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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 are the result of collaborative work between the Directorate General for Taxation and Customs Union of the European Commission (DG TAXUD), 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. Member States may also issue separate national guidance on the application of VAT rules on services connected with immovable property.

The 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 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.

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PART 1

GENERAL OBSERVATIONS ON SERVICES CONNECTED WITH IMMOVABLE PROPERTIES

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 Directive¹. 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 process of revising 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/EC² 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 Committee³ which agreed some guidelines in this respect 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. (Guidelines of the 93rd meeting of the VAT Committee). 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 Regulation⁴ 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 level, it has been commonly agreed (*reference to OECD guidelines to be inserted after formal adoption*) that such particular rules using the

¹ 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).

² 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).

³ 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.

⁴ 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).

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.

6. The guidelines (*currently*) developed by the OECD provide that taxing rights over services and intangibles directly connected with immovable property may be allocated to the jurisdiction where the immovable property is located when the use of such specific rule would lead to significantly better results than the use of the relevant general rule with regard to:

- neutrality;
- efficiency of compliance and administration;
- certainty and simplicity;
- effectiveness;
- fairness.

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

7. The purpose of the particular place of supply rule on services connected with immovable property is to ensure taxation at the place of consumption of the service. This objective should be recalled in all situations where the practical implementation of the legislation raises difficulties. Such disputable situations should always be resolved so as to ensure that the VAT tax revenue accrues to the Member State where the service is actually consumed taking into account that services connected with immovable property are considered to be consumed at the place where the property is located. Interested parties can therefore not choose to circumvent Article 47 of the VAT Directive by indicating in their contractual arrangements that services provided under this 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

8. The rule contained in Article 47 of the VAT Directive is a particular rule and not an exception to the general B2B and B2C place of supply rules contained in Articles 44 and 45 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 rules.⁵
9. It should therefore be underlined that, unlike exceptions, this particular rule of Article 47 should not be construed narrowly. However, it should also not be applied so widely as to make the general rules become an exception.
10. This particular rule applies irrespectively of whether the service is supplied to a business customer (B2B) or to a final consumer (B2C).
11. Whenever uncertainty arises with regard to the application of Article 47 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 actually consumed. It should first be verified whether the services falls within the scope of

⁵ See CJEU cases C-166/05 *Heger Rudi*; C-41/04 *Levob Verzekeringen and OV Bank*.

the particular rule of Article 47⁶ and if so, the service is considered as connected with immovable property. If not, it should be verified whether another particular rule on the place of supply applies and if no particular rule applies, the general rules of Articles 44 and 45 shall apply.

12. 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 actual place of consumption should be applied⁷.

1.5. VAT treatment of remote supplies connected with immovable property

13. Services connected with immovable property may in some instances be supplied remotely i.e. at the distance. Normally the way in which a service is supplied should not influence the VAT treatment of a service 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 onsite but also at a distance.

14. When a service provided at 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 important to assess the application of each of them with a view to determine which one would bring the most satisfactory outcome from the point of view of ensuring taxation at the place of consumption of the service.

1.6. Application of the particular rule to bundled supplies

15. In accordance with the settled case law of the Court of Justice of the European Union (hereinafter ‘CJEU’), for VAT purposes every supply must normally be regarded as distinct and independent⁸. 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 supplies⁹.

16. 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 form, objectively, a single, indivisible economic supply, which it would be artificial to split¹⁰. The essential features of the supply must be ascertained in order to determine whether the customer, being a typical consumer, receives several distinct principal supplies or a single supply¹¹.

⁶ See CJEU case C-155/12 *RR Donnelley Global Turnkey Solutions Poland*, paragraph 29.

⁷ See CJEU case C-37/08 *RCI Europe*, paragraph 39.

⁸ 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.

⁹ See CJEU case C-425/06 *Part Service*, paragraph 51.

¹⁰ See CJEU cases C-41/04 *Levob Verzekeringen and OV Bank*, paragraph 22, and C-276/09 *Everything Everywhere*, paragraphs 24 and 25.

¹¹ See for example judgment in CJEU case C-349/96 *Card Protection Plan*.

17. Moreover, that 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 supplied¹².
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 by the CJEU. When operating this assessment, all circumstances of the transaction must be taken into consideration¹³.

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

19. To achieve taxation at the actual place of consumption, the particular rule of Article 47 of the VAT Directive can only be applied when the service is linked with a specific immovable property. 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.
20. Conversely, in all other scenarios where the service is linked with a specific immovable property, it should be duly assessed whether that service has a sufficiently direct connection with immovable property as defined under Article 31a.
21. It should be underlined that services connected with immovable property cover both transactions connected to one or several clearly identified immovable properties. The fact that the service is linked to more than one property and that they are located in different Member States 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).

1.8. Services connected with immovable properties and global contracts

22. There is a great variety of possibilities in which global 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 global supply, the client can be established in a different country than the one where the property is located, etc. 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.
 - The fact that a service is provided offsite, not directly to the owner of the immovable property or to a client located in a country different from the

¹² 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.

¹³ See CJEU case C-349/96 *Card Protection Plan*, paragraph 27.

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).

- Where there is a chain of transactions, each supply of services should be assessed separately, taking into account the factual circumstances at stake.
- 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.
- 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 checked whether the dominant element of the supply is the service connected with immovable property and that this service has a sufficiently direct connection with that property (see also explanations on bundled supplies above).

1.9. Obligations of suppliers providing services connected with immovable property

23. Whenever a supplier is supplying services covered by Article 47 in a Member State, he is normally 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 State. 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.
24. 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).

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

25. 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.
26. 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. 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.

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

27. 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 in the identified place (a Member State or a third country) which includes verification whether this service is taxed or exempt. In other words even though a given services may for example be exempt it does not change the need for correct application of the rules on the place of supply.

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

28. 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 not make use of definitions and concepts stemming from their national legislation.
29. Therefore, for the purposes of identifying the Member State in which VAT is due on services connected with immovable property, the assessment has to be based on the definitions given in the VAT Implementing Regulation and not on definitions given under the national law of each Member State.

1.13. Relevant legal acts

30. 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 (hereinafter ‘the 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 (hereinafter ‘VAT Implementing Regulation’)
31. All relevant legal provisions are cited at the end of the explanatory notes in the wording applicable as from 1 January 2017.
32. 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 COUNCIL
IMPLEMENTING REGULATION (EU) No 1042/2013 RELEVANT TO
SERVICES CONNECTED WITH IMMOVABLE PROPERTY

2.1. Definition of ‘immovable property’

Article 13b

For the application of Directive 2006/112/EC, the following shall be regarded as **‘immovable property’**¹⁴:

33. The ruling of the CJEU in the *Fonden Marselisborg Lystbådehavn* case¹⁵ has greatly inspired the definition of immovable property provided for under Article 13b of the VAT Implementing Regulation. Regarding the exemption for leasing or letting of immovable property provided for under Article 135(1)(l) of the VAT Directive, the Advocate General in that case¹⁶ 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’*.
34. By referring to four categories - from points (a) to (d) - that are to be regarded as ‘immovable property’, Article 13b is more detailed than the jurisprudence in defining the concept of immovable property which is meant to distinguish immovable properties from tangible movable properties.
35. While the scope of the concept of ‘immovable property’ should always be assessed only by reference to the definition provided for in the VAT Implementing Regulation, it is worth understanding how this definition has been construed.
36. On the one hand there are goods that cannot move or be moved (e.g. land, building). These goods are immovable goods and would be covered by Article 13b(a) and (b). On the other hand, there are goods that can move or be moved, but which will be regarded as immovable goods because they are ‘closely linked to’ or ‘integrated in’ an immovable good (e.g. lifts, doors, windows) and could fall under Article 13b(b), (c) or (d).
37. This list of four categories included in the definition is exhaustive. However, as explained further on, it should be underlined that some goods may be covered by more than one category of the definition.

¹⁴ Emphasis has been put on elements in bold simply to facilitate the reading of the document.

¹⁵ See CJEU case C-428/02 *Fonden Marselisborg Lystbådehavn*.

¹⁶ See point 30 of the opinion of Advocate General delivered on 14 October 2004 in CJEU case C-428/02 *Fonden Marselisborg Lystbådehavn*.

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

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

38. 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.

2.1.1.1. A specific part of the earth

39. 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 wording ‘specific’ does not restrict the scope of the term ‘earth’ which is broad. 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.

40. The soil of the earth encompasses any piece of land, including the portion of land covered by water, i.e. the sea, ocean, rivers, lakes.

41. Also reference is 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’, it also has to be incorporated to the ground or rooted in it. 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.

42. A similar reasoning should apply to waters covering the earth like lakes, rivers and other inland waterways. Although water is capable of moving, it should be considered as immovable.

43. The undersoil of the earth covers everything that is under the ground. Therefore, oils wells, water tables and other elements that are under the ground (also ground under the water) are considered as immovable. As long as their components are not removed from the underground they shall be considered as part of the earth, that is to say immovable property.

2.1.1.2. Title and possession

44. 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’.

45. Although ‘title’ and ‘possession’ are concepts that are not defined for the purpose of applying the VAT Directive, they should be commonly understood and not rely on national definitions.

46. 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 is reminded 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 property¹⁷. Therefore, there can be a transfer of the right to dispose of tangible property as owner, even if there is no transfer of legal ownership of the property. What matters is the ‘economic ownership’ or ‘economic possession’.

47. 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 owing a title.
48. 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 under certain circumstances actual title and possession will belong to the same person, title and possession may also be attributed to different persons. Therefore the conditions relating to the requirement of ‘title and possession’ should be seen as alternative.
49. 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 over them. This 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 the provision.
50. 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, a test has to be run whether title and possession can be created over the good.
51. Inalienable immovable goods, such as public property (e.g. lakes, inland waterways, harbours, public parks, roads), are covered by Article 13b(a) even when their title is not transferrable. They may indeed be the object of supply of services (e.g. construction works, exploitation licenses) which will obviously 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;

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

52. A building can be defined as a (man-made) structure with a roof and walls such as a house or factory.

¹⁷ See CJEU cases C-320/88 *Shipping and Forwarding Enterprise Safe*, paragraphs 7 to 9 and 12; C-25/03 *HE*, paragraph 64 ; C-88/09 *Graphic Procédé*, paragraph 16.

53. The term construction has a broader meaning and encompasses other (man-made) structures that do not qualify as a building. It includes civil engineering work, such as roads, bridges, airfields, harbours, pipes installations for gas, water, sewerage, industrial installations such as power generating plants, refineries, etc.
54. In order to qualify as ‘immovable property’, those 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 moved¹⁸.
- 2.1.3. What is meant by ‘fixed to or in the ground (above or below sea level)’ and ‘which cannot be easily dismantled or moved’?**
55. 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.
56. Applying the condition ‘fixed to or on 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’.
57. While buildings or constructions requiring major infrastructure works to attach them to the ground would obviously meet those criteria, concerns maybe raised in situations where the nature of the building or construction or the type of ties to the ground might be questioned although the buildings or constructions concerned cannot be easily dismantled or moved for several reasons. The qualification as letting or leasing of immovable property of the letting of a houseboat used as a restaurant-discotheque in the circumstances referred to in the *Leichenich* case¹⁹ or of the leasing of buildings constructed from prefabricated components intended to be removed and re-used on another site in the circumstances referred to in the *Maierhofer* case²⁰ are illustrative in this respect.
58. A building or construction can be fixed to or on the ground by different means: by a binding material such as cement, by an attachment such as ropes, chains, bolts, anchors or simply by way of the size or scale of the weight of the building or construction concerned.
59. 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.
60. 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 property for the purposes of applying the rules on VAT. 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.
61. In some cases, buildings and constructions are in their very nature movable goods (e.g. prefab houses, kiosks, stalls, boats, caravans). However because they are

¹⁸ See CJEU cases C-315/00 *Rudolf Maierhofer*; C-532/11 *Leichenich*.

¹⁹ See CJEU case C-532/11 *Leichenich*.

²⁰ See CJEU case C-315/00 *Rudolf Maierhofer*.

intended to be used as a permanent location, those structures might be tied to the ground in a way that makes those structures become fixed. In other words, they are attached in a sufficiently solid way to the ground for them to become immobilised. Even if in principle, they could be moved afterwards because of their ‘mobile’ character, they are to be seen as immovable property because the ties will need a certain effort or cost to be removed. Where there are no such attachments but by the importance of its size or weight, the structure cannot be easily dismantled or moved, it should also be considered as fixed to or in the ground. This could be the case of large oil cisterns, or immersed structures such as submarine cables or conducts.

62. 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.
63. However, in line with the physical criteria (‘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 board. It should be noted that these criteria are not exhaustive and depending on the situation, one could be more accurate than the other or some criteria might need to be simultaneously fulfilled.
- 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 (use of a crane, a trailer, a truck, etc.);
 - The cost to dismantle or move the building or construction (cost compared to the value of what is actually dismantled or moved);
 - The time needed to dismantle or move the building or construction.
64. Additionally to the mentioned criteria, the intended use and 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 a same location (a few days or weeks) should not be regarded as immovable property even though they may be fixed to the ground, because the ties will just be sufficient enough 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 dismantlable or movable by the fact that their attachment to the ground is sufficient to allow them to be immobilised for a longer term.

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;

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

65. According to this point, 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 this building or construction. ‘Integral’ means that without this item the building or construction would be incomplete.

66. The effect of this provision is to consider any item, which is a movable good, as an immovable property by the sole fact of making up an integral part of an immovable property.

2.1.4.1. *Difference between Article 13b(c) and Article 13b(b)*

67. While point (b) would include items that are ‘incorporated’ in the building or construction during its construction/renovation/modification process (e.g. bricks, cement, concrete, columns, beams), items referred to in point (c) are ‘installed’ in the building or construction.
68. ‘Incorporated’ items are constituents of the structural system (walls, floors, frame, etc.) of a building or construction. ‘Incorporated’ items also include those elements that are built as infrastructure or superstructure of the building or construction. This is for instance the case for the main sanitary installation (e.g. sewage systems, water pipes, sewer connection, drainage systems), main heating/cooling/ventilation installation (e.g. heating/cooling tubes, ventilation ducts), main electrical installation (internal cabling), main home/building automation system installation.
69. ‘Installed’ items are not part of the main structure even if they can make up an integral part of the building or construction.
70. ‘Installed’ items mean that they are placed or fixed in position ready for use in this building or construction. They are usually attached or fixed to the building or construction or they can simply be placed into it and they can generally be removed or replaced.
71. ‘Installed’ items will be considered as an integral part of the building or construction when without these items the building or construction would be viewed as incomplete. Those items complete the main structure of the building or construction and therefore form part of its finishing work. This finishing work includes, in addition to the examples mentioned under Article 13b(c), all items that lean on the structural system such as isolation, partition walls, wall and floor coverings.
72. A house without doors or windows would still be viewed as a house but doors and windows, once they are installed, contribute to making this house complete, i.e. to make this house habitable. The same goes for electrical, sanitary, kitchen or heat installations other than the main installations covered under point (b). These items are intended for the better (or even effective) use or enjoyment of the building or construction as a building or construction. The installation of such items helps complete the building or construction according to the structural features ordinarily associated with a building or construction.
73. Therefore, a suitable test would be the following: an item installed in a building or construction should be considered as making up an integral part of this building or construction when it contributes to making this building or construction complete according to the structural features ordinarily associated with a building or construction.

2.1.4.2. Difference between Article 13b(c) and Article 13b(d)

74. Items covered under point (c) are in contrast to items, equipment or machine, meant under point (d), that fulfil a specific task or function independent of the building or construction, but happen to be located within a building or construction (this would be for instance the case of equipment or machinery intended to be housed in a plant or factory). Their purpose, even if physically attached to immovable property, is not for the better use or enjoyment of the immovable property but to serve a specific purpose.
75. 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).
76. Concerns might arise in relation to the installation of items on specific parts of a building or construction, such as for example solar panels. 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 the installation meets or not the criteria of Article 13b. When solar panels are installed on the roof of a building or construction, they could be covered by Article 13b(c) if these solar panels become part of the roof in the sense that they are incorporated into the roof and serve as the roof. This would also be the case of solar panel windows. Solar panel walls would be covered by Article 13b(b) as they constitute part of the building. When solar panels are installed on a building or construction without being a part of it, a test should be driven to verify whether the conditions under Article 13b(d) are met.

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.

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

77. According to this point, 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.
78. This provision refers specifically to equipment and machine but any other item is also covered by the provision.
79. The effect of this provision is to consider any item, which is a movable good, as an immovable property by the sole fact of 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.
80. Concerning the meaning of items ‘installed’, reference is made to the explanation provided under previous section devoted to Article 13b(c).

2.1.6. What is meant by ‘permanently installed’ under Article 13b(d)?

81. The reference to the wording ‘permanently installed’ should not be seen as such as a condition for the application of Article 13b(d) but rather as a means to understand in which 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 item installed in a way to last in the building or construction would cause or not a certain damage to this building or construction once removed.
82. The adverb ‘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.
83. 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 loosening the item without destruction or alteration of the building or construction.
84. 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. The accounting concept of ‘capital goods’ could be useful in some cases in order to define the ‘permanent’ character of items installed in buildings or constructions.
85. Capital goods are durable goods that are used in the production of other goods or of services. They are also called ‘producer goods’. This is in contrast to ‘consumer goods’ that are ready for consumption and are not utilized in any further production.
86. Capital goods include equipment, machines or tools (such as excavators, cranes, generators, vehicles, computers, ovens) which require relatively large investments and are bought to be used over several years.
87. Even if capital goods are designed to function on a ‘permanent’ basis they have economic/useful lives shorter than buildings or constructions in which they are used. ‘Permanent’ in the context of capital goods would mean that the item is used as a production means during a certain time in the course of an economic activity for the purpose of which it has been acquired.
88. When the reference to capital goods is not appropriate, for instance when the item might not qualify as such or when the item is permanently installed by a private person (e.g. built-in cupboard in a room), the adverb ‘permanently’ would need to be interpreted on the basis of other criteria. ‘Permanently’ would then refer to items that are installed to serve a specific purpose in this building or construction and that are intended to last or remain unchanged.

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

89. As previously explained, equipment, 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. It is therefore necessary to clarify the meaning of ‘destroying’ and ‘altering’.
90. In relation to buildings and constructions, ‘destruction’ commonly means the action or process of causing such damage that they do no longer exist or cannot be repaired.
91. ‘Alteration’ is a less drastic change. It commonly means the change in character or composition, typically in a comparatively small but significant way. Taken to the extreme, an alteration could include simply attaching or removing an item from a building or construction.
92. Destruction and alteration of a building or construction, in the meaning of Article 13b(d), refers as well to the portion of the building or construction to which the item is attached as to the rest of the building or construction.
93. Judging whether by moving an item, equipment or machine permanently installed in a building or construction, this 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 these 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 (dimension, weight, and so on), is installed permanently to a plant could for example cause destruction of (part of) a plant when removed (need to remove the roof, or to demolish a wall to extract the machine).
94. Therefore ‘destroying’ would cover situations where the building or construction is undergoing a severe damage or a substantial change due to the move of any item permanently installed into it.
95. Equally ‘alteration’ suggests damage or change but to a lesser extent.
96. 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. The building or construction should be altered in a significant way.
97. The alteration will obviously be insignificant in 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 easy to hide or repair.
98. In this respect 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.

99. For example, a machine could be bolted to the floor of a factory to keep it from shifting during production. It is possible to remove it by only removing the bolts from the floor. There will naturally be some impact on the floor when the bolts are removed. However this would not damage the building in a significant way.

2.2. Definition of services having ‘sufficiently direct connection’ with immovable property

Article 31a

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

100. The aim of Article 31a is to help identifying 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. Article 31a(3) presents a list of examples of services which are not to be considered as connected with immovable property.
101. To determine whether a service is regarded as connected with immovable property, one should apply the following reasoning:
- Check if the service is specifically foreseen under Article 31a(2);
 - If not, examine whether the service is excluded under Article 31a(3);
 - Where the service cannot be found on any of these two lists, it should be verified whether it meets any of the criteria set out under Article 31a(1).
102. 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 will to provide legal certainty in a legislative framework characterised by significant disparities among the national laws of Member States.
103. It can 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 *ad hoc* basis.
104. In the process of adoption of the VAT Implementing Regulation, these guidelines have been re-examined by the Council and considered as a solid basis for illustrating in general what is meant by Article 31a(1). The guidelines of the VAT Committee have further provided a list of cases which are now covered by Articles 31a(2) and 31a(3).
105. 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, in any event, as meeting with requirement of being connected with immovable property.

106. Finally it should be underlined that a common application of the rules is only possible when national legal concepts²¹ 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:

2.2.2. Are Article 31a(1)(a) and 31a(1)(b) cumulative?

107. The two provisions of Article 31a(1)(a) and 31a(1)(b) are not cumulative. In practice, it is possible that some scenarios meet criteria from both provisions but it is sufficient that requirements from only one of the two provisions are met for a service to be qualified as connected with immovable property.
108. As explained above the assessment of the service against the criteria contained in Article 31a(1) should only take place where that service is not included in any of the two lists from Articles 31a(2) and 31a(3).

2.2.3. How should the ‘sufficiently direct connection’ be assessed?

109. 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. Unlike exceptions, it should not be narrowly construed, nor should it be applied so widely as to make the general rules become an exception²² (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 actual place of consumption of the service²³.
110. In order to be covered by Article 47 of VAT Directive, the 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 Directive²⁴.
111. 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).
112. The criteria under 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

²¹ See opinion of Advocate General Trstenjak in CJEU case C-37/08 *RCI Europe*, in particular point 50.

²² 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 point 73.

²³ See CJEU case C-37/08 *RCI Europe*, paragraph 39.

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

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 point 2.2.7 below. In any case the supply must be linked to one or several specific immovable properties²⁵ (see also point 1.7. above).

2.2.4. Is the criterion of ‘sufficiently direct connection’ met with regard to services provided from a distance/offsite?

113. The question whether the services provided offsite/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.

2.2.5. Does the quality of the recipient of the services affect the qualification of the services?

114. The quality of the recipient of the service (i.e. whether he is the owner of the immovable property or not) 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 supplied to the owner, the tenant or any occupant of the dwelling or to another supplier in a chain of transactions (e.g. in case of subcontracting).

115. Further, for the application of Article 47 of VAT Directive it is irrelevant whether the recipient is a business or a final consumer.

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

116. This question has to be approached in the same way as the one above. Decisive 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.

2.2.7 How to understand points (a) and (b) of Article 31a(1)?

Article 31a(1)(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;

117. Article 31a(1)(a) states that services connected with immovable property have to be derived from this specific property making up a constituent element and being central and essential for the service to be supplied. It is not possible to perform such a service without the exact underlying property which further implies that the service has to be carried out in relation to a specific immovable property. The

²⁵ See CJEU case C-155/12 *RR Donnelley Global Turnkey Solutions Poland*, paragraphs 34 and 35.

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 this property to perform it provided that it is central and essential to that supply²⁶.

Article 31a(1)(b) where they are provided to, or directed towards, an immovable property, having as their object the legal or physical alteration of that property.

118. Services are regarded as having a sufficiently direct connection with immovable property in the case 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.
119. Legal alteration of an immovable property should cover any modification of the legal situation of that property.
120. Point (b) of Article 31a(1) refers to 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. It is worth to note 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 minor changes resulting in a physical alteration of an immovable property should also be covered by Article 31a(1)(b) (e.g. maintenance or cleaning of roads, tunnels, bridges, etc.).

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

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

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

121. 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.
122. 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) should therefore be assessed on a case-by-case basis against the criteria set under Article 31a(1).
123. 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 being connected with immovable property (see points 2.2.1 and 2.2.2 above).

²⁶ See CJEU case C-166/05 *Heger Rudi*.

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).

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

Article 31a(2)(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;

Article 31a(3)(a) the drawing up of plans for a building or parts of a building if not designated for a particular plot of land;

2.3.2.1. *What is the legal regime applicable to studies made with regards to an immovable property of which the (precise) location is not yet known?*

124. 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 to 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.
125. In such circumstances, when services are provided without being directed towards a plot of land or particular 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. Only services provided with respect to specific location can fall within the scope of Article 47.
126. In the event where services such as the drawing-up of plans or the conduct of a study 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.

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

Article 31a(2)(b) the provision of on-site supervision or security services;

2.3.3.1. *Which services enter the scope of Article 31a(2)(b)?*

127. Article 31a(2)(b) provides that on-site supervision and security services shall be regarded as services connected with immovable property.
128. When initially discussed in the VAT Committee in 2011²⁷, 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.

²⁷ See VAT Committee Working paper No 688.

129. The VAT Implementing Regulation applies the same tax treatment to the provision of on-site supervision and to security.
130. 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.
131. Security services have a different scope. On 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.
132. 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. This will also be the case for security services covering both the immovable property and its content (e.g. items, persons, equipment or machines located in the building or on the construction site).

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

133. As explained above, under Article 31a(2)(b), supervision relates mainly to the supervision of building sites, while security services can relate both to building sites and erected buildings and constructions.
134. In this regard, and acknowledging the 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. In both cases, 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 actual consumption, and that services connected with immovable property are consumed at the place where the property is located.

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

135. 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.
136. 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 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.
137. If the installation is supplied as a separate service (independent from the supply of the security system itself) 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. 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));
 - 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)).
138. 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.

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

Article 31a(2)(c) the **construction of a building on land**, as well as construction and demolition work performed on a building or parts of a building;

2.3.4.1. Which categories of works of construction are covered by the scope of Article 31a(2)(c)?

139. 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).

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

140. 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’.
141. On the one hand, it could be considered that the assignment of staff, regardless of whether or not this is 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.
142. On the other hand, replying to a similar question, Article 31b provides 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. It could therefore 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.
143. 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.

2.3.5. 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;

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

144. 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).
145. That can be inferred from the case law of the CJEU²⁸ 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.

²⁸ See CJEU case C-111/05 *Aktiebolaget NN*.

2.3.5.2. *What are the limits to the construction and demolition works covered by Article 31a(2)(d)?*

146. The construction and demolition works related to permanent structures (like pipeline systems) covered by this provision also cover the fixing and unfixing of permanent structures to the ground, be it land below or above sea level.
147. 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.
148. With regard to maintenance works, renovation and repair of permanent structures, see Article 31a(2)(k).

2.3.6. 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;

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

149. This provision is complementary to previous articles 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 flattening before the start of construction works or garden landscaping provided with regard to a specific piece of land.
150. It also encompasses agricultural services. The latter should be defined as services provided with the purpose of cultivating land or preparing land for the cultivation of crops (e.g. through ploughing).
151. 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 to immovable property only insofar as they concern work on land. For example, rearing of livestock is an agricultural activity that is not to be considered as connected with immovable property.

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

Article 31a(2)(f) surveying and assessment of the risk and integrity of immovable property;

2.3.7.1. *What is the purpose of Article 31a(2)(f)?*

152. 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, provided that there is a

sufficiently direct connection between the concrete service and the immovable property.

153. 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 sea-bed, 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.
154. 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) hereafter). 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.

2.3.8. 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;

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

155. Valuation services can be provided in many different circumstances where the market value of one or several immovable goods needs to be determined for private, business, legal or administrative reasons (e.g.: buying, selling, insuring immovable property, paying taxes on immovable goods or resolving disputes linked with the immovable property's integrity, conformity or damages).
156. 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 law²⁹ of the CJEU (see point 1.6 above).

²⁹ See CJEU cases C-425/06 *Part Service* and C-392/11 *Field Fisher Waterhouse*.

2.3.8.2. *Are due diligence services to be considered as connected with immovable property? Under which conditions?*

157. Due diligence services are expert services consisting in the investigation and analysis of a company's or organisation's situation prior to a business transaction. They typically aim to ascertain a list of material facts (related to immovable property or not) in order to identify potential risks and allow a better valuation of the business assets.
158. In some circumstances, due diligence services can look into immovable property owned by a customer. As expert services, they can only qualify as connected with immovable property if they have a sufficiently direct connection with that property. This would be the case insofar as the service focuses on one or several specific immovable properties, regardless of the methods (on-site or remote desktop inspection) used to provide the service.
159. Similarly to legal services (see also comments under point 2.3.18. below), due diligence services can be regarded as connected with immovable property even in the event where they are not followed by an actual sale or letting of the property, or where the property is finally not subject to a physical alteration.

2.3.8.3. *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?*

160. 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.

2.3.9. 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;

2.3.9.1. *How to understand 'leasing or letting of immovable property'?*

161. The VAT Directive does not provide for definitions of leasing or letting of immovable property. However, as already underlined in section 2 of the Explanatory notes (see point 1.12.) a common application of the rules is only possible if national law concepts³⁰ are disregarded for VAT purposes, which is essential to avoid double or non-taxation.

³⁰ See opinion of Advocate General Trstenjak in CJEU case C-37/08 *RCI Europe*, in particular point 50.

162. 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 right³¹.

2.3.9.2. 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 ?

163. 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. 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.

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

165. 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.

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

166. The VAT treatment of complex storage services provided in warehouses or other premises will depend, in the first place, on the qualification of the service as a single supply or multiple supplies. In this regard, the explanations provided by the CJEU in the *Donnelley* case³² are very clear in providing guidance on the approach to follow.

167. 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,

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

³² See CJEU case C-155/12 *RR Donnelley Global Turnkey Solutions Poland*, paragraphs 20 to 25.

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 customers an end in themselves but simply a means of better enjoying the storage?

168. 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 and the ancillary/closely linked services to it) shall be subject to VAT at the place where the storage facility is located.

2.3.10. 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;

2.3.10.1. Which are the services covered by the ‘conversion of timeshare usage rights’ under Article 31a(2)(i)?

169. The conversion of timeshare usage rights (also 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.
170. The suppliers providing these services would typically sell contractual rights (e.g. through enrolment and/or subscription fees) to their customers who would then receive points (or ‘Points Rights’). In exchange of these points, the contract allows these customers to stay, for example, in holiday resorts or obtain other services. The exchange of the points by the customer against a concrete service is called ‘conversion of timeshare usage rights’. Where the conversion of timeshare usage rights provides the customer a right to stay in a specific place, this conversion is to be seen as a service connected with immovable property.
171. 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 2.3.17 below) provided that the intermediary is not acting in the name and on behalf of another person.

2.3.10.2. Does Article 31a(2)(i) also apply to accommodation provided outside the hotel sector (e.g. to tree houses, yurts, apartment exchanges, etc.)?

172. 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.).

2.3.10.3. Are additional services commonly provided in the hotel sector, such as the organisation of events, also covered by Article 31a(2)(i)?

173. Article 31a(2)(i) does not cover all services commonly provided by hotels. On the contrary, this provision explicitly targets accommodation services.
174. Services like the organisation of events are generally covered by Articles 53 and 54 of the VAT Directive.
175. While the immovable property is the central, essential and constituent element of any accommodation service, the importance of the immovable good may not be as central for other services such as the organisation of weddings or wine tastings. These are services that some hotels may typically provide on top of their core business activity which is to offer accommodation.
176. In some scenarios, the hotel may only let a room to a customer for the organisation of an event. This service would qualify as letting of immovable property and would therefore be considered as connected with immovable property under Article 31a(2)(h). In other situations, the hotel may be the organiser of the event providing, for example, not only a room but also equipment, advertising, restaurant or catering services. In this last scenario, the service consisting in the organisation of the event will not fall under the scope of Article 31a(2)(i) and will not be considered as connected with immovable property.

2.3.11. 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**;

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

177. 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)).

178. Taking this into account and reading Article 31a(2)(j) together with Article 31a(2)(h) and Article 31a(2)(i), it appears that the scope of Article 31a(2)(j) is larger than that of the two previous 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 and which meets the conditions of a service sufficiently connected with immovable property.
179. 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 highways 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 supply of the voucher shall therefore be taxable at the place where the immovable property is situated (the transport infrastructure in the example above).

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

180. 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 berth services provided in port or airport premises, port and airport duties corresponding to the right to use the immovable property, rental of mooring places, etc. fall within the scope of Article 47 of the VAT Directive, additional services offered separately by the same suppliers (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 for example.

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

181. 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 maximize the revenue of their workspace and increase their professional network. The businesses or professionals who make use of this service minimize 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.

182. The place of supply of such services shall depend on their qualification into a single or multiple services for VAT purposes based on the criteria defined by the case law of the CJEU³³. For each 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).

2.3.12. 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;

2.3.12.1. *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?*

183. 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.

184. 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), or more generally within Article 31a(1)(b).

2.3.12.2. *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?*

185. 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.

2.3.13. 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;

2.3.13.1. *Does Article 31a(2)(l) apply to telecommunication infrastructures?*

186. 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, communication, etc. The structures used for these purposes can be buried in the ground, they can lay on the ground or be fixed to the ground in different manners.

³³ See CJEU case C-155/12 *RR Donelley Global Turnkey Solutions Poland*, paragraphs 20 to 25.

187. The maintenance, renovation or repair of telecommunication infrastructures (e.g. the replacement of cable network installed underground) can therefore constitute services covered by Article 31a(2)(l)

2.3.13.2. Does Article 31a(2)(l) apply to houseboats?

188. The CJEU has ruled³⁴ 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.
189. 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.
190. Whenever the conditions for a houseboat to qualify as immovable property are met, it can be considered as a permanent structure and the maintenance, renovation and repair of the houseboat are to be considered as services connected with immovable property.

2.3.14. 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;

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

191. 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.
192. 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

³⁴ See CJEU case C-532/11 *Leichenich*, paragraph 29.

connected with immovable property (see also comments concerning installation of security systems under Article 31a(2)(b)).

193. Article 31a(2)(n) complements by providing that the same treatment must be applied with regard to maintenance, repair, inspection and supervision of such goods.

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

194. 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 this place 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.

195. 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.

196. 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 of this document).

2.3.15. 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;

197. 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.

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

198. 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 in 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 of this document).

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

Article 31a(2)(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;

Article 31a(3)(g) portfolio management of investments in real estate;

2.3.16.1. What is meant by property management under Article 31a(2)(o)?

199. 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 (when it consists in a regular rent collection and not considered as a separate debt collection service), 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.
200. The concept of property management applies to any type of immovable property regardless of its commercial, industrial or residential use.
201. 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 to be considered connected with immovable property under some other specific provisions or under the general provisions of the Implementing Regulation.
202. 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.

2.3.16.2. 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)?

203. 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 similar to a financial service.
204. 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 buying and selling of properties and seeking new investment opportunities for his client.

205. For the purposes of the VAT Implementing Regulation, the main difference between property and portfolio management lies within 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 are to be treated as portfolio management and therefore not being connected to immovable property.
206. In practice, for assessing whether a service qualifies as property or portfolio management, it should be examined whether the service at stake is provided for investment purposes or not. Suppliers acting in these two specific sectors (real estate agents on one hand and property investments funds on the other hand, for example) typically do not have the same business model and do not target the same clients.
207. 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.
208. 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.

2.3.17. 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;

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

209. 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 2.3.9 under Article 31a(2)(h)) 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's else immovable property is established or transferred).

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

2.3.17.2. *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?*

211. 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 perform business activities mentioned in this provision.

212. 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 for the application of Article 31a(2)(p) is the type of services actually performed by the intermediary and not his profession.

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

213. Article 31a(2)(p) should also cover intermediation services where the sale, leasing, letting, establishment of transfer of certain interests in immovable property or right *in rem* over immovable property does not finally take place.

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

214. 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.

215. The purpose of including in the provision the condition that the intermediary has to act in the name and on behalf of another person was to align its scope with that of Article 31. The latter provision envisages that for intermediation in the provision of accommodation in the hotel and similar sectors, where an intermediary acts in the name and on behalf of another person, Article 44 (for B2B supplies) or Article 46 (for B2C supplies) of the VAT Directive applies. In other words, for the services mentioned in Article 31, Article 47 of the VAT Directive does not apply.

216. 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 of the VAT Directive. Therefore such a supply is not covered by Article 31a(3)(d).

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

217. It is possible that other services are included in the whole 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 connected with immovable property within the meaning of Article 47 of the VAT Directive applies (see also point 1.6 of this document).

2.3.18. 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.

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

218. Legal services may relate to many various transactions. It is only in very few situations that legal services could be seen as having sufficiently direct connection to immovable property. In order to be covered by Article 47 of the VAT Directive legal services, as indicated under Article 31a(2)(q), 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 property.

219. As a result, Article 31a(3)(h), which states which legal services are not covered by Article 47 of the VAT Directive, applies to all these legal services other than those covered by Article 31a(2)(q). In drawing a border line between these two provisions focus should be on the criteria included in Article 31a(2)(q).

220. 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).
221. Article 31a(2)(q) applies even if the underlying transaction resulting in legal alteration of the property is not carried through.
222. 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 in fixed capital, liquidation (receiving liquidation quota as property), drawing up construction contracts, leasing contracts or the partition of immovable property in case of a divorce.
223. 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 actual 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 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).
224. Therefore advisory services regarding immovable property (including legal advice on contractual conditions or property-related litigation, tax advice on the capital allowance position in respect of a specific property, real estate transfer tax or VAT structure), legal services connected with the provision of rights in pledges and mortgages or services linked with insolvency proceedings should generally be seen as examples of legal services not covered by Article 31a(2)(q). The only exception would cover situations where such services are connected with the actual 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)³⁵.

2.3.18.2. How to understand the term ‘legal alteration’ in the context of Article 31a(2)(q)?

225. 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); the establishment or transfer of rights *in rem* over immovable property

³⁵ See point 1.6 dealing with bundled supplies.

(whether or not treated as tangible property). Consequently any other types of legal alterations are not covered by this provision.

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

226. 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).

2.3.18.4. What is the meaning of the expression ‘certain interests’ under Article 31a(2)(q)?

227. 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 arising in different Member States.

228. Article 31a(2)(q) cannot be read without linking it with Article 15(2) of the VAT Directive. The latter provision leaves the option for Member States to extend the concept of tangible property to, among others, certain interests in immovable property and to rights *in rem* giving the holder thereof a right of use over immovable property. If the option is used by a given Member State, these interests or rights *in rem* are to be treated as the property to which they relate.

229. However Article 31a(2)(q) only applies to ‘certain interests in immovable property’ as well as to ‘rights *in rem* over immovable property’ (regardless of whether or not they are *treated* as tangible property). Therefore, only those interests or rights *in rem* that are mentioned in Article 15(2)(a) and (b) of the VAT Directive can be seen as covered by Article 31a(2)(q).

230. ‘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).

2.3.18.5. 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)?

231. As mentioned above, under point 2.3.18.1, 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).

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

232. 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).

2.3.18.7. Do legal services relating to the conclusion of rental agreements qualify as connected with immovable property?

233. Where legal services consist in drafting a rental agreement and the conclusion of such an agreement would establish or transfer certain interest in immovable property or rights *in rem* over immovable property, those services should be seen as covered by Article 31a(2)(q) and therefore connected with immovable property.

2.3.19. 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;

2.3.19.1. What is meant by ‘the provision of advertising’ under Article 31a(3)(c)?

234. 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.

235. This question was discussed in the VAT Committee prior to the adoption of the VAT Implementing Regulation and it was agreed that advertising services shall not be considered as services connected with immovable property even when they involve the use of immovable property.

236. 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).

237. 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.

2.3.19.2. 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?

238. 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.
239. Nevertheless, as indicated 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.

2.3.20. 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;

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

240. 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.
241. Even if the provision of a stand location is accompanied only by one related service, this is sufficient for it to fall within the scope of Article 31a(3)(e), i.e. it will be treated as a service not connected with immovable property.
242. This provision should apply not only to stands located at fairs or exhibitions but also to stands temporarily located in other venues as for example airports, shopping centres, weekly markets, etc. provided that the other conditions of Article 31a(3)(e) are satisfied. The context and physical environment of the location of the stand is therefore not a decisive element for this provision to apply. There are three important cumulative criteria that have to be met for the service to be considered as not connected with immovable property:
- i) the provision of a stand location;

- ii) the provision of other related services;
- iii) these related services must enable the exhibitor to display items and promote its services or products.

2.3.20.2. How is ‘the provision of a stand location’ to be defined under Article 31a(3)(e)?

- 243. 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, a fair or another promotional event. 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 its products or activity.
- 244. Therefore, for the purposes of applying Article 31a(3)(e), a distinction should be made between the letting of immovable property (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)).
- 245. When distinguishing between these two different scenarios, attention should be paid to all the factual circumstances of the transaction, including to the services not explicitly listed in the contract such as the provision of electricity, internet connection, heating, air conditioning, etc.
- 246. 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.
- 247. 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. 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.

2.3.21. 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.

248. 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.
249. A typical example of 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.
250. 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;*
- (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;*
- (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.