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VAT Regulation 282/2011

13 July 2011

The PwC logo is located at the bottom left of the slide. It consists of the lowercase letters 'pwc' in a bold, black, sans-serif font. A small red horizontal line is positioned above the 'p'.

Agenda

- Scope and purpose of the Regulation
- How to determine the place where the business is established
- The definitions of fixed establishment
- How to determine to or from which place of establishment a service is provided
- When is a fixed establishment considered to intervene in a supply
- What can be considered sufficient checks regarding the taxable status of the customers

Scope and Purpose of the Regulation

Purpose of the Regulation

Purpose:

To ensure the uniform application of the VAT rules on an EU basis.

Applies from: 1 July 2011 r.

(some provisions enter into force as of 2013 and 2015).

Introduces rules for application of the VAT EU Directive 2006/112/EO

How to determine the place where a business is established

The place where a business is established (art. 10 of the Regulation)

Definition for companies: The place where the functions of the central administration are carried out.

This should be assessed in view of the place where:

- the essential decisions concerning the general management are taken;
- the place where the registered office of the business is located;
- the place where the management meets.

Priority – the place where the essential decisions are taken.

Mere presence of a postal address may not be taken to be the place of establishment of a business of a taxable person.

Supplies to offshore companies managed locally?

Definitions for a fixed establishment

Definitions for a fixed establishment (art. 11 of the Regulation)

Definition: Any establishment other than the place of establishment of the business characterised by:

- a sufficient degree of permanence

And

- a suitable structure in terms of human and technical resources

To enable it to receive and use the services supplied to it for its own needs
(New concept!)

OR

To enable it to provide the services which it supplies

NB: Fixed establishment may exist even if case when no services are supplied by it

NB: Having a VAT number does not equal having a fixed establishment

*When is a fixed establishment
considered to intervene in a supply*

Intervention of a fixed establishment in the supply (art. 53 of the Regulation)

General rule: For services with place of supply in Bulgaria, the recipient should self-charge VAT unless the supplier has a fixed establishment locally intervening in the supply.

Assumption for intervention of the FE: If the supplier has invoiced using the VAT number of the FE, unless there is proof to the contrary.

Fixed establishment shall be taken into consideration only when it is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to enable it to make the supply in which it intervenes.

Intervention of a fixed establishment in the supply (art. 53 of the Regulation)

The FE **intervenes**, if its technical and human resources are used for transactions **inherent** in the fulfilment of the taxable supply **before** or **during** this fulfilment.

When resources of the FE are only used for administrative support tasks (collection of debt-claims, invoicing), this shall not be regarded as resources being used in the fulfilment of the supply.

How to determine to or from which place of establishment a services is provided

Where is the customer established? (art. 20 – art. 24 of the Regulation)

1. If the customer is established in a single country, the services are taxable in that country
 - the supplier should check this based on information from the customer and verify that information by normal commercial security measures.

Where is the customer established? (art. 20 – art. 24 of the Regulation)

2. If the customer is established in more than 1 country, the supply shall be taxable in the country where the taxable person has established his business or if this is the case - in the country of the fixed establishment to which the services are supplied.

In order to identify the customer's FE to which the service is provided, the supplier shall examine:

- the nature and use of the services provided;
- the contract, the order form and VAT ID number provided, the payer for the service.

If not possible to determine the FE under the above criteria – services shall be taxable at the place where the customer has established his business.

What can be considered sufficient checks regarding the taxable status of the customer?

General comments for taxation of services

In case of supply of services the supplier should determine:

- Status of the customer Taxable or non-taxable person
- Capacity of the customer Does the taxable person receive the services for private use?
- Place of establishment of the customer Where is the customer established?

Status of the customer (art. 17 and art. 18)

EU established customer:

Unless the supplier has information to the contrary

– The customer is a **taxable person** if:

- a) The customer has communicated his VAT number and the supplier obtains confirmation of the validity of the VAT number and of the associated name and address;
- b) The customer has applied for VAT registration and the supplier obtains any other proof which demonstrates that the customer is a taxable person; **and** the supplier carries out a reasonable level of verification of the accuracy of the information.

- The customer is a non-taxable person if no VAT number is provided.

VAT registered customers are required to provide their VAT numbers forthwith to their suppliers.

Status of the customer (art. 17 and art. 18)

VAT number validity check – on VIES web site:

http://ec.europa.eu/taxation_customs/vies/

VAT Validation Response

Yes, valid VAT number

VAT number BE 0458263830

Member State BE

Name CV PRICEWATERHOUSECOOPERS TAX CONSU

Address WOLUWEDAL 18
1932 ZAVENTEM

Consultation Number

Date when request received 04/07/2011 (dd/mm/yyyy)

Status of the customer (art. 17 and art. 18)

Customer established outside of EU

Unless the supplier has information to the contrary

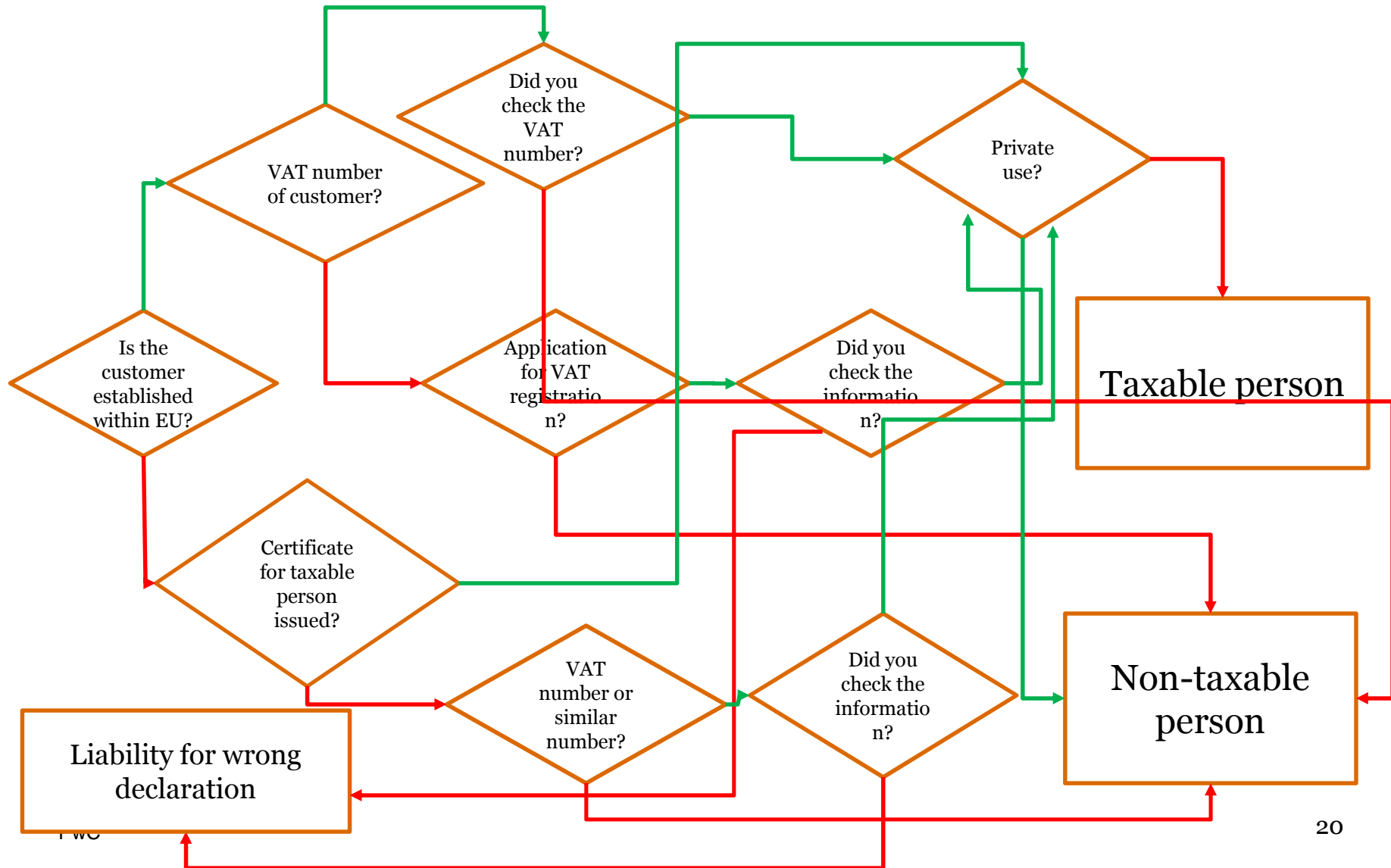
– The customer is a **taxable person** if:

a) the customer provides to the supplier a certificate issued by the competent tax authorities that the customer is engaged in economic activities in order to enable him to obtain a refund of VAT under 13th Directive;

b) if no such document is available the customer should provide to the supplier:

- VAT number or similar number; or
- Any other proof that the customer is a taxable person, **and**
- The supplier carries out a reasonable level of verification of the accuracy of the information provided by the customer

Decision Tree



Thank you for the attention!

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