

Main provisions of new Implementing Decree VAT Regulation (EU) No 282/2011

The place where a taxable person has established his business

The Regulation implements a new procedure and aspects to be examined for the determination of the place where a taxable person has established his business: ***in the future, the place where the business of a taxable person is established shall be the place where the functions of the business's central administration are carried out.*** The criteria for central administration are as follows: the place where essential decisions concerning the management of the business are taken, the place where management meets and where, according to the deed of foundation, the registered office of the business is located, of which criteria the first is the most important one. This means, that in the future, a business partner's address of registered office shall no longer be deemed automatically as the place of business, and the issuer of the invoice shall ascertain whether such is also deemed the place where the business has been established. Thus, in the future for instance for a Hungarian owned Cypriot post office box number, it is no longer possible to issue an invoice outside Hungarian VAT jurisdiction in case the decisions related to the company are effectively taken in Hungary and ***the supplier is required to ascertain of such fact, and he shall be responsible to verify it.***

Therefore we advise you to insert such a provision into your current and future contracts enabling You to issue an invoice in compliance with the prevalent regulations.

Place concerned with business activity

If a business company carries out a taxable transaction in a state where it has a place of business subject to VAT, in the future, it shall be principally examined whether the fixed establishment has intervened in the performance in question. Pursuant to the Regulation, the followings should be considered for the determination thereof:

- a fixed establishment of the taxable person shall be taken into consideration only when it is characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to make the supply of goods or services in which it intervenes;
- such human and technical resources of such fixed establishment of the business are used for transactions inherent in the fulfilment of the taxable supply of goods or services before or during this fulfilment (here it is important to note that where such resources are only used for administrative purposes, these shall not be regarded as resources being used for fulfilment);
- whether a taxable person has issued its invoice under the VAT identification number attributed by the Member State of the fixed establishment regarding the relevant transaction. The fact of incorrectly applied VAT identification number shall provide proof of the involvement of the place of business in fulfilment!

The Regulation draws on such a presumption that if the place where a taxable person has established the place of his business the territory of a Member State, than such fixed



establishment shall always be regarded as having intervened in the fulfilment of supply of goods or services in the relevant Member State. That is, in case a company which was established within Hungary but has fixed establishment in another Member State, and such fixed establishment has intervened in the fulfilment of supply of goods and services within this other Member State, the business company may not state its Hungarian VAT identification code on its invoice but shall provide the VAT identification code of the fixed establishment of the other Member State.

Place of fulfilment for the supply of goods and services

In each case the actual transaction shall be considered and it shall be determined:

- what type of activity it refers to?
- who carries out the activity?
- where the activity is carried out?

Under these criteria, it shall be decided ***who shall pay VAT where.***

VAT shall be paid in such Member State where the “place of supply of and services” is situated. Consequently such supply of services shall be deemed exempt from VAT in the other Member State (as supplier, it shall be invoiced without VAT and customers shall not pay VAT thereon).

Ways to determine are as follows. First it shall be determined whether the service falls within the scope of particular rules. Such rules or the pertaining place of supply of services are:

- Services pertaining to immovable property – place where such real property is situated
- Transport of passengers and goods – actual journey completed
- Transportation of goods within the Community for non-taxable person – place of origin
- Cultural, artistic, scientific, educational, entertainment – where the event actually takes place
- Professional assessment, work carried out on goods (for non-taxable person) – where the work is actually carried out
- Hiring means of transport for short term – the place of conveyance into possession.
- Catering service – where the service is carried out.

If a service does not fall within any of the above, the “general rules” applies, i.e. it shall be examined who the customer is, as the place of supply shall be determined accordingly.

If the customer is:



- a taxable person: the place of supply shall be the place where it is established (fixed establishment of business)
- non-taxable person: the place of supply shall be the place where the supplier is established.

Without the determination of the taxable entity, no invoice exempt from VAT shall be issued.
Therefore:

- ***For customers originating from another Member State***, prior to invoicing, the business partner's EU VAT number shall be queried and verified at:

http://ec.europa.eu/taxation_customs/vies/lang.do?fromWhichPage=vieshome&selectedLanguage=HU

It is important for the query to be made simultaneously with supply as the data base cannot provide data subsequently and VAT numbers may also be suspended in other Member States!

- ***Customer originating from a third party (outside the EU)*** other means of identification is required. For instance, certification from the customer's taxation authorities or Court of Registry.

The result of verification shall be printed and placed in the archives. Later, during tax audit a business company may evidence the taxable person's identity, and the correct issuance of invoice and the statement of appropriate VAT amount shall be the responsibility of the invoicing party!

Should you have any further questions, please contact us for assistance.

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