

ROADTRIP THROUGH ECJ CASES

Focus on VAT triangulation Article 42

Update – October 2026

VAT Directive 2006/112/EC



Why Article 42 matters

Three controls determine whether the intermediary avoids a destination-country VAT registration

01

Registration relief

Switches off the Article 41 fallback acquisition for a qualifying subsequent supply.

02

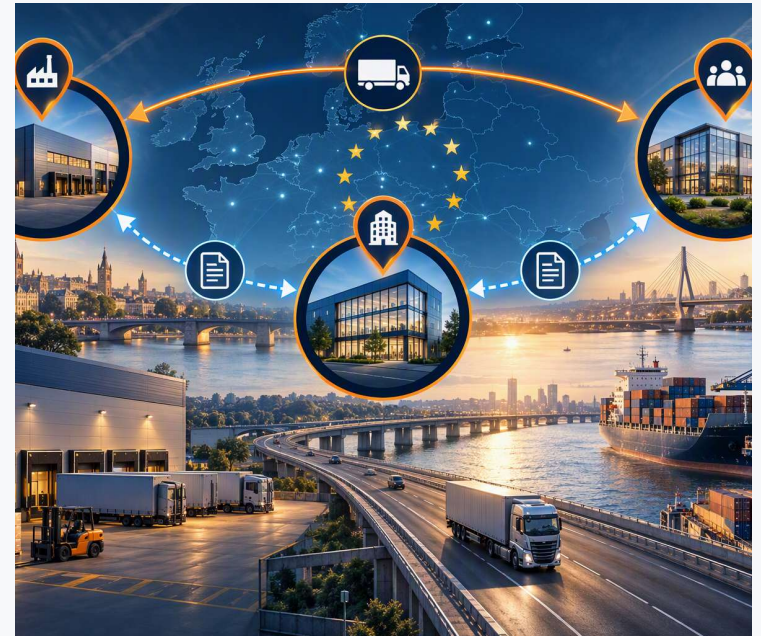
Destination taxation

Keeps VAT in the Member State where the transport ends without duplicating acquisition tax.

03

Execution discipline

Requires aligned VAT numbers, reverse-charge designation, invoice wording and reporting.



Article 42 – current wording

Consolidated text as at 14 April 2025

The first paragraph of Article 41 shall not apply and VAT shall be deemed to have been applied to the intra-Community acquisition of goods in accordance with Article 40 where the following conditions are met:

- (a) the person acquiring the goods establishes that he has made the intra-Community acquisition for the purposes of a subsequent supply, within the territory of the Member State identified in accordance with Article 40, for which the person to whom the supply is made has been designated in accordance with Article 197 as liable for payment of VAT;
- (b) the person acquiring the goods has satisfied the obligations laid down in Article 265 relating to submission of the recapitulative statement.

Article 42 – legislative position

Recast since 1 January 2007; reporting framework amended from 1 January 2010

Recast provision

Article 42 separated the triangulation relief from the general Article 41 fallback rule when Directive 2006/112/EC recast the Sixth Directive.

Reporting amendment

Point (b) operates through Article 265. Council Directive 2008/117/EC reshaped recapitulative-statement reporting, applying from 1 January 2010.

No separate earlier wording of Article 42 is reproduced: the substantive relief remains expressed through points (a) and (b).

Sixth Directive mapping

From Article 28b(A) to Articles 40–42

Sixth Directive	VAT Directive	Function
28b(A)(1)	40	Destination place of acquisition
28b(A)(2), first subpara.	41, first para.	VAT-number fallback acquisition
28b(A)(2), second subpara.	41, second para.	Reduction after destination taxation
28b(A)(2) + triangulation rules	42	Fallback disapplied for qualifying triangulation

Sixth Directive – Article 28b(A)

Verbatim predecessor place-of-acquisition rule

1. The place of the intra-Community acquisition of goods shall be deemed to be the place where the goods are at the time when dispatch or transport to the person acquiring them ends.
 2. Without prejudice to paragraph 1, the place of the intra-Community acquisition of goods referred to in Article 28a (1) (a) shall, however, be deemed to be within the territory of the Member State which issued the value added tax identification number under which the person acquiring the goods made the acquisition, unless the person acquiring the goods establishes that that acquisition has been subject to tax in accordance with paragraph 1.
- If, however, the acquisition is subject to tax in accordance with paragraph 1 in the Member State of arrival of the dispatch or transport of the goods after having been subject to tax in accordance with the first subparagraph, the taxable amount shall be reduced accordingly in the Member State which issued the value added tax identification number under which the person acquiring the goods made the acquisition.

Road map of the case law

Four judgments, four operational controls

Reporting

C-580/16

Late ESL filing may be curable

Invoice wording

C-247/21

“Reverse charge” is substantive

Longer chains

T-646/24

Direct transport may reach a fourth party

Timing

T-773/25

Late invoices do not activate relief

DECIDED CASES

Article 42 and the triangulation simplification

2018–2026



C-580/16 (Firma Hans Bühler)

C-580/16

REPORTING

FACTS

German business used an Austrian VAT number for purchases from Germany and onward sales to Czech customers. Goods moved directly from Germany to the Czech Republic. Austrian recapitulative statements were late or corrected after audit.

ISSUE

Can triangulation apply where the intermediary is established in the Member State of departure? Does late EC Sales List reporting automatically trigger the Article 41 fallback acquisition?

DECISION

Yes, the simplification may apply. Late reporting alone does not justify refusal where substantive conditions are proven, unless reliable verification is prevented or evasion is involved.

ARTICLES DISCUSSED

Articles 40, 41, 42, 141 and 265

C-247/21 (Luxury Trust Automobil)

C-247/21

INVOICE

FACTS

Austrian intermediary bought vehicles from a UK supplier and resold them to Czech customers. Direct transport occurred while the UK remained an EU Member State. Invoices omitted "Reverse charge".

ISSUE

Was the Czech customer validly designated as liable under Article 197? Could the missing Article 226(11a) wording be corrected retrospectively?

DECISION

No. "Reverse charge" is a substantive condition for valid designation. Adding it later is the first fulfilment of that condition and cannot operate retroactively.

ARTICLES DISCUSSED

Articles 42(a), 141, 197(1)(c), 226(11a)

T-646/24 (MS KLJUČAROVCI)

T-646/24

LONGER CHAINS

FACTS

Slovenian intermediary bought agricultural products in Germany and sold them to Danish buyers. Goods went directly to Danish facilities and onward customers. Immediate buyers were later treated as missing traders.

ISSUE

Must goods be physically delivered to the immediate customer? Which Member State must deny relief where the intermediary knew or should have known of VAT fraud?

DECISION

Delivery to the customer's customer in the same Member State does not itself defeat Article 141(c). But the VAT-number State must deny Articles 42 and 141 relief where fraud participation was known or should have been known.

ARTICLES DISCUSSED

Articles 41, 42 and 141(c)

T-773/25 (Finanzamt für Großbetriebe)

T-773/25

LATE INVOICE

FACTS

F GmbH used its Austrian VAT number for supplies made in 2011–2014. Original invoices lacked “Reverse charge”. New compliant invoices and amended reporting were issued in 2015.

ISSUE

Can the first compliant invoice activate triangulation ex nunc years after the supply, allowing removal of the fallback acquisition in 2015 or a future period?

DECISION

No. The late invoices do not activate the simplification retroactively or prospectively for historic supplies. They are first compliant invoices, not corrections.

ARTICLES DISCUSSED

Articles 2(1)(b)(i), 40, 41, 42(a), 141, 197(1), 226(11a)

PENDING CASES

No direct Article 42 case identified as pending

As at 16 October 2026



Key takeaways for practice

Five controls to embed before applying Article 42

1

Map the chain

Confirm legal supplies, transport attribution, VAT numbers and destination.

2

Control the invoice

Use the exact “Reverse charge” wording before release.

3

Align reporting

Reconcile invoice, VAT return and recapitulative statement.

4

Do not rely on late repair

Historic non-compliance is not cured by a later first compliant invoice.

5

Add fraud safeguards

Test counterparties and longer-chain delivery evidence.