

**Is the current VAT treatment of supply in  
respect of shipping activities in line with the  
principles of the VAT Directive?**



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## **PREFACE**

It is my pleasure to express my gratitude to the persons how support and help me.

First of all, I would like to express my gratitude to my supervisor Gert-Jan van Norden for the guidance, for providing the feedback on which this work is based, for reviewing the drafts of this thesis chapter by chapter and for his collaboration.

And of course, I could not leave out all my relatives and friends for their sincere support. Especially, I would like to thank my parents who encouraged me psychologically and practically in every step and made this thesis and this master possible.

*Tilburg, June 2015*

*Maria Amanatidou*

## **ABSTRACT**

### **Is the current VAT treatment of supply in respect of shipping activities in line with the principles of the VAT Directive?**

The purpose of this thesis is to present the special VAT rules for the types of supply which are relevant with the shipping activities, correlate them with the principles of the VAT Directive and identify their divergences. My research has covered the supply of goods and services on board and the supply of fuels, as well as the supply for repair, maintenance and other kinds of service related to sea activities. My results prove that there are lots of gaps and mismatches. In particular, gaps in the interpretation of concepts, optional exemptions, administrative problems, and deviations from the destination principle are some of the problems, because they create misunderstandings in VAT treatment and subsequently this could lead to distortion of competition, elimination of taxpayers' certainty and lack of neutrality. The results of my research can be used for the improvement of the VAT rules in this field and enhance the revenues for the Governments and the businesses' decision making processes.

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*“The use of legal principles in tax law is problematic, because it is in like trying to explain astrophysics through the poetic beauty of a star – studded sky rather than through a mathematical model”.<sup>1</sup>*

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<sup>1</sup>FransVanistendael’s phrase, Marta Papis, *Principles of Law: Function, Status and Impact in EU Tax Law*, Cecile Brokelind Edition, IBFD, p. 29

# 1<sup>st</sup> CHAPTER

## INTRODUCTION

This thesis is written in the framework of the LLM programme “International Business Taxation”, Strategy Organization Business sub - track. Its topic is based on two main pillars. On the one hand, the Value Added Tax (VAT) and on the other, the ship transport.

As regards the first pillar, nowadays, we notice the trend of states shifting from direct to indirect taxation.<sup>2</sup> This trend is obvious also in the European Union, where VAT plays a decisive role in taxation and in decision making processes.

Regarding the second pillar, ship transport is undoubtedly the predominant means of transport for world trade.<sup>3</sup> The global trade is becoming via the sea, the ship transport plays a significant role in the tourism transport and it is proven that the cruise tourism is expanding more and more as a tourist option.<sup>4,5</sup>

All these could accentuate the importance of VAT on shipping transport, either from the side of the states, regarding the supplies which are taxed, or from the side of shipping, regarding the liability.

According to the European Commission report on supplies for passengers on board, *the goods and services are not transported in order to be supplied, but are supplied while moving.*<sup>6</sup> The meaning of the distinction between supplies on board and out of board is covered under the above mentioned phrase. In particular, there are special provisions in the VAT Directive which define the tax treatment of the supply of goods and services on board, as well as the

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<sup>2</sup> [www.pwc.com/taxpolicy](http://www.pwc.com/taxpolicy), *Shifting the balance from direct to indirect taxes: bringing new challenges*, p. 5

<sup>3</sup> <http://www.imo.org/About/Pages/Default.aspx>, “IMO – the International Maritime Organization – is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships”, “International shipping transports about 90 per cent of global trade to peoples and communities all over the world. Shipping is the most efficient and cost-effective method of international transportation for most goods”

<sup>4</sup> EP Parliamentary question on VAT and the cruise liner industry in the EU, E-4006/05, Written question by Simon Busutill (PPE DE) to the Commission, Subject: *The cruise liner industry in the EU*

<sup>5</sup> Study on the economic effects of the current VAT rules for passenger transport. Final Report. TAXUD/2012/DE/334, FWC No TAXUD/2010/CC?104, Case Center for Economic and Social Research, HIS Institute for Advanced Studies, Transport and Mobility Leuven, CPB Netherlands Bureau for Economic Policy Analysis (Consortium leader), Warsaw, December 2014, p.13

<sup>6</sup> European Commission, Brussels, 22-10-2012 COM (2012) 605 final, *REPORT FROM THE COMMISSION TO THE COUNCIL on the place of taxation of the supply of goods and the supply of services, for passengers on board ships, aircraft, trains or buses drawn up in accordance with Article 37(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*, p. 3



supply of fuels, modification, repair, maintenance, chartering and hiring of vessels. VAT on shipping is deemed to be a special situation and for this reason special rules are applied, instead of the provisions which are applied in the “normal” kinds of supplies. However, my thesis does not present only those special rules but it also moves forward to the next step and examines if the general principles of the VAT Directive are applied in those cases. However, even if they are not applied, they may be justified under conditions which guarantee the avoidance of the distortion of the internal market. In light of all the above mentioned, it is the aim of this master thesis to conduct a research and provide an answer to the following research question:

**“Is the current VAT treatment of supply in respect of shipping activities in line with the principles of the VAT Directive?”**

Multinational enterprises, maritime companies and states are keen on this issue.<sup>7</sup> For companies, the strategy business organization could help them to increase their business opportunities by effective VAT planning <sup>8</sup>and, for states, to efficiently manage and monitor the transactions.<sup>9</sup> Therefore, this topic is attractive for both private and public sector.

Of course, my thesis does not cover all tax regimes in relation to ship transport, but only the part of taxation related to VAT and especially the supply of goods and services on board and the pivotal issue of fuels as well as repair, maintenance, chartering and services related to sea activities. In this thesis, I present the general principles of VAT and the special rules which are applied in those cases according to the VAT Directive. In this way, I examine if those rules are based on the principles of VAT or if they deviate from them, and in the latter case I establish whether distortion issues arise.

Until now this issue hasn't attracted many researchers. That's why it is deemed to be a quite original issue but with an upcoming interest from academic, social and practical perspective. More and more studies are presented by the European Institutions and also more and more

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<sup>7</sup> European Commission, Brussels, 22-10-2012 COM (2012) 605 final, *REPORT FROM THE COMMISSION TO THE COUNCIL on the place of taxation of the supply of goods and the supply of services, for passengers on board ships, aircraft, trains or buses drawn up in accordance with Article 37(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*, p. 7

<sup>8</sup> PWC – Indirect taxes, <http://www.pwc.com/gr/en/tax-services/indirect-taxes.jhtml>

<sup>9</sup> European Commission, Brussels, 12.2.2014 COM (2014) 69 Final, “*REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT*”, Seventh report under Article 12 of Regulation (EEC, Euratom) n° 1553/89 on VAT collection and control procedures. {SWD (2014) 38 Final}, p.6

questions are posed in the European Parliament about it.<sup>10,11,12</sup> In addition to this, it is important to mention that although the goal of VAT Directive is the enhancement of the internal market, there are still some areas of VAT in which there are differences among the Member States, for example, differences of rates or policies of deductibility.<sup>13</sup> For a researcher the application of a rule is not the only issue. The most important part is to examine if the rule is right or if it leads to distortions, and whether the policy issues are in the framework of the directive. Finally, one more reason which attracts me to this topic is a personal one. The issue of VAT on shipping has a great importance for my country's economy, Greece, as its economy is based on the maritime industry.<sup>14</sup>

### **My methodology**

This paper is divided in six main chapters. Initially, there is the introduction which I've just presented and in which I analyzed the main question, the topic and my incentives for this thesis. Then, I present the principles which govern European VAT in general. There is a great range of legal principles which should be taken into account, but in this chapter I refer only to those principles which derive from the VAT Directive. This way, I present a spherical view of the VAT principles and further on, in the next chapters I am analyzing if those principles are applied. In the next chapter, I am examining the supply of goods on board. I divided the supplies based on the territories they are found on; the domestic territory, the European territory and finally, outside the EU. After analyzing the rules which apply in each case according to the VAT Directive, I am examining if those rules are in accordance with the principles of the European VAT and I am also suggesting some solutions to the identified problems. In the third chapter, I continue with the same method but in this chapter my main

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<sup>10</sup> Study on the economic effects of the current VAT rules for passenger transport. Final Report. TAXUD/2012/DE/334, FWC No TAXUD/2010/CC?104, Case Center for Economic and Social Research, HIS Institute for Advanced Studies, Transport and Mobility Leuvenm CPB Netherlands Bureau for Economic Policy Analysis (Consortium leader), Warsaw, December 2014

<sup>11</sup> European Commission, Brussels, 22-10-2012 COM (2012) 605 final, *REPORT FROM THE COMMISSION TO THE COUNCIL on the place of taxation of the supply of goods and the supply of services, for passengers on board ships, aircraft, trains or buses drawn up in accordance with Article 37(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax*, p. 3

<sup>12</sup> EP Parliamentary question on VAT and the cruise liner industry in the EU, E-4006/05, Written question by Simon Busutill (PPE DE) to the Commission, Subject: *The cruise liner industry in the EU*

<sup>13</sup> Rita de la Feria, *The EU VAT System and the Internal Market*, Doctoral Series 16, Academic Council, p. 101

<sup>14</sup> Anastasia Bulezdova, *Shipping remains the source of income of the Greek economy*, GRReporter, 14 October 2013

subject is the supply of services. On the one hand, there is the supply of catering and restaurant services and on the other hand, the supply of other kinds of services. At the end of this chapter, I am presenting a correlation of the general principles of VAT with the applied rules, as well as some solutions in order to avoid possible distortions that I have identified. In the next chapter, I am exploring the pivotal issue of the supply of fuels, modification, repair, maintenance, chartering and hiring of vessels as mentioned in the Art. 148 VAT Directive. Under this provision, an exemption is defined for specific circumstances. The main question here is whether this exemption is in line with the neutrality principle? Again, possible solutions are provided as proposals for the improvement of the VAT treatment. Finally, I conclude my thesis by entirely presenting the results of my research and answering to my initial research question. The whole process of my research is relied on the knowledge and the skills acquired through the course of Value Added Taxes in Cross Border Situations, on the information that I gathered from the literature which I refer below and my visit to the IBFD Library in Amsterdam and, finally, on the case material of the European Court of Justice.

## 2<sup>nd</sup> CHAPTER

### THE GENERAL PRINCIPLES OF VAT

Value added taxes are indirect taxes which are introduced in many countries around the world and year by year they are becoming more popular and therefore more applied.<sup>15</sup> However, the lack of common international legislation for the taxation of the supply of goods and services creates mismatches and lots of problems in global trade,<sup>16</sup> which lead to double taxation or double non-taxation. For avoiding these consequences, there are some unwritten principles of the VAT Directive which are essential for the proper application of the VAT rules. Moreover, Koopmans emphasizes the need of principles for cases where courts have to deal with a new problem which is not covered by already existing provisions.<sup>17,18</sup> Based on the VAT principles, the OECD introduced the International VAT/GST Guidelines. The aim of those guidelines is to achieve the avoiding of double taxation or non – taxation through the development of a legal and administrative jurisdiction, which will be in line with the domestic socioeconomic conditions.<sup>19</sup> If I could define the difference between the principles and guidelines, I would state that principles are broader aims, which do not include information of how those goals could be achieved. At this point, there is need for guidelines which describe in a more analytic and practical way how states can achieve the initial goal of principles. As I present below, the OECD has introduced more than one guideline for each principle. Therefore, principles and guidelines are closely linked and sometimes there may be a use of these terms without a distinction.

It is very important to mention that both principles and guidelines are not deemed to be “hard law”. In other words, states are not obliged to apply them. Their character leaves space to the states to apply or not the principles with the help of guidelines and to follow different policies for legal, social, political and economic reasons.<sup>20</sup>

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<sup>15</sup> EY Building a better working world, *Worldwide VAT, GST and Sales Tax Guide 2015*, April 2015, for example Russian Federation, South Africa and Peru introduced VAT in 1991, Nigeria in 1993, Slovenia in 1999, Rwanda in 2001, Serbia and India in 2005, Seychelles in 2013, Bahamas in 2015.

<sup>16</sup> *International VAT/GST Guidelines*, OECD, BETTER POLICIES FOR BETTER LIVES, Global Forum on VAT 17-18 April 2014, p. 4

<sup>17</sup> Ben Terra – Julie Kajus, *A GUIDE TO THE EUROPEAN VAT Directives, Introduction to European VAT 2007*, Volume 1, IBFD, p. 27

<sup>18</sup> T. Koopmans, *Judicial Activism and Procedural Law*, European Review of Private Law, Vol. 1, 1993, p.67-81

<sup>19</sup> *International VAT/GST Guidelines*, OECD, BETTER POLICIES FOR BETTER LIVES, Global Forum on VAT 17-18 April 2014, p. 4

<sup>20</sup> Thomas Ecker, *A VAT/GST Model Convention*, IBFD DOCTORAL SERIES 25, Chapter 3, p. 55-56

The reader should keep in mind that all the principles that I make reference to and analyze below are principles which are connected with the general rules of VAT. Otherwise, they are referred as tax technical principles.<sup>21,22</sup> However, we should not forget the generally accepted principles of tax policy. Courts should take into account the fundamental legal principles, given the fact that they are based on the Treaties of the European Union.<sup>23</sup> Moreover, general principles have also been formulated by the Ottawa Taxation Framework Conditions for the e-commerce trade and they should also be applied to supplies, along with VAT. Those general principles are the efficiency, the certainty and simplicity, the effectiveness and fairness and the flexibility.<sup>24</sup>

In this chapter I will present the tax technical principles in general, and in the next chapters I will test how those principles are applied in specific provisions of the VAT Directive. The rank of the presentation of the principles doesn't play any role. All principles have the same importance, but it should be mentioned that all principles are closely linked and the application of the one is necessary for the compliance with the other.<sup>25</sup>

## **1. The concept of a consumption tax**

Value Added Taxes are deemed to be general taxes on consumption of goods and services.<sup>26</sup> At this point, I would like to make a brief historical reference to this issue. The idea of levying taxes on consumption has been hidden for centuries. In the modern times, France was the first country that adopted the indirect taxes called VAT on 1954. After that, lots of

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<sup>21</sup>*Principles of Law: Function, Status and Impact in EU Tax Law*, Cecile Brokelind Edition, IBFD, p.37

<sup>22</sup>“... there are some tax technical principles which are proper to the application of particular taxes and which are hardly used outside the area of taxation. They are used to clarify the application of a particular tax. Examples of such principles are the destination and the origin principle in VAT ...”,

*Principles of Law: Function, Status and Impact in EU Tax Law*, Cecile Brokelind Edition, IBFD, p.48

<sup>23</sup>Ben Terra – Julie Kajus, *A GUIDE TO THE EUROPEAN VAT Directives, Introduction to European VAT 2007*, Volume 1, IBFD, p. 28, for example, principles of the United Nations Charter, the principle of subsidiarity and proportionality, the Fundamental Rights of the European Union,

<sup>24</sup>*International VAT/GST Guidelines*, OECD, BETTER POLICIES FOR BETTER LIVES, Global Forum on VAT 17-18 April 2014, p. 9

<sup>25</sup>*International VAT/GST Guidelines*, OECD, BETTER POLICIES FOR BETTER LIVES, Global Forum on VAT 17-18 April 2014, p. 7 “The application of the destination principle in VAT achieves neutrality in international trade”

<sup>26</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p.13

countries introduced in their national jurisdictions VAT<sup>27</sup> and nowadays we know that more than 150 countries worldwide have adopted those kinds of taxes.<sup>28</sup>

First of all, it is important to clarify the concept of a consumption tax. By referring to the concept of “consumption”, I don’t mean only tangible products, but its meaning also includes intangible goods, like the use of means of transportation, machines etc.<sup>29</sup> Taking it to the next level, the issue which arises is the time. When do we tax consumption? We can realize that some products could be consumed directly and others have a longer period of consumption or they never stop offering consumption/pleasure to their purchasers (e.g. a souvenir or a painting). Therefore, it is acceptable that by using the term “consumption” for VAT purposes, we refer to expenditures and in particular, to the expenditures that made by private individuals.<sup>30</sup> Of course, businesses play an important role in the field of VAT, but their role is more administrative. Due to technical reasons, the tax could not be paid by each individual separately. The businesses are obliged to levy the VAT and output them to the tax authorities.<sup>31</sup>

## **2. The neutrality principle**

Secondly, there is the neutrality principle. We meet often this principle, but in every case its meaning is not the same. In order to identify neutrality, we should clarify the kinds of neutrality based on the related subjects. Firstly, I will present various kinds of the neutrality principle, then I will end up with a definition and finally I choose the most important type, in my opinion, and I apply it in the next chapters.

First of all, if I could distinguish neutrality in two big categories, I will categorize it as the fiscal neutrality and the neutrality principle of the VAT Directive. The first one is related to

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<sup>27</sup> The Institute of Chartered Accountants of India, 5. VAT – *Concepts and General Principles*, 2<sup>nd</sup>chapter - Historical Background, p. 2-3

<sup>28</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p.14

<sup>29</sup> Ben Terra – Julie Kajus, *A GUIDE TO THE EUROPEAN VAT Directives, Introduction to European VAT 2007*, Volume 1, IBFD, p. 274

<sup>30</sup> Ben Terra – Julie Kajus, *A GUIDE TO THE EUROPEAN VAT Directives, Introduction to European VAT 2007*, Volume 1, IBFD, p. 274

<sup>31</sup> Ben Terra – Julie Kajus, *A GUIDE TO THE EUROPEAN VAT Directives, Introduction to European VAT 2007*, Volume 1, IBFD, p. 273

the general principle of equal treatment in European law. More specifically, based on the Court's judgment in Rank Group HNRC – case, I can identify the fiscal neutrality principle as a principle where two identical or similar supplies for the consumer should be treated similarly from a tax perspective.<sup>32</sup>

The second one is closely connected with the VAT collection. Terra and Kajus divide it in two sub-categories, the internal and the external neutrality.<sup>33</sup> The internal neutrality is related to national issues and it could have three different types, the legal, the economic and the competition neutrality. Briefly, the legal neutrality is based on the concept that “the equal is treated equally”, the competition neutrality is linked with the legal neutrality, for example when the turnover tax is legal, the competition is also neutral and finally, the economic neutrality which mostly depends on the rate. In cases of a unique rate, the economic neutrality is ensured and vice versa.<sup>34</sup>

Regarding the external neutrality, it has an international character. This characterization as ‘external’ refers to supply of goods or services which are consumed outside of the country of origin. In the framework of external neutrality, it attempts to guarantee the equality of imported goods and services in relation to the domestic ones.<sup>35</sup>

From this analysis, we realize how many various types of neutrality principle we can have.

In addition to the above-mentioned types of the neutrality principle, there are also different kinds of guidelines. As I explain above, the OECD introduced the International VAT/GST guidelines in order to help the countries to develop policies which certify the neutrality. The OECD has defined the guidelines as below:

“1. The burden of value added taxes themselves should not lie on taxable businesses except where explicitly provided for in legislation.

2. Businesses in similar situations carrying out similar transactions should be subject to similar levels of taxation.

3. VAT rules should be framed in such a way that they are not the primary influence on business decisions.

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<sup>32</sup> Rita de la Feria, *VAT: a new dawn for the principle of fiscal neutrality?*, Oxford University Centre for Business Taxation, Saïd Business School, Park End Street, Oxford, Ox1 1HP, p.5-6

<sup>33</sup> Marta Papis, *Principles of Law: Function, Status and Impact in EU Tax Law*, Cecile Brokelind Edition, IBFD, p.375

<sup>34</sup> Ben Terra – Julie Kajus, *A Guide to the European VAT Directives Introduction to European VAT*, Volume 1, 2014, IBFD, Chapter 7: Introduction to VAT as Fiscal Phenomenon, p. 301-303

<sup>35</sup> Marta Papis, *Principles of Law: Function, Status and Impact in EU Tax Law*, Cecile Brokelind Edition, IBFD, p.375

4. With respect to the level of taxation, foreign businesses should not be disadvantaged nor advantaged compared to domestic businesses in the jurisdiction where the tax may be due or paid.

5. To ensure foreign businesses do not incur irrecoverable VAT, governments may choose from a number of approaches.

6. Where specific administrative requirements for foreign businesses are deemed necessary, they should not create a disproportionate or inappropriate compliance burden for the businesses”<sup>36,37</sup>

If I could add some thoughts on these guidelines, it would be important to point out that the neutrality principle is closely connected with the destination principle for the cross – border trade, because through those processes the system remains neutral without promoting the domestic businesses more than the foreign ones. Moreover, it is crucial to clarify the meaning of the word “similar” of the 2<sup>nd</sup> guideline. When the OECD refers to similar situations, it means, for instance, the same right of deduction. The element of identical industries is not necessary, because identical industries do not imply similar situations. The similarity of the transactions is about the persons or the terms of the supply in each jurisdiction and the final similarity, in the levels of taxation applies to cases when the VAT burden directly incurred by businesses.<sup>38</sup>

In addition to this, I would like to distinguish between the meaning of the 2<sup>nd</sup> and 4<sup>th</sup> guideline. The first one refers to the equity of taxation treatment in similar situations, as I describe above. The second one, on the other hand, talks about the equity of tax treatment for foreign entities which bear a burden that is not applied to national entities. According to the 4<sup>th</sup> guideline, there should be no discrimination between foreign and domestic businesses.

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<sup>36</sup> Committee on Fiscal Affairs, Working Party N°9 on Consumption Taxes, *OECD INTERNATIONAL VAT/GST GUIDELINES DRAFT COMMENTARY ON THE INTERNATIONAL VAT NEUTRALITY GUIDELINES*, JUNE 2012, OECD, BETTER POLICIES FOR BETTER LIVES, p.4

<sup>37</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 2, Those six guidelines are also repeated in the 9<sup>th</sup> chapter, p. 14, in the part that the authors describe the concept of neutrality: “... it should be regarded as the idea that taxable persons should not be affected by the levy of VAT, that the VAT should not be a cost to taxable persons, that the VAT should not affect their business decisions, that VAT should not distort competition, that VAT should not “cascade” and that VAT should be exactly proportional to the prices throughout the entire production and distribution chain”

<sup>38</sup> Committee on Fiscal Affairs, Working Party N°9 on Consumption Taxes, *OECD INTERNATIONAL VAT/GST GUIDELINES DRAFT COMMENTARY ON THE INTERNATIONAL VAT NEUTRALITY GUIDELINES*, JUNE 2012, OECD, BETTER POLICIES FOR BETTER LIVES, p. 9-10



As a conclusion of this topic, I would like to quote the OECD's opinion about the neutrality principle, according to which neutrality principle is deemed to be guardian of the collection of the right amount of revenue by governments.<sup>39</sup>

By the combination of these guidelines and with the help of the definition of neutrality principle in the book *Fundamentals of EU VAT Law*, I can conclude that neutrality is composed by six elements. VAT should not influence taxpayers' purchases, not be a burden for taxable persons, not affect decision making processes of business, not distort the competition, avoid phenomena of cascading and levy proportional and feasible VAT rates.<sup>40</sup>

Actually, every OECD's guidelines "represent" a different kind of neutrality principle. However, I focus more my research on 3<sup>rd</sup> guideline. The principle of neutrality is closely connected with the VAT collection. It is based on the level of effect by the VAT. In particular, VAT is deemed to be a staged process. It is levied on every stage of the transaction and every purchaser has the right of deduction of taxes apart from the final consumer.<sup>41</sup> All this process which ensures the balance between the input VAT of businesses and the output VAT, is relied on the right of deduction.<sup>42,43</sup> In other words, the total tax which was levied in every stage of the process should be the same amount with the VAT paid by the final consumer.<sup>44</sup> All these elements are decisive and they define the decision of the business and in general they affect the entire production and distribution chain. In addition to this, the neutrality principle under this concept refers to administrative burdens.<sup>45</sup> It is not only the VAT rules of the Directive that create mismatches, but in many cases the administration aggravates the situation.

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<sup>39</sup> Marta Papis, *Principles of Law: Function, Status and Impact in EU Tax Law*, Cecile Brokelind Edition, IBFD, p.376

<sup>40</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 2, p.14-15

<sup>41</sup> *International VAT/GST Guidelines*, OECD, BETTER POLICIES FOR BETTER LIVES, Global Forum on VAT 17-18 April 2014, p. 7 (1.7)

<sup>42</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p.14

<sup>43</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 2, p.14

<sup>44</sup> Prof. Han Kogels, *Editorial Making VAT as Neutral as Possible*, 21 EC TAX REVIEW, 2012, Issue 5, p.230

<sup>45</sup> OECD, *Consumption Tax Trends 2010, VAT/GST AND EXCISE RATES, TRENDS AND ADMINISTRATION ISSUES*, p. 56

My option in favor of the 3<sup>rd</sup> OECD guideline is based on the thought that this guideline is decisive for the avoidance of double taxation and the reduction of the distortion of competition. If business decisions are independent from the VAT rules, tax planning and special tax regimes for avoiding taxation could be eliminated. By identifying the cases where this principle is not applied, we could move forward with finding the best solution.

All this analysis of the concept of the principle of neutrality will help us realize how and why it is applied in VAT rules and we will be in the position to decide if this principle is applied in the supply on board of ships. Last but not least, it is significant to keep in mind that it is impossible under the current rules of VAT and states policies about it, not to deviate from neutrality.<sup>46</sup>

### **3. The principle of destination vs the principle of origin**

One of the biggest issues in VAT is the place of supply of goods or services. In other words, where a supply should be taxed. This issue is interesting from the perspective of my research because it is commonly acceptable that the destination principle is predominant in EU VAT Directive. However, in the case of supplies of shipping activities, we realize some divergences from the initial principle. As I present in the next chapters, the origin principle is quite applicable in the supplies of shipping activities. That's the reason why I believe it is crucial at this point of my thesis to include a section for the distinction of destination and origin principle.

According to the destination principle, the supply of goods or services should be taxed where the final consumption takes place. In that way, the domestic goods or services are taxed at the same rates as the goods or services which are imported from other jurisdictions.

The second principle, the origin principle, supports the opinion that the supplies of goods or services are taxed in the place where the value was added. The OECD supports that under this principle there would be many economic and administrative problems for global trade. In particular, problems arise in case that the domestic VAT rate is higher than the rate of the importation country, because the export supplies would leave the origin jurisdiction with tax and they would not be taxed in the country of destination and in that way, there will be a promotion of the importation from countries with lower or without VAT.<sup>47</sup> Therefore, this

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<sup>46</sup> Marta Papis, *Principles of Law: Function, Status and Impact in EU Tax Law*, Cecile Brokelind Edition, IBFD, p.375

<sup>47</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p.129

principle does not enhance the neutrality principle, creates distortion of the international trade and it also harms, at the European level, the enhancement of a common market.<sup>48</sup>

For those reasons both the OECD and WTO (World Trade Organization) support the principle of destination for VAT, as well as EU VAT Directive, and not the origin principle.<sup>49</sup>

After the beforehand analysis of the principles, I can go on the main topic of my research and examine if the rules of the VAT Directive about the supply on board of ships, which have a special tax treatment in comparison with the supplies out the board are in accordance with these principles.

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<sup>48</sup>*International VAT/GST Guidelines*, OECD, BETTER POLICIES FOR BETTER LIVES, Global Forum on VAT 17-18 April 2014, p. 8

<sup>49</sup> Ben Terra – Julie Kajus, *A GUIDE TO THE EUROPEAN VAT Directives, Introduction to European VAT 2007*, Volume 1, IBFD, p. 282

### **3<sup>rd</sup> CHAPTER**

#### **THE SUPPLY OF GOODS ON BOARD**

The legal framework of the taxation of shipping transport differs from the taxation in other fields. It is a special area where states try to ensure their fair share of taxation in a “platform” that is moving from place to place. The first issue is to establish the place of supply. To which jurisdiction do taxing rights allocate?<sup>50</sup>

As I refer in my introduction, I will examine the issues of supplies of goods on board in three different fields. However, before analyzing each field separately, I would like to clarify some basic issues. When we examine the taxation on board, we have to take into consideration two points, the point of departure and the point of arrival. It is important to mention that territorial application of VAT is not applied on supplies on board based on the flag of the vessel.<sup>51</sup> What defines the place of supply is the scheduled passenger operation. According to the Art. 15 of the VAT Regulation, the section of a passenger operation shall be determined by the journey of the ship/boat/cruise<sup>52</sup> and not by the journey completed by each of the passengers.<sup>53</sup> In other words, we don’t check where each passenger chooses to (dis)embark, but the scheduled route of the vessel.

In addition, I would like to point out that when the journey is an “aller – retour” journey, then the return journey is deemed to be a separate operation [Art. 37-(3) of the VAT Directive]. Therefore, we take into account each journey separately, in order to define the VAT.

In order to examine this issue, I divided it in three categories, regarding the characterization of the journey as: a) domestic, b) European or c) outside EU. However, even those categories

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<sup>50</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p. 128 - 130

<sup>51</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p. 131-132

<sup>52</sup> “ ... explicitly cover services provided on board ships (including cruise ships).”, European Commission, Brussels, 22-10-2012 COM (2012) 605 final, REPORT FROM THE COMMISSION TO THE COUNCIL on the place of taxation of the supply of goods and the supply of services, for passengers on board ships, aircraft, trains or buses drawn up in accordance with Article 37(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

<sup>53</sup> Official Journal of the European Union, Regulations, No 282/2011 of the 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax

are not always clarified. For instance, the “international waters” or “high seas” are the waters, according to the 1982 United Nations Convention on the Law of the Sea, which refrain from the coast more than 12 nautical miles, but which country has the jurisdiction over vessels sailing in international waters?<sup>54,55</sup>

### **1.1. Shipping in domestic sea – territory**

Sailing in the domestic sea territory is characterized as a domestic journey. This does not mean that those vessels sail only in the domestic sea. It is obvious that from the point of departure to the point of arrival, they also sail to international waters<sup>56</sup>, but without any stops in ports outside the country. The place of supply of goods on board is the state of sailing and the VAT which is levied is the domestic VAT. Therefore, in general, the rate of good on domestic land and on board is the same for the products of the same kind.

In my opinion, two things are worth to be discussed separately. The first one is that there is a usual policy of the coastal countries to provide some benefits to the residents of isolated regions (islands) under certain conditions. For example, according to the Greek VAT code, the general rate of VAT is 23%, but there is a paragraph in this provision (para 4 of Art. 21 of the law 2859/2000) that defines some Greek islands where the rate of VAT is reduced by 30% of the general rate. However, this special rate of VAT is applicable only to specific transactions in which the supply of goods on board is not included. Of course, this is only an example. There may be other areas where the special VAT rate is also applicable on board.

The second issue is the VAT on tourism. According to Art. 98 VAT Directive in combination with Annex III, all Member States have the right to apply a reduced VAT rate to tourism. The “key” point is the interpretation of the concept of tourism. The OECD declares that some countries like Austria, Greece, Czech Republic, France, Poland support that the reduced rates of VAT on tourism (for hotels and restaurants) cover also selected tourism – related activities, such as passenger transport.<sup>57</sup> Similarly, the European Commission supports that this reduction is applicable also to passenger transport.<sup>58</sup>

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<sup>54</sup> [www.un.org](http://www.un.org), Part II, Territorial Sea and Contiguous Zone

<sup>55</sup> [http://www.findlaw.co.uk/law/government/other\\_law\\_and\\_government\\_topics/500439.html](http://www.findlaw.co.uk/law/government/other_law_and_government_topics/500439.html), FindLaw UK, What is meant by international waters and airspace?

<sup>56</sup> See above, chapter 3, Supply of goods on board

<sup>57</sup> OECD Tourism Trends and Policies 2014, OECD Publishing, BETTER POLICY FOR BETTER LIVES, p. 88

<sup>58</sup> European Commission, Enterprise and Industry, Tourism Business Portal, Value Added Tax (VAT), 4. Which percentages of VAT are applied by different European Countries?

If these are the cases<sup>59</sup>, we face the paradox that there may be Member States where the supply of goods on board is taxed differently than the supply of the same goods on land. This phenomenon should be interpreted under the rules of State Aid (Art. 107 TFEU). More specifically, in case that there is an aid granted by a Member State in any form whatsoever, which distorts or threatens to distort competition by favoring certain undertakings shall, in so far it affects trade between Member States, be incompatible with the internal market.<sup>60</sup> In our case, this different tax treatment could be an aid, which is granted by a Member State, which distorts or threatens to distort competition in favor of either the supplies on board or the supplies on land. Despite the fact that here I only examine the domestic shipping, in the framework of a Member State, the rules of State Aid have to be applicable also to domestic situations because they still affect the European competition.

However, there are some cases where this paradox situation is justified. These exceptions are granted by the legal text of TFEU in Art.107 para 2 and 3 in combination with Art. 110 of the TFEU. These provisions present the State Aid and they prohibit its application both in direct and indirect taxation.<sup>61</sup> In particular, para 2 of Art. 107 of the TFEU includes three cases where an automatic justification is provided.<sup>62</sup> For instance, the aid of a reduced VAT rate on supplies of goods on board for residents of isolated islands who need to move frequently to the mainland has a social character, granted to individual consumers. This claim could also rely on the 3<sup>rd</sup> para where the cases which may be compatible with the internal market are described. Promotion of the economic development of areas where the standard of living is abnormally low or where there are high percentages of unemployment, recovery of a serious economic disturbance, development of certain economic activities, culture and heritage conservation are the justifications which could be provided after request.<sup>63</sup>

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<sup>59</sup> Special VAT rate and VAT on tourism

<sup>60</sup>Kees van Raad, *Materials International, TP & EU Tax Law*, Volume 3, ITC (INTERNATIONAL TAX CENTER) LEIDEN, p. 3411, Art. 107

<sup>61</sup> Ben Terre and Julie Kajus, *Commentary – A Guide to the Recast VAT Directive*, IBFD, p. 541

<sup>62</sup>M. Kronthaler and Y. Tzuberly, The State Aid Provisions of the TFEU in Tax Matters, in: M. Lang, P.Pistone, J. Schurch and C. Staringer (eds.), *Introduction to European Tax Law : Direct Taxation* (Third Edition), London: Spiramus Press: 2003, Chapter Exemptions from the Prohibitions on State Aid under Art. 107 (2) and (3) TFEU (ex. Art. 87 (2) and (3) EC), p.118

<sup>63</sup>M. Kronthaler and Y. Tzuberly, The State Aid Provisions of the TFEU in Tax Matters, in: M. Lang, P.Pistone, J. Schurch and C. Staringer (eds.), *Introduction to European Tax Law : Direct Taxation* (Third Edition), London: Spiramus Press: 2003, Chapter Exemptions from the Prohibitions on State Aid under Art. 107 (2) and (3) TFEU (ex. Art. 87 (2) and (3) EC), p.118

Therefore, the paradox cases need a scrutiny in order to be characterized as State Aid or not and if the decision is in favor of State Aid, the aid must be abolished.<sup>64</sup>

### **1.2. Is the tax treatment of supply of good on board in domestic sea – territory in line with the principles of the VAT Directive?**

Following the steps of my methodology that I presented in the introduction, in this section I will examine if the VAT rules for the taxation of supplies of goods on board in domestic sea-territory are in accordance with the selected principles of European VAT.

First of all, each state levies VAT on goods on board which are consumed by the passengers during the journey. In other words, the consumption of goods on board is generally taxable.

Regarding the principle of neutrality in the meaning of the 3<sup>rd</sup> guideline of the OECD, I notice that it is applicable. More specifically, businesses are not influenced primarily by the VAT rules. The VAT rates of the supplies of goods on board are the same as the supplies of goods on land, under “normal” circumstances, during the journeys in domestic sea – territory. However, if we face the paradox case which I presented above, there is a distortion of the neutrality. In the case of different rates, the market mechanism is affected by it, but it is the policy of states which enforces sometimes such differences under specific conditions (socioeconomic reasons).<sup>65</sup> The solution to this, as Terra and Kajus suggest, could be a uniform rate.<sup>66</sup> However, this does not mean that a difference to VAT rate is always problematic. As I explained above, this difference is justified under certain conditions.

Finally, the destination and origin principle are not applicable in this case. Under normal circumstances, the rate of VAT is unique in journeys inside a state.

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<sup>64</sup>Prof. Dr. Eric. C.C.M. Kemmeren, *Tax Competition and Comparability with EU (State Aid) Rules: balancing on what is allowed and what is not*, p.10

<sup>65</sup> Marta Papis, *Principles of Law: Function, Status and Impact in EU Tax Law*, Cecile Brokelind Edition, IBFD, p.302-303

<sup>66</sup> Ben Terra – Julie Kajus, *A Guide to the European VAT Directives Introduction to European VAT*, Volume 1, 2014, IBFD, Chapter 7: Introduction to VAT as Fiscal Phenomenon, p. 303

## 2.1 Shipping in European sea - territory

Art. 37 of the VAT Directive indicates that a journey is deemed to take place within the European Union when the vessel sails without any stopovers outside the European Union. *The place of supply in those cases shall be deemed to be at the point of departure of the passenger transport operation.*<sup>67</sup> More specifically, the text of this provision describes the meaning of the points of arrival and of departure in order to make the concept of stopover clear, but without success, as I will explain below. However, I present the interpretations which are included in the provision:

*“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.*

*“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.*<sup>68</sup>

For example (1<sup>st</sup>), a cruise with point of departure Majorca (Spain) and point of arrival Piraeus (Greece) that makes a stop in the port of Izmir (Turkey). According to the Art. 37-(2) VAT Directive, this is not a case of transportation inside the European Union. The conclusion would be different if the cruise departs from Izmir and stops in Piraeus and Majorca (2<sup>nd</sup> example). Passengers embark and disembark in Turkey, Greece and Spain. In this case, the supply of goods on board between Greece and Spain is subject to Greek VAT.<sup>69</sup>

1<sup>st</sup> Example:



<sup>67</sup> Art 37 (1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

<sup>68</sup> Art 37 (1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

<sup>69</sup> Ben Terra – Julie Kajus, *A GUIDE TO THE EUROPEAN VAT Directives, Introduction to European VAT 2007*, Volume 1, IBFD



2<sup>nd</sup> Example:



The “key” point is the interpretation of the concept of “stopover”. Mr. Kovacs, as a representative of the European Commission, replied to a similar issue that was addressed by Simon Busuttil. Busuttil mentioned the systematic policy of cruise liner companies which plan stopovers outside the Community (like in the 1<sup>st</sup> example) in order to benefit from the special regimes for taxation and especially VAT. More specifically, the cruise liner companies try to take advantage of the different tax treatments of the supplies in the third countries by adding an extra stopover in the passenger operation, which could completely change the VAT treatment of the whole journey. Mr. Kovacs supports that a stop in a third country, in the 1<sup>st</sup> example in Turkey, does not change the characterization of the journey as a journey inside the Community, because both the point of departure and the point of arrival are in the EU (Spain – Greece).<sup>70</sup>

This statement of the representative of the European Commission is in contrast with the judgment of the European Court of Justice (‘ECJ’) (first Chamber) in the case 58/04 (C-Kohler v Finanzamt Dusseldorf – Nord). Briefly, the ECJ decided that *stops made by a ship in the ports of a third country during which passengers may leave the ship, even for a short period, are “stops in a third territory” ...*<sup>71</sup>

It is obvious that the Court’s decision was based on two main points. Firstly, it follows the literal interpretation and secondly it wanted to avoid any conflict with the third countries as regards the issue of tax jurisdiction.<sup>72</sup>

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<sup>70</sup> EP Parliamentary question on VAT and the cruise liner industry in the EU, E-4006/05, Written question by Simon Busuttil (PPE DE) to the Commission, Subject: The cruise liner industry in the EU

<sup>71</sup> Case C-58/04, reference for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 23 October 2003, received at the Court on 11 February 2004, in the proceedings Antje Kohler v Finanzamt Dusseldorf - Nord

<sup>72</sup> Ben Terra – Julie Kajus, A Guide to the European VAT Directives Introduction to European VAT, Volume 1, 2014, IBFD, Chapter 11: Place of taxable transactions, p. 612-613

It is very important to mention, at this point, that the above case is a case of 2004 and the judgment of the court was based on the Council Directive 77/388/EEC as amended by Council Directive 92/11/EEC. Moreover, in the guidance of the Council for the amending of the current VAT Directive, there is a provision for the clarification of the definition of the place of supply on board. However, in practice, we notice that the legal text is exactly the same, apart from a small difference in the definition of the “section of a passenger transport effected in the Community”. The initial Directive described it as the part of transport effected, without a stop in a third territory, between the point of departure and the point of arrival of the transport of passengers, whereas the current VAT Directive defines it as the section of the operation, without a stopover outside the Community. The difference could be laying in the fact that in the first case any stop in a third country changed its characterization as a journey in European sea – territory, but under the current Directive, a stopover in a third country during the scheduled route of the vessel could affect the place of supply rules. However, the definition of “stopover” is not provided by the Directive. What is its meaning?

There is a gap of clarity of the meaning of “stopovers” under the VAT Directive and as a result it leaves space to the states to interpret it differently and this different application of tax leads to distortions. In some European jurisdictions, disembarkation for a short visit or sightseeing trips for a day and embarkation back to the vessel is deemed to be a “stopover”. In contrast, in some other European jurisdictions, a “stopover” is a formal disembarkation.<sup>73,74</sup> Apparently, the Council identified these problems that’s why it tried to fix it under the current VAT Directive, but without success, in my opinion. It still left gaps for different interpretation. It is my strong belief that this gap is purposefulness, because the European Union wants to avoid the conflicts with the third countries.

Apart from this issue, under Art. 37 of the VAT Directive regarding the supply of goods on board ships, there is also one last provision. According to this provision, the Member States

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<sup>73</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: [https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report\\_Part%20I%20Data\\_.pdf](https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report_Part%20I%20Data_.pdf), p.46

<sup>74</sup> “12. Taking the view that the interpretation of ‘stop in a third territory’ is determinative of the outcome of the dispute”, Case C-58/04, reference for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 23 October 2003, received at the Court on 11 February 2004, in the proceedings *Antje Kohler v Finanzamt Dusseldorf – Nord*

have the option to exempt, with deductibility of the VAT paid at the preceding stage, only the supply of the consumption of goods on board.<sup>75</sup>

## **2.2. Is the tax treatment of supply of goods on board in European sea – territory in line with the principles of the VAT Directive?**

In this section, I will examine as I did in the previous one, if the tax treatment of supplies of goods on board inside the European Union is in accordance with the principles that I analyzed in the 2<sup>nd</sup> chapter of my thesis.

There is also no doubt that what is taxed is the consumption. It is important to point out that all goods supplied on board of ships are taxed according to the previous provisions, even if they won't be consumed on board during the travel.<sup>76</sup>

Regarding the selected principle of neutrality, it is necessary to ensure that VAT rules won't urge businesses to take certain decisions that will affect the distribution and consumption chain. The above analysis proves that in the cases of shipping inside Europe this neutrality is applicable. The points of departure and arrival are clarified and there are no doubts for the businesses related to the supply of goods rules, which could lead to distortions. However, it is worth mentioning that in practice stakeholders have noticed lots of administrative problems with the registrations in other jurisdictions and the cost burden of these processes.<sup>77</sup> We should take into account that in order to deal with all this administrative issues, the "reverse charge mechanism" is introduced. Thanks to this mechanism, the VAT liability is shifted from a company of one country to the company of the other and the latest could report this

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<sup>75</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p. 135

<sup>76</sup> Study on the economic effects of the current VAT rules for passenger transport. Final Report. TAXUD/2012/DE/334, FWC No TAXUD/2010/CC?104, Case Center for Economic and Social Research, HIS Institute for Advanced Studies, Transport and Mobility Leuven CPB Netherlands Bureau for Economic Policy Analysis (Consortium leader), Warsaw, December 2014

<sup>77</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: [https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report%20I%20Data\\_.pdf](https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report%20I%20Data_.pdf), p. 62

VAT to its local tax authorities. This way, a balance is ensured with less administrative and compliance burdens.<sup>78</sup>

Finally, we should not forget to mention in the field of the selected neutrality principle, that the consumption of goods on board is a clause issue and Member States may exempt or continue to exempt them (Art. 37 VAT Directive, last provision). This exemption includes only the goods which are consumed on board and not the goods which could be taken away by passengers.<sup>79</sup> However, these kinds of exemptions, which are not applied in every Member State but each one follows its own policy, influence the decision making processes of the entities and they provoke deviation from the neutrality principle of the 3<sup>rd</sup> OECD guideline.

With regards to the destination and origin principles, there is a different tax treatment. The destination principle is dominant in the VAT Directive, however, in the case of supplies of goods on board, the origin principle is applicable. At this point, I can conclude that it is not in line with the principles of the VAT Directive. This divergence creates complexities and may lead to distortions of competition because it enhances the goods which come from Member States with lower VAT rates.

### **3.1. Shipping outside the European Union**

The journeys which are not deemed to be inside the European Union are characterized as journeys outside the European Union. This is a negative definition of the concept of shipping outside the European Union. During the previous two sections of this chapter, I made some references to journeys outside EU in order to show the difference between the European and the non- European shipping. To define the shipping outside the European Union in a more positive way, the journeys in which the ship departs or arrives in the port of a third country are supposed to be outside the EU. In this category, journeys with a “stopover” outside the European Union are included too.<sup>80</sup>

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<sup>78</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p. 130

<sup>79</sup> European Commission, Brussels, 22-10-2012 COM (2012) 605 final, REPORT FROM THE COMMISSION TO THE COUNCIL on the place of taxation of the supply of goods and the supply of services, for passengers on board ships, aircraft, trains or buses drawn up in accordance with Article 37(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, p. 5

<sup>80</sup> See above p. 25-26 the problem of the interpretation of the “stopover” concept

The place of supply of goods on board in this category is defined by Art. 31 of the VAT Directive.<sup>81</sup> According to this provision, the place of supply of goods is the place where the goods are located at the time when the supply takes place. Therefore, when the supply takes place in Izmir, Turkey<sup>82</sup>, no EU VAT is applied. Of course, Turkey could levy its local tax. This conclusion is based on the rules of the VAT Directive for exportations (Art. 146 VAT Directive). When the goods cross the border of the European Union, like in the example with Turkey, then we talk about exportation. In case of exportation, the goods leave the country free of VAT taxes (zero rate).<sup>83</sup> That's why the taxation depends on the country of destination. It is crucial to point out that the rules for the supply of goods for consumption on board outside the European Union are also applicable to the supply of goods to take away.<sup>84</sup>

### **3.2. Is the tax treatment of supply of goods on board outside the European sea – territory in line with the principles of the VAT Directive?**

Again I have to deal with the same question in this section, but this time the question regards the supply of goods on board outside the European Union.

From the above analysis, I can conclude that the supply of goods on board outside the European Union should be treated from VAT perspective as exportation of goods. Art. 146 VAT Directive states that Member States shall exempt these kinds of transactions. Exportation of goods is not taxable, even if the consumption is apparent.

As a consequence, the neutrality principle, with the meaning that I provide in the 1<sup>st</sup> chapter is dominant. The neutrality should certify that the entities won't be influenced in their policies by the VAT rules. Exempting or zero rating of the supply of goods on board outside the European sea – territory, ensures the same treatment of domestic and foreign goods.

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<sup>81</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: [https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report\\_Part%20I%20Data\\_.pdf](https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report_Part%20I%20Data_.pdf), p.28

<sup>82</sup> See the example of the section 2.1 shipping in European Sea - Territory

<sup>83</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p. 38

<sup>84</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: [https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report\\_Part%20I%20Data\\_.pdf](https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report_Part%20I%20Data_.pdf), p.28

Therefore, the businesses are not affected because the domestic goods are as competitive as the foreign ones. Considering that VAT was levied also on supplies of goods outside the European Union, the European suppliers would be in a disadvantageous position and this would be harmful for the competition.<sup>85</sup> Such policies could urge the entities to adopt certain tax structures, which would harm the neutrality.

Finally, the rule for the place of supply of goods for consumption on board of ships is a quite complex issue. The complexity regards the provisions which should be applied in order to identify the place of supply. There is one argument in favor of the general provision of supply of goods without transport, Art. 31 VAT Directive.<sup>86</sup> This argument is based on the idea that the goods are moving on a platform. They are not transported in order to be consumed. Therefore, the consumption takes place in the country where the goods are located at the time when the supply takes place. For instance, if the consumption physically takes place in the Spanish sea territory, the place of supply is Spain. However, if the consumption takes place in the sea territory of Morocco, this supply of goods on board charges no EU VAT (Art. 146 VAT Directive).<sup>87</sup> The supply of goods on board “leaves” the European Union without VAT, but the taxation of the importation of them in the third country depends on the local rules of the third country.<sup>88</sup>

#### **4. Suggestions for resolving the identified problems of the supply of goods on board**

From the beforehand analysis, I realize that there is a great complexity on the issue of the supply of goods on board which derives from the gaps of clarity that exist on some topics, the levy of different VAT rates or from optional exemptions for the Member States. More

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<sup>85</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 2, p. 207

<sup>86</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: [https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report\\_Part%20I%20\\_Data\\_.pdf](https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report_Part%20I%20_Data_.pdf), p.28, para 131

<sup>87</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: [https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report\\_Part%20I%20\\_Data\\_.pdf](https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report_Part%20I%20_Data_.pdf), p.33

<sup>88</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p. 137

specifically, regarding the supply of goods on board in domestic sea territory, the existence of one and unique VAT rate for the same goods both on board and on land would be the solution in order to avoid the paradox cases that I described in that section.<sup>89</sup>

On the supplies of goods on board in the European sea-territory, the “hottest” issue in my opinion is the gap in the interpretation of the concept of “stopover”. This unclarified concept creates mismatches, complexities to tax authorities and threatens to distort the competition, because entities try to benefit from these kinds of mismatches and enjoy tax avoidance structures, for example by planning stops in third countries. In my opinion, the best solution is the implementation of a consolidated interpretation of the concept. At least, this way a consolidated treatment would be applied, without distortions of competition or complexities which affect both the businesses and the taxpayer’s certainty.

The other important issue which was identified by my research is the optional exemptions. The problem is that the exemptions are not the same in all Member States. Member States could choose the exemptions. In that way, we meet divergences from Member State to Member State, which leads to distortions of the neutrality, too. The European Commission on this field, suggests removal of the exemptions.<sup>90</sup> However, in my opinion this solution is not so easy to be implemented. The exemptions which are introduced in the VAT Directive are not included in the legal text by coincidence, but there was a reason. The enhancement of public transports and the enhancement of the competition to cross border transactions are essential reasons for the existence of the exemptions.<sup>91</sup> I strongly believe that a unique application of the same exemptions for all the Member States would be a possible solution.

The next important issue which relates not only to the supply of goods on board, but to all kinds of supply that I examined above, is the administrative difficulties. The burden of the VAT registration and tax specialists in every country is unbearable for businesses. My

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<sup>89</sup> Ben Terra – Julie Kajus, *A Guide to the European VAT Directives Introduction to European VAT, Volume 1*, 2014, IBFD, Chapter 7: Introduction to VAT as Fiscal Phenomenon, p. 303

<sup>90</sup> Report from Tonia Pediaditaki, IBFD Senior Research Associate, *European Commission publishes report on place of taxation for supplies of goods and services on board means of transport*, 25 October 2012

<sup>91</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert – Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law (Draft)*, part 1, p.219

proposal in this problem is the application of “one stop-shop”. Of course, this solution is not applicable yet to the supplies of goods, but an extension would be possible and helpful.<sup>92</sup>

Then, I noticed that the rule of the place of supply of goods on board in the sea territory of the European Union deviates from the predominant, in the VAT Directive, principle of destination. This divergence could provoke distortions in competition and damage the neutrality, because it enhances the supply of goods of the Member States with lower VAT rate.

Last but not least, it is the supply of goods on board in sea territory outside the European Union. On this topic, I noticed a big complexity in the place of supply rules. As I explained, the rules for the supply of goods without transport are applicable because the goods are not dispatched or transported, but they are moving on a vessel. However, this rule is difficult in its application. Checking the sea territory borders in order to identify the EU VAT or no EU VAT is not deemed to be so feasible. On the other hand, it is worth asking how we apply the rules of zero rating when we don’t admit that there is a dispatch or transport. In my opinion, this is another one issue which should be clarified by the European Commission, because it provokes mismatches, competition issues and administrative problems.

Below, I am adding a table as a summary of my conclusions from the perspective of the principles:

SUPPLY OF GOODS ON BOARD	TAXABLE CONSUMPTION	NEUTRALITY PRINCIPLE	DESTINATION PRINCIPLE
Domestic sea-territory	YES	YES	–
European sea-territory	YES	YES*	NO
Outside the European Union	NO	YES	YES

\*Apart from cases of optional exemptions

<sup>92</sup> TarlochanLall, *VAT focus: The mini one –stop shop*, TAXJOURNAL, 3 October 2014, “...it may be extended to the supplies of goods and services”



## **4<sup>th</sup> CHAPTER**

### **THE SUPPLY OF SERVICES ON BOARD**

Supply on board is a special category of supply which is treated differently from a VAT perspective, compared to the “normal” supply. In this chapter, I will present this treatment in the supply of services on board, I will research if the applicable rules are in accordance with the principles of the VAT Directive, which I selected to examine in the 2nd chapter and I will end up proposing some solutions to the identified problems.

Initially, I will try to define the concept of services. When we mention the word “services”, we mean “everything which does not constitute a supply of goods”.<sup>93</sup> In particular, Art. 25 VAT Directive presents a non-exhaustive list of services. Supply of services on board could be any supply of services from this list or any supply of services, in general, which is not a supply of goods. For my research I will divide the supply of services in two categories; the first one is the restaurant and catering services which are deemed to be an exception – case and the second one covers the supplies of all the other kinds of services, as well as electronic services.

#### **1.1 Restaurant and catering services on board ships**

First of all, I have to clarify what I mean when referring to restaurant and catering services. Its definition is provided in Art. 6 VAT Regulation. “*Restaurant and catering services mean services consisting of the supply of prepared or unprepared food or beverages or both, for human consumption, accompanied by sufficient support services allowing for the immediate consumption thereof. The provision of food or beverages or both is only one component of the whole in which services shall predominate. Restaurant services are the supply of such services on the premises of the supplier, and catering services are the supply of such services off the premises of the supplier.*” It is important to distinguish the supply of services from the supply of goods in order to apply the one or the other provision; when food and drinks are not accompanied by other support services, their supply is deemed to be a supply of goods (c-231/94, Faaborg-GeltingLinien A/S v Finanzamt Flensburg).

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<sup>93</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert – Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p. 105

Subsequently, I can examine the place of supply of these types of services. First of all, I distinguish the tax treatment of restaurant and catering services on board within the European Union and outside the European Union.

Art 57 VAT Directive defines the place of supply of restaurant and catering services which are physically carried out on board ships within the Community. The place of supply of these categories of services is deemed to be the point of departure of the passenger transport operation. Where that point is, is explained in the next paragraphs of this article which is exactly the same with Art. 37 of VAT Directive about the supply of goods on board.<sup>94</sup>

*“2. For the purposes of paragraph 1, ‘section of a passenger transport operation effected within the Community’ 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.*

*‘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.*

*‘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.*

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

For the interpretation of the rules of the VAT Directive, the VAT Regulation gives us some explanations for the proper application of the Directive.

First of all, Art. 35 of the Regulation clarifies that the section of a passenger operation shall be determined by the journey of the ship and not by the journey completed by each of the passengers.

Secondly, Art. 36 of the Regulation of VAT makes clear the meaning of the phrase “physically carried out in board” of Art. 57 VAT Directive. In particular, two conditions should be fulfilled. The first one is that the supply should be provided “*during the section of a passenger transport operation effected*” and the second one is that this supply should take place “*within the Community*”. Therefore, in order to find the place of supply of restaurant and catering services on board, we should clarify if the supply takes place within the

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<sup>94</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: [https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report%20Part%20I%20Data\\_.pdf](https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report%20Part%20I%20Data_.pdf), p.29

European Union and during the journey and then we can apply the provisions for Art. 57 VAT Directive.

The supply of restaurant and catering services outside the European Union is treated differently. According to the second paragraph of Art. 36 VAT Regulation, when those categories of services are supplied outside the section of a passenger transport operation either on the territory of a Member State or a third country/territory, the special provision is not applicable (Art. 57 VAT Directive) but instead, the general provision of Art. 55 of VAT Directive will be used.<sup>95</sup> In the latest case, the place of supply of restaurant and catering services is *the place where the services are physically carried out*.

Finally, Art. 37 of Regulation attempts to find a solution for the journeys that take place partly inside and partly outside the European Union. In these cases, the place of supply *shall be determined in its entirety according to the rules for determining the place of supply applicable at the beginning of the supply of the restaurant or catering service*.

In order to make it more understandable, I will use an example from Terra and Kajus, which is referring to the supply of services on board flights, but I adapted it to the supply of services on board ships.<sup>96</sup> If a vessel travels from Majorca (Spain) to Izmir (Turkey) and the last embarkation/ disembarkation point within the Community is Piraeus (Greece) before the vessel stops in Izmir, then for the part of the journey Majorca – Piraeus Art. 57 VAT Directive will apply and for the part of the journey from Piraeus up to the border of Turkey Art. 55 VAT Directive will apply. Therefore, on the one hand when a restaurant or catering service starts being supplied before Piraeus and continues being supplied after this last stop in the European Union, the place of supply of the whole service would be considered to be in Spain. On the other hand, when the supply starts in a third territory, Art. 55 VAT Directive is the only provision that can be applied, although the fact that it is difficult from an administrative perspective.

It is important to mention that the “hot” issue of stopover, which is analyzed in the previous section, is also present for the supply of restaurant and catering services.

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<sup>95</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert – Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LL.M. & Nadeya Sayedi LL.M., *Fundamentals of EU VAT Law* (Draft), part 1, p.154

<sup>96</sup> Ben Terra – Julie Kajus, *A Guide to the European VAT Directives Introduction to European VAT*, Volume 1, 2014, IBFD, Chapter 11: Place of taxable transactions, p. 662-663

## **1.2. Is the tax treatment of supply of restaurant and catering services on board in line with the principles of the VAT Directive?**

After the above analysis, I could examine if the rules of VAT of restaurant and catering services on board are in accordance with the principles of the VAT Directive.

Consumption is taxable also in the case of services. The concept of consumption covers not only the goods and the tangibles, but also intangibles such as the services. However, in case of supply outside the European Union, the supply is EU VAT free.

As regards the principle of neutrality with the meaning of the 3<sup>rd</sup> OECD guideline, I notice that neutrality is applied in case of supply of restaurant and catering services on board in journeys inside the European Union. There is uniformity in the application of the rules in all Member States which is a significant fact for the non-influence of the businesses. In other words, initially there are not divergences in VAT rules which will attract the entities to benefit from them.

Indeed, the optional exemptions that I also referred to in the section of supply of goods, is not predicted in the provisions of the supply of these types of services.<sup>97</sup> However, the opinion of the European Commission in its report to the Council on the place of taxation of the supply of goods and the supply of services for passengers on board is different. The European Commission based on Art. 371 and Annex X, Part B, point 10, of the VAT Directive supports that there are optional exemptions in the case of supply of restaurant and catering services too. According to this provision, Member States are allowed to continue to exempt "*the transport of passengers and, in so far as the transport of the passengers is exempt, the transport of goods accompanying them, such as luggage or motor vehicles, or **the supply of services relating to the transport of passengers***".<sup>98</sup> Therefore, under this provision the restaurant and catering services could also be exempted. From this perspective, the neutrality principle is distorted and the competition issues are expanding.

In the case of journeys outside the European Union, the neutrality principle with the concept of the influence of businesses' decisions is applied too. Supplies of restaurant and catering

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<sup>97</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: [https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report%20I%20Data\\_.pdf](https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report%20I%20Data_.pdf), p.29

<sup>98</sup> European Commission, Brussels, 22-10-2012 COM (2012) 605 final, REPORT FROM THE COMMISSION TO THE COUNCIL on the place of taxation of the supply of goods and the supply of services, for passengers on board ships, aircraft, trains or buses drawn up in accordance with Article 37(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, p. 5

services by being EU VAT free ensures the neutrality between similar supplies on board and on land and the entities are not led to adoption of special distribution mechanisms.

In regard to the destination and origin principles, there is a different tax treatment. On the one hand, the supply of restaurant and catering services on board within the European Community is based on the origin principle, although the fact that both the OECD and the WTO support the principle of destination for VAT than the origin principle.<sup>99</sup> On the other hand, supply of restaurant and catering services on board outside the European follows the destination principle.

Consequently, we observe that the rule of the place of supply of restaurant and catering services on board within the European Community deviates from the predominant principle of the VAT Directive. In my opinion, this divergence could not cause such a significant distortion, because this measure is applied in all Member States similarly and cannot influence so much the behavior of passengers to choose a specific route in order to ensure a meal with lower VAT.

## **2.1 Other kinds of services**

When scholars examine the issue of VAT of services on board, they make a distinction.<sup>100,101</sup> They are referring separately to the restaurant and catering services on board, because they are an exception to the general rules<sup>102</sup>, and separately to other forms of services. Those forms of services are various services other than restaurant and catering services. The concept of this phrase covers mainly the services which are offered during cruises and on ferries, such as services of hairdressers, beauticians, instructors/personal trainers, doctors, casinos, cinemas etc.<sup>103</sup> Due to the lack of special treatment for the other kinds of services on board, there is a

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<sup>99</sup> Ben Terra – Julie Kajus, *A GUIDE TO THE EUROPEAN VAT Directives, Introduction to European VAT 2007*, Volume 1, IBFD, p. 282

<sup>100</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: <https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report%20I%20Data.pdf>

<sup>101</sup> Ben Terra – Julie Kajus, *A GUIDE TO THE EUROPEAN VAT Directives, Introduction to European VAT 2007*, Volume 1, IBFD

<sup>102</sup> See p.33, 4<sup>th</sup> chapter

<sup>103</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: <https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report%20I%20Data.pdf>, p.30

view that there is a gap in the VAT Directive.<sup>104</sup> On the other hand, we could argue that we could use the general provisions of the VAT Directive and handle the services on board as any other service regardless of where they take place. Therefore, in order to find the place of supply, we apply the general rules and we distinguish the services to business to consumers (B2C) and business to business (B2B). As regards the passengers and what kinds of services they could enjoy on board, things are simple and understandable. They are all these kinds of services that I refer above except for restaurant and catering services. However, in my opinion, we should also take into account the B2B services, because there are phenomena where some businesses choose to operate their businesses through a platform and provide their services to other businesses for tax avoidance reasons.

For all these cases, the general rules of the VAT Directive are applied. More specifically, B2B services are taxed in the place where the customer has established his business, according to Art. 44 VAT Directive. Additionally, I would like to mention is some categories of supply of services which are defined in Art. 53 VAT Directive and that have as a place of supply the place where those services actually take place.<sup>105</sup> Those services are cultural, artistic, sporting, scientific, educational, entertainment and similar services, ancillary transport services and valuations of and work on movable property.

On the other hand, the place of supply in the cases of B2C services is where the supplier has established his business (Art. 45 VAT Directive). Also, in the case of B2C, we meet the different VAT tax treatment of the above mentioned supply of services in Art. 54 (1) VAT Directive.<sup>106</sup>

At this point, I would like to make a brief reference to the electronic services, which are included in the general category of other services on board, but nowadays their importance is

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<sup>104</sup> European Commission, Brussels, 22-10-2012 COM (2012) 605 final, REPORT FROM THE COMMISSION TO THE COUNCIL on the place of taxation of the supply of goods and the supply of services, for passengers on board ships, aircraft, trains or buses drawn up in accordance with Article 37(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, 3.2. Services other than catering and restaurant services, “...all other services should be treated in the same way, whether or not they are provided on board means of transport...”

<sup>105</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: <https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report%20I%20Data.pdf>, p. 30 -31

<sup>106</sup> PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: <https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report%20I%20Data.pdf> p.30

great due to their continuing expansion and the recent changes of some of the relevant rules. Firstly, I would like to identify the services that this general title of electronic covers. Under Annex II of the VAT Directive, a list of such services can be found. Website supply, supply of software, supply of movies, music and gambling games are only some illustrative examples. All these examples could prove that the consumption of these services could take place anywhere, even on board of ships. That is why I find it important to examine the rules of electronic services.

Again, in order to identify the place of supply of the supplies of electronic services, we have to divide them in two categories; B2C and B2B. The change regards the first category and especially the place of supply rule. Since 1 January 2015, the place of supply of this kind of services is the place where the establishment of the customer is located or where he has his permanent address or usually resides (Art. 58 VAT Directive). This change is crucial because until now the place of supply was the place of origin and we were faced with phenomena like non-taxable persons supplying electronic services from non- EU countries or from countries with low VAT rates, like Luxembourg.<sup>107</sup> These phenomena created distortions of competition and destroyed the neutrality because businesses were seeking ways to establish their providers in such locations. However, after the change, the rule was harmonized with the destination principle and the neutrality principle is now ensured. The legislation, in regard to the B2B cases, has not changed. Therefore, in those situations, Art. 44 VAT Directive is applied. Based on this provision, the place of supply is the place of destination. In other words, the place where the business has established its activity.

In this section, I tried to present the rules which comply with the VAT treatment of other categories of services, as well as electronic services, on board ship. Now, I will continue the examination of these rules under the light of the selected principles.

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<sup>107</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert – Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law* (Draft), part 1, p.161-163

## **2.2 Is the tax treatment of supply of other kind of services on board in line with the principles of the VAT Directive?**

Principles, as I explained in the 2<sup>nd</sup> chapter, are a vital part of the VAT Directive, although it is deemed to be soft law. I could not conclude the chapter on the supply of services on board without testing the application of the principles of the VAT Directive on the supply of other types of services on board, as well as electronic services.

What is taxed is the consumption of all kinds of services except for restaurant and catering services. This consumption of services is taxable in general.

Next, I would like to repeat that the 3<sup>rd</sup> guideline of the OECD defines the neutrality principle which is ensured via the non effect of the decision making processes of the business. This kind of neutrality is certified under the rules for the other kind of services.

However, here again, we have to face the problem of optional exemptions. On the one hand, optional exemptions are not regulated by the provisions. On the other hand, there is the view of the European Commission that Art. 371 and Annex X, Part B, point 10, of the VAT Directive could be applied in this case, and Member States may exempt **the supply of services** relating to the transport of passengers.<sup>108</sup> Therefore, the supply of other services on board may (also) be exempted. In such cases, the neutrality is distorted because the exemptions could influence the policies of entities, as these exemptions are not the same for all Member States and their different application creates mismatches.

Thankfully, the neutrality in the electronic services, as I explained in the previous section, is ensured. After the change of rule related to the place of supply rule for B2C supplies, the paid VAT is the VAT of the place where the consumer is established. Therefore, businesses cannot seek ways to avoid VAT taxation by establishing providers in places with low or without VAT, as they did in the past.

With regards to the destination and origin principle, from the above analysis, I have found that the applicable principle depends on the receiver of the service. Particularly, in B2B supplies of other kinds of services the place of supply is the place of destination and so, the destination principle is applied. In the case of B2C supplies, the place of supply is where the supplier has established his business. In other words, the principle of origin is dominant here.

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<sup>108</sup> European Commission, Brussels, 22-10-2012 COM (2012) 605 final, REPORT FROM THE COMMISSION TO THE COUNCIL on the place of taxation of the supply of goods and the supply of services, for passengers on board ships, aircraft, trains or buses drawn up in accordance with Article 37(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, p. 5



Finally, in the case of electronic supplies, the place of supply in B2C supplies is in accordance with the destination principle.

Generally, the place of supply rules are based on the predominant in the VAT Directive destination principle, except for the B2B supplies of other kinds of services (not the electronic ones) which is based on the origin principle. This is the only point where I notice a deviation from the principle of destination. However, I can justify this provision up to some extent, because it is very difficult and complex to identify the destination of so many consumers. From a practical perspective, the application of the origin principle in this case is more feasible.

### **3. Suggestions for resolving the identified problems of the supply of services on board**

My aim for this section is to gather all the problems and the divergences from the principles of the VAT Directive, which came up during the beforehand analysis and suggest some possible solutions. This way, this thesis moves on to the next level and does not only stop to the identification of problems.

First of all, I pointed out that the rule of the place of supply of restaurant and catering services on board within the European Union deviates from the destination principle, which is usually preferred in the VAT Directive. This divergence, however, does not create important distortions, because this rule could not change dramatically the customers' behavior to enjoy a meal or a drink in a specific operation. This kind of services should be consumed only on board during the journey. So, even though it is not in line with the principle of VAT Directive, I do not believe that it creates serious problems.

The next issue which, from my perspective, creates difficulties is the place of supply of restaurant and catering services on board outside the European Union. The place is located where the services are physically carried out, but it is not the simplest thing to check the sea territories border every time that you want to enjoy such kinds of services during a cruise. This problematic issue is worsening when the operation is partly inside the European Union and partly outside the European Union. Based on the current legislation, we have to struggle between the rules, with complexities and uncertainty in order to find the place of their supplies. In my opinion, the European Commission should clarify those issues by introducing new rules which would abolish these difficulties.

In addition to the above problems, one more issue is the optional exemptions. Actually, this problem refers to both the supply of restaurant and catering principles services and also the other kinds of services. Despite the fact that optional exemptions are not regulated under any special provision, the Art. 371 in combination with Annex X, Part B, point 10 of the VAT Directive defines that Member States may continue to exempt “*the transport of passengers and, in so far as the transport of the passengers is exempt, the transport of goods accompanying them, such as luggage or motor vehicles, or the supply of services relating to the transport of passengers*”. If we interpret this provision according to the European’s Commission view, this provision is referring also to the supply of restaurant and catering services and the other kinds of services.<sup>109</sup> But if this is true, then the neutrality principle is in danger. The difference in the application of exemption could influence the decision of entities and lead them to the adoption of tax structures which benefit them more. In my opinion, the solution could be a uniform application of exemptions. As I also explained with regards to the similar issue in the field of supply of goods on board, there is a reason behind the existence of exemptions and that is why I disagree with some views suggesting total removal of the exemptions as a solution to the administrative complexities and for avoidance of neutrality distortion.<sup>110</sup>

Finally, I will mention one more divergence from the principle of destination, in the case of B2C supplies of other kinds of services, apart from electronic services. In spite of this divergence, I strongly believe that this deviation is justified by the circumstances. Practically, it is too difficult to apply the destination principle because we could not identify the place where each consumer has its establishment and apply all those different VAT rates.

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<sup>109</sup> European Commission, Brussels, 22-10-2012 COM (2012) 605 final, REPORT FROM THE COMMISSION TO THE COUNCIL on the place of taxation of the supply of goods and the supply of services, for passengers on board ships, aircraft, trains or buses drawn up in accordance with Article 37(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, p. 5

<sup>110</sup> Report from Tonia PEDIADITAKI, IBFD Senior Research Associate, *European Commission publishes report on place of taxation for supplies of goods and services on board means of transport*, 25 October 2012

At this point, I post a table with the summary of my research:

SUPPLY OF SERVICES ON BOARD	TAXABLE CONSUMPTION	NEUTRALITY PRINCIPLE	DESTINATION PRINCIPLE
<u>RESTAURANT AND CATERING SUPPLIES:</u>			
Within the European Union	YES	YES*	NO
Outside the European Union	NO	YES	YES
<u>OTHER KIND OF SERVICES:</u>			
B2B	YES	YES*	YES
B2C	YES	YES*	NO
<u>ELECTRONIC SERVICES:</u>			
B2B	YES	YES	YES
B2C	YES	YES	YES

\*Apart from the case of exemptions

## **5<sup>th</sup> CHAPTER**

### **THE SUPPLY OF FUELS& THE SUPPLY FOR REPAIR, MAINTENANCE AND OTHER KINDS OF SERVICES RELATED TO SEA ACTIVITIES**

I could not complete my research on VAT on shipping without referring to fuels. Fuels are the driving force of the vessels and their importance for the economy is crucial. That's why I decided to have a separate chapter only for examining the VAT treatment of fuels of vessels. Moreover, services like maintenance, repair, chartering or hiring of vessels are pivotal services for shipping and I also examine them in this chapter. The reason for this separate treatment is the special provision of Art. 148 VAT Directive, which predicts exemptions related to international transports. However, loyal to my methodology, I will start my research by examining the place of supply rules, despite the fact that their VAT treatment is not special.

Fuels are deemed to be goods. Therefore, all the general rules of VAT Directive for the supply of goods are applied in the case of fuels, as well. I will briefly present how the general rules of VAT Directive are applied in this case. In order to identify the place of supply of fuels, we have to take into account whether or not the goods are transported. In the case of supply without transport, Art. 31 VAT Directive defines that the place of supply is where the goods are located at the time when the supply takes place. Therefore, in cases of fuel replenishment without transport, for example when there are gas stations inside a port, the place of supply of fuels is the place of that port. On the other hand, when the fuels are supplied with transport, Art. 32 VAT Directive is applicable. According to the latest provision, the place of supply is deemed to be the place where the fuels are located at the time when the dispatch or transport of the goods to the customer begins.

Except for energy, vessels need repair or maintenance. Moreover, they could be chartered or hired. All these are deemed to be supply of services. In order to find their place of supply, there aren't any special provisions, but the general rules of the VAT Directive are applicable. Therefore, the place of supply is the place where the customer has established his business according to Art. 44 VAT Directive or the place where the supplier has established his business in cases of B2C (non-taxable person).

## **1. Exemptions related to international transport**

The special issue in those kinds of supplies is the liability and this is actually the reason of the separate treatment of them in this thesis. The VAT Directive consists of lots of categories of VAT exemptions. One such category is related to international transport (Art. 148 VAT Directive). The Member States shall exempt the following transactions<sup>111</sup>:

*“(a) the supply of goods for the fuelling and provisioning of vessels used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing, with the exception, in the case of vessels used for inshore fishing, of ships' provisions;*

*(b) the supply of goods for the fuelling and provisioning of fighting ships, falling within the combined nomenclature (CN) code 8906 10 00, leaving their territory and bound for ports or anchorages outside the Member State concerned;*

*(c) the supply, modification, repair, maintenance, chartering and hiring of the vessels referred to in point (a), and the supply, hiring, repair and maintenance of equipment, including fishing equipment, incorporated or used therein;*

*(d) the supply of services other than those referred to in point (c), to meet the direct needs of the vessels referred to in point (a) or of their cargoes;....”*

The first conclusion for this provision is that there is a distinction of the vessels. Fuelling or maintaining or the other kinds of services provided to vessels are exempt only for vessels used for navigation on the high seas. Indeed, in the Council Directive about restructuring the Community framework for the taxation of energy products and electricity in Art. 14 (c), it is stated that “private pleasure craft” is not exempted from taxation.<sup>112</sup> The meaning of his phrase is explained in the same directive and it means that it includes “...any craft used by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.” From both Directives, we observe that this special exemption

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<sup>111</sup> This clause case is also predicted in Art. 1 and Art. 6 of the Council Directive 2003/96/EC

<sup>112</sup> Official Journal of the European Union, COUNCIL DIRECTIVE 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity

is only applicable to vessels for international transports whose purpose is the carriage of passengers as well as commercial, industrial or fishing activities.<sup>113</sup> In other words, for every “professional” activity connected with the sea. This distinction is justified up to an extent, because the aim of the exemption is the enhancement of public transport and of specific fields of employment.

Apart from the above cases, in the category of exemptions, rescue or assistance sea vessels and fighting ships are also included.

Moreover, it is very important to point out that this exemption is also applied to charter navigations. We notice that chartering is stated in section (c) of Art. 148 VAT Directive, but this opinion is also implemented by the judgment of CJEU in the *A Oy* case (33/11). Despite the fact that the preliminary ruling concerned aircrafts, the decision would be the same also in the case of sea vessels. More specifically, the Court claimed that the VAT exemption is applied both to scheduled flights and charter flights in order to ensure the fiscal neutrality and avoid the distortion of competition.<sup>114</sup>

Finally, the last issue that I want to mention is the pivotal issue of chain transactions. When a company of fuels supplies a vessel which sails on the high seas, then this transaction is exempt from VAT. However, the problem arises when this transaction is not direct, but there are multiple successive supplies. Is this exemption applicable also in these supplies? The Court of Justice faced similar issues many times. The most known case in this matter is the *Velker* (C-185/89)., I will briefly present the transaction in order to present the chain transaction. The *Velker* Corporation sold fuel to *Forsythe*. *Velker* purchased those fuels from another company, *Verhoeven*, and the latter one purchased some of the fuels from *OVA* (*OVA* ->*Verhoeven* ->*Velker* -> *Forsythe*). The issue was that *OVA* did not levy VAT on supplies of fuels to *Verhoeven*, *Verhoeven* did not levy VAT to *Velker* and *Velker* did not levy VAT to *Forsythe*, based on the exemption provision (Art. 148 para 1 VAT Directive). However, the Court based on the principle of simplicity judged that this exemption is applied to the final ship-owner and cannot be extended to the previous stages of the chain transaction.<sup>115</sup>

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<sup>113</sup> C-183/04, *Elmeka*

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=64053&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=93875>

<sup>114</sup> C- 33/11, *A Oy*, <http://curia.europa.eu/juris/document/document.jsf?docid=125223&doclang=EN>

<sup>115</sup> C-185/89, *Staatssecretaris van Financiën v Velker International Oil Company Ltd NV*, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61989CJ0185>

However, recently we had a different judgment in a case with chain transactions. In the case - Fast Bunkering Klaipėda UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos (C-526/13), the Court presented some conditions under which the exemption could also expand to the other levels of the chain transaction. Those conditions include the direct delivery of the fuels to the operator of the vessel who would be the only person who acquires them and who has the right to dispose of them. In addition to this condition, the seller or any third part loses their rights over these specific goods. Under these circumstances, the exemption is applied to all stages of chain transaction.<sup>116</sup>

## **2. Is the tax treatment of supply of fuels and supply for repair, maintenance and the other services in line with the principles of the VAT Directive?**

After the above analysis of the place of supply rules and the special provision of the exemptions on international transport, I am in the position to correlate my results with the selected principles of the VAT Directive.

First of all, I would like to point out that other than VAT, the excise duty is also levied on fuels. Those two kinds of burden are different, but they are deemed to be indirect taxes<sup>117</sup> and in the end they are paid by the final consumer. The VAT taxes the consumption and is levied on the consumer. The excise duty is applied to a certain list of products, like tobacco, alcohol and fuels and their aim is to levy taxes to those certain products in order to protect the environment or enhance the public health via discouragement of consumption.<sup>118</sup>

The neutrality principle under the meaning of the non-influence of business decisions from VAT rules seems to be ensured to a certain extent. From the abovementioned section about the exemption of some kinds of supply for special categories of vessels, we realize that the exemptions are applied in specific transactions. Of course, problematic issues arise and doubts cover this field. But in general and based on the case law, all these difficulties could be solved and neutrality could be ensured. I could argue that in this case we have a uniform

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<sup>116</sup> C- 526/13, Fast Bunkering Klaipėda UAB v

Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos,

<http://curia.europa.eu/juris/document/document.jsf?text=oil%2B148&docid=162700&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=68500#ctx1>

<sup>117</sup> European Commission, *Taxation and Customs Union*, General Overview,

[http://ec.europa.eu/taxation\\_customs/taxation/excise\\_duties/gen\\_overview/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/excise_duties/gen_overview/index_en.htm)

<sup>118</sup> Government of the Netherlands, *Excise duty*, <http://www.government.nl/issues/excise-duty/excisable-products>

policy for exemption which was absent in the optional exemptions of the other chapters. Therefore, the businesses could distribute their goods or services without trying to find ways to take advantage of exemptions. As regards the types of supply which are examined in this chapter but which are related to vessels for private pleasure, exemption is not applied. VAT is levied as in other kinds of supply and the neutrality principle is ensured, as well.

As regards the destination or the origin principle, their application relates to the means of supply of the fuels, with or without transport. In the case of transport without transport, the destination principle is dominant because the place of supply is where the goods are located at the time when the supply takes place. In the other case of the supply with transport, there is an impression that the origin principle is applied because the place of supply is the place where the goods are located at the time when dispatch or transport of the goods to the customer begins. In other words, it seems that the goods travel with VAT. However, if we think the intra – Community supply of goods and the exports, we can observe that the goods do not have any VAT because those types of supply are exempt.<sup>119</sup>

On the other hand, in case of supply for modification, repair, maintenance, chartering and hiring of the vessels, the recipient of the supply defines which principle is applied. If the recipient is another business (B2B), the destination principle is applied because, as I analyzed above and in accordance to Art. 44, the place of supply is where the customer has established his business. On the other hand, in B2C cases where the place of supply is the place of the supplier, the origin principle is dominant.

Therefore, the only deviation from the destination principle is noticed in the B2C supplies of services. From an administrative perspective, identifying all the places of establishment of the consumers seems to be quite difficult. That's why I could justify this rule, despite its divergence from the destination principle.

### **3. Suggestions for resolving the identified problems**

This chapter enlightens the issue of the supply of fuels and of other kinds of services related to sea activities like the repair or maintenance of vessels. The problematic issues are mostly related to the provisions of the exemptions (Art. 148 VAT Directive). One of them is the distinction of vessels for the application of the exemption. The above mentioned exemption

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<sup>119</sup> Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of Dieuwertje Euser MSc, Irene Reiniers MSc LL.M. & Nadeya Sayedi LL.M., *Fundamentals of EU VAT Law* (Draft), part 1, p.131



refers only to specific vessels which navigate to the high seas and which service commercial, industrial and fishing activities. Actually, I could justify that treatment because those exemptions aim to enhance certain sectors of employment or the public transport. However, in some cases, as for instance the case of vessels which carry passengers but sail in canals or rivers, there is a divergence of tax treatment which could distort the neutrality. In my opinion, the concept of the high seas should be expanded in order to avoid such mismatches.

Similarly, the issue of charter was solved by the Court of Justice. The question was if the exemption is also applied to charters. The judgment was positive, otherwise the neutrality would be threatened. When the charter journey serves a commercial activity, then it should be treated like any other kind of vessel which navigates on high seas.

Finally, I will deal with the chain transactions. The Court, based on the simplicity principle and on its effort for less administrative burdens for the monitoring of successive transactions, was negative against the expansion of the exemption to all the stages of chain transactions. However, it recently changed its view under the restrict conditions which I mentioned in the previous section.

In substance, I don't have to offer any different solution. The Court, at least in these issues, provided us with the solutions.

Below, I am attaching the table with the current results:

<u>SUPPLY OF FUELS</u>	TAXABLE CONSUMPTION	NEUTRALITY PRINCIPLE	DESTINATION PRINCIPLE
without transport	YES	YES	YES
with transport	YES	YES	-
<u>SUPPLY FOR REPAIR, MAINTENANCE, HIRING AND OTHER SEA ACTIVITIES</u>			
B2B	YES	YES	YES
B2C	YES	YES	NO

## 6<sup>th</sup> CHAPTER

### THE CONCLUSION

In this thesis in the framework of the LLM of International Business Tax Law, I chose to research a quite original topic from an academic perspective, but with an increasing interest, from practical perspective, because of the amount of money that are generated for the Governments. This topic is based on the research question:

**Is the current VAT treatment of supply in respect of shipping activities in line with the principles of the VAT Directive?**

Based on the references and on a systematic approach, I initially examined the rules which are applied on shipping activities, then I correlated them with selected principles of the VAT Directive and finally, I identified the problematic issues and I tried to propose some possible solutions. In particular, I focused my research on the supply of goods on board, the supply of services on board and the supply of fuels and also supply for repair, maintenance and the other services related to sea activities. As for the selected principles, I chose to examine the concept of consumption, which is the basic concept of the VAT Directive and around which all the other rules are developed. Then, I continued with the neutrality principle. I chose the neutrality relied on the 3<sup>rd</sup> Guideline of the OECD, which is related to the influence of business decision from VAT. In my opinion, this neutrality is crucial for the whole market mechanism, because the businesses will not/cannot create artificial schemes in order to take advantage of specific VAT rules. Finally, I correlated the VAT rules which I analyzed above with the predominant in the VAT Directive, destination principle. This principle is the most preferable because it ensures the equality of the VAT treatment of domestic and foreign supplies, provides certainty to taxpayers and protects the competition.

Through my research, I have found that although the VAT Directive is adopted by the Member States, the margins that are left by the Directive to the Member States for implementation/interpretation are so broad that sometimes they end up in totally different results. Below, I present the results of my research in categories.

One of the biggest issues which I mentioned both in the supply of goods and restaurant and catering supply on board in the European sea-territory was the concept of “stopover”. This unclarified concept creates mismatches which derive from the gaps in its interpretation. Member States interpret it differently and as a result, distortion is created. It is my strong

belief that the implementation of a consolidated interpretation of the concept would solve this complexity.

The other important issue which was identified as a result of my research is that of the optional exemptions. This problem was identified in supply of goods, restaurant and catering services and the other kinds of services on board. Those exemptions are characterized as optional, because Member States get to choose the exemptions which will be applicable. This way, divergences are created between the Member States, which leads to the distortions of the neutrality, too. In the case of supply of goods, the optional exemptions are mentioned in the provision of those kinds of supplies on board (Art. 37, last para, VAT Directive). However, in the two other categories of supply, the issue of optional exemptions is deemed to be a grey area. Optional exemptions are not included in the provisions of these kinds of supply, but there are opinions which based on the Art. 371 in combination with Annex X, Part B, point 10 of the VAT Directive define that Member States may continue to exempt “*the transport of passengers and, in so far as the transport of the passengers is exempt, the transport of goods accompanying them, such as luggage or motor vehicles, or the supply of services relating to the transport of passengers*”, and additionally support that optional exemptions are also present in the case of supply of restaurant and catering services, as well as other kinds of services. Some experts suggest the removal of the exemptions as a solution.<sup>120</sup> However, I have a different opinion. The exemptions serve a special role and I don’t believe that we could abolish them indiscriminately. However, I support the idea of that a uniform application of the same exemptions for all the Member States.

Also another category of problematic issues can be found in the field of exemptions. Art. 148 of the VAT Directive predicts a list of exemptions under specific circumstances. However, some issues have arisen, like the distinction of vessels for the application of the exemption, the expansion of the exemption to charters or the chain transactions. The difference with these exemptions is that they are not optional and the Member States follow the same policies. Therefore, distortion of competition or absence of neutrality are not often phenomena. But even in cases like the mentioned examples, the Court of Justice clarified the issues by providing opinions or judgments.

The next issue refers to all kinds of supply for sea activities. Here the issue is the administrative difficulties. The burden of the VAT registration and tax specialists in every

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<sup>120</sup> Report from Tonia Peditaki, IBFD Senior Research Associate, *European Commission publishes report on place of taxation for supplies of goods and services on board means of transport*, 25 October 2012

country is unbearable for businesses. My proposal is based on the MOSS “Mini-one-shop-stop” which has been introduced for the electronic services. Possible expansion of this measure to the supply of goods and services would be determinant for resolving the administrative complexities.<sup>121</sup>

In addition to these problems, I pointed out that the rule of the place of supply of goods on board in the sea territory of the European Union is not in line with the predominant principle of the VAT Directive. This deviation could create distortions and allow some persons to benefit from the supply of goods from Member States with lower VAT.

Such a divergence from the destination principle can also be noticed in the rule of the place of supply of restaurant and catering services on board within the European Union. However, this deviation does not create such a distortion, because this rule could not affect the consumer’s decision for enjoying a coffee or dinner.

Additionally, B2C supply of other kinds of services, apart from electronic services, as well as B2C supply for repair, maintenance and other kinds of services of sea activities are not in line with the destination principle, either. Despite this divergence, it is my belief that it is complex, from an administrative perspective, to apply the destination principle because identifying the place of the establishment of each consumer is not easy.

As regards the supply of goods on board in domestic sea territory, I noticed that the application of different VAT rates for the same goods both on board and on land leads to paradox cases which are harmful for the competition. A unique VAT rate for the same goods on board and on land would be the perfect solution.<sup>122</sup>

Next, I studied the complexity issues of the supply of goods and restaurant and catering services on board in sea territory outside the European Union. The whole complexity refers to the place of supply rules. The provisions define the place of supply as the place where the supply takes place. However, how easy is this in practice? Checking the sea territory borders in order to identify the EU VAT or no EU VAT is not deemed to be so feasible. Of course, there are maps and borders, but it is not the simplest thing to depend your consumption on miles and maps. The European Commission should clarify the issue by introducing new rules

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<sup>121</sup> TarlochanLall, *VAT focus: The mini one –stop shop*, TAXJOURNAL, 3 October 2014, “...it may be extended to the supplies of goods and services”

<sup>122</sup> Ben Terra – Julie Kajus, *A Guide to the European VAT Directives Introduction to European VAT*, Volume 1, 2014, IBFD, Chapter 7: Introduction to VAT as Fiscal Phenomenon, p. 303

for both kinds of supply, because it creates mismatches, competition issues and administrative problems.

Finally, as a general comment for the conclusion, I would like to mention that numerous steps have been taken in the framework of indirect taxes in the European Union, but there are still many gaps and misunderstandings. It may be the time change our goal and move forward from harmonization to full consolidation. This way, all these derogations that I notice above will be eliminated.

## REFERENCES

### Academic literature:

- Ben Terra – Julie Kajus, *A GUIDE TO THE EUROPEAN VAT Directives, Introduction to European VAT 2007*, Volume 1, IBFD
- Ben Terra – Julie Kajus, *A Guide to the European VAT Directives Introduction to European VAT*, Volume 1, 2014, IBFD
- Ben Terre and Julie Kajus, *Commentary – A Guide to the Recast VAT Directive*, IBFD
- Charlene AdlineHerbain, *VAT Neutrality*, Foreword by Professor Andre Prum, Afterword by Me Jean-Claude Bouchard, promoculturelarcier
- Kees van Raad, *Materials International, TP & EU Tax Law*, Volume 3, ITC (INTERNATIONAL TAX CENTER) LEIDEN
- M. Kronthaler and Y. Tzuberly, *The State Aid Provisions of the TFEU in Tax Matters*, in: M. Lang, P.Pistone, J. Schurch and C. Staringer (eds.), *Introduction to European Tax Law : Direct Taxation (Third Edition)*, London: Spiramus Press: 2003
- Marta Papis, *Principles of Law: Function, Status and Impact in EU Tax Law*, Cecile Brokelind Edition, IBFD
- OECD, *Consumption Tax Trends 2010, VAT/GST AND EXCISE RATES, TRENDS AND ADMINISTRATION ISSUES*, p. 56
- Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of DieuwertjeEuser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law (Draft)*, part 1
- Prof. Dr. Ad van Doesum, Prof. Dr. Herman van Kesteren & Prof. Dr. Gert-Jan van Norden (Eds.) with the corporation of DieuwertjeEuser MSc, Irene Reiniers MSc LLM & Nadeya Sayedi LLM, *Fundamentals of EU VAT Law (Draft)*, part 2
- Prof. Dr. Eric. C.C.M. Kemmeren, *Tax Competition and Comparability with EU (State Aid) Rules: balancing on what is allowed and what is not*
- Prof. Han Kogels, *Editorial Making VAT as Neutral as Possible*, 21 EC TAX REVIEW, 2012, Issue 5
- Rita de la Feria, *The EU VAT System and the Internal Market*, Doctoral Series 16, Academic Council
- T. Koopmans, *Judicial Activism and Procedural Law*, *European Review of Private Law*, Vol. 1, 1993
- Tarlochan Lall, *VAT focus: The mini one –stop shop*, TAXJOURNAL, 3 October 2014

- Thomas Ecker, *A VAT/GST Model Convention*, IBFD DOCTORAL SERIES 25

**Other references:**

- Anastasia Bulezdova, *Shipping remains the source of income of the Greek economy*, GRReporter, 14 October 2013
- Case C-58/04, reference for a preliminary ruling under Article 234 EC from the Bundesfinanzhof (Germany), made by decision of 23 October 2003, received at the Court on 11 February 2004, in the proceedings Antje Kohler v Finanzamt Dusseldorf - Nord
- Committee on Fiscal Affairs, Working Party N°9 on Consumption Taxes, OECD INTERNATIONAL VAT/GST GUIDELINES DRAFT COMMENTARY ON THE INTERNATIONAL VAT NEUTRALITY GUIDELINES, JUNE 2012, OECD, BETTER POLICIES FOR BETTER LIVES
- EP Parliamentary question on VAT and the cruise liner industry in the EU, E-4006/05, Written question by Simon Busutill (PPE DE) to the Commission, Subject: The cruise liner industry in the EU
- European Commission, Brussels, 12.2.2014 COM (2014) 69 Final, “*REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT*”, Seventh report under Article 12 of Regulation (EEC, Euratom) n° 1553/89 on VAT collection and control procedures. {SWD (2014) 38 Final}
- European Commission, Brussels, 22-10-2012 COM (2012) 605 final, REPORT FROM THE COMMISSION TO THE COUNCIL on the place of taxation of the supply of goods and the supply of services, for passengers on board ships, aircraft, trains or buses drawn up in accordance with Article 37(3) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax
- European Commission, Enterprise and Industry, Tourism Business Portal, Value Added Tax (VAT), 4. Which percentages of VAT are applied by different European Countries?
- EY Building a better working world, *Worldwide VAT, GST and Sales Tax Guide 2015*, April 2015
- *International VAT/GST Guidelines*, OECD, BETTER POLICIES FOR BETTER LIVES, Global Forum on VAT 17-18 April 2014

- Official Journal of the European Union, COUNCIL DIRECTIVE 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity
- Official Journal of the European Union, Regulations, No 282/2011 of the 15 March 2011 laying down implementing measures for Directive 2006/112/ EC on the common system of value added tax
- OECD Tourism Trends and Policies 2014, OECD Publishing, BETTER POLICY FOR BETTER LIVES
- Report from Tonia Pediaditaki, IBFD Senior Research Associate, *European Commission publishes report on place of taxation for supplies of goods and services on board means of transport*, 25 October 2012
- Rita de la Feria, *VAT: a new dawn for the principle of fiscal neutrality?*, Oxford University Centre for Business Taxation, Saïd Business School, Park End Street, Oxford, Ox1 1HP
- Study on the economic effects of the current VAT rules for passenger transport. Final Report. TAXUD/2012/DE/334, FWC No TAXUD/2010/CC/104, Case Center for Economic and Social Research, HIS Institute for Advanced Studies, Transport and Mobility Leuvenm CPB Netherlands Bureau for Economic Policy Analysis (Consortium leader), Warsaw, December 2014
- The Institute of Chartered Accountants of India, 5. *VAT – Concepts and General Principles*

### **Websites:**

- C-185/89, Staatssecretaris van Financiën v Velker International Oil Company Ltd NV, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61989CJ0185>
- C-183/04, Elmeka, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=64053&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=93875>
- C- 33/11, A Oy, <http://curia.europa.eu/juris/document/document.jsf?docid=125223&doclang=EN>
- C- 526/13, Fast Bunkering Klaipėda UAB v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos, <http://curia.europa.eu/juris/document/document.jsf?text=oil%2B148&docid=162700&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=68500#ctx1>



- European Commission, Taxation and Customs Union, General Overview, [http://ec.europa.eu/taxation\\_customs/taxation/excise\\_duties/gen\\_overview/index\\_en.htm](http://ec.europa.eu/taxation_customs/taxation/excise_duties/gen_overview/index_en.htm)
- [http://www.findlaw.co.uk/law/government/other\\_law\\_and\\_government\\_topics/500439.html](http://www.findlaw.co.uk/law/government/other_law_and_government_topics/500439.html), FindLaw UK, What is meant by international waters and airspace?
- <http://www.imo.org/About/Pages/Default.aspx>, “*IMO – the International Maritime Organization – is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships*”
- [www.pwc.com/taxpolicy](http://www.pwc.com/taxpolicy), Shifting the balance from direct to indirect taxes: bringing new challenges
- PWC – Indirect taxes, <http://www.pwc.com/gr/en/tax-services/indirect-taxes.jhtml>
- PWC, *Expert study on the issues arising from taxing the supply of goods and the supply of services, including restaurant and catering services, for consumption on board means of transport*, available on: [https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report\\_Part%20I%20Data.pdf](https://circabc.europa.eu/sd/a/9fc5863f-a113-4fdb-888e-04f588fd11c2/04%20Report_Part%20I%20Data.pdf)
- [www.un.org](http://www.un.org) , Part II, Territorial Sea and Contiguous Zone