is under the assumption that the installations carried out in the countries of destination of the goods do not in any case trigger fixed establishments of the company in all these jurisdictions.

Being also applicable the reverse charge mechanism, the VAT that EQUIPAMIENTOS will have to account for and deduct it simultaneously will amount to € 177,817.50 (21% of € 846,750).

The infrastructure costs will generate Input VAT for the company of € 47,250 (21% of € 225,000).

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Summary of the treatment of operations. Quantification of the tax quota

The following table summarizes the treatment of operations and proceeds to quantify the corresponding tax rates:

Description and treatment	Payable VAT (€)	Deductible VAT (€)
Sales with installation or assembly in the Spanish VAT territory. Interest not included in the taxable amount	3.082.800	-
Deliveries with installation or assembly outside the Spanish VAT territory. Transfers of goods to another EU state subject but exempt	-	-
Indemnities not subject to	-	-
Subject maintenance services when provided to taxable persons established in the Spanish VAT territory	143.745	-
Subject and non-exempt procurement of raw materials	-	1.360.800
Services related to the Research and Development center	-	117.192,60
Works on goods sent to Portugal	27.174	27.174
Other expenditure relating to production and ancillary services relating to installations outside the Spanish VAT territory	-	491.704,50 + 177.817,50
Subject and non-exempt infrastructure expenditure	-	47.250
Total	3.253.719	2.221.938,60
Difference		1.031.780,40

As it turns out from the table EQUIPAMIENTOS will have to pay € 1.031.780,40 of VAT during the year N.

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**Supplies of real estate** Supplies of real state are deemed to be VAT taxable in the **territory where they are located**.

There is no specific rule in the Directive although it can be argued that **they are not** goods that can be dispatched or assembled, the provision of Dir 2006/112 art.31 should be perfectly applicable to locate this type of supplies.

**Notes**

1) This Place of supply must be understood, like any other proxy, regardless of the exemptions that may be applicable. The fact of having a property in a country does not attribute automatically to its owner the status of established, since the mere ownership of real estate does not imply the existence of a fixed **establishment**. This circumstance only occurs when the properties are exploited by any title (see no. 4528).

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**Examples** 1) A British company dedicated to the promotion of apartments in its country acquires a plot in the Costa Brava, Spain, for constructing apartments for British citizens sick of the awful weather of the island. Unfortunately, before the start of the constructing works, the company is forced to sell the site give not enough potential clients showed interest in the project. The buyer of the plot is an entrepreneur also dedicated to the construction and pays € 2,000,000 for the plot.

This operation is subject to VAT, since it is a supply of goods made by a taxable person in the course of its business. Likewise, the supply has as its object a property located in the Spanish VAT territory, so the applicable place of supply guarantees its taxation. There is no exemption rule applicable to this delivery.

According to the description of the facts, the selling company is not established in the Spanish VAT territory and as per the existing reverse charge rules, the acquirer, because

it is established in this jurisdiction will become the person liable to pay the VAT. Consequently, the €420,000 VAT (21% of €2,000,000) will have to be paid and simultaneously deducted by the buyer.

**2)** A company that is resident in Madrid is dedicated to managing hotels throughout Spain. One of these hotels is located in Gran Canaria, outside of the EU VAT territory. The company decides to transfer the hotel, since it needs some heavy refurbishment that it cannot afford. The acquiring company is another company in the sector that also has its registered office in Madrid.

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The operation that has been described is not subject to VAT, since it is the **transfer of a property not located in the Spanish VAT territory** but in the Canary Islands. The taxation regime of this operation must be determined by applying the rules of the IGIC, which is a tax equivalent to VAT that geographically only has the Canary Islands in its geographical scope.

### Supplies of goods on board intra-Community transport operations 276

According to Dir 2006/112 art.37, "Where goods are supplied on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community, the place of supply shall be deemed to be at the point of departure of the passenger transport operation".

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

For these purposes, it is considered as:

**(a)** section of a passenger transport operation effected within the Community 23 shall mean the section of the operation effected, without a stopover outside the Community, between the point of departure and the point of arrival of the passenger transport operation.

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

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

#### Notes

**1)** The delivery of beverages or food for immediate consumption in the same place must be considered a supply of services. Consequently, the transactions referred to in this section are supplies of goods that are not the object of such immediate consumption.

**2)** Since 1-1-2010, and according to the Dir 2006/112 art.57, catering and catering services provided on board intra-Community transport are located in the State of beginning of the aforementioned transports (see no. 2814).

**3)** When goods are sent to other Member States in order to be subsequently delivered, the stock transfer of the **goods** is not regarded as a taxable transfer of goods.

**Examples** **1)** On a Madrid-Paris flight one of the travelers buys a sandwich and a soft drink that he consumes immediately. The price of the operation is 12 €.

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The transaction described is not a supply of goods but a supply of services.

In accordance with the place of supply of art.57 this service is understood to be provided at the place of start of **transport**, which is Madrid. The applicable **tax rate** is the reduced rate of 10%.

**2)** On the same flight, another passenger acquires a French perfume for € 60.

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In this case this constitutes a supply of **goods** that meets the requirements for the application of art.37's place of supply rule. Consequently, this supply is considered to be taxable in the Spanish VAT territory at 21%.

If this same passenger bought the perfume on his return trip from Paris, the place of supply rule would turn the operation into VAT taxable in France, so the VAT applicable is French and not Spanish.

When the plane that covers the Madrid-Paris route lands in Paris, there is no stock transfer of goods for the goods that are on board at that time.

**282 Distance selling scheme** This special arrangement is linked to the B2C regime covered in a separate chapter [see no. 3100 et seq.].

**284 Supplies of gas and electricity through distribution networks** The Directive 2006/112 art.38 and 39, state that:

*a) "In the case of the supply of gas through a natural gas system situated within the territory of the Community or any network connected to such a system, the supply of electricity, or the supply of heat or cooling energy through heating or cooling networks to a taxable dealer, the place of supply shall be deemed to be the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides."*

*b) In the case of the supply of gas through a natural gas system situated within the territory of the Community or any network connected to such a system, the supply of electricity or the supply of heat or cooling energy through heating or cooling networks, where such a supply is not covered by Article 38, the place of supply shall be deemed to be the place where the customer effectively uses and consumes the goods.*

*Where all or part of the gas, electricity or heat or cooling energy is not effectively consumed by the customer, those non-consumed goods shall be deemed to have been used and consumed at the place where the customer has established his business 31 or has a fixed establishment for which the goods are supplied. In the absence of such a place of business or fixed establishment, the customer shall be deemed to have used and consumed the goods at the place where he has his permanent address or usually resides."*

These two provisions include two sets of rules:

1<sup>st</sup>. In the case of **supplies to a taxable dealer: the proxy is** the place where that reseller has the place of business or has a permanent establishment for which the goods are delivered or, in the absence of the abovementioned place of business or permanent establishment, the place where he has his permanent address or place of habitual residence.

For that purpose, a **taxable dealer** means a taxable person whose principal activity in respect of the purchase of gas and electricity consists in the resale of those products and whose own consumption of those products is negligible.

2<sup>nd</sup>. In the case of **supplies not covered by the above rule, the proxy would be different:** the place where the purchaser has the actual use and consumption of the goods. For this purpose, such use or consumption shall be deemed to take place in that territory where the meter on which the measurement is made is located there.

Where the acquirer does not actually consume all or part of the goods, these **non consumed goods** are considered to be used and consumed at the place where the acquirer has the seat of his economic activity or has a permanent establishment for which the goods are delivered.

In the absence of the aforementioned place of business or permanent establishment, it shall be understood that you have used and consumed the goods in the place where you have your permanent domicile or your place of habitual residence.

#### Notes

**1)** With these two rules of location what is intended is to make possible the application of the tax to the international exchanges of **electricity** that occur as a result of the opening of the national markets. The same applies to gas exchanges through distribution networks. The establishment of these rules is due to the impossibility of physically controlling the entry and exit of electricity or gas through distribution networks and, consequently, to the impossibility of applying to such trade the system established for intra-Community trade in goods. Please bear in mind that electricity supplies are considered as supplies of goods for VAT purposes.

**3)** For **supplies to resellers**, the place of supply is equivalent to the general place of supply of B2B services which guarantees the taxation of these operations at destination.

**4)** In the case of **consumers of electricity** the place of use or effective consumption is the key proxy. It is important to point out that here the term consumers should not be identified as limited to end consumers because it refers to either when it is an individual or a company that uses this form of energy in its production process. As it has been pointed out in the

Minutes of the Council approving the directive, the place where the counter through which the measurement of consumption is made must be taken as relevant to placing where the location takes place.

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[seq.]