The VAT in the European Union

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KPMG LLP's Washington National Tax Office is conducting an initiative to inform the debate over a VAT as a tax reform option in the United States. The project comprises webcasts, publications, speaking engagements, and university instruction, all designed to inform professionals, academics, and policymakers about VAT issues. Hellerstein has been engaged by KPMG to assist in this effort.

A key part of this project is Views on VAT, a yearlong series of articles in *Tax Notes* on the VAT regimes in foreign countries, the comparison of VAT and U.S. retail sales taxes, VAT administration and compliance issues, how a U.S. national VAT would theoretically be administered, and other issues related to the VAT.

One of the key issues to be addressed in the United States would be coordinating a federal VAT with state and local retail sales taxes. In addition to having the VAT of broadest application in economic terms, the European Union is in some respects analogous to the United States in the sense that it is a group of states, each with sovereign taxing authority, but with some restraints imposed on them by the existence of the union that they are a part of. How the VATs used by the members of the EU are coordinated with one another may be instructive if a VAT were considered in this country. This article reviews the history, structure, and operation of the EU VAT with an emphasis on the manner in which EU member states deal with cross-border transactions.

A. Introduction

When Americans think about an income tax, their thoughts naturally turn to the federal income tax with which they are familiar. When taxpayers in most other countries think about a VAT, their thoughts naturally turn to their national VATs with which they are familiar. But when Americans think about a VAT, they have no natural example to which to turn, because the United States has no national VAT. Perhaps one would expect Americans to look north to the Canadian VAT, called a goods and services tax (GST), or south to the Mexican VAT, when seeking to understand the nature of a VAT. We suspect, however, that when Americans think about a VAT, their thoughts usually turn to the EU VAT.

There are several explanations for the primacy of the EU VAT in the minds of Americans and, indeed, of many other observers. First, although the concept of a VAT has been around for a long time and France's 1948 manufacturer's excise tax is sometimes identified as the prototype of the modern VAT,[1] the adoption of the EU VAT clearly marked the beginning of the VAT as a globally significant instrument of national fiscal policy. Second, the EU VAT was the model for other countries' VATs. One can say today that the "European Union's credit-invoice VAT is the most prevalent form of VAT in use today."[2] Third, particularly with the expansion of the EU from 15 to 27 member states, the EU VAT is without question the VAT that has the broadest application in economic terms today.

There is yet another reason why the EU VAT may command the attention of Americans. The EU is in some respects analogous to the United States in that it is a group of "states," each with "sovereign" taxing authority, but with some restraints imposed by the existence of the union of which they are a part. One might think that the EU, in its efforts to implement a common VAT, would be of particular interest to Americans insofar as they think about adopting a VAT, because of the existence of subnational states with "sovereign" taxing authority that might adopt subnational VATs if a VAT were adopted at the national level.[3]

Whatever the explanation, the EU VAT is worthy of special attention, and we have therefore devoted this Views on VAT to it. In so doing, we have three goals in mind. The first is to describe the evolution and operation

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[1] Liam Ebrill et al., *The Modern VAT*, 4 (IMF 2001). The tax gave no credit for tax on capital goods until 1954, when the levy was converted into a consumption-type VAT, so others identify 1954 as the date of the first modern VAT. Alex Easson, *Taxation in the European Community*, 100 (1993); discussion of "Value-added tax, national" on the Tax Topics section of the Urban Institute's and Brookings Institution's Tax Policy Center Web site, *available at* http://www.taxpolicycenter.org/taxtopics/encyclopedia.VAT.cfm.

[2] Alan Schenk and Oliver Oldman, *Value Added Tax: A Comparative Approach*, 59 (2007).

[3] *See* Harley Duncan, "VATs in a Federal System," *Tax Notes*, Mar. 29, 2010, p. 1643, *Doc 2010-5052*, or *2010 TNT 61-5*.

of the EU VAT. The second is to explore the issues the EU has had to address in its effort to create a VAT that fulfills the basic objective of taxing final consumption in the jurisdiction where the consumption occurs while at the same time advancing the EU's overriding aim of creating a common internal market among states that retain national sovereignty. The third goal is to consider how the EU VAT has dealt with one of the most challenging issues confronting the VAT today, namely, the increasingly important cross-border trade in services.

B. Overview of the EU VAT

The first thing to say about the EU VAT is that there is no EU VAT. To be sure, EU law requires that every member state adopt a VAT; the VATs adopted by EU and member states must conform to EU norms; and a portion of member state VAT revenues inures to the benefit of the EU. Nevertheless, each EU member state has its *own* national VAT with many of its own rules and so-called "derogations" from the EU standard; each EU member state has its own tax administration and registration thresholds; and at least for now, each EU member state generally keeps the net VAT revenue it collects, without any obligation to share VAT revenues with other member states.[4]

1. Brief history of the EU VAT.[5] Although we have just said that there is no EU VAT, for ease of discussion our reference to the EU VAT is to the European Community norms that every EU member state must follow in enacting a VAT in its national legislation. The foundational document creating the original community (the Treaty of Rome (1957))[6] contemplated that the European Commission (commission)[7] would "consider how the legislation of the various member states concerning turnover taxes . . . can be harmonised in the interest of the Common Market."[8]

Pursuant to this mandate, which was subsequently amended to provide that the European Council "shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, adopt provisions for the harmonisation of legislation concerning turnover taxes . . . to ensure the establishment and functioning of the internal market."[9] Pursuant to the amended mandate, the commission has issued a series of "directives" that create the basic legal framework for the EU's system of common VATs. A "directive" is a legislative act of the EU, which its institutions are authorized to adopt, and is "binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to national authorities the choice of form and methods."[10]

The First and Second VAT Directives issued in 1967 required member states to replace their turnover tax system with a common VAT system by January 1, 1970.[11] The fundamental principles underlying the EU VAT, as

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[4]There is a limited exception to this generalization, first developed in the context of business-to-consumer supplies of e-commerce services by nonestablished traders. *See* Council Directive 2002/38/EC of May 7, 2002, amending temporarily Directive 77/338/EEC regarding the VAT arrangements applicable to radio and television broadcasting services and some electronically supplied services; Council Regulation 792/2002, amending temporarily Regulation (EEC) 218/92 on administrative cooperation in the field of indirect taxation (VAT) regarding electronic commerce (O.J. L 128, May 15, 2002) [hereinafter EU e-commerce directive] (outlining special scheme for electronically supplied services). Under this special scheme, suppliers are permitted to register in a single "Member State of identification," charge and collect VAT according to the rate of the member state where its customers reside, and pay over the amounts due to the tax administration it has elected with the tax administration, reallocating the VAT revenue to the member country of the customer. *See* Stephen Bill and Arthur Kerrigan, "Practical Application of European Value Added Tax to E-Commerce," 38 *Ga. L. Rev*. 71, 78-80 (2003). *See infra* notes 79-82 and accompanying text for further discussion of this approach.

[5]For more detailed discussions of this history, on which the following discussion relies, see Richard Doernberg et al., *Electronic Commerce and Mulitjurisdictional Taxation*, 101-109 (2001); Easson, *supra* note 1, at 84-142. The history of the EU VAT is outlined in Table 1.

[6]The treaty establishing the European Economic Community (subsequently the European Community (EC)) was signed in Rome in 1957 and came into force in 1958. The treaty has been revised on a number of occasions, including by the Treaty of the European Union (1992) (the "EU Treaty"); the Treaty of Amsterdam (1997), which amended and renumbered the EU and EC treaties; the Treaty of Nice (2003), which merged the EU Treaty and the EC Treaty; and the Treaty of Lisbon (2009), under which the EC ceased to exist and was replaced entirely by the EU. We refer below to the current version of the EU Treaty, the Treaty on the Functioning of the European Union (O.J. C 115, Sept. 5, 2008), as the Consolidated EU Treaty.

[7]The following is a rudimentary description of the three EU institutions most relevant to this article: the European Commission, the European Council, and the European Parliament. The function of the commission (headed by commissioners appointed from each of the member states) is to represent and uphold the interests of the EU as a whole. It drafts proposals for new European laws, which it presents to the council and the Parliament. The commission is also responsible for implementing the decisions of the council and the Parliament. The council of the European Union (which directly represents the member states through their designated ministers) is the EU's main decision-making body, although it often acts jointly with the European Parliament in many policy areas. As a rule, the council acts only on a proposal from the commission, and the commission normally has responsibility for ensuring that EU legislation, once adopted, is correctly applied. The European Parliament is elected by the citizens of the EU. Among its roles, as indicated, is to act jointly with the council in enacting European laws. *See generally* http://europa.eu/institutions/inst/comm/index_en.htm.

[8]Treaty of Rome, art. 99.

[9]Consolidated Version of the Treaty Establishing the European Community, art. 93 (O.J. C 325, Dec. 24, 2002). This provision now appears, in modified form, as article 113 of the consolidated EU Treaty.

[10]Consolidated EU Treaty, art. 288.

[11]First Council Directive of April 11, 1967, on the harmonization of legislation of member states concerning turnover taxes (67/227/EEC) [hereinafter First VAT Directive]; Second Council Directive of April 11, 1967, on the harmonization of legislation of member states concerning turnover taxes (67/228/EEC) [hereinafter Second VAT Directive].

Table 1. Key Events in Development of European Union VAT System

1957	Treaty of Rome	Established the European Economic Community, the predecessor of the European Union, and explicitly anticipated the harmonization of member state turnover taxes in the interest of the Common Market.
1967	First VAT Directive	Required member states to replace their turnover taxes with a credit invoice VAT.
1967	Second VAT Directive	Prescribed more detailed rules governing the implementation of the common VAT system.
1977	Sixth VAT Directive	Updated and replaced the Second VAT Directive (and parts of the First VAT Directive) to incorporate changes approved in the prior decade.
1993	1993 ''Transitional'' Directive	Abolished fiscal frontiers for intra-EU trade at member states' physical borders and replaced the preexisting collection and enforcement mechanisms with uniform administrative requirements imposed on EU traders within member states such as reverse charging for business-to-business cross-border transactions, standardized identification numbers, filing requirements, invoice standards and establishment of the Value Added Tax Identification System.
2002	E-Commerce Directive	Established new place-of-supply rules for electronically provided services from non-EU suppliers to EU customers and EU suppliers to non-EU customers. The rules generally identified the place of supply as the place where the customer was established rather than the place where the supplier was established. They also provided simplified registration and filing options for non-EU suppliers selling to individual customers.
2006	Recast Sixth VAT Directive	Updated the Sixth VAT Directive to incorporate numerous amendments that had been adopted since 1977. The Recast Sixth VAT Directive was issued for reasons of ''clarity and rationalisation'' and was not intended to introduce substantial new changes.
2007	2007 VAT Package	Effective January 1, 2010, changed the basic place-of-supply rules for B2B supplies of services from the supplier's location to the customer's location. The place of supply for business-to-consumer supplies of services will convert to the place where the customer is established effective January 1, 2015.

well as the endorsement of the credit-invoice method,[12] were set forth clearly in the First VAT Directive:

> The principle of the common system of Value Added Tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged. On each transaction, Value Added Tax, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of Value Added Tax borne directly by the various cost components. The common system of Value Added Tax shall be applied up to and including the retail trade tax.[13]

The Second VAT Directive prescribed more detailed rules governing the implementation of the common VAT system.[14] It provided that the VAT should apply to ''the supply of goods or the provision of services within the territory of the country by a taxable person against payment''[15] and to ''the importation of goods.''[16] It defined the key operative terms, such as ''supply of goods,'' ''provision of services,'' ''importation of goods,'' and ''taxable person,'' and it established the basic credit invoice method for collection of the tax.[17] The directive embraced the destination principle for goods, prescribing their taxation at the same rate as domestic supplies, and exempting or zero-rating exports.[18] Although services were taxed at origin (the supplier's location), it is fair to say that in the pre-Internet world of 1967 most services were consumed where they were supplied, so the use of the supplier's location as the place of taxation did not seriously undermine the understanding that the EU VAT was a destination-based tax.[19]

Despite the common legal framework governing the EU VAT, from the outset the VAT directives recognized that member states were free to go their own ways in enacting national VAT legislation for such matters as rates, exemptions, antifraud measures, administrative simplification, and special provisions for small businesses and the agricultural sector.[20] Indeed, one is reminded of this point every day (at least if one peruses online publications such as Tax Analysts' *Worldwide Tax Daily*) by the constant drumbeat of member-state-specific pronouncements regarding rules peculiar to the administration of the states' national VATs.

During the decade following the issuance of the First and Second VAT Directives, the six original EU member states (Belgium, France, Germany, Italy, Luxembourg, and the Netherlands) adopted the common VAT — although Belgium and Italy were granted additional time to comply (under the Third, Fourth, and Fifth VAT

[12]*See* Harley Duncan and Jon Sedon, ''How Different VATs Work,'' *Tax Notes*, Dec. 21, 2009, p. 1367, *Doc 2009-26730*, or *2009 TNT 243-3*.

[13]First VAT Directive.

[14]Second VAT Directive.

[15]*Id.* at art. 2.

[16]*Id.*

[17]*Id.* at arts. 11 and 12.

[18]*Id.* at arts. 9 and 10.

[19]Times have changed, of course, and as we shall see below, so have some of the EU VAT place-of-supply rules for services. *See infra* notes 83-98 and accompanying text.

[20]Second VAT Directive, arts. 10, 13, 14, and 15.

Directives).[21] Also, with the accession of Denmark, Ireland, and the United Kingdom to the community in 1973, the common system was then in force in nine member states. In 1977, 10 years after the issuance of the initial VAT directives, the European Council issued the Sixth VAT Directive, which replaced the Second VAT Directive (and parts of the First VAT Directive) and established the legal framework for the common EU VAT for the next three decades, although it was amended many times.[22]

Because of the substantial amendments that had been made over the years as well as new amendments,[23] the Sixth VAT Directive was ''recast,'' effective January 1, 2007, for ''reasons of clarity and rationalisation.''[24] The Recast Sixth VAT Directive, which did not, ''in principle, bring about material changes in the existing legislation,''[25] is currently the basis for the EU common VAT, even though it has been amended several times since 2007. In addition, the council in recent years has adopted several regulations, which unlike directives,[26] are ''binding in [their] entirety and directly applicable in all member states,''[27] requiring member states to harmonize their national VAT rules in a number of areas, including administrative cooperation and exchange of information.[28]

2. The EU VAT today. Before turning to a more detailed consideration of several issues arising under the EU VAT that we think are of particular interest to American readers, we briefly summarize the key features of the EU VAT as it exists today. As it has from the beginning,[29] the EU VAT generally applies to all goods and services sold for consumption within the community. Member states must apply a standard VAT rate of at least 15 percent, although they may apply one or two reduced rates of not less than 5 percent[30] to a restricted list of goods and services.[31] Member state standard VAT rates range from 25 percent in Denmark, Sweden, and Hungary to 15 percent in Luxembourg.

Taxable transactions under the EU VAT include the ''supply'' of goods and services within the territory of a member state by a ''taxable person,'' the ''intra-Community acquisition'' of goods within the territory of the country by a taxable person or a ''nontaxable person,'' and the ''importation of goods.''[32] ''Taxable person'' means ''any person who independently carries out, in any place, any economic activity.''[33] ''Supply of goods'' means ''the transfer of the right to dispose of tangible property as owner.''[34] ''Supply of services'' means ''any transaction which does not constitute a supply of goods,''[35] and expressly includes the supply of intangible property.[36] ''Importation'' means ''the entry into the Community of goods.''[37]

Taxable persons generally must collect tax on their sales, but under the credit-invoice method may deduct the VAT they have paid on their purchases before remitting the balance to the taxing authority. All EU member states have registration thresholds (that differ from state to state), and a trader whose sales volume falls below the threshold does not have to register and charge VAT on its sales. Such a trader is not eligible for a credit on any VAT paid on its input purchases. A nontaxable person, such as a private consumer buying for her own consumption, also pays the full VAT due on the transaction without any right of deduction or credit.

The place of supply of goods and services under the EU VAT, which we consider in more detail below, defies easy description. In principle, the VAT, as a destination tax, applies to imported goods but not to exported goods. Exported goods are exempt or zero-rated, and the exporter may deduct the input VAT it has paid on those exports from the output VAT it has collected on its sales. If the input taxes paid on exported goods exceed the VAT collected, the trader is entitled to a refund. Because there have been no physical border controls within the EU since 1993, there is a special regime for ''intra-Community'' cross-border supplies of goods.[38] For ser-

[21]Third VAT Directive of December 9, 1969 (69/463/EEC); Fourth VAT Directive of December 20, 1971 (71/401/EC); Fifth VAT Directive of July 4, 1972 (72/250/EEC).

[22]Sixth Council Directive 77/388/EEC of May 17, 1977, on the harmonization of the laws of the member states relating to turnover taxes — common system of value added tax; uniform basis of assessment (O.J. L 145, Nov. 6, 1977, p. 1) [hereinafter Sixth VAT Directive].

[23]We discuss these further below.

[24]Council Directive 2006/112/EC of November 28, 2006, on the common system of value added tax (O.J. L 347, Nov. 12, 2006, p. 1) [hereinafter Recast Sixth VAT Directive].

[25]*Id.* at preamble.

[26]*See supra* note 10.

[27]Consolidated EU Treaty, art. 288.

[28]*See* Council Regulation (EC) 143/23008 of February 12, 2008, amending Regulation (EC) 1798/2003 as regards the introduction of administrative cooperation and the exchange of information concerning the rules relating to the place of supply of services, the special schemes, and the refund procedure for value added tax; Council Regulation (EC) 1777/2005 of October 17, 2005, laying down implementing measures for Directive 77/388/EC on the common system of value added tax (O.J. L 272, Mar. 10, 2006, p.15). The latter regulation is currently the subject of a commission proposal for a ''recast'' regulation in accordance with the Recast Sixth VAT Directive. *See* ''Commission Proposal for a Council Regulation Laying Down Implementing Measures for Directive 2006/112/EC on the Common System of Value Added Tax (Recast),'' COM (2009) 672 (Dec. 16, 2009).

[29]*See supra* text accompanying notes 11-19.

[30]There are also ''super-reduced rates'' for a few supplies in some member states that range from 2.1 percent to 4.5 percent. European Commission, ''VAT Rates Applied in the Member States of the European Union'' (taxud.d.1 (2010) 118380).

[31]Recast Sixth VAT Directive, arts. 96-130 and Annex III.

[32]*Id.* at art. 2.

[33]*Id*. at art. 9(1).

[34]*Id*. at art. 14(1).

[35]*Id*. at art. 24(1).

[36]*Id*. at art. 25(a).

[37]*Id*. at art. 30.

[38]One key feature of this regime is the ''reverse charge'' mechanism under which the purchasing trader making an ''intra-Community acquisition'' self-assesses the input VAT at the rate of the member state where the goods are acquired. *See infra* notes 61-64 and accompanying text.

vices, the place of supply is generally where the supplier has established his business.[39]

This description, however, does not begin to capture the actual complexity of the EU place-of-supply rules, which depend on the nature of the goods or services, the nature of the supplier, whether the supplier is established in the member state, and many other factors. The chart in the appendix to this article provides an inkling of that complexity. The reader should keep in mind that the chart does not even attempt to reflect the member-state-by-member-state variations in the EU VAT alluded to above.[40]

Finally, there are other features of the EU VAT that we will mention in passing. Some will be the subject of future Views on VAT columns. The EU VAT, like many other VATs, generally ''exempts'' financial and insurance services from taxation, thus relieving those institutions of the obligation of collecting tax on their services, but subjecting them to input VAT charged by other suppliers as a real cost, because they cannot offset the input VAT against their exempt output. Drafters of the EU VAT, again like the drafters of many other VATs, have struggled with how to treat government entities, nonprofit organizations, and other tax-exempt bodies.[41] In addition, the EU VAT authorizes special schemes for the taxation of small enterprises,[42] farmers,[43] travel agents,[44] secondhand goods,[45] and gold.[46]

C. The EU VAT and the Internal Market

To an American observer, one of the most instructive aspects of the EU VAT experience is the struggle — within the context of a group of states bound by a common legal framework, but with independent taxing authority — to satisfy the dual demands of eliminating tax-related barriers to an internal common market while maintaining a system that provides an effective mechanism for implementing a destination-based consumption tax. The basic problem is epitomized by the issue of border controls, or physical facilities at a country's borders where vehicles, goods, and persons can be stopped to ensure proper documentation, tax payments, and compliance with other rules facilitating tax enforcement. It is well recognized that border controls provide an effective means for ensuring collection of consumption taxes on cross-border supplies of goods at their destination.[47] Indeed, the application of VAT to the importation of goods into a member state of the EU from outside the EU[48] is administered principally through border controls.[49] Moreover, prior to 1993, this is how the destination principle was implemented for cross-border supplies of goods within the EU: goods were taxed at the border of the importing member state,[50] as anyone old enough to remember the long lines of trucks at European borders can confirm.

As useful as fiscal frontiers may be in enforcing a VAT on a destination basis, they are inimical to the efficient operation of a true common market. To appreciate this, one need only imagine the costs to the American economy if trucks had to stop at every state border to comply with the tax reporting and collection requirements of the state they were entering.[51] This was not lost on the commission. In its 1985 white paper ''Completion of the Internal Market,''[52] the commission found intra-community fiscal borders to be incompatible with the single market concept. It initially proposed to replace the then-existing system of destination-based taxation with one in which goods would be taxed in their country of origin. The sale from one member state to another would no longer be a taxable event. This would have been consistent with the commission's long-standing objective, expressed in both the First and Sixth Directives, of ''abolishing the imposition of tax on importation and remission of tax on exportation in trade between Member States.''[53] However, not only would this system have required additional harmonization of the tax base, substantial equalization of tax rates, and deductibility of VAT regardless of the member state in which it had been charged, it also would have required a clearinghouse mechanism to reallocate revenues among member states to reflect the pattern of final consumption within the member states.[54]

These collateral requirements were essential to the proposal to impose the VAT at origin. Greater harmonization of the tax base was necessary to ensure that goods taxed at origin would likewise be taxed at destination, because if they were not it would undermine the basic principle that the EU VAT remained a destination-based tax (despite *imposition* of the tax at origin), and it would

[39] Recast Sixth VAT Directive, art. 44.

[40] *See supra* text accompanying notes 4 and 20.

[41] Pierre-Pascal Gendron, ''How Should the U.S. Treat Government Entities, Nonprofit Organizations, and Other Tax-Exempt Bodies Under a VAT?'' 20-22 (American Tax Policy Institute, May 27, 2009), *available at* http://www.americantaxpolicyinstitute.org/pdf/VAT/Gendron/pdf.

[42] Recast Sixth VAT Directive, arts. 281-294.

[43] *Id*. at arts. 295-305.

[44] *Id*. at arts. 306-310.

[45] *Id*. at arts. 311-343.

[46] *Id*. at arts. 344-356.

[47] OECD, ''Taxation and Electronic Commerce: Implementing the Ottawa Framework Conditions'' 24 (2001) [hereinafter OECD, Ottawa framework conditions].

[48] Recast Sixth VAT Directive, art. 2(1)(d).

[49] Doernberg et al., *supra* note 5, at 104.

[50] *Id.*; Easson, *supra* note 1, at 129.

[51] For example, when the governor of South Dakota remarked several years ago that his state had the power to enforce consumption taxes on goods shipped into the state by ''stopping 'little brown trucks' at the South Dakota border,'' he evoked a storm of criticism for even suggesting such a commercially disruptive measure, which would, in any event, be of questionable constitutionality. Doug Sheppard, ''Streamlined Project Approves Revisions to Agreement,'' *Tax Notes*, Nov. 11, 2002, p. 750 at 386, *Doc 2002-24653*, or *2002 TNT 213-3*.

[52] ''Completing the Internal Market (Communication From the Commission to the Council),'' COM (85) 310 final (June 14, 1985).

[53] First VAT Directive, art. 4; Sixth VAT Directive, arts. 28 and 35. *See also* Recast Sixth VAT Directive, art. 402.

[54] Doernberg et al., *supra* note 5, at 104; Easson, *supra* note 1, at 131. We described the operation of those clearinghouse mechanisms in the previous Views on VAT column. *See* Duncan, *supra* note 3.

create incentives to supply goods and services in member states that did not tax them. Substantial equalization of rates was necessary for the same reason; otherwise, the tax at origin might not reflect the tax at destination, and competitive pressures would favor conducting economic activity in member states with low tax rates. Finally, and perhaps most importantly from the perspective of the EU VAT as a destination-based VAT, the clearinghouse mechanism was necessary to ensure that the tax on consumption ended up in the coffers of the state where consumption occurred or was deemed to occur, namely, at destination, which was presumably based on economic and demographic data.

As might have been expected, the commission's far-reaching proposal[55] to dismantle completely the internal fiscal borders did not meet with unanimous approval. Most of the criticism was directed at two issues: the substantial equalization of tax rates and adoption of an origin-based system with a clearinghouse mechanism.[56] In response to that criticism, the commission proposed, and the council adopted, a compromise approach to the problem. Without abandoning the goal of ''definitive arrangements based in principle on the taxation in the Member State of origin of the supply of goods and services,''[57] the council adopted ''transitional arrangements'' in 1993. These arrangements define the EU's existing approach to intra-EU cross-border trade designed to enhance — even if it does not ''complete'' — the internal common market.

The 1993 directive[58] maintained the destination principle but moved the EU VAT toward a single internal market by abolishing preexisting collection and enforcement controls at the fiscal borders and replacing them with administrative controls at the enterprise level. These controls included such features as identifying taxable persons within the EU by standardized identification numbers; requiring that taxable persons maintain adequate records and issue invoices meeting prescribed criteria; requiring the filing of returns reporting specified information within EU-wide prescribed deadlines; and requiring that taxable persons file recapitulative statements concerning all transactions carried out in the preceding year.[59] The current ''transitional'' system is based on those administrative controls as well as on an automated exchange of information between tax authorities of member states. To establish communication and cooperation among EU tax administrations, the member states that supply goods to other member states list data in an electronic database, and the member states receiving goods are given online access to this database, the Value Added Tax Information Exchange System.[60] Removal of one set of burdens (fiscal frontiers) ushered in another, largely administrative in nature, to ensure that the destination principle would be maintained without the benefit of physical ''toll gates.''

Implementation of the destination principle is facilitated in the business-to-business (B2B) context by the ''reverse charge'' mechanism whereby registered business purchasers, who are subject to control and audit by taxing authorities at destination, self-assess the VAT.[61] Thus, the destination principle applies to the B2B ''intra-Community acquisition of goods,''[62] but the formalities take place at the destination point rather than the border. The following are some conditions that govern B2B intra-Community acquisitions of goods:

- the goods must be exchanged between taxable persons in different member states;
- the acquisition must be made for purposes of the subsequent supply of the goods in the member state of the taxable person acquiring the goods;
- the person to whom the subsequent supply is made must be identified for VAT purposes as established and liable for VAT in that member state;
- the VAT is not charged (it is ''exempt'' with credit for input taxes paid, or zero rated) in the member state of the exporting trader;
- the VAT is payable by the taxable person to whom the goods are supplied (by the ''reverse charge'' mechanism); and
- when resold in the acquiring trader's member state, the trader reports the output VAT on its VAT return and deducts the input VAT (that had been self-assessed) on the same return, assuming it would otherwise be entitled to the deduction.

Member states thus preserve their fiscal sovereignty. The member state of the acquiring trader or of destination ensures that the goods acquired are subject to taxation. The member state of the seller or of origin is not obligated to ensure that the goods are effectively taxed in the destination member state.[63]

In the business-to-consumer (B2C) context, implementation of the destination principle is facilitated by the distance-selling rule. Under that rule, suppliers whose sales to final consumers and other nontaxable persons in a member state exceed a threshold must register for VAT in the destination state and charge the destination state's VAT on their sales.[64] Something akin to a distance-selling rule has been proposed in bills introduced in Congress that would authorize the U.S. states to require remote

[55]Concrete proposals implementing the Commission's ''Completing the Internal Market'' initiative were set forth in ''Global Communication From the Commission of 5 August 1987,'' COM (87) 320 final.

[56]Easson, *supra* note 1, at 134.

[57]Recast Sixth VAT Directive, art. 402.

[58]Council Directive 91/680/EEC of December 16, 1991, supplementing the common system of value added tax and amending Directive 77/338/EEC with a view to the abolition of fiscal frontiers (1991 O.J. (L. 376) 1).

[59]*Id.*

[60]Doernberg et al., *supra* note 5, at 105.

[61]Recast Sixth VAT Directive, arts. 42, 141, 197, and 265 (intra-Community acquisition of goods). A similar reverse charge rule was subsequently adopted for services. *Id.* at art. 196. *See generally infra* section D.

[62]*Id.* at arts. 40-42.

[63]Doernberg et al., *supra* note 5, at 109-110.

[64]Recast Sixth VAT Directive, arts. 33 and 34; European Commission, Taxation and Customs Union, Distance Selling of Goods, *available at* http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/distance_selling/index_en.htm; European Commission, Taxation and Customs Union, Mail

(Footnote continued on next page.)

vendors to collect use taxes on mail order or Internet sales, even if they have no physical presence in the state, assuming the states harmonize and simplify their tax regimes sufficiently to satisfy congressional demands.[65]

Although the elimination of intra-EU fiscal frontiers in the ''transitional'' system has removed significant barriers to the smooth functioning of the internal market, it has created other problems. Some of them are reflected in the Appendix, which reveals the complex place-of-taxation rules under the existing regime. These rules depend among other things, on whether the supply is between EU member states or between EU member states and non-EU member states; whether the supply is B2B or B2C; whether the supply is of goods or services; and the precise nature of the supply. Other problems arise because the abolition of physical border controls for intra-EU trade has created an opportunity for fraudulent refund claims,[66] an issue to which we plan to devote a future Views on VAT article. Finally, there are problems that the EU shares with other destination-based VAT regimes involving the supply of services, for which border controls are becoming increasingly irrelevant in some contexts. We consider these issues in more detail, because they are of great contemporary importance[67] and reveal the problems the United States will confront should it consider adopting a VAT.

D. The EU's Response to Trade in Services

1. The problem of taxing cross-border trade in services under a VAT. Implementing the destination principle for services under a VAT is in theory no different than implementing it for goods. Indeed, until relatively recently, application of the destination principle for services was essentially not a problem. Because services were generally consumed where they were performed, there was no meaningful cross-border trade in services.[68] Consequently, the general rule under the EU VAT (and many other VATs) — that services are taxed where the service provider is established[69] — although technically an origin-based rule, in fact functioned satisfactorily as a rule that taxed consumption on a destination basis, that is, where it occurred.

Times have changed, however. Today an Internet technology professional sitting in Bangalore, India, can take control of a computer located in Athens, Georgia, and solve a software problem through keystrokes typed 8,000 miles away.[70] A global consulting firm with offices all over the world can instantaneously provide advice to a global manufacturing firm with offices all over the world with a click of a mouse in any one of the consulting firm's offices. And a telesurgeon located in New York can perform a gallbladder operation on a patient in Strasbourg, France, by controlling a surgical robot connected through a dedicated transatlantic fiber-optic cable.[71]

The problem of taxing cross-border trade in services, however, goes beyond simply recognizing that many services are performed in one jurisdiction and consumed in another and changing the place of taxation from origin to destination, although that certainly needs to be addressed. The more fundamental problem is that the enormous growth in services involving suppliers in one jurisdiction and customers in another often entails services that are intangible in nature, making it more difficult to determine the appropriate ''destination'' jurisdiction where services are consumed and to enforce the tax on the basis of that determination. Those intangible services, which may be somewhat circularly defined as services ''where the place of consumption may be uncertain,''[72] include services such as ''consultancy, accountancy, legal and other 'intellectual' services; banking and financial transactions; advertising; transfers of copyright; provision of information; data processing; broadcasting; and telecommunications.''[73]

Order and Distance Purchasing, *available at* http://ec.europa.eu/taxation_customs/taxation/vat/consumers/mail_order_distance/index_en.htm.

[65]*See, e.g.*, Sales Tax Fairness and Simplification Act, H.R. 3396, 110th Cong. 1st Sess. (2007).

[66]*See, e.g.*, ''Communication From the Commission to the Council, the European Parliament, and the European Economic and Social Committee Concerning the Need to Develop a Co-ordinated Strategy to Improve the Fight Against Fiscal Fraud,'' COM (2006) 254 final (May 31, 2006); Michael Keen and Stephen Smith, *VAT Fraud and Evasion: What Do We Know and What Can Be Done?* (2007).

[67]The OECD is devoting substantial resources to developing international guidelines for the cross-border taxation of services under consumption taxes. *See* OECD, ''Working Party No. 9 on Consumption Taxes, International Trade in Services and Intangibles, Public Consultation on Draft Guidelines for Customer Location'' (Feb. 2010).

[68]OECD, ''Report: The Application of Consumption Taxes to the Trade in International Services and Intangibles'' 4 (CTPA/CFA (2004) 34) [hereinafter OECD consumption tax report].

[69]Recast Sixth VAT Directive, art. 44.

[70]As a co-author of this article can testify from personal experience!

[71]Michael S. Kirsch, ''The Role of Physical Presence in the Taxation of Cross-Border Services,'' 3, Notre Dame Law School Research Paper No. 09-47 (2009), *available at* http://ssrn.com/link/notre-dame-legal-studies.html (citing Sajeesh Kumar, ''Introduction to Telesurgery,'' in *Telesurgery* 4 (2008)) (forthcoming 51 *B.C. L. Rev*. (2010)).

[72]OECD, Ottawa framework conditions, *supra* note 47, at 24.

[73]*Id.* ''Tangible services,'' including services relating to land and buildings, transport, and physical performance, may be defined (again somewhat circularly) as services ''where the place of consumption can be readily identified.'' The definitional proposition that the place of consumption of tangible services can be ''readily identified'' presumably is based on a combination of two assumptions. First, such services often will not involve cross-border trade at all, because both the supplier and the customer are in the same location, where the service is consumed (*e.g.*, restaurant services). Second, even if those services do involve performance in one jurisdiction and consumption in another, *e.g.*, if a movie star has her hair styled in London in preparation for an appearance at the Cannes Film Festival, where she may actually ''consume'' the hairdressing service, the choice of a practical proxy for consumption is unproblematic, whatever theoretical difficulties the choice may raise. Nevertheless, tangible services can raise thorny cross-border tax issues. Analyzing the example of services provided by a real estate agent in Country A to both a buyer resident in

(Footnote continued on next page.)

The challenge then for drafters of a contemporary VAT is how to identify the appropriate destination jurisdiction where services are consumed when, in contrast to cross-border trade in goods, the destination jurisdiction cannot be readily identified by reference to physical flows,[74] and then to consider appropriate enforcement mechanisms for implementing the destination principle. The enforcement problems are in some respects analogous to those confronting the EU internally when it abolished fiscal frontiers for intra-Community trade in goods[75]: Taxation of intangible services cannot be enforced on a destination basis by border controls, so administrative alternatives must be explored for effective enforcement of cross-border trade in those services on a destination basis.

2. Piecemeal measures under the EU VAT. As we have already noted, the basic place-of-taxation rule for supplies of services in the EU historically has been the location of the supplier.[76] Despite theoretical objections to that rule, it worked reasonably well to achieve destination-based taxation when most services were consumed where they were performed. Moreover, systematically defining the place of consumption as the place of taxation would have led to serious practical problems in some circumstances.[77] Consequently, the EU for many years maintained the basic rule while adopting a number of exceptions for taxing specific services at the customer's (rather than the supplier's) location with the aim of ensuring that those services would be taxed where they were consumed.[78]

The most recent example of the EU's piecemeal approach to the problem of taxing international trade in services was its 2002 adoption of the so-called E-Commerce Directive.[79] The E-Commerce Directive modified the then-prevailing Sixth VAT Directive[80] for some electronically provided services (from non-EU suppliers to EU customers and from EU suppliers to non-EU customers[81]) to bring the place-of-supply rules in line with the principle that consumption should be taxed where it takes place. Thus, the EU E-Commerce Directive did three things:

- In the B2C context, it adopted a simplified registration and payment obligation for suppliers who were not established in the EU in connection with their supplies of electronically provided services to private consumers in the EU.[82]
- It made clear that electronically provided services from EU suppliers to non-EU customers should not be taxed in the EU to avoid placing EU suppliers at a competitive disadvantage to non-EU suppliers.
- In the B2B context, it maintained the preexisting reverse change mechanism, thus ensuring the correct tax treatment for most B2B transactions involving supplies of electronically provided services.

3. The 2007 VAT package. The European Commission, however, came to recognize that piecemeal changes to the place-of-supply rules for cross-border trade in services did not adequately address the "enormous changes in the volume and pattern in trade in services" that "globalisation, deregulation and technology change have all combined to create."[83] Observing that "it is increasingly possible for a number of services to be supplied at a distance," the commission declared its intention to undertake a "more general and thorough review governing the place of supply of services in totality."[84] In so doing, it announced that the E-Commerce Directive would be the last individual change to its VAT directive.

Country A and a seller resident in Country B concerning the sale of land in Country B, Rebecca Millar demonstrates that different countries would approach this example in different ways. Rebecca Millar, "Cross-Border Services: A Survey of the Issues," in *GST in Retrospect and Prospect*, 317-347 (2007). In short, the consumption of those tangible services (at least as defined above) is not always readily identifiable to all observers.

[74]This is not to suggest that physical flows regarding those services are always irrelevant. The point is that they may be just one factor — and not the controlling factor — in determining the appropriate state of destination to which the services are supplied, in contrast to the prevailing rule for the supply of goods and tangible services.

[75]*See supra* Part C.

[76]Sixth VAT Directive, art. 9.1; "Commission Proposal for a Council Directive Amending Directive 77/388/EC as Regards the Place of Supply of Services (Explanatory Memorandum)," at 2, COM (2003) 822 final (Dec. 23, 2003) [hereinafter EU VAT Proposal Explanation]; "Amended Proposal for a Council Directive Amending Directive 77/388/EC as Regards the Place of Supply of Services (Explanatory Memorandum)," at 7, COM (2005) 334 final (July 20, 2005) [hereinafter Amended EU VAT Proposal Explanation].

[77]For example, attempting to determine where actual consumption of services occurs when a service is used in several jurisdictions or attempting to enforce a tax on cross-border supplies of services supplied by remote service providers in the B2C context. *See* Amended EU VAT Proposal Explanation, *supra* note 76, at 7-8.

[78]Sixth VAT Directive, art. 9.2(e) (O.J. L. 145, Nov. 6, 1977, p. 1) (providing customer-based place-of-supply rules for some services performed for customers established outside the community or for taxable persons established in the community, but not in the same country as the supplier, including transfers of intangible rights, advertising services, consultancy services, banking, financial, and insurance transactions); *id.* at art. 9.3 (providing for application of consumption-based place-of-supply rule for supply of services, based on effective use and enjoyment of services, when modification of the normal rule is necessary to avoid double taxation, nontaxation, or the distortion of competition).

[79]EU E-Commerce Directive, *supra* note 4.

[80]*See supra* text accompanying note 22.

[81]The directive did not affect wholly intra-EU transactions.

[82]Specifically, a non-EU supplier making online supplies of digital deliveries to final consumers was required to register, collect, and remit VAT to the relevant EU country under the simplified administrative procedures. As we have noted *supra* note 4, among the key administrative simplifications are the ability of the non-EU supplier to register in a single "Member State of identification," charge and collect VAT according to the rate of the member state where its customers reside, and pay over the amounts due to the tax administration it has elected, thus reallocating the VAT revenue to the member country of the customer. Needless to say, serious questions remain regarding the level of compliance with this regime.

[83]EU VAT Proposal Explanation, *supra* note 76, at 2.

[84]*Id.*

After an effort that lasted five years (in part because of the internal EU political wrangling that delayed achievement of the necessary unanimous support for a change in the VAT rules), the European Council reached political agreement in December 2007 on a VAT package designed to ''ensure that VAT on services accrues to the country where consumption occurs, and to prevent distortions of competition between member states operating different VAT rates.''[85] Effective January 1, 2010, the VAT package changed the basic place-of-supply rule for B2B supplies of services from the supplier's location to the location of the customer.[86] For B2C supplies of services, the place of taxation continues to be where the supplier is established.[87] In both the B2B and B2C contexts, specified rules for particular types of supplies were adopted to reflect the principle of taxation at the place of consumption when the general rules are inappropriate.[88]

The overarching principles informing the VAT package are (unsurprisingly) quite similar to those informing the OECD's parallel efforts[89] to design guidelines for international trade in services that ensure taxation at the place of consumption. The preamble to the directive[90] declares that ''for all supplies of services, the place of taxation should, in principle, be the place where actual consumption takes place.''[91] It then identifies the basic rule for place of taxation of B2B supplies of services as ''the place where the recipient is established, rather than where the supplier is established.''[92] For B2C supplies of services, by contrast, the directive states that ''the general rule should continue to be that the place of supply of services is the place where the supplier has established his business.''[93] Although this clearly deviates from the theoretical norm articulated above, the inconsistency may be justified by administrative concerns, namely the impracticality or difficulty of systematically enforcing a tax on services at a customer's location. It is nevertheless worth observing that there may well be less to this apparent deviation from the basic principle than meets the eye. Indeed, as described below, the directive provides for exceptions to the general rule ''based on existing criteria'' that ''reflect the principle of taxation at the place of consumption, while not imposing disproportionate administrative burdens upon certain traders.''[94]

First, in many instances, services provided to private consumers will be consumed in the same jurisdiction where the supplier is located, so there is no deviation from the rule that consumption should be taxed where it occurs as a matter of substance, even though the directive continues to use the supplier's (rather than the customer's) location as the general place-of-supply rule. Second, the specific place-of-supply rules for services such as sporting events and restaurant services[95] generally ensure that these services will be taxed where they are consumed. Finally, for what may be the most significant categories of B2C cross-border trade in services — electronically supplied services, telecommunications services, and radio and television broadcasting services — the VAT Package Directive embraces place-of-supply rules that generally look to the customer's (rather than the supplier's) location. For trade that crosses the EU's borders, the VAT Package Directive essentially continues the preexisting customer-based place-of-supply rules for both B2B and B2C trade that are embodied in the E-Commerce Directive.[96] Moreover, effective January 1, 2015, intra-EU B2C cross-border supplies of those services (as well as extra-EU B2C cross-border supplies of such services) will all be taxable under a general rule establishing the place of supply as the place where the nontaxable person is established.[97] To simplify VAT administration for those services, the VAT package adopts a one-stop shop system to enable service providers to fulfill in their home member state a single set of obligations for tax registrations, declarations, and payments, including those for taxes on services provided in other member

[85]Press release, Council of the European Union, 2836th Council Meeting, Economic and Financial Affairs Council (Dec. 4, 2007).

[86]*See* Council Directive 2008/8/EC of February 12, 2008, amending Directive 2006/112/EC of November 28, 2006, on the common system of VAT (O.J. L. 347, Nov. 12, 2006, p. 1), regarding the place of supply of services (O.J. L. 44, Feb. 20, 2008, p. 11) [hereinafter VAT Package Directive]. *See* chart in the Appendix.

[87]This rule changes in 2015. *See infra* text accompanying note 97.

[88]VAT Package Directive, *supra* note 86, art. 47 (the place of supply of services connected with immovable property is the location of property); *id*. at art. 52 (the place of supply of sporting, entertainment, and similar services is the place where events take place); *id*. at art. 53 (the place of supply of restaurant and catering services is the place where services are physically carried out). *See also* Recast Sixth VAT Directive, arts. 47, 53, 55, and the appendix.

[89]*See supra* note 67. Both efforts are informed by widely accepted norms governing a good consumption tax, and there is substantial overlap in the membership of the OECD and the EU. Nineteen of the 30 OECD member countries are also EU member states.

[90]*See supra* note 86. The VAT package consists of two directives and a regulation dealing with various aspects of the VAT package. The references in the text to the directive are to the principal directive that sets forth the basic changes in the place-of-supply rules for services. *See* VAT Package Directive, *supra* note 86.

[91]*Id.* at 6.

[92]*Id.*

[93]*Id.*

[94]*Id.*

[95]*See supra* note 88 and the Appendix.

[96]*See supra* text accompanying notes 85-88. Thus, the place of supply of telecommunications services, radio and television broadcasting services, and electronically supplied services to nontaxable persons established outside the Community is the customer's location. VAT Package Directive, art. 59 (effective Jan. 1, 2010). Likewise, the place of supply of these services by non-EU suppliers to nontaxable persons in the EU is the customer's location. VAT Package Directive, arts. 58 (electronically supplied services) and 59b (telecommunications and broadcasting services, per ''effective use and enjoyment'' concept) (see *supra* note 86 and the Appendix) (effective January 1, 2010).

[97]VAT Package Directive, *supra* note 86, art. 58 (effective Jan. 1, 2015). Before that date, the place of supply for intra-EU B2C trade in those services continues to be the supplier's location.

states where they are not established.[98] VAT revenue will then be transferred from the country where the supplier is located to the country where the customer is situated.

E. Conclusion

This brief overview of the EU VAT and the issues that it raises regarding the sometimes competing demands of furthering the internal market, respecting the tax sovereignty of independent states, and implementing an effective regime for taxing consumption where it occurs provides instructive lessons for American policymakers as they consider adoption of a VAT. The EU efforts to implement place-of-supply rules for cross-border trade inservices may also be of great interest to those who might design a VAT for the United States. Although the analogy between the EU and the United States must not be overstated, and there are risks that any effort to transplant aspects of the EU system into the American federal system would create ''lost in translation'' problems, there is plainly much to learn from the experience with the world's most important VAT regime.

[98]In effect, this extends the ''one-stop shop'' system originally introduced in connection with the E-Commerce Directive for B2C supplies from non-EU suppliers to EU customers. *See supra* text accompanying note 82.

Appendix. European Union VAT Place-of-Supply Rules

Item	Rule	Authority
Supply of Goods		
General rule	Where the goods are located at the time the supply takes place, if they are not dispatched or transported.	RSD Art. 31
Transported goods to taxable person — B2B	Where the goods are located when the dispatch or transport to the customer begins, if they are dispatched or transported by the supplier, the customer, or a third person.	RSD Art. 32
Transported goods to private consumer — B2C — Supplier *above* distance selling threshold	Where the goods are located when the dispatch to the customer *ends* for distance sales when the supplier's annual sales are above the threshold applied by the customer's member state.	RSD Art. 33
Transported goods to private consumer — B2C — Supplier *below* distance selling threshold	Where the goods are located when the dispatch or transport to the customer *begins* for distance sales if the supplier's sales are below the threshold applied by the customer's member state (unless the supplier has opted to tax in the member state of destination).	RSD Art. 34
Installation or assembly of goods — B2B and B2C	Where the goods are being installed or assembled, if done by the supplier.	RSD Art. 36
Goods supplied onboard ships, planes, or trains — B2B and B2C	Where the point of departure is if supplied during the section of a passenger transport operation effected within the community.	RSD Art. 37
Electricity or natural gas to a taxable person — B2B	Where the taxable dealer is established when receiving electricity or gas supplied through the natural gas distribution system.	RSD Art. 38
Electricity or natural gas to private consumer — B2C	Where electricity or gas supplied through the natural gas system is effectively used or consumed by the private consumer.	RSD Art. 39
Intra-Community Acquisition of Goods		
Acquisition by registered trader in a member state from trader in another Member State — B2B	Where the goods are finally located after transport from another member state. The place of acquisition is initially deemed to be the country having issued the VAT number under which the acquisition was made. If the goods are subsequently transferred to another member state for use, VAT will be due based on where the goods are finally located after transfer and any tax due the member state having issued the VAT number will be reduced accordingly.	RSD Arts. 40 and 41
Importation of Goods into the EU		
All goods — B2B and B2C	The member state within whose territory the goods are located when they enter the community. Any subsequent sales or transfers to a member state would be subject to intra-EU rules.	RSD Art. 60
Supply of Services		
General rule — B2B services	Where the customer has established his business. If the services are provided to a fixed establishment of the customer other than the place where the customer is established, then at the fixed establishment. In the absence of such place of business or fixed establishment, at the recipient's permanent or usual address.	RSD Art. 44
General rule — B2C services	Where the supplier has established his business. If the services are provided from a fixed establishment of the supplier other than the place where the supplier is established, then at the fixed establishment. In the absence of such place of business or fixed establishment, at the supplier's permanent or usual address.	RSD Art. 45

Appendix. European Union VAT Place-of-Supply Rules (cont.)

Item	Rule	Authority
Services provided by an intermediary — B2C	Where the underlying transaction, in which the intermediary intervenes, is taxable.	RSD Art. 46
Services connected with immovable property — B2B and B2C	Where the immovable property is located.	RSD Art. 47
Valuations of or work on movable tangible property — B2C	Where the services are physically delivered.	RSD Art. 54
Passenger transport — B2B and B2C	Where the transport takes place, proportionate to the distance covered in any jurisdiction.	RSD Art. 48
Transport of goods other than intra-Community — B2C	Where the transport takes place, proportionate to the distance covered in any jurisdiction.	RSD Art. 49
Transport of goods intra-Community — B2C	At the place of departure.	RSD Art. 50
Services ancillary to transport of goods (e.g., loading and unloading) — B2C	Where the services are physically carried out.	RSD Art. 54
Services relating to cultural, artistic, sporting, scientific, educational, entertainment, and similar activities — B2B and B2C	Where the services are physically carried out. Effective January 2, 2011, these services will be taxed where the events take place.	RSD Art. 53
Restaurant and catering services not associated with passenger transport within the EU — B2B and B2C	Where the services are actually carried out.	RSD Art. 55
Restaurant and catering services supplied on board ship, aircraft, or train during passenger transport in the EU — B2B and B2C	At the place of departure.	RSD Art. 57
Short-term hiring of means of transport — B2B and B2C	Where the means of transport is actually put at the disposal of the customer. Effective January 1, 2013, long-term hire of transport for B2C transactions will be taxed where the private customer is established.	RSD Art. 56
Electronically supplied services provided by non-EU supplier to private consumers in the EU — B2C	Where the customer is established, resides, or has a permanent address. Effective January 1, 2015, the same rule will apply to electronically supplied services provided by EU suppliers.	RSD Art. 58
Radio and TV broadcasting and telecommunications services provided by a non-EU supplier to private consumers in the EU — B2C	Where the customer effectively uses and enjoys the service. Effective January 1, 2015, such services provided by EU suppliers to private consumers in the EU will be taxed at the place where the private consumer is established.	RSD Art. 59b
Select services provided by EU suppliers to non-EU private consumers — B2C	Where the private customer is established, resides, or has a permanent address. Services covered include intangible transfers; advertising; consulting; banking; supply of staff; hiring of movable tangible property; access to electricity and natural gas; telecommunications; radio and television broadcasting; and electronically supplied services.	RSD Art. 59
Exception to prevent double taxation or nontaxation	Member states may use the place of effective use and enjoyment of the service to shift the place of supply of services specified in articles 44, 45, 56, and 59, from either inside or outside the EU to inside or outside their territory if necessary to prevent double taxation or non-taxation.	RSD Art. 59a

B2B = business-to-business transaction; B2C = business-to-consumer transactions; RSD = Recast Sixth VAT Directive
Source: Based on "Where to Tax" *available at* http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/vat_on_services/index_en.htm and the RSD.