

Value added tax on cross border transactions in network energy

Energy Community
5th Workshop
25 May 2023

METHODOLOGY

**How to determine whether
Country “A” VAT is due
on a specific transaction?**

5 BASIC QUESTIONS

Overview

- **5 basic questions** - Introduction
 - Taxable person
 - Operations in the scope of VAT
 - Place of the supply
 - Exemptions
 - Person liable to pay VAT

Introduction - Methodology

A hand in a dark suit sleeve points towards a glowing, circular icon containing three question marks. The icon is set against a dark blue background with light streaks and a cityscape at night. The text '5 basic questions' is overlaid in red on the icon.

5 basic questions

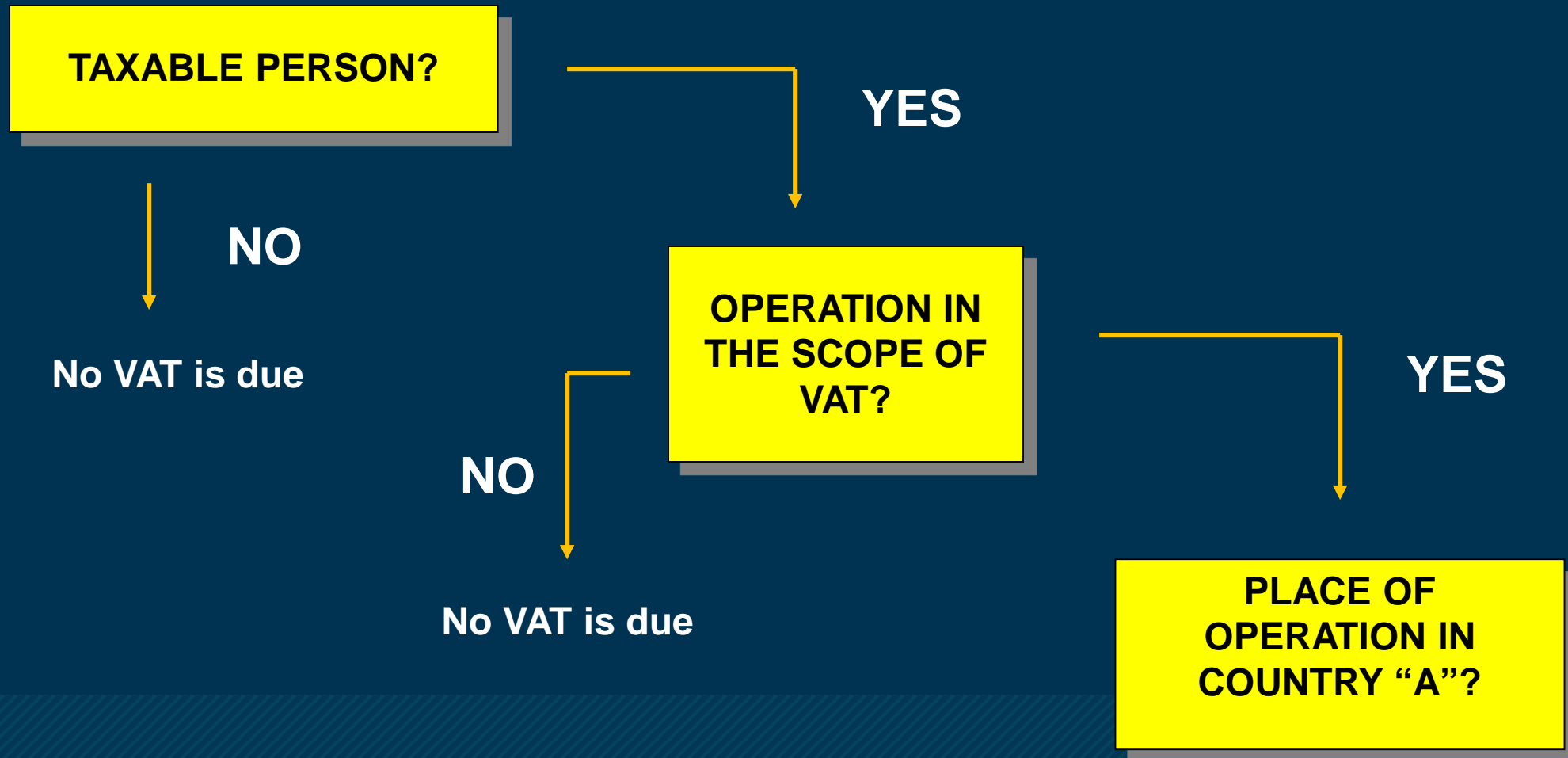
Introduction - Methodology

IS COUNTRY “A” VAT DUE ON A SPECIFIC OPERATION
AND, IF YES, BY WHOM?

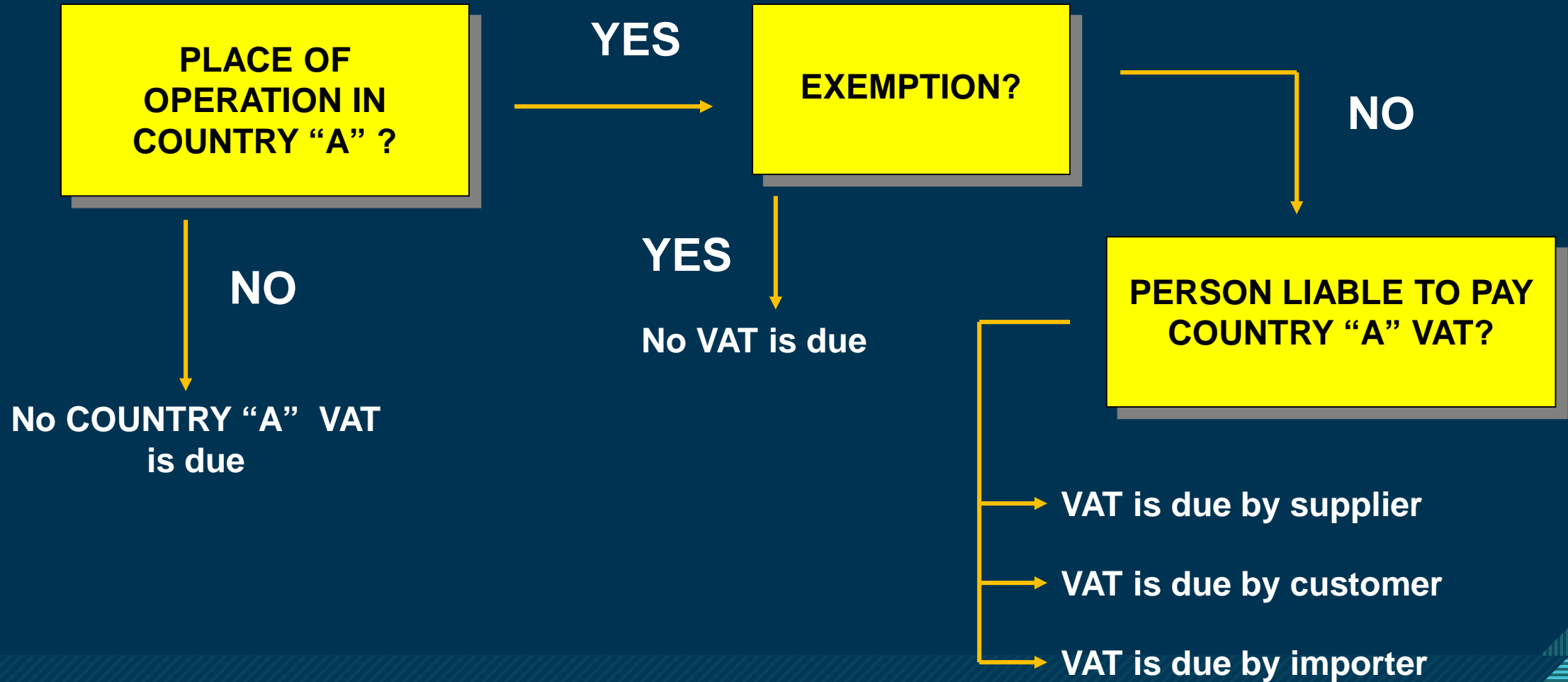
FIVE BASIC QUESTIONS

1. TAXABLE PERSON?
2. TRANSACTIONS IN THE SCOPE OF VAT?
3. PLACE OF THE OPERATION?
4. EXEMPTIONS?
5. PERSON LIABLE TO PAY VAT?

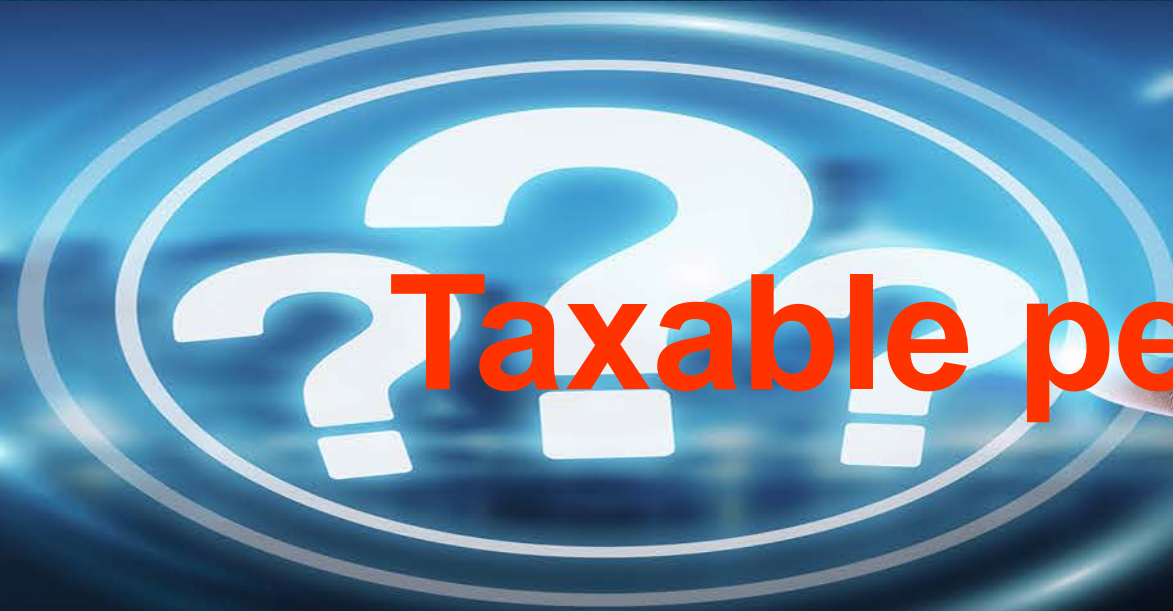
5 basic questions - Introduction



5 basic questions - Introduction



5 basic questions



Taxable person

5 basic questions – Taxable person: definition

- **Definition**

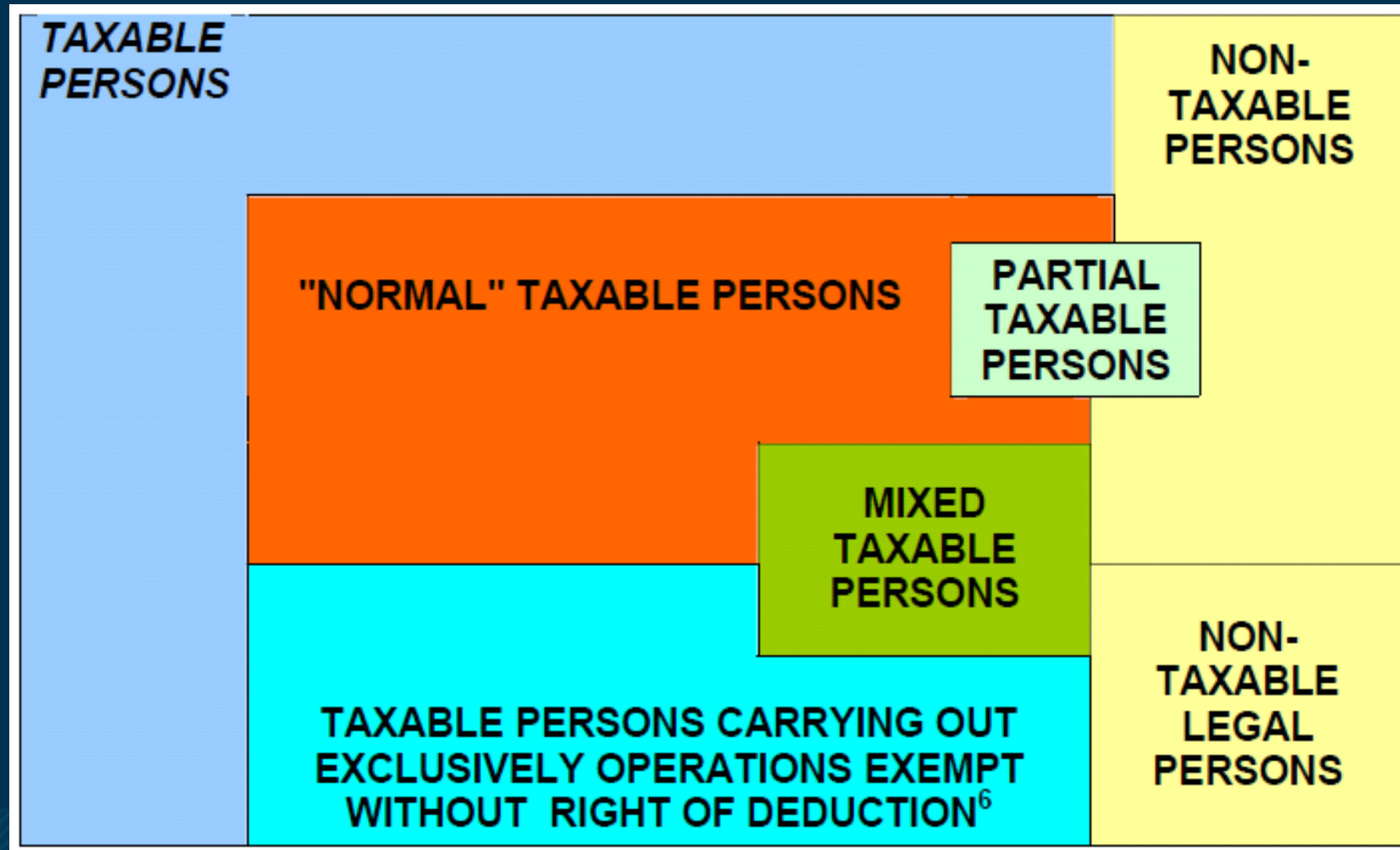
‘Taxable person’ shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Art. 9(1) of the
VAT Directive

5 basic questions – Taxable person and non-taxable (legal) person

- **Full** taxable person (only taxed operations and exempt operations with right to deduct)
 - **Exempt** taxable person (only exempt operations without right to deduct)
 - **Mixed** taxable person (taxed/exempt operations with right to deduct + exempt operations without right to deduct)
 - **Partial** taxable person (non-taxable + taxed or/and exempt operations with right to deduct or/and exempt operations without right to deduct)
 - **Occasional** taxable person (sale of new means of transport): applicable in Ukraine/Moldavia as from Accession
-
- **Non-taxable** legal person (public authorities [exceptions], passive holding)
 - **Non-taxable** physical persons (employees)

5 basic questions – Taxable person and non-taxable (legal) person



5 basic questions – Taxable person: importance

- Transaction in the scope of VAT
- Role in collection of tax
- Right to deduct VAT (if certain conditions are met)
- Obligations with respect to administrative compliance system in order to enable the VAT authorities:
 - To control the degree of (non-)compliance with the VAT rules *and*
 - To conduct the necessary investigations
- Will determine where an transaction is taking place

5 basic questions

A hand is pointing towards a glowing question mark icon. The icon is a large white question mark inside a circular frame, surrounded by a blue glow and several smaller question marks. The background is a dark blue cityscape at night.

**Operations in the scope
of VAT**

5 basic questions – Operations in the scope of VAT

- Delivery of goods (including intra-Community delivery of goods as from Accession)
- Supply of services
- Importation of goods
- Deemed deliveries of goods (including deemed intra-Community delivery of goods as from Accession) and deemed supplies of services

As from Accession: Intra-Community acquisition of goods and deemed intra-Community acquisition of goods!

5 basic questions



Place of supplies

5 basic questions – Place of supplies: importance

VERY IMPORTANT:

If an operation in the scope of VAT is not deemed to take place on Country `A` territory, no Country `A` VAT is due!

NO IMPORT NOR EXPORT OF SERVICES !!!

5 basic questions – Place of supply of services

OVERVIEW:

- Definitions
- Place of supply of services
 - General rules
 - Exeptions
- Person liable to pay VAT

Definitions

What is a “supply of services”?

- A “supply of services” means any transaction which does not constitute a supply of goods

Art. 24 (1) VAT
Directive

What is a “supply of services subject to Country A VAT”?

- The supply should be made by a **taxable person** (see basic question nr. 1)
- The supply should be made for a **consideration**
- The supply is considered to be **in Country A**

Definitions

2. EXAMPLES OF SERVICES

- Examples mentioned in art. 25 VAT Directive
- The use of goods forming part of the assets of a business for the private use of a taxable person or of his staff or, more generally, for purposes other than those of his business, where the VAT on such goods was wholly or partly deductible

Art. 26 (1) (a) VAT Directive

- The supply of services carried out free of charge by a taxable person for his private use or for that of his staff or, more generally, for purposes other than those of his business.

Art. 26 (1) (b) VAT Directive

A hand in a dark suit sleeve points towards a glowing blue question mark icon. The icon is surrounded by concentric circles and has a bright light effect. The background is a dark blue gradient with some blurred city lights.

**PLACE OF SUPPLY
PERSON LIABLE TO PAY VAT**

Place of supply

IMPORTANCE

In case a transaction is not deemed to take place on the Country A territory, no Country A VAT is due!

Person liable to pay VAT on a service

IMPORTANCE

The person liable to pay VAT has to pass on the VAT due to the State budget!

Place of supply of services – General rule

GENERAL RULE for B2B

- **Place where the taxable person who receives services has established his business, has a fixed establishment or has his permanent address or usually resides**

Art. 44 of the VAT
Directive

**The general rule is applicable
whenever no specific place of supply rule or exception is applicable
to a supply of services!**

Place of supply of services – General rule

GENERAL RULE B2B

- *Examples:*
 - The supply of services directly connected to the supply of gas and electricity (use of the pipeline/cable network to transport the gas or electricity, the provision of access to a natural gas system or to any network connected to such system, to the electricity system)
 - Accountancy/legal services
 - ...

Place of supply of services – General rule

GENERAL RULE for B2C

- **Place where the supplier has established his business, has a fixed establishment or has his permanent address or usually resides**

Art. 45 of the VAT
Directive

**The general rule is applicable
whenever no specific place of supply rule or exception is applicable
to a supply of services!**

Place of supply of services – General rule

GENERAL RULE for B2C

- **B2C supplies means supplies to a:**
 - private individual
 - charity, government department or other body which has no business activities
 - ‘person’ (natural or legal) who receives a supply of services wholly for a private purpose

Place of supply of services – Exeptions (1)

Exceptions from the general rules:

- **B2C services to a customer (a non-taxable person) outside the EU, services that are directly connected to the supply of gas and electricity** are taxed at the place where that person is established, has his permanent address or usually resides [Article 59 (h) of the VAT Directive]
- **B2C services provided by an intermediary** are taxed at the location where the main transaction, in which the intermediary intervenes, is taxable [Article 46 of the VAT Directive]
- **B2B and B2C services connected with immovable property** are taxed where the immovable property is located [Article 47 of the VAT Directive]
- **B2B and B2C passenger transport** is taxed according to the distances covered [Article 48 of the VAT Directive]
- **B2C transport of goods**, other than intra-Community transport, is taxed according to the distances covered [Article 49 of the VAT Directive]
- **B2C intra-Community transport of goods** (goods departing from one Member State and arriving in another) is taxed at the place of departure [Article 50 of the VAT Directive]
- **B2C ancillary services to the transport of goods**, such as the loading and unloading services, are taxed in the Member State where those services are physically carried out [Article 54 of the VAT Directive]

Place of supply of services – Exeptions (2)

Exceptions from the general rules:

- **B2B services** in respect of **admission to cultural, artistic, sporting, scientific, educational, entertainment and similar events** will be taxed at the place where those events actually take place [Article 53 of the VAT Directive]
- **B2C services** relating to **cultural, artistic, sporting, scientific, educational, entertainment and similar activities** will be taxed at the place where those activities actually take place [Article 54 of the VAT Directive]
- **B2B and B2C restaurant and catering services**, other than those supplied on board ships, aircraft or trains during the section of a passenger transport effected within the EU, are taxed at the place where the services are physically carried out [Article 55 of the VAT Directive]
- When **B2B and B2C restaurant and catering services** are supplied **on board ships, aircraft or trains during the section of a passenger transport effected within the EU**, tax is paid at the place of departure of the transport [Article 57 of the VAT Directive]
- **B2B and B2C short-term hiring of means of transport** is taxed at the place where the means of transport is actually put at the disposal of the customer [Article 56 of the VAT Directive]
- **Electronically supplied services**, provided by suppliers established in a third country to non-taxable persons (**B2C**) established in the EU, must be taxed at the place where the customer resides or has a permanent address [Article 58 of the VAT Directive]

5 basic questions



5 basic questions – Exemptions: interpretation

EXEMPTIONS:

RESTRICTIVE INTERPRETATION!

5 basic questions – Exemptions: two types

But only for deliveries of goods and supplies of services for the purpose of this methodology !!

- **Distinction** has to be made between:
 - Operations out of the scope of VAT (see Question 2); *and*
 - Exempt supplies
- **Distinction** has to be made between:
 - Exemptions with right to deduct; *and*
 - Exemptions without right to deduct

A blue, jagged-edged callout box with a white border, containing the word "Attention!" in yellow text.

Attention!

5 basic questions – Exemptions with right to deduct

Exempt deliveries of goods or supplies of services with right to deduct

- Supplier does not have to charge VAT
- Supplier retains the right to deduct the input VAT related to these operations

5 basic questions – Exemptions with right to deduct

Some examples:

- the importation of gas through a natural gas system or any network connected to such a system or fed in from a vessel transporting gas into a natural gas system or any upstream pipeline network, of electricity or of heat or cooling energy through heating or cooling networks;
- Deliveries of goods (gas and electricity) that are dispatched outside Country A (outside the Community as from accession) = Exports
- As from accession: intra-Community deliveries of goods
- International transport of persons
- Deliveries of and services to sea-going vessels and aircraft [conditions]
- Deliveries of goods and/or supplies of services to embassies, consular offices, international institutions, ... [conditions]

5 basic questions – Exemptions without right to deduct

Exempt deliveries of goods or supplies of services without right to deduct

- Supplier is not allowed to charge VAT
- Supplier does not have the right to deduct the input VAT related to these operations

5 basic questions – Exemptions without right to deduct

Some examples:

- Medical care
- Educational activities
- Supplies of cultural services
- Activities of public radio and television
- Supply of public postal services
- Banking and insurance services

Art. 132 of the VAT Directive

5 basic questions – Exemptions on importation

Some examples:

- Re-importation of unaltered goods and temporarily exported samples
- The importation of household and personal effects, furniture and other domestic articles (conditions)
- The importations of goods for which the delivery would be exempt
- The importation of goods for temporary use only

Art. 143 of the VAT Directive

5 basic questions

A hand is pointing towards a glowing question mark icon. The icon consists of three question marks inside a circular frame, all emitting a bright blue light. The background is a dark blue, blurred cityscape at night.

**Person liable
to pay VAT**

5 basic questions – Person liable to pay VAT

- Supplier of a good or a service
- **Person performing an intra-Community acquisition**
- **Person who charges VAT**
- Importer of the goods (designated by the Member State)
- Customer
 - Taxable person receiving certain services
 - Taxable person communicating his VAT identification number
 - Any other person designated by the Member State when the supplier is not established in this Member State
- Tax representative

5 basic questions

A hand is shown pointing towards a glowing, circular icon containing a question mark. The icon is surrounded by a bright blue light and is set against a dark blue background with a cityscape at night. The text "A multipurpose methodology" is overlaid in orange on the icon.

**A multipurpose
methodology**

5 basic questions – A multipurpose methodology

This methodology helps to:

- Better assess a taxpayer's (basic) questions and provide him/her with an answer to that question
- Better assess at the occasion of a VAT control whether the taxpayer's VAT implementation is compliant with the VAT regulations
- Ensure that all necessary elements related to an outgoing operation are provided by a tax inspector to e.g. the VAT Service in order to enable it to assess the problem and provide a correct and complete answer to the problem

5 basic questions – A multipurpose methodology

This methodology helps to *(continued)*:

- Better structure and support, from a legal perspective, (internal and external) answers
- Better structure and support, from a legal perspective, positions taken by a tax inspector or the VAT Service (e.g. in provisional assessments, in cases of appeals against assessments, ...)
- ...

5 basic questions but other questions to solve such as:

- The chargeable event and the chargeability

Art. 62-71 of the VAT Directive

- The taxable amount

Art. 72-92 of the VAT Directive

- The VAT rate to apply to the transaction

Title VIII of the VAT Directive

5 basic questions



QUESTIONS

Thank you

Nutu Adriana
VAT expert, Romanian Ministry of Finance