



*European and
international tax law*
VAT in international trade

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Agenda

VAT Basics

VAT Basics of international trade

Supply of goods in the EU

- Local supply, EU supply and EU purchase
- Transfer of own goods between EU countries
- Triangulation
- Supplies to consumers

Supply of goods outside the EU

- Export and import
- Åland Islands
- Supplies to consumers

Supply of goods with installation

Agenda

Cross border supply of services

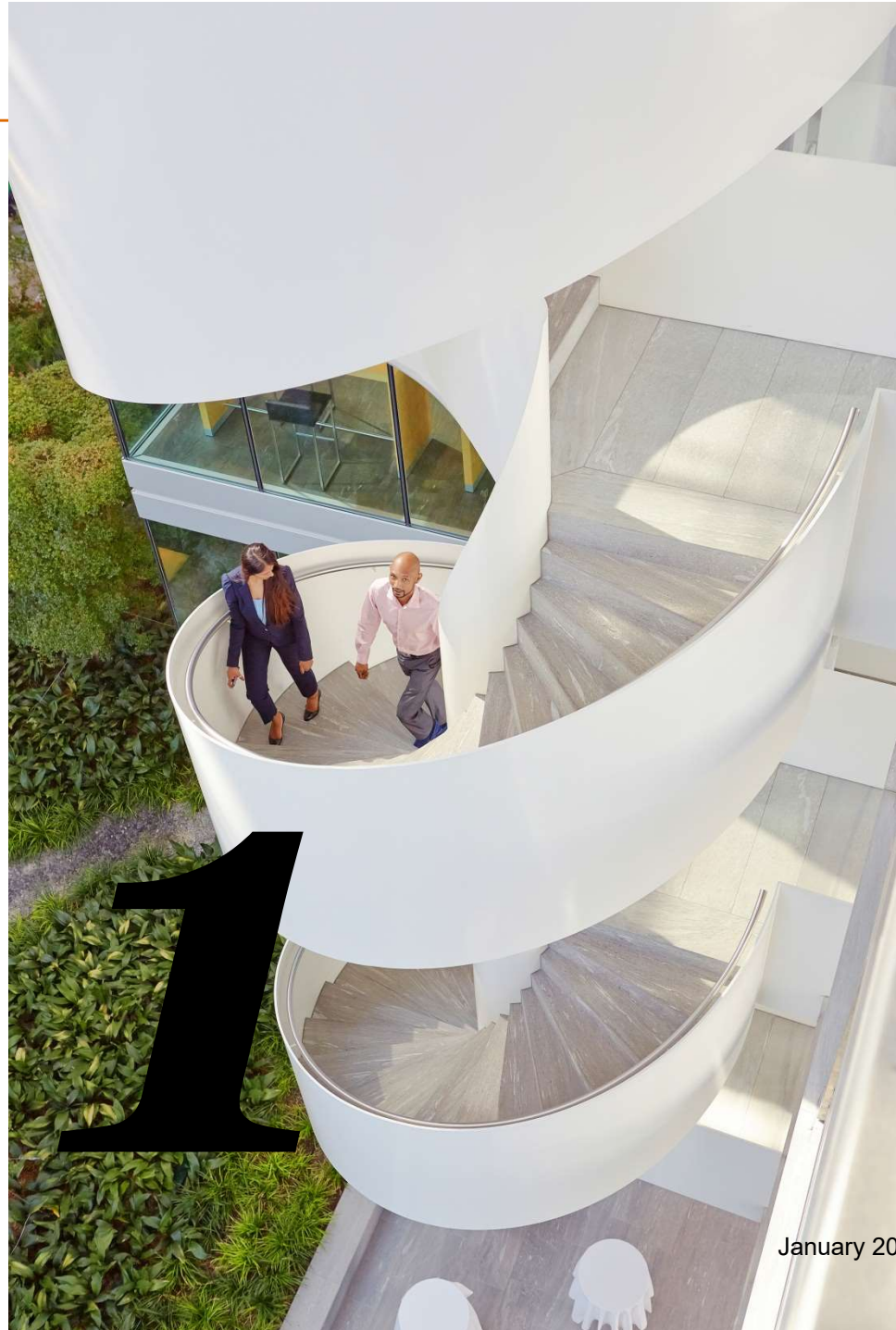
- B2B supplies of services and VAT
- Supplier's and buyer's fixed establishment and related VAT challenges
- Evidence of the buyer's VAT liability
- B2C supplies of services

VAT in contracts

VAT registration abroad

- What does it mean in practice to VAT register abroad?
- Can the VAT registration be avoided?

VAT Basics



Value added tax system in the EU

Broad-based

- Tax on consumption applied to business activities involving e.g. the production and distribution of goods and the provision of services.
- Supplies of goods and services are taxable (unless explicitly stipulated otherwise).
- Payer of the tax is the end-consumer or non-taxable person.
- In the European Union a common system of VAT applies to sales of goods and services within the EU.
- Tax revenue allocated to the country of consumption.

Indirect

- VAT liable companies collect and account the VAT to the state.

Non-repeated tax

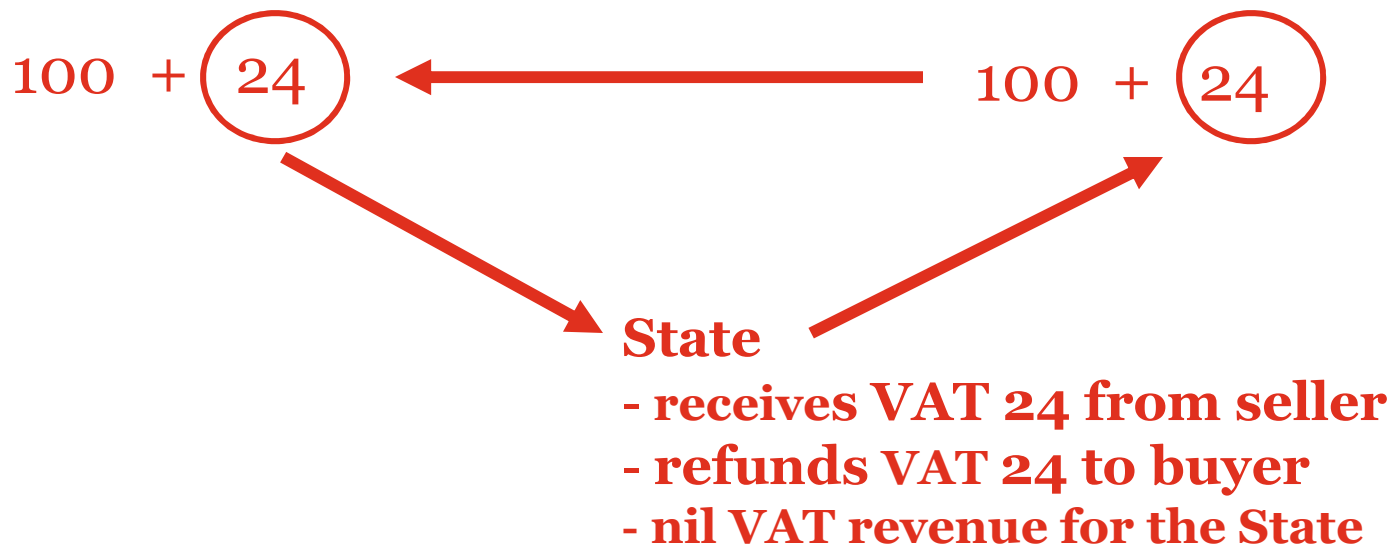
- Companies have wide VAT deduction rights.
- The objective is single taxation of the end product.

Value added tax system in the EU

Pass through expense for VAT liable companies

**VAT liable seller
invoices with
prices incl. VAT**

**VAT liable buyer
pays the price incl. VAT**



Value added tax system in the EU

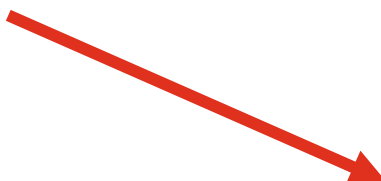
Remains as a cost for private consumers

**VAT liable seller
invoices with
prices incl. VAT**

**Private consumer
pays the price incl. VAT**

100 + (24)

100 + (24)



State

- receives VAT 24 from seller
- VAT 24 remains a cost for consumer

Sources of law

EU VAT Directive 2006/112/EY

EU regulations

European Court of Justice rulings

Finnish VAT Act (1993/1501)

Other sources, e.g.:

- Supreme Administrative Court decisions
- Helsinki Administrative Court decisions
- Government proposals
- Tax Administration guidelines
- Advance rulings from the Central Board of Taxes

Scope

Territorial

- Finnish VAT legislation is applicable when supply of goods and services takes place in Finland according to the Finnish VAT Act.

Supply of goods

- Supply of any tangible property (also electricity, heat, water, air and other energy supplies).

Supply of services

- Anything that is not considered a supply of goods. e.g. leasing of tangible goods, rights, works on goods.

Consideration (direct and immediate link)

Tax base

Tax base consists of consideration paid excluding VAT

- consideration is the price payable based on the agreement between supplier and purchaser and it includes e.g. surcharges.



Who is VAT liable?

- Companies supplying goods or services for consideration in the course of business activities - "Taxable person" (in Finnish: Elinkeinonharjoittaja)
- Supplier of construction services when purchasing construction services ("reverse charge")
- Purchaser of emission rights ("reverse charge")
- Importer of goods
- Purchaser of EU goods (i.e. intra-Community acquisitions of goods)
- Purchaser on behalf of a foreign supplier (EU and non-EU purchases of services = "reverse charge")
- Foreign supplier in certain situations

Why is an invoice important for VAT?

Supply

- Identifies the parties to the transaction
- Delivery date and value
- VAT status / liability of the supplier

Purchases

- Proof of deduction right
- Shows the VAT liability in some cases
- Enables VAT control

FI

Incorrect invoice is a
risk for both parties

Invoice references in international trade

<u>GOODS</u>	<u>SERVICES</u>
<p>EU</p> <ul style="list-style-type: none">• "VAT 0 % Intra-Community supply"• "Triangulation" <p>Non-EU</p> <ul style="list-style-type: none">• "VAT 0% Export of goods"	<p>EU</p> <ul style="list-style-type: none">• "Reverse charge, VAT Directive art 44" <p>Non-EU</p> <ul style="list-style-type: none">• "Reverse charge, VAT Directive art 44"

Indirect taxation outside the EU

Different systems

General information

- Outside the EU, the indirect tax systems vary. There can be:
 - VAT system (e.g. Norway, South Korea, Russia)
 - GST system (e.g. Canada, Australia, Singapore)
 - Sales tax system (e.g. USA)
 - Several indirect taxes
 - No indirect taxes at all
 - In many countries, the principles applied to sales of goods are similar to the EU system.

VAT basics of international trade



International trade

Basics

Place of supply and VAT liability

- Place of supply (= country with the taxation right)
 - Shows which country's VAT rules apply on the supply
 - Correct VAT treatment is set by the VAT rules of the country in question
 - Different rules apply to supplies to consumers. In the following slides the main focus is on business to business (B2B) supplies but business to consumer (B2C) supplies are also covered.
- VAT liable
 - General rule: supplier ("indirect tax")
 - If the supplier is a foreign company: liability to account VAT may shift to the buyer ("reverse charge")

International trade

Basics

Place of supply is Finland?

- The Finnish VAT rules state when Finland is the place of supply, i.e. the country that has the right to tax the supply.
- If the place of supply is Finland, the VAT treatment is set by the Finnish VAT Act
 - VAT exempt/VAT taxable – applicable VAT rate – VAT liable party
- If the place of supply is not Finland, the VAT liability is set by another country's VAT Act

International trade

Basics

Liability to pay VAT

- Alternatives:
 - supplier of goods
 - importer of the goods
 - buyer based on the so called reverse charge
- Concept of the reverse charge is used to refer to a mechanism where the customer is liable to account for (that is to report and account) the VAT on the supply.
 - usually applies in case of supplies by a company not established in the country in question, or in case of certain sector (e.g. the reverse charge of the construction sector implemented in several EU countries)

International trade

Basics

Reverse charge

- If the reverse charge applies (to be checked separately in each country), there are the following implications:
 - supplier issues invoice without VAT (a reference to the reverse charge should be included in the invoice), and
 - buyer reports, accounts and, in case of right to deduct VAT, deducts the VAT on the same VAT return (if there is the deduction right, +/- zero VAT to pay)
- In case of applying the reverse charge, the status of the customer should be paid attention to:
 - in most EU countries, the reverse charge can only be applied to sales to a locally established and VAT registered entity in the country in question
 - if the purchaser of the goods is a foreign company as well, usually does not apply

Supply of goods in the EU

3



”Ascertain the free movement of goods in a way that the VAT revenue belongs to the state where the goods are consumed”



Supply of goods in the EU

Basic terms

Place of supply of goods

1. If the goods are not transported in connection with the supply, the place of supply is the country where the goods are when supplied.
2. If the goods are transported in connection with the supply, the place of supply is the country where the goods are when the transportation to the customer begins.
3. If the goods are supplied with installation, the place of supply is the country where the goods are installed.

Supply of goods in the EU

Local supply

VAT treatment of local supply

- If the goods are not transported to another country in connection with the supply, the supply is local.
- The place of supply is thus the country where the goods are when they are supplied.
- If the supply is not exempted, it is subject to VAT in that country at the applicable VAT rate.
- Depending on the national legislation, the alternative VAT treatments for a foreign supplier are:
 - the foreign supplier is liable to register for VAT in that country or
 - the so called reverse charge can be applied and the foreign supplier avoids the VAT registration liability

Supply of goods in the EU

Example 1 - Local purchase and local supply in the UK

Finland



invoice
UK VAT

invoice
UK VAT

UK



goods



- A Oy buys goods in the UK and supplies them further to a UK customer.
- The goods remain in the UK.
- Registration liability for A Oy in the UK since reverse charge not applicable to A Oy's supply in the UK based on local legislation.

Supply of goods in the EU

Local supply

Check list for purchase and subsequent supply abroad 1/2

- Refund of input VAT on purchase
 - is there a procedure for refunding VAT to foreign companies?
 - will the refund procedure be available to A Oy? It will not apply, if A Oy would be liable to VAT register due to other operations happening at the same time (e.g. purchases of goods from other EU countries), or at a later point (e.g. onward sale of the goods)
 - the local input VAT may also remain as a cost – especially outside of the EU!

Supply of goods in the EU

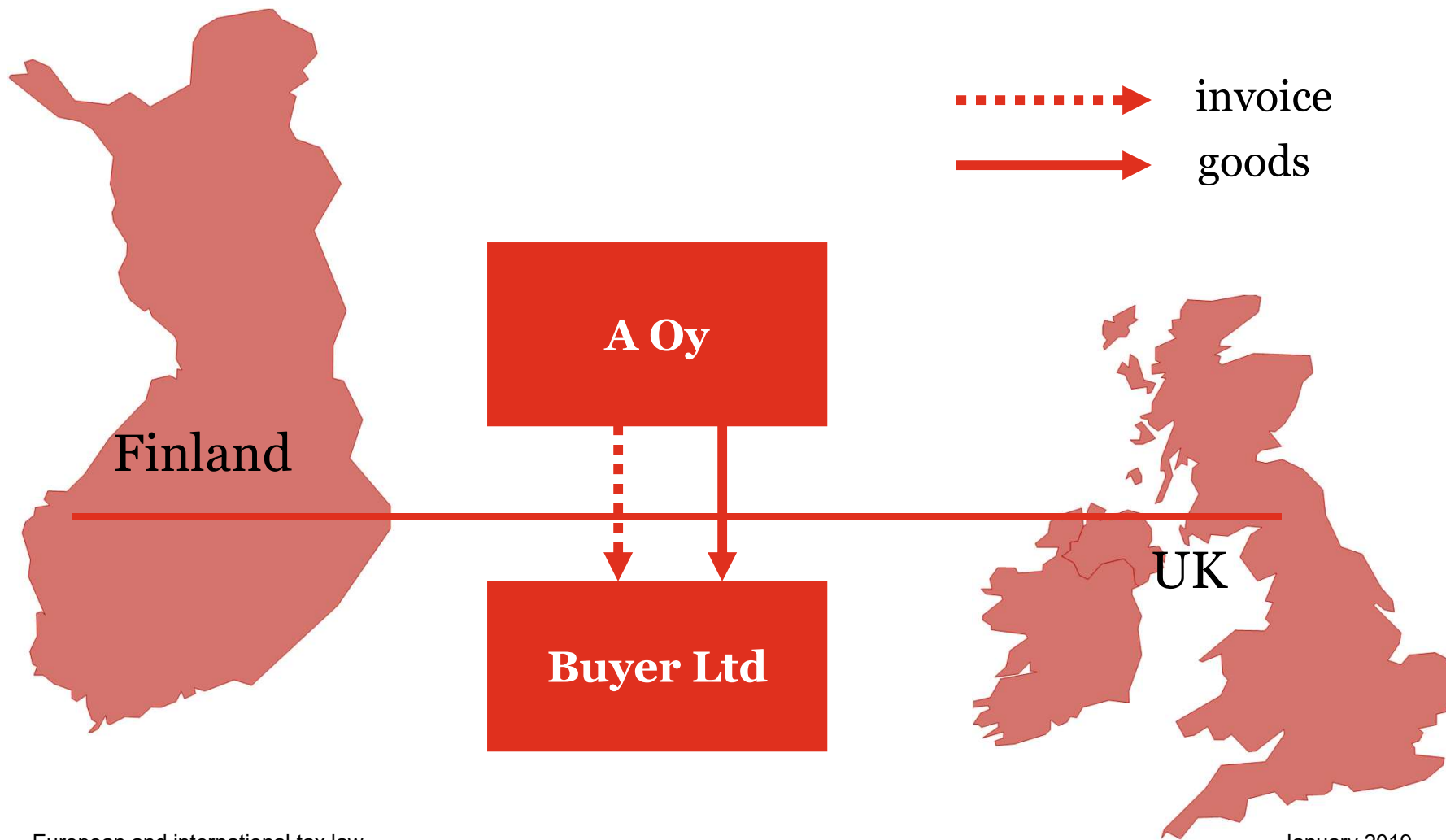
Local supply

Check list for purchase and subsequent supply abroad 2/2

- VAT liability for supply
 - it is important to consider this as well, as the sale of the goods may impact A Oy's VAT position.
 - is there a reverse charge mechanism? Consider prior to purchasing goods locally!
 - if yes, can it be applied as a refund, i.e. are the conditions fulfilled?
 - is A Oy liable to register for VAT?
 - what is the applicable VAT rate? Invoicing and reporting requirements?

Supply of goods in the EU

EU supply



Supply of goods in the EU

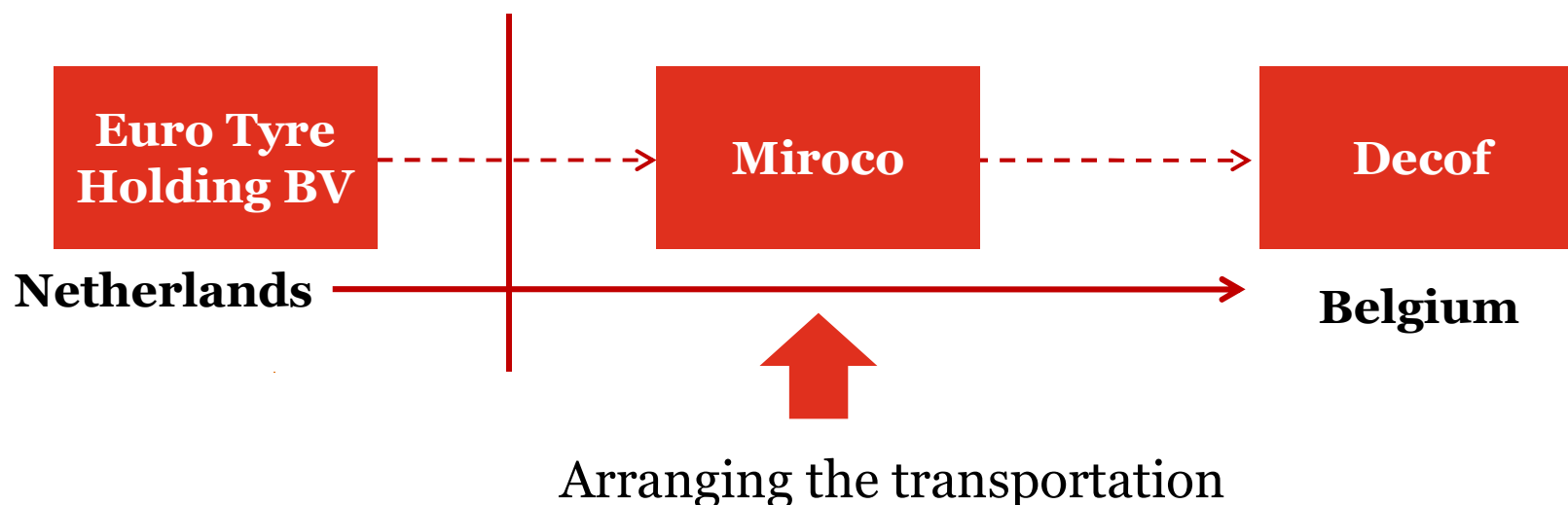
EU supply

Definition – Intra-Community supply

- In connection with the supply, the goods are transported from an EU country to another.
- Purchaser is VAT registered company or other legal person.
- Goods are transported by the supplier, buyer or a third party (carrier) on their behalf.
- The following supplies do not constitute an EU supply:
 - goods supplied with installation
 - supplies of services
 - supplies to individuals (private consumers)
 - supplies to non-VAT registered legal persons when the threshold is not exceeded (may however choose to make the EU purchase)

EU supply – Who arranges the transportation?

C-430/09 Euro Tyre Holding BV



ECJ

- The determination of the transaction to which that transport should be ascribed must be conducted in the light of an overall assessment of all the circumstances of the case.

EU supply – Time period for transportation

C-84/09 X

ECJ

- The classification of a transaction as an intra-Community supply or acquisition cannot be made contingent on the observance of any time period during which the transport of the goods in question from the Member State of supply to the Member State of destination must be commenced or completed.
- Must be made through an overall assessment of all the objective circumstances and the purchaser's intentions, provided that it is supported by objective evidence which make it possible to identify the Member State in which final use of the goods concerned is envisaged.

Supply of goods in the EU

EU supply

VAT treatment of EU supply

- Provided that the conditions for EU supply are fulfilled, it is VAT zero-rated (VAT 0%).
 1. Supplier and customer need to be VAT registered in the two EU countries concerned – the supplier quotes the valid VAT IDs on the invoice.
 2. Reference to the zero-rated supply on the invoice required (e.g. "VAT 0%, Intra-Community supply").
 3. Proof of the transport – e.g. bill of freight – the supplier needs the proof also when the customer picks up the goods.

Supply of goods in the EU

EU supply

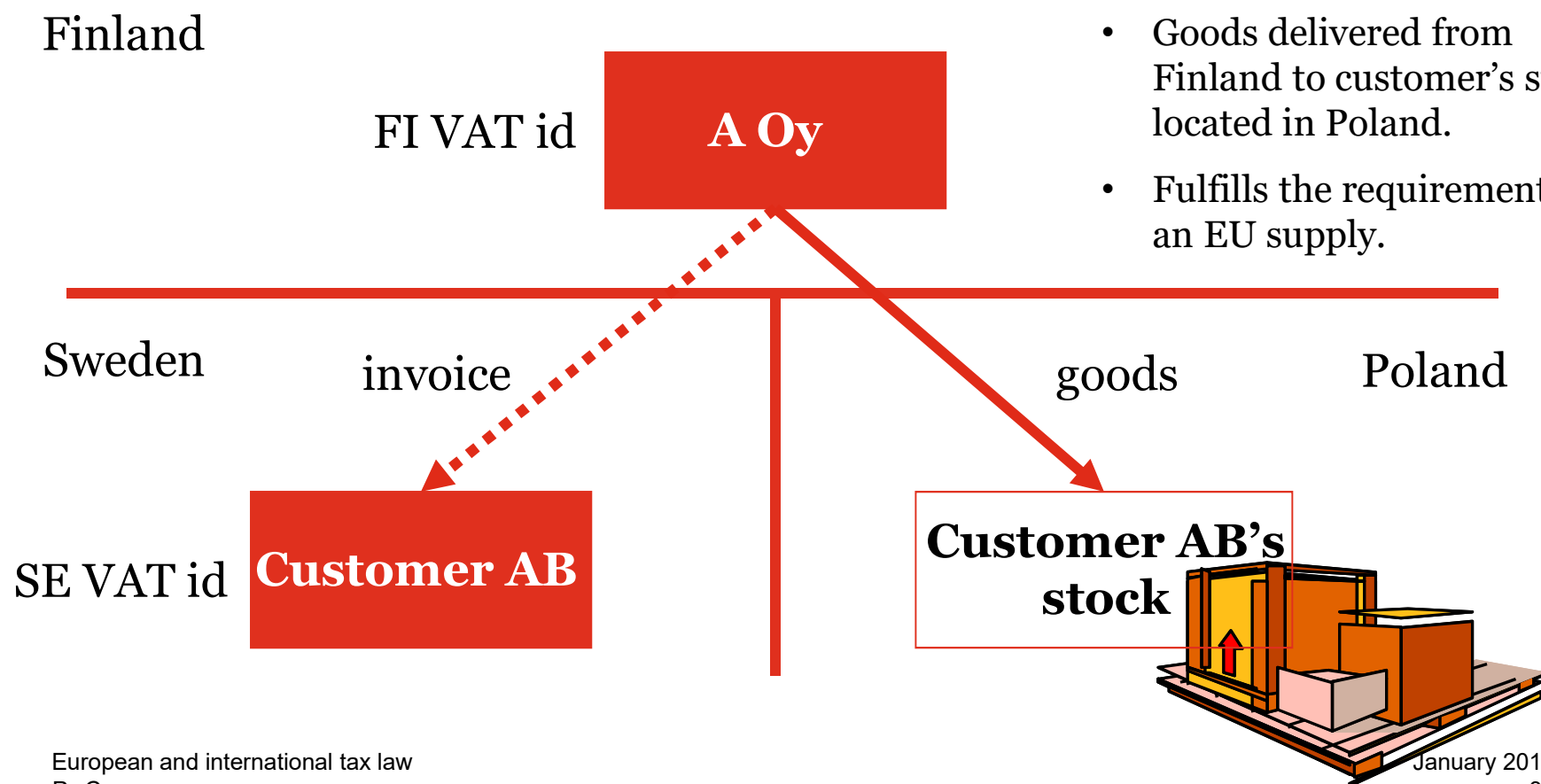
Checking the validity of the customer's VAT ID

- It is the supplier's responsibility to check that the VAT ID given by the customer is valid (in effect).
- Several ways to check the validity:
 - through VIES in the Internet
 - there's also a link in the Finnish tax authorities' site: www.vero.fi
 - by phone from the Finnish tax authorities: + 358 20 697 062
 - by email from the Finnish tax authorities: eu.vies@vero.fi

Supply of goods in the EU

Example 2 – Invoice issued and goods delivered to different EU countries

- Invoice to Swedish customer.
- Goods delivered from Finland to customer's stock located in Poland.
- Fulfills the requirements for an EU supply.



Supply of goods in the EU

EU purchase

Definition – Intra-Community acquisition

- In connection with the purchase, the goods are transported from one EU country to another.
- The purchaser is a VAT registered company or another legal person.
- Goods are transported by the supplier, buyer or a third party (carrier) on their behalf.
- The country of purchase is the country where the goods are when the transport ends.
 - the purchase is subject to VAT in that country
- E.g. the following supplies do not constitute an EU purchase:
 - goods purchased with installation
 - purchases of services

Supply of goods in the EU

EU purchase

VAT treatment of EU purchase

- Supplier's point of view:
 - the supplier handles the supply as a VAT zero-rated EU supply and issues the invoice without VAT
- Purchaser's point of view:
 - the purchaser gives its VAT ID issued by another EU country (the country of goods arrival) to the supplier to be quoted on the invoice
 - the purchaser reports and accounts the VAT on the EU purchase in the country of goods arrival

Supply of goods in the EU

Example 3 – Invoice issued to other EU country, delivery in Finland

Belgium

Customer NV

- A Oy supplies goods to its Belgian customer.
- The customer has a project site in Finland to where the goods are delivered.
- Local supply subject to Finnish VAT.

Finland

invoice

A Oy

goods

**Customer NV's
project site**

Supply of goods in the EU

Example 4 – Invoice issued to Finnish customer, delivery to the Netherlands

Finland



Netherlands

goods

- A Oy supplies goods to another Finnish company.
- The goods are delivered directly to A Oy's customer's customer in the Netherlands.
- EU supply only if Customer Oy gives another EU country's VAT id than the Finnish one. Otherwise A Oy's supply is subject to Finnish VAT.

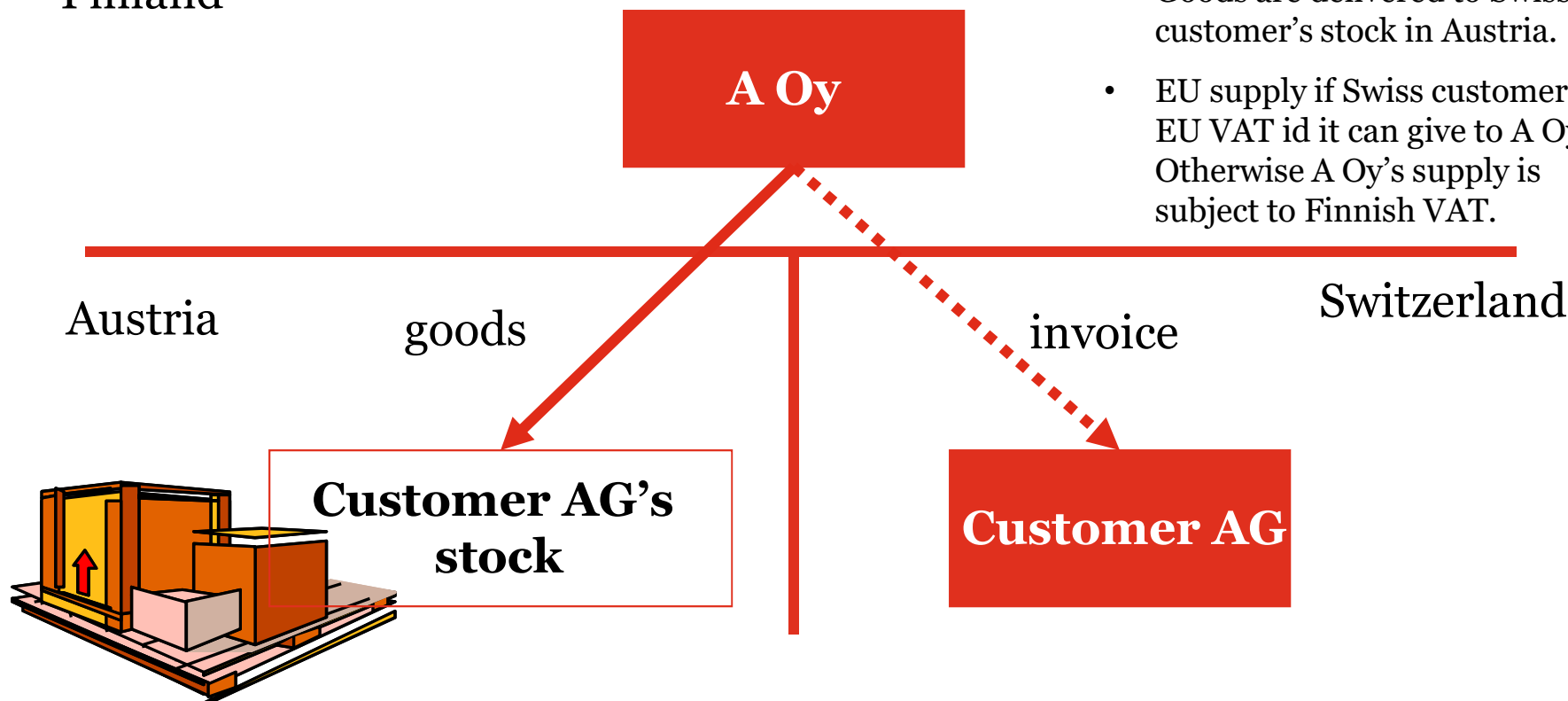


Supply of goods in the EU

Example 5 – Invoice issued to Swiss customer, delivery to Austria

- A Oy issues invoice to its Swiss customer.
- Goods are delivered to Swiss customer's stock in Austria.
- EU supply if Swiss customer has EU VAT id it can give to A Oy. Otherwise A Oy's supply is subject to Finnish VAT.

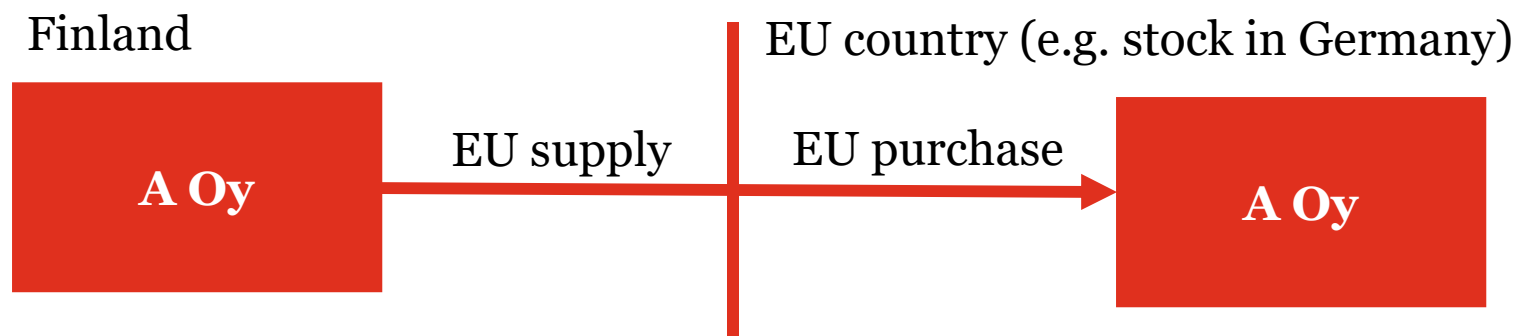
Finland



Supply of goods in the EU

Transfer of own goods

- In the country of dispatch: treated as an EU supply.
- In the country of arrival: treated as an EU purchase.
 - liability to register for VAT and report EU purchase
- The transfer is usually reported on the basis of the so-called pro forma invoice.
- VAT IDs of both country of dispatch and arrival quoted on the invoice.



EU supply – Transfer of own goods

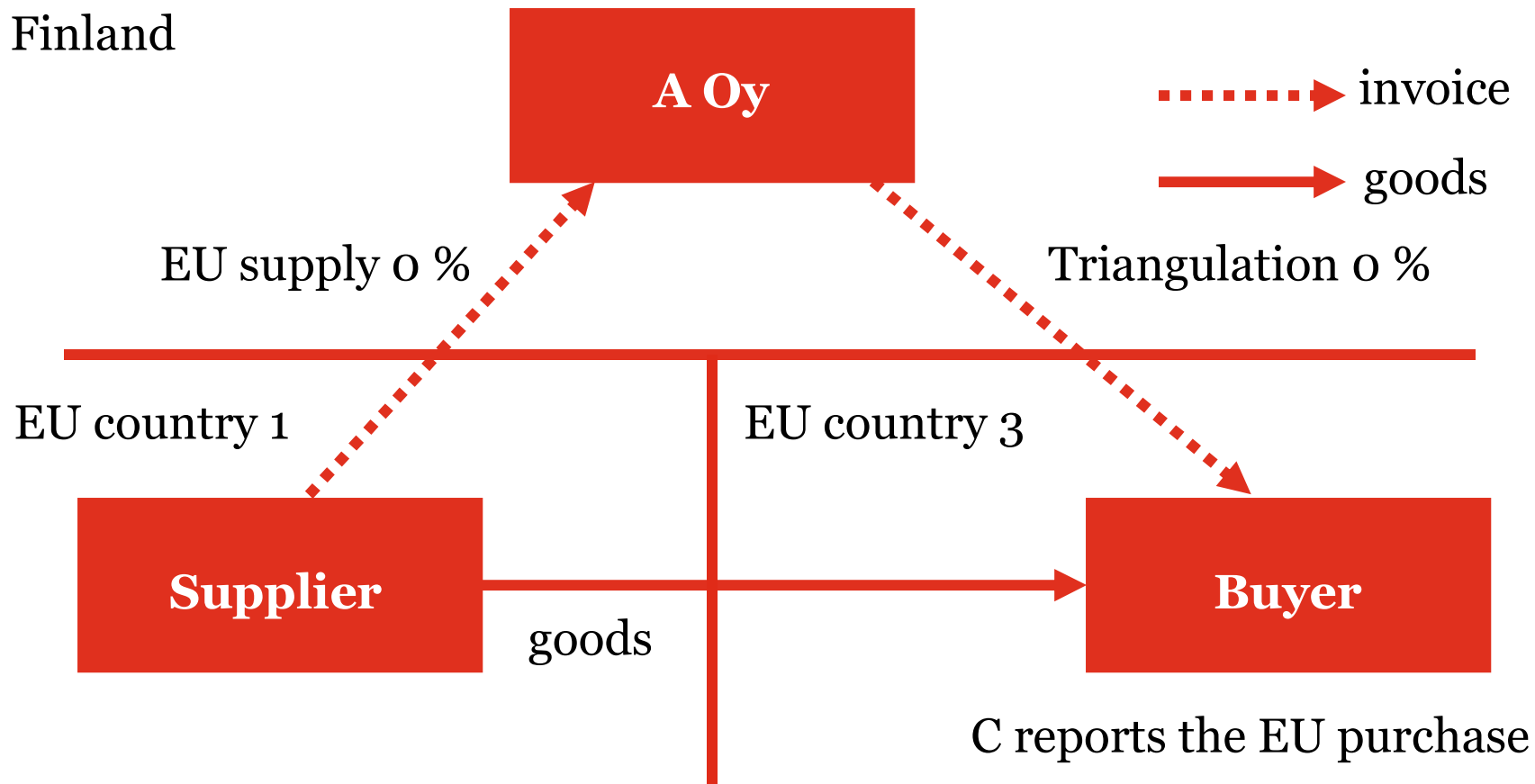
C-606/12 and C-607/12 Dresser-Rand SA

ECJ

- In order for the dispatch or transport of goods not to be classified as a transfer to another Member State, those goods, after the work on them has been carried out in the Member State in which dispatch or transport of the goods ends, must necessarily be returned to the taxable person in the Member State from which they were initially dispatched or transported.

Supply of goods in the EU

Triangulation simplification



Supply of goods in the EU

Triangulation simplification

General requirements for triangulation

- Triangulation: the goods are subsequently sold by the buyer to a third party, so that they are transported directly from the first supplier's EU country to the second buyer in another EU country in connection with the second supply.
- A, B and C are VAT liable in three different EU countries.
- Goods are transported directly from A to C.
- C is VAT liable in the country of destination.
- A or B arranges the transport to the country of C.
- In principle, triangulation is not applicable if, e.g:
 - two parties of the transaction are in the same EU country.
 - there are more than three parties in the transaction chain.

Supply of goods in the EU

Triangulation simplification

VAT treatment of the transactions in triangulation

- A. Treated as an EU supply.
- B. Triangulation supply - not an EU supply.
 - a reference to triangulation quoted on the invoice, e.g. "VAT 0%, Triangulation"
 - not reported in the VAT return but reported in the EC Sales List
- C. Reports the EU purchase in the country of destination.
 - As a result of the simplification, B avoids VAT registration liability in the country of destination (country C).
 - NB! In certain countries the party arranging the transport and VAT registration of the parties in the same countries may prevent the applicability.

Supply of goods in the EU

Triangulation simplification

- B avoids the VAT registration in the country of arrival of the goods
- Reporting by B
 - differs in EU countries, but is not reported as an IC acquisition
 - a reference to triangulation quoted on the invoice, e.g. "VAT 0%, Triangulation"

A

EU supply in the country of dispatch of the goods

B

No EU purchase but so called triangulation sale

C

EU purchase in the country of arrival of the goods

Supply of goods to consumer in other EU country

Distance sales rules

Distance sale

- Supplier from an EU country supplies goods and is responsible for their delivery to a private individual in another EU country (e.g. sale through online shops).
 - a) Subject to VAT in the country of the supplier/warehouse location until threshold exceeded.
 - b) Subject to VAT in the EU country of the private individual after the value of sales to a specific country exceeds the VAT registration threshold (EUR 35 000 - 100 000) for distance sales.

Challenges

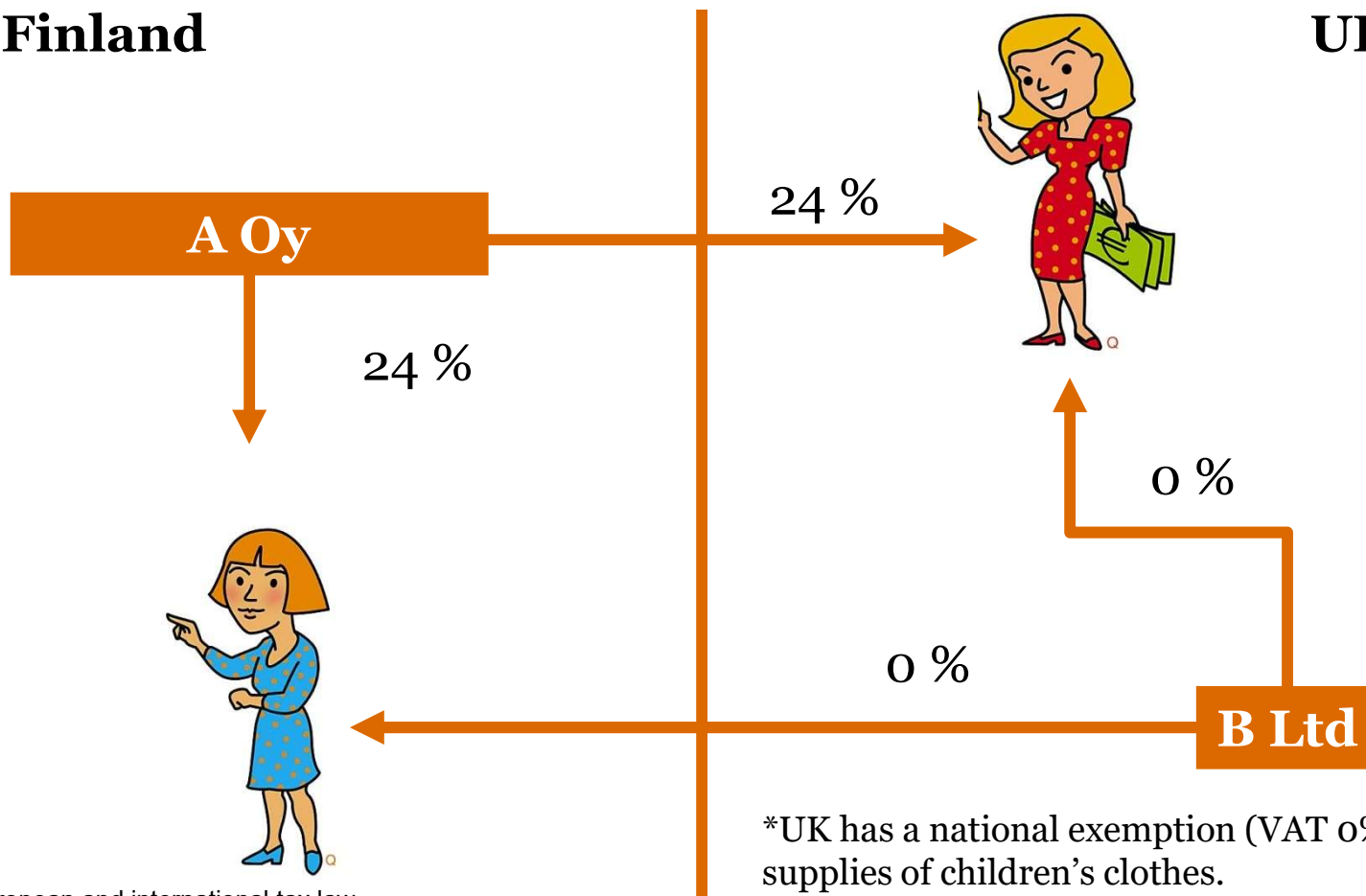
- Keeping track of the value of the sales of goods to the EU countries for the distance sales thresholds and registering for VAT when
necessary

Supply of goods to consumer in other EU country

Distance sales rules – Example: supplies of children's clothes

Finland

UK



*UK has a national exemption (VAT 0%) for the supplies of children's clothes.

Supply of goods outside the EU

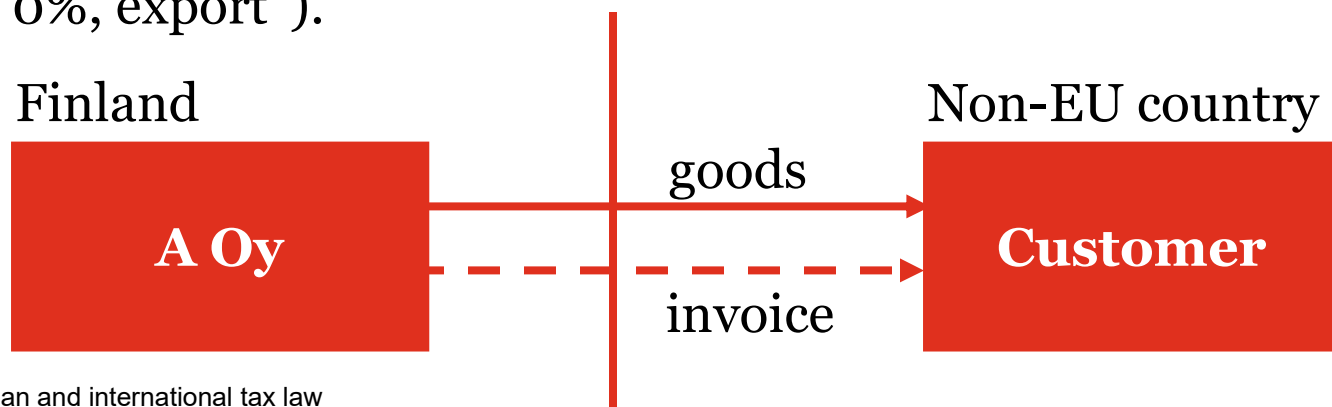


Supply of goods outside the EU

Export

Definition and VAT treatment

- Supply of goods transported outside the EU.
- Place of supply is the country of dispatch.
- Supply is VAT zero-rated when the requirements are fulfilled.
 - if the requirements are not fulfilled, the supply is taxable as a local supply in the country of dispatch.
- Reference to the zero rated supply on the invoice required (e.g. "VAT 0%, export").



Supply of goods outside the EU

Export

Proof for VAT zero rated export supply:

- Freight forwarding or shipping documents showing that the goods are transported outside the EU.
- Exit notification from the Customs.
- Possibly also other evidence is needed depending the country in question and the type of the supply.

Supply of goods outside the EU

Export

Export scenarios based on the Finnish VAT Act

1. Transport arranged by the supplier
 2. Transport arranged by the buyer
 3. Pick up sales (Ex Works)
 4. Export through party processing the goods
- The conditions for zero rated supply and proof requirements differ in the above cases

Supply of goods outside the EU

Export

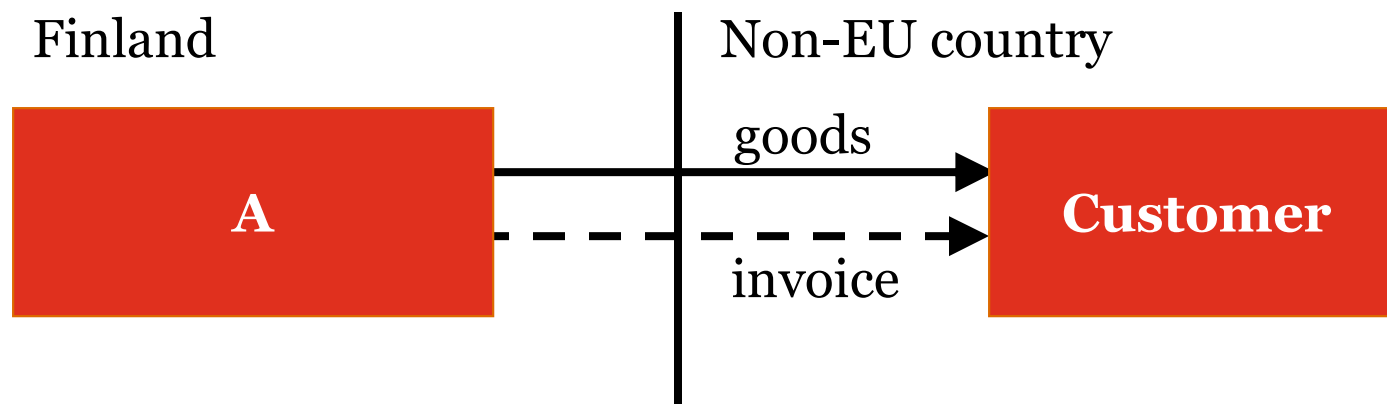
1. Export – transport arranged by the supplier

Supply is a VAT zero rated export, if

- supplier transports the goods or
- third party (carrier) transports the goods on behalf of the supplier outside the EU.

Proof

: exit notification



Supply of goods outside the EU

Export

2. Export – transport arranged by the customer

Supply is a VAT zero rated export, if

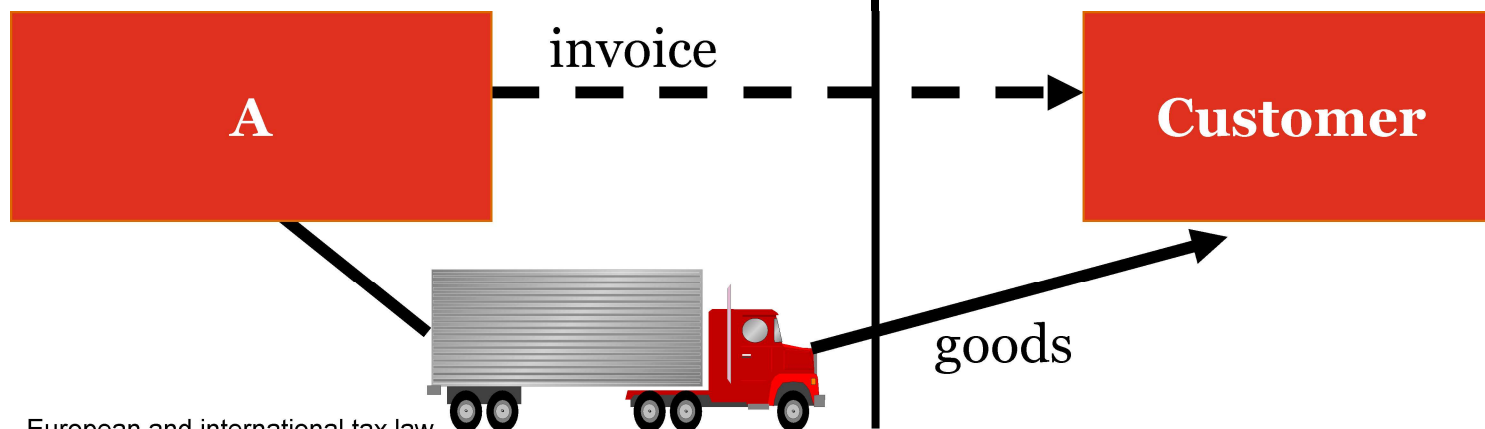
- third party (carrier) transports the goods on behalf of the customer directly outside the EU.

Proof

: freight documents and exit notification

Finland

Non-EU country



Supply of goods outside the EU

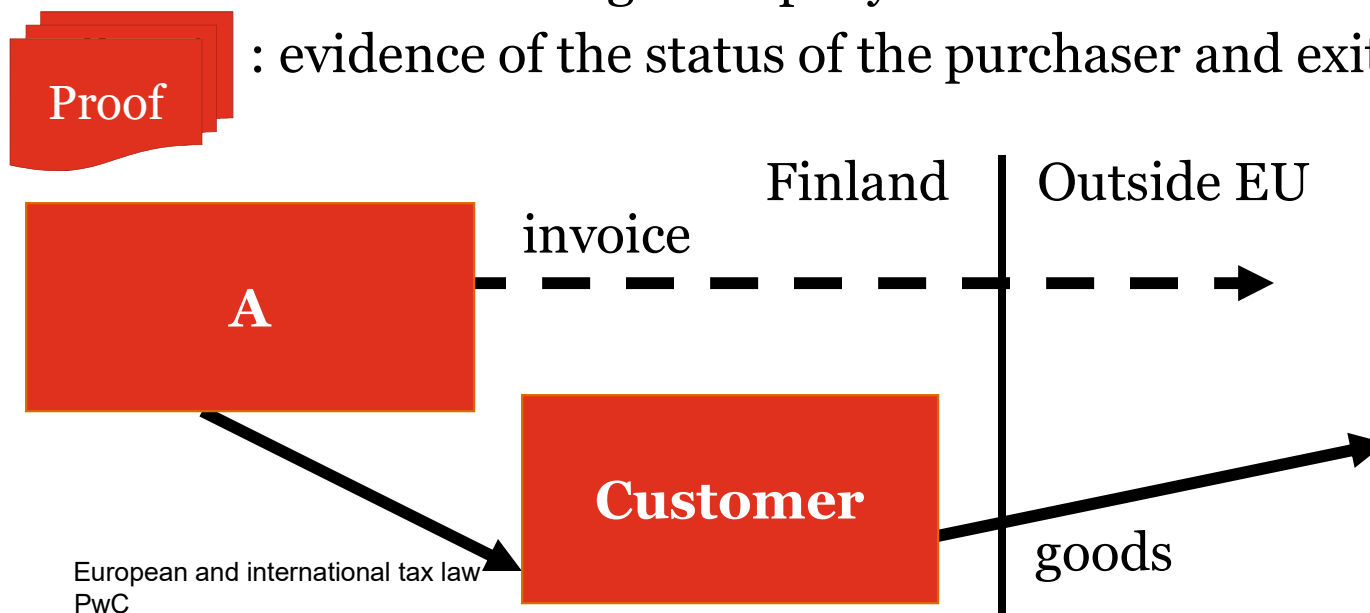
Export

3. Export – pick-up sales

Supply is a VAT zero rated export, if

- purchaser collects the goods from the supplier's premises in Finland and transports them directly outside the EU – e.g. when the goods are supplied with ex works terms, and
- customer is a foreign company not VAT liable in Finland.

: evidence of the status of the purchaser and exit notification



Supply of goods outside the EU

Export

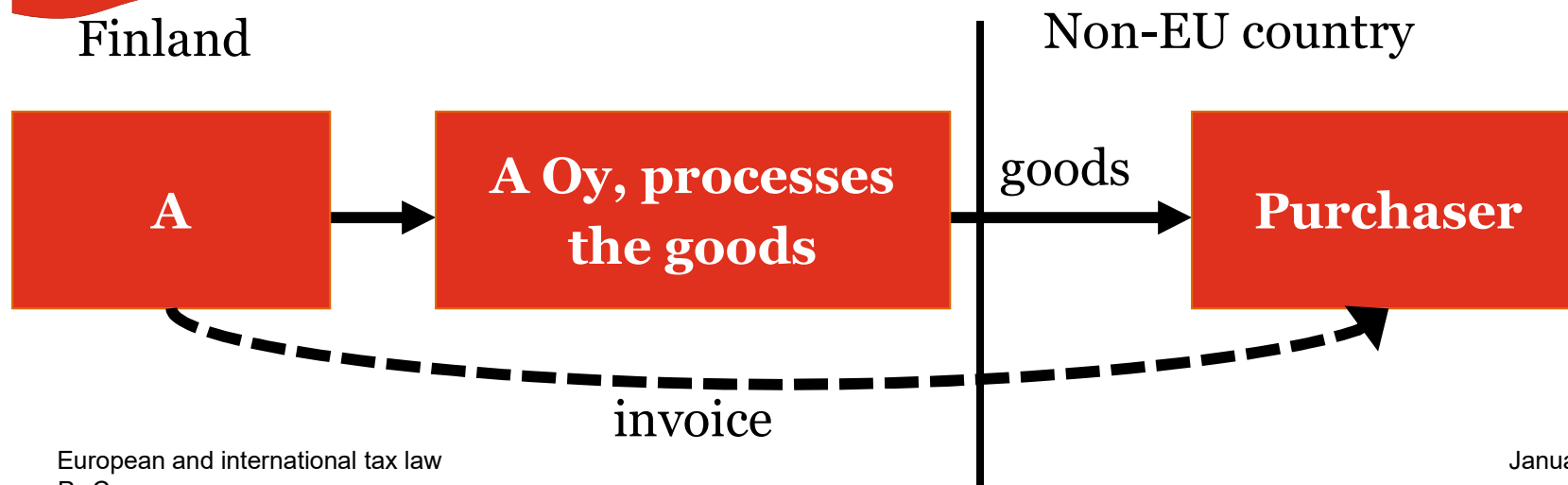
4. Export – through party processing the goods

Supply is a VAT zero rated export, if

- charging the purchaser the goods are transported to a third party to be processed after which they are transported outside the EU and
- the customer is a foreign company not VAT liable in Finland.

Proof

: evidence of the status of the purchaser and exit notification.

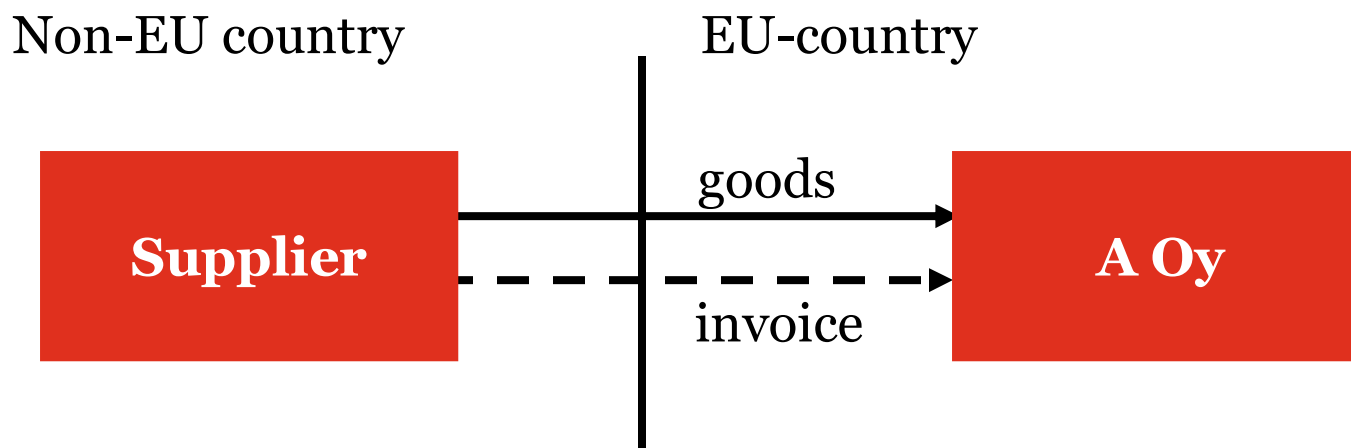


Supply of goods outside the EU

Import

Importation of goods

- Importation of goods into EU is subject to VAT.
- Importation of goods takes place and is subject to VAT in the country where the goods arriving outside the EU are released for free circulation.



Supply of goods outside the EU

Import

VAT treatment of import

- Import declaration is filed on goods.
- Customs imposed and collected import VAT in Finland until the end of 2017. As of 2018 VAT deferral applies.
- The importer of the record is liable for import VAT.
- Decision on customs clearance
 - basis for VAT calculation
 - importer calculates and reports the import VAT payable (and deductible) in the VAT return

Supply of goods outside EU

Import

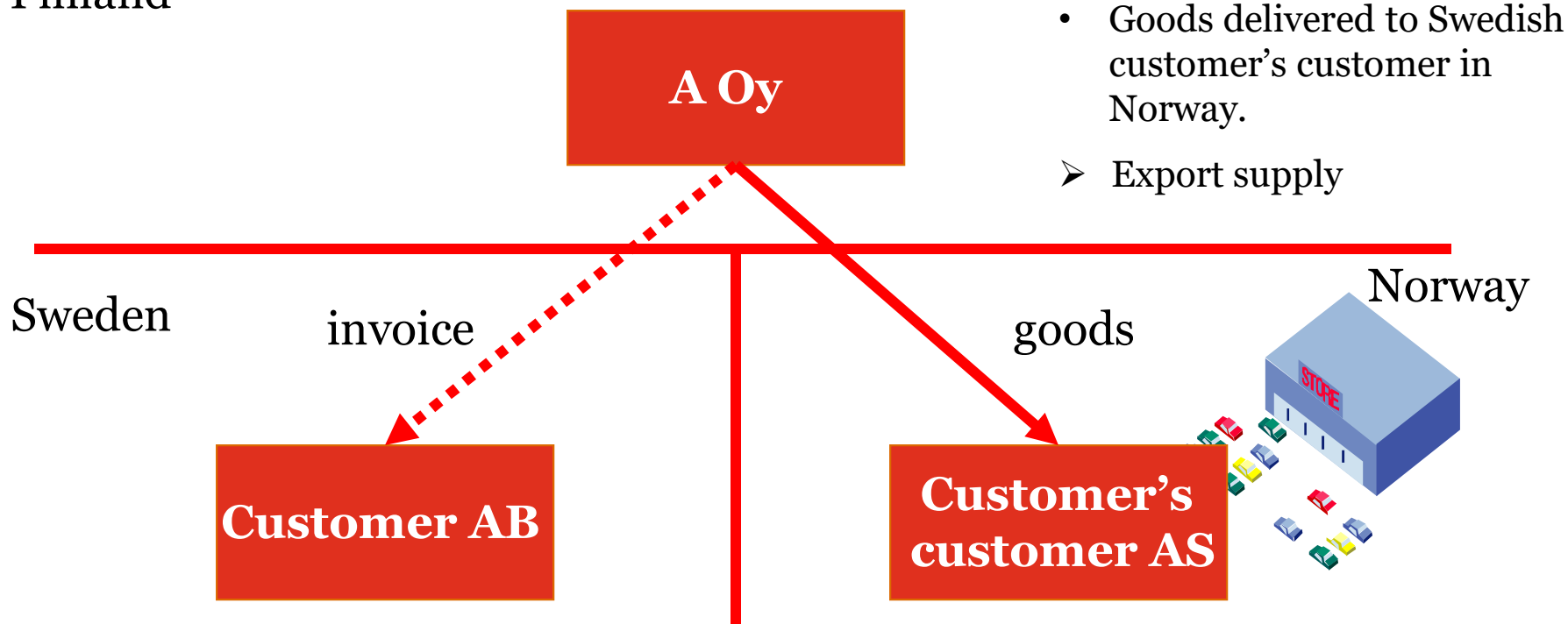
Tax basis for import VAT

- commercial value, with possible corrections
- + taxes, which are paid to the customs in connection with the importation (except import VAT)
- + transport, loading, packaging, insurance costs and other similar costs incurred until the destination mentioned in the transport agreement

Supply of goods outside the EU

Example 6 – Invoice issued to EU customer, goods delivered outside the EU

Finland

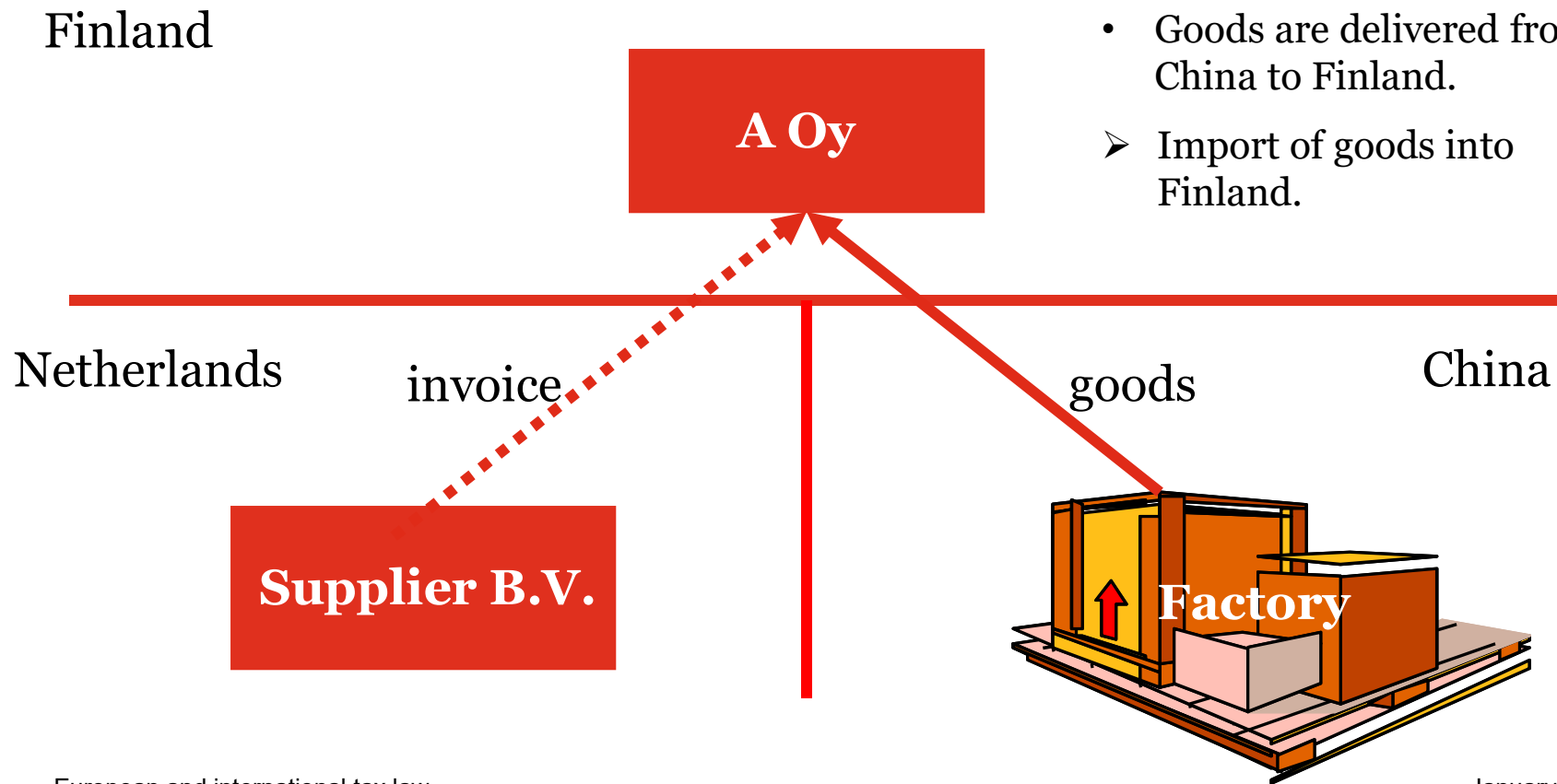


- A Oy issues invoice to its Swedish customer
 - Goods delivered to Swedish customer's customer in Norway.
- Export supply

Supply of goods outside the EU

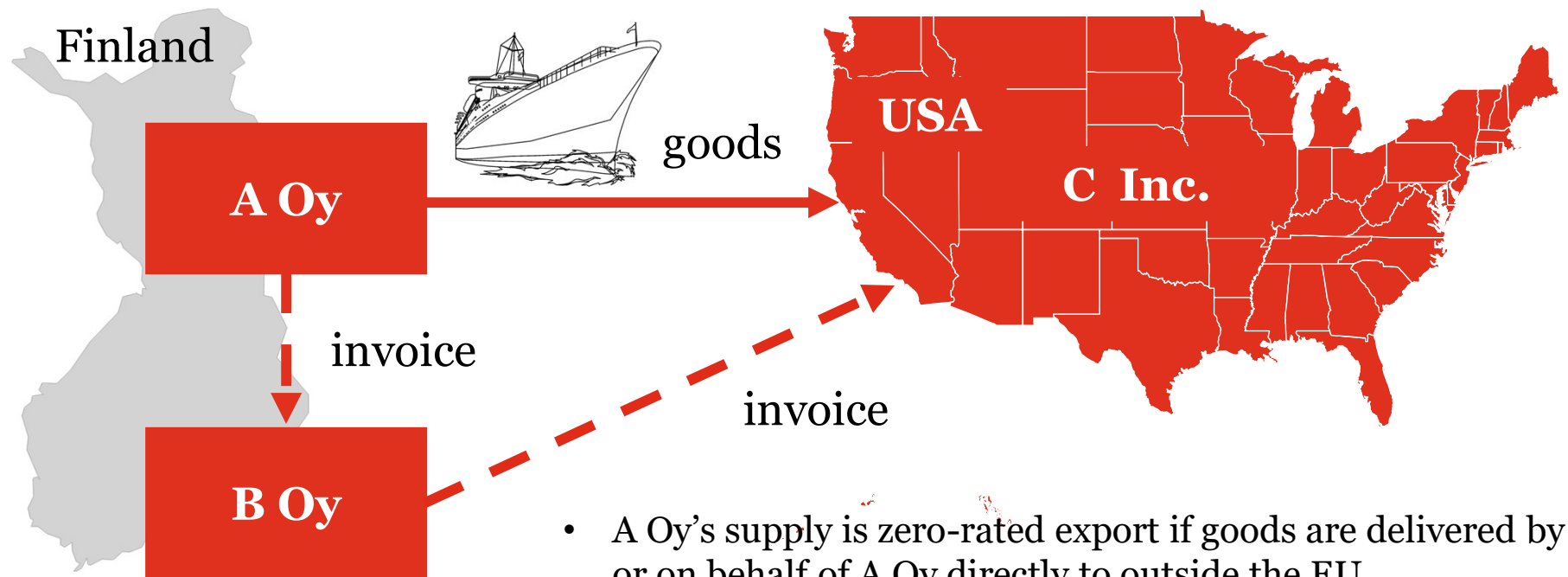
Example 7 – Import or EU purchase?

- A Oy purchases goods from Dutch vendor.
- Goods are delivered from China to Finland.
- Import of goods into Finland.



Supply of goods outside the EU

Chain delivery



- A Oy's supply is zero-rated export if goods are delivered by or on behalf of A Oy directly to outside the EU.

- If C Inc. imports the goods into the USA, no indirect tax liabilities arise for B Oy.
- B Oy's purchase and sale take place during the transportation, "high seas", and the supply to C Inc. is outside the scope of VAT.

Åland Islands

- Åland Islands is not part of VAT or excise tax areas of EU
- Åland Islands is part of EU customs area
 - Trade from EU member states to Åland Islands or vice versa is treated as trade with third countries (non-EU) but no customs duties are imposed
- However, Åland Islands is not tax-free area as such, as Finnish VAT Act is applicable in Åland Islands
- Supplies of goods between non-EU/ other EU/mainland Finland and Åland Islands: export/import.
- Supplies of services between mainland Finland and Åland Islands: generally VAT taxable.



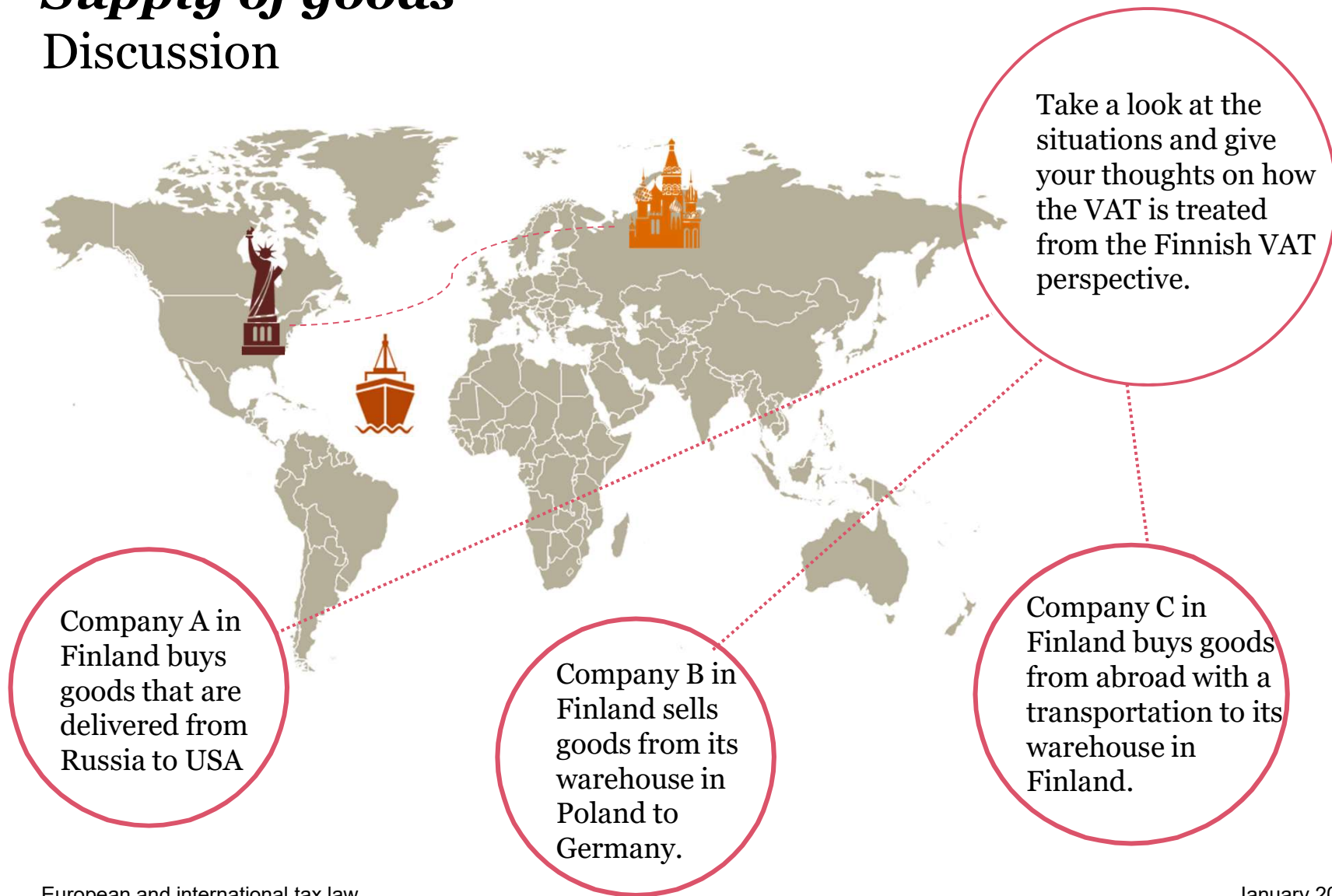
Supply of goods outside the EU

Private consumer resident outside the EU

- Tax free supplies to travellers.
- Residence outside the EU to be checked e.g. from passport.
- Supply is initially treated as VAT taxable but after VAT is refunded to the traveller (subject to proof) the supply can be adjusted as a zero-rated supply.
- Limits set for timeline and value.

Supply of goods

Discussion



Supply of goods with installation



Supply of goods with installation

Concept

When are goods being supplied with installation?

- Sale includes goods + installation or assembly service
 - supplier is liable for both the supply of goods and installation
 - it is irrelevant whether the supplier or subcontractor performs the installation – it is decisive that the supplier has agreed to supply the goods installed
- Installation and assembly
 - not defined in the EU VAT Directive
 - more than just the unwrapping the packing materials/placing the machinery/connecting it to the electric plug
- Definitions may vary in different countries
 - e.g. the value of installation compared to that of the whole delivery (%)
 - installation – oversight of installation

Supply of goods with installation

VAT treatment

Place of supply and taxability

- Tax liabilities are determined according to the local VAT legislation of the country where installation takes place (place of supply).
- In general, the country of supply is the country where the installation or assembly is done.
 - in case the installation is done Finland, the sale of goods with installation is subject to VAT in Finland
- Supplier, if not from the country of assembly, may be obliged to register for VAT and charge the local VAT in the country of installation.
- Similar rules also applied in many countries outside of the EU. The implications need to be confirmed locally in each country.

Supply of goods with installation

EU

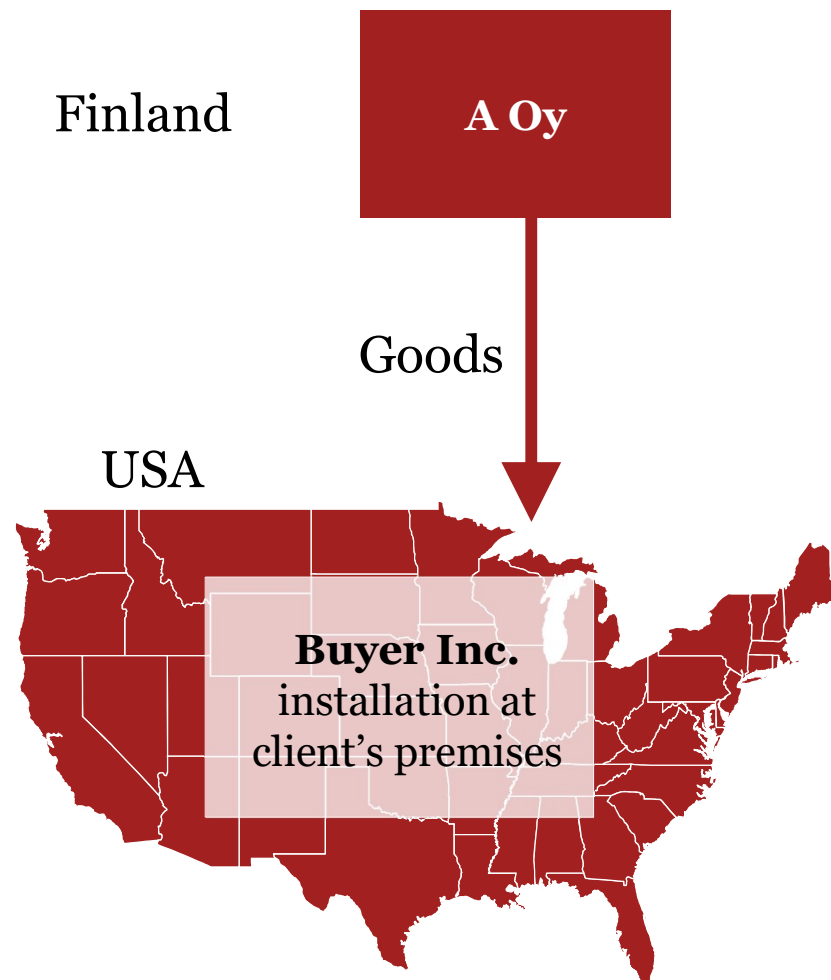
- Place of supply (taxation country) is the country where the installation takes place.
- Entire supply (goods + installation) is subject to VAT in that country.
- In most EU countries the reverse charge applies:
 - customer pays the VAT on the supply
 - supplier is not liable to register for VAT purposes
- If the installation takes a long time or in case of consecutive installation projects, the risk of triggering a permanent establishment in corporate income taxation and employer registration obligations.



Supply of goods with installation

Non-EU

- From the Finnish point of view, delivery of goods is a zero rated export.
- Indirect tax on the value of the equipment is paid upon importation.
- Indirect tax on the service (installation) is determined based on the local rules.
- Possible indirect tax liability in the country of installation.
- Is indirect tax levied on subcontractor invoices? Can it be refunded?
- If the installation takes a long time or in case of consecutive installation projects, the risk of triggering a permanent establishment in corporate income taxation and employer registration obligations.



Supply of goods with installation

Checklist

Installation country

1

Are the goods installed within the EU or outside the EU?

Purchases of goods

2

All goods from Finland or is something purchased from other countries?

Installation

3

Installation by own personnel or by subcontractors?

Tax liability

4

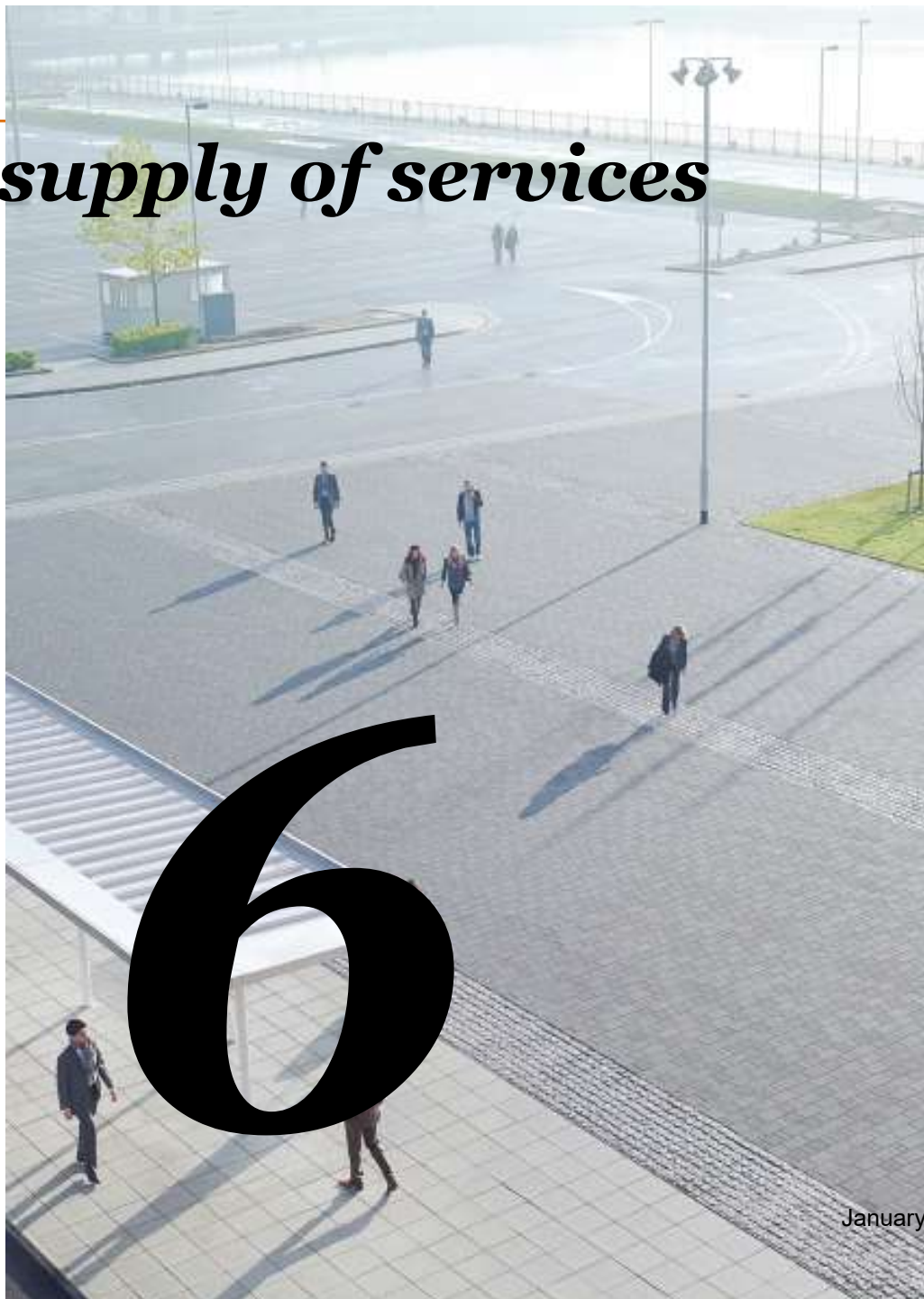
Is the reverse charge applicable/registration liability?

Duration of installation

5

Potential CIT and employer obligations?

Cross border supply of services



Cross border supply of services in the EU

Place of supply

1. Which service?

Which service is supplied?

2. Which country?

Where is the supply taxable?

3. VAT treatment?

- Taxable or non-taxable?
- Who is liable to pay the VAT?

Cross-border supply of services in the EU

Place of supply

Which service is supplied?

- Nature of service supplied determines the place of supply in the EU according to the applicable place of supply rule.
- Different rules may apply to services supplied to consumers.
- Types of services defined in EU VAT Directive (2006/112/EC).
 - general rule
 - several exceptions
- EU VAT Directive is implemented into local legislation of each EU country.

Cross-border supply of services in the EU

Place of supply

General rule

- Supply is taxable where:
 - buyer has a fixed establishment to which the service is rendered,
or
 - buyer has established its business
 - in absence of the above mentioned places, the place of supply of service is the place where the receiving taxable person has his permanent address or usually resides
 - › the idea is to tax where the consumption takes place
- There are several exceptions to the main rule.

Cross-border supply of services in the EU

Place of supply

General rule is applied to e.g.

- Consulting
- Advertising, sales and marketing
- Data processing, other IT services
- Leasing of goods
- Research and development
- Licenses, or sales of intellectual property, assignment of trademark or similar rights
- Electronically supplied services
- Work on movable tangible property
- Intermediary services
- Transport of goods (NB! Export and import transport and related services)

Cross-border supply of services in the EU

Place of supply

Exceptions to the general rule, e.g.

- Services connected with immovable property: where the immovable property is located (e.g. accommodation, hiring out of real estate)
- Passenger transport: where transport takes place
- Admission to training, scientific and educational events, conferences, fairs, exhibitions, other events, and ancillary services relating to admission: where the events actually take place
- Short-term (less than 30 days) hiring out of means of transport: where the vehicle is put at the disposal of the customer

Cross-border supply of services in the EU

Place of supply

Reverse charge on supplies of services

- If the fixed establishments of the supplier and purchaser are not in the same EU country, the purchaser is VAT liable for the supply.
- In other words, the purchaser is VAT liable based on the reverse charge if the fixed establishment of the supplier is not located in the same EU country.
- The reverse charge applies even if the supplier has a fixed establishment in the place of supply provided that the fixed establishment of the supplier does not intervene in the supply.

Cross-border supply of services in the EU

Fixed establishment

Fixed establishment

- A fixed establishment is any establishment characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources.
- A fixed establishment needs to hold permanent business operations.
- The supplier's fixed establishment should have personnel and technical resources that enables it to provide the services which it supplies.
- The purchaser's fixed establishment should have personnel and technical resources that enables it to receive and use the services supplied to it for its own needs.
- VAT registration alone does not create a fixed establishment.

Cross-border supply of services in the EU

VAT liability

Proof of the VAT liability of the purchaser 1/2

- Supplier is required to have sufficient proof on the VAT liability of the purchaser in its country of establishment.
- When the purchaser is from another EU country:
 - supplier has received the VAT ID of the purchaser and the supplier has checked that the VAT ID is valid, or
 - if the purchaser does not have the VAT number yet but the VAT number has been applied for, any evidence on that which validity the supplier should check.

Cross-border supply of services in the EU

VAT liability

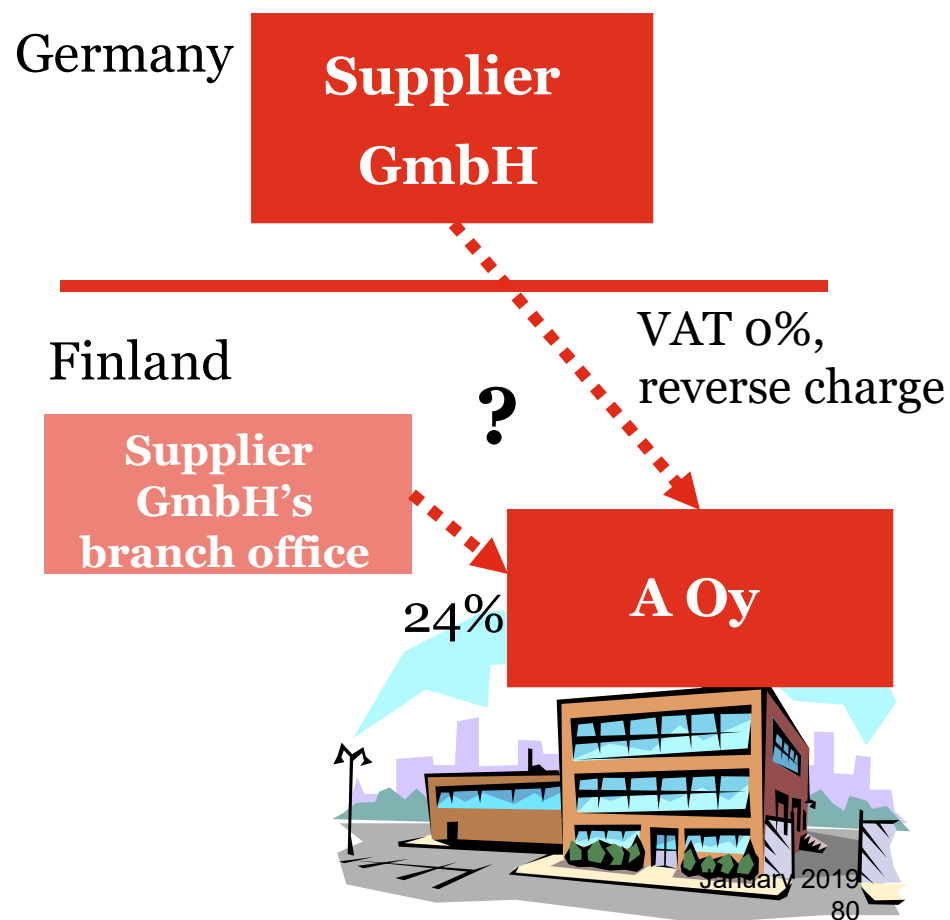
Proof of the tax liability of the purchaser 2/2

- When the purchaser is from outside the EU:
 - supplier has received a certificate from the tax authorities of the country of the purchaser which indicates that the purchaser is tax liable, or
 - supplier has received VAT ID or other tax number of purchaser, or
 - any other evidence which validity the supplier should check

Cross-border supplies of services in the EU

Example 8 – Purchase of consulting services

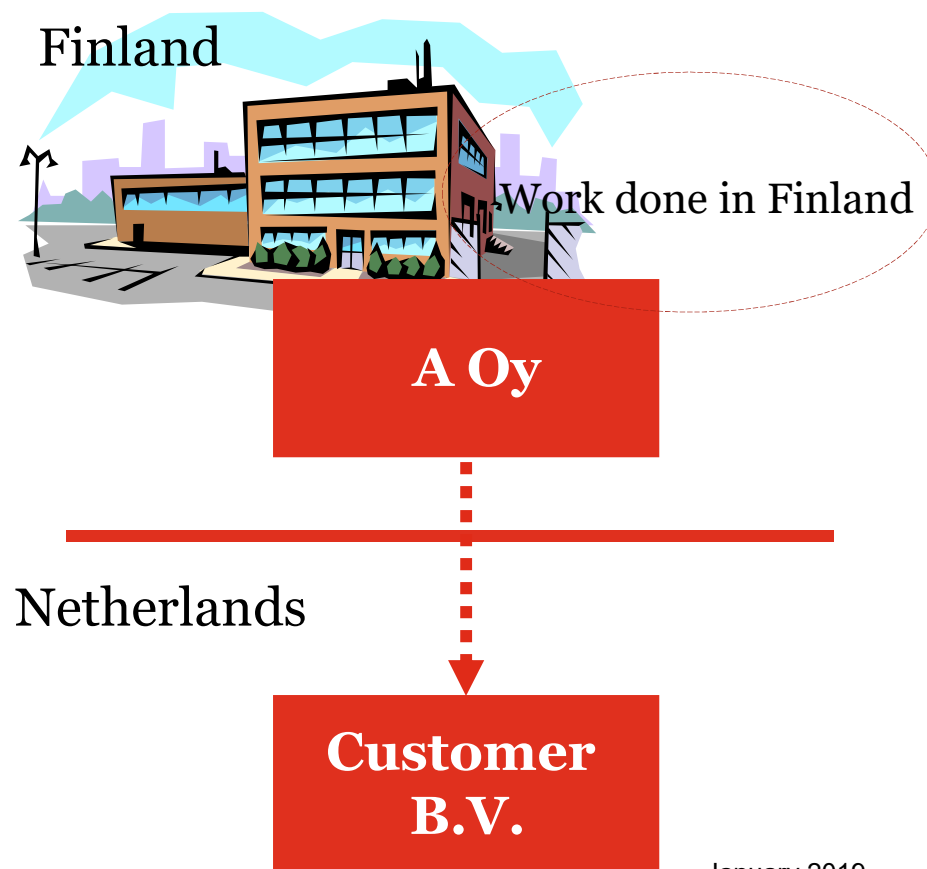
- A Oy buys consulting services from Supplier GmbH.
- Supplier GmbH has a VAT registered branch office in Finland.
- Services are invoiced from Germany but the employees of the Finnish branch have done the actual work.
- General rule applies
- Needs to be determined which fixed establishment is the supplier in order to apply correct VAT treatment.



Cross-border supplies of services in the EU

Example 9 – Supply of maintenance services

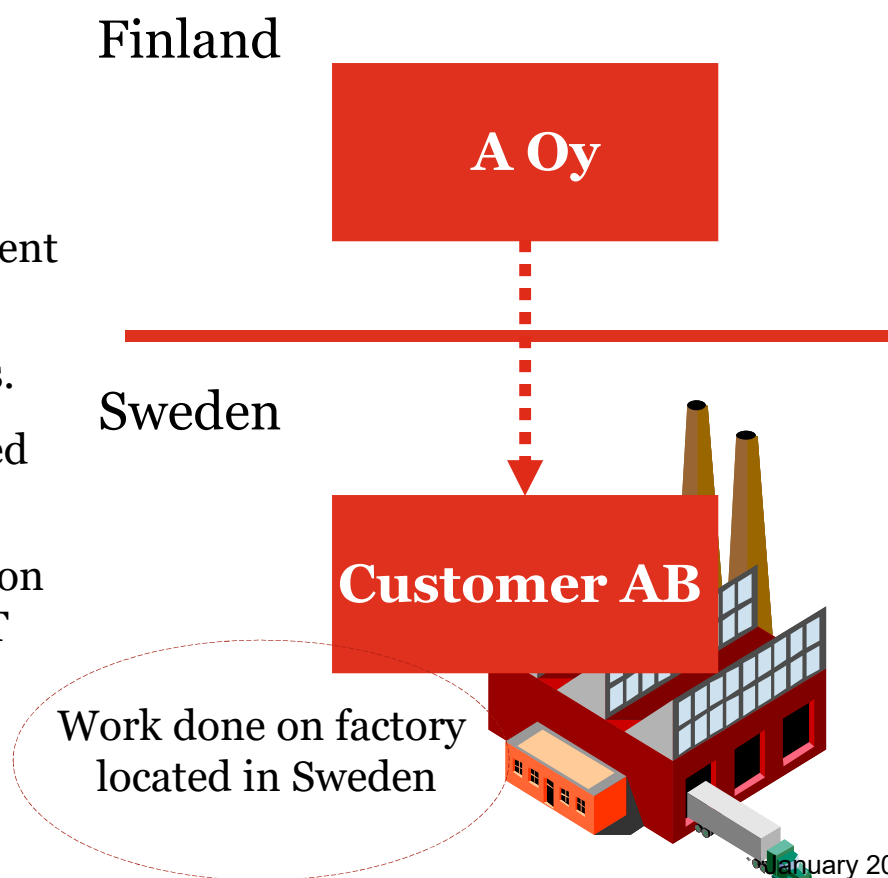
- A Oy supplies maintenance services to a customer established in the Netherlands.
- The goods are delivered to Finland for the work to be done.
- A Oy does not have a fixed establishment or a VAT registration in the Netherlands.
- Work on movable goods: general rule applies + place of supply is the Netherlands. Dutch VAT rules determine the correct VAT treatment.
- A Oy issues its invoice with VAT 0%, reverse charge.



Cross-border supplies of services in the EU

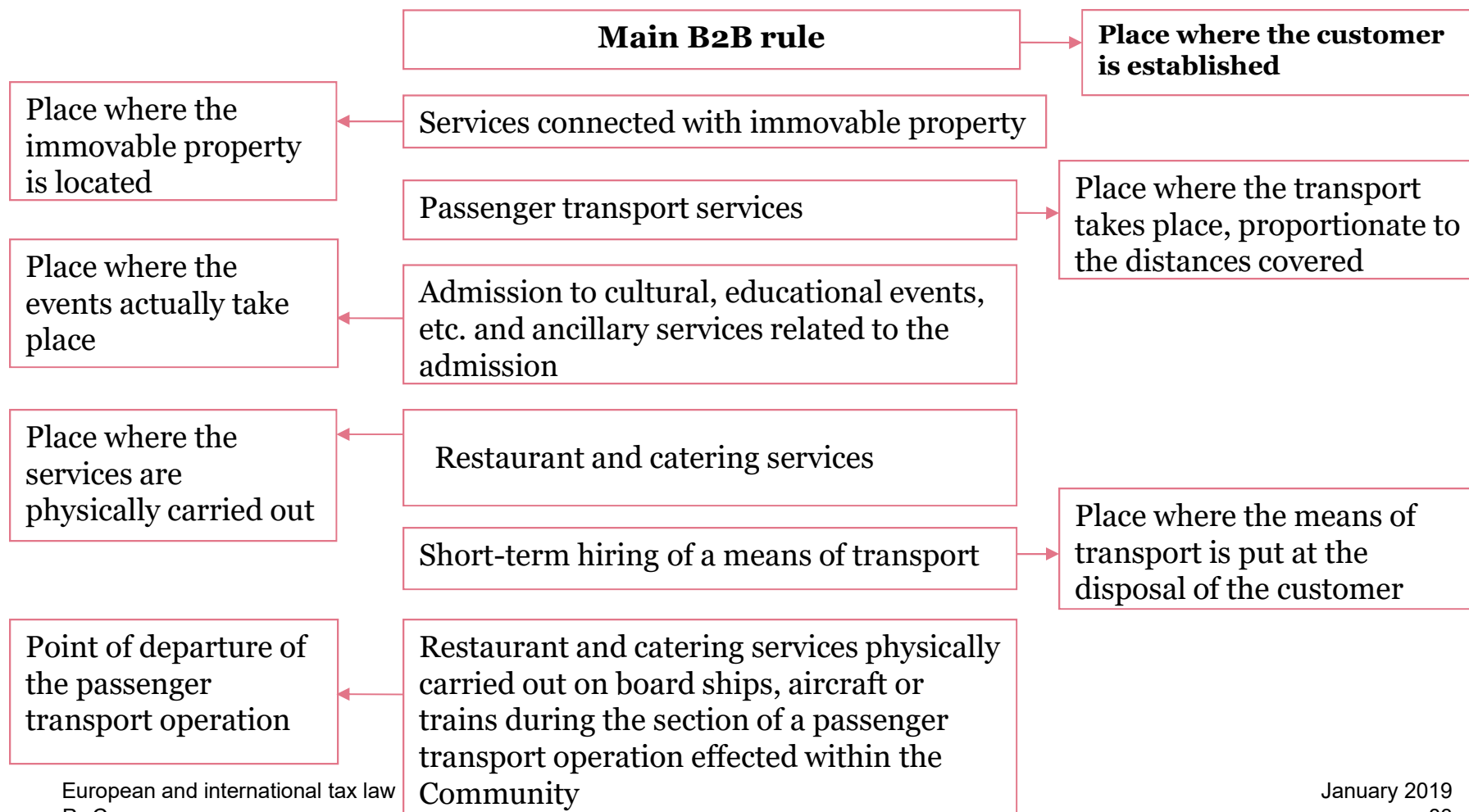
Example 10 – Electrical works

- A Oy conducts electrical works on a factory located in Sweden.
- The work done serves the building as such.
- A Oy does not have a fixed establishment or a VAT registration in Sweden.
- The duration of the works is 2 months.
- Exception applies (=services connected with immovable property)
- Sweden is the place of supply (=location of immovable property). Swedish VAT rules determine the correct VAT treatment.



EU: place of supply rules for services

B2B sales



Cross-border supply of services

Place of supply of services

General rule B2C

- Supply is taxable where:
 - the supplier has established his business or fixed establishment
 - in absence of the above mentioned places, the place of supply of service is the place where the supplier has his permanent address or it usually resides
- There are several exceptions to the main rule (such as: electronically supplied services, services connected with immovable property, admission to events, restaurant and catering services)

Cross-border supply of services

Outside the EU

General information

- The place of supply rules presented above are applied only in the EU. Countries located outside the EU have their own indirect tax legislation and thus the country specific VAT or other indirect tax liabilities have to be examined separately.
- Double taxation and situations where the supply is not taxed at all are possible.
- VAT liability may result in a need to establish a local subsidiary/branch (e.g. Russia and Turkey).
- The concept of fixed establishment for indirect tax purposes is country specific and thus has to be examined case by case basis.

VAT in contracts



VAT in contracts

Issues to consider

- VAT items need to be taken into consideration already when preparing the contract:
 - price definition– VAT included or not?
 - ”agreed sales price does not include VAT” – what is agreed?
 - if the supplier becomes liable to register for VAT – is the supplier allowed to add the VAT on top of the sales price or does the VAT remain as a cost to the supplier?
 - the costs related to the potential VAT registration process need to be taken into consideration when calculating the sales profit
- In long-term contracts the following needs to be taken into account:
 - having as flexible clauses as possible – e.g. ” VAT at the applicable rate will be added to the sales price”, and
 - if the circumstances change, the contract needs to be altered accordingly



VAT in contracts

Issues to consider

- Is supplier VAT registered in the country in question? What is the tax status of the customer, i.e. is the customer VAT liable and does the customer have a fixed establishment in the country in question?
- Are we selling goods, services or both?
- Are we selling such services that are not treated according to the general place of supply rule?
- Can the local VAT
 - be refunded as a refund to foreign companies?
 - be deducted in the local VAT return?
 - remain as an expense?
- Contracts need to correspond with the facts of the delivery.
 - from where are the goods transported to the country?
 - who is making the EU purchase/import?

VAT registrations abroad



Performing VAT liable business activities abroad

Registration process

Registration process

- Duration of the indirect tax registration process varies country by country, usually between 2 weeks - 6 months.
- Registration must be completed before business activities are started.
- Possible penalties
 - penalties for delayed registration
 - penalties for late filing of indirect tax returns
 - penalties for delayed indirect tax payments
 - liability to pay indirect tax before registration without entitlement to deduction

Performing VAT liable business activities abroad

What does it mean in practice?

Sales – accounting

1

Liability to charge and account local indirect tax

Purchases – deductions

2

Indirect tax included in purchases is deducted in the indirect tax return

Reporting liability

3

Liability to file local indirect tax returns

Bookkeeping

4

Liability to maintain indirect tax bookkeeping consistent with local legislation

Invoicing requirements

5

Liability to follow local invoicing requirements

Performing VAT liable business activities abroad

What does it mean in practice?

Tax representative

6

A may be obliged to name a tax representative

Deposits

7

Deposits of payable taxes e.g. to the tax representatives

Administrative costs

8

Registration and compliance costs may be significant

Selecting registration type and related consequences

9

Some countries have several registration types that may impact e.g. the applicability of reverse charge mechanism

Local legislation

10

Liability to follow changes in local indirect tax legislation (e.g. right to deduct indirect tax)

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