Community Transactions of Taxable Persons under the General VAT Rules

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1. Who should apply the information contained in this booklet?

For those VAT taxable persons paying taxes according to the general rules (irrespective of the form of organization), that

- were not registered solely as persons carrying out tax-exempt activity which does not entitle them for tax deduction;
- did not choose tax-exempted taxable person status;
- are not solely farmers with special status;

and **they supply goods or services within the European Union (hereinafter: the Community)**, or **they carry out acquisition of goods from there**, or **receive service from there.**

The rules regarding the intra-Community commercial relations of the special group of taxable persons mentioned as exceptions and the non-taxable legal persons having a Community tax number are detailed in Information Booklet no. 17.

2. What is a community transaction?

Community transaction is (in the terms of the content of this booklet):

- the intra-Community acquisition of goods (Section 19-22 of the VAT Act[1]),
- intra-Community supply of goods (Section 89 of the VAT Act),
- service supplied to a taxable person established in another Member State of the Community,
- service received from a taxable person established in another Member State of the Community.

3. When shall you apply for a Community tax number?

If the taxable person **wishes to establish a commercial relationship** as follows, it shall apply for a Community tax number.

Commercial relationship requiring the generating of a Community tax number are:

- the intra-Community acquisition of goods subject to tax payment liability [Section 19, 20 (4)-(7), 21-22 of the VAT Act]
- the intra-Comunity supply of goods (Section 89 of the VAT Act) – including the tax-exempt intra-Community supply of goods underlying the tax-exempt importation of goods pursuant to the VAT Act,
- the supply of services according to Section 37 of the VAT Act,

[1] Act CXXVII of 2007 on Value Added Tax (hereinafter referred to as VAT Act).

- the receipt of services pursuant to Section 37 of the VAT Act.[2]

To determine the **Community tax number**, the taxable person **shall**, at the beginning of its taxable activity, **declare** whether it carries out the activity listed above requiring a Community tax number.[3] For the same reason, the value added taxable person which is already operating but does not have a Community tax number shall also notify NTCA in advance if it intends to establish such a commercial relationship indicated above with the taxable person resident in another Member State of the Community.

NTCA determines the Community tax number on the basis of the notification.

At the request of the taxpayer (on the date of the notification, also during the tax year), NTCA **deletes the taxpayer's Community tax number** if the taxpayer reports that he pr she terminated his or her commercial relationship with the taxable person resident in another Member State of the Community.

For more information on the Community tax number, please see the Information Booklet no. 27, which is available in Hungarian only. This is accessible under Value Added Tax (Általános Forgalmi Adó).

4. Intra-Community acquisition of goods

The intra-Community acquisition of goods is the acquisition of the right to dispose as owner of the goods so that it implies with the dispatch of the goods as a consignment or the transportation of the goods, as a result of which the goods goes to the domestic territory from another Member state of the Community. (The dispatch or the transportation of the goods can be perfromed by the the person acquiring the goods and the person supplying the goods or on behalf of any of them another person, as well.)[4]

Such transaction **is subject to tax payment[5], if**

- the sale is for consideration, and
- the acquiring taxable person or non-taxable person is a legal person, and
- the seller is a taxable person established in another Member state (with a tax number there) who is not individually tax exempt in his/her own Member State[6], and
- the sale is *not* an intra-Community distance sales of goods[7], and
- the product is *not* subject to installation or assembly[8], and

[2] Subsections 1-2 of Section 257/B of VAT Act.
[3] Section 29 of the Act on the Rules of taxation.
[4] Subsection 1 of Section 21 of the VAT Act.
[5] Point b) of Section 2, point a) of Section 19 and points a)-c) of Section 20 of the VAT Act.
[6] Where it is registered as a taxable person, it shall not benefit from the exemption provided for in Article 284 of the Council Directive 2006/112/EC on the common system of value added tax ('the VAT Directive') under the law of that Member State which corresponds to the VAT Directive in its content.
[7] Section 12/B (1) and Section 29 of the VAT Act.
[8] Section 32 of the VAT Act.

- the product is an ***unused*** chattel, work of art, collector's item or antique, the seller of which is a reseller or a public auctioneer, and which has been taxed in the Member State of sale in accordance with the special rules applicable to them[9], and
- the product is ***not*** one whose domestic sales would be tax exempt under Sections 103, 104 and 107 of the VAT Act (e.g. a product intended for the operation of a particular vessel or aircraft).

In addition to the above, **tax is payable even if**

- any person acquires a new means of transport (even if the purchaser is a natural person who is not a taxable person),
- a taxable or non-taxable legal person acquires an excise product for which an excise duty liability arises domestically under the Excise Act[10].[11]

Information on the intra-Community acquisition and sale of a new means of transport can be found in Information Booklet no. 16.

On this basis**, the purchaser is not liable to tax** on an intra-Community acquisition **if**:

- the seller has opted for an individual tax exemption in his/her own Member State (in such a case the transaction does not give rise to any tax payment liability in any Member State), or
- the sale is subject to special rules on Intra-community distance selling (intra-community distance sale of goods) in which case the seller fulfills the tax liability under certain conditions[12] in his/her own Member State or in the country of destination, depending on the threshold, or
- the sale is subject to special rules for the sale of the products to be installed and assembled (in this case the purchaser typically incurs a tax liability domestically, but according to different rules), or
- the purchased product is a used movable, works of art, antique and the seller of which is a reseller or organizer of a public auction and they were sold according to the rules applicable them (in such a case the transaction is taxed in the Member State of the seller), or
- acquisition of a product is not one whose domestic sales would be exempt from VAT under Sections 103, 104 (tax exemption for international transport) and 107 (tax exemption for transactions treated in the same way as sales of a product outside the Community) of the VAT Act (in this case the acquisition is tax exempt).

Also, no tax shall be paid **on intra-Community acquisitions of goods by the special group of taxpayers** if the aggregate value, exclusive of VAT, of the goods acquired did not

[9] In the Member State of the Community where the product was at the time of dispatch or consignment, the product was taxed in accordance with the law of that Member State, the content of which complies with Articles 312 to 325 and 333 to 341 of the VAT Directive.
[10] Act LXVIII of 2016 on Excise Tax and Special Rules for the Distribution of Excise Products.
[11] Points b)-c) of Section 19 of the VAT Act.
[12] Section 49/A of the VAT Act.

exceed or exceed EUR 10,000 in the year preceding the given year and in the year in question.[13] Detailed information on this can be found in the Information Booklet No. 17.

However, intra-Community acquisitions include, but are not limited to, and shall be accounted for as such, purchases by installments or closed end leases.

The **place of supply** of the intra-Community acquisition is in that Member state (that is to say the VAT of that Member state shall be paid), where the goods is located at the end of the transport or on arrival of the consignment).[14]

The essence of the taxation mechanism for intra-Community acquisition is that the purchaser has to account for the tax payable in the VAT return based on the domestic VAT rate (0 percent, 5 percent, 18 percent, 27 percent) on the acquired goods. As intra-Community acquisitions are not subject to customs clearance, the classification in the tariff which may be necessary to determine the correct tax rate shall also be made by the taxable person.

In the case of intra-Community acquisition of goods, the tax payment liability arises **on the date of issue of the invoice certifying the acquisition, but not later than the 15th day of the month following that month which involves the day of supply**.[15] The delivery rules for domestic transactions shall apply in determining the date of completion (delivery) of the acquisiton of goods.[16]

For example, if a taxpayer makes an intra-Community acquisition on 6 September, he/she becomes liable for taxation in connection with the intra-Community acquisition on 15 October at the latest. This shall be included in the monthly VAT return to be submitted by 20 November with regard October or in the quarterly VAT return to be filed by 20 January for the fourth quarter of the year. However, if the sales invoice was issued in September, the intra-Community acquisition must be included in the VAT return to be filed by 20 October, in the case of a monthly filer, and also by 20 October for the third quarter of the year by the quarterly filer.

By way of derogation from the general rule, if the person liable to pay the tax, between the performance and the assessment of the tax payable:

- any changes take place in his legal status regulated in the VAT Act, as a result of which no VAT may be demanded of him (e.g. he ceased to be a taxable person), the tax payable shall be assessed on the day before the day of the change in the legal status,
- his/her debts are assumed for consideration, the tax payable shall be assessed by the the remission of the debt.[17]

The **tax base** shall also be determined in the same way as for domestic transactions, and the tax base shall be subject to 27 percent VAT, if the goods are not subject to another tax

[13] Point d) of Subsection 1 and Subsection 2-4 of Section 20 of the VAT Act.
[14] Section 50 of the VAT Act.
[15] Section 63 (1) of the VAT Act.
[16] Section 62 of the VAT Act.
[17] Subsection 2 of Section 63 of the VAT Act.

rate pursuant to the provisions of the VAT Act or do not qualify as tax-exempt intra-Community acquisition of goods under Section 91 of the VAT Act (for example, the domestic sales or import of which would be exempted from tax).

For the advance paid for the intra-Community acquisition of goods **does not relate tax payment at the time of the delivery of the advance based on the rules of the VAT Act**. Thus, if an advance is paid on the intra-Community acquisition of goods as part of the consideration, no tax shall be assessed and paid in connection with the delivery or transfer of the advance. For the full consideration, including the advance payment, the tax liability arises on the date of issue of the receipt for the given acquisition, but no later than on the 15th day of the month following the month of the date of completion.

The **consideration specified in a foreign currency** shall be converted into forints at the exchange rate quoted as a selling price in foreign currency by a credit institution with a domestic currency exchange license valid at the time of assessing the tax payable. If the purchaser has chosen to apply the exchange rate published by the National Bank of Hungary (MNB) or the European Central Bank (ECB) and has notified NTCA in advance, the consideration shall be converted into HUF at the exchange rate officially published by the MNB or the ECB.[18] This means applying the exchange rate that is valid on the 15th of the month following the date of completion or at the time of the issue of the invoice.

There are certain transactions which, although eligible for intra-Community acquisitions, but are tax-exempt.[19] **The intra-Community acquisition of goods is exempted**

- the subject of which is such goods, the supply of which would be exempted (as supply of goods performed in domestic territory),
- the person acquiring the goods would be entitled for the reimbursement of the VAT related to the intra-Community acquisition of goods of the acquired goods under Chapter XVIII of the VAT Act,
- which would be tax-exempt under the Act, if it had been obtained from imports (so from a third country).

For example, goods returned in the same condition to a taxable person making an intra-Community tax exempt supply of goods, i.e. returned goods, are tax exempt for the latter title.

5. Exempted intra-Community supply of goods

Intra-Community **tax exempt sale**[20] is the transfer of the right to dispose of goods dispatched as a consignment or transported to a destination outside the territory of Hungary but within the Community where

- the seller is not a taxable person subject to individual tax exemption[21], and

[18] Section 80 and Section 80/A of the VAT Act.
[19] Section 91 of the VAT Act.
[20] Subsection 1 of Section 89 of the VAT Act.
[21] Point a) of Subsection 1 of Section 90 of the VAT Act.

- the **taxable person** acquiring the goods, acting as such in a Member State of the Community other than the domestic territory, is recognized as a **VAT taxable legal person** or is identified for VAT purposes in a Member State other than the domestic territory and is liable for payment of VAT whose acquisitions of goods are subject to VAT pursuant to the national law of that Member State[22], and
- **the purchaser has a tax number in another Member State of the Community and provides it to the seller**, and
- the product is an unused movable property, work of art, collector's item or antique, the sale of which is subject to the provisions of Chapter XIV of the VAT Act[23], and
- **the dispatch or transport of the product to another Member State is justified.**

The exemption shall not apply where the taxable person has not complied with the obligation to submit a **recapitulative statement**, or it is incorrect, false or incomplete, unless the taxable person can duly justify such shortcoming, error or omission occurred in spite of acting in good faith and completes, supplements or corrects the statement.[24]

This exemption is **not the same concept as an exemption which does not otherwise entitles the taxpayer to a tax deduction**, since the tax levied domestically on related acquisitions is deductible, when other conditions for deduction are satisfied.[25]

The invoice shall contain the Community tax number of the customer as well.[26]

Further information on the conditions for the customer's tax number and recapitulative statement and proof of delivery of the goods is given in separate informative leaflets https://nav.gov.hu/ado/afa. [Please note that these are available only in Hungarian.]

The intra-Community supply of a **new means of transport** is also exempted, not only if it is supplied to a taxable person having a Community tax number in another Member state or to a non-taxable legal person, but also **if any person or organization not having a Community tax number is the purchaser**.[27] For more information on intra-Community supply of a new means of transport, please see Information Booklet no. 16.

In the case of a **tax-exempt intra-Community supply of goods**, the tax becomes chargeable (being a tax-exempt transaction, it means the inclusion of the transaction in the VAT return and in the recapitulative statement) **on the date of issue of the invoice issued for the sale, but no later than the 15th day of the month following the month in which the supply takes place.**[28] Thus, in the case of an intra-Community supply of goods, the tax liability does not arise at the time of delivery. However, the date of delivery should also be known in relation to such transactions. On the one hand, the date of delivery must be indicated on the invoice for tax-exempt intra-Community sales in the

[22] Point b) of Subsection 1 of Section 90 of the VAT Act, the transactions are not subject to VAT pursuant to Article 3 (1) of the VAT Directive in accordance with the national law of that Member State.
[23] Subsection 3 of Section 90 of the VAT Act.
[24] Subsection 1a of Section 89 of the VAT Act.
[25] Point b) of Section 121 of the VAT Act.
[26] Point d) of Section 169 of the VAT Act.
[27] Subsection 2 of Section 89 of the VAT Act.
[28] Subsection 4 of Section 60 of the VAT Act.

same way as on invoices for other transactions unless the date of delivery and the date of issue of the invoice are the same. In such a case, it is sufficient to enter the date of issue on the invoice. On the other hand, in the case of tax-exempt intra-Community sales, it may also be necessary to know the date of delivery in order to determine the tax liability, since the tax liability must, where appropriate, be determined in relation to it.

When determining the **date of delivery**, as a rule, the normal delivery date rules shall be applied, i.e. by default, the date of delivery will be the date of completion of the transaction as per fact pattern.[29] In the case of a periodically settled transaction, as a general rule, this will be the last day of the period covered by the settlement or payment.[30] If a periodically settled tax-exempt intra-Community sale takes place between the parties and the settlement period between the parties exceeds one calendar month, a chargeable event on a time basis shall take place on the last day of the calendar month.[31] (This also applies to intra-Community acquisitions of goods.[32])

For example, if the taxable person supplied goods within the Community on 6 September but has not yet issued an invoice, the tax liability arises on 15 October at the latest. A monthly return from October unil 20 November and a quarterly return from the fourth quarter until 20 January shall be included in the VAT return or recapitulative statement as a tax-exempt intra-Community supply. However, if the invoice has already been issued in September, the transaction must be indicated in the VAT return and recapitulative statement to be submitted for the month of September or in the quarterly return due for the third quarter by the quarterly filer.

The **consideration specified in a foreign currency** shall be converted into forints at the exchange rate quoted as a selling price in foreign currency by a credit institution with a domestic currency exchange license valid at the time of assessing the tax payable. If the purchaser has chosen to apply the exchange rate published by the National Bank of Hungary (MNB) or the European Central Bank (ECB) and has notified NTCA in advance, the consideration shall be converted into HUF at the exchange rate officially published by the MNB or the ECB.[33] This means applying the exchange rate that is valid on the 15th of the month following the date of completion or at the time of the issue of the invoice.

For the advance paid for the tax-exempted intra-Community supply of goods **does not relate tax liability at the time of the delivery of the advance based on the rules of the VAT Act**.[34] Thus, if the supplier receive an advance for the intra-Community supply of goods, no invoice is required to be issued[35] at the time of the delivery of the advance and it is not required to involve the amount of the advance in the tax return and the recapitulative statement. For **the full consideration, including the advance payment**, the tax liability arises at the time of issuing the receipt for the given sale, but not later than on the 15th day of the month following the month of delivery (Since the transaction is tax-exempt, this means the inclusion of the transaction in the VAT return and in the recapitulative statement).

[29] Subsection 1 of Section 55 of the VAT Act.
[30] Section 58 of the VAT Act.
[31] Subsection 2 of Section 58 of the VAT Act.
[32] Section 62 of the VAT Act.
[33] Section 80 and Section 80/A of the VAT Act.
[34] Subsection 4 of Section 59 of the VAT Act.
[35] Subsection 4 of Section 159 of the VAT Act.

Special rule: if the taxable person **carries out**, as a domestic activity, **tax-exempt intra-Community supply only from a VAT warehouse**, there is no need to register as a domestic taxable person. This is subject to the condition that the tax obligations relating to intra-Community sales are fulfilled by the tax warehousekeeper instead, on the basis of a written authorization from the taxable person. For the authorization (power of attorney) to be valid, the taxable person **shall be a taxpayer not registered or not required to do so domestically,** whereas **the operator of the tax warehouse** must be a taxable person **with a Community tax number**. The power of attorney shall be submitted to the customs authority supervising the tax warehouse together with the document of unload from the warehouse when the removal of the product is proposed. In the course of fulfilling the tax obligations assumed on the basis of the written authorization, the operator of the tax warehouse is obliged to issue an invoice certifying the fulfillment of the transaction as a representative of the taxable person. It is also the the operator of the tax warehouse to keep separate records of tax liabilities for each taxable person and per each power of attorney. In addition, the operator must disclose the details of the transaction in his/her tax return and in the recapitulative statement separately from his/her own details.[36]

6. Chain transactions

If transport is also required to complete the supply of goods, then **the supply of goods took place in the country of dispatch**, the country of departure of the transport, i.e. as a general rule, the supply is to be taxed there.[37] However, **more complex** rules apply to determining the place of delivery in cases where **the product is sold several times from the place of departure (dispatch) to arrival at the palce of destination**.[38]

These transactions are called **chain transactions.** Chain transactions are thus arrangements for the supply of a goods where the product is sold more than once and the product is delivered **directly** from the first seller in the chain to the last buyer. The place of supply of each sale shall be judged individually. That is, if “A” sells to “B”, “B” sells to “C”, and “C” sells to “D” and the product goes directly from taxpayer “A” to taxpayer “D”, the place of supply of sales between "A" and "B", between "B" and "C" and between "C" and "D" **shall be examined separately**.

An important principle is that the rule described above (i.e. when **the place of departure of the transport is a factor determining the place of delivery**) can only be applied to **a single sale in the chain** (since the product is only transported once despite several supplies (sales) of goods). And this will be the supply (sale**) to which the transportation is related.** The transport is related to the sale in which the transport is performed by someone under his/her/its own name or by the customer. If the transport is carried out by the first seller in the chain or ordered in his/her own name, or the transport is carried out in the chain by the final buyer or ordered in his/her own name, the place of delivery of the sale is the place of departure in which they participate.

[36] Section 89/A of the VAT Act.
[37] Section 26 of the VAT Act.
[38] Section 27 of the VAT Act.

There are also cases where **an intermediate participant** in a chain transaction **transports the goods**, or has them transported, i.e. a person who is involved in two sales at the same time. In this case, it shall be decided whether the transport is to be carried out by the intermediate taxable person as buyer or as seller. If the transport is arranged by the intermediate taxpayer **as a buyer**, the transport is related to the sale, the recipient of which is the intermediate taxpayer (invoiced to him/her), so **this sale is taxed at the place of departure**. If the transport is arranged by the intermediate taxpayer **as a seller**, **the supply (sale) made by him/her is taxed** in that same place.

There is a legal presumption that if the intermediate buyer ("B") performs or orders the transport, then he/she **has acted as a buyer**, so the supply delivered to him/her is related to the transport (is taxed according to the place of dispatch). **An exception to this** is if the seller of the product is **informed** by him/her of the **tax number** determined for him/her by the Member State from which the product is dispatched or transported.

As a general rule, therefore, it must be considered that the transport takes place in connection with the purchase of such an intermediate actor. An intermediate operator shall, however, not be considered as a customer transporting the goods if he/she communicates to the taxable person selling to him/her the tax number assigned to him/her by the Member State of dispatch of the product, i.e. in the case of a domestic place of departure, his/her Hungarian tax number. In this case, he/she shall be considered to be transporting as a seller.

The place of delivery of sales by **other actors in the chain** should be determined according to whether the sale is a pre-shipment or a post-shipment sale. **The place of departure determines the place of delivery of the transaction for the preceding, and the place of destination for the latter.**[39]

In the previous four-player example, there are three sales whose place of delivery needs to be determined. If the product is transported by "A" to "D", then the place of supply of goods between "A" and "B" is determined by the place where the transport of the goods has begun, the place of delivery of all subsequent supplies of goods (i.e. B-C, C-D) will be the place of completion of the transport of the goods. If the goods are transported by buyer "D" from the site (plant, etc.) of "A", the place of delivery of goods between "C" and "D" is determined by the place where the transport of the goods has begun, and the place of delivery of goods of all prior sales shall also be the place where the goods are at the time the shipment begins. Let's see what if the product is transported by "C" directly from "A" to "D"! As a general rule, it may be established that goods are transported by "C", as a buyer, thus the place of delivery of the supply of goods between 'B' and 'C' shall be judged according to the place of dispatch. The place of delivery of the sale preceeding this one (i.e. A-B) is the place where the product is located at the time the shipment begins. The place of delivery of all follow-up sales (i.e. C-D) is the place where the product is located at the time the shipment is completed. If "C" communicates his/her domestic tax number to "B", the "place of dispatch" approach shall be applied for the supply of goods between "C" and "D", the place of delivery of other sales preceeding it is also the place where the product is located at the beginning of the transport.

[39] Subsection 3 of Section 27 of the VAT Act.

If the product departs from a domestic place, it should also be borne in mind that the tax-exempt intra-Community supply can only be made in the case of the **last taxable person in the chain transaction with the domestic place of dispatch** or, in the case of exports outside the Community, the condition of the exempt export sales.

7. Triangular transaction

Special rules apply to sales whose three operators are taxable persons with a Community tax number registered in a different Member state (or a non-taxable legal person with a Community tax number).[40]

The essence of a triangular transaction is that a taxable person ('B') established in another Member state, appearing as an 'intermediate customer', makes a supply of goods to a taxpayer (purchaser) in Member state ('C') by acquiring the product from a third Community country ('A') be. However, the product does not enter the Member state of the intermediate buyer because it is shipped directly from Member state A to Member state C. Thus, in a triangular transaction, the change in ownership does not follow the actual movement of the product. While the taxpayer of Member state "C" makes a purchase of goods from intermediate buyer "B" and the taxpayer of Member State "A" makes supplies of goods to intermediate buyer "B", the intermediate buyer appears in the transaction in a dual role. On the one hand, it purchases goods from the taxpayer of Member state "A" and, on the other hand, supplies goods to the taxpayer of Member state "C". **The essence of the special VAT rule for the triangular transaction is that the taxpayer in country B** (the intermediate customer) **does not have to register as a taxable person in country A or C**, even though he sells in country C, but instead, **the tax liability arises in "C" in their own Member state.**

Exemption from "B" is conditional on the transaction being included in the recapitulative statement in country "B", indicating that it acted as an intermediate customer, and that the invoice be issued in accordance with the invoicing rules, indicating that the transaction is taxable "C" taxpayer' country. In such a case, the intra-Community acquisition of goods of "B" is tax exempt in the Member State of "C".[41]

8. Transfer of assets

The transfer of assests qualifies as supply of goods, so it belongs to the scope of the VAT Act where **the taxable person transports or have transported** the goods owned by him, and manufactured, **acquired for his activity** (i.e. his economic activity) **resulting his taxable person status** (including the goods received under a commission) **from the domestic territory to another Member state**, or otherwise transports it.[42]

However, the transfer of assets alone is only covered by the VAT Act **if no other connected supply of goods or connected services are made**.

[40] Subsection 2 of Section 91 and Section 141 of the VAT Act.
[41] Pursuant to Section 91 (2) of the VAT Act in Hungary.
[42] Subsection 1 of Section 12 of the VAT Act.

The transfer of assets under the very legal title is **not subject to VAT** in the following cases:[43]

- **the product is being installed or assembled** in another Member State of the Community;
- the product is exported for the purpose of **intra-Community distance sales of goods**);
- if the **product is sold on board a train, a ship or an aircraft** and is fulfilled during the period of carriage of passengers within the territory of the Community;
- **sale** of the product outside the territory of the Community (**export**);
- tax-exempt supply of goods in connection with **international transport**;
- transactions treate**d in the same way as sales of products outside the territory of the Community**;
- **tax-exempt intra-Community supplies of goods**;
- the product is moved to another Member State **for processing, working or peer review**, if, after completion, the product is returned to the Member State of dispatch to the taxable person receiving the service;
- the product is **temporarily used by the owner to provide a service** in another Member State**;**
- **the product is temporarily used for a period not exceeding twenty-four months** within the territory of another Member state of the Community, in which the importation of the same goods from a third country with a view to their temporary use would be covered by the arrangements for temporary importation with full exemption from import duties;
- the product is transferred to a **customer stock maintained** in another Member State;
- the supply of gas through a **natural gas system** situated within the territory of the Community or any **network** connected to such a system, the supply of heat or cooling energy **through heating or cooling networks**, and the **supply of electricity**.

If **any of the conditions** listed **is not met**, the transport, forwarding of the own goods between Member states **shall be deemed to be a supply of goods** on the date on which the condition ceases.

Special rules for customer stock are described in a separate information booklet https://nav.gov.hu/ado/afa [It is only available in Hungarian.]

In the case of the transfer of assets falling within the scope of the VAT Act, **the tax base** is the purchase price of the goods, failing which the production cost[44] determined upon performance, which must be adjusted in accordance with the items set out in Section 70-71. of the VAT Act, that is to say it shall be increased, for example, with the costs related ancillary to the supply, e.g. transport costs. The tax should be assessed according to the

[43] Subsection 2 of Section 12 of the VAT Act.
[44] Section 68 of the VAT Act.

domestic tax rate for goods (0 percent, 5 percent, 18 percent, 27 percent), if the taxpayer does not fulfill the obligation to register as a taxable person in the country of destination (to where the goods is transferred).

If the domestic **person performing the transfer of assets** fulfills his obligation to register **in the country of destination** (in that Member state to which he transfers his goods) with regard to the transfer of assets as an intra-Community acquisition of goods, that is to say **he is a taxable person having a Community tax number** there, he is taxed after the transfer of assets in that country **under intra-Community acquisition.** In that case, the taxable person **performs a tax-exempt intra-Community supply of goods** in the domestic territory. In the invoice issued for this purpose the Community tax number of the customer in the country of destination shall be indicated as the Community tax number of the customer.

If the transfer of goods is realised to Hungary, that is to say the "other side" of the transfer of assets detailed above takes place domestically, it is considered to **be an intra-Community acquisition of goods** domestically. An intra-Community acquisition is that if the taxable person transports the goods which he owns, have the goods which he owns transported - which he used in another Member state for his taxable activity there - for the purpose of an economic activity to domestic territory, unless it is done in the reverse direction as listed above.

9. Distance-selling

The rules on tax-exempt intra-Community supply of goods described above (with the exception of the supply of new means of transport and certain excise goods) apply only to the supply to taxable or non-taxable legal persons having a Community tax number and only if the purchaser is liable to pay tax on the acquisition in the Member State of acquisition.

The assessment is different where the taxable person supplies goods, which are neither new means of transport, nor the subject of installation or assembly, **to the following persons** by himself or by a third party on his own behalf (including dispatch

or transport with the *indirect* involvement of the taxable person supplying the goods)[45] with the goods delivered **to another Member state of the Community:**

a) a non-taxable person,

b) a taxable person who carries out only tax-exempt supply of goods or services which is not eligible for deduction (including a tax-exempt taxable person) which is not liable to pay tax after his intra-Community acquisition,

c) a farmer with a special status which is not liable to pay tax after his acquisition in the Community,

d) a non-taxable legal person which is not liable to pay tax after its acquisition in the Community,

e) any person if the intra-Community acquisition of goods does not give rise to a tax liability because, if the transaction was a domestic supply of goods, it would be exempt from tax under Sections 103, 104 and 107 of the VAT Act (for example, products for the operation of certain means of water or air transport).[46]

This form of supply is the so-called intra-Community distance selling (distance sale of goods).

After the supply of goods performed to the persons listed under a)-d), tax liability is arisen by the supplier. (Sales under point (e) are exempt from tax.)

These **intra-Community distance sales** by taxable persons will be taxed at the place of arrival of the goods or the place where the transport is completed, i.e**. the Member State of consumption**, at the rates applicable there.

However, if certain conditions are met, the **place of dispatch** or the place of departure of the transport will continue to be the place of supply after 1 July 2021, i.e. goods dispatched or transported from within the country will be taxed at domestic rates in the country of the transaction.[47] This rule, and the conditions for its application, **apply jointly to intra-Community distance sales and to supplies of remote services.**

The conditions are as follows:

- the taxable person has established his business only in one Member State of the Community;
- remote services[48] are supplied to non-taxable persons who are established their business, have their permanent address or usually reside in any Member State other than the Member State of the Community where the taxable person has established or goods sold through intra-Community distance sale are dispatched in consignments or transported to a Member State other than the Member State

[45] Article 5a of Council Implementing Regulation (EU) no.282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (hereafter: Implementing Regulation).
[46] Subsection 1 of Section 12/B of the VAT Act.
[47] Section 49/A of the VAT Act.
[48] Section 45/A of the VAT Act.

other than the Member State of the Community where the taxable person has established;

- the total value of the supplies of goods and services through intra-Community distance sale or remote services in the current calendar year, and - provided that such goods or services were supplied - in the preceding calendar year does not exceed the equivalent of **EUR 10,000**, exclusive of VAT, for the year to date.

Below the threshold, a taxable person **may also choose** to determine the place of supply according to the general rule, i.e. at the place of destination of the goods in the Member State of consumption (in which case the choice also applies to supplies of services which may be supplied at a distance, if such supplies are made). However, his/her choice is binding for two years following the year of choice. This must be reported to the NTCA. (A declaration will also be deemed to be such if the taxable person established in the country logs into the one-stop shop (OSS system)[49]. In other words, by registering for the one-stop shop, the taxable person also opts to be taxed at the place of destination of the goods and at the place of consumption.)

Where a taxable person makes an intra-Community distance sale or provides remote service that **exceeds** the threshold of EUR 10,000, i.e. HUF 3,100,000[50], the taxpayer is already liable to pay the tax in the Member State where the recipient is established and at the destination of the product on the supply concerned by the excess. This change shall also be reported to NTCA.

For more information on intra-Community distance selling, please consult Information Booklet no. 98. [Please note that this is available in Hungarian only.]

10. Place of delivery of the supply of services as a general rule

A supply of services is subject to VAT in domestic territory, i.e. a VAT liability arises thereafter, if its place of supply determined in accordance with the provisions of the VAT Act is in domestic territory.[51] **As a general rule, the place of supply of the service depends on whether the recipient of the service is a taxable person (or participates in the transaction as a taxable person).**

In transactions between taxable persons, the place of supply of the service is determined by the registered seat, permanent establishment, and in the absence thereof, the place of residence or the usual residence of the taxable person receiving the service. In case the taxable person has one or more establishments in addition to his seat, the place of supply is determined by the place of establishment most directly affected by the use of the service. **In case of services supplied for non-taxable person, the place of supply shall be the place where the supplier of the service is established for the purpose of engaging in an economic activity or, in the absence**

[49] If the taxable person exercises his/her right of option under subsections (1) to (2) of Section 253/I of the VAT Act.
[50] Subsection 3 of Section 256 of the VAT Act.
[51] Point a) of Section 2 of the VAT Act.

of such economic establishment, the place where he has his permanent address or usually resides.

Those domestic non-taxable legal persons who have (or should have) a Community tax number and those **non-taxable legal persons** from another Member state who have (or should have) Community tax number in their own Member state shall also be treated as taxable persons for the purpose of determining the place of supply of the service.[52] Taxable persons are generally considered to be taxable persons in respect of all services supplied to them. This means that the supplier of the service does not have to consider whether the service ordered is used by the taxable person for the economic activity which gives rise to his status as taxable person or for an activity which is not subject to VAT. The place of supply shall be determined as if he were using it **in his capacity as a taxable person**. This rule shall not apply where the taxable person uses the service as a final consumer for his own private use or that of his employees. In such a case, the place of supply shall also be determined as if he had not used the service as a taxable person.[53]

It is also important that persons and organizations whose tax status as a taxable person is solely based on the fact that they supply new means of transport or supply immovable property in a series of transactions, shall be considered taxable persons for the purposes of determining the place of supply in respect of only those services, which are used for their activities resulting in taxable person status.[54] For example, if a private individual becomes a taxable person as a result of the supply of immovable property in a series of transactions, he is considered as a taxable person in respect of the brokerage services used to the supply of his new immovable property, but no longer acts as a taxable person when he leases a motor vehicle.

On this basis, as a general rule, if the customer of the service is a taxable person, whether registered in another Member state or in a third country, the place of supply of the service will be the domestic territory if the seat or the establishment most directly affected by the supply of the recipient of the service is the domestic territory. Where the supply actually takes place shall not be regared. In the case of services supplied to non-taxable person, the place of supply will be the domestic territory if the seat or the establishment most directly affected by the supply of the supplier of the service, in the absence of these, his permanent address or habitual residence is in domestic territory.[55]

That is, all services used by a domestic taxable person related to his domestic seat, establishment that are not listed in the exceptions detailed below are subject to domestic tax at the appropriate domestic tax rate (5 percent, 18 percent, 27 percent) or, where applicable tax exemption applies to it.

If the taxable person established in Hungary for economic purposes participates in the position of customer in a service fulfilled in domestic territory, as a general rule, i.e. Section 37 of the VAT Act, he shall be liable for VAT payment liability on this service, if the taxable person supplying the service is not established domestically for economic purposes, in the absence of establishment for economic purposes he does not have

[52] Point b) of Subsection 1 of Section 36 of the VAT Act.
[53] Point a) of Subsection 1 of Section 36 of the VAT Act.
[54] Subsection 2 of Section 36 of the VAT Act.
[55] Section 37 of the VAT Act.

permanent address or habitual residence domestically. **The advance payable** in connection with the so-called import services **also gives rise to VAT liability**. In this case, however, the advance does not include the proportionate amount of the tax payable, that is, the tax shall be charged on the amount of the advance.[56]

The VAT Act determines the place of supply of several services differently from the general rules. There are services, the place of supply of which is always subject to special rules, regardless of whether the recipient of those is a taxable person or a person or organization that is not a taxable person. There are also services which are subject to special regulations, other than the general rule, only if the recipient is not a taxable person.

11. Special rules for the place of supply of services

A) Services which place of supply shall be determined in any case on the basis of the special rules regardless of whether the recipient of the services is taxable person or not:

The place of supply of **services connected with immovable property**, shall be the place where the property is located.[57] Commercial accommodation service is also a service connected with immovables. The service related to the inmovable property is taxed domestically if the location of the inmovable property is domestic. If the service related to domestic inmovable property is supplied by such a taxable person who is not established domestically for economic purposes, the customer domestic taxable person who hais required to discharge the tax liability instead of the supplier of the service. However, if the suplier of the service is established domestically for economic purposes, the foreign supplier of the service is liable to pay the VAT.[58]

In the case of **passenger transport**, the place of supply is **the route** that is actually taken[59] during the supply of the service, i.e. only the route covered domestically falls within the scope of the Hungarian VAT Act. If the passenger transport is carried out on the order of a domestic taxable person by such a foreign taxable person who is not established domestically, the tax payment liability lies with the recipient domestic taxable person in respect of the domestic road section taxable domestically.[60] There is no need to consider paying tax if it is about **international passenger transport**, as it is tax-exempt.[61]

The place of short-term hiring of a means of transport shall be the place where the means of transport is actually **put at the disposal of the customer**.[62] Short-term hiring of a means of transport means if the continuous use of the means of transport does not exceed ninety days in the case of vessels, and thirty days in the case of other means of

[56] Subsection 3 of Section 59, Point a) of Section 140 of the VAT Act.
[57] Section 39 of the VAT Act.
[58] Point b) of Section 140 of the VAT Act.
[59] Section 40 of the VAT Act.
[60] Point b) of Section 140 of the VAT Act.
[61] Section 105 of the VAT Act.
[62] Subsection 1 of Section 44 of the VAT Act.

transport.[63] Thus, domestic tax liability of the domestic taxable person supplying the service arises thereafter if he actually makes the means of transport available to the lessee domestically. An exception is if the actual use of the means of transport is in a third country – such a situation is described in point E). If a domestic taxable person is a short-term lessee, he may also be liable to pay tax if the means of transport is supplied domestically, but the person supplyig the service is a foreign taxable person not established in domestic territory.[64]

In the case of supply of **restaurant and catering services**, the place of supply shall be the place **where the services are physically carried out/rendered**. Different rules apply to such services, if they are physically carried out on board of ships, aircrafts or trains **during the section of a passenger transport operation effected within the Community.** In this case the place of supply of the supply of the service **shall be the point of departure** of the passenger transport operation. As regards roundtrip passenger transport services, the first leg and the second leg of the trip shall be treated separately, as independent passenger transport services. The passenger transport within the Community shall mean the operation effected **without a stopover outside the Community**, where **the point of departure and the point of arrival of the passenger transport operation are located inside the Community.** The point of departure of a passenger transport operation shall mean the first scheduled point within the territory of the Community whether or not there was a stopover earlier outside the territory of the Community. The point of arrival of a passenger transport operation shall mean the last scheduled point of disembarkation within theterritory of the Community, regardless of any later stopover outside the Community. This means that supply of restaurant and catering services on board ships, aircrafts or trains during the section of a passenger transport operation effected within the Community is taxable in domestic territory if the passenger transport starts from Hungary or the first point of boarding within the Community is here.[65]

B) Services the place of supply of which is to be determined according to special rules only if the recipient is not a taxable person:

The place of supply of **services by an intermediary**, i.e. services supplied to a non-taxable-person by an intermediary acting in the name and on behalf of another person shall be the place where **the underlying transaction is supplied.**[66] If the place of supply of the service of an intermediary is inland, the intermediary service **may be tax-exempt**, if the intermediary transaction is certain, otherwise tax-exempt one giving rise to tax deduction (supply of goods outside the Community or transactions treated in the same way, as well as international transport).[67]

For **transport of goods** supplied to a non-taxable person, if it is not considered as intra-Community freight transport, **the place of supply is the route actually covered**[68], i.e. only the road section covered inland is subject to domestic VAT. Subject to certain

[63] Subsection 4 of Section 44 of the VAT Act.
[64] Point b) of Section 140 of the VAT Act.
[65] Section 45, Subsection 2 of Section 33 of the VAT Act.
[66] Section 38 of the VAT Act.
[67] Subsection 1 of Section 110 of the VAT Act.
[68] Subsection 1 of Section 41 of the VAT Act.

conditions, no payment of tax is required for this road section either. For example, if the consideration for the transport is included in the tax base of the imported goods (this may be evidenced, for example, by a customs decision)[69], or, if goods are transported which leave the territory of the Community subject to an export procedure.[70]

In the case of the **intra-Community transport of goods** supplied to a non-taxable person, the place of supply shall be deemed to be the **place of departure of the transport of the product**. Intra-Community transport of goods shall cover any transport of goods in respect of which the place of departure and the place of arrival are situated within the territories of two different Member states of the Community. For the purposes of this rule the place of departure of the transport of goods shall mean the place where transport of the goods actually begins, irrespective of distances covered in order to reach the place where the goods are located; the place of arrival of the transport of goods shall mean the place where transport of the goods actually ends.[71] For example, if freight transport from Hungary to Austria is ordered by a non-taxable person, the place of supply is inland, given that it is the place of departure. Thus, the person supplying the service is liable for VAT domestically. The tax liability applies to the entire road section - and not only to the inland section – i.e. the domestic tax rate (27 percent) shall apply to the consideration for the entire road. If, on the basis of the order in question, the domestic taxable person has to transport the goods from Austria to Hungary, the entire road is outside the scope of VAT, and on invoice issued for it, the term outside the scope of VAT shall be indicated. The Hungarian taxable person shall also take into account that, due to his service supplied in Austria, he may also have to register there as a taxable person (if the taxpayer is not established there, they can opt for one-stop-shop taxation).[72] This may be necessary due to possible tax liabilities in Austria related to the service.

Where the service is supplied to a non-taxable person, the place of supply of services is the place **where the service is physically carried out** in the following cases[73]:

- **services ancillary related to passenger transport, transport of a goods,**
- **peer evaluation directly aimed at the goods, excluding immovable properties,**
- **work on the goods, excluding immovable properties.**

Such an activity carried out in the domestic territory is therefore subject to domestic VAT, but the activity carried out abroad is not.

The domestically completed service which is related ancillary to the transport of the goods, such as loading, warehousing and storage of means of transport, subject to certain conditions, are **tax exempt** giving rise to VAT deduction - among others - if they are directly linked to a product which was exited of the territory of the Community or was

[69] Subsection 2 of Section 93 of the VAT Act.
[70] Point b) of Subsection 1 of Section 102 of the VAT Act.
[71] Subsections 2-4 of Section 41 of the VAT Act.
[72] Subsections (1)-(2) of Section 253/I of the VAT Act.
[73] Section 43 of the VAT Act.

imported.[74] Under certain conditions, warehousing is also tax-exempt even if it takes place in a free zone, a free warehouse, a customs warehouse, a tax warehouse.[75]

The contract work, if it is carried out domestically by a non-taxable person on a material or product supplied by a non-taxable customer resident abroad, and, therefore, the product will be exited to a third country by the customs authority, is tax-exempt.[76] If a product to be installed or assembled is not only supplied by the taxable person but he also installs (assembles) it, it shall be taxed as supply of goods in the country where the installation or assemblement takes place.[77]

In the case of **long-term hiring of means of transport** (i.e. more than 30 days, more than 90 days in the case of ships), if the customer is not subject to VAT, the place of supply is **the customer's place of establishment**.[78] This is for a private individual the permanent address or habitual residence. In the case of long-term hiring of **a recreational ship** by a non-taxable customer, the place of supply shall be the place where the recreational ship is **made available to the lessee**, provided that the lessor supplies the hiring of the ship from its seat or permanent establishment at the place of issue[79].

In case of **telecommunications services, radio and audiovisual media services, electronically supplied services** (so-called remote services (i.e. supplied at a distance)), if the recipient of the service is not subject to VAT, the place of supply shall be the place where, in that connection, **the recipient of the service is established** or, in the absence thereof, where his permanent address of habitual residence is.[80] The law lists by way of example some electronic services [81]:

a) hosting, website supply, web-hosting and operating the webiste, remote maintenance of IT programs and equipment,
b) supply of software and updating thereof,
c) supply of images, text and information and making available of databases,
d) supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment media services and events,
e) supply of distance learning,

provided that they are supplied through access to global information networks. Where the supplier of a service and the customer communicate via electronic mail, over such networks - including the presentation and acceptance of an offer -, that shall not of itself mean that the service supplied is an electronically supplied service.

By way of derogation, the place of supply[82] of these services **shall be determined in accordance with the general rules**, i.e. **on the basis of the place of establishment of the taxable person supplying the service**, provided that:

[74] Section 102, Subsection 2 of Section 93 of the VAT Act.
[75] Section 111 and Section 116 of the VAT Act.
[76] Section 101 of the VAT Act.
[77] Section 32 of the VAT Act.
[78] Subsection 2 of Section 44 of the VAT Act.
[79] Subsection 3 of Section 44 of the VAT Act.
[80] Subsection 1 of Section 45/A of the VAT Act.
[81] Subsection 2 of Section 45/A of the VAT Act.
[82] Subsection 3 of Section 45/A of the VAT Act.

a) the taxable person is established for economic purposes in a Member state of the Community or, in the absence of an establishment for economic purposes, he has his permanent address or usually resides only in one Member state of the Community,
b) services are supplied to non-taxable persons who are established for economic purposes in any Member state other than the Member state referred to in Paragraph a) or, in the absence thereof, have their permanent address or usually reside in any Member state other than the Member state referred to in Paragraph a),
c) in the given calendar year, and if such a service is supplied in the calendar year preceding the given calendar year, the total amount of the consideration of the supplies referred to in Paragraph b) does not exceed the amount equivalent to 10,000 euro, that is 3,100,000 forints exclusive of VAT, for the year on the aggregate[83]. If a taxable person also makes intra-Community distance selling, the threshold will apply to both remote services and intra-Community distance selling.

Below this threshold, too, the person supplying the services **may choose** to determine the place of supply as per the general rule, i.e. the place of establishment of the recipient (his/her choice also applies to distance sales within the Community, if such sales are made.).[84] However, his/her choice is binding for two years following the year of making his choice.[85] His choice shall be reported to NTCA. (From 24 November 2022, a declaration will also be deemed to be such if the taxable person established in the country logs into the one-stop shop (OSS system)[86]. In other words, by registering for the one-stop shop, the taxable person also opts to be taxed at the place of consumption.)

If a taxable person **exceeds the threshold of EUR 10,000** for the supply of a remote service (and intra-Community distance selling) that shall be reported to NTCA, he shall pay the tax in the Member state in which the recipient has been established on the supply of the given and further such transactions[87]

For such services rendered to a **non-taxable person established outside the Community**, the place of supply remains the place of establishment of the recipient in all cases, that is, VAT is not payable in the Community for these.

C) Cultural, artistic, scientific, educational, entertainment and sporting services

For cultural, artistic, scientific, educational, entertainment and sporting services, as well as other similar services (in particular: organization of exhibitions, fairs and presentations), including their organization, and for the services ancillary related to the aforementioned, the application of the special rules related to the determination of the place of supply is depending on whether the service is used by a taxable person or non-taxable person, organization.

[83] Subsection 3 of Section 256 of the VAT Act.
[84] Subsection 4 of Section 49/A of the VAT Act.
[85] Subsection 2 of Section 49/A of the VAT Act.
[86] If the taxable person exercises his/her right of option under subsections (1) to (2) of Section 253/I of the VAT Act.
[87] Subsection 2 of Section 49/A of the VAT Act.

Where the **customer** of such a service is **not a taxable person**, the place of supply shall be determined by the place where the service is **actually carried out**.[88] This means that the taxable person, as a supplier of services, is liable to pay domestic VAT on these services, if he actually carries them out domestically. Exceptions to this rule from 2025 are services relating to activities as described above **which are streamed or otherwise made virtually available**. The place of supply of these services is the place where the **non-taxable person** to whom the service is provided **is established or, in the absence of establishment, where he has his permanent address or usually resides.[89]** In these cases, the taxable person becomes liable to pay tax in the domestic territory if the non-taxable customer is established, has his permanent address or usually resides in the domestic territory.

If such service is **supplied to a taxable person**, the place of supply shall be determined under the general rule[90], i.e. **the establishment for economic purposes** of the recipient prevails. Exceptions to this are those services which **provide admission** to cultural, artistic, scientific, educational, entertainment, sporting or similar events (such as fairs, exhibitions and presentations), including the related ancillary services. The place of supply of these is the place where the exhibitions and presentations **actually take place**, also in case the customer is the taxable person.[91] From 2025, however, the place of supply of services related to admission and ancillary services will also be governed by the general rule (**the place of establishment for business purposes of the taxable person to whom the supply is provided**) **if the participation** in the event or activity **is virtual**.[92]

For these services, **the domestic taxable person,** as a customer, may incur a tax liability if the place of supply under Section 37 of the VAT Act and in the case of services ensuring admission under Section 42 of the VAT Act is the domestic territory and the services are recived from a foreign taxable person who is not established domestically.[93]

D) Services under the scope of Section 46 of the VAT Act

For these services, the Act on VAT extends the general rule for determining the place of supply of services supplied **to taxable persons** to those cases, where **the recipient of the service is established in a third country,** or, in the absence thereof, has his permanent address, habitual residence in a third country and is **a non-taxable person**. (If the recipient of the service is a non-taxable person or organization from another Member state, the general rule applies to determining the place of supply of the service supplied to him/it.) If the recipient of the services listed below is a non-taxable person resident in a third country (non-Community), the place of supply of the service is determined by the recipient's **place of establishment outside the Community** or, in the absence thereof, by his permanent address or habitual residence.

These services are:

[88] Point d) of Subsection 1 of Section 43 of the VAT Act.
[89] Subsection 3 of Section 43 of the VAT Act.
[90] Subsection 1 of Section 37 of the VAT Act.
[91] Subsection 1 of Section 42 of the VAT Act.
[92] Subsection 2 of Section 42 of the VAT Act.
[93] Points a) and b) of Section 140 of the VAT Act.

- temporary or permanent transfers and assignments of copyrights, patents, licenses, trade marks and similar rights;
- advertising services;
- the services of consultants, accountants, lawyers, tax experts, IT experts, translators and interpreters, and other similar services including - under certain conditions[94] - the services of engineers as well;
- data processing and the provision of information;
- banking, financial and insurance transactions, including reinsurance, with the exception of the hire of safes;
- assignment and or hiring-out of workers, the supply of staff;
- the hiring out of goods, with the exception of immovable property and all means of transport;
- the provision of access to a natural gas system situated within the territory of the Community or to any network connected to such a system, to the electricity system or to heating or cooling networks, the transmission or distribution of natural gas, electricity, heating or cooling energy through these systems or networks, and the provision of other services directly linked thereto.[95]

It is important to note that the physical location of the supply or receipt is irrelevant for the services indicated in Section 46.

E) Enforcing the "consumption versus actual use" principle

In the case of **renting out means of transport** - including railway cars -, whether it is a short-term or long-term rental, **the place of supply is inland**, if, by the application of the general rule, by the application of the special rules related to the short-term hire and hire of means of transport by non-VAT taxable persons the place of supply would be outside the territory of the Community, but **the actual use** or otherwise the acquisition of the financial advantage **is inland**. The opposite is also true, i.e. **the place of supply of the hiring will be outside of the territory of the Community** if the **actual use** or otherwise the acquisition of the financial advantage **is outside the territory of the Community**,

[94] If the services of engineers, due to their key characteristics, are not services directly linked to immovable property, product specific peer review or product work if provided to a taxable person. Furthermore, if they are not services supplied to a taxable person for the purpose of ensuring admission to cultural, artistic, scientific, educational, entertainment, sporting or other similar events (in particular: exhibitions, fairs and shows) or are not services ancillary to the foregoing.
[95] Section 46 of the VAT Act.

regardless of whether the place of supply would otherwise be in domestic territory by the application of the general rules.[96]

12. The person obliged to pay the tax by the (cross-border) services

As a general rule, in connection with the supply of goods and/or services **the tax is payable by the taxable person who carries out the transaction acting in his own name.**[97]

By derogation of the general rule, in the domestic territory **the recipient taxable person is liable to pax the tax**, **if** the place of supply of the service under the VAT Act is the domestic territory, but **the taxable person supplying the service is not established domestically for economic purposes**, in the absence thereof, he does not have permanent address or habitual residence domestically.[98]

It is important to know that only for the purpose of the determination of the person obliged to pay tax (by applying Section 138 and 140 of the VAT Act), the taxable person shall also be considered as non-established taxable person who **has a permanent establishment** in the Member state of the place of supply, **but this establishment is not involved in, is not affected by the supply of the service.**[99] In such cases, **the recipient taxable person**, including the non-taxable legal person registered for VAT purposes as well, **shall be liable to pay the tax**. If the permanent establishment contributes to the supply of the service, the VAT is charged and passed on by the domestic establishment of the taxable person supplying the service. Where a taxable person **having his seat domestically** and a permanent establishment in another Member state supplies a service with a place of supply pursuant to the general rule to a domestic taxable person, **the taxable person supplying the service is liable to pay the tax**, whether or not his domestic seat is involved in the supply of the service.[100] It is important that 'establishment' has an independent concept in the VAT system.[101]

It is a general rule, the VAT incurred domestically in connection with services supplied abroad, i.e. in a third country or in other Member states may be deducted by the taxable person under the general rules, but only to the extent that taxpayer would be able to deduct it if he was performing that service domestically. [102]

13. Special rules related to invoicing

It is important that a taxable person - in line with the provisions of the VAT Act - is **obliged to issue an invoice even if he supplies goods or services outside the domestic territory**, in the territory of the Community or in a third country, provided that **his place of establishment for economic purposes which is the most directly**

[96] Section 49 of the VAT Act.
[97] Section 138 of the VAT Act.
[98] Section 140 of the VAT Act.
[99] Section 137/A of the VAT Act.
[100] Article 54 of the Implementing Regulation of the VAT Directive.
[101] Point 2 of Section 259 of the VAT Act.
[102] Point a) of Section 121 of the VAT Act.

affected by the supply of the given transaction is in domestic territory (in the absence thereof his permanent address or habitual residence is in domestic territory). In the case of supply of goods or services supplied in the territory of the Community, but outside the domestic territory, an additional legal condition of the obligation to issue an invoice pursuant to the VAT Act is that the person acquiring the goods or the recipient of the service shall be liable to pay the tax.[103]

If, in these cases, the taxable person is required to issue an invoice, the invoice shall **include the term „reverse charge"**[104], provided that the customer is liable to pay tax in his own country. Although the law does not stipulate that in the case of transactions supplied abroad, the term "outside of the territorial scope of the VAT Act" shall be indicated, but - given that the receipt shall contain clear information and from that it has to become clear why it does not include VAT - it is advisable to include a reference to the territorial scope exclusion in all invoices that document a transaction supplied abroad.

A taxable person may also fulfil his tax liability *in respect of* ***supplies of services to non-taxable persons established in the Community*** in a Member State other than that in which he is established (provided it is not established in the Member State of supply) and his tax liability in respect of distance sales (**intra-Community distance sales** and **distance supplies of goods imported from a third country**[105] within the meaning of point 9) by means of the **one-stop-shop (OSS)**[106] and the **import one-stop-shop (IOSS)**[107]. In the case of transactions for which the taxable person discharges his tax liability through the one-stop shop, the rules applicable to the documentation of the transactions shall be those of the Member State where the taxable person is registered for the one-stop shop[108]. If, for example, a resident taxable person provides remote services to non-taxable persons established or resident or ordinarily resident in another Member State and meets his tax liability in the other Member States through the one-stop shop, he must provide supporting documents for these transactions in accordance with the Hungarian VAT Act.

14. Tax return, recapitulative statement

A taxable person with a community tax number cannot be an annual tax return filer. Therefore, if NTCA determines its community tax number during the year and the taxpayer started the year as an annual tax return filer, he/she must switch to quarterly tax return filing due to the community tax number.[109]

A value added taxable person having a Community tax number shall make a statement on form 'A60 of NTCA (**recapitulative statement**) on:

- the supply of goods under Subsections (1), (3) and (4) of Section 89 of the VAT Act to customers in another Member State of the Community, including the case when the indirect customs representative files a declaration in place of the VAT warehouse

[103] Points c) and d) of Subsection 2 of Section 159 of the VAT Act.
[104] Point n) of Section 169 of the VAT Act.
[105] Subsection 2 of Section 12/B of the VAT Act.
[106] Chapter XIX/A of the VAT Act, for more detailed information please see Information Booklet no. 97.
[107] Chapter XIX/B of the VAT Act, for more detailed information please see Information Booklet no. 98.
[108] Subsection 4 of Section 158/A of the VAT Act.
[109] Point B.3.1.4 of Schedule 2 of the Act on the Rules of Taxation Act (ART).

operator or the importer in connection with the supply of goods performed by the person liable for the payment of the tax or by the importer **(intra-Community supply of goods)**,

- the supply of goods to customers identified for VAT purposes in another Member State of the Community, to whom he has supplied goods which were supplied to him by way of intra-Community acquisitions referred to in Section 52, and the purchase of goods from suppliers identified for VAT purposes in another Member State of the Community, which were supplied to him under Section 52 **(acquisition and supply of goods as an intermediate actor in a "triangular transaction")**,
- **the services he/she has supplied – including advance payments – under Section 37 of the VAT** Act to taxable persons identified for VAT purposes in another Member State of the Community, and the non-taxable legal persons not identified for VAT purposes, that is taxable in the Member State where the transaction is carried out, and for which the recipient is liable for the payment of VAT **(i.e. the supply of services, of which the place of supply is to be determined in accordance with the general rule)**,
- **the intra-Community acquisition of goods from a taxable person identified for VAT purposes in another Member State of the Community**, or the **services he/she has received under Section 37 of the VAT Act**, for which he/she is liable for payment of VAT as being recognized as the acquirer or customer **(i.e. transactions subject to the general rule for determining the place of supply/delivery including advances paid for the use of the services)**,
- the amount of adjustment where the taxable amount is reduced subsequently under Section 77 of the VAT Act.[110]

In terms of legal effects, the recapitulative statement shall be construed a tax return.

As a general rule, the VAT taxpayer is required to submit the recapitulative statement with the same frequency as the tax return frequency. As a general rule, the taxable person liable for monthly VAT return filing shall submit it electronically on a monthly basis, by the 20th day of the month following the month in question, the VAT payer liable for quarterly VAT return filing shall submit it electronically on a quarterly basis, by the 20th day of the month following the quarter in question to NTCA in parallel with the VAT return. In the event of a switch in the frequency of tax return filing (from quarterly to monthly), if a recapitulative statement should be made for a Community commercial transaction for a partial period, this recapitulative statement shall be submitted by the taxpayer at the same time as the VAT return for the partial period.

The special rule on the frequency of submission of the recapitulative statement shall also be taken into account. Irrespective of the frequency of the VAT return filing requirements applicable to the taxable person, he/she is required to switch from quarterly to monthly recapitulative statement filing, if the aggregated consideration of his

- **intra-Community supplies** (supply of goods specified in Section 89 (1) and (4) of the VAT Act and supply of goods corresponding to the supply of goods pursuant to Section 91 (2) of the VAT Act), or

[110] Schedule 4/A of the VAT Act.

- **intra-Community acquisitions** (intra-Community acquisition of goods as defined in Section 19, 21 and 22 (1) of the VAT Act)

exclusive of value added tax, for the quarter in question exceeds the sum equivalent to **EUR 50,000**.

In such a case, the recapitulative statement for the transitional period must be submitted by the 20th day of the month following the end of the period from the first day of the quarter to the last day of the month in which the threshold was exceeded. Thereafter, the firstmonthly recapitulative statement shall be submitted for the month following the month in which the threshold was exceeded. If during the **period of four calendar quarter following the transition** the taxable person does not exceed one-by-one the threshold of 50,000 Euro, (and is otherwise not required to submit a monthly VAT return for the tax assessment period following the fourth calendar quarter under the general rules on the frequency of the tax returns), after the fourth calendar quarter, the taxpayer may switch to a quarterly frequency again.

On form No. 'A60, different types of transactions shall be shown on different sheets/pages.

There is no need to declare a period during which the taxable person has not carried out any intra-Community trade.

The transaction, the amount relating to intra-Community trade shall be subject of a recapitulative statement for the period in which the tax became chargeable. If the tax base of the community transaction already included in the recapitulative statement or the consideration of that in the case of the supply of services outside the scope of the VAT Act **reduces subsequently** according to Section 153/B (1) of the VAT Act, the taxable person shall not retroactively correct his recapitulative statement containing the original transaction. He shall account for the amount of the adjustment, i.e. the difference in the recapitulative statement for the period in which the person acquiring the goods or the recipient of the service **received notification** of the amount of the adjustment.

In all other cases, when the tax base of the community transaction changes subsequently but not pursuant to the provisions involved in Section 153/B of the VAT Act, the taxable person shall self-audit his original return and correct his original recapitulative statement retrospectively.

National Tax and Customs Administration