



EU VAT Compass 2022/2023

Including:

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

EU VAT Compass 2022/2023

Why this book?

Encompassing the most important features of the European Union's VAT system, the EU VAT Compass 2022/2023 is an essential source of reference for all those actively working or interested in EU VAT. The book consists of three parts, each comprising a vital element of the EU VAT system.

Part One presents the consolidated text of the current EU VAT Directive (No. 2006/112), as most recently amended by Directive 2021/1159; 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 the 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 1,050 ECJ judgments in VAT cases and the pending cases that are expected to lead to judgments in the course of 2022 and 2023.

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 Northern Ireland (United Kingdom).

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Preface

The *EU VAT Compass 2022/2023* 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 2022.

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, as most recently amended by Directive 2021/1159. 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 1050 ECJ judgments in VAT cases. It also contains an overview of the cases pending before the ECJ on 31 December 2021, which can reasonably be expected to lead to judgments of the ECJ in the course of 2022 and 2023.

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 Northern Ireland (United Kingdom). In principle, the overview is based on information available on 1 January 2022. 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 2022 (*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 fixes" for intra-Community trade in the European Union by the Member States that are applicable from 1 January 2020 and the new VAT rules for cross-border e-commerce which have come into force on 1 July 2021.

Preface

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

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Part One

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**Council Directive 2006/112/EC
of 28 November 2006
on the common system of value added tax
OJ L 347 of 11 December 2006**

**TITLE I
SUBJECT MATTER AND SCOPE**

Article 1

1. This Directive establishes the common system of value added tax (VAT).
2. The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.

On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.

The common system of VAT shall be applied up to and including the retail trade stage.

Article 2

1. The following transactions shall be subject to VAT:
 - a. the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;
 - b. the intra-Community acquisition of goods for consideration within the territory of a Member State by:

[Text until 31 December 2024]

- i. a taxable person acting as such, or a non-taxable legal person, where the vendor is a taxable person acting as such who is not eligible for the exemption for small enterprises provided for in Articles 282 to 292 and who is not covered by Articles 33 or 36;

[Text from 1 January 2025]

- i. a taxable person acting as such, or a non-taxable legal person, where the vendor is a taxable person acting as such who is not eligible for the exemption for small enterprises provided for in Article 284 and who is not covered by Article 33 or 36;

[Directive 2020/285]

- ii. in the case of new means of transport¹, a taxable person, or a non-taxable legal person, whose other acquisitions are not subject to VAT pursuant to Article 3(1), or any other non-taxable person;
 - 1. Under Article 2 of Implementing Regulation 282/2011, the following shall not result in intra-Community acquisitions within the meaning of point (b) of Article 2(1):
 - a. the transfer of a new means of transport by a non-taxable person upon change of residence provided that the exemption [zero rate] provided for in point (a) of Article 138(2) could not apply at the time of supply;
 - b. the return of a new means of transport by a non-taxable person to the Member State from which it was initially supplied to him under the exemption [zero rate] provided for in point (a) of Article 138(2).
 - iii. in the case of products subject to excise duty, where the excise duty on the intra-Community acquisition is chargeable, pursuant to Directive 92/12/EEC², within the territory of the Member State, a taxable person, or a non-taxable legal person, whose other acquisitions are not subject to VAT pursuant to Article 3(1);
 - 2. Directive 92/12 has been replaced by Directive 2008/118, with effect from 1 April 2010.
- c. the supply of services for consideration within the territory of a Member State by a taxable person acting as such;
- d. the importation of goods.
- 2. a. For the purposes of point (ii) of paragraph 1(b), the following shall be regarded as “means of transport”, where they are intended for the transport of persons or goods:
 - i. motorised land vehicles the capacity of which exceeds 48 cubic centimetres or the power of which exceeds 7,2 kilowatts;
 - ii. vessels exceeding 7,5 metres in length, with the exception of vessels used for navigation on the high seas and carrying passengers for reward, and of vessels used for the purposes of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing;
 - iii. aircraft the take-off weight of which exceeds 1,550 kilograms, with the exception of aircraft used by airlines operating for reward chiefly on international routes.
- b. These means of transport shall be regarded as “new” in the cases:
 - i. of motorised land vehicles, where the supply takes place within six months of the date of first entry into service or where the vehicle has travelled for no more than 6,000 kilometres;

- ii. of vessels, where the supply takes place within three months of the date of first entry into service or where the vessel has sailed for no more than 100 hours;
 - iii. of aircraft, where the supply takes place within three months of the date of first entry into service or where the aircraft has flown for no more than 40 hours.
 - c. Member States shall lay down the conditions under which the facts referred to in point (b) may be regarded as established.
3. “Products subject to excise duty” shall mean energy products, alcohol and alcoholic beverages and manufactured tobacco, as defined by current Community legislation, but not gas supplied through a natural gas system situated within the territory of the Community or any network connected to such a system.
[Directive 2009/162]

Article 3

1. By way of derogation from Article 2(1)(b)(i), the following transactions shall not be subject to VAT:
 - a. the intra-Community acquisition of goods by a taxable person or a non-taxable legal person, where the supply of such goods within the territory of the Member State of acquisition would be exempt pursuant to Articles 148 and 151;
 - b. the intra-Community acquisition of goods, other than those referred to in point (a) and Article 4, and other than new means of transport or products subject to excise duty, by a taxable person for the purposes of his agricultural, forestry or fisheries business subject to the common flat-rate scheme for farmers, or by a taxable person who carries out only supplies of goods or services in respect of which VAT is not deductible, or by a non-taxable legal person³.
3. Under Article 4 of Implementing Regulation 282/2011, a taxable person who is entitled to non-taxation of his intra-Community acquisitions of goods, in accordance with Article 3, shall remain so where, pursuant to Article 214(1)(d) or (e), a VAT identification number has been attributed to that taxable person for the services received for which he is liable to pay VAT or for the services supplied by him within the territory of another Member State for which VAT is payable solely by the recipient.
However, if that taxable person communicates this VAT identification number to a supplier in respect of an intra-Community acquisition of goods, he shall be deemed to have exercised the option provided for in Article 3(3).

2. Point (b) of paragraph 1 shall apply only if the following conditions are met:
 - a. during the current calendar year, the total value of intra-Community acquisitions of goods does not exceed a threshold which the Member States shall determine but which may not be less than EUR 10,000 or the equivalent in national currency;
 - b. during the previous calendar year, the total value of intra-Community acquisitions of goods did not exceed the threshold provided for in point (a).

The threshold which serves as the reference shall consist of the total value, exclusive of VAT due or paid in the Member State in which dispatch or transport of the goods began, of the intra-Community acquisitions of goods as referred to under point (b) of paragraph 1.

3. Member States shall grant taxable persons and non-taxable legal persons eligible under point (b) of paragraph 1 the right to opt for the general scheme provided for in Article 2(1)(b)(i).

Member States shall lay down the detailed rules for the exercise of the option referred to in the first subparagraph, which shall in any event cover a period of two calendar years.

Article 4

In addition to the transactions referred to in Article 3, the following transactions shall not be subject to VAT:

- a. the intra-Community acquisition of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), where the vendor is a taxable dealer acting as such and VAT has been applied to the goods in the Member State in which their dispatch or transport began, in accordance with the margin scheme provided for in Articles 312 to 325;
- b. the intra-Community acquisition of second-hand means of transport, as defined in Article 327(3), where the vendor is a taxable dealer acting as such and VAT has been applied to the means of transport in the Member State in which their dispatch or transport began, in accordance with the transitional arrangements for second-hand means of transport;
- c. the intra-Community acquisition of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), where the vendor is an organiser of sales by public auction, acting as such, and VAT has been applied to the goods in the Member State in which their dispatch or transport began, in accordance with the special arrangements for sales by public auction.

TITLE II TERRITORIAL SCOPE

Article 5

For the purposes of applying this Directive, the following definitions shall apply:

1. “Community” and “territory of the Community” mean the territories of the Member States as defined in point (2);
2. “Member State” and “territory of a Member State” mean 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 Treaty⁴, with the exception of any territory referred to in Article 6 of this Directive;

 4. 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). 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.
3. “third territories” means those territories referred to in Article 6;
4. “third country” means any State or territory to which the Treaty is not applicable.

Article 6

1. This Directive shall not apply to the following territories forming part of the customs territory of the Community:
 - a. Mount Athos;
 - b. the Canary Islands;
 - c. the French territories referred to in Article 349 and Article 355(1) of the Treaty on the Functioning of the European Union;
 - d. the Åland Islands;
 - e. the Channel Islands;
 - f. Campione d'Italia;
[Directive 2019/475]
 - g. the Italian waters of Lake Lugano.
[Directive 2019/475]

2. This Directive shall not apply to the following territories not forming part of the customs territory of the Community:
 - a. the Island of Heligoland;
 - b. the territory of Büsingen;
 - c. Ceuta;
 - d. Melilla;
 - e. Livigno.
 - f. *[Deleted]*
 - g. *[Deleted]*
[Directive 2019/475]

Article 7

1. In view of the conventions and treaties concluded with France, the United Kingdom and Cyprus respectively, the Principality of Monaco, the Isle of Man and the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall not be regarded, for the purposes of the application of this Directive, as third countries.
2. 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, that transactions originating in or intended for the Isle of Man are treated as transactions originating in or intended for the United Kingdom, 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.

Article 8

If the Commission considers that the provisions laid down in Articles 6 and 7 are no longer justified, particularly in terms of fair competition or own resources, it shall present appropriate proposals to the Council.

TITLE III TAXABLE PERSONS

Article 9

1. “Taxable person”⁵ shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

5. Under Article 5 of Implementing Regulation 282/2011, a European Economic Interest Grouping (EEIG) constituted in accordance with Regulation (EEC) No. 2137/85 which supplies goods or services for consideration to its members or to third parties shall be a taxable person within the meaning of Article 9(1).
[Article 2 of Implementing Regulation 1777/2005]

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as “economic activity”. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

2. In addition to the persons referred to in paragraph 1, any person who, on an occasional basis, supplies a new means of transport, which is dispatched or transported to the customer by the vendor or the customer, or on behalf of the vendor or the customer, to a destination outside the territory of a Member State but within the territory of the Community, shall be regarded as a taxable person.

Article 10

The condition in Article 9(1) that the economic activity be conducted “independently” shall exclude employed and other persons from VAT in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer’s liability.

Article 11

After consulting the advisory committee on value added tax (hereafter, the “VAT Committee”), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

A Member State exercising the option provided for in the first paragraph, may adopt any measures needed to prevent tax evasion or avoidance through the use of this provision.

Article 12

1. Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to in the second subparagraph of Article 9(1) and in particular one of the following transactions:
 - a. the supply, before first occupation, of a building or parts of a building and of the land on which the building stands;
 - b. the supply of building land.
2. For the purposes of paragraph 1(a), “building” shall mean any structure fixed to or in the ground.

Member States may lay down the detailed rules for applying the criterion referred to in paragraph 1(a) to conversions of buildings and may determine what is meant by “the land on which a building stands”.

Member States may apply criteria other than that of first occupation, such as the period elapsing between the date of completion of the building and the date of first supply, or the period elapsing between the date of first occupation and the date of subsequent supply, provided that those periods do not exceed five years and two years respectively.

3. For the purposes of paragraph 1(b), “building land” shall mean any unimproved or improved land defined as such by the Member States.

Article 13

1. States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions.

However, when they engage in such activities or transactions, they shall be regarded as taxable persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition.

In any event, bodies governed by public law shall be regarded as taxable persons in respect of the activities listed in Annex I, provided that those activities are not carried out on such a small scale as to be negligible.

2. Member States may regard activities, exempt under Articles 132, 135, 136 and 371, Articles 374 to 377, Article 378(2), Article 379(2) or Articles 380

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