Abogados

February 2020

informational alert

Quick Fixes: developments in the EU VAT incorporated by Royal Decree-Law 3/2020. Draft and other changes 303 2020

Eduardo Verdún
Responsible Partner Indirect Taxation EY

Silvia Bermudo
Indirect Taxation Socia EY

Inigo Hernandez
Indirect Taxation associated EY

Introduction

Royal Decree-Law 3/2020, of 4 February, has been incorporated into our domestic law the so-called "fast VAT measures" or " *VAT Quick Fixes* "Approved by the Directive (EU) 2018/1910 and Implementing Regulation (EU) 2018/1912.

These four specific measures taken to address short-term problems of application of VAT in (i) sales slogan (removing the requirement for registration of the Community Provider), (ii) sales in string (clarifying allocation the exemption to one of these), (iii) the requirement of the VAT registration as a material requirement for the application of the exemption of tax on intra-Community supplies of goods, and (iv) the evidence of intra-EU transport.

Although the first three measures should have been transposed by 1 January 2020, they are incorporated into the Law of the national VAT with effect from 1 March 2020, while the latter measure, introduced in the European Regulation, it worked effect from January 1, subject to adjustment now makes our VAT Regulation.

This Alert develops the main elements of such measures in order to assess their impact and expose some of the controversial issues raised.

I. *VAT Quick Fixes 2020.*

Background and Purpose

The **current tax regime VAT of intra-EU trade in goods between businesses** It entered into force on 1 January 1993, at which time the common European tax was modified to suit the new internal market after being suppressed fiscal controls at internal borders of the Member States.

Then it impossible to establish a definitive regime and hoping not to hinder the abolition of internal borders of the Union, was adopted a

provisional system, which was replaced by the final when circumstances permit.

Thus, within the so-called "Action Plan on VAT", the European Commission presented, dated May 25, 2018, one **proposal to amend the VAT Directive (** Directive 2006/112 / EC) aimed at establishing the elements which the **new definitive VAT regime for intra-Community trade in goods between businesses,** based on the principle of taxation in the Member State of destination.

However, and while the entry into force of the new regime occurs, currently scheduled for July
2022, the Council of the Union adopted in December
2018, the introduction of **four quick steps or "** ***Quick Fixes*** **"** for harmonization, simplification and improvement in the short term some aspects of the current intra-Community VAT regime.

Specifically, the Directive (EU) 2018/1910 of the Council of 4 December 2018, amended the VAT Directive introducing three quick action relating to

sales slogan, the **chain sales** and the **relevance of the identification number VAT as a material requirement** for the implementation of the **exemption from VAT on intra-Community supplies of goods.**

For its part, the Commission Implementing Regulation (EU) 2018/1912 of the Council of 4 December 2018, amended European regulation of VAT (Commission Implementing Regulation (EU) 282/2011) introducing a fourth quick action on the **proof transport intra-Community supplies of goods.** Also said Regulations specify the **content of the new record** that is created for the **sales slogan.**

In addition, Regulation (EU) 2018/1909 of the Council of 4 December 2018, it amended Regulation (EU) 904/2010 as regards the **information exchange** for the purposes of monitoring the proper implementation of agreements **sales slogan.**

Those Community rules **should enter into force on 1 January 2020,** including its incorporation into domestic law no later than 31 December 2019.

Thus, on 1 October, they published on **Draft Law** and the **Draft Royal Decree** for the **modification,** respectively

Law 37/1992 of 28 December on VAT (hereinafter VAT Act or LIVA) and **VAT Regulations, approved by Royal Decree 1624/1992, of 29 December (** VAT regulations or RIVA hereinafter).

However, the short duration of the XIII legislature prevented the adoption of such standards. The beginning of the current legislature last day XIV December 3, 2019 and the formation of fully functioning government since January 2020 have enabled it

complete transposition by means of the **urgent approval** legal texts through the **Royal Decree-Law 3/2020 of 4 February.**

It includes new regulations approved on some **practical aspects of the implementation of the four measures in Spain.** However, leaves **some controversial issues unresolved** the European legislator, despite the aim of simplifying the four measures, had not clarified and which must be resolved at a later stage, either by the Community or national legislature or by the relevant bodies interpreters of the standard.

In this regard, the legal services of the European Commission, in an effort to ensure uniform treatment of the tax across the Union, have published

guidelines for the implementation of the 4 quick action in the "Explanatory Notes on *Quick Fixes* 2020 "December 2019. Although the report has no binding force, its findings can serve as a starting point for analysis and commentary on some of the controversial issues.

II. Sales slogan or *call-off stock*

The merchandise sales slogan or reserve stocks agreements (" *call-off stock* "In English) refer to a situation in which the supplier sends goods from one Member State to another (for example, Spain) **for storage (tank) and subsequent withdrawal by the client (employer) depending on your needs.** This operation, of increasing importance in recent years, is common in various sectors of industry where it is key to have a guaranteed supply by the supplier.

So far, this operation resulted, for the purposes of VAT, a **operation assimilated to an intra goods (transfer or " *transfer* " in English)** in the Member State of departure of the goods and the same time, **an operation assimilated to an intra-Community acquisition of goods in the Member State of arrival,** both made by the supplier. Subsequently, at the time of removal of the goods by the customer (employer), the provider performed **an inner delivery,** which could be applicable investment rule the taxpayer.

such treatment **He is forcing the supplier** to have a **identification number for the purposes of VAT (VAT registration number)**
in the **Member State of arrival of goods** and comply with it certain obligations, such as submitting certain statements (model 349, Intrastat declaration).

Several Member States have introduced simplifications in their internal regulations to avoid registration and filing in this type of operational, but **different legislative solutions** in each one of them. In Spain, however, with some doctrinal qualification of the Directorate General of Taxes, he had been following the aforementioned operating system with double registration requirement.

Well, with the aim of **simplify and harmonize the treatment of these transactions at Union level,**
VAT Directive now incorporates the conditions that may lead to a **goods exempt intra-Community supply in the Member State of departure**

performed by the seller and **acquisition**
Intra-Community goods in the Member State of arrival made by the purchaser. Such treatment will prevent the registration of the provider in the Member State of arrival of the goods.

For transposition into national standard, the first paragraph of Article 9.3º of the LIVA is modified to establish that **shall not be considered an operation assimilated to an intra goods** shipping goods to carry a provider under an agreement of sale of goods on consignment from Spain (entiéndase territory of application of the tax) to another Member State.

Recall that the second issue of Article 16 of the VAT Law provides, in turn, by reference, the same exclusion for the opposite case: **will not have,** so, **consideration of an operation assimilated to an intra-Community acquisition of goods** shipping goods to carry a provider under an agreement of sale of goods on consignment from another Member State to the territory of application of the tax.

Also it is amending paragraph one of Article 15 of the LIVA to **include within the concept of intra-Community acquisition of goods,** those that are made in **As part of an agreement of selling goods on consignment.**

In addition, a new item is created 9a of the Law on VAT, laying down the **requirements for the implementation of the simplification of** *call-off stock (* regulation refers to the case in which the supplier sends the goods from Spain destined for a customer in another Member State, but it applies equally in the opposite case):

- There should be a **agreement of sale on consignment** between seller and purchaser, under which the goods are dispatched or transported to another Member State by the seller or by a third party on their behalf and on their own, in order that these assets are acquired, at a later time upon arrival, by the purchaser under that agreement.

- The **seller** issuing or transport the goods **you may not have the seat of his economic activity or a permanent establishment in the Member State of arrival of goods.**

- The entrepreneur or professional who will buy the goods must **be identified for purposes of VAT in the Member State of arrival** dispatch or transport of the goods, and that **tax identification number,** as well as its name, reason or **Full company name should be known by the seller** at the time of the start of the dispatch or transport.

- **The seller** you must declare the shipment of goods **in the New book registry created for *call-off stock*** in the new paragraph 3 of Article 243 of the VAT Directive.

This new record, considered substantive for the implementation of simplification, is incorporated into the standard expanding the content of the **register of certain intra-Community transactions,** provided for in Article 66 of the Rules of VAT (a new number 3 is added to paragraph 1 and paragraphs 2 and 3 are modified).

The new record contains detailed information on the description, tax base, quantity, unit price and other information assets affected in the different phases of the operation (dispatch and arrival of goods, subsequent removal thereof, failure to comply with the requirements of simplification, etc.), because management implies the need for **control protocols such information and registration.**

The addition of the new record in that book implies, for those **bound to the SII,** to perform **appropriate adjustments in the ERP system,** to allow the sending of information in near real time to the Administration, which, a priori, will **mean a disadvantage, in some cases, could discourage the** implementation of simplification. For this course, in any case it sets a moratorium until January 1, 2021 to facilitate adaptation.

In line with the provisions of the VAT Directive (Article 243), **the client must also keep track of certain intra-Community transactions book** recording information relating to the assets subject to the operation of the *calloff stock*.

- **The seller** should include sending goods **in the summary statement of intra-Community transactions** s (model 349), stating the identification number of the customer.

To regulate this obligation, has amended Article 79 of the Rules of VAT by adding a new paragraph 2, including within the required to submit that declaration entrepreneurs or professionals who send goods to another Member State under an agreement to sell on consignment. In turn, it has amended Article 80 of the same rules to regulate the content of the declaration in such cases (obligation to declare the identification number of the customer).

This change will involve the modification of the order regulating the model 349 to enable a new password to enable registration of shipments cited.

- You must acquire the right to dispose of the goods within a period not **exceeding time 12 months** since his arrival in Spain.

The **novelty** provides more relevant than national law regarding European legislation it has to do with the **I become** of the **Community supply goods** by the supplier and the corresponding **Community acquisition of goods** symmetrical by the purchaser in such operational.

Thus, Article 75 of the LIVA clarifies that be **the date of legal acquisition (** Removal of the goods by the customer) which must be taken into account for purposes of the **chargeability of the respective intra operations** and not the time of the provision of goods in the Community sense of VAT. While this option seemed already to be chosen by the Community legislature, now it is clarified in our VAT Act.

As it progressed, remain unresolved practical issues concerning the implementation of this simplification measure:

- A controversial aspect has to do with the requirement under which the supplier **It should not be established for the purposes of VAT in Spain** to apply simplification. What happens in those cases where the supplier

It has a permanent establishment in Spain, but **not intervene** in operational sales slogan?

In the opinion of the Committee on VAT of the European Commission, this situation should prevent the implementation of simplification. However, we should expect the **statement of the Spanish authorities.**

- On the other hand, there will also be at the discretion of the Spanish authorities regarding the implementation of simplification when **the goods are stored in a warehouse of a third party (** a logistics for example) operator. Although the content of the new book registry created for sales slogan seems to open this possibility, this issue certainly relevant in practice is pending clarification.

- Finally, the preamble to the legal text transposing simplifying our legislation states that employers may choose not to benefit from the simplification breach of the conditions for its implementation. This will, in any case, a detailed study course course, the review of operational and support documentation and preservation of evidence.

III. Chain sales

Directive VAT clarifies in its new Article 36a of treatment effects of so-called VAT
chain sales: successive deliveries of the **same goods** which they are the subject of a **single intra-Community transport** from one Member State to another Member State directly from the first supplier to the last of the chain.

Treatment for the purposes of VAT of these operations has generated over the various time **conflicts when an intermediary transport operator is responsible (** other than the original supplier or end customer), which have been resolved by the Court of Justice of the European Union (ECJ) in several judgments (eg, issues Emag, Euro-Tire or Toridas).

Thus, as already sat the CJEU, the
Community transport of the goods **It shall be charged only one of deliveries,** which will be the only one who will benefit from the **VAT exemption** intended for intra-Community supplies of goods.

For this purpose, they should take into account the following rules when transporting goods be responsible the **intermediary operator:**

- As a general rule, intra-Community transport shall be allocated to the **delivery made to the intermediary operator.**

- However, intra-Community transport should be attributed to the **delivery by the intermediary operator** when the provider has notified an identification number for the purposes of VAT in the Member State from which the goods are shipped.

Other installments of the chain should be classified as **domestic sales** and may require identification for the purposes of VAT from the supplier in the Member State of delivery of goods.

Thus, the number 1 is amended in paragraph two of Article 68 of the VAT Act, which regulates the venue of the supply of goods for

implement the simplification in our law.

In connection with the treatment of sales chain, the following practical questions arise:

- The new regulation does not require **no communication** by **of the operator intermediary Administration,** either

  No particular format for the **communication must make it your provider.** However, it is understood that the communication must be written (in paper or electronic form) to the extent that the intermediary operator must preserve and oversight to management if requirement to prove the treatment of VAT applied to the sale chain.

  The controversy arises in the event that the
  intermediary operator can not provide proof of the communication made to the supplier. At this point, the legal services of the Commission set out a number of requirements (among others, the identification number for the purposes of VAT consigned by the supplier on your invoice,

VAT treatment applied to such invoice, etc.) which, if fulfilled as a whole, should not question the VAT treatment applied by intra operator sale chain.

- On the other hand, when the intermediary operator is communication provider arises. It is understood that **this must occur before the sale,** but nothing has to respect the rules.

- Another point of interest refers to the interaction of the new regulation with simplification in the rules of the VAT for **triangular operations.**

In principle, the new regulation should not change the criteria applicable to such operations, but the VAT Committee goes further and argues that

simplification of triangular operations could be applicable to a sale chain involving four parts when the goods are sent by the second (intermediate operator) destined for the end customer (fourth in the chain) in certain circumstances (for example, following the orders of the third). It will be the position to be established by the Spanish authorities on this issue.

- Finally, another issue of concern is the **test intra-Community transport operator shall retain the intermediary.** For the legal services of the Commission, such evidence should not be the same as that to be required for the exemption of intra-Community supplies of goods (which is now governed by the European regulation VAT and discussed below), more even when the broker operator may not be who apply the exemption.

IV. The NIF-IVA as a material requirement for exemption from VAT on intra-Community supplies of goods

Article of the VAT Directive governing the tax exemption on intra-Community supplies of goods (Article 138) incorporates basically **two new material conditions for the application of the exemption.**

These conditions have been introduced, quite logically, Article 25 of our VAT Act, which regulates exemptions on intra-Community supplies of goods.

Thus, to apply the exemption will be required, along with the condition that the goods are transported to another Member State, **two substantive requirements** following:

- On the one hand, the **acquirer is identified for purposes of VAT** in a Member State other than Spain and **notifies the provider that ID number.**

At present, the **European jurisprudence,** and also **national,** tending to recognize the minor formal requirement of the material in the VAT had been setting the

identification for the purposes of VAT of the recipient was a formal requirement and non-material for the implementation of the **exemption from VAT on intra-Community supplies of goods** and therefore, the lack of such a requirement, but could lead to a formal sanction, should not question the application of the exemption.

- On the other hand, **inclusion by the vendor in his summary statement of intra-Community transactions (** model 349) **of the VAT number of the acquirer** assigned by a Member State other than Spain.

The only one **exception** such requirement will occur in cases where the **supplier can demonstrate** acting **good faith,** circumstances that concur when to properly justify compliance with the requirements for the application of the exemption to the competent tax authorities (Article 138.1 bis of the VAT Directive).

For compliance with this requirement comes close in time to the date of operation, and bearing in mind their limited use by taxpayers, is **It eliminates the possibility that the summary statement of intra-Community transactions is presented on an annual basis.**

This change **generally it affects** to all the **intra-Community supplies of goods,** forcing companies that perform such operations to review their control protocols identification number VAT customers and preparing the summary statement of intra-Community transactions.

V. Transport test intra in intra-Community supplies of goods

The **exemption on intra-Community supplies lies essentially in that** the **goods** are **dispatched or transported from one Member State to another.**

However, the divergent approaches of the Member States in testing this condition had generated **difficulties and legal uncertainty.**

In order to provide a practical solution, the European VAT regulation incorporates the effect **two presumptions *rebuttable:***

- when the **transport** the intra-Community supply is performed by the **seller,** it must have **at the least two not contradictory evidence** among those listed below.
- when the **transport** the intra-Community supply is performed by the **acquirer,** the seller must have (i) **written statement of the acquirer** certifying that the goods have been transported by him and (ii) **at the least two not contradictory evidence** that they relate below.

The evidence of intra transport referred to in the above points are:

- The **documents related to the dispatch or transport of goods,** such as a document CMR, bill of lading, invoice or air freight carrier bill of goods.
- A **insurance policy** on the issue or the transport of goods, or **Bank documents** proving payment of the dispatch or transport of goods.
- **Official documents** issued by a public authority such as a notary certifying the arrival of the goods to the Member State of destination.
- A **extended by a depositary receipt** in the Member State of destination to confirm the storage of goods in that Member State.

It should be noted that our Rules governing VAT so far, in Article 13, the evidence to prove the exemption from VAT on intra-Community supplies of goods Building on the

principle of freedom of evidence.

Article 13 of the Rules of the VAT reform to enshrine the principle of freedom of evidence and refer to the **list of documents incorporated in the European regulation VAT** how **evidence admitted** for this purpose.

SAW. Modification of the territorial status of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano

Royal Decree-Law 3/2020, of February 4, includes an amendment to the VAT Act, with entry into force on February 6, independent of all the mentioned above.

Directive (EU) 2019/475 of the Council of 18 February 2019, amended, inter alia the VAT Directive as regards the **territorial status** certain territories of the Italian Republic that have become part of the customs territory of the Union, established in Article 3 that Member States should, no later than 31 December

2019, making the transposition of its content to be carried off application from 1 January
2020.

In this regard, in its letter dated 18 July 2017, Italy asked the European Union **the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano be included in the customs territory**

of the Union, leaving the same time these territories **outside the scope of the VAT Directive.**

The Italian Republic argued that Campione d'Italia, an enclave Italian in the territory of Switzerland and the Italian waters of Lake Lugano should be included in the customs territory of the Union, since it was no longer justified their exclusion for reasons arising from their isolation and economic disadvantages.

However, to maintain a level playing field among economic operators established in Switzerland and in the Italian municipality of Campione d'Italia, they had to remain outside the harmonized VAT Community system to enable implementation of Swiss legislation on indirect taxation .

Thus, letters amending a) and b) of the number 1 paragraph two of Article 3 of the Law on VAT concerning the spatial scope of VAT, in order to establish that the Italian territories of Campione d'Italia and the Italian waters of Lake Lugano become part of the customs territory of the Union.

VII. Other new VAT: Pre303

In the area of tax management, include the new support service created by the AEAT for making the model 303, called "Pre303", which is available in its first version since this February.

The draft 303 will be for the exclusive use of taxpayers included in the SII and registered in the Register Return Monthly than large company or group IVA, not included in cash basis or are recipients of the same, are not included in the special scheme for used goods, works of art, antiques and collectibles, or the regime of Travel Agents or investment gold and, finally, do not be prorated or differentiated sectors.

Although its creation is a step forward in the treatment of information by the Tax Agency in its aid and assistance perspective, the scope of which is affected, so far, extremely limited.

In any case, again it shows the need is so continuously analyze the consistency of the information sent via the SII and possible errors from that used for the preparation of periodic statements.

For this, the team Indirect Taxation of EY Law has tools fully automated analysis of data sent by the SII, traceability errors and immediate correction thereby ensuring the accuracy of the above information in the model 303 regarding the content of the record books.

VIII. Control automated tax, e-commerce and other challenges to the electronic tax administration. Event March 10

All normative content to this warning with respect to the challenges that the tax authorities digital raises, will be discussed and in-depth analysis on 10 March at the Torre Azca, home of EY in Madrid, in a breakfast will feature leading executives from the Tax Agency.

You will soon receive the invitation and the agenda of the event where we hope to see you there.

You can check the latest tax and legal alerts in our EY Studies Center

For further information regarding this alert, please contact:

Ernst & Young Abogados, SLP

Eduardo Verdún Fraile
Eduardo.VerdunFraile@es.ey.com

Silvia Bermudo Conde
Silvia.BermudoConde@es.ey.com

Inigo Hernandez Moneo
iN igo.HernandezMoneo@es.ey.com

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transactions and consultancy advice. Analysis and quality services we offer help build confidence in capital markets and economies around the world. We develop outstanding leaders who work together to meet commitments to our stakeholders. Thus play an essential role in creating a better workplace for our employees, our customers and society.

EY refers to the international organization and may refer to one or more of the companies Ernst & Young Global Limited and each is a separate legal entity. Ernst & Young Global Limited is a UK company limited by guarantee (company limited by guarantee) and does not provide services to clients. For further information about our organization, into ey.com.

ey.com/es

Twitter: @EY_Spain

Linkedin: EY

Facebook: Spain EY Careers

Google+: EY Spain

Flickr: EY Spain