



# Why not VAT on intra-EU supplies of goods and services ?

Christian Amand  
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- 1957: how to combine turnover taxes levied at each stage of the production with a future internal market ?  
(Campet Report)
  - Suggestion: introduce, in each country, the French mechanism of split payment on sales tax, combined with the deduction of input VAT (TVA 1954)
    - The deduction renders such tax neutral on the international trade

# Why a common VAT system ?

First and second VAT Directives (1967)

- Solve permanent disputes between MS about about the determination ,
  - on export : lump sum refund of national taxes on consumption (exports)
  - on import: lump sum payment of import taxes on consumption (imports)
    - Difficult to know the importance of national consumption taxes variable depending the economic organisation
- Complement to the abolition of customs duties within the EU and taxes having the same impact as customs duties (1967)
- Prohibition of State Aids
- Consumption taxes are attributed to the country of consumption (GATT 1947 and WTO rules)

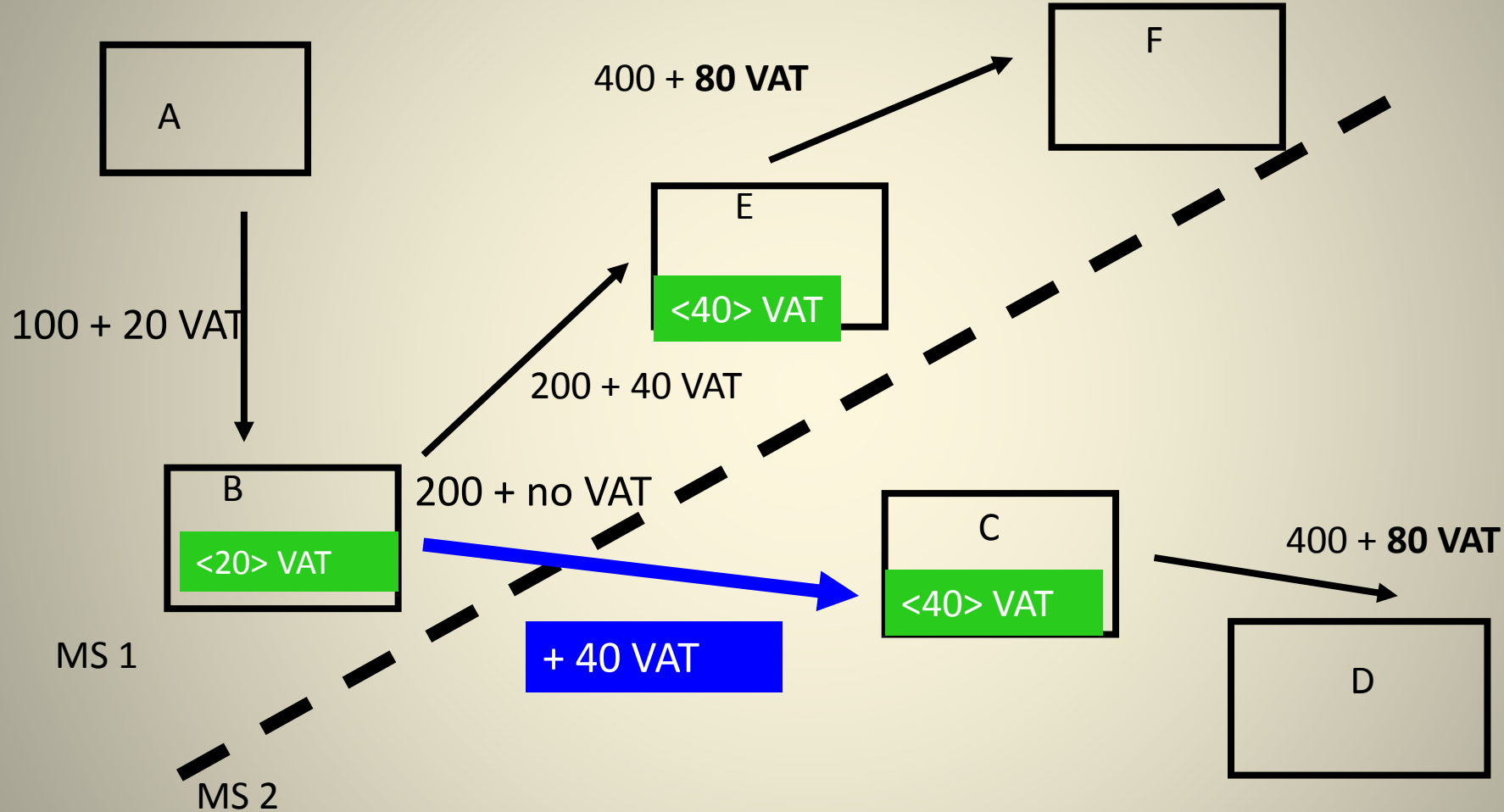
# The first VAT Directive

## Tax neutrality on intra-community trade

(art. 1(2), Directive 2006/112/EC)

- Application to goods and services of
  - a **general tax** on consumption
  - **exactly proportionnal to the price** of goods and services, however many transactions take place in the production and distribution process before the stage the tax is charged
- **On each transaction**, VAT calculated on the price of the goods and services at the rate applicable to such goods and services, *shall be chargeable after deduction* of the amount of the VAT borne directly by the various costs components

# The reason why VAT has been introduced in Europe in 1967: no discrimination between local and foreign operations



Country of production and length of the production process are not relevant

# Sixth VAT Directive of 1977

- Uniform taxable base for calculation of « own resources » for the European Institutions
  - Further harmonisation of concepts
  - Explicit list of VAT exemptions

# Uniform base of taxation, but not a uniform VAT system...

- 1977 Sixth VAT Directive : only a « uniform base of assessment » for the calculation of the « own resources » (Council Decision of 21 April 1970)
  - « May » provisions (methods of deduction, etc) and methods of implementation + options granted to business
  - Temporary provisions, accession treaties (art. 370, 371 and 375 to 390b and annex X of the VAT Directive)
  - Simplification and anti-fraud measures (art. 394, 395 and 396, VAT Directive)
  - Concepts not defined by the Directive + divergences of translation (Case 139/84, *Van Dijk Boekhuis*)
  - Operations ancillary to main operations (Case 126/78, *Nederlandse Spoorwegen*; C-380/99, *Bertelsman*; Case C-49/96 , *Card Protection Plan*; Case C-308/96, *Madgett and Baldwin*; Case C-41/04, *Levob*; Case C- 94/09, *Commission v. France*; C-425/06, *Part Services*; Case C-572/07, *RLRE Tellmer*)
  - No agreement on VAT exemptions + different views about the concept of economic activity

- « Objective 1992 » creation of an internal market
  - With customs controls at the internal borders ?
- White Paper 1987: « taxation in the Country of origin » + redistribution of money by the European Commission (**clearing system!**)
  - + various other difficulties such as public bodies, distance sales to private individuals, exchange of information, etc.



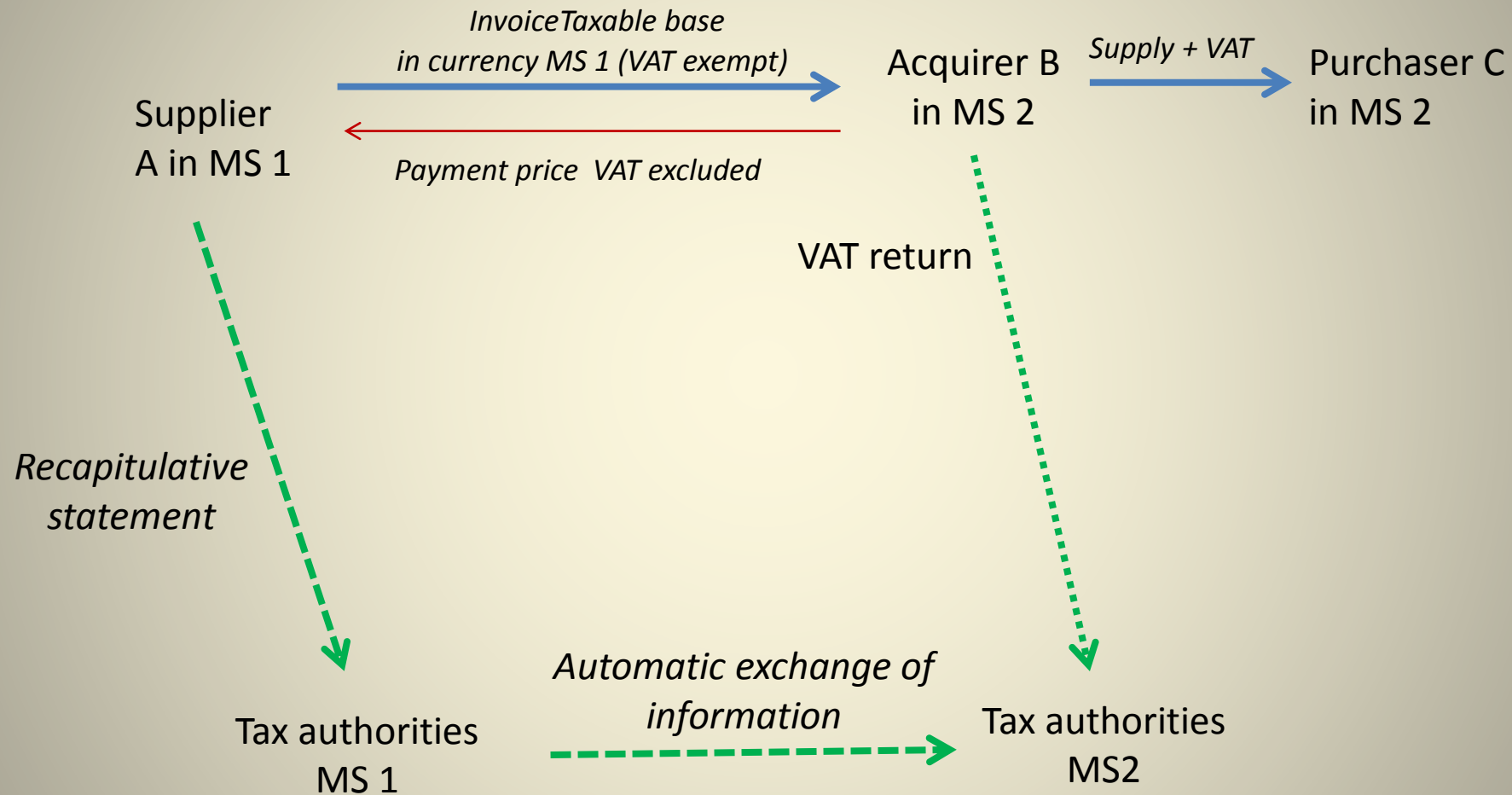
# Difficulties faced in 1987

- How to solve the contradiction
  - VAT is attributed to the MS of final consumption
  - VAT is collected at each stage of the production by the Member State of production
    - The mechanism Taxation/ Deduction is an incentive to declare
- Volume of trade renders impossible the control of the physical movements of goods within the EU

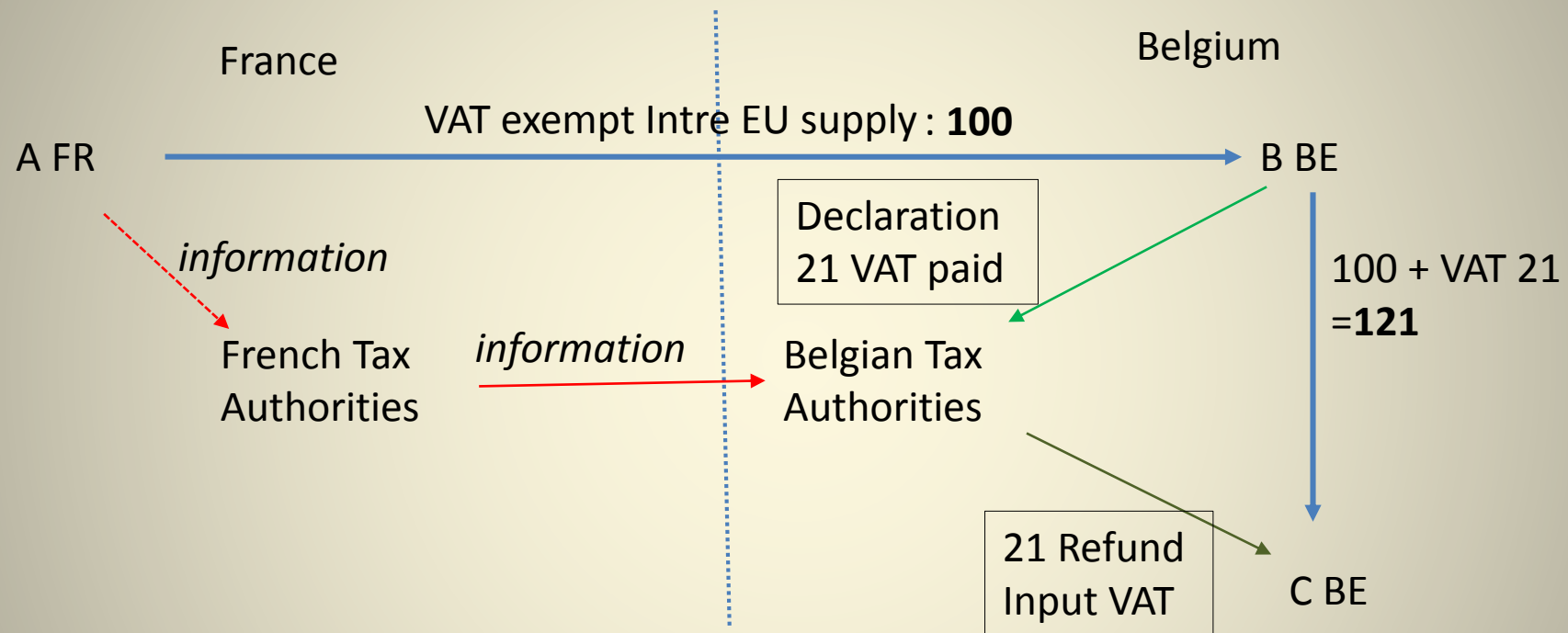
# Possible solutions ?

- November 1989: EU Council decides to adopt the « Benelux 40 System » until 1996
  - Exemptions on exports and taxation on imports maintained
  - Control of intra-EU movement of goods based on commercial documents
  - Warning: this system will lead to massive frauds!
- Maurice Lauré: VAT is only workable within a single jurisdiction, with a single tax authority
  - Who will control such authority ?

# Intra-community supplies as applicable to goods since 1993 (and to services since 2010)

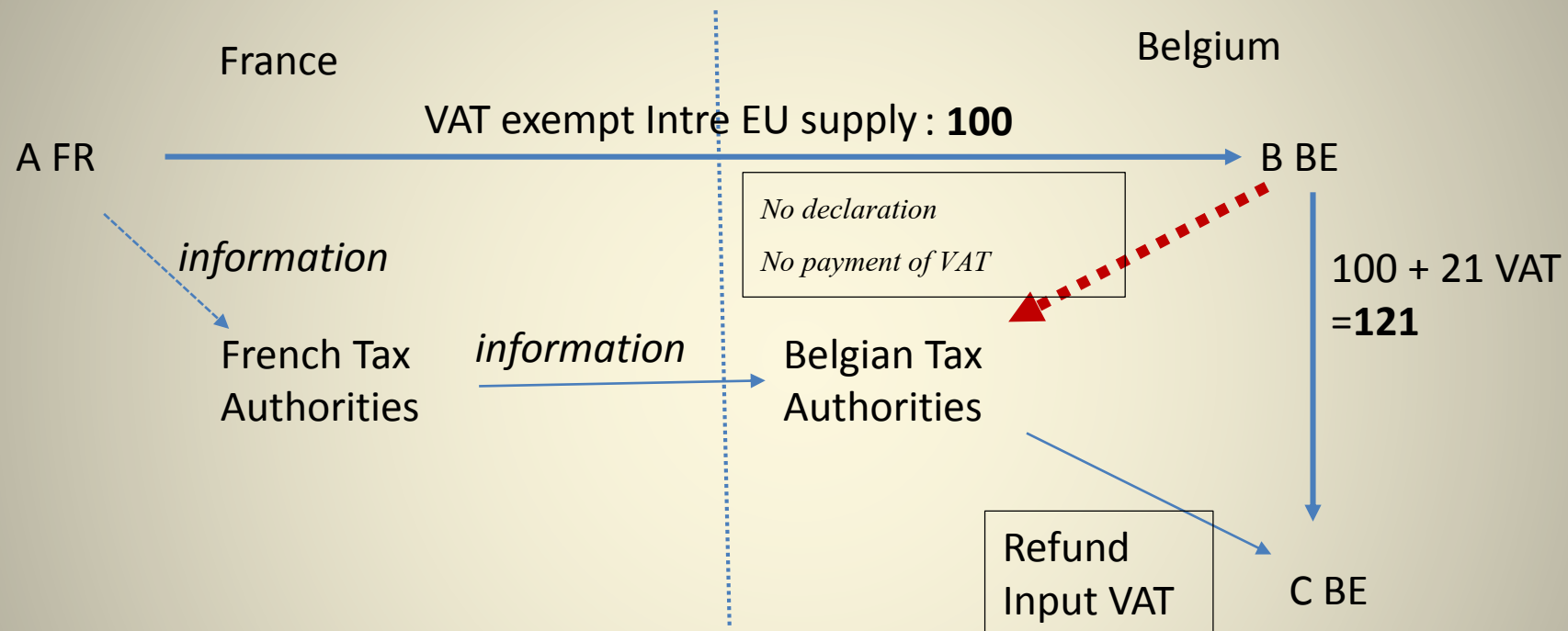


# A honest scheme



# Consequences of the break of the chain of deductions

## A fraudulent scheme



Benefit of B: 21

BTA:

- rejection of deduction of input VAT by C
- Immediate request of information about A
- All the customers of A are scrutinized

# Solutions against Fraud ....?

- Austria, Germany, Czech Republic: general reverse charge
    - A sales tax is much less efficient ....
  - Spain: online filing
  - Other solutions ?
- + how to finance EU budget ?

# EU Commission VAT Action Plan: OSS

- B2B intra-EU supplies :
  - VAT charged by the supplier at the rate applicable in the country of the customer
  - VAT paid by the supplier to a **One Stop Shop** in the country of the supplier
    - System not applicable on supplies to *certified taxable persons* (???)
    - But who will be responsible for the redistribution of the money to the MS? (Clearing system ?)

**One Stop Shop 2018**

**=**

**VAT in the country of origin 1988!**

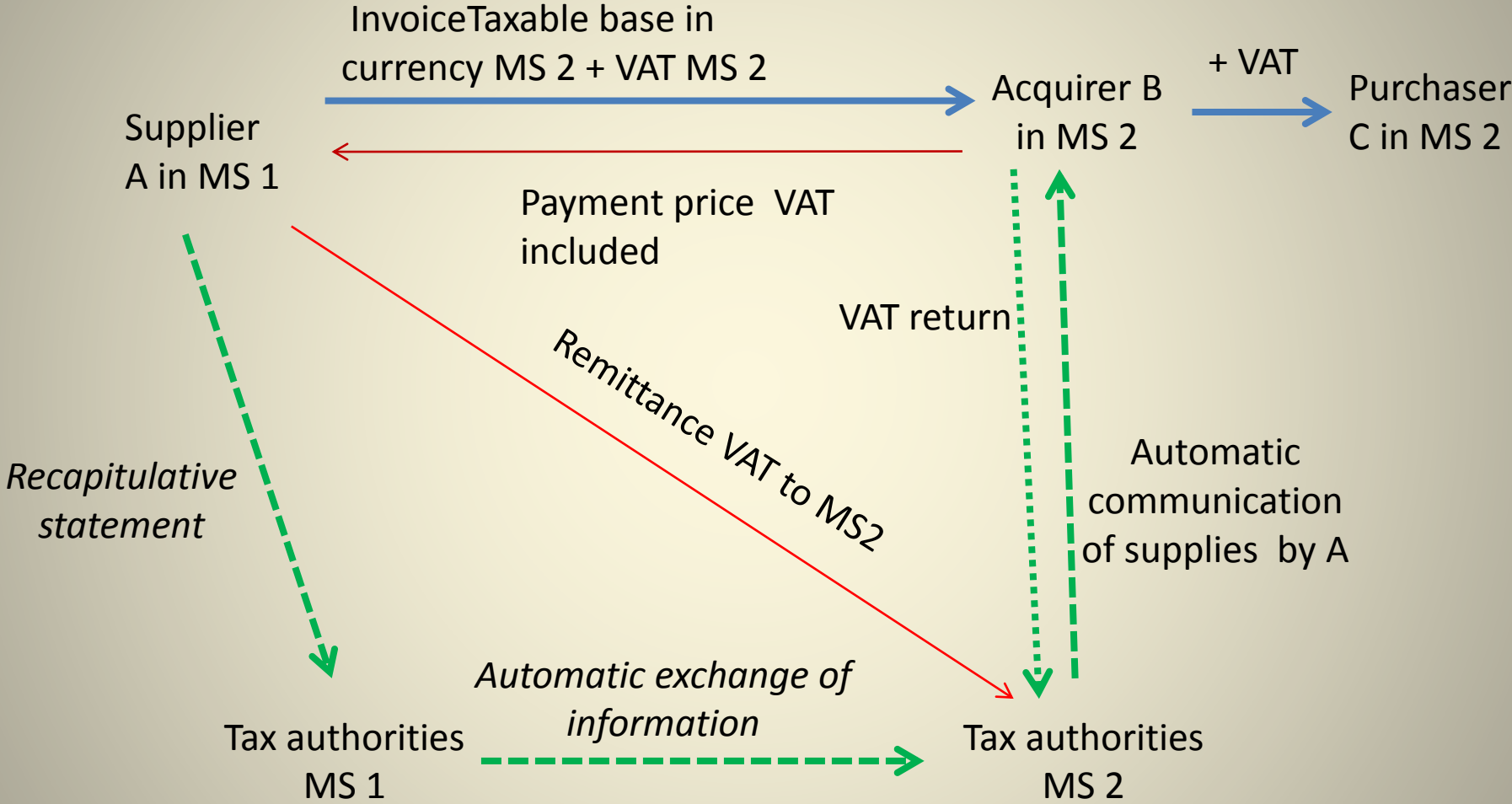
*(Less discussions about clearing....!)*



# Possible alternative for B2B intra-EU supplies of goods and services ?

- Why the supplier could not transfer the VAT charged to the customer directly to the tax authorities of the MS of the customer ?
- Follow the invoices (like for services) and not the physical movement of the goods
  - No changes re. supplies to final consumers (B2C)/ non business and to exports /imports

# An alternative intra-EU VAT system



# VAT on B2B intra-Eu supplies of goods and services

- Follow the invoices stream between permanent establishments
- Direct payment of the VAT by the supplier to the tax authorities of the acquirer at the rate and in the currency of the MS of the acquirer
  - Based on the current recapitulative statements (*one column is added: VAT on supplies charged to each purchaser established in another EU Member State*)
- Authorities of Member State of acquirer
  - Compare the information obtained from the *payments received* from foreign business and the *recapitulative statements*
  - Communicate to the acquirer information contained in the recapitulative statement (*but not the payments*)

- Supplier in MS 1 charges VAT to acquirer B in MS2 at the rate and the currency MS2, regardless the physical moments of the goods (like it is currently the case for the services);
- Acquirer B in MS 2 pays price to supplier A MS1, including VAT of MS2
- Supplier A in MS1 remits directly the VAT to the tax authorities of MS2 (according to the data contained in the recapitulative statement submitted to tax authorities in MS1)
- Tax authorities of MS2 informs acquirer B in MS2 that, according information contained in recapitulative statement submitted by A in MS1, A in MS 1 has designated him as acquirer of goods and services with VAT of MS2
- Unless problem detected automatically by MS2, B can deduct VAT charged by A in its own VAT return in MS2
- Other points are unchanged: VAT returns, import/export procedures, supplies B2C

# Advantages for business (1)

- close the source of missing traders fraud regarding the intra-EU operations (most if not all operations are taxed)
- solve the issue to bring difficult/impossible proofs regarding intra-EU operations (proof of transport is not necessary)
- solve the issue of the proof of the good faith ie the *Kittel test* (by the communication of information regarding supplies from another Member State to the acquirer)

# Advantages for business (2)

- limit the number of VAT registrations without Fixed Establishments within the EU (because the chargeability of the VAT will depend from the presence of a legal entity or a fixed establishment)
- limit the use of the 8<sup>th</sup> Directive refunds
- limit the formalities regarding tolling in various Members States;
- solve the difficulties regarding the determination of the person liable of the VAT in presence of Fixed establishment

# Additional costs for business

- Administrative burden to business ?
  - a few lines in the existing intra-community recapitulative statements
  - the knowledge of the VAT rates in other Member States
    - But is it really an issue ?

# Obstacles for business

- End of the current financial advantage on intra-Eu supplies
- Contacts with the foreign tax authorities
  - Probably limited
  - Tax embassy in each MS ?
  - Collection of taxes according to the procedures of th MS of establishment of the taxpayer ?



# Benefits for MS

- No clearing between MS
- Additionnal means of control, based on existing systems
- The customer who is informed that he made an intra-EU acquisition - but has not- is invited to take immediate measures, otherwise he is assumed to cooperate to a fraud
- Although there is no follow-up of the goods based on the physical movement, the person having a title on these goods is precisely determined
- B2C rules unchanged



Christian Amand  
Avocat  
Avenue Tedesco 7  
1160 Bruxelles  
Tél. : + 32 2 663 14 55  
E-mail: [ca@xirius.be](mailto:ca@xirius.be)  
Website: <http://www.xirius.be>