Artykuły

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The EU VAT system – the importance of the "Quick fixes", simplifications in force as from 1 January 2020

Summary. The Article explains in detail how to understand four simplification measures to the current EU VAT system, referred to as "Quick fixes". They were adopted by the Council on 4 December 2018 and are included in the Council Directive (EU) 2018/1910, the Council Implementing Regulation (EU) 2018/1912 and the Council Regulation (EU) 2018/1909.
The adopted solutions cover:
1) the clarification of the material status of the VAT number of the customer in the context of an exempt intra-Community supply;
2) the proof of transport in the context of an exempt intra-Community supply;
3) the chain transactions;
4) the call-off stock arrangements.
The Article also provides a short introduction on the way that led to the adoption of these four measures.

Keywords: "Quick fixes", an intra-community supply of goods, an intra-community acquisition of goods, a vat identification number, chain transactions, a call-off stock, a proof of an intra-community transport, an exemption of intra-community supplies, an intermediary operator, GFV – the group on the future of vat, VEG– the vat expert group

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1. The road leading to new simplifications

In 1993 the EU Single Market, based on the 'four freedoms' of movement of goods, services, people and capital was established. As a result, in the context of movement of goods, the fiscal frontiers between Member States were abolished. For the VAT system, this meant that there would be no more exports and imports of goods between Member States, thus abolishing physical checks at EU internal borders.

Initially it was planned that a definitive VAT system would operate within the European Union in the same way as it would within a single country (thereby following the principle of taxation in the country of origin). Unfortunately, due to political and technical constraints, instead of the originally planned definitive VAT regime, transitional arrangements were adopted.

Since then various attempts have been made to agree on the definitive regime based on the principle of taxation at origin. After many years it was recognised by the Council, the European Parliament and the European Economic and Social Committee that an agreement based on such a principle was not possible. A new VAT system based on the principle of taxation at destination was considered as a more realistic solution.

At the same time, businesses underlined that the complexity, additional compliance costs and legal uncertainty of the current transitional VAT arrangements often prevented them from entering in cross-border activities.

The Commission engaged in discussions with Member States and stakeholders in order to examine in detail the different possible ways of implementing the destination principle. That dialogue took place, among others, in the Group on the Future of VAT[1] and the VAT Expert Group.[2] In the context of the work of these groups, which focused mainly on developing a solution for the definitive VAT system, the most burning problems of the current VAT system were identified and discussed.

[1] Permanent Commission expert group composed of representatives of national tax administrations. The group provides the Commission with a forum for consulting VAT experts from Member States on pre-legislative initiatives.

[2] The VAT Expert Group assists and advises the European Commission on VAT matters. The group is composed of (i) individuals (appointed in a personal capacity with expertise in the VAT area), (ii) organisations (representing businesses) and (iii) tax practitioners.

The documents developed by those groups included a detailed analysis of the most pressing issues and possible improvements to the current situation.[3]

The European Council adopted conclusions on 8th November 2016[4], which stated that, while the Commission was working on the definitive VAT system for intra-Union trade, improvements to the current VAT system should be made in the meantime. The Council asked for amendments in four areas – VAT identification numbers; chain transactions; call-off stock; and proof of an intra-Community supply.[5]

Therefore, the Commission decided that together with the first part of the proposals[6] relating to the definitive VAT system (introducing the

[3] GFV NO 39 (and annex) – Option 1B – Sub-Group report – Consignment stock; GFV NO 40 – Option 1B – Sub-Group report – Chain transactions; GFV NO 41 – Option 1B – Sub-Group report – Proof of intra-EU supplies; VEG NO 026 – Option 1B – Sub-Group – Overview of the outcome; VEG NO 027 – Option 1B – Sub-Group report – Proof of intra-EU supplies – report; VEG NO 028 – Option 1B – Sub-Group report – Consignment stock; VEG NO 029 – Option 1B – Sub-Group report – Chain transactions – report; VEG NO 042, 046, 051 (annexes 1 and 4) Sub-group on the topics for discussion – Proof of Evidence of intra- EU Supplies.

[4] Council conclusions of 8 November 2016 on Improvements to the current EU VAT rules for cross-border transactions (Doc. 14257/16 FISC 190 ECOFIN 1023); see: http://data.consilium.europa.eu/doc/document/ST-14257-2016-INIT/en/pdf (accessed: 12.03.2020).

[5] 1. VAT identification number: the Council invited the Commission to present a legislative proposal aimed at making the valid VAT identification number of the taxable person or non-taxable legal person acquiring the goods, allocated by a Member State other than that in which dispatch or transport of the goods began, an additional substantive condition for the application of the exemption in respect of an intra-Community supply of goods.

2. Chain transactions: the Commission was invited by the Council to propose uniform criteria and appropriate legislative improvements which would lead to increased legal certainty and harmonised application of VAT rules when determining the VAT treatment of chain transactions, including triangular transactions.

3. Call-off stock: the Council invited the Commission to propose modifications to the current VAT rules in order to allow simplification and uniform treatment for call-off stock arrangements in cross-border trade.

4. Proof of intra-Community supply: the Council invited the Commission to explore possibilities for a common framework of recommended criteria for the documentary evidence required to claim an exemption for intra-Community supplies.

[6] Proposal for a Council Directive amending Directive 2006/112/EC as regards harmonising and simplifying certain rules in the value added tax system and introducing the definitive system for the taxation of trade between Member States, COM(2017)569 final. Proposal for a Council Implementing Regulation amending Implementing Regulation

cornerstones of the definitive VAT system), it should propose a number of simplification measures aimed at improving the current VAT system and addressing the concerns raised in the Council Conclusions.[7]

2. The new solutions adopted by the Council

On 4 December 2018, the Council adopted a package of legal acts introducing four simplification measures to the current VAT system.

The four adopted solutions cover:

1) the clarification of the status of the VAT number of the customer in the context of an exempt intra-Community supply;

2) the proof of transport in the context of an exempt intra-Community supply;

3) chain transactions;

4) call-off stock arrangements.[8]

The simplification apply as from 1 January 2020.

Provisions included in the Directive had to be transposed by Member States before that date, but Regulations apply directly at the national level.

The final solutions adopted by the Council differ, in some points substantially, from the original proposals adopted by the Commission. For

(EU) No 282/2011 as regards certain exemptions for intra-Community transactions, COM(2017)568 final. Proposal for Council Regulation amending Regulation (EU) No 904/2010 as regards the certified taxable person COM(2017)567 final.

[7] The second detailed part of the Commission's proposal in respect of the Definitive VAT System is included in Proposal for a Council Directive amending Directive 2006/112/EC as regards the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States COM(2018)329 final.

[8] The adopted package consists of three legal acts:

Council Directive (EU) 2018/1910 of 4 December 2018 amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States (OJ L 311, 7.12.2018, p. 3);

Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions (OJ L 311, 7.12.2018, p. 10);

Council Regulation (EU) 2018/1909 of 4 December 2018 amending Regulation (EU) No 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of call-off stock arrangements (OJ L 311, 7.12.2018, p. 1) – this regulation provides only for the obligations for Member States to store and make available specific information concerning the call-off stock arrangements simplification and will not be discussed in this article.

example, the new simplifications do not have any link with the definitive VAT system solutions.

In the current VAT system, when goods are supplied within the EU by a taxable person to another taxable person, and they are moved from one Member State to another Member State:

(i) The supplier has to account for an intra-Community supply (exempt if certain conditions are fulfilled) in the Member State where the transport or dispatch begins while;

(ii) The acquirer has to account for an intra-Community acquisition in the Member State where the goods arrive.

The four simplification measures focus on different aspects of these core elements of the current VAT system and will be analysed in detail in this article.

They aim at improving the functioning of the current EU VAT system. While it is declared in the context of works on the definitive VAT system, that "Quick fixes" are temporary measures (referred to as short-term improvements) in await of the permanent solution to be introduced, the author would like to underline that the process leading to achieve the desired solution could take some time.[9]

Therefore, it is of a great importance that the simplifications are applied by Member States in a harmonised way as we may be faced with an extended period of time before the permanent solutions could enter into force.

3. The VAT number and the exemption for an intra-Community supply

Currently the VAT number of the customer is not mentioned as a condition for the exemption of intra-Community supplies in Article 138 of the VAT Directive.[10] Therefore, the lack of the VAT Identification Number of the buyer is not sufficient as a base to refuse the exemption for the supplier. In the line of the current jurisprudence of the Court of Justice of the

[9] See for example, M. Merkx, J. Gruson, *Definitive VAT Regime: Ready for the Next Step,* EC Tax Review 2019-03.

[10] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1) as amended. Further in the document when referring to the provisions from VAT Directive I will not mention the reference to this legal text.

European Union, the VAT Identification Number is only a formal condition for the exemption of intra-Community supplies.[11]

The change introduced by the simplification in Article 138 seeks to strengthen the value of the VAT identification number of the customer by making it a condition of exemption from VAT of an intra-Community supply of goods. In other words, substantive value is assigned to this number.

The changed paragraph 1 of this Article states that an intra-Community supply can be exempt when:

(i) the goods are transported from one Member State to another Member State (this is already existing condition);

(ii) the customer (a taxable person or a non-taxable person) is identified for VAT purposes in a Member State other than that where the transport/dispatch of the goods begins and he has indicated his number to the supplier (this is a new condition).

This new condition for the exemption consists of three elements: (i) the customer has to have a VAT number, (ii) that VAT number has to be attributed by a Member State other than the one where the transport of the goods begins and (iii) the customer has to indicate this number to his supplier.

This provision does not mention how this indication should take place. It seems correct to assume that this indication should be traceable for control purposes. Mentioning the VAT number on the invoice should therefore be sufficient.

In the context of the exemption there is a new paragraph 1a included in Article 138. It links the exemption with the fulfilment by the supplier of the obligation to submit an accurate recapitulative statement. Practically, this cannot be assessed at the time of the supply but it allows the exemption to be refused at a later stage where the supplier either does not submit the recapitulative statement or submits an inaccurate statement and he cannot explain the reasons in a satisfactory way to the tax authorities. The purpose of this provision is to allow the exemption to apply when genuine mistakes are made in relation to the recapitulative statement.

[11] See for example CJEU judgement of 20 October 2016, Plöckl, C-24/15. More on this issue: B.J.M. Terra, J. Kajus, O. Henkov, *A Guide to the Recast VAT Directive (IBFD 2017)*, p. 2469 and the following.

4. Proof of transport – details

4.1. The situation today

For the application of the exemption for intra-Community supplies, it has to be proven that the goods were transported from one Member State to another Member State and currently there are no common EU rules on what type of evidence should be sufficient for that proof.

Businesses have argued for a number of years that such a situation is very burdensome[12] as Member States differ as to what they regard as being sufficient proof of transport.[13]

4.2. Conditions for the deeming provision to apply

The new simplification relating to proof of transport is an amendment to the VAT Implementing Regulation. New Article 45a introduces a rebuttable presumption by listing conditions relating to when the goods are to be regarded as dispatched or transported from a Member State to a destination outside its territory but within the Community.

The two lists of valid proofs are included in paragraph 3 of Article 45a. The presumption is based on a reference to those two lists.

Point (a) covers documents relating to the transport or dispatch of the goods such as a signed CMR document or note, a bill of lading, an air-freight invoice, an invoice from the carrier of the goods.

Point (b) mentions other documents:

(i) an insurance policy with regard to the transport or dispatch of the goods or bank documents proving payment of the transport or dispatch of the goods;

(ii) official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination;

(iii) a receipt issued by a warehouse keeper in the Member State of destination confirming the storage of the goods in that Member State.

[12] VEG NO 051 ANN1.

[13] Christian Amand, *The Impossible Proof of Intra-Community Supplies of Goods*, International VAT Monitor March/April 2016; B.J.M. Terra, J. Kajus, O. Henkov, *A Guide to the Recast VAT Directive (IBFD 2017)*, p. 2450 and the following; VEG NO 051 ANN1.

The presumption is possible in two different situations, namely when:
– the supplier is responsible for the transport or dispatch of goods, or
– the acquirer is responsible for the transport or dispatch of goods.

When the supplier has indicated that he is responsible for the transport or dispatch of goods, the presumption applies when he has at least **two items of non-contradictory evidence** confirming the transport or dispatch.

These two pieces of evidence have to be issued by two parties independent of each other, of the vendor and of the acquirer. These can be any two documents listed in point (a) or alternatively one document from the list under the point (a) and one document from the list in point (b).

In the second case, when the acquirer is responsible for the transport or dispatch of goods the presumption applies under the following two conditions.

Firstly, the acquirer has to send, no later than on the 10th day of the month following the supply, a written statement to the supplier stating: (i) that goods were transported by him or by a third party on his behalf and (ii) what is the Member State of destination of the goods.

Secondly, the supplier has to have at least two items of non-contradictory evidence collected in the same way as in the case when the supplier is responsible for transport.

As noted, a tax authority may rebut this presumption, by showing that in fact the transport did not take place, which as a consequence would lead to a situation where the exemption from Article 138 would not apply.

4.3. The application of the exemption of an intra-Community supply when the deeming provision does not apply

Where the conditions for the presumption are not fulfilled it does not mean that the exemption of an intra-Community supply cannot apply. It may happen that the supplier would not be able to collect the precise evidence listed in Article 45a of the VAT Implementing Regulation.

In such a situation, the supplier is not covered by the presumption and he would have to prove the transport by collecting other evidence recognised as sufficient by the competent tax authority, as it is the case today.

5. Chain transactions – details

5.1. What is a chain transaction?

In many instances, businesses are involved in supply chains where there are consecutive supplies of the same goods made between three or more different parties with only one physical movement of the goods.

It means that for example a chain transaction occurs where:

(i) there are 4 suppliers (A, B, C and D);

(ii) they are located in 4 different Member States (A in 1, B in 2, C in 3 and D in 4);

(iii) they are supplying the same goods from the first supplier to the last one in the line and;

(iv) the goods are transported only once from one Member State to another Member State.

Of course, there can be various chain transaction scenarios. For instance, some suppliers can be located in the same Member State or the goods may be moved from a Member State other than the one in which the first supplier is located or to a Member State other than that in which the last person in the chain is located.

On the other hand, it could happen that in a longer chain there are two transports of goods involved. In such a case the whole chain of supplies does not qualify as one but rather two chain transactions (provided certain conditions are fulfilled).

5.2. The situation today

As we know, when goods are supplied cross-border within EU there is a normally an exempt intra-Community supply on the side of the supplier and an intra-Community acquisition by the customer. However, when there is a chain transaction, the Member States concerned may differ in the assessment on how each transaction in the chain should be treated for VAT purposes.

At present, we do not have any legal clarification in the VAT Directive of how to understand and to treat chain transactions.

Over the years, the Court of Justice of the European Union (CJEU) has provided some guidance for the situation of a chain of supplies with a cross-border movement of goods where there is a single dispatch or transport of these goods.[14]

[14] CJEU judgements: C-245/04 *EMAG,* C-430/09 *Euro Tyre Holding BV*, C-386/16 *Toridas.*

In accordance with the established jurisprudence:

(i) the dispatch or transport can only be linked to one of the supplies within the chain, which might then benefit from the exemption as an intra-Community supply;

(ii) the determination of the supply to which that dispatch or transport should be ascribed must be conducted in the light of an overall assessment of all specific circumstances;

(iii) it is crucial to ascertain who among the parties has the power to dispose of the goods as owner at the time of the transport i.e. who is the person responsible for the transport.

When there is only one transport of goods and several consequential supplies in the chain then only one exempt intra-Community supply and, correlated with it, one intra-Community acquisition, takes place. The transport has to be linked with only one supply in the chain. All the other supplies in the chain have to be taxed either in the Member State of departure of the goods or in the Member State of arrival of the goods. The supplies made before the supply that is linked with the transport should be taxed in the Member State of departure and the supplies made after the transport in the Member State of arrival.

When the first supplier or the last customer in the chain is in charge of the transport, there is no problem with the attribution of the transport. The first supplier or the last customer is engaged in only one supply so there is no doubt, with which transaction the transport has to be linked.

Unfortunately, there is however a problem when the transport is made by one of the intermediaries. They are involved in two transactions in the chain (the supply made to the intermediary and the supply made by the intermediary) and Member States differ in the way they approach the attribution of the transport to a specific supply in the chain.

During the work, leading to the adoption of the "Quick fixes" proposals discussions on this issue took place in the GFV and the VEG. In one of the documents (GFV No 40), different current approaches of MSs to this scenario were identified.

According to some Member States' responses, they ascribe the cross-border movement of goods to the first supply in the chain.

For other Member States, the intra-Community supply is always the last supply.

A number of Member States considered that based on the information available, when the shipment is organised by an intermediary the supply made to the intermediary is most likely the intra-Community supply.

Finally, another group of Member States was of the view that a transport is to be attributed to the supply to the intermediary or to the supply made by the intermediary, depending on the circumstances.

Differences in national practices caused by the lack of a legal framework for chain supplies create legal uncertainty and material costs for businesses as well as problems of double-taxation or non-taxation. In other words, there is no harmonisation.

5.3. The solution provided by the simplification

The new Article 36a provides a harmonised approach to the attribution of the transport to one supply in a chain transaction.

When the transport is organised by the first or by the last person in the chain then the problem of identifying the supply which should be linked to the intra-Community transport, does not exist. This is the reason why the solution provided in the simplification measure does not target either of these two situations.

Article 36a relates to place of supply rules and gives conditions for a chain transaction, which occurs where the same goods:

(i) are supplied successively;

(ii) are dispatched or transported from one Member State to another Member State;

(iii) are moved directly from the first supplier to the last customer in the chain.

As the definition refers only to a transport between two Member States, imports and exports to and from third countries are not covered by the simplification.

There is one main rule regulating to which supply the transport is attributed and one fall-back solution.

Both refer to the notion of the intermediary operator, who is defined as a supplier in the chain other than the first supplier who dispatches or transports the goods himself or by a third party on his behalf. You will note that this definition excludes explicitly the first person in the chain and, as it refers to an intermediary operator being a supplier, and the last person in the chain, who is only a customer (and not a "supplier") in that chain.

Article 36a states that when a chain transaction occurs, the dispatch or transport shall be ascribed only to the supply made TO the intermediary operator (the main rule).

However, when the intermediary operator communicates to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported, the dispatch or transport is ascribed only to the supply made BY the intermediary operator.

The tax administration does not have to be informed at the time. Further, no particular way is required for this communication to the supplier to occur. Of course the supplier should be able to demonstrate at the time of the tax control that the communication actually took place at the time of the supply.

Article 36a excludes from its scope the situations covered by Article 14a introduced by e-commerce Directive[15] (entering into force 1.01.2021). This is a deeming provision including in the supply chain – in between the supplier of goods and the final customer – electronic interfaces (marketplaces, portals, etc.). As the work was being carried out simultaneously on "Quick fixes" and e-commerce proposals with the view of providing the particular solution for those deemed supplies it was decided to exclude chain transactions involving marketplaces from the scope of Article 36a entirely.[16]

To sum up, the chain transaction simplification harmonises the way in which the transport should be attributed to one supply only in a chain of successive supplies, removing divergent practices between Member States.

This attribution allows for the identification of which supply is to be treated as an exempt intra-Community supply followed by an intra-Community acquisition. In this way, a dividing line is made in the chain of transactions. Supplies carried out before it are taxable in the Member State where the transport or dispatch begins and supplies made after it are taxable in the Member State of arrival of goods.

This approach has to be applied to any scenario fulfilling the definition of a chain transaction. I will illustrate it with two examples.

Example 1

There are 4 suppliers in the chain (5 participants in total), the first one is located in MS A, the second and the third are located in MS B, the fourth

[15] Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/ED as regards certain value added tax obligations for supplies of services and distance sales of gods, OJ L 348, 29.12.2017, p. 7.

[16] Commission's proposals for a Council Directive and a Council Implementing Regulations were adopted on 11.12.2018, COM (2018)819 final and COM(2018)821 final, respectively.

supplier and its customer are located in MS C. The third supplier is responsible for the transport. The goods are transported from Member State A to Member State C.

Two situations are possible:

1) the transport is attributed to the supply made by the second supplier to the third one, which organises the transport (main rule applies – no communication of the number attributed to the intermediary by the Member State where the transport/dispatch begins);

2) the transport is attributed to the supply made by the third supplier (fall-back rule applies – the number attributed to the intermediary by the Member State from where the transport/dispatch begins is communicated by the intermediary organising the transport to his supplier).

In situation 1):

(i) the first supplier makes a domestic supply in Member State A;

(ii) the second supplier makes an intra-Community supply in Member State A where he has to register (the supply is exempt if the conditions in Article 138 are fulfilled), at the same time the third supplier in the chain (organising the transport) has an intra-Community acquisition in Member State C – i.e. the dividing line is linked with the second supply;

(iii) the third and the fourth supplier make domestic supplies in Member State C.

In situation 2):

(i) the first and the second supplier make a domestic supply in Member State A – the second supplier has to register there[17];

(ii) the third supplier makes an intra-Community supply in Member State A where he has to register (the supply is exempt if the conditions in Article 138 are fulfilled), at the same time the fourth person in the chain has an intra-Community acquisition in Member State C – i.e. the dividing line is linked with the third supply;

(iii) the fourth supplier makes a domestic supply in Member State C.

Example 2

There are 3 suppliers in the chain (4 participants in total), the first one is located in MS A, the second, the third and its customer are located in MS B and the second supplier is responsible for the transport. The goods are transported from Member State A to Member State C.

[17] Unless Reverse Charge applies in a given Member State under Article 194.

Two situations are possible:

1) the transport is attributed to the supply made by the first supplier to the second one which organises the transport (main rule applies – no communication of the number attributed to the intermediary by the Member State from where the transport/dispatch begins);

2) the transport is attributed to the supply made by the second supplier (fall-back rule applies – the number attributed to the intermediary by the Member State from where the transport/dispatch begins, is communicated by the intermediary organising the transport to his supplier).

In situation 1):

(i) the first supplier makes an intra-Community supply in Member State A where he has to register (the supply is exempt if the conditions from Article 138 are fulfilled), at the same time the second person in the chain (organising the transport) has an intra-Community acquisition in Member State C – i.e. the dividing line is linked with the first supply;

(ii) the second and the third supplier make domestic supplies in Member State C where they both have to register.[18]

In situation 2):

(i) the first supplier makes a domestic supply in Member State A;

(ii) the second supplier makes an intra-Community supply in Member State A where he has to register (the supply is exempt if the conditions from Article 138 are fulfilled), at the same time the third person in the chain has an intra-Community acquisition in Member State C – i.e. the dividing line is linked with the second supply;

(iii) the third supplier makes a domestic supply in Member State C.

5.4. Interaction between the simplification for the chain transactions and triangulation

The simplification for triangular transactions is available today in the VAT Directive. In general terms it can be said that it requires the intervention of three taxable persons, identified in three different Member States and the transport of goods from Member State 1 to Member State 3 is linked with the supply made to the person placed in the middle of the chain.

The conditions to be met for the triangulation simplification are settled by Article 141.

[18] Unless Reverse Charge applies in a given Member State under Article 194.

In essence I would like to underline that the two simplifications – for chain transactions and for triangulation are independent.

First it has to be identified to which supply, according to the rules in Article 36a the transport has to be attributed to; second – if the transport is linked with the supply made to the intermediary operator the conditions envisaged for the triangular simplification in Article 141 have to be fulfilled for the second simplification to apply.

6. Call-off stock – details

6.1. The situation today

There is no solution in the current VAT Directive for call-off stock arrangements.

This means that when a supplier is moving goods from one Member State to a stock/warehouse located in another Member State he makes a transfer covered by Article 17. As a result, he is obliged to declare an intra-Community supply in the Member State from where goods were moved. At the same time the supplier is obliged to register for VAT in the Member State where the goods were moved to a stock, file the VAT return there and account for an intra-Community acquisition. When goods are taken from the stock by the customer, the supplier makes a domestic supply. This is true regardless of whether the supplier knows or not, at the time the goods are moved from one Member State to another one, to whom he will supply the goods.

Currently, some Member States apply simplifications and others do not. Between those Member States who apply simplifications, there are differences – which leads to a total lack of harmonisation, is contrary to the smooth operation of the internal market and is burdensome for businesses.

6.2. What does the simplification do?

The simplification envisages that the transfer of goods under call-off stock arrangements from one Member State to another Member State is not treated as a supply of goods for consideration when it is followed by a supply to a customer identified in the Member State of the arrival of goods. Consequently, at the time of the transfer the supplier would not have to declare an intra-Community supply in the Member State where the

transport begins and would not have to register for VAT and account for an intra-Community acquisition in the Member State to which he moves the goods.

It is only when the customer takes the goods from stock, provided that the required conditions are fulfilled (outlined in point 6.4 below), that on the side of the supplier the intra-Community supply takes place and on the side of the acquirer an intra-Community acquisition occurs.

As a result, the supplier does not have to register for VAT in the Member State to which the goods were moved nor is he required to declare a domestic supply to his customer.

6.3. The legal base

This simplification is regulated in several new provisions in the VAT Directive. Article 17a is the main provision for the call-off stock simplification. with further additional changes in Articles 243, 262 as well as in Article 54a of the VAT Implementing Regulation and Article 21 of the Regulation (EU) No 904/2010.[19]

6.4. What are the conditions for the simplification to apply?

In general, the simplification does not apply to situations where the supplier moving the goods from one Member State to the stock located in another Member State, does not know at the time of the transfer who his client is going to be.

6.4.1. The conditions necessary for the simplification to apply

The transfer of his own goods between Member States by a taxable person is not treated as a supply of goods for consideration (i.e. it does not trigger an intra-Community supply followed by an intra-Community acquisition) under the following conditions:

(i) the goods are transported/dispatched by a taxable person (the dispatcher/supplier) or on his behalf from one Member State to another;

(ii) at the time of the transport it is envisaged that the goods will be supplied there to another taxable person (the future acquirer/customer) at a later stage after arrival;

[19] As amended by Council Regulation (EU) 2018/1909 of 4 December 2018.

(iii) there is an agreement at the time of the transport, between the dispatcher and the future acquirer entitling the latter to acquire those goods;

(iv) the dispatcher/supplier of the goods has not established his business nor has a fixed establishment in a Member State of arrival of goods;

(v) the customer/future acquirer is identified for VAT in the Member State of arrival of the goods;

(vi) the dispatcher knows, at the time the dispatch/transport of goods begins, the future acquirer's identity and VAT number assigned by the Member States of arrival of goods;

(vii) the dispatcher records the transfer of goods in a register[20];

(viii) the dispatcher includes in the recapitulative statement the future acquirer's identity and VAT number assigned by the Member States of arrival of goods.

The aforementioned obligatory conditions for the call-off stock arrangements are included in Article 17a(2). There are also additional formal conditions included in the VAT Directive, which however are not decisive for the existence of the call-off stock arrangements.

6.4.2. The accompanying conditions

Article 243(3) introduces the obligation for the dispatcher/supplier and the customer/future acquirer to keep registers. The dispatcher/supplier has to keep the register in order to show the correct application of Article 17a. The future acquirer/customer should keep a register of goods supplied to him under the call-off stock arrangements.

The dispatcher/supplier has to include in the recapitulative statement information about the future acquirer's identity and VAT number assigned

[20] In accordance with Article 54a(1) of the VAT Implementing Regulation, the register (referred to in Article 243(3) of the VAT Directive) kept by every taxable person who transfers goods under call-off stock arrangements shall contain the following information:

a) the Member State from which the goods were dispatched or transported, and the date of dispatch or transport of the goods;

b) the VAT identification number of the taxable person for whom the goods are intended, issued by the Member State to which the goods are dispatched or transported;

c) the Member State to which the goods are dispatched or transported, the VAT identification number of the warehouse keeper, the address of the warehouse at which the goods are stored upon arrival, and the date of arrival of the goods in the warehouse;

d) the value, description and quantity of the goods that arrived in the warehouse.

by the Member State of arrival of goods and about any change in the submitted information in accordance with Article 262(2).

Finally, Article 54a of the VAT Implementing Regulation introduces the obligation for the supplier and the customer to keep detailed registers.[21]

6.5. Situations covered by the simplification

6.5.1. The basic scenario

When the conditions in Article 17a(2) for the call-off stock simplification are fulfilled, the whole cycle – i.e. the transfer of goods from one Member State to another Member State by the supplier followed by the removal of goods from the stock by the customer[22] – must be finished within 12 months after the arrival of the goods in the Member State where the goods are stored.

[21] In accordance with Article 54a(2) of the VAT Implementing Regulation, the register (referred to in Article 243(3) of the VAT Directive) kept by every taxable person to whom goods are supplied under call-off stock arrangements shall contain the following information:

(a) the VAT identification number of the taxable person who transfers goods under call-off stock arrangements;

(b) the description and quantity of the goods intended for him;

(c) the date on which the goods intended for him arrive in the warehouse;

(d) the taxable amount, description and quantity of the goods supplied to him and the date on which the intra-Community acquisition of the goods referred to in point (b) of Article 17a(3) of Directive 2006/112/EC is made;

(e) the description and quantity of the goods, and the date on which the goods are removed from the warehouse by order of the taxable person referred to in point (a);

(f) the description and quantity of the goods destroyed or missing and the date of destruction, loss or theft of the goods that previously arrived in the warehouse or the date on which the goods were found to be destroyed or missing.

Where the goods are dispatched or transported under call-off stock arrangements to a warehouse keeper different from the taxable person for whom the goods are intended to be supplied, the register of that taxable person does not need to contain the information referred to in points (c), (e) and (f) of the first subparagraph.

[22] In accordance with Article 54a(1) of the VAT Implementing Regulation, the register (referred to in Article 243(3) of the VAT Directive) kept by every taxable person who transfers goods under call-off stock arrangements shall contain the following information referring to the moment when the goods are taken from the stock by the customer:

(f) the taxable amount, description and quantity of the goods supplied and the date on which the supply of the goods referred to in point (a) of Article 17a(3) of Directive 2006/112/EC is made and the VAT identification number of the buyer.

6.5.2. The return of goods

Article 17a(5) deals with the situation when the goods are returned.

It may happen that after a taxable person moved the goods under the call-off stock arrangements from one Member State to a stock located in another Member State he decides to move goods back to the Member State from which they were transported.

Normally such a transport of goods back between two Member States should be treated as a transfer with the obligation to declare an intra-Community supply and an intra-Community acquisition in the respective countries. However, under certain conditions, the return of the goods to the Member State from which they were taken originally under the call-off stock arrangements will not require the fulfilment of these obligations.

Those conditions are:

(i) the right to dispose of the returned goods was not transferred from the person that moved goods under the call-off stock arrangements;

(ii) the goods are returned no later than 12 months after they were initially dispatched;

(iii) the person moving the goods back records their return in the register.[23]

Additionally, in accordance with Article 262(2) this modification, being a change in the initially submitted information, should be introduced in the recapitulative statement.

6.5.3. The substitution of a customer

The VAT Directive envisages in Article 17a(6) the situation where, after the goods were transferred under the call-off stock arrangements simplification, the person for whom the goods were originally intended is replaced by another person. It is still possible in such a case that the simplification continues to apply provided that:

(i) the substitution takes place no later than 12 months after the goods were initially dispatched;

[23] In accordance with Article 54a(1) of the VAT Implementing Regulation, the register (referred to in Article 243(3) of the VAT Directive) kept by every taxable person who transfers goods under call-off stock arrangements shall contain the following information:

(h) the value, description and quantity of the returned goods and the date of the return of the goods referred to in Article 17a(5) of Directive 2006/112/EC.

(ii) all the other applicable conditions in Article 17a(2), listing the obligatory conditions for call-off stock simplification to apply, are met;

(iii) the dispatcher/supplier records the substitution in the register.[24]

Additionally, in accordance with Article 262(2) this modification, being a change in the initially submitted information, should be introduced in the recapitulative statement.

After the substitution, the time limit of 12 months is not interrupted, nor does a new period of 12 months start running. Goods must therefore be called off the stock by the new intended acquirer within 12 months of the arrival of the goods in the Member State where they are stored.

As the substitution does not stop the application of the simplification for the call-off stock arrangements, it is important to identify when it takes place. This is true, especially having in mind that not all supplies to replaced customers are covered by the substitution (more explanations under point 6.6.2). The substitution has to take place at the same time at which the initial intended acquirer ceases to be so, i.e. there cannot be a time period when the customer authorised to take goods from the stock is not known, and it has to take place before the goods are moved from the stock by the customer.

6.6. Situations not covered by the simplifications

There are various situations explicitly identified in the in Article 17a when the simplification for the call-off stock arrangements will stop to apply.

6.6.1. Storing of the goods longer than 12 months

The call-off stock arrangements can only apply during a limited. If within 12 months after the arrival of the goods to the stock the goods are not supplied to the intended buyer (the one identified at the time the transport of goods took place or the substitution), the simplification will cease to apply on the day following the 12-months period. This is true even if other necessary conditions have not changed. On that day a transfer within the meaning of Article 17 will be deemed to take place, the dispatcher will have

[24] In accordance with Article 54a(1) of the VAT Implementing Regulation, the register (referred to in Article 243(3) of the VAT Directive) kept by every taxable person who transfers goods under call-off stock arrangements shall contain the following information:

(e) the VAT identification number of the taxable person substituting for the initial customer under the conditions referred to in Article 17a(6) of Directive 2006/112/EC;

to declare an intra-Community supply in the Member State from which the goods were moved and at the same time will have to declare an intra-Community acquisition in the Member State where the goods are stored.

At the same time, if within the 12 month period any conditions for the application of the call-off stock arrangements simplification, set out in paragraphs 2 and 6 of Article 17a, cease to apply, the transfer within the meaning of Article 17 will be deemed to take place at the time that relevant condition is no longer fulfilled.[25] Article 17a(7) identifies three possible situations when the conditions for the application of the call-off stock arrangements simplification ceases to apply. They are referred to below under points 6.6.2, 6.6.3 and 6.6.4.

6.6.2. Supply to a third person

Where goods are supplied to a third person, i.e. a person other than the originally intended customer or the person substituting the initially intended customer, the conditions for the application of the call-off stock arrangements simplification will be deemed to cease to be fulfilled immediately before such supply. The meaning of "fulfilled immediately" should be understood that there has to be an identifiable time difference between the moment when the simplification ceased to apply and the supply to the third person that follows it. At the same time, the difference should be as small as possible, provided that the condition above is fulfilled.

6.6.3. Situation where the goods are moved to a third Member State

Where goods are dispatched or transported to a Member State other than the one to which they were initially moved under the simplification (a third Member State), the conditions for the application of the call-off stock arrangements simplification will be deemed to cease to be fulfilled immediately before such dispatch or transport starts.

[25] In accordance with Article 54a(1) of the VAT Implementing Regulation, the register (referred to in Article 243(3) of the VAT Directive) kept by every taxable person who transfers goods under call-off stock arrangements shall contain the following information:

(g) the taxable amount, description and quantity of the goods, and the date of occurrence of any of the conditions and the respective ground in accordance with Article 17a(7) of Directive 2006/112/EC.

6.6.4. Goods in the warehouse are stolen, lost or destroyed

In cases where the goods are destroyed, lost or stolen, the conditions for the application of the call-off stock arrangements simplification will deemed to cease to be fulfilled on:

(i) the date that the goods were actually removed or destroyed, or

(ii) if it is impossible to determine that date referred to in point (i) the date on which the goods were found to be destroyed or missing.

7. The need for the harmonised approach

The four "Quick fixes" aim at improving the operation of the VAT system in the internal market in the context of transactions between taxable persons (B2B supplies of goods). As the author explained at the beginning of this article, the "Quick fixes" simplifications are referred to as short-term, temporary measures placed on the road leading to the establishment of the definitive VAT system. However, the time needed to reach this new solution may be quite long.

Therefore, it is of great importance to have in place well operating improvements to the current VAT system. It is equally relevant for taxable persons and Member States.

The author hopes that efforts that are being undertaken at the EU level with view of providing as detailed guidance as possible will bring the sufficiently harmonised application in all Member States. In this context, the author would like to draw the attention to guidance on the four "Quick fixes" at the EU level in the Explanatory Notes and the VAT Committee guidelines.[26]

8. Closing remarks

The four "Quick fixes" bring in a broad scale of modifications relevant for the application of the current intra-Community supplies for the first time since 1993, when the transitional VAT system entered into force.

The strengthening of the value of the VAT Number as well as the introduction of the directly applicable presumption for the proof of transport

[26] https://ec.europa.eu/taxation_customs/business/vat/commission-guidelines_en; https://ec.europa.eu/taxation_customs/sites/taxation/files/guidelines-vat-committee-meetings_en.pdf (accessed: 12.03.2020).

should provide much clearer indications on the required conditions for the intra-Community supply to be exempt.

The simplifications for the chain transactions and the call-off stock arrangements address two particular situations where up to now Member States developed different interpretations/approaches on how the exemption for the intra-Community supply and the correlated intra-Community acquisition should apply. Those are very common arrangements used by business in every day practice. Therefore, the changes introduced were very much awaited.

They should increase the level of VAT harmonisation in the context of EU cross-border supplies, lower the level of administrative costs, introduce higher legal certainty and in this way, fulfil their purpose provided that they will be applied in a harmonised manner by Member States.

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VEG NO 042, 046, 051 (annexes 1 and 4) Sub-group on the topics for discussion – Proof of Evidence of intra-EU Supplies.

„Quick fixes" („szybkie naprawy") – uproszczenia w obecnym europejskim systemie VAT, które weszły w życie z dniem 1 stycznia 2020 r.

Streszczenie. Artykuł wyjaśnia w szczegółowy sposób, jak należy rozumieć cztery uproszczenia („Quick fixes") wprowadzone do europejskiego systemu VAT. Te zmiany zostały przyjęte przez Radę 4 grudnia 2018 r. i zawarte są w Dyrektywie Rady (UE) 2018/1910, w Rozporządzeniu wykonawczym Rady (EU) 2018/1912 i Rozporządzeniu Rady (EU) 2018/1909.
Przyjęte rozwiązania dotyczą:
1) ustanowienia numeru indentyfikacyjnego VAT nabywcy jako przesłanki materialnej wymaganej w kontekście zwolnionej dostawy wewnątrzwspólnotowej;
2) dowodów potwierdzających transport lub wysyłkę towarów w kontekście zwolnionej dostawy wewnątrzwspólnotowej;
3) uregulowań w odniesieniu do transakcji łańcuchowych;
4) procedur w zakresie magazynu typu *call-off stock*.
Artykuł zawiera również krótkie wyjaśnienie tego, w jaki sposób cztery uproszczenia zostały przyjęte.

Słowa kluczowe: dostawa wewnątrzwspólnotowa towarów, nabycie wewnątrzwspólnotowe towarów, „szybkie naprawy", numer indentyfikacyjny VAT, transakcje łańcuchowe, magazyn typu *call-off stock*, dowód potwierdzający transport lub wysyłkę towarów wewnątrz Unii Europejskiej, zwolnienie dostawy wewnątrzwspólnotowej towarów, podmiot pośredniczący, grupa zajmująca się przyszłością VAT, grupa ekspercka VAT