



EU VAT Compass 2021/2022

Including:

- EU VAT Directives
- ECJ Case Law on VAT
- VAT Options Exercised by the Member States

EU VAT Compass 2021/2022

Why this book?

Part One presents the consolidated text of the current EU VAT Directive (No. 2006/112), as most recently amended by Directive 2020/2020. It also contains the texts of several other Directives in the field of VAT. The text of Implementing Regulation 282/2011, as most recently amended by Implementing Regulation 2020/1112, is included.

For the interpretation of EU VAT legislation, the case law of the Court of Justice of the European Union (ECJ) is an indispensable element. Part Two provides an overview of both the operative parts of the more than 1,000 ECJ judgments in VAT cases and the pending cases that are expected to lead to judgments in the course of 2021 and 2022.

The book concludes with an overview of the options laid down by the VAT Directive that have been taken up by the individual Member States. This comprehensive analysis covers all EU Member States and the United Kingdom.

Title:	EU VAT Compass 2021/2022
Editor(s):	Fabiola Annacondia
Date of publication:	June 2021
ISBN:	978-90-8722-708-1 (print/online), 978-90-8722-709-8 (ePub), 978-90-8722-710-4 (PDF)
Type of publication:	Book
Number of pages:	1,046
Terms:	Shipping fees apply. Shipping information is available on our website
Price (print/online):	EUR 130 / USD 155 (VAT excl.)
Price (eBook: ePub or PDF):	EUR 95 / USD 115 (VAT excl.)
Price (subscription):	EUR 100 / USD 120 (VAT excl.)

Order information

To order the book, please visit www.ibfd.org/IBFD-Products/shop. You can purchase a copy of the book by means of your credit card, or on the basis of an invoice. Our books encompass a wide variety of topics, and are available in one or more of the following formats:

- IBFD Print books
- IBFD eBooks – downloadable on a variety of electronic devices
- IBFD Online books – accessible online through the IBFD Tax Research Platform



IBFD, Your Portal to Cross-Border Tax Expertise

IBFD

Visitors' address:
Rietlandpark 301
1019 DW Amsterdam
The Netherlands

Postal address:
P.O. Box 20237
1000 HE Amsterdam
The Netherlands

Telephone: 31-20-554 0100
Fax: 31-20-622 8658
www.ibfd.org

© 2021 IBFD

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the written prior permission of the publisher. Applications for permission to reproduce all or part of this publication should be directed to: permissions@ibfd.org.

Disclaimer

This publication has been carefully compiled by the IBFD and/or its editor, but no representation is made or warranty given (either express or implied) as to the completeness or accuracy of the information it contains. The IBFD and/or the editor are not liable for the information in this publication or any decision or consequence based on the use of it. The IBFD and/or the editor will not be liable for any direct or consequential damages arising from the use of the information contained in this publication.

However, the IBFD will be liable for damages that are the result of an intentional act (*opzet*) or gross negligence (*grote schuld*) on the IBFD's part. In no event shall the IBFD's total liability exceed the price of the product.

The information contained in this publication is not intended to be an advice on any particular matter. No subscriber or other reader should act on the basis of any matter contained in this publication without considering appropriate professional advice.

Where photocopying of parts of this publication is permitted under Article 16B of the 1912 Copyright Act jo. the Decree of 20 June 1974, Stb. 351, as amended by the Decree of 23 August 1985, Stb. 471, and Article 17 of the 1912 Copyright Act, legally due fees must be paid to Stichting Reprorecht (P.O. Box 882, 1180 AW Amstelveen). Where the use of parts of this publication for the purpose of anthologies, readers and other compilations (Article 16 of the 1912 Copyright Act) is concerned, one should address the publisher.

ISBN 978-90-8722-708-1 (print)
ISBN 978-90-8722-709-8 (eBook, ePub); ISBN 978-90-8722-710-4 (eBook, PDF)
ISSN 2210-934X (print); 2772-4107 (electronic)
NUR 826

Preface

The *EU VAT Compass 2021/2022* aims to provide an essential source of reference for all those actively working or interested in the VAT system of the European Union. The book consists of three Parts, each encompassing a vital element of the European VAT system. All Parts reflect the situation prevailing on 1 January 2021.

Part One contains the text of the provisions of the European Union's basic VAT Directive (Directive 2006/112). The consolidated text of the VAT Directive contains all amendments, including amendments by Directive 2017/2455; Directive 2019/475; and Directive 2019/1995, which Member States must transpose into their national legislation by 30 June 2021 and apply from 1 July 2021 (the date of transposition has been postponed from 31 December 2020 to 30 June 2021 and the date of application has been postponed from 1 January 2021 to 1 July 2021 due to the COVID-19 crisis); and Directive 2020/1756, which applies from 1 January 2021. It also includes the most recent amendments by Directive 2019/2235, which Member States must transpose into their national legislation by 30 June 2022 and apply from 1 July 2022; Directive 2020/284, which Member States must apply from 1 January 2024; and Directive 2020/285, which Member States must apply from 1 January 2025.

Part One also contains the text of several other Directives on VAT, and the provisions of the Implementing Regulation (Regulation No. 282/2011, as most recently amended by Regulation No. 2020/1112) are added as notes to the respective provisions of the VAT Directive.

For the interpretation of the European Union's VAT legislation, the case law of the Court of Justice of the European Union (ECJ) is an indispensable element. Part Two provides an overview of the operative parts of the more than 1000 ECJ judgments in VAT cases. It also contains an overview of the cases pending before the ECJ on 31 December 2020, which can reasonably be expected to lead to judgments of the ECJ in the course of 2021 and 2022.

The book concludes with an overview of the options laid down by the VAT Directive that have been taken up by the individual Member States. The comprehensive analysis in Part Three covers all EU Member States and the United Kingdom. In principle, the overview is based on information available on 1 January 2021. The footnotes contain information, if available, on amendments that are envisaged to come into force after that date. Part Three also includes an overview of the place-of-supply rules for services that apply from 1 January 2021 (*see* section 4.2.). The options for Member States to apply the reverse charge mechanism have been split up into permanent (*see* section 10.1.2.) and temporary arrangements (*see* section 10.1.3.). As regards the simplified intra-Community triangulation arrangement, detailed information is provided (*see* section 10.2.). In recent years, some Member States introduced the split payment mechanism as an alternative VAT collection method; details of these mechanisms are provided (*see* section 10.7.). The book also includes the implementation of the "quick

Preface

fixes” for intra-Community trade in the European Union by the Member States that are applicable from 1 January 2020.

In producing this book, it is inevitable that some “minor details” were missed and the presentation of the information may occasionally be less than optimal. In an effort to improve future editions, the editor gratefully receives any suggestions that may make future editions more accessible and useful. Comments and suggestions can be sent to VATCompass@ibfd.org.

The editor

Table of Contents

Preface	iii
Part One	
Directive 2006/112, including the provisions of Implementing Regulation 282/2011	1
Rates of conversion	291
Directive 2008/9 on VAT refunds to taxable persons established in another Member State	293
Thirteenth Directive 86/560 on VAT refunds to taxable persons established outside the European Union	304
Directive 2007/74 (excerpt) on the exemption from VAT for goods imported by travelers from third countries	307
Directive 2009/132 (summary) on the exemption from VAT on the final importation of certain goods	310
Directive 2006/79 on the exemption from VAT on the importation of non-commercial consignments	313
Part Two	
ECJ Case Law on VAT 1970-2020	317
Transposition Table (from the provisions of the former Sixth Directive to the corresponding provisions of Directive 2006/112)	757
Part Three	
VAT Options Exercised by the Member States	765

Part One

**Directive 2006/112 and several other
VAT Directives**

Table of Contents

Council Directive 2006/112/EC

of 28 November 2006

on the common system of value added tax

Subject	Articles	Page	
Title I	Subject matter and scope	1-4	21
Title II	Territorial scope	5-8	25
Title III	Taxable persons	9-13	27
Title IV	Taxable transactions	14-30	29
Title V	Place of taxable transactions	31-61	42
Title VI	Chargeable event and chargeability of VAT	62-71	71
Title VII	Taxable amount	72-92	74
Title VIII	Rates	93-130	81
Title IX	Exemptions	131-166	90
Title X	Deductions	167-192	114
Title XI	Administrative obligations:		
	– Payment of VAT	192a-212	125
	– Identification	213-216	139
	– Invoicing	217-240	140
	– Accounting	241-249	151
	– Returns	250-261	160
	– Recapitulative statements	262-271	163
	– Miscellaneous	272-273	168
	– Imports and exports	274-280	169
Title XII	Special schemes:		
	– Small enterprises	280a-294	171
	– Farmers	295-305	186
	– Travel agents	306-310	190
	– Margin scheme	311-343	192
	– Investment gold	344-356	202
	– TBE services	357-369	206
	– Services and distance sales of goods (from 1 July 2021)	369a-369x	224
	– Import VAT (from 1 July 2021)	369y-369zb	257
– Exchange values (from 1 July 2021)	369zc	259	
Title XIII	Derogations	370-396	259
Title XIV	Miscellaneous	397-401	267
Title XV	Final provisions	402-414	268
Annex I	Activities of public bodies		273
Annex II	Electronic services		274
Annex III	Reduced rates		276
Annex IV	<i>[Deleted]</i>		278
Annex V	VAT warehousing		279
Annex VI	Reverse charge mechanism		281

Annex VII	Agricultural activities	282
Annex VIII	Agricultural services	283
Annex IX	Works of art, collectors' items, antiques	284
Annex X	Transitional arrangements	286
Annex XI	Repealed Directives	288
Annex XII	Correlation table <i>[not reproduced]</i>	290
Rates of conversion		291
Other VAT Directives		
Council Directive 2008/9/EC		293
of 12 February 2008		
laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State		
Thirteenth Council Directive (86/560/EEC)		304
of 17 November 1986		
on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory		
Council Directive 2007/74/EC		307
of 20 December 2007		
on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries		
Council Directive 2009/132/EC		310
of 19 October 2009		
determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods		
Council Directive 2006/79/EC		313
of 5 October 2006		
on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries		

to 390c, engaged in by bodies governed by public law as activities in which those bodies engage as public authorities.
[Directive 2009/162, Act of Accession of Croatia]

TITLE IV TAXABLE TRANSACTIONS

CHAPTER 1 Supply of goods

Article 14

1. “Supply of goods” shall mean the transfer of the right to dispose of tangible property as owner.
2. In addition to the transaction referred to in paragraph 1, each of the following shall be regarded as a supply of goods:
 - a. the transfer, by order made by or in the name of a public authority or in pursuance of the law, of the ownership of property against payment of compensation;
 - b. the actual handing over of goods pursuant to a contract for the hire of goods for a certain period, or for the sale of goods on deferred terms, which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment;
 - c. the transfer of goods pursuant to a contract under which commission is payable on purchase or sale.
3. Member States may regard the handing over of certain works of construction as a supply of goods.

[Text from 1 July 2021]

4. *For the purposes of this Directive, the following definitions shall apply:*
 - (1) *“intra-Community distance sales of goods” means supplies of goods dispatched or transported by or on behalf of the supplier⁶, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a Member State other than that in which dispatch or transport of the goods to the customer ends, where the following conditions are met:*
 - (a) *the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;*

(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier;

(2) “distance sales of goods imported from third territories or third countries” means supplies of goods dispatched or transported by or on behalf of the supplier⁶, including where the supplier intervenes indirectly in the transport or dispatch of the goods, from a third territory or third country, to a customer in a Member State, where the following conditions are met:

(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Article 3(1) or for any other non-taxable person;

(b) the goods supplied are neither new means of transport nor goods supplied after assembly or installation, with or without a trial run, by or on behalf of the supplier.

[Directive 2017/2455]

6. **[Text from 1 July 2021]**

Under Article 5a of Implementing Regulation 282/2011, for the application of Article 14(4) of Directive 2006/112/EC, goods shall be considered to have been dispatched or transported by or on behalf of the supplier, including where the supplier intervenes indirectly in the dispatch or transport of the goods, in particular in the following cases:

- a. where the dispatch or transport of the goods is subcontracted by the supplier to a third party who delivers the goods to the customer;
- b. where the dispatch or transport of the goods is provided by a third party but the supplier bears either the total or partial responsibility for the delivery of the goods to the customer;
- c. where the supplier invoices and collects the transport fees from the customer and further remits them to a third party who will arrange the dispatch or transport of the goods;
- d. where the supplier promotes by any means the delivery services of a third party to the customer, puts the customer and a third party in contact or otherwise provides to a third party the information needed for the delivery of the goods to the consumer.

However, goods shall not be considered to have been dispatched or transported by or on behalf of the supplier where the customer transports the goods himself or where the customer arranges the delivery of the goods with a third person and the supplier does not intervene directly or indirectly to provide or to help organise the dispatch or transport of those goods.

Article 14a

[Text from 1 July 2021]

1. Where a taxable person facilitates⁷, through the use of an electronic interface such as a marketplace, platform, portal or similar means, distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding

EUR 150, that taxable person shall be deemed to have received and supplied those goods himself^{8, 9}.

2. Where a taxable person facilitates⁷, through the use of an electronic interface such as a marketplace, platform, portal or similar means, the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied those goods himself^{8, 9}.

[Directive 2017/2455]

7. **[Text from 1 July 2021]**

Under Article 5b of Implementing Regulation 282/2011, for the application of Article 14a of Directive 2006/112/EC, the term “facilitates” means the use of an electronic interface to allow a customer and a supplier offering goods for sale through the electronic interface to enter into contact which results in a supply of goods through that electronic interface.

However, a taxable person is not facilitating a supply of goods where all of the following conditions are met:

- a. that taxable person does not set, either directly or indirectly, any of the terms and conditions under which the supply of goods is made;
- b. that taxable person is not, either directly or indirectly, involved in authorising the charge to the customer in respect of the payment made;
- c. that taxable person is not, either directly or indirectly, involved in the ordering or delivery of the goods.

Article 14a of Directive 2006/112/EC shall not apply to a taxable person who only provides any of the following:

- a. the processing of payments in relation to the supply of goods;
- b. the listing or advertising of goods;
- c. the redirecting or transferring of customers to other electronic interfaces where goods are offered for sale, without any further intervention in the supply.

8. **[Text from 1 July 2021]**

Under Article 5c of Implementing Regulation 282/2011, for the application of Article 14a of Directive 2006/112/EC, a taxable person, who is deemed to have received and supplied the goods himself, shall not be held liable for the payment of VAT in excess of the VAT which he declared and paid on these supplies where all of the following conditions are met:

- a. the taxable person is dependent on information provided by suppliers selling goods through an electronic interface or by other third parties in order to correctly declare and pay the VAT on those supplies;
- b. the information referred to in point (a) is erroneous;
- c. the taxable person can demonstrate that he did not and could not reasonably know that this information was incorrect.

9. **[Text from 1 July 2021]**

Under Article 5d of Implementing Regulation 282/2011, unless he has information to the contrary, the taxable person deemed to have received and supplied the goods pursuant to Article 14a of Directive 2006/112/EC shall regard:

- a. the person selling goods through an electronic interface as a taxable person;
- b. the person buying those goods as a non-taxable person.

Article 15

1. Electricity, gas, heat or cooling energy and the like shall be treated as tangible property.

[Directive 2009/162]

Part Two

ECJ Case Law on VAT

1970 – 2020

Introduction

This part sets out the judgments of the Court of Justice of the European Union (“ECJ”) in VAT cases. In principle, only cases relating to the First, Second, Sixth, Eighth and Thirteenth Directives and Directives 2006/112 and 2008/9 are included, even if they relate to:

- articles that have been withdrawn, such as Article 32 of the former Sixth Directive,
- imports and exports between Member States (prior to 1993),
- taxes characterized as turnover taxes within the meaning of Article 401 of Directive 2006/112, and
- failure of Member States to transpose EU legislation into national law on time.

Therefore, not included are cases exclusively relating to:

- the European Union’s Own Resources,
- Article 110 of the Treaty on the Functioning of the European Union (previously Articles 90 and 95 of the EC Treaty),
- the European Union’s Customs Codes (Regulations 2913/92 and 450/2008), and
- Directives 69/169, 83/181, 83/182, 83/183, 85/362, 2006/79, 2007/74 and 2009/132.

For practical reasons, references to Directives have been shortened. For example, “Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment” is presented as “Sixth Directive [...]” and “Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax” as “Directive 2006/112 [...].” “Value added tax” and “value-added tax” have been replaced with “VAT” and “Commission of the European Union” with “Commission”. The names of the private parties (taxable persons) involved in the proceedings are consistently mentioned first (the symbol “▷” indicates that the order of the parties has been reversed).

The **Table of Contents** lists the decided and officially published pending cases in a consecutive order indicating (i) the case numbers, (ii) the date of the judgment or the order, (iii) the (principal) parties involved, and (iv) several keywords or a brief description of the legal issue.

The **Judgments of the Court of Justice** section presents the operative parts of the ECJ’s judgments or orders in a chronological order. Where necessary, a short summary of the facts in the main proceedings has been added. The case numbers and the main party or parties involved are highlighted in bold. Also included is the page number where the official text of the judgments is published in the *European Court Reports* [ECRs]. From 2012, judgments are identified by a European Case Law Identifier (ECLI), which is a uniform identifier that has the same recognizable format for all Member States and EU courts. It is composed of five, mandatory, elements separated by colons: ECLI:[country code]:[court

code]:[year of decision]:[an ordinal number].¹ Where the full text of the judgment is not available in English, the reference is marked with an *.

The **Index of Topics** groups the judgments by issue or Article of the VAT Directive.

The **Alphabetical Index** presents the parties involved in the decided cases, in an alphabetical order.

The **Transposition Table** is aimed at facilitating transposition of the judgments of the ECJ that are based on the provisions of the former Sixth Directive to the corresponding provisions of the current VAT Directive.

1. Council conclusions inviting the introduction of the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law, OJ C 127, 29 Apr. 2011, p. 1-7.

Table of Contents

Case	Date	Parties involved	Keyword(s)	Page
9/70	06-10-1970	Franz Grad	Concurrence of VAT with specific taxes	365
20/70	21-10-1970	Transports Lesage		
23/70	21-10-1970	Erich Haselhorst		
111/75	20-05-1976	Impresa Costruzioni Comm. Quirino Mazzalai	Time of supply	365
51/76	01-02-1977	Verbond van Nederlandse Ondernemingen	Capital goods	365
126/78	12-06-1979	Nederlandse Spoorwegen	Taxable amount – Cash-on-delivery ("Rembours")	366
181/78 229/78	12-06-1979	Ketelhandel P. van Paassen Denkavit Dienstbetoon	Taxable person	366
154/80	05-02-1981	Coöperatieve Aardappelenbewaarplaats	Consideration	367
8/81	19-01-1982	Ursula Becker	Failure to transpose Community law	367
15/81	05-05-1982	Gaston Schul	Import from another Member State	367
89/81	01-04-1982	Hong Kong Trade Development Council	Services free of charge	367
222/81	01-07-1982	B.A.Z. Bausystem	Interest awarded by judicial decision	368
255/81	10-06-1982	R.A. Grendel	Failure to transpose Community law	368
294/82	28-02-1984	Senta Einberger	Illegal activities – Importation of drugs	369
324/82	10-04-1984	Commission – Belgium	Taxable amount – Catalogue price on importation	369
42/83	10-07-1984	Dansk Denkavit	Accounting periods – Periods for payment	369
70/83	22-02-1984	Gerda Kloppenburg	Failure to transpose Community law	368
268/83	14-02-1985	Rompelman	Start of economic activities	370
5/84	13-02-1985	Direct Cosmetics	Amendment of special measure	370
16/84	10-07-1985	Commission – Netherlands	Taxable amount – Second-hand goods	371
17/84	10-07-1985	Commission – Ireland	Taxable amount – Second-hand goods	372
47/84	21-05-1985	Gaston Schul	Taxable amount – Imports from another Member State	370
107/84	11-07-1985	Commission – Germany	Exemption – Transport of mail	372
139/84	14-05-1985	Van Dijk's Boekhuis	Production of goods	370

Case	Date	Parties involved	Keyword(s)	Page
168/84	04-07-1985	Günther Berkholz	Fixed establishment – Zero rate	371
249/84	03-10-1985	Venceslas Profant	Importation from another Member State	372
283/84	23-01-1986	Trans Tirreno Express	National transport via third territory	373
295/84	27-11-1985	Rousseau Wilmot S.A., Caudry	Charges characterized as turnover tax	372
73/85	08-07-1986	Hans-Dieter and Ute Kerrutt	Services connected with immovable property <i>Bauherrenmodell</i>	373
235/85	26-03-1987	Commission – Netherlands	Public notaries and bailiffs	373
353/85	23-02-1988	Commission – United Kingdom	Exemption – Spectacles supplied by doctors	374
391/85	04-02-1988	Commission – Belgium	Taxable amount – Saloon and estate cars	373
415/85	21-06-1988	Commission – Ireland	Zero rate	375
416/85	21-06-1988	Commission – United Kingdom	Zero rate	375
3/86	28-06-1988	Commission – Italy	Special scheme for farmers – Flat-rate deduction	376
102/86	08-03-1988	Apple and Pear Development Council	Economic activities – Consideration	374
127/86	06-07-1988	Yves Ledoux	Use of vehicle in another Member State	377
138/86 139/86	12-07-1988	Direct Cosmetics Laughtons Photographs	Taxable amount – Special measure	377
165/86	08-03-1988	Leesportefeuille “Intiem”	Deduction – Delivery to employees	375
252/86	03-03-1988	Gabriel Bergandi	Charges characterized as turnover tax	374
257/86	21-06-1988	Commission – Italy	Exemption on import – Free samples	376
269/86	05-07-1988	Mol	Supply of drugs and amphetamines	376
289/86	05-07-1988	Happy Family	Supply of narcotic drugs and drugs derived from hemp	377
317/86	15-03-1989	Philippe Lambert	Charges characterized as turnover tax	379
48/87	15-03-1989	Marie-Thérèse Charbonnelle	Charges characterized as turnover tax	379
49/87	15-03-1989	Willot Sarl	Charges characterized as turnover tax	379
50/87	21-09-1988	Commission – France	Deduction – Restrictions	378
122/87	24-05-1988	Commission – Italy	Exemption – Veterinarians	375
123/87	14-07-1988	Léa Jorion	Deduction – Invoicing requirements	378

Table of Contents

Case	Date	Parties involved	Keyword(s)	Page
203/87	21-02-1989	Commission – Italy	Zero rate	379
207/87	14-07-1988	Gerd Weissgerber	Failure to transpose Community law	378
230/87	23-11-1988	Naturally Yours	Taxable amount – “Inducement”	378
231/87	17-10-1989	Comune di Carpaneto Piacentino	Activities as public authority	381
285/87	15-03-1989	Etablissements Dico	Charges characterized as turnover tax	379
330/87	14-07-1988	SA d'Etude et de Gestion Immob. (EGI)	Deduction – Invoicing requirements	378
C-342/87	13-12-1989	Genius Holding	Deduction – VAT mentioned on invoice	382
348/87	15-06-1989	SUFA	Exemption – Umbrella organization	380
353/87	02-02-1989	Commission – Italy	Failure to transpose Community law	379
363/87 – 367/87	15-03-1989	Sofel, Jean-Pierre Auber and Pellerey Display	Charges characterized as turnover tax	379
50/88	27-06-1989	Heinz Kühne	Deduction – Private use	380
51/88	15-03-1989	Knut Hamann	Means of transport – Ocean-going yachts	380
65/88	15-03-1989	Louis Garcia	Charges characterized as turnover tax	379
78/88 79/88 80/88	15-03-1989	Pellerey Display, Sofel and Jean Mentreau	Charges characterized as turnover tax	379
93/88 94/88	13-07-1989	Wisselink Abemij and Others	Charges characterized as turnover tax	381
C-126/88	27-03-1990	Boots Company	Taxable amount – Price discounts and rebates	383
129/88	17-10-1989	Comune di Rivergaro	Activities as public authority	381
C-165/88	05-12-1989	ORO and Concerto	Taxable amount – Second-hand goods	382
173/88	13-07-1989	Morten Henriksen	Exemption – Premises and sites for parking vehicles	381
C-320/88	08-02-1990	Safe	Supply of goods	382
C-4/89	15-05-1990	Comune di Carpaneto Piacentino	Activities as public authority	383
C-185/89	26-06-1990	Velker	Zero rate – Provisioning of sea-going vessels	383
C-186/89	04-12-1990	Van Tiem	Economic activities – Building right (“ <i>opstal</i> ”)	384
C-343/89	06-12-1990	Witzemann	Importation of counterfeit currency	384
C-35/90	17-10-1991	Commission – Spain	Exemption – Professional services	385

Part Three

**VAT Options Exercised
by the Member States
(situation on 1 January 2021)**

Table of Contents

Contributors	771
1. Introduction	773
2. Taxable Persons	779
2.1. VAT grouping	779
2.1.1. Austria	780
2.1.2. Belgium	780
2.1.3. Cyprus	781
2.1.4. Czech Republic	782
2.1.5. Denmark	782
2.1.6. Estonia	783
2.1.7. Finland	783
2.1.8. Germany	784
2.1.9. Hungary	785
2.1.10. Ireland	785
2.1.11. Italy	785
2.1.12. Latvia	786
2.1.13. Luxembourg	786
2.1.14. Malta	787
2.1.15. Netherlands	788
2.1.16. Slovak Republic	788
2.1.17. Sweden	789
2.1.18. United Kingdom	789
2.2. Joint VAT registration	790
2.2.1. France	790
2.2.2. Italy	791
2.2.3. Romania	791
2.2.4. Spain	792
2.3. Supply of new immovable property	793
2.3.1. New buildings	793
2.3.2. Occasional supplies	795
2.4. Registration threshold	796
3. Taxable Events	803
3.1. Transfer of businesses	803
3.2. Intra-Community acquisitions of goods	805
3.3. Consignment goods and call-off stocks	806
3.3.1. Consignment goods	806
3.3.2. Call-off stocks	808
4. Place and Time of Taxation	811
4.1. Place-of-supply rules for goods – Chain transactions	811
4.2. Distance selling thresholds	811
4.3. Place-of-supply rules for services	813

4.4.	Effective-use-and-enjoyment criterion	817
4.4.1.	Effective use and enjoyment in a Member State	820
4.4.2.	Effective use and enjoyment outside the European Union	826
4.5.	Time of supply	830
4.5.1.	Issue of invoices	830
4.5.2.	Cash accounting	832
5.	Taxable Amount	835
5.1.	Open-market value	835
5.2.	Bad-debt relief	838
6.	Reduced Rates	845
6.1.	Austria, Belgium, Bulgaria, Croatia and Cyprus	847
6.2.	Czech Republic, Denmark, Estonia, Finland and France	856
6.3.	Germany, Greece, Hungary, Ireland and Italy	862
6.4.	Latvia, Lithuania, Luxembourg, Malta and Netherlands	871
6.5.	Poland, Portugal, Romania, Slovak Republic and Slovenia	879
6.6.	Spain, Sweden and United Kingdom	887
7.	Exemptions	893
7.1.	Letting of immovable property	893
7.1.1.	Letting of residential property	895
7.1.2.	Letting of commercial property	895
7.2.	Options for taxation	896
7.2.1.	Letting and leasing of immovable property	896
7.2.2.	Financial services – Supplies of immovable property	897
7.3.	Standstill exemptions	900
7.3.1.	Admission to sporting events	901
7.3.2.	Artists and liberal professionals	901
7.3.3.	Supply of new buildings	902
7.3.4.	Passenger transport	903
8.	Zero Rating	905
8.1.	Provisioning of sea vessels, etc.	905
8.2.	Goods under customs control	906
8.3.	Goods and services supplied to exporters	907
8.4.	VAT warehousing	907
9.	Deduction of Input Tax	909
9.1.	Immediate deduction	909
9.2.	Exclusions	912
9.3.	Excess input tax	920
9.4.	Pro rata	925
9.5.	Adjustments of input tax deductions	925
9.5.1.	Non-payment and stolen goods	926
9.5.2.	Capital goods – Adjustment period	926
9.5.3.	Capital goods – Services	928

Table of Contents

9.6. Refunds to non-resident businesses	930
9.6.1. Refund procedure	930
9.6.2. Refund thresholds	931
9.6.3. Reciprocity principle	932
9.6.4. Refund offices	934
10. Liability to Pay VAT	941
10.1. Reverse charge mechanism	941
10.1.1. Optional reverse charge mechanism – Non-resident suppliers	942
10.1.2. Optional permanent reverse charge mechanism – Specific transactions	945
10.1.3. Optional temporary reverse charge mechanism – Specific transactions	949
10.2. Simplified intra-Community triangulation	952
10.3. VAT representatives	956
10.4. Third party's joint and several liability	959
10.4.1. Cross-border relationships	960
10.4.2. Specific transactions	963
10.5. VAT on importation – Postponed accounting	968
10.6. Assessment and refund application periods	971
10.7. Split payment mechanism	976
10.7.1. Italy	976
10.7.2. Poland	977
10.7.3. Romania	978
11. Administrative Obligations	981
11.1. Registration	981
11.2. VAT invoices	981
11.2.1. VAT invoices relating to exempt supplies	981
11.2.2. Time limits	982
11.2.3. Invoices drawn up by the customer	983
11.2.4. Customer's identification number	984
11.2.5. Clauses on VAT invoices	985
11.2.6. Storage of invoices	990
11.3. VAT returns	992
11.3.1. Tax periods	992
11.3.2. Electronic VAT returns	996
11.3.3. Filing of VAT returns and payment of VAT	997
11.4. Recapitulative statements	999
11.4.1. Additional details	1000
11.4.2. Filing frequency	1000
11.4.2.1. Quarterly filing	1001
11.4.2.2. Annual filing	1002
11.4.3. Filing format	1002
11.4.4. Intra-Community acquisitions of goods	1004
11.4.5. Receipt of cross-border services	1005

VAT Options Exercised by the Member States (situation on 1 January 2021)

12. Special Schemes	1007
12.1. Flat-rate farmers	1007
12.2. Margin scheme	1008
13. Information Offices	1011
14. Thresholds and Tax Rates	1017

Contributors

This Part is based on information provided by the following contributors:

Austria	Hannes Gurtner LeitnerLeitner, Linz
Belgium	Marc Govers The VAT House, Antwerp
Bulgaria	Lubka Tzenova Bulgarian University of Finance, Business and Entrepreneurship, Sofia
Croatia	Marko Starčević CMS Reich-Rohrwig Hainz, Branch office Zagreb
Cyprus	Yiannis Tsangaris Commissioner, Cyprus Tax Department
Czech Republic	Milan Tomiček Stanik, Tomiček & Partners, Prague
Denmark	Claus Bohn Jespersen KPMG Acor Tax, Copenhagen
Estonia	Karin Neemsalu Baltic Business Advisory OÜ (Mazars), Tallinn
Finland	Mirka Danielsson Deloitte, Helsinki
France	Florence Gournay-Noury Tax Manager, Paris
Germany	Sonja Wiesner WTS, Munich
Greece	Alex Karopoulos Zepos & Yannopoulos, Athens
Hungary	Gábor Németh WTS Klient, Budapest
	Zsolt Szatmari IBFD, Amsterdam
Ireland	Gabrielle Dillon Twomey Moran Taxation Advisers, Dublin
Italy	Simonetta La Grutta Grant Thornton, Milan
Latvia	Larisa Geržova IBFD, Amsterdam
Lithuania	Robertas Degesys TGS Baltic, Vilnius
Luxembourg	Erwan Loquet BDO Luxembourg

Malta	Sarah Cassar Torregiani Malta
Netherlands	Bert Laman Mazars, Rotterdam
Poland	Krzysztof Lasiński-Sulecki Nicolaus Copernicus University, Toruń
Portugal	Isabel Vieira dos Reis Garrigues, Lisbon
Romania	Ana-Maria Notingher Tax Advisor, Bucharest
Slovak Republic	Elvíra Ungerová KPMG, Bratislava
Slovenia	Jerica Dolšak van Rijnsoever Tax Lawyer, Ljubljana
Spain	Gorka Echevarría Zubeldia Global VAT Manager, Geneva
Sweden	Tomas Karlsson Ernst & Young AB, Stockholm
United Kingdom	Robert Killington Independent VAT Specialist

1. Introduction

The European Union consists of 27 Member States: Austria (AT), Belgium (BE), Bulgaria (BG), Croatia (HR), Cyprus (CY), the Czech Republic (CZ), Denmark (DK), Estonia (EE), Finland (FI), France (FR), Germany (DE), Greece (EL), Hungary (HU), Ireland (IE), Italy (IT), Latvia (LV), Lithuania (LT), Luxembourg (LU), Malta (MT), the Netherlands (NL), Poland (PL), Portugal (PT), Romania (RO), the Slovak Republic (SK), Slovenia (SI), Spain (ES) and Sweden (SE), which means that they all apply the “harmonized” European VAT system.

On 29 March 2017, the United Kingdom (Great Britain and Northern Ireland) submitted a notification of its intention to withdraw from the European Union pursuant to Article 50 of the Treaty on European Union. The United Kingdom (GB) became a “third country” as of 1 February 2020, 00:00 a.m. (CET) towards the rest of the EU Member States¹. However, after the end of the transition period, the Protocol on Ireland/Northern Ireland (“IE/NI Protocol”) applies². The IE/NI Protocol is subject to periodic consent of the Northern Ireland Legislative Assembly, the initial period of application extending to 4 years after the end of the transition period. The IE/NI Protocol makes certain provisions of EU law applicable also to and in the United Kingdom in respect of Northern Ireland. In the IE/NI Protocol, the European Union and the United Kingdom have furthermore agreed that insofar as EU rules apply to and in the United Kingdom in respect of Northern Ireland, Northern Ireland is treated as if it were a Member State. The IE/NI Protocol provides that EU VAT rules concerning goods apply to and in the United Kingdom in respect of Northern Ireland. This means that references to the European Union have to be understood as including Northern Ireland, whereas references to the United Kingdom have to be understood as referring only to Great Britain (England, Scotland and Wales). Transactions involving services are not covered by the IE/NI Protocol. This means that transactions of services between Member States and Northern Ireland are treated as transactions between Member States and third countries/territories.

Where there is a reference to the United Kingdom, this includes all parts of Great Britain and Northern Ireland. References to Great Britain only cover the nations of England, Scotland, and Wales.

In view of the dozens of options available to the Member States under the VAT Directive³, the adjective “harmonized” significantly overstates the actual situation, even if the legislation of all Member States were perfectly in line with the provisions of EU law, which is clearly not the case.

1. For more information, *see* <https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement/> and https://ec.europa.eu/info/relations-united-kingdom/eu-uk-withdrawal-agreement/protocol-ireland-and-northern-ireland_en.
2. Article 185 of the Withdrawal Agreement.
3. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347 of 11 December 2006; for the consolidated text of the VAT Directive, *see* Part One.

Member States and the United Kingdom impose VAT under the following headings:

	Official name of the tax	Common abbreviation(s)
AT	Umsatzsteuer ¹	USt, MwSt
BE	Belasting over de toegevoegde waarde Taxe sur la valeur ajoutée	btw, TVA
BG	Danak varhu Dobawenata Stoinost	DDS
CY	Φόρος Προστιθέμενης Αξίας (Foros Prostithemenis Axias)	ΦΠΑ (FPA)
CZ	Daň z přidané hodnoty	DPH
DE	Umsatzsteuer ¹ (Mehrwertsteuer)	USt, MwSt
DK	Merværdiafgift	MOMS
EE	Käibemaks ¹	KM
EL	Φόρος Προστιθέμενης Αξίας	ΦΠΑ
ES	Impuesto sobre el Valor Añadido	IVA
FI	Arvonlisävero	ALV
FR	Taxe sur la valeur ajoutée	TVA
GB	Value added tax	VAT
HR	Porez na dodanu vrijednost	PDV
HU	Általános forgalmi adó	ÁFA
IE	Value added tax	VAT
IT	Imposta sul Valore Aggiunto	IVA
LT	Pridetines vertes mokesčis	PVM
LU	Taxe sur la valeur ajoutée	TVA
LV	Pievienotās vērtības nodoklis	PVN
MT	Taxxa fuq il-Valur Mizjud	VAT
NL	Omzetbelasting ¹	BTW, btw, OB, ob
PL	Podatek od towarów i usług	PTU
PT	Imposto Sobre o Valor Acrecentado	IVA
RO	Taxa pe valoarea adăugată	TVA
SE	Mervärdesskatt	MOMS
SI	Davek na dodano vrednost	DDV
SK	Daň z pridannej hodnoty	DPH

1. Turnover tax. It should be noted that the Treaty on the Functioning of the European Union (TFEU) also refers to the term "turnover tax", not "value added tax" (see Articles 112 and 113 of the TFEU).

This Part provides information⁴ on how Member States of the European Union have made use of some of the most important options available to them under the VAT Directive in force on 1 January 2021. This Part also includes information on VAT rules applicable in the United Kingdom on 1 January 2021.

4. Part Three is based on contributions made by the correspondents listed at the beginning of this Part. Only the editor is responsible for the final result.

“Exemptions” – “Taxable”

For the purposes of this Part, the concept of “exemption” is restricted to “true exemptions”, i.e. supplies of goods and services on which no output VAT is payable, whilst the supplier is not entitled to deduct related input tax. Exemptions with the right to deduct input tax are referred to as “zero rates”.

The meaning of the expression “taxable” in the VAT Directive is quite ambiguous. It may mean “subject to the VAT legislation” or “actually subject to VAT”. Where they are actually subject to VAT, supplies of goods and services are labelled as “taxed”, unless use of the word “taxable” does not give rise to misunderstanding, such as in “taxable person”, “taxable dealer”, “taxable entity”, “taxable amount”, etc.

Currencies

The names of the currencies of the Member States that have not adopted the euro are expressed by means of a three-letter code, of which the first two letters indicate the country and the final letter the name of the currency⁵. For three Member States, the final letter of the official code is an “N”, which stands for “new”. Where the new currency was introduced more than 10 years ago, which applies to the Bulgarian lev, the Polish złoty and the Romanian leu, qualifying those currencies as “new” is not appropriate and, therefore, the official currency abbreviations “BGN”, “PLN” and “RON” in this Part have been replaced with “BGL”, “PLZ” and “ROL”, respectively.

For reference purposes, all amounts expressed in the national currencies of the Member States have been converted into euro on the basis of the exchange rates as published by the European Central Bank for 4 January 2021; *see* OJ C 2 of 5 January 2021. That procedure does not apply to amounts in national currencies that must be converted into euro on the basis of the exchange rate applicable on a specific date.

“Community” – “Union”

Under the Treaty of Lisbon, which entered into force on 1 December 2009, the *Treaty on (the) European Union* (TEU) and the *Treaty establishing the European Community* (TEC) have been amended, and the latter Treaty has been renamed as *Treaty on the Functioning of the European Union* (TFEU). From 1 December 2009, the European Union has been given a single legal personality. Prior to that date, the *European Community* and the *European Union* had different statutes. The Treaty of Lisbon has ended this dual system and, under the new Article 1 of the TEU, the *European Union* has replaced and succeeded the *European Community*. That replacement has undoubtedly the effect that, from 1 December

5. In this respect, the abbreviation of the euro (“EUR”) is a notable exception to that rule because the name of the European currency does not begin with an “R”.

2009, the concept “European Community” in secondary EU law must be interpreted as meaning “European Union”.

It could be argued that the replacement of the concept of “Community” by that of “European Union” in primary EU law should also affect the terminology in secondary EU law. However, the wording of secondary EU law, which contains definitions of concepts containing the adverb “intra-Community”, has formally not been adapted. In order to maintain the link with legally defined concepts, we will continue to use the old and familiar adjective “intra-Community”, even if the concept in question is not legally defined (“intra-Community supplies of goods”). The proposal for a Council Directive amending the VAT Directive as regards the introduction of a definitive VAT system⁶ seizes the opportunity to replace the terms “intra-Community” and “Community” by the terms “intra-Union” and “Union” in the provisions of the VAT Directive. Other terms have been “modernized”, such as “European Union”, “EU law”, “EU Member State” and “Member States of the European Union”.

“Territory of the Community”

Under Article 5 of the VAT Directive, the terms “Community” and “territory of the Community” are defined as the territory of the Member States to which the Treaty establishing the European Community is applicable in accordance with Article 299 of that Treaty, with the exception of certain territories.

As mentioned above, with effect from 1 December 2009, the Treaty establishing the European Community (TEC) has been renamed as the Treaty on the Functioning of the European Union (TFEU), therefore, reference to Article 299 TEC should have been replaced by reference to, *inter alia*, Article 52 of the Treaty on (the) European Union and Article 355 of the TFEU.

The VAT Directive does not apply to the following territories forming part of the customs territory of the Community: Mount Athos; the Canary Islands; the French territories referred to in Article 349 and Article 355(1) of the Treaty on the Functioning of the European Union⁷; the Åland Islands; Campione d’Italia and the Italian waters of Lake Lugano; and to the following territories not forming part of the customs territory of the Community: the Island of Heligoland; the territory of Büsing; Ceuta; Melilla and Livigno. For the purposes of applying the VAT Directive, these territories are considered “third territories”.

In view of the conventions and treaties concluded with France and Cyprus respectively, the Principality of Monaco and the United Kingdom Sovereign

6. Proposal for a Council Directive amending Directive 2006/112/EC as regards the introduction of detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States, COM(2018) 329 final of 25 May 2018.
7. Articles 349 and 355(1) of the Treaty on the Functioning of the European Union refer to the French territories of Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy and Saint-Martin.

Base Areas of Akrotiri and Dhekelia are, for the purposes of the application of the VAT Directive, not considered third countries.

Member States shall take the measures necessary to ensure that transactions originating in or intended for the Principality of Monaco are treated as transactions originating in or intended for France, and that transactions originating in or intended for the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia are treated as transactions originating in or intended for Cyprus.

The United Kingdom (Great Britain and Northern Ireland) left the European Union in 2020 and following the transition period became a third country on 1 January 2021. However, there are special arrangements for Northern Ireland that continues to apply the rules of the VAT Directive for supplies of goods.

The Isle of Man is treated as part of the United Kingdom. Transactions originating in or intended for the Isle of Man are treated as transactions originating in or intended for the United Kingdom.

The position of the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia is governed by a protocol between the Republic of Cyprus and the United Kingdom, according to Article 7(8) of the EU Withdrawal Agreement.

VAT options

It should be noted that the following overview is inevitably a compromise between completeness and clarity, which means that “minor” details had to be ignored. However, what may be a minor detail to some, may be of vital importance to others. The editor is aware of the fact that the presentation of the information in this edition may occasionally be less than optimal and she intends to improve future editions in this respect. To that end, the editor invites you to bring to her attention any suggestions which may make future editions more accessible and useful. Although the country information has been compiled and summarized with great care, it cannot be precluded that the overview contains mistakes. The editor would be grateful if you were to bring them to her attention.

Contact

IBFD Head Office
Rietlandpark 301
1019 DW Amsterdam
P.O. Box 20237
1000 HE Amsterdam
The Netherlands

Tel.: +31-20-554 0100 (GMT+1)

Email: info@ibfd.org

Web: www.ibfd.org



IBFD, Your Portal to Cross-Border Tax Expertise