

CASE T-614/25

Trading 4

Chain transactions, excise suspension and the VAT exemption

General Court (Second Chamber, five Judges)
Judgment of 9 September 2026

Articles 138(1), 141 and 197(1) VAT Directive

Core message: physical movement and excise documentation do not, by themselves, determine which supply is exempt.



Executive takeaways

The judgment reinforces a substance-first analysis for chain transactions.

The Court's ruling

- Only one supply in a chain with a single intra-Community transport can benefit from Article 138(1).
- The decisive question is when and to whom the right to dispose of the goods as owner was transferred.
- Excise duty suspension, destination VAT and proof of physical exit are relevant evidence, but are not determinative by themselves.

Practical consequence

- Triangulation cannot be used to prove that the first supply is the moving supply. It presupposes that conclusion.
- Contracts, Incoterms, transport control, logistics costs, resale timing and operational evidence must tell one consistent story.
- Businesses should document transport attribution before applying the exemption, particularly for fuel and other excise goods.

SUBSTANCE OVER FORM

Facts and transaction flow

Petroleum products moved directly from Latvia to customers in other Member States.



What Trading 4 did

- Supplied petroleum products under an excise duty suspension arrangement during 2016–2017.
- Invoiced B using a 0% VAT rate.
- Goods travelled directly from Trading 4 to B's customers, C.

Tax authority position

- B had already transferred ownership to C before dispatch.
- The A→B supplies were therefore domestic Latvian supplies.
- Standard Latvian VAT, corrective measures and an alleged VAT-evasion link followed.

Trading 4 position

- Excise arrival formalities indicated transfer only at destination.
- B organised the transport and Trading 4 denied prior knowledge of immediate resale.
- Destination VAT had already been paid by C.

Legal architecture

The provisions perform different functions and must be applied in sequence.

Article 138(1)

Exempts the supply to which the intra-Community transport is attributed.

Article 141

Simplifies the intermediary's intra-Community acquisition in the destination Member State.

Article 197(1)

Shifts VAT liability on the subsequent supply to the customer, subject to conditions.

First identify the moving supply → then test exemption → only then apply triangulation simplification

Article 141 does not reverse the logic: it presupposes an exempt first supply and a corresponding intra-Community acquisition by the intermediary.

Question 1: what is enough to exempt A → B?

The referring court presented three apparently strong indicators.

1

Excise suspension

Goods moved under an excise duty suspension arrangement.

2

Reverse charge

C, registered in the third Member State, was liable for VAT.

3

Physical proof

Goods left Latvia and arrived in the third Member State.

Answer: NO. Taken alone or together, those circumstances do not establish that the transport belongs to the A → B supply.

The decisive test: transfer of economic ownership

“As owner” is an autonomous EU VAT concept, not merely a national-law title test.

Assess all facts and circumstances

- When did B obtain decision-making power over the goods, including the power to resell?
- Who initiated transport for its own economic activity?
- Who bore transport costs and made logistical arrangements?
- Who exercised actual or functional control over the movement?
- Was the transport embedded in B’s resale operation on its own account?



Physical possession is not required. The relevant question is the power actually to dispose of the goods as if owner.

Excise duty suspension does not decide VAT attribution

VAT and excise follow distinct chargeable events and evidentiary logic.

What excise evidence can show

- ✓ Movement under duty suspension
- ✓ Actual departure from Latvia
- ✓ Arrival / receipt in another Member State

What it cannot establish by itself

- ✗ When economic ownership transferred
- ✗ Which supply is the moving supply
- ✗ Whether A → B qualifies for Article 138(1)

SEPARATE VAT AND EXCISE ANALYSES

Triangulation simplification is downstream, not proof

Article 141 cannot be used circularly to establish the exemption for the first supply.



Correct analytical sequence

- 1. Attribute the single transport to one supply using the factual ownership and transport-control analysis.
- 2. If attributed to $A \rightarrow B$, assess Article 138(1) and the conditions for an exempt intra-Community supply.
- 3. Only then assess whether B's acquisition and $B \rightarrow C$ supply qualify for Articles 141 and 197.

Key logic

The simplification presupposes that B made an intra-Community acquisition. That presupposes an exempt moving supply from A to B.

Questions 2 and 3: no substantive ruling

The procedural outcome narrows the judgment's operative scope.

Question 2 not examined

- Question 2 asked whether Trading 4's knowledge of an immediate resale before departure would prevent exemption.
- The question was conditional on an affirmative answer to Question 1.
- Because Question 1 was answered negatively, the Court found no need to examine it.

Question 3 inadmissible

- Question 3 concerned a further resale by C during the same transport operation.
- The main dispute concerned Article 138(1) treatment of Trading 4's own supplies, not application of Article 141 to B.
- The interpretation sought therefore had no relationship to the subject matter of the dispute.

Do not overread the judgment: it does not resolve every factual pattern involving prior knowledge or four-party chains.

Implications for multinational businesses

The judgment increases the importance of transaction-level evidence and governance.

Contracting

Align title/risk clauses, Incoterms and resale rights with the intended moving supply.

Transport

Record who appoints the carrier, pays freight, instructs routing and controls delivery changes.

Tax determination

Do not infer Article 138 exemption from EMCS closure, destination VAT or triangulation invoicing alone.

Master data

Validate VAT IDs, destination, customer role and chain position before invoicing.

Evidence file

Retain orders, contracts, carrier instructions, CMR/e-CMR, EMCS reports, invoices and payment flows.

Controls

Escalate immediate resale, altered consignee details and multi-party transport instructions.

Recommended control response

A focused six-step review can reduce exemption and registration risk.

01 Map the chain

Identify every sale, VAT ID, destination and physical movement.

02 Attribute transport

Determine who controlled and economically used the transport.

03 Time ownership

Evidence when each party obtained power to dispose or resell.

04 Apply VAT rules

Test Article 138 first, then acquisition, triangulation and reverse charge.

05 Reconcile evidence

Ensure contracts, invoices, CMR and EMCS records are consistent.

06 Govern exceptions

Block or escalate contradictory facts before zero-rating.

Policy principle: exemption follows the attributed moving supply, not the most convenient documentation trail.

Bottom line

Prove the moving supply, not just the movement.

For a chain with one intra-Community transport, only one supply can be exempt. Excise suspension, destination VAT liability and physical arrival are not substitutes for determining when economic ownership transferred and who controlled the transport.

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Articles

138(1)

141

197(1)

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