



HARMONISATION VALUE ADDED TAX IN THE EU



Concept of the tax

- General tax on consumption
 - introduced in 1967
 - replacing existing systems (cascade system)
- Applied to supply of goods and services
- Proportional to price, whatever the number of transactions => neutral
- Fractional payment with right of deduction



Example

- VAT = 10%, profit margin = 50%

A → B → C → D

• <u>Cascade:</u>	1 000	1 650 (+550)	2 722 (+907)
– duty	100	165	273
– total	1 100	1 815	2 995
• <u>VAT:</u>	1 000	1 500 (+500)	2 250 (+750)
– VAT	100 (100)	150 (50)	225 (75)
– total	1 100	1 650	2 475



6th VAT Directive

- Scope (*Article 2*)
 - supply of goods or services
 - for consideration
 - within the country
 - by a taxable person
 - [intra-Community acquisition of goods]
 - importation of goods



6th VAT Directive

- Territorial application (*Article 3*)
 - fiscal territory
 - the territory of each Member State
 - defined in Article 299 of the EC Treaty
 - excluding certain EU territories due to their status
 - including certain non-EU territories because of their special status



6th VAT Directive

- Taxable persons (*Article 4*)
 - any person
 - acting independently
 - carrying out any economic activity
 - whatever the purpose
 - public bodies
 - not when engaging in activities as public authorities
 - risk of significant distortion of competition
 - always when carrying out certain activities (*Annex D*)
 - [anyone supplying a new means of transport to another Member State]

6th VAT Directive

- Taxable transactions
 - supply of goods (*Article 5*)
 - transfer of right to dispose of tangible property as owner
 - supply of services (*Article 6*)
 - transaction other than supply of goods
 - [intra-Community acquisition of goods (*Article 28a*)]
 - imports (*Article 7*)
 - only goods



6th VAT Directive

- Place of taxable transactions
 - supply of goods (*Article 8*)
 - where situated
 - when the goods are supplied
 - at time of transport when goods are dispatched
 - where installation or assembly is carried out
 - at point of departure
 - when supplied on board ships, aircraft or trains during a transport of passengers
 - at place of customer
 - with gas supplied through natural gas distribution system or electricity



6th VAT Directive

- Place of taxable transactions
 - supply of services (*Article 9*)
 - where the supplier has established his business or has a fixed establishment
 - exceptions
 - immovable property
 - transport services
 - cultural services
 - intellectual services
 - effective use and enjoyment
 - new proposal – B2B and B2C (*COM(2005) 334*)

6th VAT Directive

- Place of taxable transactions
 - [intra-Community acquisitions (*Article 28b*)
 - where situated
 - at the end of transport or dispatch]
 - imports (*Article 7*)
 - where goods enter the EU
 - where goods cease to be covered by suspensive customs arrangements
 - aim is to ensure equal treatment between imported goods and those supplied within the EU



6th VAT Directive

- Chargeable event and chargeability of tax (*Article 10*)
 - chargeable event
 - when legal conditions are fulfilled for VAT to become chargeable
 - at supply of goods or services
 - at import of goods
 - chargeability of tax
 - when authorities are entitled to claim payment of the tax
 - at supply of goods or services
 - at time of payment, if before supply
 - at the issue of invoice
 - at import of goods



6th VAT Directive

- Taxable amount (*Article 11*)
 - basis for calculation of VAT
 - within the territory of the EU: consideration
 - upon importation: the customs value
 - includes
 - other taxes
 - incidental expenses



6th VAT Directive

- Taxable amount (*Article 11*)
 - excludes
 - price reductions
 - discounts and rebates
 - reimbursement of expenses
 - may be reduced
 - in cases of cancellation, refusal or non-payment



6th VAT Directive

- Rates (*Article 12*)
 - standard rate: minimum 15%
 - shall be the same for supply of goods and services
 - reduced rate(s) (*Annex H*): one or two reduced rates of at least 5%
 - only for categories listed
 - optional for Member States
 - parking rates (*Article 28(2)*) – zero rates
 - transitional measure
 - reduced rates: labour intensive services (*Article 28(6)*)
 - authorised temporary measure



6th VAT Directive

- Exemptions (without right of deduction)
 - within the territory of the country (*Article 13*)
 - certain activities of public interest
 - health, education, culture
 - other activities
 - insurance, financial transactions, leasing and letting of immovable property
 - option to tax
 - certain financial transactions, leasing and letting of immovable property



6th VAT Directive

- Exemptions on importation (*Article 14*)
 - goods qualifying for customs duty exemption
 - certain imports (*Directive 83/181/EEC*)
 - personal property (at marriage, inheritance ...)
 - imports of negligible value (mail order)
 - intended for charitable or philanthropic organisations (articles for handicapped persons, disaster victims ...)
 - in the context of international relations (decorations, presents ...)
 - small consignments (*Directive 78/1035/EEC*)
 - non commercial nature



6th VAT Directive

- Exemptions on importation (*Article 14*)
 - travellers' allowances (*Directive 69/169/EEC*)
 - qualitative limits (alcohol, tobacco)
 - quantitative limits (threshold)
 - new proposal (*COM(2006) 76*)
 - re-importation
 - diplomatic arrangements, ...



6th VAT Directive

- Exemptions (with right of deduction)
 - exports and international transport (*Article 15*)
 - supply of goods dispatched or transported outside the EU
 - tourist scheme
 - work on movable property to be exported
 - supply related to vessels and aircraft in international traffic
 - diplomatic arrangements, international organisations, NATO forces, ...



6th VAT Directive

- Exemptions (with right of deduction)
 - international goods traffic (*Article 16*)
 - goods placed under customs arrangements
 - customs warehouses
 - transit
 - inward processing
 - goods placed in fiscal warehouses
 - tax warehouses for excise goods
 - VAT warehouses (*Annex J*)



6th VAT Directive

- Deductions
 - origin and scope (*Article 17*)
 - fixing when right of deduction arises
 - expenditures giving rise to deduction: if business expenses
 - goods and services supplied
 - imported goods
 - [goods acquired]
 - when used for the purposes of taxed transactions
 - even if carried out in another country
 - although, in some cases, exempt from tax

6th VAT Directive

- Deductions
 - origin and scope (*Article 17*)
 - refund to non-established persons – see later
 - partial deduction
 - when used also for non-deductible purposes
 - on a proportional basis
 - proportion determined
 - for all transactions
 - sector by sector
 - actual use



6th VAT Directive

- Deductions
 - exercise of right of deduction (*Article 18*)
 - formal conditions
 - invoice
 - import document
 - possible additional requirements
 - deduction effected by subtraction
 - input tax exceeds output tax
 - refund
 - carry forward



6th VAT Directive

- Deductions
 - calculation of deductible proportion (*Article 19*)
 - fraction made up by
 - deductible transactions (numerator)
 - total turnover (denominator)



6th VAT Directive

- Deductions
 - adjustments of deductions (*Article 20*)
 - initial deduction incorrect
 - change in use after deduction is made
 - especially relevant for capital goods
 - five year adjustment
 - may be extended up to 20 years in the case of immovable property



6th VAT Directive

- Persons liable for payment for tax (*Article 21*)
 - internal
 - supplier of goods and services
 - recipient of certain services
 - [acquirer of goods]
 - anyone invoicing VAT
 - on imports
 - person making the import



6th VAT Directive

- Obligations for persons liable for payment
 - under the internal system (*Article 22*)
 - statement of start of business
 - attribution of VAT identification number
 - keeping accounts
 - issue of invoice in respect of goods and services supplied
 - submission of VAT return
 - payment of net VAT amount due
 - [submission of recapitulative statements]
 - simplification measures possible
 - new proposal – one stop mechanism (*COM(2004) 728*)



6th VAT Directive

- Obligations for persons liable for payment
 - in respect of imports (*Article 23*)
 - payment of tax at import
 - can instead allow for this to be included in the VAT return



6th VAT Directive

- Special schemes
 - small undertakings (*Article 24*)
 - specific for each country
 - thresholds
 - based on annual turnover
 - provides for exemption without right of deduction
 - optional scheme
 - can opt for taxation
 - gives right of deduction



6th VAT Directive

- Special schemes
 - flat-rate farmers (*Article 25*)
 - not compulsory for Member States
 - compensation system
 - no right of deduction
 - fixed flat-rate percentage
 - compensates for tax incurred
 - optional scheme
 - can opt for taxation
 - gives right of deduction



6th VAT Directive

- Special schemes
 - travel agents (*Article 26*)
 - compulsory for Member States
 - ensures that tax revenues of underlying services accrue to Member State of consumption
 - taxes only margin = total amount to be paid by traveller minus costs of the journey for the travel agent
 - no right of deduction

6th VAT Directive

- Special schemes
 - second-hand goods, works of art, collectors' items and antiques (*Article 26a and Annex I*)
 - compulsory for Member States
 - taxes margin
 - avoids cascade effect
 - no right of deduction
 - optional scheme
 - can opt to tax under normal rules
 - may be of interest with export



6th VAT Directive

- Special schemes
 - gold (*Article 26b*)
 - compulsory for Member States
 - applies to investment gold
 - provides for exemption
 - optional scheme
 - can opt to tax
 - gives right of deduction



6th VAT Directive

- Special schemes
 - E-commerce (*Article 26c*)
 - compulsory for Member States
 - one stop scheme
 - covers all supplies to EU private customers
 - optional scheme
 - can opt to register under the normal rules



6th VAT Directive

- Simplification procedure
 - derogative measures (*Article 27*)
 - objective
 - simplifying procedure for charging VAT
 - preventing evasion or avoidance
 - requirement
 - not effect tax collected at final consumption stage
 - legislative procedure
 - authorisation by Council



6th VAT Directive

- Transitional provisions (*Article 28*)
 - divergent rates
 - taxation (*Annex E*)
 - exemption (*Annex F*)
 - option to tax (*Annex G*)
- Transitional regime - see later

6th VAT Directive

- VAT Committee (*Article 29*)
 - objective
 - ensuring uniform application of common VAT rules
 - tasks
 - consultations regarding specific measures taken by Member States
 - questions on the application of common VAT provisions
 - means
 - agreeing guidelines
 - serving as basis for implementing measures



6th VAT Directive

- Implementing measures (*Article 29a*)
 - simplified procedure
 - measures taken by Council
 - based on guidelines unanimously agreed in the VAT Committee
 - outcome
 - directly applicable legal act (*Council Regulation (EC) No 1777/2005*)



6th VAT Directive

- Miscellaneous
 - international agreements (*Article 30*)
 - unit of account = EURO (*Article 31*)
 - other turnover taxes than VAT prohibited (*Article 33*)
 - protective measure
 - own resources
 - customs territory \neq fiscal territory (*Article 33a*)
 - procedure for goods coming from or going to EU territories not part of the fiscal territory
- Final provisions (*Articles 34-38*)



6th VAT Directive Transitional Regime

Phases of harmonisation of VAT in EU: a short reminder

- 1968 – introduction of VAT – replacement of national cascade-type taxes
- 1977 – 6th VAT Directive – further harmonisation of VAT as VAT becomes own resource of the EU
- 1993 – Internal Market – abolition of fiscal frontiers – VAT transitional system



6th VAT Directive Transitional Regime

- Scope (*Article 28a*)
 - within scope
 - intra-Community acquisitions (ICAs)
 - all goods acquired by taxable person or non-taxable legal person acting as such, including those acquired by transfer
 - new means of transport acquired by taxable person or any other person
 - excise goods acquired by taxable person or non-taxable legal person



6th VAT Directive Transitional Regime

- Definition of new means of transport
 - cars (>48 cc or 7.2 kW); vessels (>7.5 m); aircraft (>1 500 kg)
 - supplied less than 3 months after first entry into service; for cars 6 months
 - travelled less than 6 000 km; sailed less than 100 hours; flown less than 40 hours
- Tax treatment of new means of transport
 - supplier always regarded as taxable person
 - supply to customer in another Member States exempt
 - acquisition by that customer taxed



6th VAT Directive Transitional Regime

- Right of deduction when selling new means of transport
 - right of deduction to be exercised only at time of supply
 - deduct VAT included in purchase price or paid at importation
 - deduction limited so as not to exceed the tax for which the supplier would otherwise be liable



6th VAT Directive Transitional Regime

- New means of transport (example)
 - the owner of a car decides to sell it
 - it is a new means of transport (the car is sold within 6 months of first entry and it has travelled less than 6 000 km)
 - the buyer is situated in another Member State
 - the sale is exempt from VAT; the purchase is an ICA and will be subject to VAT



6th VAT Directive Transitional Regime

- New means of transport (example)
 - the seller will be entitled to deduct the tax he paid when purchasing the car but not beyond the amount of tax for which he would have been liable, had the supply not been exempt
 - if the sales price is below the purchase price, the right of deduction will be limited



6th VAT Directive Transitional Regime

- New means of transport (example)
 - the car was bought at a price of € 25 000 plus € 5 000 (20% VAT)
 - if sold at a price of
 - € 30 000 plus € 6 000 (20% VAT)
 - owner entitled to deduct € 5 000 (not € 6 000)
 - € 25 000 plus € 5 000 (20% VAT)
 - owner entitled to deduct € 5 000
 - € 20 000 plus € 4 000 (20% VAT)
 - owner entitled to deduct € 4 000 (not € 5 000)



6th VAT Directive Transitional Regime

- Scope (*Article 28a*)
 - out of scope
 - ICAs
 - by special group (farmers, SMEs with only supplies for which VAT is not deductible and non-taxable legal persons)
 - if total yearly amount of ICAs is < € 10 000
 - provided not new means of transport or excise products



6th VAT Directive Transitional Regime

- Special group (example)
 - a local town decides to purchase some paper and 15 PCs in another Member State because VAT rate is 15%, while locally it is 25%
 - paper costs €2 000 and PCs €15 000
 - paper is bought in April and PCs in September
 - paper can be bought in other Member State with 15% VAT, but PCs will be subject to ICA, and therefore 25% VAT will be due



6th VAT Directive Transitional Regime

- Scope
 - non-transfer
 - goods installed in other Member State
 - goods delivered during IC passenger transport
 - related to exports or international transport
 - for supply of service and goods return
 - temporary use in other Member State for supply goods/service
 - temporary use (less 24 months) if imports would also be exempted from import duties



6th VAT Directive Transitional Regime

- Place of transaction (*Article 28b*)
 - IC acquisition of goods = where transport ends
 - supply of goods
 - distance selling (threshold €35 000–100 000)
 - supply of services (exceptions)
 - in the IC transport of goods = place of departure
 - ancillary to the IC transport of goods = where materially carried out
 - rendered by intermediaries = see main transaction
 - in the case of valuations of or work on movable tangible property = where materially carried out
 - exception = Member State that attributed VAT ID N° to client

6th VAT Directive Transitional Regime

- Place of transaction for transport (example)
 - transport by French company from Belgium to Spain



- 1) for Belgian company: place = Belgium
- 2) for French company: place = France
- 3) for German company: place = Germany



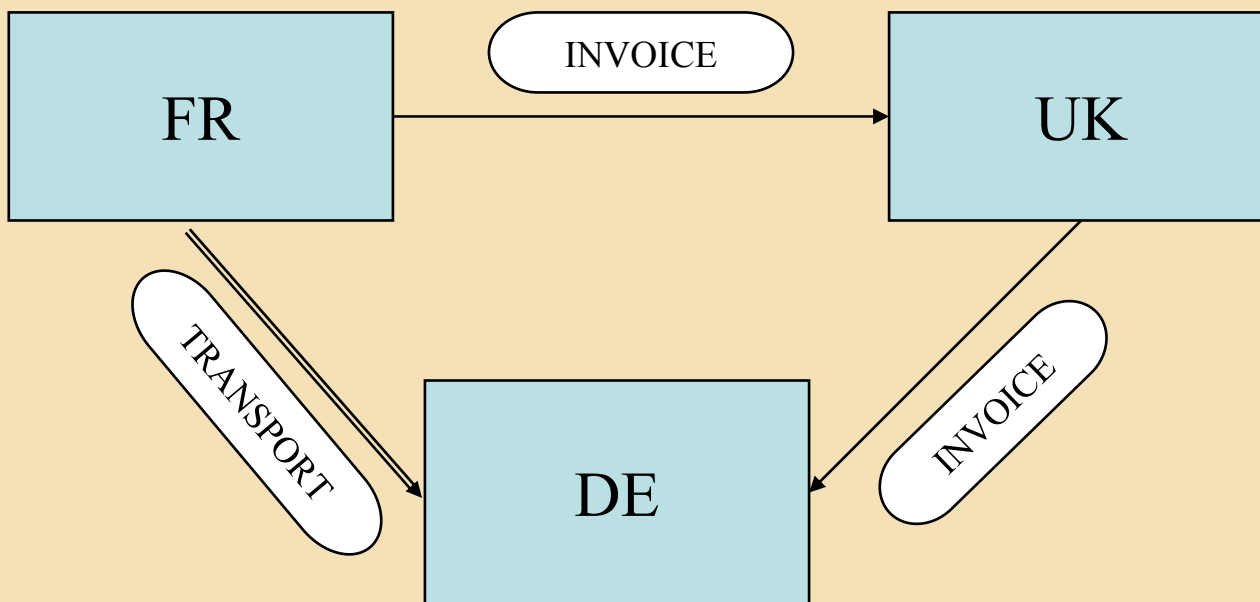
6th VAT Directive Transitional Regime

- Exemptions (*Article 28c*)
 - supply of goods
 - intra-Community acquisition of goods
 - if supply/import within the territory would in all circumstances be exempt
 - if IC acquisition in all circumstances would entitle to full reimbursement of VAT
 - transport services to/from the Azores and Madeira
 - importation of goods in other Member State than that of arrival
 - other (e.g. triangular transactions)



6th VAT Directive Transitional Regime

- Triangular transactions (example)





6th VAT Directive Transitional Regime

- Chargeable event and chargeability of tax (*Article 28d*)
 - when IC acquisition of goods is effected
 - tax chargeable on 15th day of month following chargeable event
- Taxable amount and rate applicable (*Article 28e*)
- Right of deduction (*Article 28f*)



6th VAT Directive Transitional Regime

- Persons liable for payment of tax (*Article 28g*)
 - as a rule, the person liable for payment is the supplier
 - if supplier is not established, the purchaser may be designated as person liable for VAT payment
 - in a limited number of cases, the receiver remains liable for payment of VAT
 - Article 9(2)(e) services, IC transport, triangular operations, ...
 - no fiscal representative to be imposed on EU-established suppliers
 - fiscal representative may be required from supplier established in third country if no agreement on mutual assistance



6th VAT Directive Transitional Regime

- Persons liable for payment VAT (example)
 - transport by French company from Belgium to Spain

BE  ES

- 1) for French company: liable person = supplier
- 2) for Belgian company: liable person = Belgian receiver
- 3) for German company: liable person = German receiver



6th VAT Directive Transitional Regime

- Obligations for persons liable for payment (*Article 28g*)
 - e.g. VAT identification number, invoicing, listing, return, accounting
- Special schemes (*Articles 28i and 28j*)
 - small undertakings (no exemption for new means of transport)
 - flat-rate scheme farmers (extension to IC trade)
- Miscellaneous provisions (*Article 28k and 28l*)
 - period of application, rate of conversion
 - tax-free shops for IC transport – now abolished



6th VAT Directive Transitional Regime

- Transitional provisions applicable in the field of second-hand goods, works of art, collectors' items and antiques (*Article 28o*)
- Transitional measures in the context of the accession of Austria, Finland and Sweden (*Article 28p*)
 - for goods imported and placed under a suspension regime in a Member State at the time of accession



VAT refund

- 8th VAT Directive (79/1072/EEC) for taxable persons established in another Member State
 - new proposal – electronic procedure (*COM(2004) 728*)
- 13th VAT Directive (86/560/EEC) for taxable persons established outside the EU



VAT refund

- Principle:
 - a taxable person can claim reimbursement of VAT paid in another Member State where he is not established
- Conditions:
 - no taxable transactions in that Member State
 - not established in that Member State
 - goods and services used for taxed transactions giving a right of deduction
 - reimbursement under conditions applicable in Member State of refund



VAT refund

- Problems:
 - procedure is complicated
 - sometimes very long period between request and time of refund
 - depending on the Member State where the VAT is paid, refund rules may vary
 - strict interpretation of conditions by Member State of refund may lead to a rejection of the demand