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Single VAT Registration (SVR) - Transfer of own goods

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1. INTRODUCTION

Volume 3 of the Study 'VAT in the Digital Age'[1] is related to the **Single VAT Registration** (SVR). The purpose of the SVR is to limit the number of obligatory VAT identifications in different Member States where a business is not established and, ideally, to have a single VAT identification in one Member State that allows for doing business in some or all other Member States.

In this context, the question was raised whether **transfers of own goods**, from one Member State to another, could be included in the SVR. Currently, a transfer of own goods constitutes a(n) (exempt) supply in the Member State of departure and an intra-Community acquisition in the Member State of arrival. This implies that VAT registration is also required in the Member State of arrival in order to be able to declare the intra-Community acquisition in the VAT return of the Member State of arrival and to fulfil the VIES listing obligation[2] in the Member State of departure. According to the above-mentioned study, the occurrence of transfers of own goods is considerable and including them in the SVR could therefore result in a significant simplification for businesses involved in cross-border trade[3]. This would in particular be the case regarding the increasingly important business model whereby platforms move stocks of goods of underlying suppliers between different Member States. At the same time, it could help all other businesses (not linked to marketplaces) to operate cross-border by removing the registration obligation in each Member State to which stocks are moved, and thus contribute to business growth at EU level.

Following two Fiscalis workshops in relation to the above-mentioned study, the Commission services consider, however, that further analysis as well as discussion with the Member States on this particular topic is required. To that end, **three different options** are presented below for integrating the transfer of own goods into the SVR. A number of advantages and disadvantages for each option are listed as well as a number of questions for debate and further consideration at the end.

2. OPTION 1 – DIGITAL REPORTING OBLIGATIONS (DRR) AND THE ABOLITION OF THE 'TRANSFER OF OWN GOODS' AS A TAXABLE EVENT (OR THE EXEMPTION OF THE INTRA-COMMUNITY ACQUISITION)

Under this option, the 'transfer' would no longer be a taxable event[4] (as it is currently the case under Article 17 of the VAT Directive) and, subsequently, VAT identification would no longer be required for this type of transaction. Alternatively, the transfer could still be a taxable event, but the intra-Community acquisition would, in the same way as the intra-

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[1] VAT in the Digital Age: Volume 3 - Single place of VAT registration and import one stop shop, Economisti Associati.

[2] Reference is still made in this document to "VIES listings" although these are under revision in the framework of the Digital Reporting Requirements part of the VAT in the Digital Age intitiative.

[3] It is to be noted, however, that in case VAT is incurred in a Member State where a taxable person is not identified for VAT purposes, an effective refund has to be asked. It is therefore possible that certain taxable persons would prefer to keep their VAT registration in a given Member State in order to be able to deduct VAT of that Member State in their VAT return.

[4] It is then to be stipulated that the cross-border movement of goods, which would no longer constitute any taxable event, should not affect the overall level of the right of deduction of the taxable person moving the goods.

Community supply, be exempt[5] (and would allow for input deduction in the previous stage, similar to e.g. export). However, the follow-up of the goods, currently done via the mentioning of the (intra-Community) supply in the VIES listing, would no longer be ensured.

In order to guarantee the follow-up of the goods, it would be necessary, or at least recommendable, to complement this change with a record keeping mechanism. Such a mechanism could be linked to the DRR and on the basis of e-invoicing (for more information as regards the concept and functioning of DRR, see the relevant part of the above-mentioned study).

The possible functioning of the DRR in this respect could be based on a simplified invoice (self-invoicing), containing the VAT number in the Member State of registration of the business that is bringing its own goods from one Member State to another. This (self-) invoice would mention the transfer (from Member State A to Member State B) and the value of the goods (corresponding to the current 'taxable amount'). Other obligations might also be considered, such as the addresses of the physical location of the stock in both Member States, or even the VAT identification number of the owners of the storage facilities.

Under this system, the DRR should at least be able to provide three Member States with the relevant information: the Member State of identification (Member State that issued the VAT number under which the movement of the goods has been declared), the Member State of departure of the goods and the Member State of arrival of the goods. Insofar the Member State, where the goods are moved from, corresponds with the Member State of identification, only two Member States would have to be informed. While the latter situation might be the most common one as regards transfers, the development of e-commerce has made it more likely that goods will be moved from a Member State where the business owner of these goods is not identified.

As a sub-option, it could in addition be proposed that the taxable person, moving his goods from one Member State to another, is required to keep, in the Member State of his registration, a register of all such movements in the EU. This should enable the tax administration to have an immediate and clear view of the stocks that a taxable person is holding in other Member States. Via the DRR, a Member State, where a stock is placed, would know in which Member State the register is kept and could seek, from that Member State, information or assistance as regards that register, the movements or the stock(s).

Advantages:

- If 'transfer of own goods' would no longer constitute any taxable event, there would be no issue as regards the right of deduction in relation to the intra-Community acquisition. In case the intra-Community acquisition would be exempt, the taxable person would still have, as mentioned above, a right of deduction in relation to the previous stage. In both cases, mentioning in the DRR would therefore only have to be made in order to follow up on the goods.
- Member States would have to handle less registration requests.

[5] It is then to be stipulated that, for these exempt intra-Community acquistions, no registration would be required.

- VIES listings would no longer have to be submitted by businesses regarding these movements of goods.
- It would apply to all businesses, not only to marketplaces.
- The transfer of goods can be followed by one of the following operations in the Member State of arrival which, equally, do not lead to a registration obligation in that Member State:
    - B2C domestic or intra-Community distance sale as this could be declared under the Union One-Stop-Shop (OSS) (this already assumes that the OSS is extended to cover 'domestic' B2C supplies)
    - B2B supplies by the underlying supplier (as the deemed supplier provision for platforms is only applicable for B2C supplies) in the Member State of arrival when covered by the reverse charge mechanism (Article 194 of the VAT Directive).

Disadvantages and challenges:

- If the transfer does no longer constitute any taxable event, it would constitute a rather radical departure from basic VAT principles leading to a possible considerable impact on different provisions or systems (e.g. call-off stock, VIES data, etc.). In the case of exemption of the intra-Community acquisition, the current principles would be more preserved.
- A (perceived or real) loss of control possibilities for Member States due to the non-registration of non-established businesses that might have stocks of goods on their territory.
- Alhtough problably a rather exceptional situation, the abolition of 'transfer of own goods' as a taxable event (or the exemption of the intra-Community acquisition) would benefit taxable persons that would not have a full right of deduction in relation to their intra-Community acquisition in the Member State of arrival under the current rules.
- Certain new obligations for businesses which have to be weighed up against the current obligation to register as to see whether the new solution would effectively be less burdensome and cheaper.
- Legislation on e-invoicing would have to be amended.
- IT changes would be required in light of the DRR (self-invoicing) and other (possible) obligations (register).
- Identification in the Member State of arrival would still be required if followed by an 'intra-Community' supply from that Member State to a taxable person in another Member State (the same issue might exist in relation to exports made from the Member State of arrival).
- The option may not solve the issue of 'platforms' moving goods of their 'underlying suppliers' between Member States, which makes the latter liable for the transfer/moving of the goods.

3. OPTION 2 – EXTENSION OF THE ONE-STOP-SHOP (OSS) TO INCLUDE THE TRANSFER OF OWN GOODS

OPTION 2A The transfer remains the same taxable event

Under this option, the 'transfer of own goods' would, as is currently the case, still constitute a (intra-Community) supply in the Member State of departure and an intra-Community acquisition in the Member State of arrival. These two taxable events would be declared as a single event in the OSS, to which a module for 'transfers' could be added.

As in the previous option, the OSS should at least be able to provide information to the Member States of identification, departure and arrival (or departure and arrival insofar the supplier is identified in the Member State of departure).

In addition, it would almost be inevitable that the supplier, transferring his own goods, would be required to have a register of such movements, as mentioned in option 1, in the Member State of its VAT identification number under which the transfer has taken place, and this would then include details of all such transfers of own goods.

Advantages:

- The step is less radical as the main concepts of the current VAT system are kept.
- Member States would have to handle less registration requests.
- VIES data would no longer have to be submitted by businesses on these movements of goods.
- It would apply to all businesses, not only to marketplaces.
- It could be kept optional and other current practices could possibly continue. If made obligatory, the impact on other systems will have to be assessed (e.g. call-off stock simplification).
- Reasonable chance of reducing burden on businesses in comparison to them being faced with registration obligations in different Member States.
- Required IT changes would be in line with existing developments of simplification as it is building on an existing system that is known by businesses and tax administrations.
- The transfer of goods can be followed by one of the following operations in the Member State of arrival which, equally, do not lead to a registration obligation in that Member State:
    - B2C domestic or intra-Community distance sale as this could be declared under the Union OSS (this already assumes that the OSS is extended to cover 'domestic' B2C supplies)
    - B2B supplies by the underlying supplier (as the deemed supplier provision for platforms is only applicable for B2C supplies) in the Member State of arrival when covered by the reverse charge mechanism (Article 194 of the VAT Directive).

Disadvantages and challenges:

- If the taxable event is kept, the 'zero rated' transaction mentioned in the OSS, implicitly includes a right of deduction. In the **rather exceptional** cases that a supplier, transferring his own goods, would not have a full right of deduction in the Member State of arrival, VAT would effectively be due. Either the OSS would have to be equipped to make such a payment possible or the supplier would still be obliged to register in the Member State of arrival (as well as in the Member State of departure) so as to declare the transfer under the current rules; including the submission of the VIES listing obligation. If payment is taking place via the OSS, it could be envisaged that it is also mentioned in the VIES system whether the business moving the goods would have a full right of deduction or not.
- A (perceived or real) loss of control possibilities for Member States due to the non-registration of non-established businesses that might have stocks of goods on their territory.
- IT changes would be required as an extra module would have to be added to the OSS.
- Identification in the Member State of arrival would still be required if followed by an 'intra-Community' supply from that Member State to a taxable person in another Member State (the same issue might exist in relation to exports made from the Member State of arrival).
- The option may not solve the issue of 'platforms' moving goods of their 'underlying suppliers' between Member States, which makes the latter liable for the transfer/moving of the goods.

OPTION 2B The transfer does no longer constitute any taxable event (or the intra-Community acquisition is exempt)

Contrary to the previous (sub-)option, the 'transfer of own goods' would no longer constitute a taxable event but would still have to be declared in the special module of the OSS. As a second sub-option, and as mentioned under option 1, the transfer could still be a taxable event, but the intra-Community acquisition would also be exempt (and would allow for input deduction in the previous stage).

Equally, the supplier, moving his own goods to another Member State, would be required to have a record keeping mechanism in the Member State of its VAT identification number under which the transfers have taken place, and which would include details of all such movements.

Advantages:

- If 'transfer of own goods' would no longer constitute any taxable event[6], there would be no issue as regards the right of deduction in relation to the intra-Community acquisition in the OSS. In the case the intra-Community acquisition would be exempt, the taxable person would still have, as mentioned above, a right of deduction in

[6] As mentioned above, it would have to be stipulated that the cross-border movement of goods, which would no longer constitute any taxable event, should not affect the overall level of the right of deduction of the taxable person moving the goods.

relation to the previous stage. In both cases, mentioning in the OSS would therefore only have to be made in order to follow up on the goods.

- Member States would have to handle less registration requests.
- VIES data would no longer have to be submitted by businesses on these movements of goods.
- It would apply to all businesses, not only to marketplaces.
- Reasonable chance of reducing burden on businesses in comparison to them being faced with registration obligations in different Member States.
- Probably more difficult to make it optional. If the special rule would not be applied, the movements of the goods cross-border would still have to be considered as a taxable event for which the VIES listing would be required.
- Required IT changes are in line with existing developments of simplification as it is building on an existing system that is known by businesses and tax administrations.
- The transfer of the goods can be followed by one of the following operations in the Member State of arrival which, equally, do not lead to a registration obligation in that Member State:
    - B2C domestic or intra-Community distance sale as this could be declared under the Union OSS (this already assumes that the OSS is extended to cover 'domestic' B2C supplies)
    - B2B supplies by the underlying supplier (as the deemed supplier provision for platforms is only applicable for B2C supplies) in the Member State of arrival when covered by the reverse charge mechanism (Article 194 of the VAT Directive).

<u>Disadvantages and challenges:</u>

- The abolition of 'transfer of own goods' as a taxable event (or the exemption of the intra-Community acquisition with a right of deduction in the previous stage) would benefit taxable persons that would not have a full right of deduction in relation to their intra-Community acquisition in the Member State of arrival under the current rules.
- Rather radical departure from basic VAT principles leading to a possible considerable impact on different provisions or systems (e.g. call of stock, non-transfers,…) in case the transfer would no longer constitute any taxable event. The impact would be less in case of exemption of the intra-Community acquisition.
- A (perceived or real) loss of control possibilities for Member States due to the non-registration of non-established businesses that might have stocks of goods on their territory.
- Less likely that it could be made optional as there would be two systems in parallel; impact on the different provisions and systems is to be assessed.
- Identification in the Member State of arrival would still be required if followed by an 'intra-Community' supply from that Member State to a taxable person in another Member State (the same issue might exist in relation to exports made from the Member State of arrival).

- The option may not solve the issue of 'platforms' moving goods of their 'underlying suppliers' between Member States, which makes the latter liable for the transfer/moving of the goods.

4. OPTION 3 – EXTENSION OF THE DEEMED SUPPLIER PROVISION COMPLEMENTED BY A 'TRANSFERS' MODULE IN THE OSS

OPTION 3A The transfer remains the same taxable event

Under this option, the scope of the 'deemed supplier' rule would be extended to cover the 'transfer of own goods' of underlying suppliers. In the case a transfer of goods of an underlying supplier is carried out by a platform, that platform would then be liable to account for the VAT on the transfer and declare this in (a specific module of) the OSS.

Advantages:

- It would solve the issue of 'platforms' moving goods of their 'underlying suppliers' between Member States, which currently requires their 'underlying suppliers' to register in each Member State where the goods are moved to. For these transfers, the platform would become liable[7].
- The measure is essentially an extension of the obligations of platforms, leaving most of the basic principles of the VAT system unchanged and decrease the burden on smaller businesses.
- Could provide certain guarantees for tax administrations in terms of control.
- Member States would have to handle less registration requests.
- VIES data would no longer have to be submitted by businesses on these movements of goods.
- Reasonable chance of reducing reduces burden on businesses in comparison to them being faced with registration obligations in different Member States.
- Required IT changes would be in line with existing developments of simplification as it is building on an existing system that is known by businesses and tax administrations.
- The transfer of the goods can be followed by one of the following operations in the Member State of arrival which, equally, do not lead to a registration obligation in that Member State:
    - B2C domestic or intra-Community distance sale as this could be declared under the Union OSS (this already assumes that the OSS is extended to cover 'domestic' B2C supplies)
    - B2B supplies by the underlying supplier (as the deemed supplier provision for platforms is only applicable for B2C supplies) in the Member State of arrival

[7] It is to be pointed out that, in case the underlying supplier would be charged for the storage, that service would normally not be connected with immovable property (Article 47 of the VAT Directive and Article 31a(3)(b) of the VAT Implementing Regulation) but be taxed according to Article 44 of the VAT Directive, namely where the underlying supplier has established his business. This avoids that he would incur VAT from another Member State for which an effective VAT refund would have to be asked.

when covered by the reverse charge mechanism (Article 194 of the VAT Directive).

Disadvantages/challenges

- The arrangement might, de facto, promote the platform business model. (Smaller) businesses that would transfer their own goods from one Member State to another, would still be required to register for VAT purposes in the Member State of departure as well in the Member State of arrival. This, in turn, may force them to sell via platforms in order to obtain the same level playing field. This might be seen as going against the spirit of other legislation e.g. the new VAT SME Directive[8], which is intended to offer more possibilities for cross-border trade, even under the SME exemption. However, this issue might be solved if option 3 would be combined with option 2. To note also that it might be rather exceptional that SMEs would have stocks in multiple Member States outside the platform business model.
- The extension of the 'deemed supplier' provision would benefit taxable persons that would not have a full right of deduction (on their intra-Community acquisition) as it is the right of deduction of the platform that will have to be taken into consideration. In fact, the transfer would consist in a supply from the underlying supplier to the platform (which is treated as a supply without transport) and a supply by the platform (to which the transport is allocated)[9]. Given the allocation of the transport, the intra-Community acquisition takes place in relation to the platform who is liable for the VAT on the intra-Community acquisition but who would, normally, have a full right of deduction.
- Identification of the underlying supplier in the Member State of arrival would still be required if followed by an 'intra-Community' supply from that Member State to a taxable person in another Member State (the same issue might exist in relation to exports from the Member State of arrival).

OPTION 3B The transfer does no longer constitute any taxable event (or the intra-Community acquisition is exempt)

The same principle that the platform would be liable for the 'transfer of goods' of its underlying suppliers, would also be applicable in this case. However, the movement of the goods of underlying suppliers would in these circumstances no longer constitute any taxable event or the intra-Community acquisition would be exempt. The declaration in the OSS would be of an administrative nature in order to ensure the follow-up of the goods.

Advantages

- The option may solve the issue of 'platforms' moving goods of their 'underlying suppliers' between Member States, and for which the platform would become liable.

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[8] Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13)

[9] See page 13 of the Explanatory Notes on VAT e-commerce rules.

- At the same time, it would settle the issue of the right of deduction in relation to the intra-Community acquisition since no VAT would be due on the movement of goods due to the lack of any taxable event or because the intra-Community acquisition would be exempt.
- It could provide certain guarantees for tax administrations in terms of control as it would be possible concentrate around a smaller number of taxable persons.
- Member States would have to handle less registration requests.
- VIES data would no longer have to be submitted by businesses on these movements of goods.
- Reasonable chance of reducing reduces burden on business in comparison to them being faced with registration obligations in different Member States.
- Required IT changes are in line with existing developments of simplification as it is building on an existing system that is known by businesses and tax administrations.
- The transfer of the goods can be followed by one of the following operations in the Member State of arrival which, equally, do not lead to a registration obligation in that Member State:
    - B2C domestic or intra-Community distance sale as this could be declared under the Union OSS (this already assumes that the OSS is extended to cover 'domestic' B2C supplies)
    - B2B supplies by the underlying supplier (as the deemed supplier provision for platforms is only applicable for B2C supplies) in the Member State of arrival when covered by the reverse charge mechanism (Article 194 of the VAT Directive).

<u>Disadvantages</u>

- The extension of the 'deemed supplier' provision would benefit taxable persons that would not have a full right of deduction (on their intra-Community acquisition) (see above).
- In the case the movement of goods of underlying suppliers would no longer constitute a taxable event (or the intra-Community would be exempt), the question is raised what the treatment should be of other 'transfers'. If these other transfers, by any taxable person other than a platform, would remain a taxable event (or of which the intra-Community acquisition would not be exempt), a disparity will occur between the two types of 'transfer'. This would, inter alia, imply that a taxable person, without a full right of deduction in the Member State of arrival (probably a rather exceptional situation however), would have an interest in using a platform so as to avoid a VAT liability in the Member State of arrival.
- Again, this may result in an effective promoting of the 'platform' model at the detriment of other market participants, in particular smaller businesses. Logically, the other 'transfers' should also no longer be considered as constituting any taxable event (or the intra-Community acquisition should equally be exempt). This would imply that either option 1 or option 2B] is used for these movements. As under option 3, the OSS is used for declaring movements of goods of underlying suppliers by platforms, it would probably be logical to apply option 2B], equally based on OSS declarations, to the other movements.

- Identification of the underlying supplier in the Member State of arrival would still be required if followed by an 'intra-Community' supply from that Member State to a taxable person in another Member State (the same issue might exist in relation to exports from the Member State of arrival).
- Overall, it could however be argued that, in order to extend certain obligations for platforms in particular circumstances, rather fundamental changes in terms of legislation as well as to obligations for taxable persons are required within the VAT system.
- IT would in principle only apply to platforms and their underlying suppliers; other businesses would, as mentioned, not have the same possibilities and would most likely have to bear the (legislative and administrative) changes as a result of the abolition of the concept of transfer of goods as a taxable event or the exemption of the intra-Community acquisition.

5. QUESTIONS TO THE DELEGATES

Delegates are invited to express their views on the following questions:

(1) Do you consider the inclusion of the 'transfer of own goods' in the SVR an option that is worth pursuing or, at least, worth examining further?

(2) If so, is there any of the options as described above that you, from the outset, see as the best possible way forward in this respect?

(3) Do you believe that above-described situations, whereby there is no full right of deduction in relation to the intra-Community acquisition, occur in practice or are they rather theoretical in nature?

(4) Is there another option, not described in this document, that you would prefer or that, in your view, should be examined and discussed further? (These other options could also consist in the combination of some of the already described options, e.g. option 2B (for businesses not making use of a platform) in combination with option 3B (for businesses making use of a platform) and on the basis of the exemption of the intra-Community acquisitions).

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