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E-commerce “online” in the Enlarged European Union: consequences arising from the simultaneous adoption of the OECD permanent establishment definition and the COUNCIL Directive 2002/38/EC.

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*Abstract*

In this paper, we analyse the OECD permanent establishment definition and the COUNCIL Directive 2002/38/EC of 7 May 2002, applicable to radio and television broadcasting services and certain electronically supplied services for services provided by electronic means (e.g. Internet). Then, we analyse the implications that arise from simultaneously adopting both regulations in the context of electronic commerce “online”. For the moment, there are not available data concerning these regulations’ impact on corporate income tax base and as well as on consumption tax base in the Enlarged European Union. However, it seems that the framework created by these regulations is favourable to unfair (or harmful) tax competition within the EU regarding e-commerce “online”. Finally, we observe that the OECD permanent establishment and the COUNCIL Directive 2002/38/EC of 7 May 2002 created a “tax haven” for electronic commerce “online” in the Portuguese territory of Madeira Island.

JEL Classification: K33, K34

Keywords: e-commerce online; permanent establishment; corporate tax; VAT; Tax haven; COUNCIL Directive 2002/38/EC

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## **1. Introduction.**

E-commerce transactions raise many taxation issues, for example, whether or not a website can constitute a permanent establishment. If an e-commerce website can constitute a permanent establishment, then the jurisdiction where the website is placed has the right to tax the profits arising from the business. The problem is that a website can be located everywhere and managed from everywhere. Another important issue is related with VAT. Recently, e-commerce “on-line” transactions were included in the scope of VAT. The EU regulation (COUNCIL Directive 2002/38/EC) to charge these transactions seems, in our opinion, to create an unfair competition among the European jurisdictions, regarding Business-to-Consumer. In this paper, we therefore analyse both these important taxation issues and their consequences.

## **2. E-commerce definitions**

When innovations occur, usually more than one definition for the same concept appears, e-commerce being an example. For their importance, we consider two; one from the Department of Treasury of USA and the other from the OECD.

The Department of Treasury defines e-commerce as «The ability to perform transactions involving the exchange of goods or services between two or more parties using electronic tools and techniques»<sup>2</sup>

OECD provides a broader and narrower<sup>3</sup> definition. The former is: «An electronic transaction is the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organisations, conducted over computer-mediated networks. The goods and services are ordered over those networks, but the payment and the ultimate delivery of the good or service may be conducted on or off-line.» The narrower definition is «An Internet transaction is the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organisations, conducted over the Internet. The goods and services are ordered over the Internet, but the payment and the ultimate delivery of the good or service may be conducted on or off-line».

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<sup>2</sup> See “Selected Tax Policy Implications of Global Electronic Commerce”, 1996, Department of the Treasury Office of Tax Policy.

<sup>3</sup> See OECD, Business to Consumer – electronic commerce an update on the statistics available at <http://www.oecd.org/sti/consumer-policy>.

Because we consider the OECD definitions more precise, particularly the last one, we adopt the narrower OECD definition in our work.

### **3. Types of e-commerce**

Although there are different classification criteria to classify e-commerce (which gives rise to several types of e-commerce), here we present those most appropriate for the main purpose of our work. Thus, we consider two criteria: 1) the delivery of the goods or the supply of the service and 2) the type of persons involved. According to the former criterion, two types of e-commerce exist: “on-line” and “off-line”. The other criterion (type of persons involved) depends on the nature of the type of persons and leads to two kinds of e-commerce: “Business-to-Business (B2B)” and “Business-to-Consumer (B2C)”.

#### **3.1 E-commerce “on-line” vs. e-commerce “off-line”**

Considering the previously stated, we have to distinguish e-commerce transactions “on-line” and “off-line”<sup>4</sup>. In the first one, all the phases of the transaction, that is, the order of purchase, supply of the service or the transmission of rights, as well as the payment, are processed in real time. In the second one, the order of purchase and the payment are performed "on-line", this being the delivery carried through traditional means. On-line transactions involve intangible goods, while off-line transactions involve tangible goods or packaged digital products (e.g., software on CD).

#### **3.2 E-commerce “business-to-business” vs. e-commerce “business-to-consumer”**

Business-to-business involves the transaction and supply of services between business (and not-for-profit organizations). Business-to-consumer is related with the supply of services by business (or not-for-profit organizations) to individual consumers, i.e., it corresponds to transactions between business and families.

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<sup>4</sup> Other authors use “direct” e “indirect” and not “on-line” e “off-line”, for example, Bevers, G. (2001). “Value Added Tax and Electronic Commerce.” British Tax Review(n.º 6): 401-483.

#### **4. The concept of permanent establishment of OECD**

The concept permanent establishment is defined in the article 5 of the *Model Tax Convention on Income and on Capital*<sup>5</sup>. If we analyse this article, we can observe three situations that implies the existence of permanent establishment:

- (i) Existence of “fixed place of business” {article 5(2)}
- (ii) Existence of a building site or construction or installation project {article 5(3)}
- (iii) Existence of a dependent agent {article 5(5)}

Taking into account the scope of this work (e-commerce on-line), we focus just on the first situation, though the third situation also raises important issues.

- (i) Existence of “fixed place of business” {article 5(1)}

In this situation, a permanent establishment exists only if the following requirements are met:

- *Firstly*, a “place of business” must exist in the contract state. If facilities, machines or equipment are present, the requirement is satisfied.

- *Secondly*, the “place of business” should be “fixed”, i.e., it should have a quality of permanence and to be geographically defined (although n.º 1 does not state the level of permanence).

- *Thirdly*, the non-resident entity’s business should be wholly or partly carried out through the “fixed place”.

Paragraph 2 indicates some examples of what can be considered as permanent establishment. In this paragraph, the legislator has simply intended to help clarify the concept with some examples.

Paragraph 4 determines that preparatory and auxiliary activities should not raise a permanent establishment. Regarding this matter, Abreu (1998, p. 171) denotes the «... the concept of activity auxiliary or preparatory is very hard to define...»<sup>6</sup>. The

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<sup>5</sup> Version – April 29, 2000.

<sup>6</sup> See Abreu, M. (1998). *O Conceito de Estabelecimento Estável no Acordo de Dupla Tributação entre Portugal e Moçambique. As Reformas Fiscais Africanas*. S. Vasques. Lisboa, Editora Fim de Século: 171.

problem is that sometimes tax authorities formulate different interpretations about what are “preparatory or auxiliary” activities.

In conclusion, only one of the three situations previously stated leads to the existence of a permanent establishment. The first is the most relevant for e-commerce, so, we next analyse that context and explain the OECD’s view.

## **5. Application of permanent establishment on the e-commerce context**

### **5.1 The equipment server-website is a permanent establishment**

According to article 5.<sup>o</sup> of the OECD *Model Tax Convention on Income and on Capital*, an e-commerce website can be considered a permanent establishment if it is a “fixed place of business”. Thus, we have to test the first situation (i) Existence of “fixed place of business” {article 5(1)}. To conclude that a “fixed place of business” exists, the following requirements should be met:

- 1 – Existence of a “place of business”
- 2 – The “place of business” should be “fixed”
- 3 – The business should be wholly or partly carried out through the “fixed place”

*Firstly*, the server has to be located anywhere in a contract state; therefore, we think that the server-website meets the requirement. The server is a physical asset and needs to be located somewhere; consequently, the location where the server is located can be a “place of business”<sup>7</sup>.

The building where the server is located might be, or not, the entity’s property. It can also be located in a territory, where the entity has no presence. Paragraph 4 on commentaries to the *Model Tax Convention on Income and on Capital* states that the property is irrelevant, and in addition, it states that the “place of business” can be located in another entity’s facilities.

*Secondly*, to argue that a “place of business” is “fixed”, the equipment server-website should be located in a specific place for some time<sup>8</sup>. This condition is satisfied if some

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<sup>7</sup> The website by itself cannot meet this requirement.

<sup>8</sup> The Model Tax Convention does not establish a specific period. This is why some authors indicate the twelve months for the building site or construction or installation project and other indicate the 181 day rule for Individuals; see Hoeren, T. and V. Kabisch (2000). ECLIP - Electronic Commerce Legal Issues Platform - ESPRIT IV Project 27028 -Research Paper Taxation-. 2000. The nature of activity is also

level of permanence exists in a precise place<sup>9</sup>. However, if the server changes from jurisdiction to jurisdiction, the condition cannot be satisfied. This is an uncommon situation, though it is possible. Therefore, the equipment server-website satisfies the “fixed” requirement.

*Thirdly*, the server, *per se*, cannot perform any operation; it is “stupid” equipment, thus, it cannot meet the third requirement. Therefore, cannot be considered a permanent establishment, but if the equipment server-website is thought to be as one, then an entity can wholly or partly carry out a business. Consequently, all requirements are met and allow one to consider the existence of a permanent establishment.

## **5.2 The OECD view.**

The OECD work about the clarification of the article 5 from its *Model Tax Convention on Income and on Capital* resulted in some publications for comments OECD (1999), (2000a), (2000b) and (2000c) and finally in the document “Clarification on the Application of the Permanent Establishment Definition in E-commerce: Changes to the Commentary on Article 5”.

The consensus reached states that:

- A website does not constitute, by itself, a permanent establishment
- An agreement for web hosting does not constitute a permanent establishment of the enterprise that carries a business (wholly or partly) through the website. .
- except in rare situations, an Internet Service Provider (ISP) cannot be considered a *dependent agent* of another enterprise, creating in this way a permanent establishment of this other enterprise.

Concerning the comments of those that have argued that a permanent establishment always requires personnel intervention, i.e., the existence of personnel is a *sine qua non* requirement for the qualification of permanent establishment, the Committee on Fiscal Affairs (CFA) does not support this view. The latter argues that the nature of the activity and the correct understanding of preparatory and auxiliary activities are more relevant.

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important, see paragraph 6 of commentaries to Model Tax Convention - OECD (2000d). Model Tax Convention on Income and on Capital. Paris, OECD Publications.

<sup>9</sup> See paragraphs 2 and 5 of commentaries to Model Tax Convention.

To clarify the application of the article 5, OECD has made changes to the commentary on the article, adding the paragraphs 42.1 to 42.10, immediately after paragraph 42 of the commentary on Article 5<sup>10</sup>.

### **5.2.1 The “fixed place of business”**

The commentaries refer to the server and website and as well as the requirements that are necessary to conclude the existence of the permanent establishment.

Concerning the (i) “place of business”, automatic equipment may constitute a permanent establishment but, «a distinction needs to be made between computer equipment, which may be set up at a location so as to constitute a permanent establishment under certain circumstances, and the data and software which is used by, or stored on, that equipment. For instance, an Internet web site, which is a combination of software and electronic data, does not constitute itself tangible property. It therefore does not have a location that can constitute a “place of business” as there is no “facility such as premises or, in certain instances, machinery or equipment”...»<sup>11</sup>, thus, the website, *per se*, cannot constitute a “place of business” and therefore, a permanent establishment. However, the website and the server as one can constitute a permanent establishment.

An enterprise can have a website located in a server of another entity (e.g. ISP) but, it only has a “place of business” and consequently a permanent establishment, if it «has the server at its own disposal, for example it owns (or leases) and operates the server on which the web site is stored and used...» because «...the place where that server is located could constitute a permanent establishment of the enterprise if the other requirements of the Article are met.»

Regarding the (ii) “fixed” requirement, the added paragraphs to the commentaries do not specify any time value because what is important is that the website resides in a specific place for a specific period (not defined)<sup>12</sup>

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<sup>10</sup> See OECD (2001). Taxation and Electronic Commerce - Implementing the Ottawa Taxation Framework Conditions. Paris, OECD Publications.

<sup>11</sup> Commentaries, paragraph 42.2

<sup>12</sup> The period was not specified but, in our opinion, the twelve-month applicable to “building site or construction or installation project” can serve as a reference.

Concerning the issue (iii) of an enterprise “carry wholly or partly” a business with the equipment server-website, the commentaries recommend a case-by-case analysis.

It also states that the presence of personnel is irrelevant for the existence of a permanent establishment. To “carry wholly or partly” an activity, the personnel may not be necessary because what is relevant is the nature of the activity (see paragraph 42.6).

### **5.2.2 The preparatory and auxiliary activities**

Concerning the existence or not of a permanent establishment when preparatory or auxiliary activities are carried out, the CFA of OECD says that a case-by-case analysis should be taken. Then, it gives examples of activities that would generally be regarded as preparatory or auxiliary:

«• Providing a communications link – much like a telephone line – between suppliers and customers.

- Advertising of goods or services.
- Relaying information through a mirror server for security and efficiency purposes.
- Gathering market data for the enterprise.
- Supplying information.»<sup>13</sup>

However, it is necessary to take into account the nature of the company’s activity; if the preparatory and auxiliary activities are significant and essential to the whole activity, then, they are outside the scope of paragraph 4 of article 5.º, leading to the existence of permanent establishment.

In conclusion, according to OECD, an equipment server-website might be considered a permanent establishment.

## **6. The Directive 2002/38/EU COUNCIL DIRECTIVE 2002/38/EC of 7 May 2002<sup>14</sup>**

Concerning the e-commerce “online”, in the beginning of 1998, the EU interim report “on the implications of electronic commerce for VAT and Customs”<sup>15</sup> stated that

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<sup>13</sup> See paragraph 42.7 (OECD)

<sup>14</sup> COUNCIL DIRECTIVE 2002/38/EC of 7 May 2002 - amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services.

«Clearly with the advent of e-commerce, the relatively small amount of distortion which currently exists, due to the non-taxation of supplies from non-EU countries for EU consumption by private persons, is likely to become a serious problem unless a satisfactory way of taxing such transaction is found.».

In addition to the distortion between non-EU operators and EU operators, the growth of e-commerce can reduce the VAT revenues. Thus, in order to deal with these issues, the EU amends the VAT Directive issuing the “COUNCIL DIRECTIVE 2002/38/EC of 7 May 2002, - amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services”.

On May 7 - 2002, the Ecofin Council reached a consensus regarding the European Commission’s proposal to apply VAT to e-commerce on-line transactions. The new rules became effective by July 1, 2003. The directive 2002/38/EC which amends the 6<sup>th</sup> directive regarding the VAT application for e-commerce transactions was approved.

The Directive adopted establishes the following:

- To put the EU operators in the same position as the non-EU operators, i.e., the non-EU operators have to charge VAT inside the EU, and they are not forced to charge VAT for customers residing outside the EU
- Regarding e-commerce B2B, the non-EU operators are not obliged to provide any declaration, since their EU customers (taxable persons) use the *reverse charge method*. The EU operator should issue an “auto-invoice”.
- Concerning e-commerce B2C, the non-EU operators have to charge VAT to the EU individual consumers, as the EU operators are compelled to do. They are allowed to opt for a special scheme to facilitate their compulsory declarations. They have to apply the VAT standard rate of the EU country where the individual resides.
- It creates a special scheme for the non-EU operators. Opting for the special scheme, the non EU-operators may choose one of the 25 EU country members in order to facilitate compliance with fiscal obligations.

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<sup>15</sup> See EU-European\_Commission (1998). Interim report on the implications of electronic commerce for VAT and Customs. Brussels, European Union.

- The Directive includes an annex where some examples «of radio and television broadcasting services and certain electronically supplied services»<sup>16</sup> are given.
- Concerning all transactions carried out, the EU countries members should allow the taxable person to provide the statements or declarations by electronic means, and may require that only electronic means be used.

In practice, the Council directive 2002/38/EC, has added rules that explicitly subject “on-line” transactions to VAT and added rules that locate (*nexus rules*) these transactions inside the EU. Additionally, it establishes a special scheme for the non-EU, which is not compulsory.

Concerning the “rules on subjection”, the directive changed article 9, paragraph (2)(e), to include two more indents « — radio and television broadcasting services, — electronically supplied services, inter alia, those described in Annex L». Therefore, the transactions involve:

- «1. Website supply, web-hosting, distance maintenance of programmes and equipment.
- 2. Supply of software and updating thereof.
- 3. Supply of images, text and information, and making databases available.
- 4. Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events.
- 5. Supply of distance teaching...».

Outside of the scope of this directive, logically, are the communications by e-mail: «Where the supplier of a service and his customer communicates via electronic mail, this shall not of itself mean that the service performed is an electronic service within the meaning of the last indent of Article 9(2)(e)»<sup>17</sup>

Regarding the “rules on location”, the directive has added point f) to article 9(2):

«(f) the place where services referred to in the last indent of subparagraph (e) are supplied when performed for non-taxable persons who are established, have their permanent address or usually reside in a Member State, by a taxable person who has established his business or has a fixed establishment from which the service is supplied

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<sup>16</sup> See annex L.

<sup>17</sup> COUNCIL DIRECTIVE 2002/38/EC, Annex L.

outside the Community or, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, shall be the place where the non-taxable person is established, has his permanent address or usually resides».

The previous point ensures that the transactions B2C are located inside of EU, given the right to charge those transactions to the Member state where the consumer resides. Therefore, the Non-EU operators, like the EU operators, have to charge the VAT to their individual costumers. Consequently, the prior distortion disappears.

Paragraph 2, from article 1, determines that only the standard rate is applicable to the e-commerce “on-line” transactions. In addition, it determines that the standard rate of the Member state of “residence” or “permanent address” should be applied. For that reason, the *nexus* elements are “habitual residence” and “permanent address”.

The Directive also determines that «Member States shall, subject to conditions which they lay down, allow the taxable person to make such returns by electronic means, and may also require that electronic means are used. » This provision is part of paragraph 1, 2, 3, e 4 – article 2.º which amends article 22.º, from the aticle 28.º H of directive 77/388/EEC, and it seems to be part of the EU policy so that the tax authorities can use the new technologies to improve the services offered to the taxpayers.

The special scheme for non-established taxable persons supplying electronic services to non-taxable persons is optional. It has a set of rules with definitions and other procedures for fiscal compliance.

The next diagrams<sup>18</sup> express what the Directive states. The first, assumes an entity located in the UE (*established operator*), and the next, assumes an entity located outside the UE (*non-established operator*).

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<sup>18</sup> Adapted from Lopes (2003): Lopes, J. (2003). O Comércio Eletrónico - Aspectos Fiscais. Coimbra, Universidade Aberta.

**•VAT – E-commerce On-line**  
**•COUNCIL DIRECTIVE 2002/38/EC of 7 May 2002**  
**•EU operator (i.e. placed in the EU)**

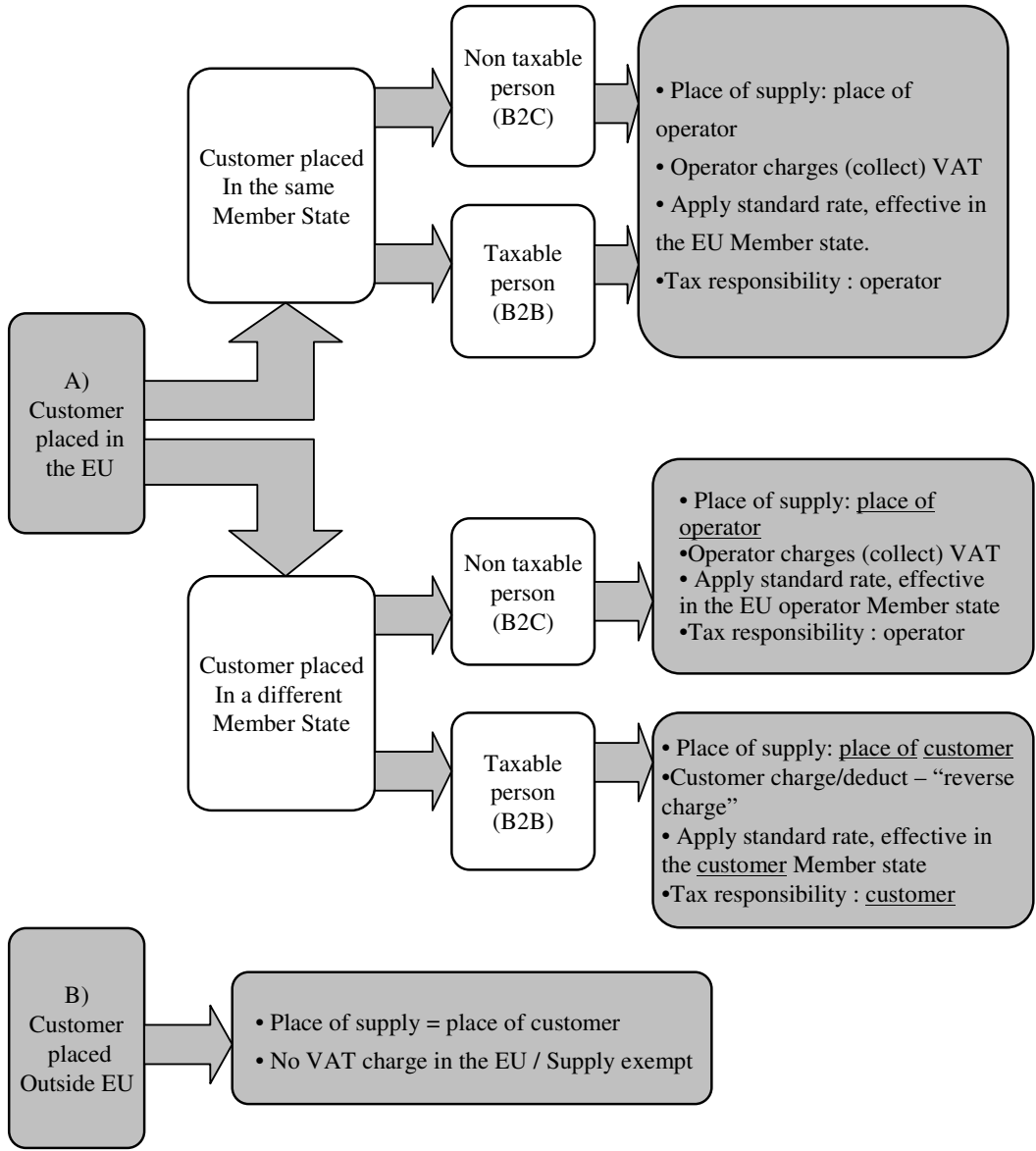


Diagram 1A: VAT – e-commerce “on-line” – EU Operator

**•VAT – E-commerce On-line**  
**•COUNCIL DIRECTIVE 2002/38/EC of 7 May 2002**  
**• Non-EU Operator (i.e. placed outside EU)**

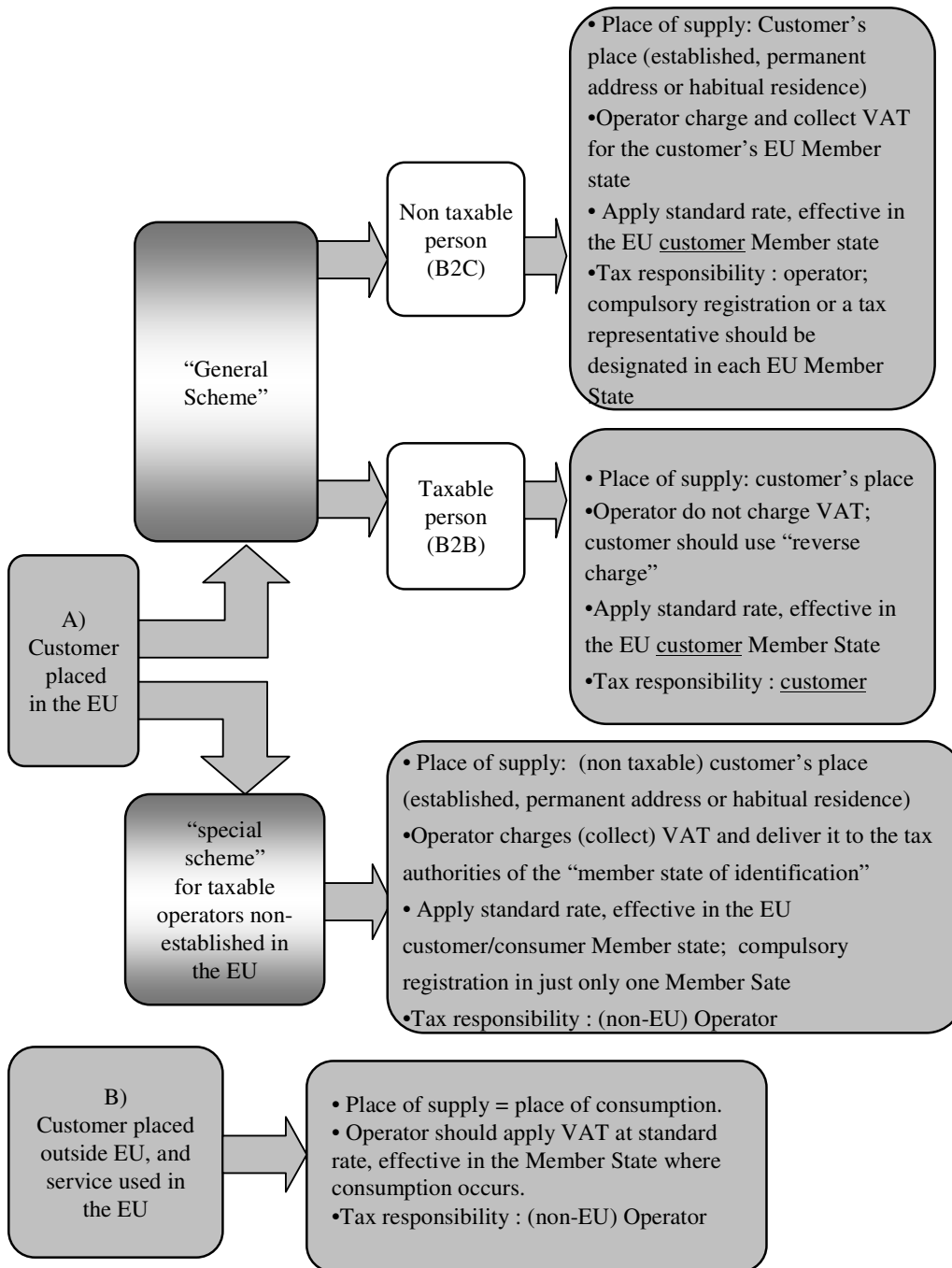


Diagram 1B : VAT – e-commerce “on-line” – non-EU operator

The solution adopted by the EU is temporally<sup>19</sup>, hence, in 2006 it should be evaluated. The Council Directive 2002/38/EC, in our opinion, has some drawbacks.

It solves the issue of unfair competition between non-EU operators and EU operators. However, regarding B2C creates an unfair competition, among the EU25 operators.

As Basto (1991, p. 75) mentions «the differences in terms of structures, tax bases and tax rates among the different States – or more generic, among jurisdictions – might originate, and certainly do, regarding transactions beyond the borders of each state or jurisdiction, juxtapositions of systems which could result in unacceptable consequences, concerning equity and efficiency»<sup>20</sup>.

Bevers (2001) also stresses that an operator registered in the Luxembourg can charge VAT at a rate of at least 8% lower than other EU operators.

As shown in the next table, there are many different VAT tax rates in the EU25. For the VAT standard rate, we can find from a minimum of 13% in Madeira and Azores to a maximum of 25% in Sweden and Denmark. In the new EU Member States, we can find a minimum of 15% in Cyprus and a maximum of 25% in Hungary.

Table 1: VAT rates at 1st September 2004<sup>21</sup>

EU 15 Member States	Standard Rate	New EU 10 Member States	Standard Rate
Germany	16%	Czech Republic	19%
Austria	20%	Estonia	18%
Belgium	21%	Cyprus	15%
Denmark	25%	Latvia	18%
Spain	16%	Lithuania	18%
Finland	22%	Hungary	25%
France	19,6%	Malta	18%
Greece	18%	Poland	22%
Netherlands	19%	Slovenia	20%
Ireland	21%	Slovakia	19%
Italy	20%		
Luxembourg	15%		
Portugal*			
Continental	19%		
Madeira e Azores	13%		
United Kingdom	17,5%		
Sweden	25%		

<sup>19</sup> See article 4 «Article 1 shall apply for a period of three years starting from 1 July 2003».

<sup>20</sup> From the portuguese «As diferenças de estruturas, bases de incidência e taxas de imposto entre os diferentes Estados – ou mais genericamente, entre jurisdições – podem originar, e certamente originam, no que respeita às transacções que transcendem as fronteiras de cada Estado ou jurisdição, justaposição de sistemas susceptível, de resultar em consequências inaceitáveis, quer quanto à equidade, quer quanto à eficiência».

<sup>21</sup> Source: EU-European\_Commission (2004). VAT Rates Applied in the Member States of the European Community. Brussels, EU.

For the same reasons, and for the first time, without limitation<sup>22</sup>, in e-commerce on-line B2C transactions an EU operator placed at Madeira Island can charge less than 12% in VAT rate, which is significant. So, why should a rational consumer buy “digital products” at 25% of VAT rate if he could pay VAT at 13% rate?

Regarding neutrality, since all e-commerce transactions are taxed only at standard rate, if some digital products as software or music sold packed are taxed at a reduced rate, it raises a neutrality issue, because the same product is charged at different rates in the same jurisdiction.

Therefore, the different VAT rates are a strong incentive for tax planning in the e-commerce, because it is only necessary to place a server-website in the low tax jurisdiction.

Regarding B2C, to benefit from a lower VAT rate, the non-EU operators might now carry out e-commerce on-line through a PE or a subsidiary placed in a jurisdiction with lower VAT tax rate.

On the topic of fiscal compliance issues, the tax authorities can supervise the EU operators but it is not easy to ensure that the accounting records are reliable. Concerning the non-EU operators, not only does it seem difficult to ensure the reliability of the accounting records, but also the enforcement of the directive, because the operators are placed in jurisdictions, where the European law is not effective.

## **7. International Business Centre of Madeira (IBCM)**

Due to the OECD battle against tax havens for their harmful tax practices many “off-shores” they have been adopting the provisions required. The IBCM «has been characterized since its creation by the fulfilment of strict rules of transparency and by a strong but competitive regulation, acquiring, year after year, a very solid international credibility»<sup>23</sup>. The “OECD project on harmful tax practices: the 2004 progress report”

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<sup>22</sup> Without limitation, because for e-commerce “off-line” or common distance sales, the “distance Sales scheme” is applicable, and after a small amount of sales the operators have to apply the state of residence VAT rate and also register for VAT purposes. For the first time the “origin principle” is used without restrictions.

<sup>23</sup> See <http://www.sdmadeira.pt>

treat the IBCM as a transparent regime and with effective exchange of information<sup>24</sup>. In addition, the European Commission has approved a new regime for IBCM.

The new regime of IBCM has significant tax benefits. Companies that, between 1 January 2003 and 31 December 2006, apply and obtain a proper licence to carry out their activities within the IBC will be able to enjoy a reduced rate of corporate tax of 1% in 2003-2004, 2% in 2005-2006 and 3% in 2007-2011 (see <http://www.sdmadeira.pt> or Tax Benefit Status (TBS)).

The IBCM also has proper infrastructures at reasonable prices.

The above stated, (very low income taxation, the lower VAT standard rate, and good infrastructures) creates a perfect environment to attract e-business's investors interested in operating in e-commerce on-line at a worldwide level

## **8. Conclusion**

An equipment server-website might constitute a permanent establishment, according to the *OECD Model Tax Convention on Income and on Capital*. The COUNCIL DIRECTIVE 2002/38/EC of 7 May 2002, for B2C, determines that a VAT standard rate from the jurisdictions where the operator is placed should be applied. This creates inequities and consequently unfair competition among operators placed in different EU jurisdictions. The differences among VAT tax rates will also stimulate non-EU operators to use a permanent establishment or incorporate a subsidiary in a low tax jurisdiction. The EU operators might also feel inclined to use a PE or a Subsidiary placed in EU jurisdiction with lower VAT rate. The PE seems the perfect instrument to be used in the e-commerce on-line context, because contrary to subsidiaries they have fewer drawbacks, regarding provisions to tackle tax evasion (e.g. place of effective management rule, or thin capitalization). Considering the previously stated, the IBCM of Madeira Island seems the "perfect" tax haven to locate the equipment server-websites to carry out e-commerce on-line.

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<sup>24</sup> OECD (2004). *The OECD'S Project on Harmful Tax Practices: The 2004 Progress Report*. Paris, OECD.

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