

# VAT number in customer identification (3/7/19)

The VAT Committee of the European Commission regularly publishes its opinion on questions submitted by member states. While that opinion is merely advisory in nature because the Committee has no mandate to issue any interpretation of EU law, it is worth listening to. This article explores the VAT Committee's guidelines on customer status identification and the importance attached to having a VAT registration number, in particular for determining the place of supply.

## Customer identification and place of supply

Identifying your customer correctly is a key factor in determining the place of supply.

Under the general place-of-supply rules laid down by articles 44 and 45 of the VAT directive<sup>1</sup> and by section 19 of the Latvian VAT Act, services to a taxable person are treated as supplied where the customer belongs. However, services to a non-taxable person are treated as supplied where the supplier belongs. The customer's status is crucial in determining the place of supply for electronically supplied services (and a few other services).

Customer identification procedures are laid down by articles 17 and 18 of Council Implementing Regulation (EU) No. 282/2011. Under article 17, the place of supply depends on whether the customer is a taxable person after determining his status under articles 9–13 and 43 of the VAT directive.

The concept of a taxable person in articles 9–13 of the directive is quite broad and focuses on a person's business. In other words, a taxable person is one that independently carries on a business at any place regardless of its purpose or outcome.

The VAT Committee states that the fact of having a VAT number alone is not enough to prove that someone is a taxable person. Likewise, the lack of such a number does not necessarily mean that someone is not a taxable person. So this factor affects the person's VAT status.

However, the VAT number is an essential piece of evidence in proving that someone is a taxable person (articles 18 and 19 of the above regulation), especially in determining the place of supply. The VAT Committee states that the VAT number (i.e. the supplier can prove he has verified the existence and genuineness of the customer's VAT number) is in fact the most important piece of evidence the supplier can obtain to identify his customer's status correctly. The VAT Committee also finds that the supplier is not required to treat as a taxable person someone who has not presented his VAT number for acquiring services.

## Risks

While the supplier is not required to obtain the customer's VAT number in order to shift the place of supply to the customer, the supplier must hold very robust evidence if he is to treat the customer as a taxable person.

The supplier will be considered to have acted in good faith if he has done everything possible to obtain the customer's proof of identity. If the customer has failed to present his VAT number or has failed to

cooperate sufficiently in proving his status, the supplier's action in good faith implies that he will collect VAT from the customer (the place of supply does not shift to the customer).

It is important to note that a customer that is a taxable person according to his independent business but has failed to present his VAT number to the supplier (or is not registered in breach of law), thus paying VAT in the supplier's country, will not be released from the obligation to pay VAT in the customer's country charged by its tax authority because the place of supply remains unchanged. If the parties cooperate and provide sufficient evidence that VAT has been paid in the customer's country, they can both make adjustments.

---

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