INTERPRETATION OF THE MANDATORY 'ECONOMIC' EXEMPTION FOR THE TRANSPORTATION TO EXPORT GOODS

The Circular Letter2021/C/96 of 27 October 2021

The Circular Letter, 2021/C/96 of 27 October 2021 implements the 'L.Č' IK . case (C-288/16 of 17 June 2017) regarding the exemption of the transportation of exported goods (dispatches to third countries, including e.g., the UK)[1]. In the 'L.Č' IK case[2] the application of Article 146(1)(e) of the VAT Directive was interpreted. The application of the exemption was restricted by the CJEU to the main contractor if he provided the transportation services to the consignor or consignee of the goods and had a customs export declaration.

The Cartrans Spedition case (C- 495/17, of 8 November 2018)

The CJEU overruled the interpretation in the 'L.Č' IK case by its judgment of 8 November 2018 in the Cartrans Spedition case (C- 495/17) following the Opinion of Advocate General E. Sharpston[3]. The Cartrans Spedition case concerned transportation services to export goods provided by a subcontractor of Cartrans and services of intermediaries for such transportation (e.g., as a broker). The Court ruled that this '*economic*' exemption is mandatory. It applies when goods are exported out of the Community. As no consumption takes place in the Union, neither the goods, nor the international transport services to export those goods should be subject to EU VAT. The exemption should be applied across the commercial chain i.e., for the qualifying transportation services provided by the main contractor, any subcontractors or sub-subcontractors and intermediaries (Articles 146(1)(e) and 153 of the VAT Directive).

Furthermore, Member States should accept any evidence proving that the goods left the EU. The CJEU precluded that Member States only accept a customs export declaration as such proof, as a custom export declaration is not part of the Common VAT System. The application in time of Cartrans was not restricted by the CJEU and applies '*ex tunc*'.

The Cartrans judgment is consistent with the Court's previous case law in the two A OY cases (C-33/16 of 4 May 2017 and C-33/11 of 19 July 2012) and in the BDV Hungary Trading case (C-563/12 of 19 December 2013). In the meantime, the interpretation given by the Court in Cartrans has been confirmed in 3 subsequent cases, all referring to Cartrans (Vinš, C-275/18 of 28 March 2019, Unitel, C-653/18 of 17 October 2019 and Bakati, C-656/19, 17 December 2020).

Conclusion: the current policy is compliant with the binding interpretation of the CJEU and may not be changed

Based on the above, the Circular Letter should be withdrawn. It is further to the binding interpretation given by the CJEU in Cartrans infringing Article 146(1)(e) of the VAT Directive, read in conjunction with Article 153 of the VAT Directive or not. The judgment is applicable '*ex tunc'*. The existing policy exempting the transportation services for exporting goods across the commercial chain is compliant with the binding interpretation of the CJEU. It may consequently not be changed and should continue to apply.

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[1] `Judgment in 'L.Č' IK . case, C-288/16 of 17 June 2017, https://curia.europa.eu/juris/document/document.jsf?docid=192246&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=1996234, accessed on 26 January 2022.

[2] The Court Regional Administrative Court of Latvia had ruled that L.Č.'s services could not be regarded as consignment or freight-forwarding services, but rather constituted the supply of driver services consisting in providing a driver for a vehicle owned by a carrier which holds an international carriage licence. 'L.Č.' could not be regarded as a carrier, since it lacks such a licence, and it concerned the lending of drivers. (§ 12, 'L.Č' IK, C- 495/17)

[3] Judment Cartrans Spedition case (C- 495/17, of 8 November 2018:)https://curia.europa.eu/juris/document/document.jsf?text=&docid=207466&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1996234 and Opinion of Advocate General E. Sharpston: https://curia.europa.eu/juris/document/document.jsf?text=&docid=203973&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1996234, accessed on 26 January 2022.

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IMPACT OF NOT APPLYING THE INTERPRETATION IN CARTRANS AND CHANGING THE POLICY

The change of policy by the Circular letter currently suspended up to 31 March 2022 will have major consequences.

The *'economic'* exemption not to tax exports of goods and services directly connected to it, like transports provided for in the VAT Directive will as from 1 April 2022 no longer apply throughout the commercial chain of transportation providers. Only the main contractor (the principal) providing the transportation services directly to the consignor or consignee for the export of the goods will exempt his services from VAT, if he has an export declaration. Subcontractors of the principal will no longer be allowed to apply this exemption. A Belgian subcontractor (A) invoicing a main Belgian transporter (B) (his principal) for shipping goods to the UK should as from 1 April 2022, charge VAT to his principal. The above applies to transportation services in a B2B context or in the framework of B2C supplies (e.g. e-commerce).

Abolishing this mandatory exemption of Article 146(1)(e) of the VAT Directive impacts the transportation sector and its clients in multiple ways.

This impacts the cash flow of both (A), who will have to finance the VAT charged pending payment by (B). (B) cannot offset the input VAT - if he mostly performs exempt transportation services - against any output VAT. The financing costs, which is against the neutrality principle, will be passed on in the commercial chain.
Billing systems including self-billing, which is common practice in the transportation sector, order processes, reporting…will all have to be changed. This will require investments in processes and technology but also in people (e.g., training them on the new rules, processes and changed IT applications).
This may also distort competition in the industry e.g., between the larger companies and the smaller businesses, acting mostly as their subcontractors.

Furthermore, so far, 13 Member States, including Belgium and Germany (as from 1 January 2022) plan or already have introduced this *'wrong* 'interpretation, infringing Article 146(1)(e) and 153 of the VAT Directive.

Transportation companies are already diverting business from Belgium to Member States which have not and are not intending to implement this guideline, like France and the Netherlands[4]. Both continue to apply the exemption in accordance with Cartrans (and the previous and subsequent established case law of the CJEU). This is negative for Belgium, its ports and the transportation sector and its ambition to be '*a (or 'the'(?)) leading logistics'* EU country, also in view of e-commerce which will only become more important.

The Annex to this document, examines 4 cases in a B2B t (scenario 1.1., 1.2, 2 and 3) and B2C context (scenario 4.1. and 4.2.) to determine the impact of the withdrawal of the exemption of transportation services directly linked to the export of goods.

THE GUIDELINE OF THE VAT COMMITTEE (an incomprehensible aberration)

It should be noted that the VAT Committee, an advisory committee has adopted a non-binding Guideline based on the judgment in the ''L.Č' IK 'case, disregarding the judgment in Cartrans which was already ruled upon before the meeting and Vinš (C-275/18 of 28 March 2019).

Guideline resulting from the 112th Meeting of the VAT Committee on12 April 2019[5]

The following guideline has been issued following the 112th Meeting of the VAT Committee on12 April 2019. It was approved by a large majority, i.e., 20 to 23 Member States:

"*1. Further to the decision of the Court of Justice of the European Union in case C-288/16 'L.Č' IK, the VAT Committee, at large majority, agrees that the words "directly connected" in Article 146(1)(e) of the VAT Directive are to be interpreted as meaning that the transport or ancillary services must be provided directly to the consignor or the consignee of the goods.*

[4] https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/btw/tarieven_en_vrijstellingen/diensten_met_0_btw/diensten_bij_invoer_en_uitvoer_van_goederen_naar_landen_buiten_de_eu/, accessed on 23 January 2022
[5] GUIDELINES RESULTING FROM THE 112th MEETING of 12 April 2019, DOCUMENT A – taxud.c.1(2019)8721302 – 980 (1/1), P.250 GUIDELINES RESULTING FROM MEETINGS OF THE VAT COMMITTEE GUIDELINES RESULTING FROM MEETINGS OF THE VAT COMMITTEE , updated until 8 April 2020.

2. Therefore, the VAT Committee, at large majority, agrees that the VAT exemption laid down in Article 146(1)(e) of the VAT Directive shall not apply to a supply of services, such as transport of goods to a third country, when these services are not provided directly to the consignor or the consignee of the goods.
3. In particular, the VAT Committee, at large majority, acknowledges that supplies of transport services or ancillary services carried out by a subcontractor of the principal contractor supplying those services on to the consignor or the consignee of the goods cannot be exempt from VAT and shall be subject to VAT according to the normal rules of the VAT Directive."

This interpretation is precluded by the CJEU in its judgment on Cartrans. A judgment of the CJEU is declaratory: "*(…) it does not lay down any new rule but is incorporated into the body of provisions and principles of Union law on which it is based*."[6]

The judgment also has effects *'erga omnes*: '(…) *meaning to the parties in the Proceedings, to all Member States, the Commission and the Member States' courts*.'.[7] It applies *'ex tunc'*, as it interprets the provisions and principles of Union Law to which it relates '*ab initio'.* In the case of VAT, *'ex tunc*' means the judgement is effective as from the entry into force of the Sixth Directive. The Court of Justice has consequently clarified and defined the meaning and scope of Article 146 (1)(e) of the VAT Directive and applied it in conjunction with Article 153 as it must be or ought to have been understood and applied from the time of its entry into force. The judgement in Cartrans is binding in its entirety including the operative part and main body of the judgment, since the operative part has to be understood in the light of the reasoning on which it is based.[8]

The interpretation in Cartrans therefore must be applied, not only by the Courts and Tribunals but also by the EU Commission and the Member States when they examine questions on the application of the VAT Directive in the VAT Committee (article 398 VAT Directive).

It should also be noted that the Commission, as mentioned in Advocate General's E. Sharpston's Opinion, agreed in its written observations with the Advocate General's and Cartrans position, and therefore with the Court of Justice's given interpretation. Although this judgement was delivered before the Commission Services analysis of 4 March 2019, its binding interpretation was neither considered or applied by the Commission.

Conclusions

This Guideline infringes Articles 146(1)(e) and 153 of the VAT Directive further to the declaratory interpretation given by the CJEU in Cartrans, applicable '*erga omnes*' and '*ex tunc'*.

This Guideline is not binding and may not be implemented by the Member States. A change of tax policy to implement this *'wrong'* guideline, infringes Articles 146(1)(e) and Article 153 of the VAT Directive.

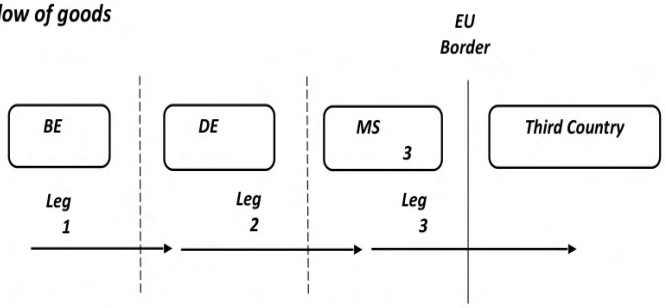
The withdrawal of the Guideline would be beneficial. This will not only prevent disputes but also ensure a harmonised interpretation and application of Articles 146(1)(e) and 153 of the VAT Directive in accordance with the Common VAT system as interpreted by the CJEU for the transport sector operating in the Single Market.

The withdrawal may be raised by the Chairman of the VAT Committee at his own initiative or at the request of a representative of any Member State (Article 398 VAT Directive).

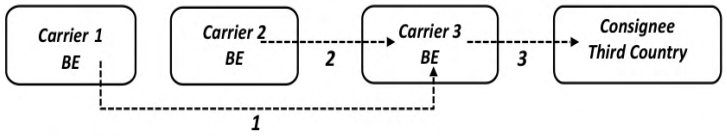
[6] Koen Lenaerts, Ignace Maselis, Kathleen Gutman and Janek Nowak, EU PROCEDURAL LAW (Oxford, OUP, 2015), pp. 244 - 245.
[7] Koen Lenaerts, Ignace Maselis, Kathleen Gutman and Janek Nowak, EU PROCEDURAL LAW (Oxford, OUP, 2015), p. 245 and case law cited in footnote 91.
[8] Koen Lenaerts, Ignace Maselis, Kathleen Gutman and Janek Nowak, EU PROCEDURAL LAW (Oxford, OUP, 2015), p.243.

Scenario 1.1: Current Belgian Tax Policy (Circular Letter AOIF no. 3 2010 of 7 January 2010): exemption applies in accordance with Cartrans Spedition (C-495/17): three Belgian carriers transport goods to a Third Country e.g. Russia or the UK in 3 legs

Flow of goods



Flow of invoices



Belgian Carrier 1 and Belgian Carrier 2 invoice Belgian Carrier 3 for leg 1 and leg 2:

- *Place of supply : Belgium, Article 44 VAT Directive.*
- *Exempt from Belgian VAT, as Article 146(1)(e) of the VAT Directive is applied by the Belgian Tax Authorities.*
- *No cash flow impact on Carrier 1 and 2 as no Belgian VAT has to be charged to Carrier 3.*
- *No additional financial risk for Carrier 1 and 2 in case Carrier 3 becomes a bad debtor.*
- *Same treatment for subcontractors and principal contractor.*

Belgian Carrier 3 invoices the Consignee of the Third Country for leg 1, leg 2 and leg 3:

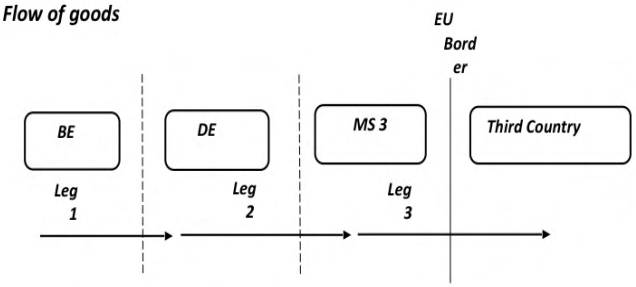
- *VAT exempt, Article 146 (1)(e) EU VAT Directive.*
- *Belgian Carrier 3 is not financing any (input)VAT paid to Belgian Carrier 1 and 2.*
- *Neutrality is respected: choice of principal to subcontract or not is not driven by VAT consequences.*

In case Carrier 1, 2 and 3 would be established in any of the Member States (e.g. the Netherlands (1), France, Luxembourg, Finland,…) applying the exemption of Article 146(1)(e) of the VAT Directive in accordance with Cartrans Spedition (C-495/17), the treatment would be the same as in Belgium.

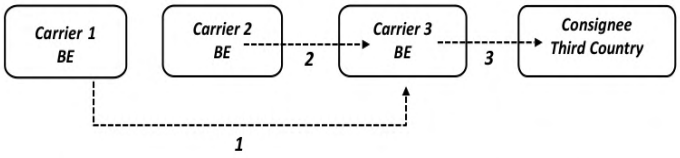
(1) https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/btw/tarieven_en_vrijstellingen/diensten_met_0_btw/diensten_bij_invoer_en_uitvoer_van_goederen_naar_landen_buiten_de_eu/, *consulted on 23 January 2022*

Scenario 1.2.: Exemption not applied in accordance with Cartrans Spedition (C-495/17) (Circular Letter AOIF 2021/C/96 of 27 October 2021): three Belgian carriers transport goods to a Third Country e.g. Russia or the UK in 3 legs

Flow of goods



Flow of invoices



Belgian Carrier 1 and Belgian Carrier 2 invoice Belgian Carrier 3 for leg 1 and leg 2:

- *Place of supply : Belgium, Article 44 VAT Directive.*
- *21% Belgian VAT to be charged, as the exemption of Article 146(1)(e) of the VAT Directive is no longer applied by the Belgian Tax Authorities.*
- *Cash flow impact on Carrier 1 and 2 as 21% Belgian VAT has to be charged to Carrier 3.*
- *Additional financial risk for Carrier 1 and 2 in case Carrier 3 becomes a bad debtor.*
- *Different treatment for services provided by subcontractors and the principal contractor.*

Belgian Carrier 3 invoices the Consignee of the Third Country for leg 1, leg 2 and leg 3:

- *VAT exempt, Article 146 (1)(e) VAT Directive.*
- *Belgian Carrier 3 is financing the 21% (input)VAT paid to Belgian Carrier 1 and 2 until: .*
  - *it can be deducted from the output VAT at the time of filing the VAT return, or*
  - *is reimbursed by the tax authorities, when the input VAT cannot be offset against the output VAT reported in the VAT return.*
- *Neutrality is not respected: choice of principal to subcontract or not is driven by VAT (financial) consequences.*

The three carriers will need to change their processes and systems for ordering, (self-)billing, accounting and VAT reporting.

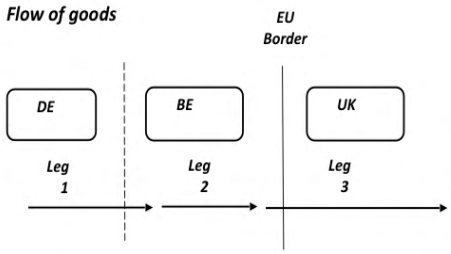
The costs caused by no longer applying the exemption will be passed on in the supply chain and if not, impact the margin of the transportation companies.

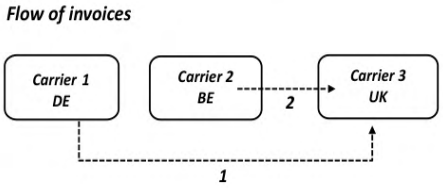
Carrier 3 can mitigate the impact of the change in tax policy by:
- no longer subcontracting leg 1 or leg 2 of the transport, or
- no longer subcontracting leg 1 and leg 2 of the transport to Belgian carriers, but to transportation companies established in other Member States or outside of the EU, or
- move his business to a Member State applying the exemption of Article 146(1)(e) of the VAT Directive and
  - continue to subcontract leg 1 and 2 to the Belgian Carriers 1 and 2, or
  - no longer subcontracting leg 1 and 2 to the Belgian Carriers 1 and 2 but to carriers established in the Member State where he is now established or established in another Member State than Belgium or outside of the EU.

In case Carrier 1, 2 and 3 would be established in any of the Member States applying the exemption of Article 146(1)(e) of the VAT Directive in accordance with Cartrans Spedition (C-495/17) (e.g. the Netherlands (1), France, Luxembourg, Finland,…), all invoices would - like it is currently in Belgium - be exempt from VAT. Scenario 1.1. would continue to apply.

(1) https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/btw/tarieven_en_vrijstellingen/diensten_met_0_btw/diensten_bij_invoer_en_uitvoer_van_goederen_naar_landen_buiten_de_eu/, consulted on 23 January 2022.

Scenario 2: A German, a Belgian and a UK Carrier transport goods to the UK in 3 legs. The goods leave the EU from the port of Zeebrugge. Belgium has implemented Article 59a(b) of the VAT Directive i.e. the use and enjoyment rule for transportation services.





1. Current Belgian Tax Policy (Circular Letters AOIF no. 3 2010 of 7 January 2010 and 2018/C/68 of 31 May 2018)

German Carrier 1 and Belgian Carrier 2 invoice the UK Carrier who picks up the goods in Belgium:

- *Place of supply: Application of Article 44 VAT Directive for Invoice 1 and Application of Article 59a(b)VAT Directive for invoice 2.*
- *Invoice 1: Carrier 1: No German VAT, application of Article 44 VAT Directive.*
- *Invoice 2: Carrier 2: Subject to Belgian VAT further to the implementation of Article 59a(b) VAT Directive **but exempt from VAT** (application of Article 146(1)(e) of the VAT Directive implemented in Article 41, § 1, first subsection, 3° VAT Code)*
- *No distortion of competition between Carrier 1 and 2*
- *Neutrality is respected: choice of principal to subcontract or not is not driven by VAT consequences.*

2. Withdrawal of the current Belgian Tax Policy (Circular Letter AOIF 2021/C/96 of 27 October 2021):

German Carrier 1 and Belgian Carrier 2 invoice the UK Carrier who picks up the goods in Belgium:

- *Place of supply: Application of Article 44 VAT Directive for Invoice 1 and Application of Article 59a(b)VAT Directive for invoice 2.*
- *Invoice 1: Carrier 1: No German VAT, application of Article 44 VAT Directive.*
- *Invoice 2: Carrier 2: Subject to Belgian VAT further to the implementation of Article 59a(b) VAT Directive **but NOT exempt from VAT** (**No** application of Article 146(1)(e) of the VAT Directive implemented in Article 41, § 1, first subsection, 3° VAT Code):*
  - *Cash flow impact on Carrier 2 as Belgian VAT has to be charged to Carrier 3.*
  - *Additional financial risk for Carrier 2 in case Carrier 3 becomes a bad debtor.*
  - *Distortion of competition with transportation services provided by businesses established in Member States, who have not implemented the use and enjoyment rule (Article 59a(b)VAT Directive) like e.g. the Netherlands and France or have implemented this use and enjoyment rule but apply the exemption of Article 146(1)(e) of the VAT Directive.*

- ***Impact on Carrier 3 in Third Country:***
  - *The UK Carrier has to apply for a VAT refund under the Thirteenth VAT Directive which has a cash flow impact and creates additional costs of doing business with the Belgian Carrier 2.*
  - *The UK Carrier has an interest to contract only with the German Carrier 1 to provide the transport in 1 leg from Germany to the Port of Zeebrugge and to no longer subcontract leg 2 to the Belgian Carrier.*

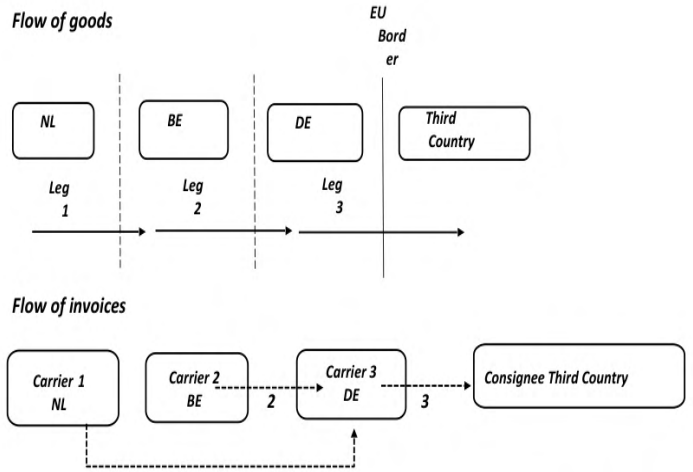
In case Carrier 1 would be established in other Member States of the EU, the treatment of the invoice issued by Carrier 1 would be the same.

In case Carrier 3 would export the goods via the port of Rotterdam or Calais, even if the second leg of the transportation services would be performed in the Netherlands or France, no VAT would be charged to Carrier 3 on the transportation services as both Member States have not implemented Article 59a(b) VAT Directive. Even in case the second leg of the transportation services would be performed in a Member State which has implemented the use and enjoyment rule of Article 59a(b) VAT Directive and applies the exemption of Article 146(1)(e) of the VAT Directive, no VAT would be charged to Carrier 3 on the transportation services. This means that Carrier 2 would then not be impacted from a cash flow/financial perspective. The UK Carrier will not have a cash flow impact either and will not have to ask for a refund under the Thirteenth VAT Directive.

Consequently, although the transportation services provided to the UK Carrier 3 are all performed by providers established in the Single Market, Carrier 3 will have an interest to no longer subcontract a leg of the transport performed within the territory of a Member State like e.g. Belgium, that implemented the use and enjoyment rule of Article 59a(b) VAT Directive, as soon as the exemption of Article 146(1)(e) of the VAT Directive is no longer applicable and VAT at the standard VAT rate will be charged (e.g. 21% for Belgium).

Carrier 3 therefore should although the transportation is provided within the Single Market review the supply chain and how the transportation can reorganised to avoid such consequences.

Scenario 3: A Dutch, a Belgian and a German Carrier transport goods to a Third Country in 3 legs.



1. Current Belgian Tax Policy (Circular Letters AOIF no. 3 2010 of 7 January 2010 and 2018/C/68 of 31 May 2018)

Dutch Carrier 1 and Belgian Carrier 2 invoice German Carrier 3 for leg 1 and leg 2:

- *Place of supply : Germany, Article 44 VAT Directive.*
- *Invoice 1: Carrier 1: - No Dutch VAT, exempt from VAT.*
  - *No reporting on EC Sales List in the Netherlands further to Article 146(1)(e) of the VAT Directive which is applied by the Dutch Tax Authorities.*
  - *Carrier 3: - Reverse charge of German VAT, as the exemption of Article 146(1)(e) is not applied by the German Tax Authorities.*
  - *Mismatch as invoice 1 is not reported by Carrier 1 on the EC Sales List. This may trigger questions or an audit by the German Tax Authorities.*
- *Invoice 2: Carrier 2: - No Belgian VAT, exempt from VAT.*
  - *No reporting on EC Sales List in Belgium further to Article 146(1)(e) of the VAT Directive which is applied by the Belgian Tax Authorities.*
  - *Carrier 3: - Reverse charge of German VAT, as the exemption of Article 146(1)(e) is not applied by the German Tax Authorities.*
  - *Mismatch as invoice 2 is not reported by Carrier 2 on the EC Sales List. This may trigger questions or an audit by the German Tax Authorities.*

German Carrier 3 invoices the Consignee for leg 1, leg 2 and leg 3:

- *Place of supply : Third Country, Article 44 VAT Directive.*

2. Withdrawal of the current Belgian Tax Policy (Circular Letter AOIF 2021/C/96 of 27 October 2021):

Dutch Carrier 1 and Belgian Carrier 2 invoice German Carrier 3 for leg 1 and leg 2:

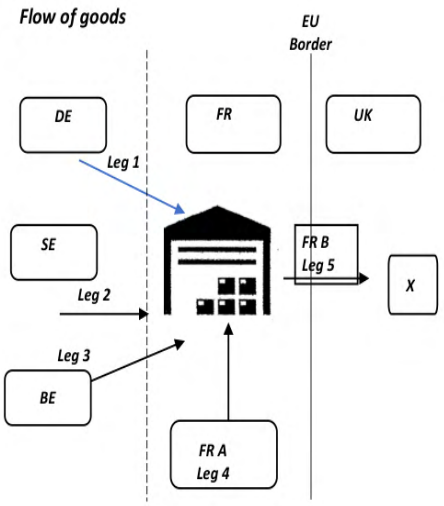
- *Place of supply : Germany, Article 44 VAT Directive.*
- *Invoice 1: Carrier 1: - No Dutch VAT, exempt from VAT.*
  - *No reporting on EC Sales List in the Netherlands further to Article 146(1)(e) of the VAT Directive which is applied by the Dutch Tax Authorities.*
  - *Carrier 3: - Reverse charge of German VAT, as the exemption of Article 146(1)(e) is not applied by the German Tax Authorities.*
  - *Mismatch as invoice 1 is not reported by Carrier 1 on the EC Sales List. This may trigger questions or an audit by the German Tax Authorities.*
- *Invoice 2: Carrier 2: - No Belgian VAT, exempt from VAT.*
  - *Invoice 2 has to refer to Article 44 of the VAT Directive.*
  - *Reporting on EC Sales List in Belgium, as Article 146(1)(e) of the VAT Directive is no longer applied by the Belgian Tax Authorities.*
  - *Carrier 3: - Reverse charge of German VAT, as the exemption of Article 146(1)(e) is not applied by the German Tax Authorities.*

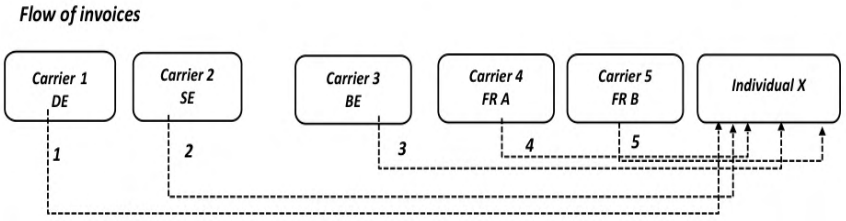
German Carrier 3 invoices the Consignee for leg 1, leg 2 and leg 3:

- *Place of supply : Third Country, Article 44 VAT Directive.*

When a Member State no longer applies the mandatory exemption for the transportation services directly linked with the export of the goods of Article 146(1)(e) of the VAT Directive, a carrier established in the EU providing or receiving such services taking place in the EU (application of Article 44 of the VAT Directive), has to change it's ordering, (self-)billing and accounting processes and IT systems. Also its reporting on the VAT return and the EC Sales Listing has to be changed.

Scenario 4.1.: B2C transport for a private individual X moving back to the UK exports his belongings to the UK. As an expat X lived in Sweden, Germany, Belgium and France and kept some of its belongings in storage facilities in Sweden, Germany and Belgium when he moved to a small appartment in Paris. A Swedish, German, a Belgian and a French Carrier A picked up those goods and delivered it to a warehouse of French Carrier B in the port of Le Havre in France. The French Carrier B exported all those good in one shipment from the port of Le Havre to the UK. The French export formalities were completed and a copy of the export declaration was provided to X, who informed the German, Swedish and Belgian carrier accordingly.





Current Belgian Tax Policy (Circular Letters AOIF no. 3 2010 of 7 January 2010 and 2018/C/68 of 31 May 2018)

Place of supply: Application of Article 50 of the VAT Directive, the place is at the place of departure of the intra-Community transport of goods to a non-taxable person.

German Carrier 1 and Swedish Carrier 2 for leg 1 and leg 2:

- *place of taxation in Germany and Sweden respectively.*
- *Invoice 1: German Carrier: charges 19% German VAT, as Germany does not apply the exemption of Article 146(1)(e) of the VAT Directive.*
- *Invoice 2: Swedish Carrier: charges 25% Swedish VAT, as Sweden does not apply the exemption of Article 146(1)(e) of the VAT Directive.*

Belgian Carrier 3:

- *place of taxation in Belgium.*
- *Invoice 3: Exempt from Belgian VAT, as Belgium applies Article 146(1)(e) of the VAT Directive.*

Place of supply: Application of Article 49 of the VAT Directive, the transport of goods to a non-taxable person which is not an intra-Community transport of goods takes place where the transport takes place, proportionate to the distances covered.

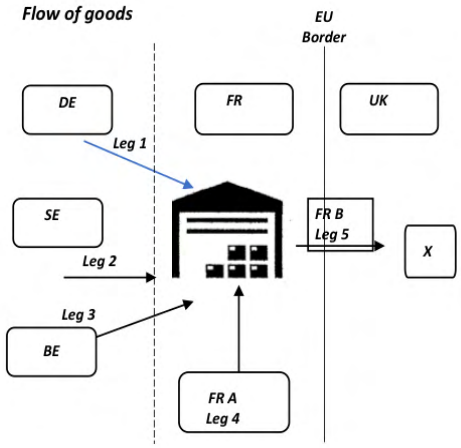
French Carrier 4 (FR A):

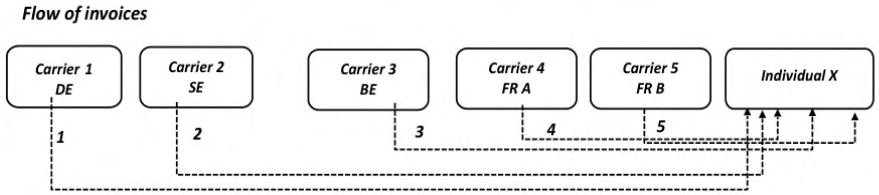
- *place of taxation in France.*
- *Invoice 4: Exempt from French VAT, as France applies Article 146(1)(e) of the VAT Directive.*

French Carrier 5 (FR B):

- *place of taxation in France for the part on French territory.*
- *Invoice 5: Exempt from French VAT, as France applies Article 146(1)(e) of the VAT Directive.*

Scenario 4.2.: B2C transport for a private individual X moving back to the UK exports his belongings to the UK. As an expat X lived in Sweden, Germany, Belgium and France and kept some of its belongings in storage facilities in Sweden, Germany and Belgium when he moved to a small apartment in Paris. A Swedish, German, a Belgian and a French Carrier A picked up those goods and delivered it to a warehouse of French Carrier B in the port of Le Havre in France. The French Carrier B exported all those good in one shipment from the port of Le Havre to the UK. The French export formalities were completed and a copy of the export declaration was provided to X, who informed the German, Swedish and Belgian carrier accordingly.





Withdrawal of the current Belgian Tax Policy (Circular Letter AOIF 2021/C/96 of 27 October 2021):

Place of supply: Application of Article 50 VAT Directive

German Carrier 1 and Swedish Carrier 2:

- *place of taxation in Germany and Sweden respectively.*
- *Invoice 1: German Carrier: charges 19% German VAT, as Germany does not apply the exemption of Article 146(1)(e) of the VAT Directive.*
- *Invoice 2: Swedish Carrier: charges 25% Swedish VAT, as Sweden does not apply the exemption of Article 146(1)(e) of the VAT Directive.*

Belgian Carrier 3:

- *Invoice 3: Belgian carrier: charges 21% Belgian VAT, if Belgium no longer applies Article 146(1)(e) of the VAT Directive.*

Place of supply: Application of Article 49 of the VAT Directive, the transport of goods to a non-taxable person which is not an intra-Community transport of goods takes place where the transport takes place, proportionate to the distances covered.

French Carrier 4 (FR A):

- *place of taxation in France.*
- *Invoice 4: Exempt from French VAT, as France applies Article 146(1)(e) of the VAT Directive.*

French Carrier 5 (FR B):

- *place of taxation in France for the part on French territory.*
- *Invoice 5: Exempt from French VAT, application of Article 146(1)(e) of the VAT Directive.*

In case a French transporter (e.g. FR A) would drive from France to Belgium, Germany and Sweden to pick up the goods and deliver them to a warehouse in France, the place of taxation would be France because the intra-Community transport starts in France. As France applies the exemption of Article 146(1)(e) of the VAT Directive, no VAT would be charged to Individual X by the French transporter (e.g FR A). Also a domestic transport in France prior to the export of the goods by another carrier takes place in France and would also not be subject to French VAT. This would be the case in all Member States applying the exemption of Article 146(1)(e) of the VAT Directive properly. In case Belgium changes its policy, 21% VAT will have to be charged for all such transports.

21% VAT will also be due, when e.g., a company transports goods for a non-taxable person from Gent to a Belgian airport, prior to its shipment to a Third Country by a different transporter, e.g., an express courier company. Only this last shipment will not be subject to VAT.
The non-taxable person should not pay 21 % of VAT if he only contracts the express courier company to collect the goods from his home and to export them to a Third Country. This limits the 'choice' of the consumer in selecting a transporter, assuming a private individual is aware of the 21% VAT he can save. This will also put pressure on 'domestic' transporters to reduce their prices in order to remain competitive for B2C transports prior to export shipments.

A Belgian non-taxable person living close to the French or Dutch border could also deliver his package to a transporter in one of those Member States, who then would export the goods. This will be 21% cheaper for the Belgian individual as both France and the Netherlands apply the exemption of Article 146(1)(e) of the VAT Directive.