



Explanatory notes

on

EU VAT place of supply rules on services connected with immovable property that enter into force in 2017

(Council Implementing Regulation (EU) No 1042/2013)

Disclaimer: These explanatory notes are not legally binding and only contain practical and informal guidance about how EU law should be applied on the basis of the views of the Commission's Directorate General for Taxation and Customs Union.

IMPORTANT PRELIMINARY REMARKS

These explanatory notes provide background information on place of supply rules for services connected with immovable property, as well as explanations on how these rules should be understood according to the European Commission Directorate General for Taxation and Customs Union.

They are not legally binding and do not prevent Member States and national tax administrations from adopting national guidance on the same subject matter.

The **objective** of these explanatory notes is to **provide a better understanding of European legislation**, mainly of Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services. They can be seen as a **guidance tool** that can be used to clarify the practical implementation of the European VAT legislation on services connected with immovable property.

These explanatory notes have been prepared by the Directorate General for Taxation and Customs Union of the European Commission (DG TAXUD) after extensive consultation with Member States and business representatives.

These explanatory notes are not legally binding. They do not express a formal opinion of the European Commission nor is the European Commission bound by any of the views expressed therein. They do not necessarily fully represent the views of all Member States. National tax administrations may also issue separate guidance on the application of VAT rules on services connected with immovable property. Stakeholders in search of a precise, complete and binding answer to a specific query are invited to contact their relevant national tax administrations¹ which, according to the subsidiarity principle, have the principal responsibility for informing their taxable persons about the interpretation and application of the VAT legislation.

The explanatory notes are not comprehensive: only certain issues have been included when it was considered desirable to provide explanations. It is advisable and recommended for any user of the explanatory notes to read both the general observations in Part I and the specific observations in Part II since explanations under Part I are often relevant for the good understanding of specific provisions.

They are a work in progress: these explanatory notes are not a final product but reflect the state of play at a specific point in time in accordance with the knowledge and experience available.

¹ More information on national VAT rules and contact details of national tax administrations can be found on http://ec.europa.eu/taxation_customs/taxation/vat/index_en.htm

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PART 1

GENERAL OBSERVATIONS ON SERVICES CONNECTED WITH IMMOVABLE PROPERTY

1.1. Historical background

1. Under European VAT legislation, the place of taxation of services connected with immovable property is defined by a particular rule laid down under Article 47 of the VAT Directive². This rule provides that the place of supply of services connected with immovable property shall be where the immovable property is located.
2. In the consideration of the revision of the place of supply rules on services which started with a first proposal from the European Commission in 2003 and resulted in the adoption of Council Directive 2008/8/EC³, the Council decided to keep the particular rule on the place of taxation of services connected with immovable property.
3. In parallel, specific questions on the interpretation of this provision have been discussed in the VAT Committee⁴ which agreed some guidelines notably on some specific scenarios such as the provision of legal services referring to immovable property, the provision of package services comprising stand location at fairs and exhibitions, etc.⁵. However, these guidelines were often not agreed unanimously.
4. In order to provide more consistency, effectiveness and certainty to the VAT treatment applied to the supply of services connected with immovable property located within the EU, the guidelines on services connected with immovable property agreed in the VAT Committee have been integrated in the provisions of the VAT Implementing Regulation⁶ and will therefore become binding and directly applicable in all Member States as of 1 January 2017.

1.2. International background

5. Particular place of supply rules on services connected with immovable property are applied not only within the European Union but also in some third countries. At EU level, this particular rule is in line with the implementation of the destination principle. At international level⁷, it has been commonly agreed that such particular rules using the location of an immovable property as a proxy for determining the place of taxation may lead to a fair allocation of taxable rights amongst tax jurisdictions.

2 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

3 Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services (OJ L 44, 20.2.2008, p. 11).

4 The VAT Committee is an advisory committee set up under Article 398 of the VAT Directive to promote the uniform application of the provisions of the VAT Directive. It has not been attributed any legislative powers and cannot take legally binding decisions but can give guidance.

5 See Guidelines of the 93rd meeting of the VAT Committee.

6 Council Implementing Regulation (EU) No 1042/2013 of 7 October 2013 amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services (OJ L 284, 26.10.2013, p. 1).

7 See International VAT/GST Guidelines developed by the OECD.

1.3. Purpose of the particular rule on services connected with immovable property

6. The purpose of the particular place of supply rule on services connected with immovable property is to ensure taxation at the presumed place of consumption of the service. This objective should be recalled in all situations where the practical implementation of the legislation raises difficulties. Such situations should always be resolved in a way as to ensure that the VAT revenue accrues to the Member State where the service is presumably consumed taking into account that services connected with immovable property are considered to be consumed at the place where the property is located. The parties to such transactions cannot therefore circumvent Article 47 of the VAT Directive by indicating in their contractual arrangements that services provided under the contract should rather be subject to the general place of supply rules.

1.4. Nature of the particular rule on services connected with immovable property

7. The rule contained in Article 47 of the VAT Directive is a particular rule and not an exception to the general place of supply rules contained in Articles 44 (B2B) and 45 (B2C) of the VAT Directive. It falls under Title V 'Place of taxable transactions', Chapter 3 'Place of supply of services', Section 3 'Particular provisions' and should not be interpreted as an exception to the general rules⁸.
8. According to consistent case-law of the Court of Justice of the European Union (hereinafter 'CJEU'), provisions which entail exceptions to general rules (such as provisions referring to exemptions or reduced rates) must be strictly interpreted. Since the rule in Article 47 of the VAT Directive is not an exception, this criterion of strict interpretation does not apply to the definition of services connected with immovable property.
9. Article 47 should be applied on the basis of an objective assessment of the conditions provided under the VAT Directive and the VAT Implementing Regulation. This particular rule applies regardless of whether the service is supplied to a business customer (B2B) or to a final consumer (B2C).
10. Whenever uncertainty arises with regard to the application of Article 47 of the VAT Directive as a particular rule held up against the general rules of Articles 44 and 45, the VAT treatment of the transaction should be determined having regard to the purpose of this particular rule – as to allow taxation in the Member State where the service is consumed – and by carrying out an objective assessment. It should first be verified whether the services fall within the scope of the particular rule of Article 47⁹ and if so, the service will be considered as connected with immovable property. If not and no other particular rule applies¹⁰, then the general rules of Articles 44 and 45 shall apply.
11. In some circumstances, it can occur that conditions for application of two or more particular rules are fulfilled. In such cases, the rule better assuring taxation at the presumed place of consumption should be applied¹¹.

8 See CJEU cases C-166/05 *Heger Rudi* and C-41/04 *Levob Verzekeringen and OV Bank*.

9 See CJEU case C-155/12 *RR Donnelley Global Turnkey Solutions Poland*, paragraph 29.

10 The service should always be examined on equal bases whether it falls under any of the particular rules within Articles 46 to 59a of the VAT Directive. If that is the case then the relevant provision, and not the general rules in Articles 44 and 45 of the VAT Directive, would apply.

11 See CJEU case C-37/08 *RCI Europe*, paragraph 39.

1.5. VAT treatment of remote supplies connected with immovable property

12. Services connected with immovable property may in some instances be supplied remotely, i.e. from a distance. Normally the way in which a service is supplied should not influence its VAT treatment provided that its nature does not change. Indeed it cannot be excluded that for example thanks to modern technologies some services connected with immovable property can be supplied not only on-site but also at a distance.
13. When a service provided from a distance is susceptible to be covered by more than one of the particular rules governing the place of supply of services (for example by the rule on services connected with immovable property and by that on electronically supplied services), it is necessary to assess the consequences of applying each rule with a view of determining which one would bring the most satisfactory outcome from the point of view of ensuring taxation at the presumed place of consumption of the service.

1.6. Application of the particular rule on services connected with immovable property to bundled supplies

14. In accordance with the settled case-law of the CJEU, for VAT purposes every supply must normally be regarded as distinct and independent¹². However, where a transaction consists of several elements, it should be assessed whether it should be treated as a single supply or as several distinct and independent supplies¹³.
15. A supply must be regarded as a single supply where two or more elements or acts supplied by the taxable person are so closely linked that they, objectively, form a single, indivisible economic supply, which it would be artificial to split¹⁴. The essential features of the supply must be ascertained in order to determine whether the customer, being a typical consumer, receives several distinct supplies or a single supply¹⁵.
16. Moreover, this is also the case where one or more supplies constitute a principal supply and the other supply or supplies constitute one or more ancillary supplies which share the tax treatment of the principal supply. In particular, a supply must be regarded as ancillary to a principal supply if it does not constitute for customers an end in itself but a means of better enjoying the principal service supplied¹⁶.
17. In the presence of a single bundled supply, the predominant element of this supply has to be identified and it should be verified whether this predominant element is connected with immovable property or not.
18. The qualification of a given scenario as a single or multiple supplies must be done on a case-by-case basis taking into account these criteria set out by the CJEU¹⁷.

12 See CJEU cases C-392/11 *Field Fisher Waterhouse*, C-111/05 *Aktiebolaget NN*, paragraph 22, C-461/08 *Don Bosco Onroerend Goed*, paragraph 35, and C-276/09 *Everything Everywhere*, paragraph 21.

13 See CJEU case C-425/06 *Part Service*, paragraph 51.

14 See CJEU cases C-41/04 *Levob Verzekeringen and OV Bank*, paragraph 22, and C-276/09 *Everything Everywhere*, paragraphs 24 and 25.

15 See for example judgment in CJEU case C-349/96 *Card Protection Plan*.

16 See CJEU cases C-349/96 *Card Protection Plan*, paragraph 29, C-41/04 *Levob Verzekeringen and OV Bank*, paragraph 20, C-111/05 *Aktiebolaget NN*, paragraph 22, C-276/09 *Everything Everywhere*, paragraphs 21 and 22, and C-497/09 *Bog and Others*, paragraph 53.

17 See CJEU case C-42/14 *Wojskowa Agencja Mieszkaniowa w Warszawie*, paragraph 30 and the following.

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When carrying out this assessment, all circumstances of the transaction must be taken into consideration¹⁸.

1.7. Connection of a service with one or several specific immovable properties

19. Services connected with immovable property cover both transactions connected with one immovable property and with several immovable properties. The fact that the service is linked to more than one property is not an obstacle for the service to qualify as having a sufficiently direct connection with immovable property within the meaning of Article 31a(1) of the VAT Implementing Regulation.
20. To achieve taxation at the presumed place of consumption, the particular rule of Article 47 of the VAT Directive can only be applied when the service is linked with one or several specific immovable properties, i.e. when the service relates to one or several clearly identified or identifiable immovable properties. In situations where it is impossible to identify the immovable property, it is, *a fortiori*, not possible to tax the service in the jurisdiction where the property would be located. In such situations, it should be concluded that the service is not sufficiently connected with immovable property.
21. In all scenarios where the service is linked with one or several specific immovable properties, it should be duly assessed whether that service has a sufficiently direct connection with immovable property as defined under Article 31a of the VAT Implementing Regulation.
22. The fact that one or several immovable properties are located in a broader geographical area within one jurisdiction (such as a city or a region) or that they are located in different Member States does not prevent, by itself, the service from being connected with immovable property. In cases where the service would cover more than one jurisdiction, the taxation rights should be split proportionally between the jurisdictions concerned.

1.8. Services connected with immovable property and complex contracts

23. There is a great variety of possibilities in which contracts can be set up as there are a lot of different methods in which suppliers may organise the way in which they provide services. For example, many subcontractors may be involved in a supply; the client can be established in a different country than the one where the property is located, etc.
24. The following elements should be taken into account while assessing whether these situations qualify as connected with immovable property:
 - Where more than one immovable property is involved in the supply each of them has to be clearly identified or identifiable.
 - Services linked to several specific immovable properties cannot be considered as lacking a sufficiently direct connection with immovable property simply because they are linked to more than one immovable property or because these immovable properties are located in different Member States.
 - The fact that a service is provided off-site, not directly to the owner of the immovable property or to a client located in a country different from the country where the immovable property is located is not decisive on its own when the service is assessed (as connected or not with immovable property).

¹⁸ See CJEU case C-349/96 *Card Protection Plan*, paragraph 27.

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- Where there is a chain of transactions, each supply of services should be assessed separately, taking into account the factual circumstances at stake.
- Where a complex supply includes services connected with immovable property but also other goods or services (i.e. it is a bundled supply involving several elements), it has to be verified whether the predominant element of the supply is the service connected with immovable property and whether this service has a sufficiently direct connection with that property (see also the explanations on bundled supplies above).

1.9. Obligations of suppliers providing services connected with immovable property

25. Whenever a supplier is supplying services covered by Article 47 of the VAT Directive in a Member State, he is in general liable for the payment of the VAT due to the tax authorities of the Member State where the immovable property is located (see Article 193 of the VAT Directive). As a consequence, the supplier normally has to register for VAT purposes and fulfil all related obligations in that Member State¹⁹. If a service is connected with several immovable properties located in different jurisdictions, the supplier will be liable for paying the relevant VAT due and register for VAT purposes in all these jurisdictions.
26. However, each Member State may provide that, when the supplier is not established in its territory, the person liable for payment of the VAT due is the person to whom the service is supplied (see Article 194 of the VAT Directive). Business operators should therefore verify whether this option is applied in the Member States where they are not established but intend to operate.

1.10. Interaction between the particular rule of Article 47 of the VAT Directive and the concept of fixed establishment recognised for VAT purposes

27. The concept of fixed establishment (not to be confused with the concept of permanent establishment used for direct taxation purposes) is defined under Article 11 of the VAT Implementing Regulation. It is not linked to the particular rule on the place of supply of services connected with immovable property.
28. When a service supplied qualifies as a service connected with immovable property, VAT is due in the Member State where the immovable property is located (see also explanations on liability obligations under [point 1.9.](#) above). The existence of a fixed establishment of the supplier in that Member State is therefore irrelevant for determining the place of supply of that service. Moreover, the mere fact that a business owns an immovable property in a given Member State does not, in itself, allow the conclusion that it has a fixed establishment in that jurisdiction.

1.11. Interaction between the rules on the place of supply and VAT exemptions

29. When examining the interaction between the rules on the place of supply and the rules dealing with VAT exemptions, it should not be forgotten that the general approach in the EU VAT system is to first identify the correct place of supply of a given service and only as a next step to look at the rules applicable to that supply in the identified jurisdiction (a Member State or a third country). This includes determining whether this service is taxed (and if yes at what rate) or exempt. In

¹⁹ For more information on national rules applying in the Member States see also:
http://ec.europa.eu/taxation_customs/common/links/tax/index_en.htm

other words, even though a given service may be VAT exempt, it does not change the need for correctly identifying the place of supply in the first place.

1.12. Irrelevance of concepts and definitions of national legislations for the application of the particular rule

30. In order to reach common interpretation and consistent application of the particular rule of Article 47 of the VAT Directive in the whole European Union, tax administrations responsible for the implementation of EU VAT legislation should avoid making use of definitions and concepts stemming from their national legislation.
31. Therefore, for the purposes of applying Article 47 of the VAT Directive, the assessment has to be based on the definitions given in the EU VAT legislation and not on definitions given under the national law of each Member State. In the case of serious doubts which may lead to double or non-taxation, Member States should raise the matter in the VAT Committee.

1.13. Relevant legal acts

32. The legal acts referred to in these explanatory notes include:
 - Council Directive 2006/112/EC on the common system of value added tax as amended by Directive 2008/8/EC ('VAT Directive')
 - Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax as amended by Regulation (EU) No 1042/2013 of 7 October 2013 ('VAT Implementing Regulation')
33. All relevant legal provisions are cited at the end of the explanatory notes in the wording applicable as from 1 January 2017.
34. Whenever reference is made to an article of the VAT Implementing Regulation, the reference to that particular legal act is omitted and only the article is mentioned. In all other instances, it is specified to which legal act reference is made.

PART 2

SPECIFIC OBSERVATIONS ON PROVISIONS OF THE VAT IMPLEMENTING REGULATION RELEVANT TO SERVICES CONNECTED WITH IMMOVABLE PROPERTY

2.1. General approach to Articles 13b and 31a

35. Part 2 of these explanatory notes provides clarification on the application of the provisions of the VAT Implementing Regulation aiming at determining the place of supply of services connected with immovable property.
36. When services qualify as services connected with immovable property, the place of their supply shall be the place where the immovable property is located according to Article 47 of the VAT Directive.
37. To be considered as connected with immovable property, a service needs to have a sufficiently direct connection with immovable property.
38. Therefore, what should first be assessed is whether the service relates to a good that can qualify as immovable property. The purpose of Article 13b is to provide a definition of the concept "immovable property". Clarification on this provision is provided under [point 2.2.](#) below.
39. Secondly, if the answer to this first question is affirmative, it should be assessed whether there is a sufficiently direct connection between the service and the immovable property to which it relates so as to qualify as a service connected with immovable property. The purpose of Article 31a is to help determine whether a service will be considered or not as having a sufficiently direct connection with immovable property. Clarification on this provision is provided under [points 2.3 and 2.4](#) below.
40. Since different situations and circumstances may occur in practice, meaning that each individual case cannot be examined in this framework, the explanation focuses on the criteria that should allow the reader to determine whether a service is connected or not with immovable property.

2.2. Definition of 'immovable property'

Article 13b

For the application of Directive 2006/112/EC, the following shall be regarded as '**immovable property**'²⁰:

41. While in most scenarios the immovable nature of a good or asset would seem rather easy to establish, some particular cases may give rise to doubts. Therefore, in order to provide a single definition applicable in all Member States, the European legislator has agreed on a common definition of the concept of 'immovable property' in Article 13b.
42. This definition has been greatly inspired by the ruling of the CJEU in the *Fonden Marselisborg Lystbådehavn* case²¹. Regarding the exemption for leasing or letting

²⁰ Emphasis has been put on elements in bold simply to facilitate the reading of the document.

²¹ See CJEU case C-428/02 *Fonden Marselisborg Lystbådehavn*.

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of immovable property provided for under Article 135(1)(l) of the VAT Directive, the Advocate General in that case²² stated that immovable property can be defined as '*a specific part of the earth's surface, including the buildings firmly constructed thereon, over which title and possession can be created*'.

43. By including four categories – from points (a) to (d) – the definition of 'immovable property' provided by Article 13b is more detailed than the jurisprudence and is meant to distinguish between immovable properties and tangible movable goods from a VAT perspective.
44. While the concept 'immovable property' should always be assessed only by reference to the definition provided by Article 13b, it is worth understanding how this definition has been construed.
45. On the one hand there are goods that cannot move or be moved easily (e.g. land, buildings, trees, crops). These goods are immovable and would be covered by Article 13b(a) or (b). On the other hand, there are goods that can move or be moved, but which will be regarded as immovable property because they are 'closely linked to' or 'integrated in' an immovable good (e.g. lifts, doors, windows). These goods would fall under Article 13b(b), (c) or (d).
46. The list of four categories mentioned under Article 13b is exhaustive. However these categories should not be regarded as mutually exclusive, meaning that some goods may be covered by more than one category, as will be shown further on. To determine whether a service is connected to immovable property it is essential to check whether it relates at least to one of those four categories.
47. It should be stressed that the fact that a good can qualify as immovable property under one or several categories of the definition does not entail that all services involving this type of good will have to be considered as connected with immovable property. Only those services having a 'sufficiently direct connection with that property' will be treated as connected with immovable property for VAT purposes (see more detailed explanations under [points 2.3 and 2.4](#) below).

Article 13b(a) any specific part of the earth, **on or below** its surface, **over which title and possession can be created**;

2.2.1. What is covered by Article 13b(a)?

48. To be considered as 'immovable property' under Article 13b(a), two cumulative conditions need to be fulfilled: 1) it should be a specific part of the earth, either on or below its surface and 2) it should be possible to create over it title and possession (see specific remark on the conjunction "and" under [paragraph 60](#) below).

2.2.1.1. A specific part of the earth

49. The reference to 'a specific part of the earth' means that what could be considered as immovable property consists of clearly identified or identifiable areas of the earth over which title and possession can be created. The scope of the term 'earth' is broad as the reference to the earth, either on or below its surface, indeed includes the soil itself and everything which is on it and also what is below it, that is to say the undersoil.

²² See paragraph 30 of the opinion of Advocate General delivered in CJEU case C-428/02 *Fonden Marselisborg Lystbådehavn*.

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- 50. The soil of the earth encompasses any piece of land, including the portion of land covered by water, i.e. the sea, oceans, rivers, lakes and other inland waterways.
- 51. Reference is also made to what is on the surface of the earth. Given the context of the provision, not everything that is simply on the soil will be considered as 'immovable'.
- 52. Goods also have to be attached, incorporated or rooted in the ground. Therefore, this provision will notably include trees and crops (it is to be noted that because these have roots in the ground they are also covered as being 'below the surface of the earth') as long as they remain attached to the ground.
- 53. This should also apply to waters covering the earth like rivers, lakes and other inland waterways. Although water can move it should be considered as immovable as long as it is not removed from its water basin.
- 54. The undersoil of the earth covers everything that is under the ground. Therefore, oil wells, water tables, minerals and other resources that are under the ground (also ground under the water) are considered as immovable. As long as these components are not extracted from the underground they shall be considered as part of the earth, that is to say immovable property.
- 55. The conclusion that water, oil or other substances contained on the soil or in the undersoil can qualify as immovable does not entail that all services involving such substances would necessarily be considered as connected with immovable property (see notably [paragraph 173](#) below).

2.2.1.2. Title and possession

- 56. Taking into account the wording of Article 13b(a), only those immovable goods 'over which title and possession can be created' are covered by the definition of 'immovable property'.
- 57. Although 'title' and 'possession' are concepts that are not defined for the purpose of applying the VAT Directive, they should be applied for VAT purposes in a common way by Member States without relying on national definitions.
- 58. To grasp their meaning, one should go back to the definition of a supply of goods provided for in Article 14 of the VAT Directive. Indeed, it should be recalled that the purpose of Article 13b is to define the concept of 'immovable property' which is derived from tangible property within the meaning of the VAT Directive. A supply of goods shall mean 'the transfer of the right to dispose of tangible property as owner'. According to the settled case-law of the CJEU, 'supply of goods' does not refer to the transfer of ownership in accordance with the procedures prescribed by the applicable national law but covers any transfer of tangible property by one party which empowers the other party actually to dispose of it as if he were the owner of the property²³. Therefore, there can be a transfer of the right to dispose of tangible property as the owner, even if there is no transfer of legal ownership of the property. What matters is the 'economic ownership' or 'economic possession'.
- 59. In line with this reasoning, what should be verified is whether the immovable property is likely to be 'owned' in the sense that somebody can dispose of it as if he were the owner. This concept of ownership goes beyond the simple fact of owning a title.

²³ See CJEU cases C-320/88 *Shipping and Forwarding Enterprise Safe*, paragraphs 7 to 9 and 12, C-25/03 *HE*, paragraph 64, and C-88/09 *Graphic Procédé*, paragraph 16.

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60. The linguistic divergences in the VAT Implementing Regulation are symptomatic in this respect: certain language versions refer to 'title *and* possession' while others refer to 'title *or* possession'. This shows that even if in most circumstances actual title and possession will belong to the same person, it may also be that title is attributed to one person and possession to another. Therefore 'title and possession' can be interpreted as 'title *or* possession', or, 'title *and* possession'.
61. Moreover, the choice of the wording 'can be created' means that goods can also qualify as immovable property even if at the moment of the assessment nobody holds actual title or possession over these goods. It is sufficient that title or possession can be created which reflects the potential broad scope of this provision as only immovable goods that could not belong to anybody, in the sense described above, would not be covered by it²⁴.
62. Typically, title and possession over immovable goods are represented by a title deed and/or a registration in an official registry. However, these constitute only the proof of the title and possession. There could be different ways to evidence title and possession and even without this proof, it would be necessary to determine whether title and possession could be created.
63. Inalienable immovable goods, such as public property (e.g. lakes, inland waterways, harbours, public parks), are also covered by Article 13b(a) even when the title over them is not transferrable. Apart from the fact that their legal status can change over time under public authorities' decisions, they can also be the object of supply of services (e.g. construction works, exploitation licenses) which will be considered as services connected with immovable property.

Article 13b(b) any building or construction fixed to or in the ground **above or below** sea level **which cannot be easily dismantled or moved**;

2.2.2 What is covered by Article 13b(b)?

2.2.2.1. What is meant by buildings and constructions under Article 13b(b)?

64. A building can be defined as a (man-made) structure with a roof and walls such as a house or factory.
65. The term 'construction' has a broader meaning and encompasses other (man-made) structures that do not typically qualify as a building (for additional explanations on items, equipment and machines that can qualify as immovable property, see from [point 2.2.3](#) to [2.2.4](#) below). Constructions may include civil engineering work, such as roads, bridges, airfields, harbours, dikes, gas pipelines, water and sewerage systems as well as industrial installations such as power generating plants, wind turbines, refineries, etc.
66. It is worth noting that buildings or constructions shall be considered immovable property in all their constitutive parts. The term 'constitutive' not only refers to the frame of the building or construction but also to every item installed and making up an integral part of this building or construction or permanently installed into it, making up a whole in such a way that in the absence of these items the building or construction would be incomplete or its integrity altered. The extent to which these items that are installed in a building or construction should also qualify as immovable property is detailed under points [2.2.3](#) to [2.2.4](#) below.

²⁴ Since some concerns might arise concerning international waters, it is worth mentioning in this respect that according to the United Nations Convention on the Law of the Sea, the high seas are open to all States. Even if no State may validly subject any part of the high seas to its sovereignty, a State (or a person in its jurisdiction) may carry out activities such as drilling, dredging, excavation of the seabed or ocean floor and subsoil of the high seas. Those works will relate to immovable property, even if nobody has sovereignty over this part on the earth.

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67. In order to qualify as 'immovable property', buildings and constructions need to be fixed to or in the ground, above or below sea level, and should not be capable of being easily dismantled or moved²⁵.

2.2.2.2. *Is an incomplete building still to be viewed as a building under Article 13(b)?*

68. According to the definition provided for under Article 12(2) of the VAT Directive, a 'building' shall mean any structure fixed to or in the ground.
69. Therefore, whether a building is complete or not (for instance, when it has no roof or windows like ancient monuments), it would still be covered by Article 13(b) provided that it is fixed to or in the ground. This will also be the case for buildings that are in the process of being constructed; they become immovable property as the construction works are carried out and the structure is being fixed to or in the ground. Even if still not habitable or fit for purpose, such a structure is to be considered as immovable property.
70. The same reasoning is valid for constructions. Indeed the VAT Implementing Regulation refers to buildings and constructions while the VAT Directive only refers to structures fixed to or in the ground. Therefore, irrespective of whether the structure qualifies as a building or a construction, what will be decisive to qualify as immovable property is whether the concerned structure is fixed to or in the ground.
71. It should be noted that the purpose of points (c) and (d) of Article 13b (see further explanations under points [2.2.3](#) to [2.2.4](#) below), is to provide an assessment on whether and to what extent certain elements installed in a building or construction that complete or equip this building or construction should also be considered as immovable property. The absence of elements that complete or equip the building or construction and make them habitable or fit for purpose does not prevent these structures from being considered as immovable property.

2.2.2.3. *What is meant by 'fixed to or in the ground (above or below sea level)' and 'which cannot be easily dismantled or moved'?*

72. Two conditions must simultaneously be fulfilled: the building or construction should 1) be fixed to or in the ground (above or below sea level), and 2) it should not be capable of being easily dismantled or moved.
73. Applying the condition 'fixed to or in the ground' inevitably requires referring to the condition that it should be fixed in such a way that it 'cannot be easily dismantled or moved'.
74. While buildings or constructions requiring major infrastructure works to attach them to the ground would obviously meet these criteria, concerns may be raised in situations where the nature of the building or construction or the type of ties used to fix it to the ground might be questioned. A houseboat used as a restaurant-discotheque in the circumstances referred to in the *Leichenich* case²⁶ or the buildings constructed from prefabricated components intended to be removed and re-used on another site in the circumstances referred to in the *Maierhofer* case²⁷ are illustrative in this respect.

²⁵ See CJEU cases C-315/00 *Rudolf Maierhofer*, and C-532/11 *Leichenich*.

²⁶ See CJEU case C-532/11 *Leichenich*.

²⁷ See CJEU case C-315/00 *Rudolf Maierhofer*.

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75. A building or construction can be fixed to or in the ground by different means: by a binding material such as cement, by an attachment such as ropes, chains, bolts or anchors.
76. However, what will be decisive in considering a building or construction as an immovable property is whether it can or cannot be easily dismantled or moved.
77. In accordance with the case-law of the CJEU, it is not necessary for a building or construction to be indissociably incorporated into the ground in order to be regarded as immovable property²⁸. What needs to be checked is whether the measures taken to immobilise cannot be easily undone, that is to say without effort and considerable cost.
78. In some cases when they are intended to be used as a permanent location, goods which are by their very nature movable goods (e.g. prefabricated houses, kiosks, stalls, boats, caravans), might be attached to the ground in a way that effectively makes those structures immobilised. Even if, in principle, they could be moved afterwards because of their 'mobile' character, they are to be seen as immovable property in so far as the immobilised structure cannot be easily dismantled or moved. According to the CJEU, immobilisation measures cannot be removed easily when they cannot be removed without effort and considerable cost²⁹.
79. The reference to 'easily dismantled or moved' could create some practical difficulties since the adverb 'easily' remains a rather subjective and unspecific concept that may in certain circumstances require a case-by-case analysis.
80. However, in line with the physical criterion ('without effort') and the economic one ('without considerable cost') provided by the CJEU to assess this aspect, the following objective criteria could be taken on board³⁰:
- the need for professional skills - this refers to the tools, equipment, know-how, etc. required to actually dismantle or move the building or construction including the means needed to dismantle or move them (using a crane, a trailer, a truck, etc.);
 - the cost of the complete operation/service to dismantle or move the building or construction compared to the value of what is actually dismantled or moved;
 - the time needed to dismantle or move the building or construction;
 - the fact that by moving or dismantling the building or construction this building or construction would be destroyed or its value significantly reduced.
81. In addition to the criteria above, the intended use and/or the actual use of the structure as a permanent or non-permanent location might also be relevant in this respect. For instance, mobile snack bars temporarily present in the same location should not be regarded as immovable property even though they may be fixed to the ground, if the attachments to the ground will just be sufficient to immobilise them for the period of use but they are in fact provisional structures easy to move or dismantle. Conversely, if they are used as a permanent location to carry out an economic activity, they could be considered as not being easily dismountable or movable by the fact that their attachment to the ground is sufficient to allow them to be immobilised for a longer term.

28 See CJEU cases C-532/11 *Leichenich*, paragraph 23, and C-315/00 *Rudolf Maierhofer*, paragraph 33.

29 See CJEU case C-532/11 *Leichenich*, paragraph 23.

30 Please note that these criteria are not exhaustive and depending on the situation, one criterion could be more accurate than the other or some criteria might need to be simultaneously fulfilled.

82. Therefore, the intended use of a good as a permanent location can give an indication on its 'immovable' character but is not sufficient as a criterion to determine whether a structure is to be seen as immovable property. What needs to be checked is whether this structure is fixed to or in the ground in such a way that it cannot be easily dismantled or moved.

Article 13b(c) any item that **has been installed and makes up an integral part of a building** or construction **without which the building or construction is incomplete**, such as doors, windows, roofs, staircases and lifts;

2.2.3. What is covered by Article 13b(c)?

83. According to this provision, any item that has been installed in a building or construction is deemed to be immovable property when it makes up an integral part of that building or construction. 'Integral' means that without this item the building or construction would be incomplete.
84. The effect of this provision is to treat any item, which would otherwise be a movable good, as immovable property by the sole fact of it making up an integral part of a building or construction.

2.2.3.1 When does an item installed in a building or construction make up an integral part of it?

85. As already mentioned under [paragraph 66](#) above, a building or construction is to be considered immovable property in all its constitutive parts. In addition to the main structure of a building or construction, some items that are installed in this building or construction are also to be considered as immovable property when they make up an integral part of it.
86. Installation of an item in a building or construction under Article 13b(c) means that it is placed or fixed in position ready for use in this building or construction. It is usually attached or fixed to the building or construction or it can simply be placed into it and it can generally be removed or replaced.
87. Whether items installed should be seen as elements without which a building or construction would be viewed as incomplete will of course depend on the nature of the building or construction.
88. The use and the purpose of a structure determine which elements make up an integral part of it. For instance, when a building is used as a dwelling, the elements such as doors and windows installed into that building shall be considered as making up a whole with that building because these elements are needed for this building to qualify as a dwelling. Such elements will not necessarily be the same as those needed in a warehouse or a factory or in constructions such as power plants, bridges or tunnels. Specific elements will indeed be required in certain circumstances in order to make the building or construction suitable for its specific use (e.g. a smoke extractor in a factory, protection elements in a prison).
89. Therefore, to be considered as immovable property, what needs to be checked is whether in the absence of those elements (i.e. if they were to be removed) the nature of the building or construction would in itself be changed in a way that it could not be used according to the function it was designed for.
90. However, items, equipment or machines, even attached to the building or construction, which do not lose their individuality or structural integrity are mere equipment in a building or construction which remains complete even without these elements. Nevertheless, these items could be considered as immovable

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property if their removal would cause destruction or alteration to the building or construction in which they are installed within the meaning of Article 13b(d) (see in this respect further clarification under [point 2.2.4](#) below).

91. The examples mentioned under Article 13b(c) form part of the finishing elements without which some buildings or constructions would be seen as incomplete. The finishing elements refer to those elements the installation of which does not provide a frame to the building or construction (they do not as such contribute to the strength or stability of the building or construction) but completes or equips the building or construction. In so far as those finishing elements contribute to complete the main structure of the building or construction so that it can be used for the purpose it has been designed to, they shall be considered as immovable property. In addition to the examples mentioned under Article 13b(c), one could add the finishing construction elements that are placed on the structural system such as isolation, partition walls, wall and floor coverings. The same goes for electrical, sanitary, ventilation or heat installations other than the main installations that would be covered under point (b). All these items are intended for the better (or even more effective) use or enjoyment of the building or construction as a building or construction.
92. It is recalled that the fact that an item makes up an integral part of a building or construction does not mean that without this item the building or construction would not be seen as immovable property. What it does mean is that once those elements are installed in the building or construction, they should also be considered as immovable property because they complete the building or construction. A house without doors or windows would still be viewed as a house but doors and windows, once they are installed, contribute to making the house complete, i.e. to make the house habitable, and therefore should be considered as immovable property.
93. When it comes to specific constructions, what will be decisive in concluding that an item makes up an integral part of the construction is whether the installation of the item is essential or highly needed for this type of construction to be qualified as such. This would be the case when without this item the construction would become useless. For instance, in a windfarm, the generator elements (e.g. blades) installed on a wind turbine that is fixed to the ground are constituent elements of this construction without which this wind turbine would be seen as incomplete.
94. Therefore, a suitable test would be the following: an item installed in a building or construction would be considered as making up an integral part of the building or construction when it contributes to making the building or construction complete according to the features ordinarily associated with a building or construction and according to the function to be given to that building or construction.

Article 13b(d) any item, equipment or machine **permanently installed** in a building or construction **which cannot be moved without destroying or altering** the building or construction.

2.2.4. What is covered by Article 13b(d)?

95. According to this provision, any item, equipment or machine which is permanently installed in a building or construction is deemed to be immovable property when it cannot be moved without destroying or altering the building or construction.
96. This provision refers specifically to equipment and machine but any other item could also be covered by the provision.

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- 97. The effect of this provision is to consider any item, which would otherwise be a movable good, as immovable property by the sole fact of it being permanently installed in a building or construction in such a way that it cannot be moved without destroying or altering the building or construction.
- 98. Concerning the meaning of items that are 'installed', reference is made to the explanation provided under [paragraph 86](#) above.

2.2.4.1. *What is meant by 'permanently installed' under Article 13b(d)?*

- 99. The use of the words 'permanently installed' should not necessarily be seen as a condition for the application of Article 13b(d) but rather as a means to understand in what circumstances an item installed in a building or construction could cause destruction or alteration of this building or construction when removed from it. Indeed, what will be decisive in applying Article 13b(d), is whether the removal of the item installed in a way to last in the building or construction would cause a certain damage to this building or construction. 'Permanently installed' therefore refers to items that are installed to serve a specific purpose in a building or construction and that are intended to last or remain unchanged.
- 100. 'Permanently' could be interpreted either in a subjective way, that is the intention of the person to install the item permanently, or in an objective way, that is by reference to the time during which the item is installed. The intention is a useful concept to determine at the outset whether the installation is designed to 'attach' the item to the building or construction, if not forever, at least during its normal economic life. It is this attachment that should make it impossible to remove the item without destroying or altering the building or construction in the process.
- 101. When it comes to items installed in buildings or constructions used for the purpose of an economic activity, one should preferably rely on an objective criterion to determine which types of items are likely to be permanently installed. Industrial equipment or machines have economic/useful lives shorter than the buildings or constructions in which they are used. 'Permanent' in this context would mean that the items are used during a certain time in the course of the economic activity for the purpose of which they have been acquired.

2.2.4.2. *How should it be assessed whether a building or construction is altered or destroyed?*

- 102. As previously explained, equipment, a machine or any other item might be permanently installed in a building or construction, but the critical question as regards its permanence is whether it can be removed without destroying or altering the building or construction in which it is installed. It is therefore necessary to clarify the meaning of 'destroying' and 'altering'.
- 103. Destruction and alteration of a building or construction, in the meaning of Article 13b(d), refer to both the portion of the building or construction to which the item is attached and to the rest of the building or construction.
- 104. In relation to buildings and constructions, 'destruction' commonly means the action or process of causing such damage that they no longer exist or cannot be repaired.
- 105. Judging whether by moving an item, equipment or machine permanently installed in a building or construction, the building or construction would be destroyed should not be particularly problematic. However, it is recalled that 'items permanently installed' in a building or construction do not necessarily imply that those items are attached to the building or construction by means of a tab, clip or any other type of link. An industrial machine which, by its characteristics

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(dimension, weight, and so on), is installed permanently in a plant could for example cause destruction to (part of) the plant when removed (for example if it were necessary to remove the roof, or to demolish a wall in order to extract the machine).

106. Therefore 'destroying' would cover situations where the building or construction is undergoing severe damage or a substantial physical change due to the removal of any item permanently installed in it.
107. 'Alteration' is a less drastic change. It commonly means the change in character or composition, typically in a comparatively small but significant way.
108. Anything fixed to and then unfixed from a building or construction would technically equate to an alteration. However, a minor damage or change is not sufficient for Article 13b(d) to apply. Instead, the building or construction would need to be altered in a significant way.
109. The alteration will obviously be insignificant in the case of items simply hanging on the wall, nailed or screwed to the ground or on the walls whose removal only leaves on the ground or walls traces or marks (e.g. mounting holes) that are easy to hide or repair.
110. For example, a machine bolted to the floor of a factory to keep it from shifting during production could be removed by simply removing the bolts from the floor. There will naturally be some impact on the floor when the bolts are removed but this would not damage the building in a significant way.
111. The amount of effort, time or cost needed for repairing the building or construction could be useful in determining whether the alteration is significant or not. Also whether the removal of the item would cause certain damage to the item itself can be an extra indicator, for instance if once removed, the item needs to be repaired, has no value or serves no purpose or not the same purpose anymore.
112. Therefore, in order to fall within the scope of Article 13b(d), the attachment of the item to the building or construction should be strong enough to create a whole that fulfils a specific function independent of the building and the removal of which would cause significant damage to the building or construction and possibly to the removed item itself.

2.2.4.3. *What is the interaction between points (b), (c) and (d) of Article 13b?*

113. As already mentioned under [paragraph 46](#) above, the four categories listed under Article 13b should not be regarded as mutually exclusive, meaning that some goods may be covered by more than one category.
114. However, while point (b) of Article 13b, which concerns erected buildings or constructions, includes items that are being 'incorporated' in the building or construction during its construction/renovation/modification process (e.g. bricks, cement, concrete, columns, beams), point (c) includes items that are 'installed' in the building or construction (for an explanation on what installation of an item means, see [paragraph 86](#) above).
115. 'Incorporated' items are constituents of the structural system of a building or construction (walls, floors, frame, etc.). 'Incorporated' items also include those elements that are built as infrastructure or superstructure of a building or construction, for instance the main sanitary installation (e.g. sewage systems, water pipes, sewer connection, drainage systems), the main

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heating/cooling/ventilation installation (e.g. heating/cooling tubes, ventilation ducts), the main electrical installation (internal cabling), the main home/building automation system installation, etc.

116. 'Installed' items are not part of the main structure of a building or construction even if they can make up an integral part of it. They are intended to complete the main structure of the building or construction so that it can be used for the purpose assigned to it.
117. Items, equipment or machines, meant under point (d), are items that fulfil a specific task or function independent of the building or construction in which they happen to be located. Their purpose, even if they are physically attached to the immovable property, is not for the better use or enjoyment of the immovable property (as would be the case for items meant under point (b) of Article 13b) but to serve a specific purpose.
118. However, the scope of points (c) and (d) may also overlap since the installation of an item will in some situations be covered by point (c) as well as point (d). This would be the case when items are an integral part of the building or construction and cannot be moved without destroying or altering the building or construction (e.g. marble staircases in a house, a built-in cupboard or fitted kitchen).
119. Therefore, only where the removal of an item from a building or construction would affect the nature of this building or construction or its physical integrity, the item would need to be considered as immovable property.
120. Concerns might arise in relation to the installation of items onto specific parts of a building or construction, such as solar panels for example. Since different situations are possible, depending on how these items are installed, a careful examination of the circumstances would need to be carried out in order to determine whether or not the installation meets the criteria of Article 13b.
121. In general, solar panels would be covered by Article 13b(b) as they constitute infrastructure of the building. To serve their specific purpose that is to generate electricity or heat, they indeed have to be integrated with the electrical or heating installations of the building or construction. When solar panels are installed on a building or construction without being a part of its infrastructure, it would be necessary to determine whether the conditions under Article 13b(c) or (d) are met.
122. As already mentioned before, it might happen that goods will be covered by more than one provision under Article 13b. For instance, when solar panels are installed on the roof of a building or construction, they could also be covered by Article 13b(c) if they become part of the roof in the sense that they are incorporated into it and serve as the roof. This would also be the case for solar panel windows. Solar panel walls would normally be covered by Article 13b(b) as they constitute part of the building.
123. When doubts arise in any other particular situation involving the installation of an item in a building or construction, an analysis has to be done on a case-by-case basis following a similar reasoning: is the item part of the structure under point (b), is it an integral part of it under point (c) or is it permanently installed into it within the meaning of point (d)?

2.3. Definition of services having 'sufficiently direct connection' with immovable property

Article 31a

2.3.1. How do Article 31a(1), 31a(2) and 31a(3) interact? How should they be read together?

124. The aim of Article 31a is to help with the identification of services connected with immovable property as defined in Article 47 of the VAT Directive. Article 31a(1) provides guidance on what qualifies as services connected with immovable property. Article 31a(2) gives a list of examples of services which should be seen as connected with immovable property and therefore covered by Article 47 of the VAT Directive. Article 31a(3) presents a list of examples of services which **are not** to be considered as connected with immovable property and therefore are not covered by Article 47 of the VAT Directive.
125. To determine whether a service is regarded as connected with immovable property, one should apply the following reasoning:
- Check if the service is included under Article 31a(2) – if yes it is covered by Article 47 of the VAT Directive;
 - Examine whether the service is excluded from the application of Article 47 of the VAT Directive under Article 31a(3);
 - Where the service cannot be found on any of these two lists, verify whether it meets any of the criteria set out under Article 31a(1).
126. The structure of Article 31a and the interaction between Articles 31a(1), 31a(2) and 31a(3) can be explained by the historical background of this provision and by the desire to provide legal certainty in a legislative framework characterised by significant disparities among the national laws of Member States.
127. It should be recalled that the examples listed under Articles 31a(2) and 31a(3) are the result of discussions of the VAT Committee where Member States, faced with divergent interpretations and risks of double or non-taxation, had agreed on a number of guidelines on an *ad hoc* basis.
128. In the process of adopting the VAT Implementing Regulation, the guidelines of the VAT Committee have been re-examined by the Council and considered as a solid basis for illustrating what is meant by Article 31a(1) and for providing a list of cases which are now covered by Articles 31a(2) and 31a(3).
129. It is important to note that Article 31a(2) does not restrict the scope of Article 31a(1) – it simply presents situations that the EU legislator considers as meeting with the requirement of being connected with immovable property.
130. Finally it should be underlined that a common application of the rules is only possible when national legal concepts³¹ are disregarded for VAT purposes. This is essential to avoid double or non-taxation.

Article 31a(1). Services connected with immovable property, as referred to in Article 47 of Directive 2006/112/EC, shall include only those services that have a sufficiently direct connection with that property. Services shall be regarded as having a sufficiently direct connection with immovable property in the following cases:

- (a) where they are derived from an immovable property and that property makes up a constituent element of the service and is central to, and essential for, the services supplied;
- (b) where they are provided to, or directed towards, an immovable property, having as their object the legal or physical alteration of that property.

31 See opinion of Advocate General Trstenjak in CJEU case C-37/08 *RCI Europe*, in particular paragraph 50.

2.3.2. How should the 'sufficiently direct connection' be assessed?

131. It must be recalled that the rule provided for under Article 47 of the VAT Directive is a particular rule and not an exception to the general rules of Articles 44 and 45. It should be applied based on an objective assessment of the conditions provided under the VAT Directive and the VAT Implementing Regulation³² (see also [point 1.4 in Part 1](#)). Such an approach is coherent with the logic of the place of supply rules which is to ensure taxation at the place of consumption of the service³³.
132. In order to be covered by Article 47 of the VAT Directive, a service must have sufficiently direct connection with the immovable property. As many services may be connected in one way or the other to immovable property it should be recognised that a tenuous or accessory connection should not be considered as sufficient to place these services within the scope of Article 47 of the VAT Directive³⁴.
133. It flows from the above that the assessment of the presence of a 'sufficiently direct connection' between the service provided and the immovable property must be carried out in an objective manner against the criteria provided under Article 31a(1)(a) and (b).
134. The criteria set out in point (a) cover services where the outcome originates from the immovable property (for example leasing of a building or obtaining the right to fish within delimited territory) while under point (b) the immovable property is the object at the centre of the service performed on it (for example repair of a building). Additional information on how to understand the criteria from points (a) and (b) of Article 31a(1) are included under [points 2.3.6 and 2.3.7](#) below. In any case the supply must be linked to one or several specific immovable properties³⁵ (see also [point 1.7](#) above).

2.3.3. Can the criterion of 'sufficiently direct connection' be met by services that are provided from a distance/off-site?

135. The question whether services provided off-site/at a distance can be seen as connected with immovable property depends on the specific nature of the service in question. The fact that the service is provided (fully or partially) at a distance is not on its own an obstacle for the service to have a sufficiently direct connection with immovable property. Each case must be judged objectively taking into account the factual circumstances at stake, the definition of immovable property provided by Article 13b and the provisions of Article 31a.

2.3.4. Does the status of the recipient of the services affect the qualification of the services being provided?

136. The status of the recipient of the service (i.e. whether or not he is the owner of the immovable property) is irrelevant for determining the qualification of the service itself: all depends on the nature and the objective features of the service concerned. For example, it is obvious that a service of repair of a dwelling or construction work is connected with the immovable property, whether it is

32 See CJEU cases C-166/05 *Heger Rudi* and C-41/04 *Levob Verzekeringen and OV Bank*, and the opinion of Advocate General Trstenjak in CJEU case C-37/08 *RCI Europe*, in particular paragraph 73.

33 See CJEU case C-37/08 *RCI Europe*, paragraph 39.

34 See for example CJEU cases C-166/05 *Heger Rudi*, paragraphs 23 and 24, and C-37/08 *RCI Europe*, paragraph 36.

35 See CJEU case C-155/12 *RR Donnelley Global Turnkey Solutions Poland*, paragraphs 34 and 35.

supplied to the owner, the tenant or any occupant of the dwelling or to another supplier in a chain of transactions (e.g. in the case of subcontracting).

137. Further, for the application of Article 47 of the VAT Directive it is irrelevant whether the recipient is a business or a final consumer. The qualification of the services being provided should therefore not be affected by the status of the recipient.

2.3.5. Does the location of the recipient of the services affect the qualification of the services?

138. This question has to be approached in the same way as the one above. The deciding factor is the nature of the service and not the location of the recipient of the supply. The VAT treatment of the service cannot depend on whether the property is located inside or outside the country where the property owner is established. Each service needs to be judged taking into account the factual circumstances at stake.

2.3.6. How to understand point (a) of Article 31a(1)?

139. Article 31a(1)(a) states that services connected with immovable property have to be derived from a specific property that makes up a constituent element that is central and essential for the service to be supplied. It is not possible to perform such a service without the underlying property which implies that the service has to be carried out in relation to a specific immovable property³⁶. The outcome of a service must originate from that immovable property. In other words, the service is derived from the immovable property when use is made of the property to perform the service provided that property constitutes the main and dominant element of that supply³⁷.

2.3.7. How to understand point (b) of Article 31a(1)?

140. Services are regarded as having a sufficiently direct connection with immovable property where they are provided to, or directed towards, an immovable property, having as their object the legal or physical alteration of that property. In other words they have to focus on the modification of the legal status and/or physical features of that immovable property.
141. Legal alteration of an immovable property should cover any modification of the legal situation of that property.
142. Point (b) of Article 31a(1) refers to the physical alteration without any further specification. Thus it seems correct to assume that any kind of physical modification of an immovable property should be sufficient to be covered by this provision (including services seeking to prevent any physical alteration). It is worth noting that the phrase 'physical alteration' used in Article 31a(1)(b) should not be seen as limited only to changes that are significant. In other words even minor changes resulting in a physical alteration of an immovable property (i.e. not involving changes in the substance of the immovable property) should be covered by Article 31a(1)(b) (e.g. maintenance or cleaning of roads, tunnels, bridges, buildings, etc.).

³⁶ See also explanation on specific part of the earth under [point 2.2.1.1](#) and [point 1.7](#).

³⁷ See CJEU case C-166/05 *Heger Rudi*.

2.3.8. Are Articles 31a(1)(a) and 31a(1)(b) cumulative?

143. The two provisions of Articles 31a(1)(a) and 31a(1)(b) **are not** cumulative. In practice, it is possible that some services will satisfy criteria of both provisions but it is sufficient that requirements from only one of the two are met in order for a service to be qualified as connected with immovable property.
144. As explained under [point 2.3.1](#), the assessment of the service against the criteria contained in Article 31a(1) should only take place where that service is not included in either of the two lists from Articles 31a(2) and 31a(3).

2.4. Particular examples of services connected or not connected with immovable property

Article 31a(2). Paragraph 1 shall cover, in particular , the following:

2.4.1. Is the list of Article 31a(2) indicative or exhaustive?

145. The list under Article 31a(2) is purely indicative and provides, as indicated by its wording ('in particular'), examples of specific services which the EU legislator has considered as being connected with immovable property in the sense of Article 47 of the VAT Directive. By doing so, it provides legal certainty in many common scenarios.
146. Article 31a(2) does not restrict the general definition of the concept of services connected with immovable property provided under Article 31a(1). Any specific situation that has not been explicitly covered by Article 31a(2)(a) to (q) or by Article 31a(3) should therefore be assessed on a case-by-case basis against the criteria set under Article 31a(1).
147. Following the same logic, the EU legislator has also provided under Article 31a(3) an indicative list of services that are not to be considered as connected with immovable property (see [point 2.3.1](#) above).

For simplification and clarity purposes, the following explanations examine in parallel the positive and negative definition given of some comparable scenarios, whenever these are mentioned both under Article 31a(2) and under Article 31a(3).

2.4.2. Drawing up of plans (Article 31a(2)(a) and Article 31a(3)(a))

<u>Article 31a(2)(a)</u>	the drawing up of plans for a building or parts of a building designated for a particular plot of land regardless of whether or not the building is erected;
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<u>Article 31a(3)(a)</u>	the drawing up of plans for a building or parts of a building if not designated for a particular plot of land;
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2.4.2.1. *What is the legal regime applicable to studies made with regard to an immovable property of which the location is not yet known?*

148. The preparatory phase of construction works can cover multiple steps (e.g. developing conceptual designs, conducting geostationary studies, etc.) which are more or less closely connected with immovable property. Some services of this preparatory phase can be supplied while the specific location of the immovable property is not yet known or certain.

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149. In such circumstances, when services are provided without being linked to a plot of land or a specific property, these services cannot be regarded as sufficiently connected with immovable property and fall outside the scope of Article 47 of the VAT Directive. Such services should be taxed according to the relevant B2B or B2C general place-of-supply rules depending on whether they are provided to a business customer or to a final consumer unless another particular rule would apply. Only services provided with respect to an immovable property whose location is identified by the moment when the service is supplied can fall within the scope of Article 47 (see also explanations under [point 1.7](#) above).
150. In the event where services such as the drawing-up of plans are not followed up by construction works and no building is erected, these services can nevertheless qualify as connected with immovable property provided that they were supplied with respect to a clearly identified location. This could also be the case in the event where the supplier of the services participates in a bidding process but does not succeed in winning the contract.

2.4.3. On-site supervision and security services (Article 31a(2)(b))

Article 31a(2)(b)	the provision of on-site supervision or security services;
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2.4.3.1. Which services enter the scope of Article 31a(2)(b)?

151. Article 31a(2)(b) provides that on-site supervision and security services shall be regarded as services connected with immovable property.
152. When initially discussed in the VAT Committee in 2011, on-site supervision was pointed out as an example of services provided in the framework of the preparation and coordination of construction works. It is in fact one of the services expressly listed in Article 47 of the VAT Directive as a service connected with immovable property.
153. The VAT Implementing Regulation applies the same tax treatment to the provision of on-site supervision and to security services.
154. On-site supervision or construction supervision typically relates to services provided in the construction sector in order to ensure that construction, demolition or renovation works are executed properly, in compliance with the technical and legal requirements, that they respect allocated deadlines and budget, that they meet the relevant regulatory and quality standards and that they are supported by the necessary documentation. These are expert services that often involve the coordination of different contractors and aim at safeguarding the successful completion of a project. Part of the supervision service may involve the permanent or regular presence of experts on site. Another part including tasks such as planning of works, coordination of sub-contractors, completing and issuing documents, certificates and declarations may be carried out off the building site.
155. Security services have a different scope. On the one hand, they can be provided during the preparatory or construction phase of works to prevent theft or damage of equipment and material stored at a building site. This would generally require on-site presence of security guards who would control the access to the site of staff and delivery suppliers, ensure overnight security, monitor the site through video surveillance (CCTV monitoring), etc. On the other hand, security services can also be provided after the end of the construction or renovation works to ensure the security of residential, commercial, industrial or office buildings. These services can be provided through the physical presence of security officers, by installing security systems into the building or both.

156. The scope of Article 31a(2)(b) encompasses all these different scenarios. Therefore, when a supplier ensures the supervision or security of an immovable property, regardless of whether it is a construction, a building or only a plot of land, Article 47 of the VAT Directive applies. When, for ensuring the security of a movable good (e.g. items, equipment or machines located in a building, on a construction site or on a plot of land), the supplier also has to secure the immovable property itself, the security service will also be covered by Article 47 of the VAT Directive.

2.4.3.2. Does Article 31a(2)(b) also cover remotely provided services?

157. As explained above, under Article 31a(2)(b), supervision relates mainly to the supervision of building sites, while security services can relate to building sites as well as to erected buildings and constructions.
158. In this regard, and acknowledging modern supervision and security technologies, supervision and security services should receive the same tax treatment for VAT purposes regardless of whether they are supplied through the physical presence of human resources on the site or whether they are supplied remotely (i.e. without physical human presence on site), such as for example by using technological means installed on site. For both supervision and security services, the condition should be that the immovable property is an essential element of the service supplied. When conducting this assessment, it should be recalled that the aim of the particular rule of Article 47 of the VAT Directive is to ensure taxation at the place of consumption, and that services connected with immovable property are consumed at the place where the property is located.

2.4.3.3. Does the installation of a security system enter the scope of Article 31a(2)(b)?

159. To establish whether the installation of a security system is to be covered by Article 47 of the VAT Directive, it must first be determined whether the transaction qualifies as a supply of goods or as a supply of services.
160. If the installation of the security system is part of the sale arrangement of a security system, the transaction may receive different qualifications for VAT purposes. It can be a supply of goods with installation which, according to Article 36 of the VAT Directive, will be taxed where the security system is installed or assembled. It can also be a supply of service connected with immovable property when the conditions set under Article 31a(2)(m) are met.
161. If the installation is supplied as a separate service (independent from the supply of the security system itself which would be taxed as a supply of goods) it should be assessed whether the conditions set under Article 31a(2)(m) are met, i.e. whether upon installation the security system qualifies as immovable property as defined under Article 13b (see also [point 2.4.14](#)). The conditions foreseen under Article 13b would be satisfied and the service of installation would qualify as connected with immovable property if:
- i) the security system that has been installed makes up an integral part of a building or construction without which the building or construction is incomplete (Article 13b(c)) – this could for example be the case if the security system has been installed in a prison or in banking premises where valuables are stored;

or

- ii) the security system is permanently installed in a building or construction and cannot be moved without destroying or altering the building or construction (Article 13b(d)) – this could be the case in apartments or offices.
162. In the case of installation works leading to the security system becoming part of the immovable property, the service is considered as connected with immovable property. This would ensure taxation at the same location, regardless of whether the supply is qualified as a supply of goods with installation or assembly or as a supply of services connected with immovable property.

2.4.4. Construction of buildings (Article 31a(2)(c))

<u>Article 31a(2)(c)</u> the construction of a building on land , as well as construction and demolition work performed on a building or parts of a building;
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2.4.4.1. Which categories of works of construction are covered by the scope of Article 31a(2)(c)?

163. The scope of this provision covers all types of construction works including not only the construction of new buildings but also other construction works such as the reconstruction, alteration, conversion, enlargement, demolition (total or partial) of existing buildings or parts of buildings (this list is not exhaustive and in practice some services can cover two or more of these examples).

2.4.4.2. Which should be the VAT treatment of the hiring of staff for the purpose of construction works?

164. It is arguable whether the hiring of staff for carrying out construction works is a service 'provided to, or directed towards, an immovable property, having as [...] object the legal or physical alteration of that property'.
165. On the one hand, it could be considered that the assignment of staff, regardless of whether or not they are hired for construction work, is a provision of services subject to the general place-of-supply rules and should not be seen as connected with immovable property.
166. On the other hand, replying to a similar question, Article 31b provides a presumption that the hiring of equipment with a view of carrying out work on immovable property must be treated as a supply of services connected with immovable property, insofar as the supplier hiring out the equipment assumes responsibility for the execution of the work. Although there is no presumption with regard to the hiring of staff, it could be argued that, similarly to the provision of equipment, the hiring of staff can constitute a service connected with immovable property if the supplier assumes responsibility for the execution of the work.
167. To ensure a coherent VAT treatment for hiring of equipment and for hiring of staff, the same logic has to be followed in both scenarios: the service shall only be considered as connected with immovable property if the supplier of the hiring out of staff assumes responsibility for the execution of the work. In such scenarios, the supplier would in actual fact not just supply staff to his customer but also take responsibility for the performance and results of the construction works which equals to providing construction services, i.e. providing a service connected with immovable property.

2.4.5. Construction of permanent structures (Article 31a(2)(d))

Article 31a(2)(d) the **construction of permanent structures on land**, as well as construction and demolition work performed on permanent structures such as **pipeline systems for gas, water, sewerage** and the like;

2.4.5.1. *Does Article 31a(2)(d) also apply to the construction of permanent structures fixed to the river/sea/ocean's floor?*

168. Yes, under this provision the term 'land' should be understood as any piece of land above or below sea level, consistent with the definition given under Article 13b(b).
169. That can be inferred from the case-law of the CJEU³⁸ according to which the installation of a cable on the seabed must be subject to the same tax treatment as an installation on immovable property.

2.4.5.2. *Which are the construction and demolition works covered by Article 31a(2)(d)?*

170. Article 31a(2)(d) complements Article 31a(2)(c) and covers two types of services: on the one hand the construction of permanent structures and, on the other hand, the construction and demolition works performed on existing permanent structures.
171. The construction and demolition works related to permanent structures (such as pipeline systems) covered by this provision also cover the fixing and unfixing of permanent structures to the ground, be it land above or below sea level.
172. Article 31a(2)(d) provides explicit examples of several permanent structures by making reference to pipeline systems for gas, water, sewerage. As indicated by the wording of the provision, this list is however not exhaustive. Other examples of permanent structures covered by this provision include cooling and heating systems.
173. Once the permanent structure is constructed and the construction works are over, the use of this structure for services such as the transport of gas, water, sewage, electricity, etc. shall not be considered as connected with the immovable property.
174. With regard to maintenance works, renovation and repair of permanent structures, see Article 31a(2)(l).

2.4.6. Work on land and agricultural services (Article 31a(2)(e))

Article 31a(2)(e) **work on land**, including **agricultural services** such as tillage, sowing, watering and fertilisation;

2.4.6.1. *Which categories of works and agricultural services enter the scope of Article 31a(2)(e)?*

175. Article 31a(2)(e) is complementary to previous provisions and covers works on land other than the construction or demolition of buildings (Article 31a(2)(c)) and the construction and demolition of other permanent structures fixed to the ground (Article 31a(2)(d)). It covers, for example, land development works such as

³⁸ See CJEU case C-111/05 *Aktiebolaget NN*.

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flattening before the start of construction works or garden landscaping provided with regard to a specific piece of land.

176. It also encompasses agricultural services. Those should be defined as services provided with the purpose of preparing land for the cultivation of crops or of cultivating land (e.g. through ploughing, harvesting, clearing of land, felling of trees).
177. Since agricultural services can cover a very large range of activities, a strict definition should be applied for VAT purposes under the VAT Implementing Regulation. Agricultural services should be considered as connected with immovable property only insofar as they concern work on land. For example, rearing of livestock is an agricultural activity not to be considered as connected with immovable property. Also, the sorting, processing, packaging, labelling and transportation of crops after the harvesting or of trees after they have been cut would not qualify as services connected with immovable property³⁹.

2.4.7. Surveying and assessment of risk and integrity (Article 31a(2)(f))

<u>Article 31a(2)(f)</u> immovable property;	surveying and assessment of the risk and integrity of
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2.4.7.1. What is the purpose of Article 31a(2)(f)?

178. Article 47 of the VAT Directive defines the place of supply of services connected with immovable property and makes explicit reference to the services of experts. Like valuation services, surveying and assessment of the risk and integrity of immovable property constitute such expert services and must be taxed accordingly at the place where the immovable property is located.
179. Risk and integrity assessment services are for example provided by experts to insurance companies to help determine the conditions of an insurance contract for a building. They can also be provided as part of feasibility studies carried out in view of construction works. Such services imply technical assessment of the physical state and/or integrity of a specific immovable property, its structural elements, equipment, etc. In some cases, they can require site visits of the property. Such on-site presence of the experts is however not a condition per se for the service to be covered by Article 31a(2)(f). Other examples of risk and integrity assessment services are anti-seismic evaluations, surveying of the seabed, assessment conducted on a plot of land in order to determine whether it is suitable for construction, assessment of energy efficiency, assessment of safety related documentation and compliance with other environment, health or safety related obligations.
180. While surveying and assessment of risk and integrity can sometimes be provided together with valuation services, they can also be provided separately. The EU legislator has therefore chosen to cover them individually in two complementary provisions of the VAT Implementing Regulation (see Article 31a(2)(g) below). This aims at clarifying that not only valuation but also other expert services serving similar purposes are covered by the particular place of supply rule of Article 47 of the VAT Directive.

³⁹ Where these services are provided as a package, together with a service connected with immovable property, it must be assessed whether the package is to be treated as a bundled supply for VAT purposes – see also [point 1.6](#) above.

2.4.8. Valuation services (Article 31a(2)(g))

Article 31a(2)(g) the **valuation of immovable property**, including where such service is needed for insurance purposes, to determine the value of a property as collateral for a loan or to assess risk and damages in disputes;

2.4.8.1. Which services consisting in valuation of immovable property are covered by Article 31a(2)(g)?

181. Valuation services can be provided in many different circumstances where the market value of one or several immovable properties needs to be determined for private, business, legal or administrative reasons (e.g.: buying, selling, insuring or paying taxes on immovable property, or resolving disputes linked with the immovable property's integrity, conformity or damages).
182. The scope of Article 31a(2)(g) therefore covers all valuation services regardless of the purposes of the valuation. The examples given under Article 31a(2)(g) (valuation services for insurance purposes, valuation services to determine the value of a property as collateral for a loan or valuation services to assess risk and damages in disputes) serve only as illustrations and do not constitute an exhaustive list as indicated by the use of the word 'including' under this provision. Scenarios where the valuation service constitutes part of a bundled supply must be examined on a case-by-case basis according to the established case-law⁴⁰ of the CJEU (see [point 1.6](#) above).

2.4.8.2. Can due diligence services qualify as a service connected with immovable property under Article 31a(2)(g)?

183. Due diligence services cover a wide range of expert services consisting in the investigation and analysis of a company's or an organisation's situation prior to a business transaction. They typically aim to ascertain a list of material facts in order to identify potential risks and allow a better valuation of the business assets. They can be related to immovable property or not and be provided by experts working in different professional sectors such as auditors, engineers, etc. Examples of due diligence services are tax due diligence, technical and environmental due diligence services (for due diligence qualifying as legal services see [point 2.4.18](#) below).
184. When the valuation of the immovable property assets is part of a complex due diligence service, an assessment should be carried out to identify which element is predominant in the supply. When the valuation of the immovable property predominates, the due diligence service can be considered as connected with immovable property under Article 31a(2)(g) (see also [point 1.6](#) on bundled supplies above).

2.4.8.3. Does the method by which a property valuation is carried out have a bearing on whether the provision of that service is treated as connected with immovable property or not?

185. The market value of an immovable property can be assessed through different methods such as the direct comparison method, the capital value method, residual method, etc. Some of these methods may require a physical inspection of the immovable property, others not. The choice of the valuation method is not relevant *per se* for determining the place of supply of the service for VAT purposes.

40 See CJEU cases C-425/06 *Part Service*, and C-392/11 *Field Fisher Waterhouse*.

2.4.9. Leasing and letting of immovable property (Article 31a(2)(h) and Article 31a(3)(b))

Article 31a(2)(h) the **leasing or letting of immovable property** other than that covered by point (c) of paragraph 3, **including the storage of goods** for which a specific part of the property is **assigned for the exclusive use** of the customer;

Article 31a(3)(b) the storage of goods in an immovable property if no specific part of the immovable property is assigned for the exclusive use of the customer;

2.4.9.1. *How to understand 'leasing or letting of immovable property' for the purpose of the place of supply rules?*

186. The VAT Directive does not provide for definitions of leasing or letting of immovable property. The concept is used both for the place-of-supply rules and exemptions.
187. According to settled case-law, letting or leasing of immovable property is essentially the conferring to the party, for an agreed period and in return for a payment, of the right to occupy property as if that person were the owner and to exclude any other person from enjoyment of such right⁴¹. This definition covers the key elements of 'leasing and letting of immovable property' and can be used for the purpose of Article 31a(2)(h). The fact that a specific situation does not fall under the definition of 'letting or leasing of immovable property' given by the CJEU (because, for example, one of the conditions is not fulfilled) does not mean that it cannot be governed by Article 47 of the VAT Directive where the general conditions in Article 31a(1) are met.
188. The leasing of immovable property can fall under Article 47 of the VAT Directive only insofar as it qualifies as a supply of service and not as a supply of goods under the relevant national legislation.

2.4.9.2. *How should storage of goods be understood under Article 31a(2)(h), taking into account the position taken by the CJEU in the RR Donnelley case?*

189. Article 31a(2)(h) generally qualifies services of leasing and letting of immovable property, with the exception of the provision of advertising, as connected with immovable property (see also [point 2.4.20](#), on provision of stand location). It also explicitly covers services consisting in storage of goods and specifies the conditions under which these are to be seen as connected with immovable property.
190. For the particular example of storage of goods, the legislator has fixed the requirement that a specific part of the immovable property where the goods are stored must be assigned for the exclusive use of the customer (i.e. that the space where the goods are stored is identified, known by the customer and is allocated exclusively to his needs during the whole duration of the contract) for the storage to be seen as connected with immovable property.
191. In the *RR Donnelley* case, the CJEU has further indicated that 'If, (...) it were to transpire that the recipients of such storage service have, for example, no right of access to the part of the property where their goods are stored or that the immovable property on which or in which those goods are to be stored does not constitute a central and essential element of the supply of services', the supply of

41 See for example CJEU cases C-174/06 *CO.GE.P.*, paragraph 31, and C-270/09 *MacDonald Resorts*, paragraph 46.

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complex storage services could fall outside the scope of Article 47 of the VAT Directive.

192. These two elements – the access to the stored goods and the central and essential character of the immovable property for the service supplied – are factors meant to help the national courts in their assessment but do not constitute new, additional conditions to the one foreseen under Article 31a(2)(h). Therefore, the situation where a customer has an exclusively assigned area for the storage of goods (i.e. an area where only that customer can store goods to the exception of any other person), could qualify as a service connected with immovable property even if the customer can access that area only at certain moments or under certain conditions.

2.4.9.3. How should storage services provided together with additional services be treated?

193. The VAT treatment of complex storage services provided in warehouses or other premises will depend, in the first place, on the qualification of the services as a single supply or multiple supplies (see explanations under [point 1.6.](#) above). In this regard, the explanations provided by the CJEU in the *RR Donnelley* case⁴² are very clear in providing guidance on the approach to follow.
194. The following test should therefore be run in order to establish the place of supply of a complex storage service:
- Is storage of goods provided together with other services which are so closely linked to the storage that they form, objectively, a single, indivisible service, which it would be artificial to split, the storage element of the single service being in any case the main one and the one sought by the customer?
 - Is the storage service provided together with other merely ancillary services that do not represent for the customer an end in themselves but simply a means of better enjoying the storage?
195. If the answer to one of these two questions is affirmative, the complex supply shall be treated as one single supply. Provided that a specific part of the storage facility is assigned for the exclusive use of the customer, the indivisible services (in the first case) and, in the second case, all the components of the complex supply (both the storage of goods and the ancillary services thereto) shall be subject to VAT at the place where the storage facility is located.

2.4.10. Provision of accommodation (Article 31a(2)(i) and Article 31a(3)(d))

Article 31a(2)(i) the **provision of accommodation in the hotel sector** or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, including the right to stay in a specific place resulting from the **conversion of timeshare usage rights** and the like;

Article 31a(3)(d) **intermediation** in the **provision of hotel accommodation** or accommodation in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, if the intermediary is acting in the name and on behalf of another person;

⁴² See CJEU case C-155/12 *RR Donnelley Global Turnkey Solutions Poland*, paragraphs 20 to 25.

2.4.10.1. Does Article 31a(2)(i) also apply to accommodation provided outside the hotel sector (e.g. to holiday cottages, holiday villas, apartment exchanges, etc.)?

196. The scope of Article 31a(2)(i) is broad: it applies not only to accommodation in hotels but also to accommodation 'in sectors with similar function, such as holiday camps or sites developed for use of camping sites'. This means that the type or venue of the accommodation is irrelevant for the qualification of the service. The important criterion is whether the immovable property will be used for accommodation purposes or not. Therefore, any accommodation service subject to VAT (i.e. considered as a taxable supply) can qualify as connected with immovable property under Article 31a(2)(i), regardless of the type of accommodation that is involved in the supply of the service (a room in a hotel, an apartment, a bungalow, a tree house, a yurt, a camping site, etc.).

2.4.10.2. Which are the services covered by the provision of 'the right to stay in a specific place resulting from the conversion of timeshare usage rights' under Article 31a(2)(i)?

197. Article 31a(2)(i) confirms that the provision of accommodation in hotels and similar establishments qualifies as a service connected with immovable property that should be taxed where this immovable property is situated.
198. The same provision also clarifies that services allowing a customer to enjoy a right to stay in a specific place (e.g. in a timeshare resort) in exchange of his timeshare usage rights are also subject to the place of supply rule provided by Article 47 of the VAT Directive.
199. The 'conversion of timeshare usage rights' (also commonly called exchange of timeshare usage rights) relates to services enabling customers to exercise, against consideration, a right to temporarily use a property, stay in a hotel or occupy an accommodation. It presents an alternative to the more traditional accommodation methods and is therefore subject to the same VAT treatment as accommodation services.
200. The CJEU has ruled⁴³ that 'it is common ground timeshare usage rights are rights in immovable property and their transfer in exchange for the enjoyment of similar rights constitutes a transaction connected with immovable property'.
201. In practice, holders of timeshare usage rights are usually members of a group or an association. A holder of timeshare rights who wishes to exchange his right with that of another holder would not get into direct contact with that person but would rather contact the group or association whose business consists in organising the exchange between its members against consideration.
202. According to the CJEU, the service of facilitating, organising or allowing the exchange of timeshare usage rights is consumed where the immovable property in respect of which timeshare usage rights are exchanged is located.
203. Therefore the services provided by companies or associations administering and organising the exchange between their members of their timeshare usage rights (both under traditional timeshare exchange schemes⁴⁴ and under points based timeshare ownership schemes⁴⁵) are covered by the provision of 'the right to stay

43 See CJEU case C-37/08 *RCI Europe*, paragraph 37.

44 See CJEU case C-37/08 *RCI Europe*.

45 See CJEU case C-270/09 *Macdonald Resorts*.

in a specific place resulting from the conversion of timeshare usage rights' under Article 31a(2)(i).

204. It also follows from Article 31a(3)(d) that intermediation in the provision of a right to stay in a specific place resulting from the conversion of timeshare usage rights, for example by facilitating the exchange of the usage rights, can be connected with immovable property (see [point 2.4.17](#) below) provided that the intermediary is not acting in the name and on behalf of another person.

2.4.11. Assignment or transfer of rights to use whole or parts of an immovable property (Article 31a(2)(j))

Article 31a(2)(j) the **assignment or transfer of rights** other than those covered by points (h) and (i) to **use the whole or parts of an immovable property**, including the licence to use part of a property, such as the granting of **fishing and hunting rights** or access to **lounges in airports**, or the use of an infrastructure for which tolls are charged, such as a **bridge or tunnel**;

2.4.11.1. What is the purpose of Article 31a(2)(j)?

205. The purpose of this provision is to complement the scope of the services covered by Article 31a(2)(h) and Article 31a(2)(i) in order to ensure consistent tax treatment of the different types of use of immovable property. These three provisions (Article 31a(2)(h), (i) and (j)) all cover services that consist in allowing a customer a right to use an immovable property under different contractual conditions (i.e. leasing, letting and storage under Article 31a(2)(h); provision of accommodation under Article 31a(2)(i) and assignment or transfer of other rights to use immovable property under Article 31a(2)(j)).
206. Taking this into account and reading Article 31a(2)(j) together with Article 31a(2)(h) and Article 31a(2)(i), it is apparent that the scope of Article 31a(2)(j) is larger than that of the other two provisions because it aims at embracing services 'other than those covered by points (h) and (i)'. It should therefore be applied not only to the examples which are listed in the provision itself (fishing and hunting rights, access to lounges in airports, use of bridges or tunnels subject to tolls) but also to any other similar assignments or transfers of rights to use whole or parts of an immovable property which is not explicitly listed in the mentioned provisions when these meet the conditions of being a service sufficiently connected with immovable property.
207. The assignment or transfer of rights to use the whole or parts of an immovable property can also take the form of a voucher, e.g. for the payment of highway tolls. In such circumstances, the place of supply of the voucher shall follow that of the underlying supply. Whenever the underlying supply is sufficiently connected with immovable property, the sale of the voucher shall therefore be taxable at the place where the immovable property is situated (the transport infrastructure in the example above).

2.4.11.2. Which are the limits to the scope of Article 31a(2)(j)?

208. The scope of this provision is broad but remains strictly limited by the condition of the existence of a 'sufficiently direct connection' between the service and the immovable property. While examples such as mooring, anchorage, docking, provision of berth services⁴⁶ in port or airport premises, provision of rights to use specific port or airport areas, etc. would fall within the scope of Article 47 of the VAT Directive, additional services offered separately by the same suppliers (for

⁴⁶ See CJEU case C-428/02 *Fonden Marselisborg Lystbådehavn*.

example cleaning or laundry services proposed to the customers on top of berth services; telecommunications, restaurant and catering services provided in VIP lounges of airports; maintenance of boats moored in rented mooring places, etc.) do not fall within the scope of Article 47 only because they are provided in ports or airports. However, if these same additional services are provided together as a package with a service connected with immovable property, it should be examined whether the package qualifies as a single supply for VAT purposes and must be taxed accordingly (see also explanations on bundled supplies under [point 1.6.](#) above).

2.4.11.3. Does Article 31a(2)(j) apply to office sharing?

209. Office sharing is a developing practice which allows businesses or organisations that own or manage an office building, to share part of their office space with other businesses. This allows the office providers to maximise the revenue of their workspace and increase their professional network. The businesses or professionals who make use of this service minimise their rental costs and enjoy more flexibility in choosing a workspace based on their current needs. The service can include different components ranking from the simple rental of a desk to the usage of a full range of services such as the use of telephones, photocopiers, printers, kitchens, meeting rooms, etc. These can be invoiced together as a package service or result in separate invoices for the basic rental of a desk on the one hand, and for the additional services on the other.
210. The place of supply of such services shall depend on their qualification as a single or multiple services for VAT purposes based on the criteria defined by the case-law of the CJEU⁴⁷. For each single supply, including bundled supplies considered as a single supply, it should be examined whether the use of the whole or parts of the immovable property (office space) constitutes the central and essential element of the contract. Whenever this is the case, Article 31a(2)(j) shall apply and VAT shall be due in the Member State where the offices are located (see also [point 1.6.](#) above).

2.4.11.4. Does Article 31a(2)(j) apply to houseboats?

211. The CJEU has ruled⁴⁸ that in some circumstances houseboats can qualify as immovable property (see also explanations under Article 13b(b)). It is notably so when the houseboat is fixed by attachments, which are not easily removable, to the bank and bed of the river, stays in a demarcated location in the river water and is exclusively used for the permanent operation of a fixed activity at that location, such as the running of a restaurant-discotheque for example.
212. A houseboat can also qualify as an immovable property in situations where, for example, the houseboat is let for accommodation purposes, for the purposes of organising an event or for running a commercial activity such as providing restaurant services when the contract of letting provides that the boat can only be used at rest, while being attached to a fixed location. Many houseboats have no means of self-propulsion and can only be moved by other means such as tug boats or cranes.
213. Whenever the conditions for a houseboat to qualify as immovable property are met, the assignment or transfer of rights to use whole or parts of this boat can qualify as a service connected with immovable property under Article 31a(2)(j).

⁴⁷ See CJEU cases C-155/12 *RR Donelley Global Turnkey Solutions Poland*, paragraphs 20 to 25, and C-42/14 *Wojskowa Agencja Mieszkaniowa w Warszawie*, paragraph 30 and the following.

⁴⁸ See CJEU case C-532/11 *Leichenich*, paragraph 29.

2.4.12. Maintenance, renovation and repair of buildings (Article 31a(2)(k))

Article 31a(2)(k) the **maintenance, renovation and repair of a building** or parts of a building, including work such as cleaning, tiling, papering and parqueting;

2.4.12.1. Does Article 31a(2)(k) cover only maintenance, renovation and repair of buildings or also maintenance, renovation and repair of different types of immovable property?

214. The wording of Article 31a(2)(k) clearly refers only to buildings and parts of buildings which limits the scope of this provision to some immovable properties.
215. The maintenance, renovation and repair of other types of immovable property can however also have a sufficiently direct connection with immovable property if they fall within the scope of other provisions of the VAT Implementing Regulation, notably Article 31a(2)(l) and (n), or more generally within Article 31a(1)(b).

2.4.12.2. Does Article 31a(2)(k) only cover maintenance, renovation and repair linked to major works or does it also apply to recurrent cleaning services, inside and outside buildings?

216. The scope of this provision covers a large range of services. It applies to major renovation works as well as to more limited repairs or maintenance services. It covers the interior and exterior cleaning of a building and therefore encompasses services of office cleaning.

2.4.13. Maintenance, renovation and repair of permanent structures (Article 31a(2)(l))

Article 31a(2)(l) the **maintenance, renovation and repair of permanent structures** such as pipeline systems for gas, water, sewerage and the like;

2.4.13.1. Does Article 31a(2)(l) apply to telecommunications infrastructures?

217. In order to illustrate the concept of 'permanent structures', Article 31a(2)(l) provides a list of examples of such structures by making reference to pipeline systems for gas, water and sewerage. However, this list is not limitative and the provision applies also to other permanent structures. These would typically be facilities, infrastructures or installations needed for providing essential services and commodities such as transportation, electricity, heating, water supply, communications, etc. The structures used for these purposes can be buried in the ground, they can be lying on the ground or be fixed to the ground in different manners.
218. The maintenance, renovation or repair of telecommunication infrastructures (e.g. the replacement of a cable network installed underground) can therefore constitute services covered by Article 31a(2)(l).

2.4.14. Installation or assembly of machines or equipment (Article 31a(2)(m) and Article 31a(3)(f))

Article 31a(2)(m) the **installation or assembly of machines or equipment** which, upon installation or assembly, qualify as immovable property;

Article 31a(3)(f) the installation or assembly, (...) of machines or equipment which is not, or does not become, part of the immovable property;

2.4.14.1. *How should Article 31a(2)(m) be interpreted with regard to Articles 13b(c) and (d)?*

219. Articles 13b(c) and (d) provide respectively that 'any item that has been installed and makes up an integral part of a building or construction without which the building or construction is incomplete' and 'any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction' shall be regarded as 'immovable property'. Both provisions thus make reference to 'installed' movable goods that become immovable property upon installation or assembly.
220. The purpose of Article 31a(2)(m) is therefore to recall and explicitly clarify that the installation and assembly of movable goods which, once installed or assembled, qualify as immovable property, are to be considered as services connected with immovable property (see also comments concerning installation of security systems under [point 2.4.3.3](#)).
221. Article 31a(2)(n) complements the provision by providing that the same treatment must be applied with regard to maintenance, repair, inspection and supervision of such goods.

2.4.14.2. *As of which moment in the process of installation or assembly of machines or equipment do these qualify as immovable property?*

222. Article 31a(2)(m) covers the process of installation from the start. All installation and assembly services carried out at the place where the item, equipment or machine will ultimately be installed or assembled fall under Article 31a(2)(m). Assembly services carried out at a different location prior to the delivery of the goods to the place of installation or assembly would, for example, not fall under the scope of this provision. Also, the transport or delivery of these goods or of the tools or machines needed for the installation or assembly would not be covered by this provision.
223. Any services performed on the item, machine or equipment in a jurisdiction different from the one where the immovable property is located, prior to its installation or assembly, should in any case be considered as not connected with immovable property.
224. For bundled supplies (e.g. where transport services are included), an individual assessment should be performed as to the overall nature of the service (see [point 1.6](#) above).

2.4.15. Maintenance, repair, inspection and supervision of machines or equipment (Article 31a(2)(n) and Article 31a(3)(f))

Article 31a(2)(n) the **maintenance and repair, inspection and supervision of machines or equipment** if those machines or equipment qualify as immovable property;

Article 31a(3)(f) (...), the maintenance and repair, the inspection or the supervision of machines or equipment which is not, or does not become, part of the immovable property;

225. The purpose of this provision is identical to the one of Article 31a(2)(m) (see above). Once machines or equipment have been installed or assembled and qualify, upon their installation or assembly as immovable property, maintenance, repair, inspection and supervision services provided with respect to these machines or equipment are to be considered as connected with immovable property.

2.4.15.1. Does Article 31a(2)(n) apply to remotely provided services?

226. Modern technologies can allow specialised businesses to provide, for example, part or all of their inspection or supervision services remotely (i.e. without being physically present at the place where the machines or equipment are located). Since the nature of the service is the same regardless of the technical methods used and since technology will continue to evolve over time, the VAT treatment of these services should be the same regardless of whether they require physical intervention carried out on the spot of the machines or equipment, or not (see also [point 1.5](#) above).

2.4.16. Property management (Article 31a(2)(o) and Article 31a(3)(g))

<u>Article 31a(2)(o)</u>	property management other than portfolio management of investments in real estate covered by point (g) of paragraph 3, consisting of the operation of commercial, industrial or residential real estate by or on behalf of the owner of the property;
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<u>Article 31a(3)(g)</u>	portfolio management of investments in real estate;
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2.4.16.1. What is meant by property management under Article 31a(2)(o)?

227. Under Article 31a(2)(o), the concept of property management encompasses the administrative services provided to ensure the proper running, maintenance and use of immovable property. Typically, these services consist in coordinating the supervision, cleaning, and maintenance of the property, collecting rents, keeping records and managing payments of on-going expenses, advertising the property, enforcing the terms of the lease, taking contact for the mitigation and resolution of conflicts between the property owner and service suppliers and/or tenants.
228. The concept of property management applies to any type of immovable property regardless of its commercial, industrial or residential use.
229. While the scope of Article 31a(2)(o) is limited by the wording of the provision which makes reference only to property management 'by or on behalf of the owner of the property', it does not prevent services operated on behalf of the tenant or the lessee from being considered as connected with immovable property under some other specific provisions or under the general provisions of the VAT Implementing Regulation.
230. Also, while property management has been defined by the EU legislator as having a sufficiently direct connection with immovable property, this is not the case for portfolio management of investments in real estate even when that portfolio contains immovable property.

2.4.16.2. What is meant by portfolio management of investments in real estate? Does the management of a single investment asset fall under the scope of Article 31a (3)(g)?

231. Article 31a(2)(o) and Article 31a(3)(g) both make reference to 'portfolio management of investments in real estate'. This shows the will of the EU legislator to exclude this activity from the scope of services considered as connected with immovable property because portfolio management of investments is a service of a financial nature and, as such, can be regarded as a financial transaction⁴⁹.

⁴⁹ See CJEU case C-44/11 *Deutsche Bank AG*, paragraph 54.

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232. This specification in the VAT Implementing Regulation is meant to distinguish between property and portfolio management and to indicate that investment management services are not to be treated as connected with immovable property even when the portfolio contains immovable goods. Unlike property management services that focus on the smooth running and operation of the immovable property, portfolio management services take care of the financial interests of the customer and primarily aim at increasing the value of his portfolio. A portfolio manager would thus not take care of the day-to-day management of the property but would rather focus on analysing and monitoring the market and the assets of his client, buying and selling of properties, adding value and seeking new investment opportunities for his client as well as developing relations with other investors.
233. For the purposes of the VAT Implementing Regulation, the main difference between property and portfolio management lies in the use made of the immovable property at stake. Immovable property can be an investment asset just as investments in gold, securities, collectors' items, works of art, antiques, boats, etc. Whenever immovable property is bought or sold for investment purposes, management services linked to that operation (including asset management services provided during the holding period) should be treated as portfolio management and as such the services would not be connected with immovable property.
234. In practice, for assessing whether a service qualifies as property or portfolio management, it should be examined whether the supplier provides to his customer an investment service or not. Suppliers acting in these two specific sectors (real estate agents on the one hand and property investments funds on the other hand, for example) typically do not have the same business model, do not use the same pricing methods and do not target the same clients.
235. Also, the number of properties covered by the service is irrelevant for the qualification of a service as property or portfolio management. Since the nature of the service remains the same irrespective of the number of properties at stake, it is possible that in some situations portfolio management of investment in real estate could relate to one single property.
236. In conclusion, the management of investments (i.e. portfolio management) should not be qualified as a service connected with immovable property even if the investments concern immovable property.

**2.4.17. Intermediation in transactions involving immovable property
(Article 31a(2)(p) and Article 31a(3)(d))**

Article 31a(2)(p) **intermediation in the sale, leasing or letting of immovable property** and in the establishment or transfer of certain interests in immovable property or rights *in rem* over immovable property (whether or not treated as tangible property), other than intermediation covered by point (d) of paragraph 3;

Article 31a(3)(d) **intermediation** in the provision of **hotel accommodation** or accommodation in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, if the intermediary is acting in the name and on behalf of another person;

2.4.17.1. Which intermediation activities qualify as connected with immovable property? What is the scope of Article 31a(2)(p)?

237. Article 31a(2)(p) covers only intermediation in the sale, leasing or letting of immovable property (for definition of leasing and letting of immovable property see [point 2.4.9.1](#) above) and in the establishment or transfer of certain interests

in immovable property or rights *in rem* over immovable property (which takes place for example when a right to use a road located on somebody else's immovable property is established or transferred). The intermediation in the sale, establishment or transfer of shares or interests giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof is not covered by the terms 'transfer of certain interests in immovable property' (read more under [point 2.4.18](#) below).

238. Having in mind that national civil law concepts differ substantially in relation to intermediation and the underlying transactions, such concepts should not be a point of reference when assessing whether a service is covered by Article 31a(2)(p).

2.4.17.2. *Is Article 31a(2)(p) limited only to intermediation by real estate agents or does it also apply to any person involved in intermediation services?*

239. Article 47 of the VAT Directive explicitly includes in its scope services of experts and estate agents. However intermediation covered by Article 31a(2)(p) is not limited to services performed by these two professions. Persons or legal entities who are not experts or estate agents could also provide the services mentioned in this provision.

240. This is confirmed by the literal wording of Article 47 of the VAT Directive, the scope of which is not limited to specific trades or professions. Therefore, other professions – like for example an asset manager or a real estate broker – should not be excluded from the scope of Article 31a(2)(p) only because they are not explicitly mentioned under Article 47 of the VAT Directive. What is decisive is the type of services actually performed by the intermediary and not his profession.

2.4.17.3. *Does point (p) of Article 31a(2) also cover supplies where the sale, leasing, letting, establishment or transfer of certain interests in immovable property or right in rem over immovable property does not take place?*

241. Article 31a(2)(p) will also apply even when the sale, leasing, letting, establishment or transfer of certain interests in immovable property or right in rem over immovable property does not finally take place.

2.4.17.4. *Why does Article 31a(3)(d) underline the condition 'if the intermediary is acting in the name and on behalf of another person'?*

242. Article 31 provides that for intermediation in the provision of accommodation in the hotel sector and similar sectors, where an intermediary acts in the name and on behalf of another person, Article 44⁵⁰ or Article 46⁵¹ of the VAT Directive applies. In other words, for the services mentioned in Article 31, Article 47 of the VAT Directive does not apply.

243. Consequently, in order to avoid a contradiction, Article 31a(3)(d) excludes from the scope of services connected with immovable property intermediation in the provision of hotel accommodation or accommodation in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, if the intermediary is acting in the name and on behalf of another person.

⁵⁰ For B2B supplies it is the place where the customer belongs.

⁵¹ For B2C supplies it is the place where the underlying transaction is taxable.

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244. It should be underlined that when a taxable person is acting in his own name he is not treated as an intermediary but as a supplier in accordance with Article 28 (or Article 306 seg., where applicable) of the VAT Directive. Therefore such a supply is not covered by Article 31a(3)(d).

2.4.17.5. *How should situations be treated where intermediation services referred to in Article 31a(2)(p) include various elements (like the research, making connections, web-site creation, prospecting and analysis of property qualities)?*

245. It is possible that other services are included in the supply provided by a business performing intermediation services. In the case of complex supplies each case has to be assessed on its own merits. In accordance with the settled case-law of the CJEU where a transaction consists of several elements that are treated as one single supply a principal supply has to be identified. Only when the main element is identified as intermediation in the sale, leasing or letting of immovable property, or in the establishment or transfer of certain interests in immovable property or rights *in rem* over immovable property the whole service can be covered by Article 31a(2)(p). Then the single intermediary supply is considered as being connected with immovable property within the meaning of Article 47 of the VAT Directive (see also [point 1.6](#) above).

2.4.18. Legal services (Article 31a(2)(q) and Article 31a(3)(h))

Article 31a(2)(q) **legal services relating to the transfer of a title to immovable property**, to the establishment or transfer of certain interests in immovable property or rights *in rem* over immovable property (whether or not treated as tangible property), such as notary work, or to the drawing up of a contract to sell or acquire immovable property, even if the underlying transaction resulting in the legal alteration of the property is not carried through.

Article 31a(3)(h) legal services other than those covered by point (q) of paragraph 2, connected to contracts, including advice given on the terms of a contract to transfer immovable property, or to enforce such a contract, or to prove the existence of such a contract, where such services are not specific to a transfer of a title on an immovable property.

2.4.18.1. *Which criteria shall allow to determine whether a service falls within the scope of Article 31a(2)(q) or Article 31a(3)(h)?*

246. Much of the work undertaken by lawyers and other suppliers of legal services could have a connection with land, buildings and other forms of immovable property⁵². However, it is only in some well identified situations that legal services could be seen as having sufficiently direct connection with immovable property.
247. In order to be covered by Article 31a(2)(q) (and as a consequence included in the scope of Article 47 of the VAT Directive) legal services need to relate to the transfer of a title to immovable property, to the establishment or transfer of certain interests in immovable property or rights *in rem* over immovable property⁵³.

52 See for example CJEU cases C-166/05 *Heger Rudi*, paragraphs 23 and 24, and C-37/08 *RCI Europe*, paragraph 36.

53 The notion of 'rights in rem' may not be used in some national systems. It would be useful to have guidance for taxable persons at national level explaining which national concepts fall within the scope of the notion 'rights in rem' with a view of enabling taxable persons to apply correctly the provisions of the VAT Implementing Regulation. In case of double or non-taxation the VAT Committee should be consulted.

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248. At the same time, Article 31a(3)(h) states that legal services other than those covered by Article 31a(2)(q), where such services are not specific to a transfer of a title to an immovable property, do not fall within the scope of Article 47 of the VAT Directive. In particular Article 31a(3)(h) mentions the following: giving advice on the terms of a contract to transfer immovable property, enforcing such a contract or proving the existence of such a contract.
249. In drawing a border line between these two provisions focus should be on the situations included in Article 31a(2)(q).
250. Article 31a(2)(q) covers legal services relating to:
- the transfer of a title of immovable property;
 - the establishment or transfer of certain interests in immovable property (whether or not treated as tangible property);
 - the establishment or transfer of rights *in rem* over immovable property (whether or not treated as tangible property).
251. Article 31a(2)(q) applies even if the underlying transaction resulting in legal alteration of the property is not carried through (i.e. there is no actual alteration to the legal status of the property).
252. Two examples of legal services covered by Article 31a(2)(q) are given in this provision: notary work and the drawing up of a contract to sell or acquire immovable property. However, it should be kept in mind that legal services relating to the transfer of a title of immovable property can take other forms like for example legal services relating to property investments, liquidation (receiving liquidation quota as property), the drawing up of construction contracts, leasing contracts or the partition of immovable property in the case of a divorce.
253. The range of legal services which could have a link with immovable property is very wide. However, only legal services relating to one of the three points listed under Article 31a(2)(q) should be seen as connected with immovable property. This means that the legal services covered by Article 31a(2)(q) are only those that relate to the legal alteration of the property. Consequently, legal services connected with the transfer of a title that happened at some point in the past (i.e. the service does not relate to a current or prospective transaction) cannot be treated as connected with immovable property. Such an approach is confirmed by the reference in the last part of this provision to the legal transaction altering the legal status of the property (even if finally not carried through).
254. Therefore examples of legal services not covered by Article 31a(2)(q) would include: legal advice on contractual conditions or property-related litigation; tax advice on the capital allowance position in respect of a specific property; legal advice on real estate transfer taxes; legal services connected with the provision of rights in pledges and mortgages or services linked with insolvency proceedings.
255. The only exception to this rule would be in situations where such services are connected with the act of transfer of the title of immovable property, the establishment or transfer of certain interests in or rights *in rem* over immovable property (whether or not treated as tangible property)⁵⁴.

54 See [point 1.6](#) above dealing with bundled supplies.

2.4.18.2. *Do legal services relating to the conclusion of rental or leasing agreements qualify as connected with immovable property?*

256. Where legal services consist in drafting an agreement (such as a rental or leasing agreement) and the conclusion of such an agreement would establish or transfer certain interest or rights *in rem* over the immovable property, those services should be seen as covered by Article 31a(2)(q).
257. Further in the case where a Member State would not see a rental or a leasing contract concerning an immovable property as establishing or transferring certain interest in it or rights *in rem* over it, the test from Article 31a(1) should be run in order to verify whether nevertheless the legal services relating to these two types of contracts should be treated as connected with immovable property. As legal services dealing with such rental or leasing contracts normally focus on an immovable property and aim at its legal alteration they should be seen as having a sufficiently direct connection with immovable property and therefore be covered by Article 47 of the VAT Directive. It is only where rental or leasing contracts are completely disconnected from the immovable property that the legal services dealing with such contracts could be seen as not having a sufficiently direct connection.
258. It is important, especially from the point of view of a harmonised approach by Member States, that legal services directly relating to rental and leasing contracts are treated in a uniform way in the whole European Union and are taxable in the Member State of the location of an immovable property.

2.4.18.3. *How to understand the term 'legal alteration' in the context of Article 31a(2)(q)?*

259. Legal alteration mentioned in Article 31a(2)(q) refers only to changes indicated there i.e. the transfer of a title to immovable property; the establishment or transfer of certain interests in immovable property (whether or not treated as tangible property); and the establishment or transfer of rights *in rem* over immovable property (whether or not treated as tangible property). Consequently, other types of legal alteration are not covered by this provision.

2.4.18.4. *Is the scope of Article 31a(2)(q) limited only to legal services supplied by lawyers and notaries?*

260. Article 31a(2)(q) refers to legal services but it does not list the professions by which these services should be performed. Therefore professions other than lawyers or notaries cannot be excluded from the application of this provision. Decisive is that the person providing the legal services is a taxable person and that these services relate directly to the transfer of a title of immovable property, the establishment or transfer of certain interests in immovable property or rights *in rem* over immovable property (whether or not treated as tangible property).

2.4.18.5. *What is the meaning of the expression 'certain interests' under Article 31a(2)(q)?*

261. Article 31a(2)(q) refers to the establishment or transfer of 'certain interests' in immovable property. It has to be recognised that such a formulation aims at accommodating for different concepts of interests in property being applied in different Member States.

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262. In that respect, Article 31a(2)(q) cannot be read without linking it with Article 15(2)⁵⁵ of the VAT Directive.
263. Article 31a(2)(q) applies only to 'certain interests in immovable property' as well as to 'rights *in rem* over immovable property' (regardless of whether or not Member States have used the option from Article 15(2) of the VAT Directive to consider them as tangible property).
264. 'Interests equivalent to shares giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof' as mentioned in Article 15(2)(c) of the VAT Directive are not covered by the notion 'certain interests' included in Article 31a(2)(q).
265. In case of doubt, where legal services are covered neither by Article 31a(2)(q) nor by Article 31a(3)(h) the test should be run to determine whether the service fulfils the criteria from the definition of Article 31a(1) (read more under [point 2.3](#) above).

2.4.18.6. *Do advisory services that require on-site presence or that are linked to a specific immovable property qualify as connected with immovable property under Article 31a(2)(q)?*

266. As mentioned above, under [point 2.4.18.1](#), advisory services, as a rule, should not be seen as covered by Article 31a(2)(q). The requirement of on-site presence for a legal service to be performed is irrelevant for the application of Article 31a(2)(q).

2.4.18.7. *Do legal services related to the financing of an immovable property purchase or investment consultancy qualify as connected with immovable property?*

267. Neither legal services related to the financing of an immovable property purchase nor investment consultancy qualify as connected with immovable property as they are not aiming directly at the transfer of a title of immovable property, the establishment or transfer of certain interests in immovable property or rights *in rem* over immovable property (whether or not treated as tangible property).

2.4.19. Advertising services (Article 31a(3)(c))

Article 31a(3) Paragraph 1 shall not cover the following:

- (c) the provision of advertising, even if it involves the use of immovable property;

2.4.19.1. *What is meant by 'the provision of advertising' under Article 31a(3)(c)?*

268. Advertising services can be provided through very different means and on different physical supports. Immovable property can be one of the possible supports for this type of service. When this is the case, the question arises whether the use of an immovable property (such as walls or billboards) as a physical support for the service is sufficient to qualify this service as connected with immovable property.

⁵⁵ This provision leaves the option for Member States to extend the concept of tangible property to certain interests in immovable property, to rights *in rem* giving the holder thereof a right of use over immovable property and to shares or interests equivalent to shares giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof.

269. Article 31a(3)(c) provides that advertising services shall not be considered as services connected with immovable property even when they involve the use of immovable property.
270. This can be explained by the fact that, in the scenario described above, the immovable property (wall or billboard) is only a support for the service and not the subject-matter of the service. The subject-matter of the service is the promotion of a product. Therefore, there is no sufficiently direct connection between the advertising service and the immovable property for Article 47 of the VAT Directive to be applied, no matter what product is being advertised (e.g. even in the event of advertising a house or flat for sale).
271. The provision of advertising services should of course not be confused with the rental or letting service whereby a property owner would rent an immovable property to an advertising company that would in turn use this property as a space for advertising. This example illustrates two separate contractual relations. First, there is a service of renting or letting of the immovable property which will qualify as a service connected with immovable property. Second, there is a subsequent advertising service supplied by the advertising company to its own customer which does not qualify as a service connected with immovable property.

2.4.19.2. *Does Article 31a(3)(c) also apply to cases where the advertising entails a physical alteration of the immovable property, such as through painting a part of the building?*

272. The wording of Article 31a(3)(c) does not distinguish between the different forms and techniques of advertising. Since the key question is to determine if the immovable property is the subject-matter of the service or not, and the answer to this question is the same irrespective of the technique used for advertising, it should be considered that Article 31a(3)(c) shall apply even when the service implies painting part of a building.
273. Nevertheless, as indicated under [paragraph 271](#) above, each contractual situation has to be assessed separately. For example, if an advertising company supplies an advertising service involving painting of a wall, this service will not be connected with immovable property and the VAT charged by the advertising company to its customer should be determined under the relevant general rules. However, if the advertising company concludes a separate contract with a subcontractor who will actually paint the wall for the advertising company, the service supplied by the painter to the advertising company is a service connected with immovable property and therefore the painter will have to charge the VAT of the jurisdiction where the immovable property is located.

2.4.20. Provision of a stand location together with other related services (Article 31a(3)(e))

Article 31a(3) Paragraph 1 shall not cover the following:

(e) the **provision of a stand location at a fair or exhibition site together with other related services** to enable the exhibitor to display items, such as the design of the stand, transport and storage of the items, the provision of machines, cable laying, insurance and advertising;

2.4.20.1. *What is the scope of application of Article 31a(3)(e)?*

274. Article 31a(3)(e) covers the situations where the provision of a stand location at a fair or exhibition site is accompanied by other related services and defines them as not connected with immovable property.

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275. Even if the provision of a stand location is accompanied only by one related service and the services are provided as a package, this is sufficient for the supply to fall within the scope of Article 31a(3)(e), i.e. to be treated as a service not connected with immovable property. This approach is necessary to ensure a harmonised application of this provision throughout the EU with a view of avoiding double or non-taxation.
276. There are three important cumulative criteria that have to be met for the service to be considered as not connected with immovable property under Article 31a(3)(e):
- i) the provision of a stand location;
 - ii) the provision of one or more related services;
 - iii) these related services must enable the exhibitor to display items and promote its services or products.

2.4.20.2. *How is 'the provision of a stand location' to be defined under Article 31a(3)(e)?*

277. The 'provision of a stand location' consists in putting temporarily a delimited surface and/or movable structure (for example a booth, a stall or a counter) at the disposal of an exhibitor for the purposes of participating in an exhibition or a fair. This service is considered as not connected with immovable property under Article 31a(3)(e) insofar as the stand location is provided 'together with other related services', i.e. insofar as the supplier does not simply let the bare surface but rather provides a package of services needed by the exhibitor for the temporary promotion of his products or activity.
278. Therefore, for the purposes of applying Article 31a(3)(e), a distinction should be made between the letting of immovable property alone (to be qualified under Article 31a(2)(h) as connected with immovable property) and the provision of a stand location together with other related services allowing the exhibitor to display items (to be qualified as not connected with immovable property under Article 31a(3)(e)).
279. When distinguishing between these two different scenarios, all the factual circumstances of the transaction should be taken into account, including the services implicitly included in the contract such as the provision of electricity, internet connection, heating, air conditioning, etc.
280. In accordance with Article 31a(3)(e), other related services provided together with a stand location should enable the exhibitor to display items. The services mentioned cover the design of the stand, transport and storage of the items, the provision of machines, cable laying, insurance and advertising. This list is not exhaustive but purely illustrative. Other types of services could also be covered by the reference made in Article 31a(3)(e) to related services provided that they enable the exhibitor to display items.
281. Services should be qualified as other related services to the provision of a stand location under Article 31a(3)(e) regardless of whether they are provided under one contract (with the provision of the stand location) or under separate contracts concluded with the same supplier. The application of the place-of-supply rules should not be undermined by a modification in the contractual arrangements so as to circumvent taxation in a given jurisdiction.

2.4.21. Supply of equipment for carrying out work on immovable property (Article 31b)

Article 31b

Where **equipment is put at the disposal** of a customer with a view to carrying out work on immovable property, that transaction **shall only be a supply of services connected with immovable property if the supplier assumes responsibility** for the execution of the work.

A supplier who provides the customer with equipment together with sufficient staff for its operation with a view to carrying out work shall be **presumed to have assumed responsibility for the execution of that work**. The presumption that the supplier has the responsibility for the execution of the work **may be rebutted by any relevant means** in fact or law.

282. Article 31b provides that the hiring of equipment to a customer, with or without accompanying staff, with a view to carrying out work on an immovable property shall only be regarded as a service connected with immovable property if the supplier assumes responsibility for the execution of the work. Where the equipment is put at the disposal of the customer together with sufficient staff for its operation, the presumption is that the supplier of the equipment has assumed such responsibility. In this case, the service must be taxed in the country where that immovable property is located.
283. A typical example of a scenario in which this provision could apply is the use of scaffoldings for the construction, repairing or cleaning of a building. If the scaffolding is simply put at the disposal or rented to a customer, this rental service will not qualify as a service connected with immovable property. However, if the supplier of the scaffolding assumes responsibility for the execution of the work (e.g. construction, repairing or cleaning of the building), notably because he has also provided sufficient staff to take care of this execution, the service will qualify as a service connected with immovable property.
284. In any case, the presumption of responsibility on the part of the supplier of the equipment included under Article 31b can be rebutted by any relevant means in fact or law. The contractual arrangements would generally provide important indications on the person with whom the contractual responsibility lies.

ANNEX

EXTRACTS FROM RELEVANT LEGISLATION

COUNCIL DIRECTIVE 2006/112/EC (Provision already applicable)

Article 47 – Supply of services connected with immovable property

The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, shall be the place where the immovable property is located.

COUNCIL IMPLEMENTING REGULATION (EU) NO 1042/13 (Provisions taking effect on 1 January 2017) amending Implementing Regulation (EU) No 282/2011 as regards the place of supply of services

Article 13b

For the application of Directive 2006/112/EC, the following shall be regarded as 'immovable property':

- (a) any specific part of the earth, on or below its surface, over which title and possession can be created;*
- (b) any building or construction fixed to or in the ground above or below sea level which cannot be easily dismantled or moved;*
- (c) any item that has been installed and makes up an integral part of a building or construction without which the building or construction is incomplete, such as doors, windows, roofs, staircases and lifts;*
- (d) any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction.';*

Article 31a

1. Services connected with immovable property, as referred to in Article 47 of Directive 2006/112/EC, shall include only those services that have a sufficiently direct connection with that property. Services shall be regarded as having a sufficiently direct connection with immovable property in the following cases:

- (a) where they are derived from an immovable property and that property makes up a constituent element of the service and is central to, and essential for, the services supplied;*
- (b) where they are provided to, or directed towards, an immovable property, having as their object the legal or physical alteration of that property.*

2. Paragraph 1 shall cover, in particular, the following:

- (a) the drawing up of plans for a building or parts of a building designated for a particular plot of land regardless of whether or not the building is erected;*
- (b) the provision of on-site supervision or security services;*
- (c) the construction of a building on land, as well as construction and demolition work performed on a building or parts of a building;*

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- (d) *the construction of permanent structures on land, as well as construction and demolition work performed on permanent structures such as pipeline systems for gas, water, sewerage and the like;*
- (e) *work on land, including agricultural services such as tillage, sowing, watering and fertilisation;*
- (f) *surveying and assessment of the risk and integrity of immovable property;*
- (g) *the valuation of immovable property, including where such service is needed for insurance purposes, to determine the value of a property as collateral for a loan or to assess risk and damages in disputes;*
- (h) *the leasing or letting of immovable property other than that covered by point (c) of paragraph 3, including the storage of goods for which a specific part of the property is assigned for the exclusive use of the customer;*
- (i) *the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, including the right to stay in a specific place resulting from the conversion of timeshare usage rights and the like;*
- (j) *the assignment or transfer of rights other than those covered by points (h) and (i) to use the whole or parts of an immovable property, including the licence to use part of a property, such as the granting of fishing and hunting rights or access to lounges in airports, or the use of an infrastructure for which tolls are charged, such as a bridge or tunnel;*
- (k) *the maintenance, renovation and repair of a building or parts of a building, including work such as cleaning, tiling, papering and parqueting;*
- (l) *the maintenance, renovation and repair of permanent structures such as pipeline systems for gas, water, sewerage and the like;*
- (m) *the installation or assembly of machines or equipment which, upon installation or assembly, qualify as immovable property;*
- (n) *the maintenance and repair, inspection and supervision of machines or equipment if those machines or equipment qualify as immovable property;*
- (o) *property management other than portfolio management of investments in real estate covered by point (g) of paragraph 3, consisting of the operation of commercial, industrial or residential real estate by or on behalf of the owner of the property;*
- (p) *intermediation in the sale, leasing or letting of immovable property and in the establishment or transfer of certain interests in immovable property or rights in rem over immovable property (whether or not treated as tangible property), other than intermediation covered by point (d) of paragraph 3;*
- (q) *legal services relating to the transfer of a title to immovable property, to the establishment or transfer of certain interests in immovable property or rights in rem over immovable property (whether or not treated as tangible property), such as notary work, or to the drawing up of a contract to sell or acquire immovable property, even if the underlying transaction resulting in the legal alteration of the property is not carried through.*

3. Paragraph 1 shall not cover the following:

- (a) *the drawing up of plans for a building or parts of a building if not designated for a particular plot of land;*
- (b) *the storage of goods in an immovable property if no specific part of the immovable property is assigned for the exclusive use of the customer;*
- (c) *the provision of advertising, even if it involves the use of immovable property;*

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- (d) *intermediation in the provision of hotel accommodation or accommodation in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, if the intermediary is acting in the name and on behalf of another person;*
- (e) *the provision of a stand location at a fair or exhibition site together with other related services to enable the exhibitor to display items, such as the design of the stand, transport and storage of the items, the provision of machines, cable laying, insurance and advertising;*
- (f) *the installation or assembly, the maintenance and repair, the inspection or the supervision of machines or equipment which is not, or does not become, part of the immovable property;*
- (g) *portfolio management of investments in real estate;*
- (h) *legal services other than those covered by point (q) of paragraph 2, connected to contracts, including advice given on the terms of a contract to transfer immovable property, or to enforce such a contract, or to prove the existence of such a contract, where such services are not specific to a transfer of a title on an immovable property.*

Article 31b

Where equipment is put at the disposal of a customer with a view to carrying out work on immovable property, that transaction shall only be a supply of services connected with immovable property if the supplier assumes responsibility for the execution of the work.

A supplier who provides the customer with equipment together with sufficient staff for its operation with a view to carrying out work shall be presumed to have assumed responsibility for the execution of that work. The presumption that the supplier has the responsibility for the execution of the work may be rebutted by any relevant means in fact or law.