

EU VAT Quick Fixes

OBSERVATIONS FROM THE EXPLANATORY NOTES



EU Explanatory notes

Topics

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The explanatory notes on the 2020 Quick Fixes published by the European Commission contain some interesting explanations. In this post I highlight some issues that are of potential interest.

However, it is vital to confirm that the explanatory notes are not legally binding and only display the views of the European Commission.



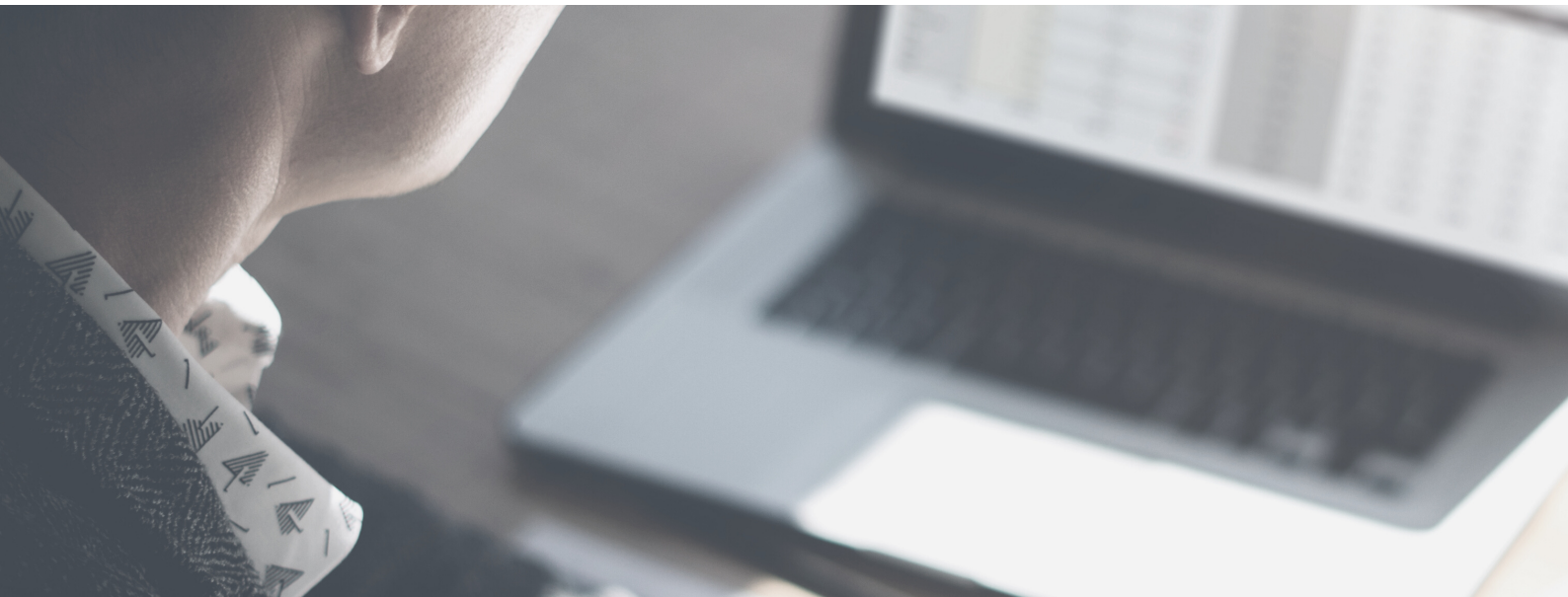
Call-Off Stock

- The acquirer should keep a separate register indicating the arrival of the goods in the stock. Such a register is not required to be maintained by the acquirer in case he is not the warehouse keeper. In that case, the third party warehouse keeper should accurately record the arrival date in his registers.
- In case of full or partial substitution of the initial acquirer, there is no restart of the 12 month period within which consumption should take place.
- Small losses of goods under a call-off stock arrangement should not result in an acquisition to be reported by the supplier. Small losses in this respect are losses that amount below 5% in terms of value or volume of the total stock.
- In case the supplier runs the call-off stock warehouse directly with its own local means, then this warehouse qualifies as a fixed establishment, and the call-off stock arrangement does not apply.
- It is advised to initiate a VAT registration as soon as a business foresees it will soon no longer qualify for the call-off stock arrangement. This has to do with the required timelines for a VAT registration.
- Transport to the call-off stock location must be done by or on behalf of the supplier. It can also be the acquirer who performs this transport, provided ownership remains with the supplier.
- A supplier can dispatch materials to several intended acquirers. Also, for several acquirers bulk materials can be stored in the same tank.
- The 12 month period for consumption starts at 00:00h of the first full day the goods arrive in the warehouse rather than when they arrive in the country of arrival. It is required to record both the identity and the VAT number of the acquirer. However, this is assumed to be fulfilled when the VAT identification number of the intended acquirer is mentioned in the recapitulative statement.
- For transports started before 1 January 2020, the new call-off stock arrangements cannot be applied.
- The only requirement on the position of the supplier is that there is no (fixed) establishment in the member state to where the goods are transported. As a result, the consignment stock arrangement is also open for non-EU vendors. However, the condition that the products should be shipped from one member state to another provides some limitations.



Chain Transactions

- The chain transaction rules do not cover chain transactions involving imports/exports or supplies within one single country.
- Both the first supplier and the final customer cannot qualify as the intermediary operator. So if any of these
- arrange transportation, the supply by the primary supplier resp. the supply to the last customer is the EC supply.
- The risk of accidental loss or damage to the goods during transport is an essential factor to determine who is the intermediary operator. As this, in general, is arranged through the Incoterms, these become more relevant. In cases where this criterion causes practical difficulties, the intermediary operator is the one transporting the goods or making the transport arrangements with a third party.
- The taxable person doing the actual transport does not have to be a third party but can also be any of the other suppliers in the chain who is asked by the intermediary operator to transport the goods to the last customer. The question here is if this request to transport can also be embedded in the Incoterm covering the supply or if a separate contract for the transport is required?
- The burden of proof of transport increases, when compared to the requirement before January 1 as the intermediary operator needs to prove (1) that he arranged the transport (and need to, provides such proof to his supplier) AND (2) he needs to show the goods have indeed been transported from one Member State to another (which he also must provide to his supplier)
- In purchase order processing, the supplier needs to carefully watch which VAT identification number the intermediary operator communicates as this determines the VAT treatment of the supply.
- The final customer in a chain does not necessarily need to be a taxable person. Supplies to such a non-taxable person will either be domestic supplies or distance sales.



Exemption for intracommunity supplies of goods

- Application of the VAT exemption can be revoked retroactively in case the supplier does not include the correct information regarding the supplies in his recapitulative statement.
- If the customer does f.e. not communicate a VAT number to his supplier, then the conditions for the exemption have not been met, and as a result the supplier needs to charge VAT on this supply. However, this does not exclude the customer from having to report an intracommunity acquisition in the country of arrival.
- If the customer has requested a VAT identification number, but such has not been issued yet by the tax authorities, then the supplier needs to charge VAT on the supply of goods. Corrective invoices can be issued once the customer can communicate a VAT number.
- In the case of a VAT group, only the VAT identification number issued to the VAT group can be used for the exemption for intracommunity supplies of goods.

"The Quick Fixes should simplify VAT but are not so simple to implement for businesses"



Proof of Transport

- Member States can have more flexible presumptions in the local legislation, and as a result, suppliers can benefit both from these national presumptions and the new EU presumptions.
- The purpose of the 10-day deadline is to provide a timeframe for the acquirer to provide the vendor with the written statement. It does NOT imply that if such a statement is delivered outside this timeframe that the vendor does not have the required documentary evidence.