



The road to the new definite VAT system: Quick Fixes

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Some time ago, the EU Commission proposed several reforms of the VAT system that are aimed at improving and modernising VAT. The central element of the proposal consists of a new system for the levy of VAT on cross-border intra-community supplies of goods. Even though the proposal is still pending, the EU legislator has already adopted four measures which are meant to improve the current system. These 'Quick Fixes' become effective as of 1 January 2020. Even though the four Quick Fixes follow from EU law, EU member states may implement the new rules differently.

In this flyer, we discuss four Quick Fixes, which relates to the VAT treatment of call-off stock, allocation of transport for chain transactions, proof of the cross-border transport of goods and the obligation to obtain and document VAT identification numbers of customers.

Quick Fix 1: The simplified VAT treatment of call-off stock

Background

In order to make sure that goods are at the disposal of customers at all times, suppliers often hold stock at the premises of their customers. If the stock is transferred from one EU member state to another EU member state, the supplier is often confronted with a VAT registration and reporting obligation in the member state where the stock is transported to. In case no simplification is in place, the transfer leads to a deemed intra-community supply in the member state of dispatch and an intra-community acquisition in the member state of arrival, both of which are to be reported by the supplier. At the moment the customer removes the stock from the warehouse, the supplier is generally considered to perform a domestic supply of goods in the member state where the goods are located.

Currently, several member states have simplification measures in place. Such measures often imply that the actual supply of goods to the customer is being considered as a zero-rated (or VAT exempt) intra-community supply of goods by the supplier in the member state of dispatch. The customer must report the intra-community acquisition of the goods in the member state of arrival.

New rules: Quick Fix for call-off stock

The current simplification measures for call-off stock differ per member state. In fact, some member states have not even implemented any into their national legislation. This leads to complexities and legal uncertainty for businesses who operate in a cross-border context. In order to solve this problem, the EU legislator has decided to adopt a uniform simplification measure which will be implemented in all EU member states.

On the basis of the new measure, the transfer of own goods (call-off stock) from one member state to the other will no longer be regarded as a fictitious intra-community transaction. At the moment the customer withdraws the goods from the stock, the supplier carries out an intra-community supply of goods in the member state from which the stock was transported in the first place. The customer is required to report an intra-community acquisition in the member state where the goods have been transported to.

In order to apply the simplification measure, businesses need to adhere to certain conditions.

The most important ones are the following:

- The goods are dispatched to another member state by the supplier or on its behalf with the intention that the goods will be supplied to the customer at a later stage after arrival
- The customer is a taxable person
- The customer is entitled to take ownership of the goods based on an existing agreement between the supplier and the customer
- The supplier is not established nor has a VAT fixed establishment in the member state of arrival
- The customer has a VAT identification number in the member state of arrival of the goods
- The supplier has information about the identity of the customer plus the VAT identification number of the customer in the member state of arrival prior to the moment of dispatch
- Both the supplier and customer must keep a special register of those goods, specific information must be included in this register, and
- The goods must be supplied to the customer within 12 months after arrival of the goods.

In case the conditions are not met, the simplification measure for call-off stock cannot be applied. In that case, the supplier is likely required to register for VAT purposes in the member state in which the call-off stock is located.

How can you prepare your business for the Quick Fix?

The Quick Fix for call-off stock is a simplification measure which may be used to avoid VAT registrations in other member states. We advise businesses with call-off stock in other member states to reconsider their VAT position. In case they want to make use of the simplification measure, they should meet the conditions as of 1 January 2020 onwards. Even though the Quick Fix has apparent advantages, in order to benefit from this it is required to take proper care of its implementation; processes such as invoicing, ERP-operations and VAT return filing are likely to be affected.

Quick Fix 2: The allocation of transport for chain transactions

Background

A chain transaction consists of multiple subsequent supplies of goods (e.g. party A supplies goods to party B, who in turn supplies the goods to party C). For logistic reasons, the goods are often sent directly from the warehouse of the first supplier (in this case: party A) to the last customer (in this case: party C). When the goods are transported from one member state to the other, the cross-border transport can only be ascribed to one of the supplies in the chain. Only that supply can qualify for the VAT exemption (zero-rate) for intra-community supplies of goods.

The current VAT legislation does not contain any rules for the allocation of transport in situations involving cross-border supply chains. Even though the European Court of Justice has provided some guidance by means of its case law, the lack of consistent rules means that businesses face considerable uncertainty on this point. Additionally, the different national approaches to the levy of VAT on chain transactions may lead to double taxation or non-taxation.

New rules: Quick Fix for the allocation of transport

The second Quick Fix provides a uniform, simple rule for the allocation of transport in situations involving intra-community chain transactions. As of 1 January 2020, the rule stipulates that in case the intermediary operator (party B) arranges the transport of the goods himself (or has it arranged on his behalf through a third party like a logistics service provider), the transport of the goods must be ascribed to the first supply (i.e. the supply by party A to party B). The second supply (i.e. the supply by party B to party C) is then a domestic supply in the member state of arrival.

The Quick Fix has a different outcome when party B provides party A with his VAT identification number of the member state of dispatch. In that case, the transport must be ascribed to the second supply, i.e. the supply by party B to party C. The first supply by party A is then a domestic supply in the member state of dispatch.

Please note that this Quick Fix is tailored to the scenario in which the intermediary operator (party B) dispatches or transports the good by himself or on his behalf. This means that the simplification is not applicable in the situation that party A or the end customer (party C) arranges the transport of the goods.

How can you prepare your business for the Quick Fix?

The second Quick Fix allows businesses to set up their intra-community supply chains in such a way that the allocation of transport can be determined in an easy and straight-forward manner. This promotes the legal certainty of all parties involved.

We advise businesses to establish the VAT treatment of their (intra-community) supply chains in advance. In this context, it is recommendable to see whether the second Quick Fix can lead to a simplified treatment of the chain transactions. Possibly, VAT registrations and compliance obligations in other member states can be avoided.

Quick Fix 3: Proof of cross-border transport of goods

Background

A supplier who makes an intra-community supply of goods is required to have sufficient proof that the respective goods were indeed transported from one member state to the other. The supplier needs this proof to apply the VAT exemption (zero-rate) for intra-community supplies of goods. Currently, the EU member states have different rules as regards this burden of proof. In practice, this often leads to discussions between businesses and the tax authorities.

New rules: Quick Fix for the burden of proof

The third quick fix is formulated as a presumption for the proof of the cross-border transport of the goods. In case the requirements are met, it shall be presumed that the goods have been transported from one member state to the other. This allows the business (supplier) to apply the VAT exemption for intra-community supplies.

The new measure contains two primary categories of documents that can be considered as proof: category A documents and category B documents.

- **Category A documents:** These are documents in relation to the transport of the goods. For example, a fully signed CMR transport document, a bill of lading, an airfreight invoice or an invoice from a carrier of the goods.
- **Category B documents:** These are other types of documents, such as an insurance policy in relation to the transport of the goods, bank documents stating the payment of the transport of the goods, official documents issued by a public authority (like a notary) confirming the arrival of the goods in the member state of arrival or a receipt issued by a warehouse keeper confirming the storage of the goods in the member state of arrival.

Under the new rules the presumption is deemed to be fulfilled if the supplier has transported the goods himself and if he has obtained at least two items of non-contradictory A documents, or two non-contradictory A and B documents. An important note to this is that the documents must be issued by two parties independent of each other and of the vendor and the acquirer.

In the situation that the transport of the goods is arranged by or on behalf of the acquirer of the goods, the supplier must also have a special statement of the acquirer confirming that the goods have been transported to the member state of arrival. This statement is subject to specific requirements. Finally, we note that the tax authorities are allowed to rebut the presumption.

How can you prepare your business for the Quick Fix?

In case businesses want to make use of the presumption of the third Quick Fix, their administration of the items of proof should meet the requirements. Possibly, this means that they will have to change or even upgrade the processes which they have in place to collect and administrate the proof. It may be advisable to contact suppliers and customers to conclude agreements on the exchange of transport documentation.

Quick Fix 4: Administration of the VAT identification number

Background

On the basis of the current rules, a supplier who makes an intra-community supply of goods is required to report the VAT identification number of his customer in the EC Sales List (VIES listing/recapitulative statement), as well as on his invoices.

Based on case law of the European Court of Justice, having and reporting the VAT identification number of the customer is not a material requirement for applying the VAT exemption (zero-rate) for intra-community supplies of goods. The application of the exemption cannot be refused based on the mere fact that the supplier did not have the valid VAT identification number of the customer.

New rules: Quick Fix relating to the VAT identification number

The fourth quick fix will change the current state of affairs. As of 1 January 2020, obtaining a valid VAT identification number of the customer in case of intra-community supplies will become a material requirement for the application of the VAT exemption (zero-rate).

Additionally, reporting the intra-community supply of goods in the EC Sales List will also become a material requirement, unless the supplier is acting in good faith and can justify any shortcoming in this respect.

How can you prepare your business for the Quick Fix?

As of 1 January 2020, businesses carrying out intra-community supplies of goods should more than ever make sure that the valid VAT identification numbers of their customers are documented in their administrations. The customer master data should be fully up to date, and we recommend businesses to regularly validate the VAT identification numbers on the website of the European Commission (i.e. the VAT Information Exchange System (VIES)). Additionally, businesses must make sure that the valid VAT identification number of the customers is mentioned on the invoices that are issued regarding intra-community supplies of goods.

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