



*Directorate-General for Library,
Research and Documentation*

RESEARCH NOTE

Value added tax and place of supply in the case of ‘similar rights’ — Inclusion of greenhouse gas emission allowances

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Subject: Determination, for the purposes of value added tax, of the place of supply of services consisting in the transfer of greenhouse gas emission allowances — Interpretation of the concept of ‘similar rights’ within the meaning of Article 56(1)(a) of Directive 2006/112/EC — Whether or not the transfer of greenhouse gas emission allowances is included

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SUMMARY TABLE

I. INTRODUCTION

1. This [*] research note [*] concerns the application of Article 56(1) of Directive 2006/112/EC,¹ in the version which was in force until 31 December 2009 ('the VAT Directive'). That provision lists the services in respect of which the place of supply, for the purposes of the application of VAT, is the place where the customer is established.
2. The [note] concerns, in particular, the categorisation of transfers of greenhouse gas emission allowances as transfers of 'similar rights', that is, similar to transfers and assignments of copyrights, patents, licences and trade marks (as referred to in Article 56(1)(a)). The note examines the legal systems of all the Member States, with the exception of Portuguese law.
3. The research carried out indicates that, generally, it is not immediately obvious from the legislation in the area, and in particular from the rules transposing Article 56(1)(a) of the VAT Directive, or from the case-law, whether greenhouse gas emission allowances are categorised as 'similar rights' to the transfers and assignments mentioned. However, the absence of such an express categorisation does not imply that greenhouse gas emission allowances are not included within the scope of that provision.
4. In the vast majority of Member States (22 of the 27 legal systems examined), a national provision corresponding to Article 56(1) of the VAT Directive applies to greenhouse gas emission allowances. That conclusion is based on the national acts brought into line with

¹ Council Directive of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

the guidelines issued by the Advisory Committee on VAT in 2004.² It should be noted that in two Member States (**Estonia, Slovakia**), express provision has been made for transfers of greenhouse gas emission allowances as a distinct point in the national *law* transposing Article 56(1) of the VAT Directive. In a number of other Member States (**Germany, Austria, Belgium, Bulgaria, Finland**,³ **France**,⁴ **Hungary, Ireland, Lithuania, Czech Republic, United Kingdom, Slovenia, Sweden**), *opinions, circulars or recommendations* have been issued by the competent authorities stating that transfers of allowances are considered as falling under the national provision corresponding to Article 56(1)(a) of the VAT Directive. In three Member States (**Spain, Italy**,⁵ **Poland**), it is clear from *administrative practices in the form of individual decisions taken by the tax authorities* that transfers of greenhouse gas allowances have been considered to constitute transactions for which the place of supply is the place where the transferee is established. Lastly, in four Member States, preparatory documents (**Denmark, Luxembourg, Netherlands**) or correspondence between ministries (**Latvia**) demonstrate a similar point of view.

5. It should be stated in this regard that, while in some legal systems transfers of allowances have been expressly categorised as ‘similar rights’ (**Finland, Italy, Netherlands, Slovenia, Sweden**), there are others in which transfers of emission allowances have simply been classified as falling under the national provision

² For a list of guidelines agreed by the Advisory Committee on VAT, see the webpage at: http://ec.europa.eu/taxation_customs/resources/documents/taxation/vat/key_documents/vat_committee/guidelines-vat-committee-meetings_fr.pdf.

³ According to Finnish legal writers, it was not clear that all the Member States adopted this view, while in Belgium a ‘consensus’ was referred to.

⁴ In France, which made the request for guidelines from the Advisory Committee on VAT concerning greenhouse gas emission allowances from the point of view of VAT, it was decided in June 2009 temporarily to exempt transfers of those allowances from VAT as transactions relating to securities.

⁵ It should be pointed out that the procedure before the Italian tax authorities concerned a purchaser of greenhouse gas emission allowances established in Switzerland.

corresponding to Article 56(1)(a) of the VAT Directive, without any clarification as to the specific category to which those allowances were allocated (**Germany, Austria, Belgium, Bulgaria, Denmark, Spain, France, Hungary, Ireland, Italy, Latvia, Luxembourg, Poland, Czech Republic, United Kingdom**), or which specify a separate category ‘transfer of greenhouse gas emission allowances’ (**Estonia, Slovakia**), distinct from the categories expressly mentioned in Article 56(1)(a) of the VAT Directive.

6. It should also be noted that the case-law in those various Member States on the determination of the place of taxation of transfers of greenhouse gas emission allowances before 2010 seems fairly sparse.
7. For the other legal systems (**Cyprus, Croatia, Greece, Malta, Romania**), it has not been possible to identify if and/or how transfers of greenhouse gas emission allowances have been categorised for VAT purposes and therefore what the place of supply for those transfers is.
8. In this research note all the legal systems are listed in a summary table with an indication of whether or not transfers of greenhouse gas emission allowances are included within the concept of ‘similar rights’, or as belonging generally to the class of services in respect of which the supply is deemed to take place where the customer is located. Those legal systems in relation to which it has not been possible to establish the position are marked ‘unclear’. In the case of ten legal systems, it appeared helpful to give further details, which are set out in this note.

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SUMMARY TABLE

**LEGAL SYSTEMS IN WHICH GREENHOUSE GAS EMISSION
ALLOWANCES ARE TREATED AS 'SIMILAR RIGHTS' FOR THE
PURPOSES OF ARTICLE 56(1)(A) OF THE VAT DIRECTIVE, IN THE
VERSION IN FORCE IN 2009**

LAW	YES	UNCLEAR
GERMAN	X	
AUSTRIAN	X	
BELGIAN	X	
BULGARIAN	X	
CYPRIOT		X
CROATIAN ⁶		X
DANISH	X	
SPANISH	X	
ESTONIAN	X	
FINNISH	X	
FRENCH	X	
GREEK		X
HUNGARIAN	X	
IRISH	X	

⁶ Not yet a Member State of the European Union in 2009.

LAW	YES	UNCLEAR
ITALIAN	X	
LATVIAN	X	
LITHUANIAN	X	
LUXEMBURGISH	X	
MALTESE		X
NETHERLANDS	X	
POLISH	X	
ROMANIAN		X
SLOVAK	X	
SLOVENIAN	X	
UNITED KINGDOM	X	
SWEDISH	X	
CZECH	X	