



**VAT.**

**Current Problems with Fraud and  
Abuse and Prospects for Future**

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Brno 2017

# AGENDA

- VAT. Introductory remarks
- Types of VAT fraud
- Fraud vs. abuse
- Why is VAT fraud possible?
- Case law and VAT fraud
- Legislative measures against VAT fraud
- Revolutionary change of the VAT system as a solution
- Other developments



Old Town Panorama

# INTRODUCTORY REMARKS

# VAT. INTRODUCTORY REMARKS

**VAT applies generally to transactions relating to goods or services.**

Taxable transactions:

- supply of goods:
  - domestic supply
  - exportation (zero-rated)
  - intra-Community supply (zero-rated)
- supply of services
- importation of goods
- intra-Community acquisition of goods

# VAT. INTRODUCTORY REMARKS

**‘Supply of goods’** shall mean the transfer of the right to dispose of tangible property as owner.

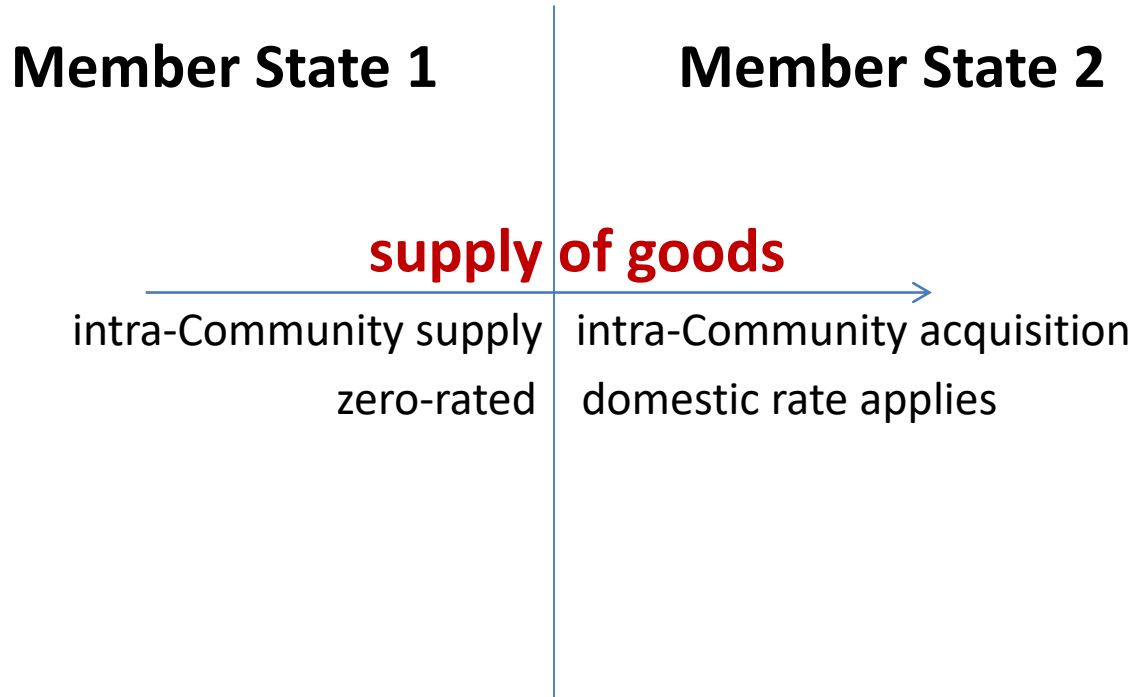
Art. 14(1) of the VAT Directive

**‘Supply of services’** shall mean any transaction which does not constitute a supply of goods.

Art. 24(1) of the VAT Directive

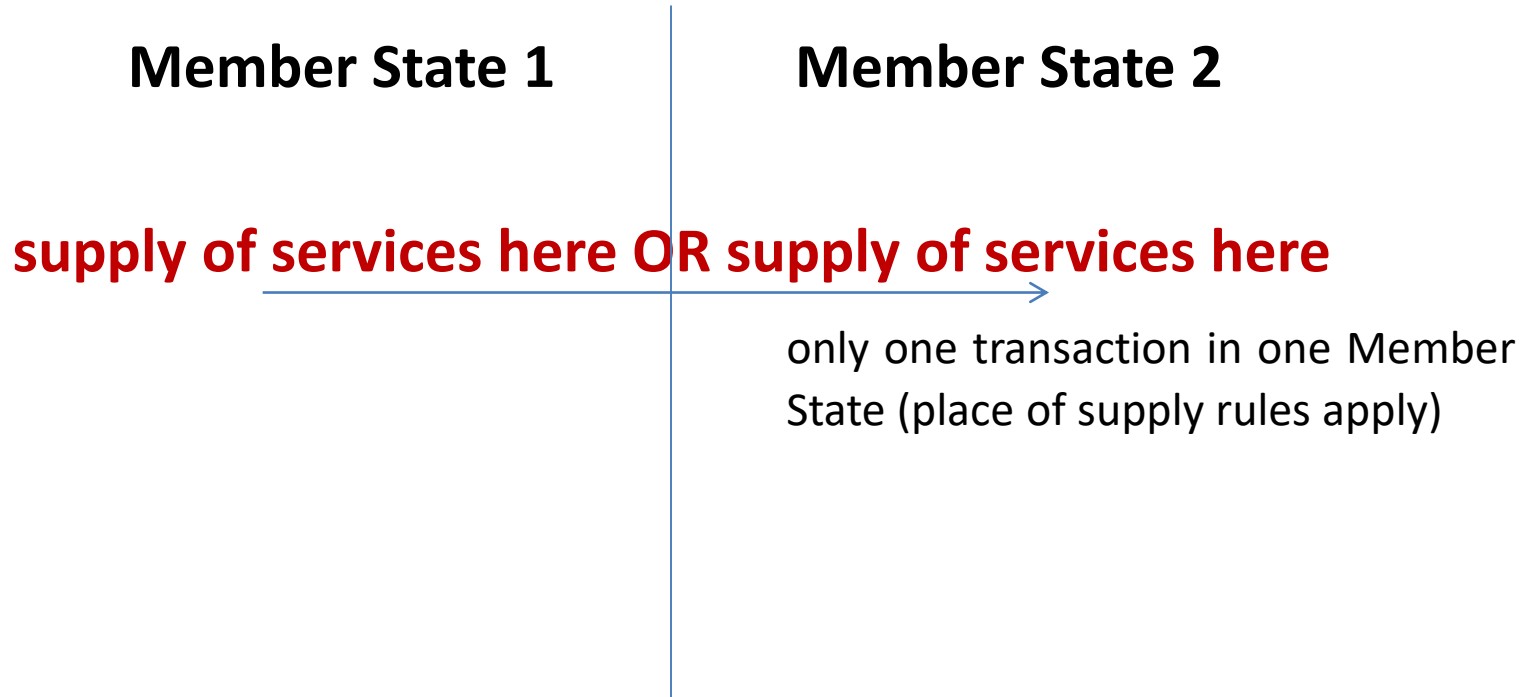
# VAT. INTRODUCTORY REMARKS

## Intra-Community transactions in goods



# VAT. INTRODUCTORY REMARKS

## Cross-border supplies of services



# VAT. INTRODUCTORY REMARKS

**VAT is proportional to the price charged by the taxable person in return for the goods and services which he has supplied.**



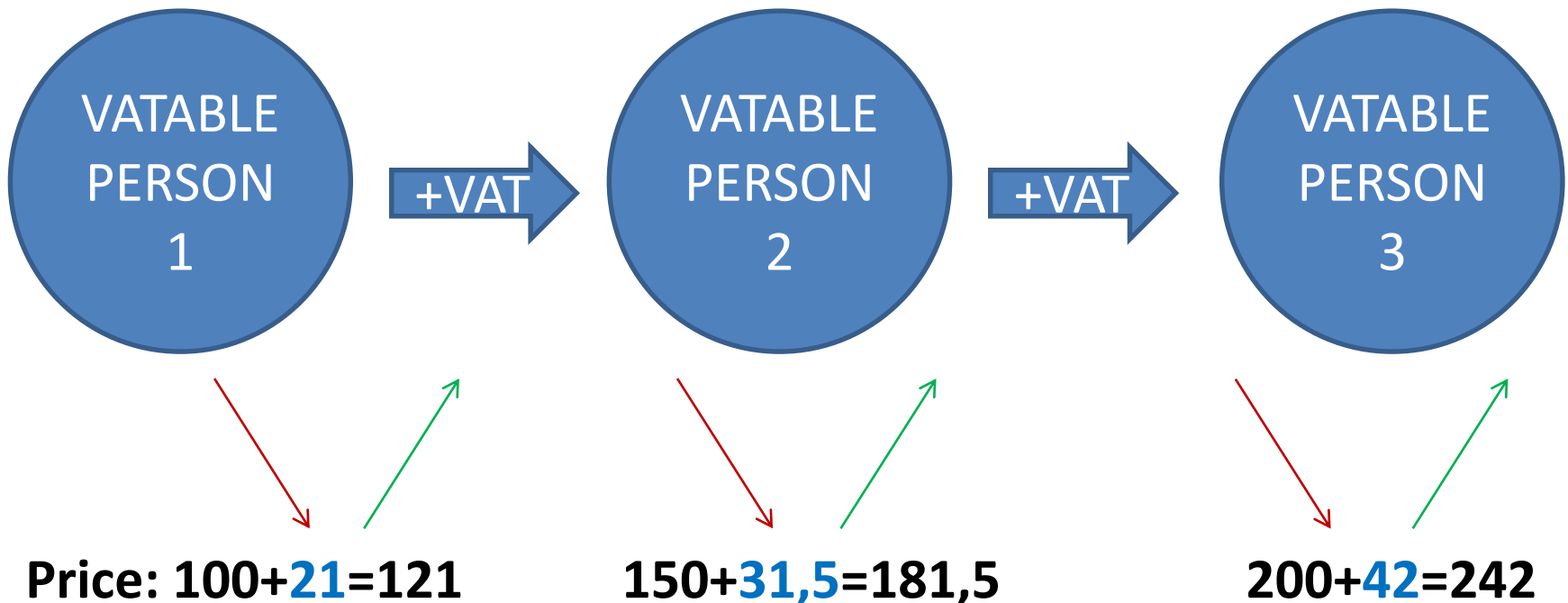


# VAT. INTRODUCTORY REMARKS

Czech Republic: standard rate – 21%

→ VAT DUE

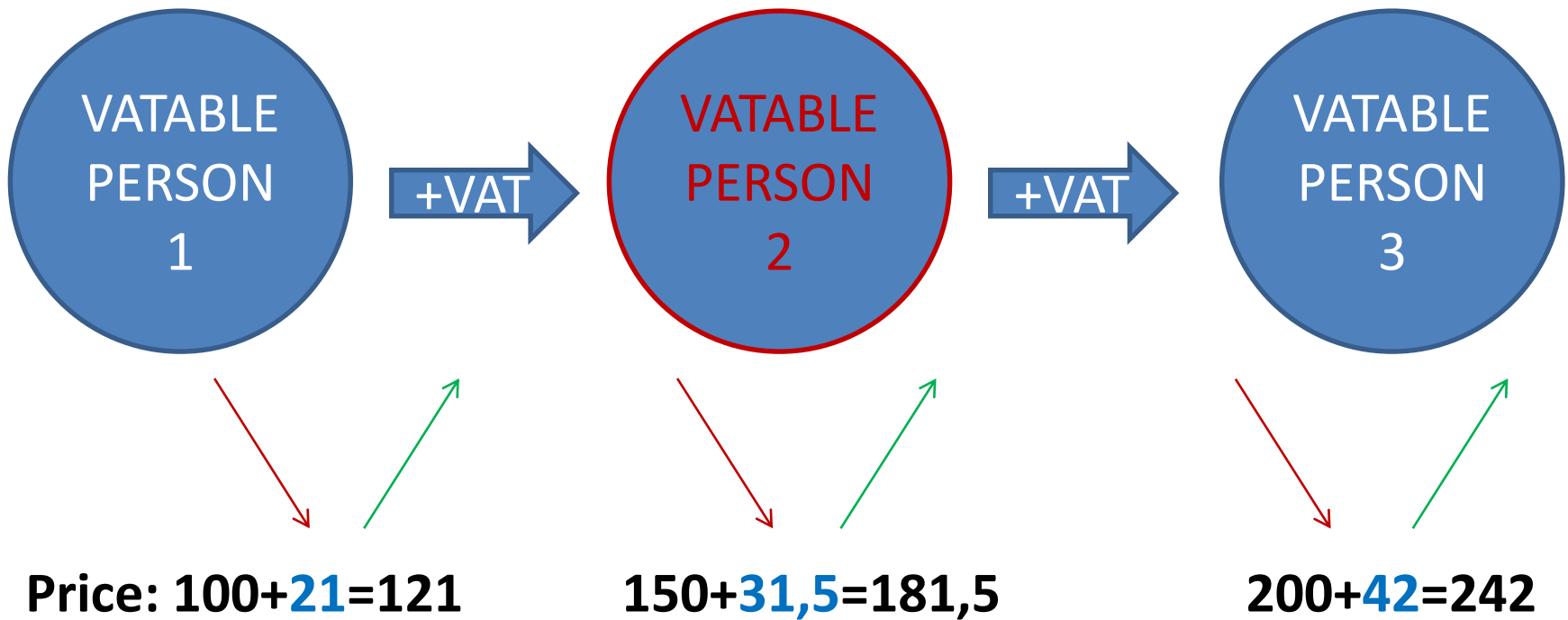
→ INPUT VAT



# VAT. INTRODUCTORY REMARKS

Tax to be remitted to tax authorities by **VATABLE PERSON 2:**

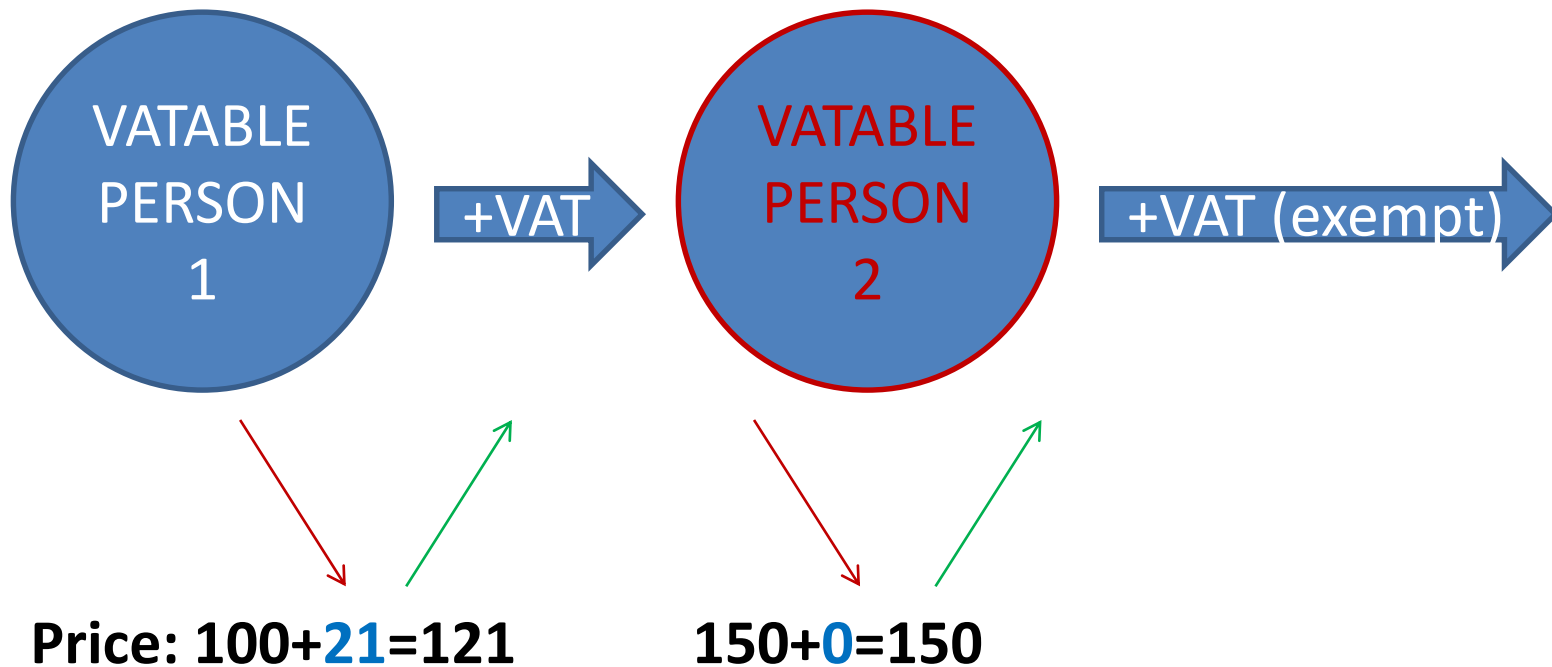
$$31,5 - 21 = 10,5$$



# VAT. INTRODUCTORY REMARKS

**VATABLE PERSON 2** carries out exempt transactions:

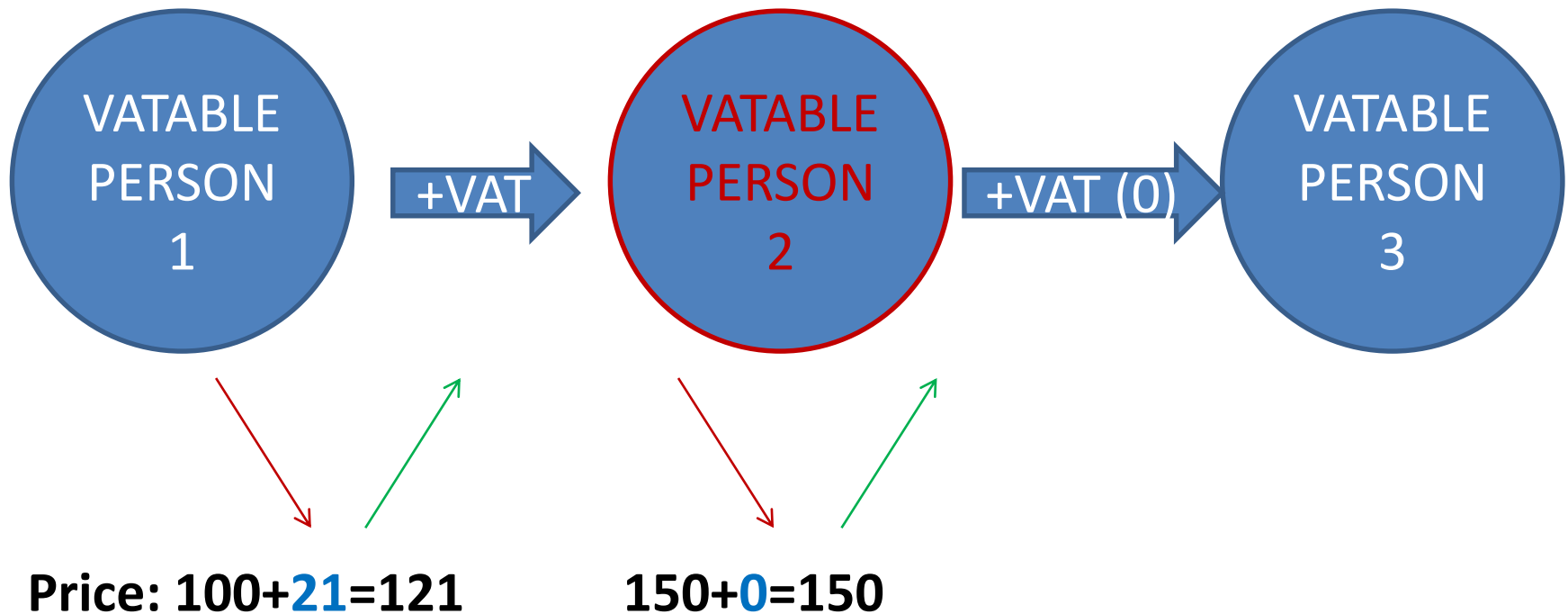
no VAT due no right to deduct (exceptions exist)



# VAT. INTRODUCTORY REMARKS

**VATABLE PERSON 2** carries out zero-rated transactions:

$$0 - 21 \text{ (right to deduct still exists)} = -21$$



# VAT. INTRODUCTORY REMARKS

**The final burden of VAT rests ultimately on the consumer.  
No right to deduct.**

# VAT. INTRODUCTORY REMARKS

**The final burden of VAT rests ultimately on the consumer.**

**a consumer**

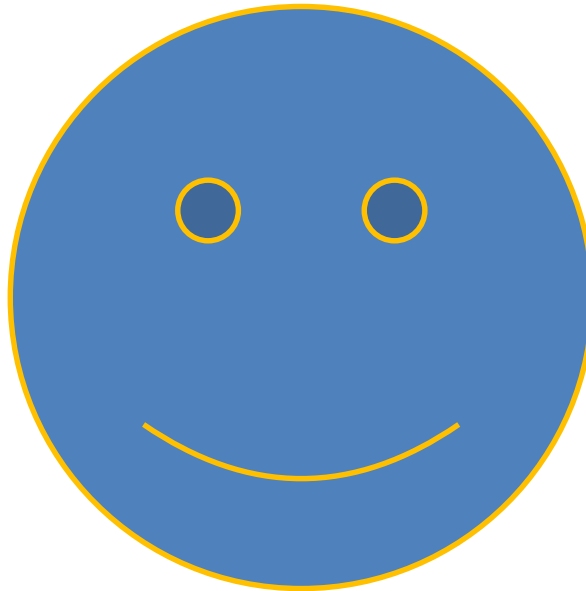


# VAT. INTRODUCTORY REMARKS

**The final burden of VAT rests ultimately on the consumer.**

**a vatable person**

**C-110/94 INZO**  
**C-219/12 Fuchs**



# VAT. INTRODUCTORY REMARKS

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

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as ‘**economic activity**’. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

Art. 9(1) of the VAT Directive



# VAT. INTRODUCTORY REMARKS

Every taxable person shall state when his activity as a taxable person commences, changes or ceases.

Art. 213(1)(first sentence) of the VAT Directive

Town Hall

# TYPES OF VAT FRAUD



# TYPES OF VAT FRAUD

**VAT Gap** – the difference between the amount of VAT actually collected and the VAT Total Tax Liability (VTTL), in absolute or percentage terms.

[http://europa.eu/rapid/press-release\\_MEMO-15-5593\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5593_en.htm)

# TYPES OF VAT FRAUD

## VAT Gap (estimates for 2013)

<b>EU-26</b>	<b>167 654 million euro</b>	<b>15.2 %</b>
Czech Republic	2761 milion euro	19.1 %
Finland	812 million euro	4.1 %
Italy	<b>47 516 million euro</b>	33.6 %
Poland	10 131 million euro	26.7 %
Romania	8 296 million euro	<b>41.1 %</b>
Slovenia	<b>186 million euro</b>	5.8 %
Spain	12 094 million euro	16.5 %

[http://europa.eu/rapid/press-release\\_MEMO-15-5593\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5593_en.htm)

# TYPES OF VAT FRAUD

## **Types of VAT fraud:**

- underreported supplies,
- inflated refund claims,
- domestic sales disguised as exports or intra-Community supplies,
- fictitious traders,
- missing traders,
- carousel fraud.

# TYPES OF VAT FRAUD

## **Underreported supplies**

Consumers of goods and services have no right to deduct. VAT constitutes additional cost for them.

## **Inflated refund claims**

# TYPES OF VAT FRAUD

**Domestic sales disguised as exports or intra-Community supplies**

**domestic supplies  
e.g. 21% VAT rate**



**export and  
intra-Community  
supplies zero-rated  
(exemption with the  
right to deduct)**

# TYPES OF VAT FRAUD

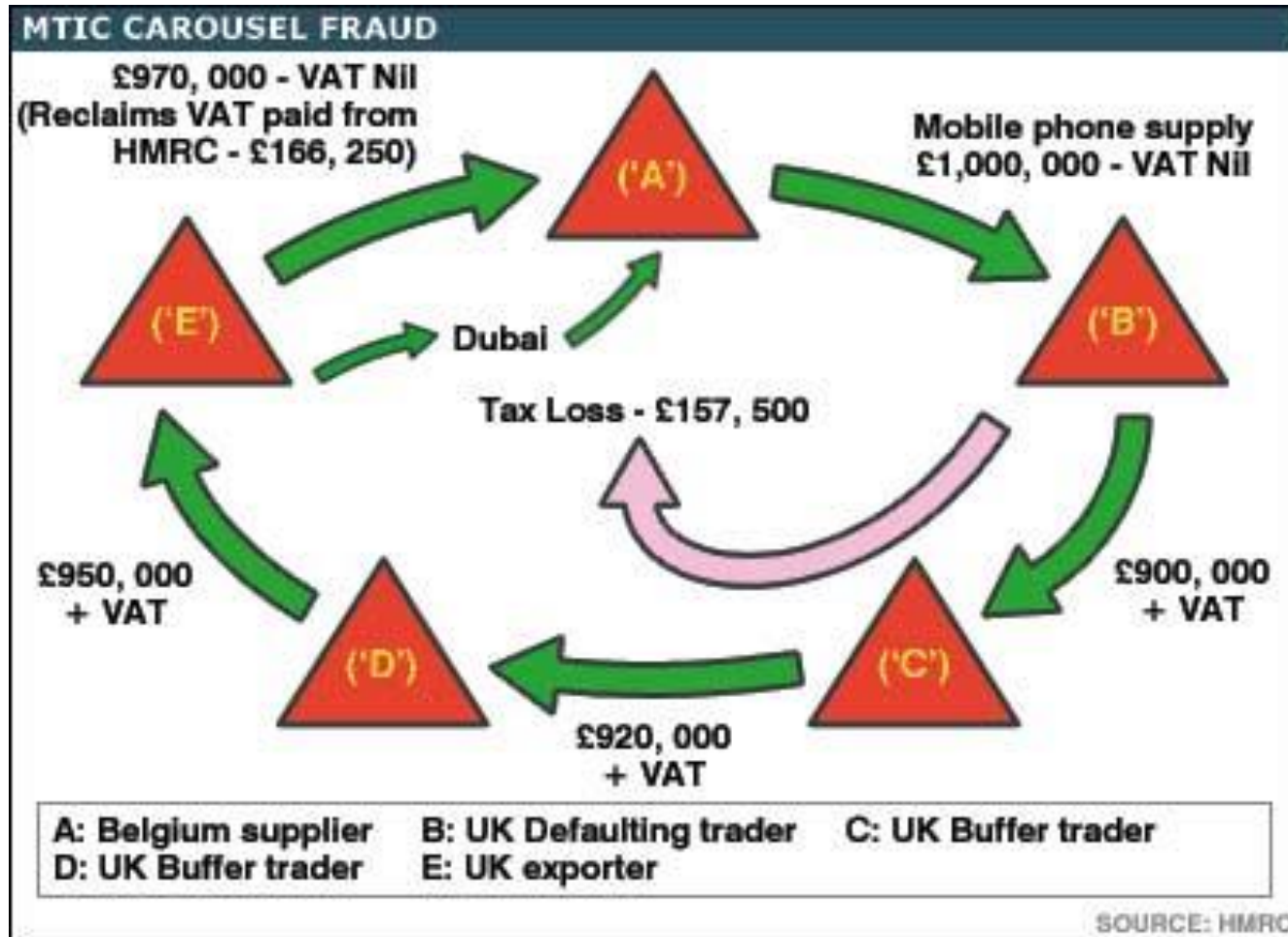
**Fictitious traders**

**Missing traders**

**Carousel fraud**



# TYPES OF VAT FRAUD



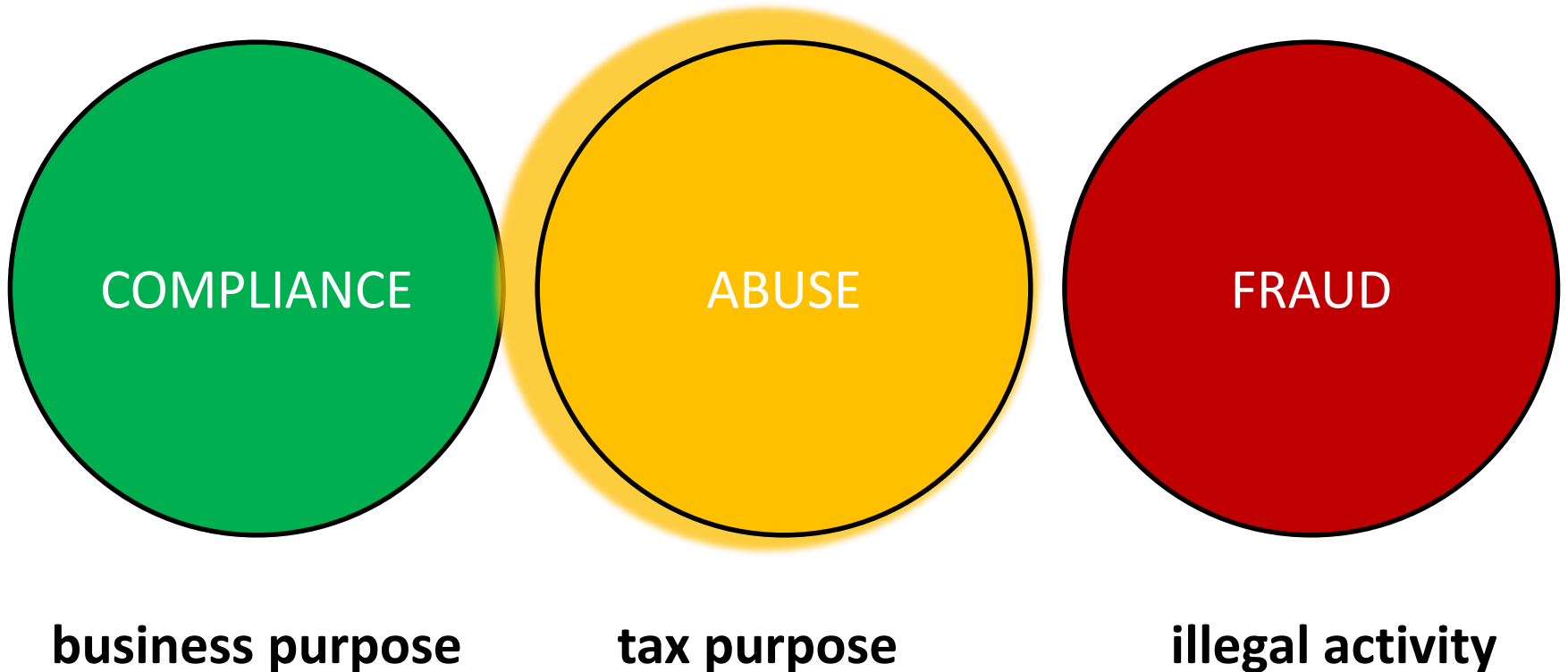


Copernicus in front of the Town Hall

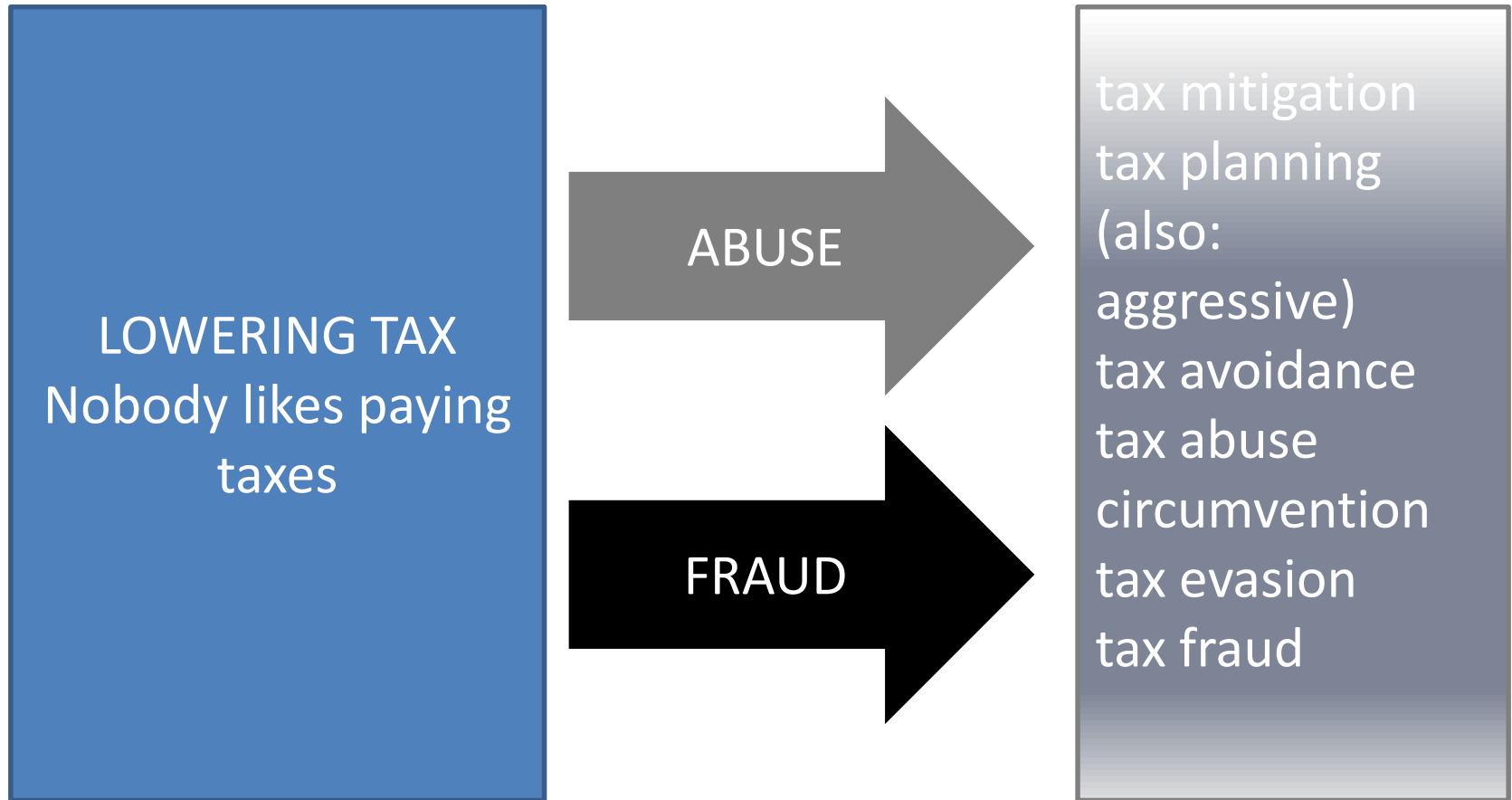
# FRAUD VS. ABUSE

NICOLAUS COPERNICUS  
TORUNENSIS  
IN TERRAE MOTU  
SOLE CAELIQUE STATO

# FRAUD VS. ABUSE



# FRAUD VS. ABUSE



# FRAUD VS. ABUSE

A finding that there is an **abuse presupposes an intention** on the part of the Community exporter to benefit from an **advantage** as a result of the application of the Community rules **by artificially creating the conditions** for obtaining it. Evidence of this must be placed before the national court in accordance with the rules of national law, for instance by establishing that there was collusion between that exporter and the importer of the goods into the non-member country.

C-110/99 Emsland-Stärke

# FRAUD VS. ABUSE

EU

CH



Export subsidies higher  
than customs duties

# FRAUD VS. ABUSE

The Sixth Directive must be interpreted as precluding any right of a taxable person to deduct input VAT where the transactions from which that right derives constitute an abusive practice. For it to be found that an abusive practice exists, it is necessary, first, that the transactions concerned, notwithstanding formal application of the conditions laid down by the relevant provisions of the Sixth Directive and of national legislation transposing it, result in the **accrual of a tax advantage the grant of which would be contrary to the purpose of those provisions**. Second, it must also be apparent from a number of objective factors that the **essential aim of the transactions concerned is to obtain a tax advantage**.

C-255/02 Halifax

# FRAUD VS. ABUSE

Articles 43 EC and 48 EC must be interpreted as precluding the inclusion in the tax base of a resident company established in a Member State of profits made by a controlled foreign company in another Member State, where those profits are subject in that State to a lower level of taxation than that applicable in the first State, unless such inclusion relates only to **wholly artificial arrangements intended to escape the national tax normally payable**. Accordingly, such a tax measure must not be applied where it is proven, on the basis of objective factors which are ascertainable by third parties, that despite the existence of tax motives that controlled company is actually established in the host Member State and carries on genuine economic activities there.



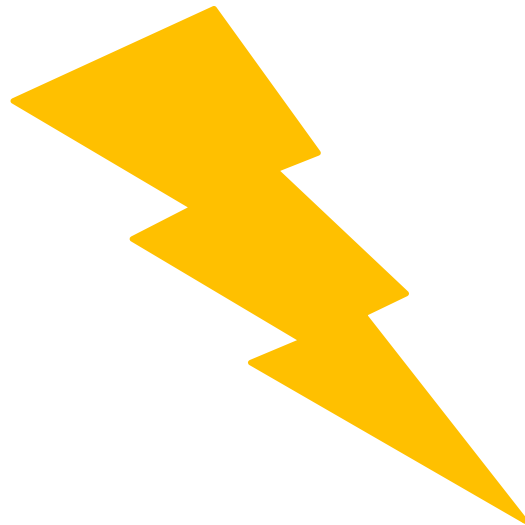
# FRAUD VS. ABUSE

It is incumbent upon the referring court to analyse all the circumstances of the main proceedings in order to determine whether that agreement constituted **a wholly artificial arrangement concealing the fact that the services at issue were not actually supplied** by the company acquiring the licence, but were in fact supplied by the company granting it, examining in particular whether the establishment of the place of business or fixed establishment of the company acquiring the licence was not genuine...

C-419/14 WebMindLicenses Kft.

# FRAUD VS. ABUSE

**FRAUD  
TAX EVASION**



**TAX ABUSE  
TAX AVOIDANCE**

# FRAUD VS. ABUSE

**The Court of Justice often mentions tax fraud and tax abuse simultaneously.**

**The VAT Directive allows Member States to introduce measures aimed at eliminating tax evasion and tax avoidance (at the same time).**



St. John's Cathedral

# WHY IS VAT FRAUD POSSIBLE?

# WHY IS VAT FRAUD POSSIBLE?

In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply.

Art. 73 of the VAT Directive

# WHY IS VAT FRAUD POSSIBLE?

In order to prevent tax evasion or avoidance, Member States may in any of the following cases take measures to ensure that, in respect of the supply of goods or services involving family or other close personal ties, management, ownership, membership, financial or legal ties as defined by the Member State, the taxable amount is to be the open market value

Art. 80 (in principio) of the VAT Directive

# WHY IS VAT FRAUD POSSIBLE?

Every taxable person shall keep accounts in sufficient detail for VAT to be applied and its application checked by the tax authorities.

Art. 242 of the VAT Directive

Every taxable person shall submit a VAT return setting out all the information needed to calculate the tax that has become chargeable and the deductions to be made including, in so far as is necessary for the establishment of the basis of assessment, the total value of the transactions relating to such tax and deductions and the value of any exempt transactions.

Art. 250(1) of the VAT Directive

# WHY IS VAT FRAUD POSSIBLE?

- Goods sent to third countries are rarely examined at borders.
- No border controls in intra-EU trade.



# WHY IS VAT FRAUD POSSIBLE?

A right of deduction shall arise at the time **the deductible tax becomes chargeable.**

Art. 167 of the VAT Directive

The chargeable event shall occur and VAT shall become chargeable **when the goods or the services are supplied.**

Art. 63 of the VAT Directive



M  
A

Hotel \*\*\*  
Retman  
restauracja • pub

3 Franz Zähler 3

Rabianka Street

CASE LAW AND VAT FRAUD

# CASE LAW AND VAT FRAUD

Transactions such as those at issue in the main proceedings, which are not themselves vitiated by VAT fraud, constitute supplies of goods or services effected by a taxable person acting as such and an economic activity within the meaning of Articles 2(1), 4 and 5(1) of the Sixth Directive, where they fulfil the objective criteria on which the definitions of those terms are based, regardless of the intention of a trader other than the taxable person concerned involved in the same chain of supply and/or the possible fraudulent nature of another transaction in the chain, prior or subsequent to the transaction carried out by that taxable person, of which that taxable person had no knowledge and no means of knowledge.

C-354/03, C-355/03 and C-484/03 Optigen

# CASE LAW AND VAT FRAUD

The right to deduct input VAT of a taxable person who carries out such transactions cannot be affected by the fact that in the chain of supply of which those transactions form part another prior or subsequent transaction is vitiated by VAT fraud, without that taxable person knowing or having any means of knowing.

C-354/03, C-355/03 and C-484/03 Optigen

# CASE LAW AND VAT FRAUD

## KNOWLEDGE TEST QUESTION NO. 1

Am I a fraudster?



Yes, I am.

**No right to deduct**

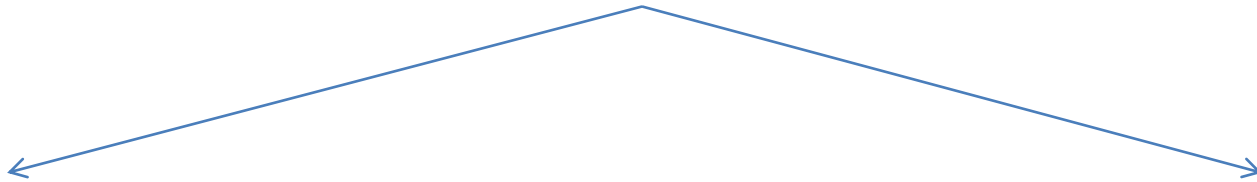
No, I am not.

Next question

# CASE LAW AND VAT FRAUD

## KNOWLEDGE TEST QUESTION NO. 2

Do I know that my supplier is a fraudster?



Yes, I do.

**No right to deduct**

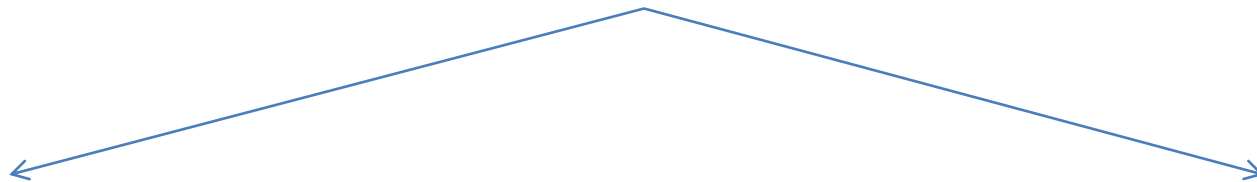
No, I don't.

Next question

# CASE LAW AND VAT FRAUD

## KNOWLEDGE TEST QUESTION NO. 3

Should I reasonably know that my supplier is a fraudster?



**Yes, I should.**

**No right to deduct**

**No, I had no grounds to suspect...**

**I can deduct input VAT**

# CASE LAW AND VAT FRAUD

## **GOOD FAITH WHEN BASIC REQUIREMENTS HAVE NOT BEEN MET**

zero-rating: C-409/04 Teleos and C-271/06 Netto Supermarkt

right to deduct: ? (see the reference in C-277/14 Stehcamp)



# CASE LAW AND VAT FRAUD

## **What if:**

domestic legal order does not refer to good faith?

## **Example: Poland**

Where the sale of goods or services has been documented by invoices or corrective invoices issued by a trader who does not exist (a 'non-existent trader'), those invoices and customs documents may not form the basis for reducing the tax due and refunding the value added tax credit or refunding input tax.

No right to deduct when documented transaction has not actually taken place.

# CASE LAW AND VAT FRAUD

- **C-18/13 Maks Pen**
- **C-131/13 Italmoda**

# CASE LAW AND VAT FRAUD

Where the national courts must or may raise of their own motion points of law based on binding rules of national law, they must do so in relation to a binding rule of European Union law such as that which requires that the national courts and authorities refuse entitlement to the right to deduct value added tax where it is established, in the light of objective evidence, that that right is being relied on for fraudulent or abusive ends.

C-18/13 Maks Pen

# CASE LAW AND VAT FRAUD

It is incumbent on those courts, in the assessment of whether that right to deduct was relied on for fraudulent or abusive ends, to **interpret the national law, so far as possible**, in the light of the wording and the purpose of Directive 2006/112, in order to achieve the result sought by that directive, which requires that they do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and **applying the interpretative methods recognised by that law.**

C-18/13 Maks Pen

# CASE LAW AND VAT FRAUD

Sixth VAT Directive must be interpreted as meaning that it is for the national authorities and courts to refuse a taxable person, in the context of an intra-Community supply, the benefit of the rights to deduction of, exemption from or refund of value added tax, **even in the absence of provisions of national law providing for such refusal**, if it is established, in the light of objective factors, that that taxable person knew, or should have known, that, by the transaction relied on as a basis for the right concerned, it was participating in evasion of value added tax committed in the context of a chain of supplies.

C-131/13 Italmoda

# CASE LAW AND VAT FRAUD

**Does «Italmoda» apply to abuse as well?**

Leaning Tower

# LEGISLATIVE MEASURES AND FRAUD



# LEGISLATIVE MEASURES AND FRAUD

## Measures

```
graph TD; Measures --> Legal["(nearly) purely legal:"]; Measures --> Technical["legal + technical:"]; Legal --- L1["reverse charge"]; Legal --- L2["joint and several liability"]; Legal --- L3["split payment"]; Technical --- T1["electronic invoicing"]; Technical --- T2["(+ database)"];
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(nearly) purely legal:

reverse charge

joint and several liability

split payment

legal + technical:

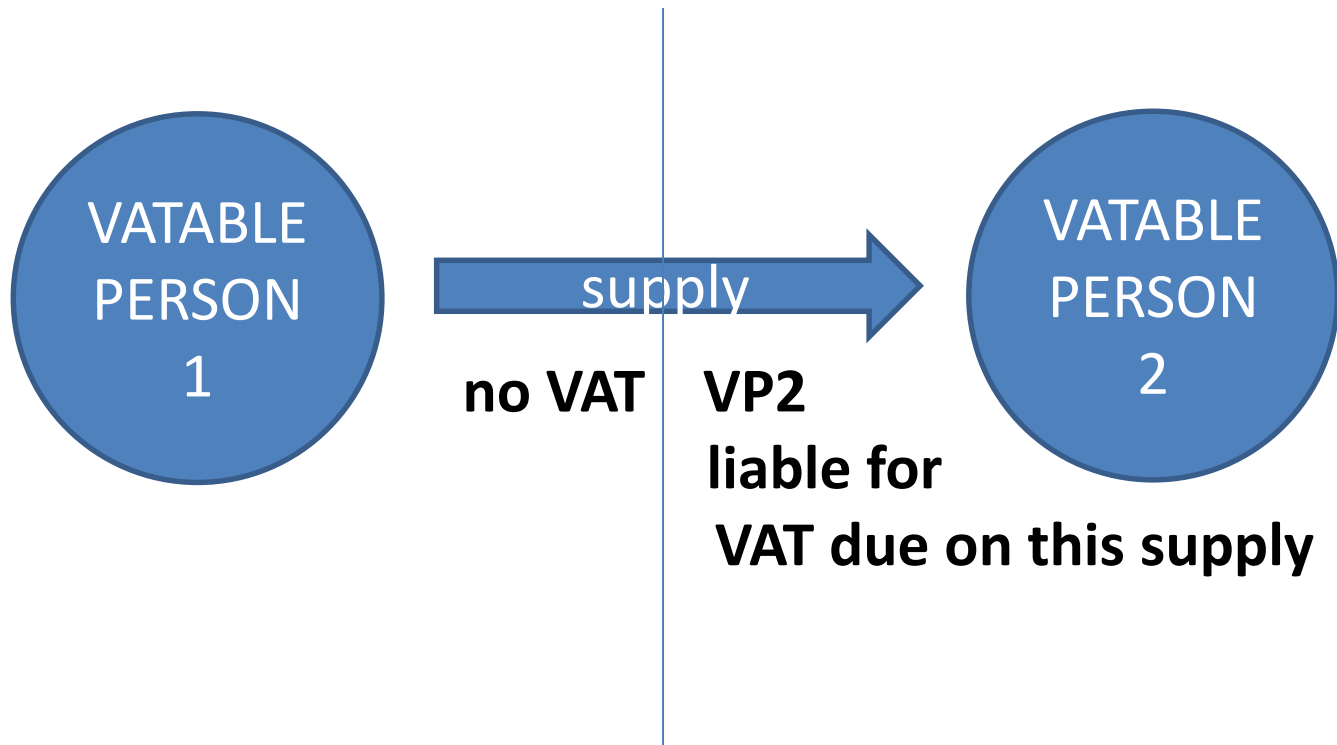
electronic invoicing

(+ database)



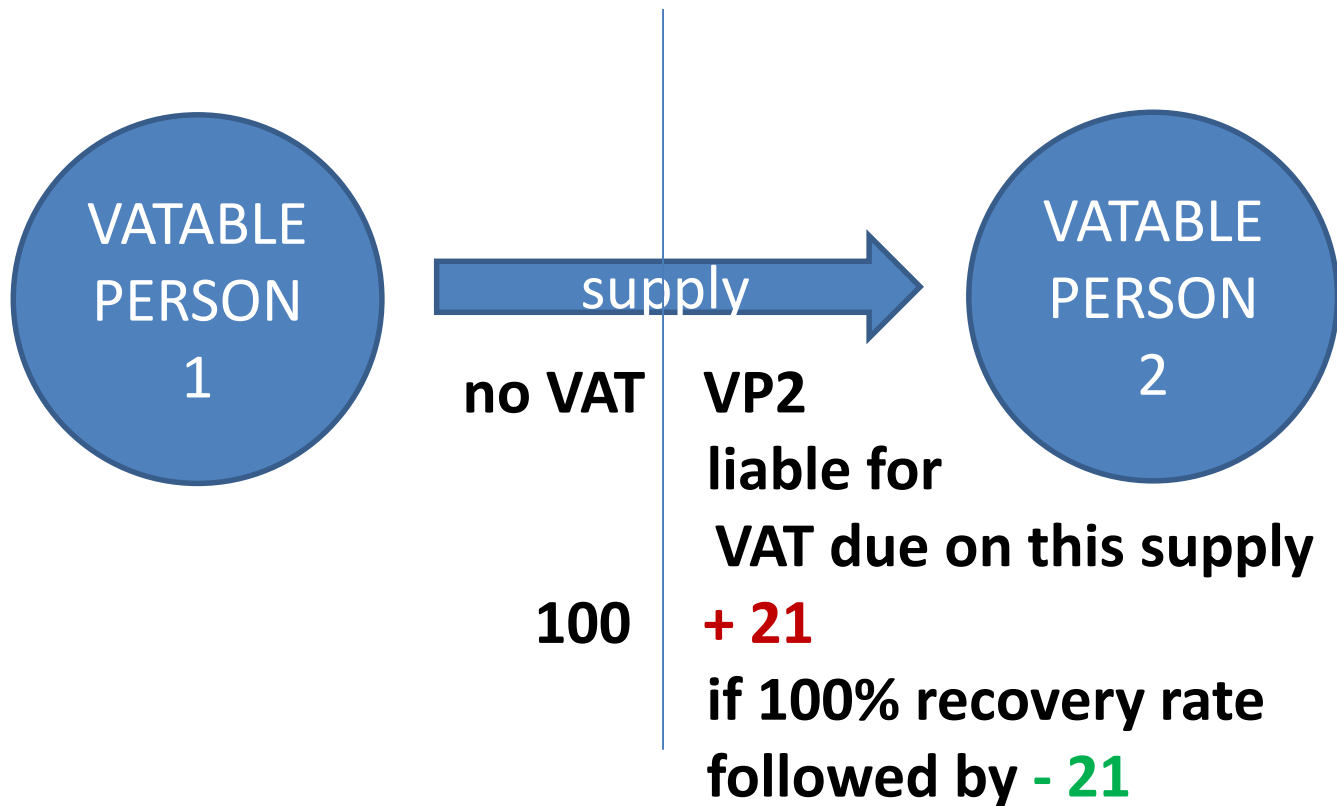
# LEGISLATIVE MEASURES AND FRAUD

## Reverse charge mechanism



# LEGISLATIVE MEASURES AND FRAUD

## Reverse charge mechanism



# LEGISLATIVE MEASURES AND FRAUD

## **Reverse charge mechanism (cross-border)**

VAT shall be payable by the person to whom the goods are supplied when the following conditions are met:

- (a)** the taxable transaction is a supply of goods carried out in accordance with the conditions laid down in Article 141;
- (b)** the person to whom the goods are supplied is another taxable person, or a non-taxable legal person, identified for VAT purposes in the Member State in which the supply is carried out;
- (c)** the invoice issued by the taxable person not established in the Member State of the person to whom the goods are supplied is drawn up in accordance with Sections 3 to 5 of Chapter 3.

Art. 197 of the VAT Directive

# LEGISLATIVE MEASURES AND FRAUD

## **Reverse charge mechanism (domestic supplies OBLIGATORY)**

- investment gold
- transactions between a taxable person who is a member of a regulated gold bullion market and another taxable person who is not a member of that market
- transactions taxed pursuant to Art. 352 of the VAT Directive

Art. 198 of the VAT Directive

OBLIGATORY

# LEGISLATIVE MEASURES AND FRAUD

## **Reverse charge mechanism (domestic supplies FACULTATIVE)**

- (a)** the supply of construction work, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property, as well as the handing over of construction works regarded as a supply of goods,
- (b)** the supply of staff engaged in activities covered by point (a),
- (c)** the supply of immovable property, as referred to in Article 135(1)(j) and (k), where the supplier has opted for taxation of the supply pursuant to Article 137,

Art. 199 of the VAT Directive

# LEGISLATIVE MEASURES AND FRAUD

## **Reverse charge mechanism (domestic supplies FACULTATIVE)**

- (d)** the supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non industrial waste, recyclable waste, part processed waste and certain goods and services, as listed in Annex VI,
- (e)** the supply of goods provided as security by one taxable person to another in execution of that security,
- (f)** the supply of goods following the cession of a reservation of ownership to an assignee and the exercising of this right by the assignee,

Art. 199 of the VAT Directive

# LEGISLATIVE MEASURES AND FRAUD

## **Reverse charge mechanism (domestic supplies FACULTATIVE)**

- (g)** the supply of immovable property sold by a judgment debtor in a compulsory sale procedure.

Art. 199 of the VAT Directive

# LEGISLATIVE MEASURES AND FRAUD

## **Reverse charge mechanism (domestic supplies FACULTATIVE)**

Member States may, until 31 December 2018 and for a minimum period of two years, provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:

- (a)** the transfer of allowances to emit greenhouse gases as defined in Article 3 of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community, transferable in accordance with Article 12 of that Directive,

Art. 199a of the VAT Directive



# LEGISLATIVE MEASURES AND FRAUD

## **Reverse charge mechanism (domestic supplies FACULTATIVE)**

- (b)** the transfer of other units that may be used by operators for compliance with the same Directive,
- (c)** supplies of mobile telephones, being devices made or adapted for use in connection with a licensed network and operated on specified frequencies, whether or not they have any other use,
- (d)** supplies of integrated circuit devices such as microprocessors and central processing units in a state prior to integration into end user products,

Art. 199a of the VAT Directive

# LEGISLATIVE MEASURES AND FRAUD

## **Reverse charge mechanism (domestic supplies FACULTATIVE)**

- (e)** supplies of gas and electricity to a taxable dealer as defined in Article 38(2),
- (f)** supplies of gas and electricity certificates,
- (g)** supplies of telecommunication services as defined in Article 24(2),
- (h)** supplies of game consoles, tablet PC's and laptops,
- (i)** supplies of cereals and industrial crops including oil seeds and sugar beet, that are not normally used in the unaltered state for final consumption,

Art. 199a of the VAT Directive

# LEGISLATIVE MEASURES AND FRAUD

## **Reverse charge mechanism (domestic supplies FACULTATIVE)**

- (j)** supplies of raw and semi-finished metals, including precious metals, where they are not otherwise covered by point (d) of Article 199(1), the special arrangements for second-hand goods, works of art, collector's items and antiques pursuant to Articles 311 to 343 or the special scheme for investment gold pursuant to Articles 344 to 356.

Art. 199a of the VAT Directive

# LEGISLATIVE MEASURES AND FRAUD

## **Reverse charge mechanism (domestic supplies FACULTATIVE)**

A Quick Reaction Mechanism (**QRM**) - special measure to combat sudden and massive fraud liable to lead to considerable and irreparable financial losses

Art. 199b of the VAT Directive

# LEGISLATIVE MEASURES AND FRAUD

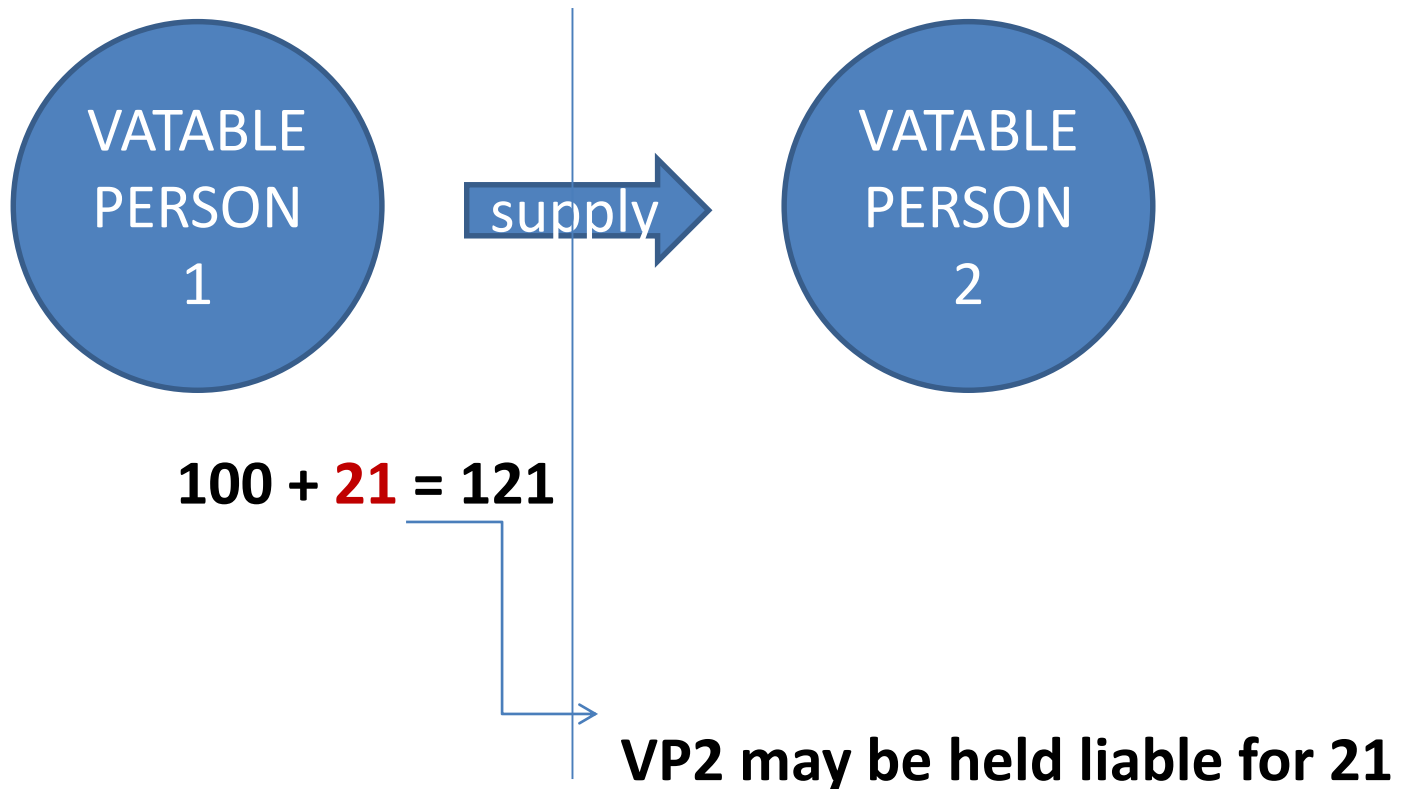
## **Reverse charge mechanism (domestic supplies FACULTATIVE)**

- 1) a Member State applies to the European Commission (cc: other Member States) – simultaneously: application for a special measure
- 2) the European Commission may ask for further information within 2 weeks
- 3) ... and further information within 1 week
- 4) negative opinion or confirmation of the European Commission within 1 month
- 5) if confirmation received the Member State may apply the measure from that date

Art. 199b of the VAT Directive

# LEGISLATIVE MEASURES AND FRAUD

## Joint and several liability



# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability**

- **C-384/04 Federation of Technological Industries**
- **C-499/10 Vlaamse Oliemaatschappij**

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability**

Member States are permitted to enact measures under which a person is to be jointly and severally liable to pay a sum in respect of VAT payable by another person.



# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability**

In the exercise of the powers conferred on them by European Union directives, Member States must respect the general principles of law that form part of the European Union legal order, which include, in particular, the principles of legal certainty and proportionality.

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability**

Whilst it is legitimate for the measures adopted by the Member States to seek to preserve the rights of the public exchequer as effectively as possible, such measures must not go further than is necessary for that purpose.

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability**

A system of strict joint and several liability go beyond what is necessary to preserve the public exchequer's rights. Imposing responsibility for paying VAT on a person other than the person liable to pay that tax, even where that person is an authorised tax warehouse-keeper bound by the specific obligations referred to in Directive 92/12, without allowing him to escape liability by providing proof that he had nothing whatsoever to do with the acts of the person liable to pay the tax must, therefore, be considered contrary to the principle of proportionality. It would clearly be disproportionate to hold that person unconditionally liable for the shortfall in tax caused by acts of a third party over which he has no influence whatsoever.

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability**

It is not contrary to European Union law to require the person other than the personal liable to pay the tax to take every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion.

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability**

The fact that the person other than the person liable to pay the tax acted in good faith, exhibiting all the due diligence of a circumspect trader, that he took every reasonable measure in his power and that his participation in fraud is excluded are important points in deciding whether that person can be obliged to account for the VAT owed.

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability C-499/10 Vlaamse Oliemaatschappij**

VOM is a service provider which unloads, stores in (tax) warehouses and transfers onto lorries petroleum products arriving by boat for its customers. The customers store the goods in those warehouses until they are sold to the final customer, mainly retail petrol filling stations. For those services, VOM invoices a 'service fee' which depends on the number of litres handled.

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability C-499/10 Vlaamse Oliemaatschappij**

Article 51a(3) of the Belgian Value Added Tax Code provides: 'In the case of warehousing arrangements other than customs warehousing, the warehouse-keeper, the person responsible for the transport of the goods from the warehouse as well as, where applicable, his principal, are jointly and severally liable towards the State for the payment of the tax, together with the persons who are liable for the tax... '

# LEGISLATIVE MEASURES AND FRAUD

**Joint and several liability C-499/10 Vlaamse Oliemaatschappij Ghebra NV ('Ghebra')** was a fuel wholesaler and stored its petroleum products in VOM's warehouse. On 20 June 2003 Ghebra was declared insolvent.



# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability C-499/10 Vlaamse Oliemaatschappij**

Ghebra NV was a fuel wholesaler and stored its petroleum products in VOM's warehouse. On 20 June 2003 Ghebra was declared insolvent.

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability C-384/04 FTI**

Sections 17 and 18 of the Finance Act 2003 (UK) were enacted to combat 'missing trader' intra-Community fraud, including 'carousel' fraud, in the field of VAT.

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability C-384/04 FTI**

The national measures at issue in the main proceedings provide that a taxable person other than the person who is liable can be made jointly and severally liable to pay the VAT with the latter person if, at the time of the supply to him, the former knew or had reasonable grounds to suspect that some or all of the VAT payable in respect of that supply, or of any previous or subsequent supply of those goods, would go unpaid.

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability C-384/04 FTI**

A person is presumed to have reasonable grounds for suspecting that such is the case if the price payable by that person was less than the lowest price that might reasonably be expected to be payable for those goods on the market, or was less than the price payable on any previous supply of those goods. That presumption is rebuttable on proof that the low price payable for the goods was attributable to circumstances unconnected with failure to pay VAT.

# LEGISLATIVE MEASURES AND FRAUD

## **Joint and several liability C-384/04 FTI**

While Article 21(3) of the Sixth Directive allows a Member State to make a person jointly and severally liable for the payment of VAT if, at the time of the supply, that person knew or had reasonable grounds to suspect that the VAT payable in respect of that supply, or of any previous or subsequent supply, would go unpaid, and to rely on presumptions in that regard, it is none the less true that such presumptions may not be formulated in such a way as to make it practically impossible or excessively difficult for the taxable person to rebut them with evidence to the contrary.

# LEGISLATIVE MEASURES AND FRAUD

## Split payment

price  
(VAT inclusive)

price (seller's account)

VAT (seller's VAT account)

Taxable person has limited  
rights to this account

# LEGISLATIVE MEASURES AND FRAUD

## **Split payment**

Is it in line with the Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions?

**'Amount due'** means the principal sum which should have been paid within the contractual or statutory period of payment, including the applicable taxes, duties, levies or charges specified in the invoice or the equivalent request for payment.

# LEGISLATIVE MEASURES AND FRAUD

## **Electronic invoicing (+ database)**

all transactions registered electronically (a cloud)



# LEGISLATIVE MEASURES AND FRAUD

## **Denying VAT registration?**

C-527/11 Ablessio

new Romanian registration rules

The image shows a modern architectural structure with a facade of large, light-colored concrete panels. Several cantilevered sections of the building feature a dark, textured surface. A black sign with white text is mounted on the wall. The sky is clear and blue, and some trees are visible in the background.

Congress Hall (2015)

# REVOLUTION IN THE VAT SYSTEM

# REVOLUTION IN THE VAT SYSTEM?

**Different options for B2B intra-EU supplies of goods  
analysed by the VAT Expert Group (2012-2014)**  
(presentation partly based on documents  
of the European Commission)

# REVOLUTION IN THE VAT SYSTEM?

## **Maintaining the status quo (option no. 1)**

Number of transactions: **2**  
Place of taxation: **place of departure (0%)/place of arrival**  
Person liable for: **supplier (0%)/customer**

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

**Adapting current rules whilst still following the flow of the goods with the supplier charging the VAT of the Member State of destination (option no. 2a)**

Number of transactions: **1**  
Place of taxation: **place of arrival**  
Person liable for: **supplier**

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

**Adapting current rules whilst still following the flow of the goods with the reverse charge mechanism (option no. 2b)**

Number of transactions: **1**  
Place of taxation: **place of arrival**  
Person liable for: **customer when the supplier is not established in the state of taxation**

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

**Aligning with the rules governing B2C sales with the supplier charging the VAT of the Member State of destination (option no. 3a)**

Number of transactions: **1**

Place of taxation: **place of departure or place of arrival**

Person liable for: **supplier**

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

**Aligning with the rules governing B2C sales with the reverse charge mechanism (option no. 3b)**

Number of transactions: **1**

Place of taxation: **place of departure or place of arrival**

Person liable for: **customer when the supplier is not established in the state of taxation**

**advantages/disadvantages**



# REVOLUTION IN THE VAT SYSTEM?

**Aligning with the rules governing the place of supply of services with the supplier charging the VAT of the Member State of destination (option no. 4a)**

Number of transactions: **1**  
Place of taxation: **place of establishment of the customer**  
Person liable for: **supplier**

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

**Aligning with the rules governing the place of supply of services with the reverse charge mechanism (option no. 4b)**

Number of transactions: **1**

Place of taxation: **place of establishment of the customer**

Person liable for: **customer**

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

**Aligning with the contractual flows with the supplier charging the VAT of the Member State of destination (option no. 5a)**

Number of transactions: **1 or 2**

Place of taxation: **place of establishment of the customer/place of establishment incurring the costs**

Person liable for: **supplier/customer**

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

**Aligning with the contractual flows with the reverse charge mechanism (option no. 5b)**

Number of transactions: **1 or 2**

Place of taxation: **place of business of the customer/place of the establishment incurring the costs**

Person liable for: **customer**

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

## **Viable Integrated VAT (VIVAT) (option no. 6)**

Number of transactions:	<b>1</b>
Place of taxation:	<b>place of departure/adjustments in the place of arrival of the transport</b>
Person liable for:	<b>supplier /customer (for adjustments)</b>

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

## **Compensating VAT (CVAT) (option no. 7)**

Number of transactions:	<b>1</b>
Place of taxation:	<b>place of departure/adjustments in the place of arrival of the transport</b>
Person liable for:	<b>supplier/customer (for adjustments)</b>

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

## **The Single European VAT Area (SEVA) (option no. 8)**

Number of transactions: **1**  
Place of taxation: **EU**  
Person liable for: **supplier**

**advantages/disadvantages**

# REVOLUTION IN THE VAT SYSTEM?

## **origin taxation**

Number of transactions: **1**  
Place of taxation: **EU**  
Person liable for: **supplier**

## **advantages/disadvantages**



# REVOLUTION IN THE VAT SYSTEM?

## Action Plan on VAT

### Recent and ongoing policy initiatives

Removing VAT obstacles to e-commerce in the Single Market

+

SMEs VAT package

### Urgent measures to tackle the VAT gap

Improving cooperation within the EU and with non-EU countries

Towards more efficient tax administrations

Improving voluntary compliance

Tax collection

### Towards a robust single European VAT area

Definitive VAT regime for cross-border trade

### Towards a modernised VAT rates policy

More freedom for Member States on rates policies

# REVOLUTION IN THE VAT SYSTEM?

**Proposal for a COUNCIL DIRECTIVE amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold.**

EUR 10 000 per invoice

# REVOLUTION IN THE VAT SYSTEM?

## RECENT CHANGES IN POLAND

### Registration and deregistration

- tax authorities can deny registration
- tax authorities can deregister taxable entities

# REVOLUTION IN THE VAT SYSTEM?

## RECENT CHANGES IN POLAND

### Documentation

- quarterly VAT returns nearly unavailable
- VAT returns submitted electronically (exceptions still exist)
- quarterly and annual recapitulative statements unavailable
- recapitulative statements filed electronically
- Single Control File submitted electronically

# REVOLUTION IN THE VAT SYSTEM?

## RECENT CHANGES IN POLAND

### Reverse charge:

- electronics
- metals
- scrap materials
- emission allowances
- construction services

# REVOLUTION IN THE VAT SYSTEM?

## RECENT CHANGES IN POLAND

### **Administrative penalties:**

- additional tax liability of 20%, 30% or 100%

### **Criminal penalties:**

- up to 25 years imprisonment

A scenic view of a pond in a wooded area. The foreground is dominated by tall, dry reeds. To the right, a wooden deck with a railing is visible. The pond is surrounded by bare trees, and the water reflects the sunlight. The overall atmosphere is peaceful and natural.

Barbarka

# OTHER DEVELOPMENTS

# OTHER DEVELOPMENTS

## **How neutral is VAT?**

A taxable person the right to deduct the input VAT paid for the acquisition or production of capital goods, for the purposes of a planned economic activity related to rural and recreational tourism, which are (i) directly intended for use by the public free of charge, and may (ii) enable taxed transactions to be carried out, provided that a direct and immediate link is established between the expenses associated with the input transactions and an output transaction or transactions giving rise to the right to deduct or with the taxable person's economic activity as a whole, which is a matter for the referring court to determine on the basis of objective evidence.

C-126/14 Sveda



# OTHER DEVELOPMENTS

## How neutral is VAT?

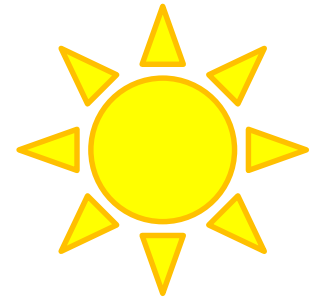
BALTIC MYTHOLOGY RECREATIONAL (DISCOVERY) PATH. BAR

free access

construction costs covered from public funds – 90%

the provision of accommodation, food and beverages, the organisation of trade fairs, conferences and leisure activities, as well as the engineering and consultation associated with those activities

# OTHER DEVELOPMENTS



## How neutral is VAT?

BALTIC MYTHOLOGY RECREATIONAL (DISCOVERY) PATH. BAR

free access

construction costs covered from public funds – 90%

the provision of accommodation, food and beverages, the organisation of trade fairs, conferences and leisure activities, as well as the engineering and consultation associated with those activities

# OTHER DEVELOPMENTS

## **How neutral is VAT?**

Article 168(e) of the VAT Directive must be interpreted as not precluding national legislation which excludes the deduction of VAT on import which the carrier, who is neither the importer nor the owner of the goods in question and has merely carried out the transport and customs formalities as part of its activity as a transporter of freight subject to VAT, is required to pay.

C-187/14 DSV Road

# OTHER DEVELOPMENTS



## How neutral is VAT?

Under the wording of Article 168(e) of the VAT Directive, a right to deduct exists only in so far as the goods imported are used for the purposes of the taxed transactions of a taxable person. In accordance with the settled case-law of the Court concerning the right to deduct VAT on the acquisition of goods or services, that condition is satisfied only where the cost of the input services is incorporated either in the cost of particular output transactions or in the cost of goods or services supplied by the taxable person as part of his economic activities.

C-187/14 DSV Road

# OTHER DEVELOPMENTS

## **What's in a service?**

Articles 2(1) and 6(1) of the Sixth Directive are to be interpreted as meaning that a sum paid as a deposit, in the context of a contract relating to the supply of hotel services which is subject to value added tax, is to be regarded, where the client exercises the cancellation option available to him and that sum is retained by the hotelier, as a fixed cancellation charge paid as compensation for the loss suffered as a result of client default and which has no direct connection with the supply of any service for consideration and, as such, is not subject to that tax.

C-277/05 Société thermale d'Eugénie-les-Bains

# OTHER DEVELOPMENTS

## **What's in a service?**

Article 24(1) of the VAT Directive must be interpreted as meaning that the term 'supply of services' includes subscription contracts for the supply of consulting services to an undertaking, in particular those of a legal, commercial or financial nature, under which a supplier has agreed to be available to the customer during the term of the contract.

C-463/14 Asparuhovo Lake Investment Company

# OTHER DEVELOPMENTS

## **What's in a service?**

Articles 2(1) and 10(2) of Sixth Council Directive must be interpreted as meaning that the issue by an airline company of tickets is subject to value added tax where the tickets issued have not been used by passengers and the latter are unable to obtain a refund for those tickets.

C-250/14 and C-289/14 AirFrance KLM and Hop! BritAir SAS

# OTHER DEVELOPMENTS

## **What's in a service?**

Article 2(1) and the first and second subparagraphs of Article 10(2) of the Sixth Directive must be interpreted as meaning that the value added tax paid when the air ticket was purchased by a passenger who has not used it becomes chargeable on receipt of payment of the ticket price, whether by the airline company itself, by a third party acting in its name and on its behalf, or by a third party acting in its own name but on behalf of the airline company.

C-250/14 and C-289/14 AirFrance KLM and Hop! BritAir SAS



# OTHER DEVELOPMENTS

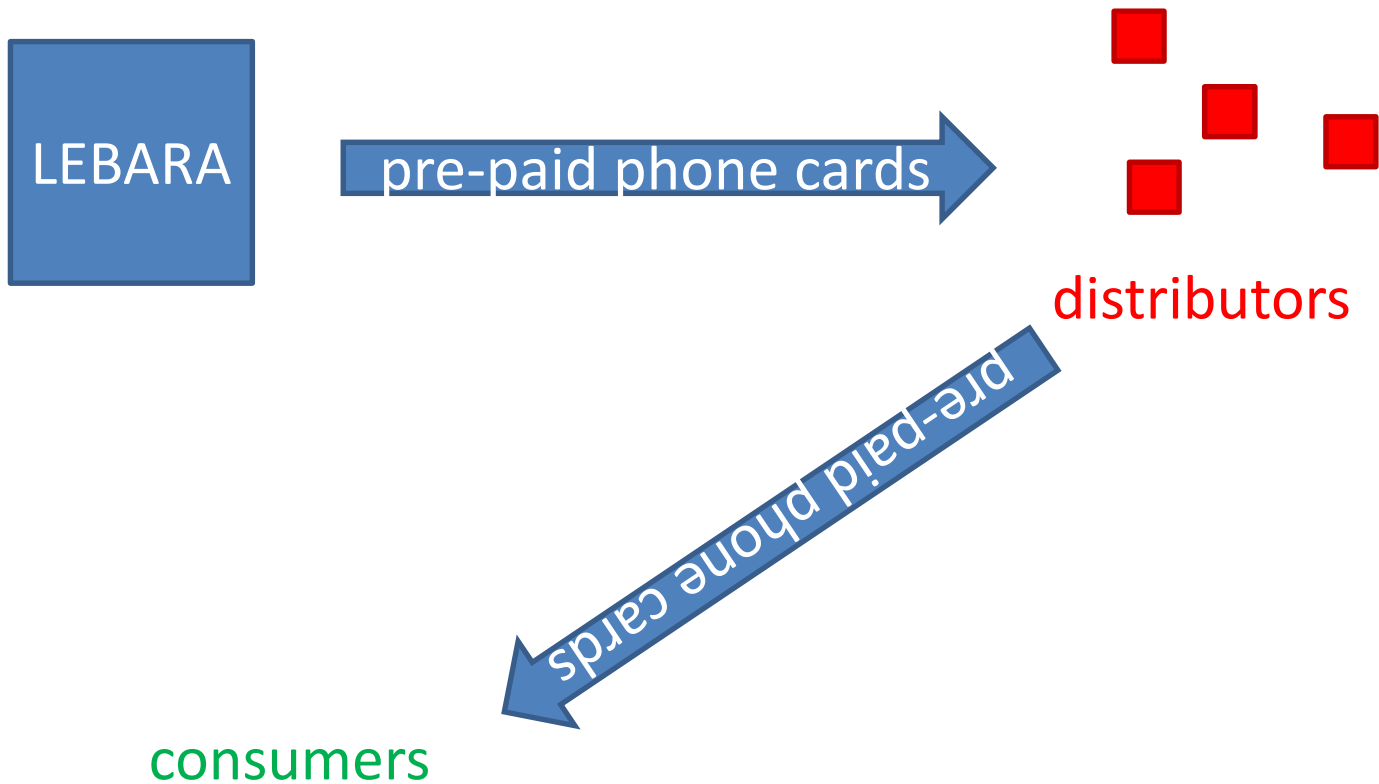
## **What's in a service?**

Articles 2(1) and 10(2) of the Sixth Directive must be interpreted as meaning that, in the event that a third party sells an airline company's tickets on behalf of that company in the context of a franchise agreement and pays that company, in respect of tickets issued and no longer valid, a lump sum calculated as a percentage of the annual turnover from the corresponding flight routes, that sum constitutes a sum that is taxable as consideration for those tickets.

C-250/14 and C-289/14 AirFrance KLM and Hop! BritAir SAS

# OTHER DEVELOPMENTS

What's in a service?



# OTHER DEVELOPMENTS

## **What's in a service?**

A telecommunications services operator which offers telecommunications services consisting in selling to a distributor phonecards which display all the information necessary for making international telephone calls by means of the infrastructure provided by that operator and which are resold by the distributor, in its name and on its own behalf, to end users, either directly or through other taxable persons such as wholesalers or retailers, carries out a supply of telecommunications services for consideration to the distributor.

C-520/10 Lebara

# OTHER DEVELOPMENTS

## **What's in a service?**

On the other hand, that operator does not carry out a second supply of services for consideration, this time to the end user, where that user, having purchased the phonecard, exercises the right to make telephone calls using the information on the card.

C-520/10 Lebara

# OTHER DEVELOPMENTS

## **What's in a service?**

Can Lebara recover the amount of tax paid when the phonecard has not been fully used?



Thank you

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