

Intra-EU trade Quick Fixes 2020

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Authors:

- ▶ Stijn Vastmans
- ▶ Gert Vranckx

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Introduction

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Background (1)

- ▶ Plans to introduce the “definitive regime” for VAT and EU trade
 - ▶ Counter EU VAT fraud
 - ▶ Taxing intra-Community (IC) supply in the Member State (MS) of destination
 - ▶ Introduction of concept of “certified taxable payer” (CTP): reverse charge
 - ▶ Proposals are published, but no agreement (yet)

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Background (2)

- ▶ In the meantime: **consensus on 4 “quick fixes”**:
 - ▶ IC supply – Conditions
 - ▶ IC supply - Proof of transport
 - ▶ Call-off Stock arrangement
 - ▶ Chain transactions – Allocating transport

 - ▶ This with a view:
 - ▶ To **solving some practical issues** under the current rules
 - ▶ In pursuit of **less red tape** (compliance formalities)
 - ▶ Hoping for / aiming towards EU **harmonization**

 - ▶ Link to **CTP** and quick fixes has been **abolished**
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VAT 'quick fixes' - definition

“Something that seems to be a fast and easy solution to a problem but is in fact not very good or will not last long.”

Cambridge Dictionary

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VAT ‘quick fixes’ - legislative package

- ▶ 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;
 - ▶ 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;
 - ▶ 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.
 - ▶ Draft Belgian law of 12 September 2019 with a view to changing the Belgian VAT Code to implementing EU Directive 2018/1910 (still to be approved by Parliament)
 - ▶ Draft explanatory notes VAT Expert Group, Group on the Future of VAT and European Commission of 9 September 2019
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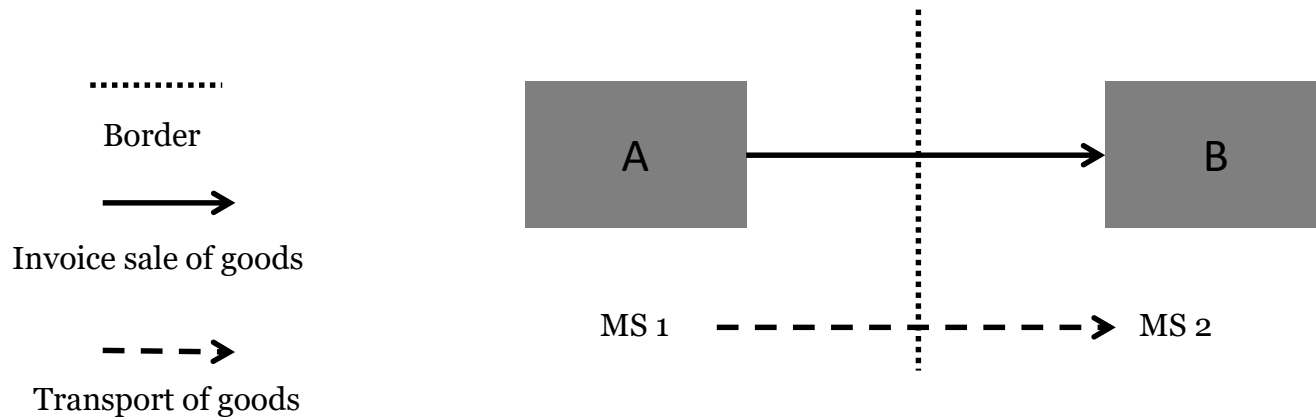
*IC supply -
Conditions*

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IC supply – conditions (1)

► IC supply



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IC supply – conditions (2)

- ▶ **Exemption for IC supplies – art. 138, 1 VAT Directive 2006/112/EC**
 - ▶ Supply of goods that are transported from one MS to another MS
 - ▶ To an acquirer who is a taxable person in a MS other than the MS of departure of the goods

AND... (newly added conditions as from 1/1/2020)

- ▶ **The acquirer has a valid VAT identification number**
 - attributed by another MS than the MS of departure of the goods
 - has communicated this VAT number to its supplier
- ▶ **The supplier has to file a correct European sales listing with respect to this supply, unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities**

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IC supply – issues/concerns (1)

- ▶ Valid VAT number
 - When must this be valid
 - Date of transport? Date of invoicing?
 - Quid VAT number under request?
 - Must be a VIES active number
 - Quid only valid local tax number (eg. Germany, Spain)?
 - Must be a VIES active number
 - Quid retroactive cancellation of VAT number in MS of arrival?
 - No issue in the past according to CJEU, case Mecsek-Gabona (C-273/11)
 - Future, when having a valid VAT number becomes a material condition?
- ▶ Communication valid VAT number
 - By email?
 - When?
 - In practice: invoice is decisive

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IC supply – issues/concerns (2)

- ▶ EU sales listing: quid justification of shortcomings?
 - How will VAT authorities apply this?
 - Always possible?
 - Change VAT number at the request of the client
 - Good faith

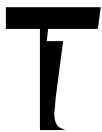
- ▶ VAT taxable IC supply if no valid VAT number customer or if incorrect EU sales listing
 - Supplier has to charge VAT – quid VAT refund?
 - IC acquisition in MS of arrival

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IC supply – recommendations

- ▶ **Checking VAT number of your customer will be crucial**
 - Implement internal procedures
 - Procedure for periodical checks

- ▶ **Complying with the European sales listing requirements is of the utmost importance**
 - Clear instructions/procedure for the VAT compliance team



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*IC supply - Proof
of transport*

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IC supply – proof of transport – new rules (1)

- ▶ **Documentary evidence of transport – new art. 45bis
Implementing regulation 282/2011**
- ▶ Supplier arranges for the transport:
 - Supplier has to gather 2 non-contradictory pieces of proof of transportation
 - Issued by 2 different third parties
 - That are independent of each other, of the supplier and of the recipient
 - 2 pieces of category A or 1 of category A and 1 of category B

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IC supply – proof of transport – new rules (2)

▶ **Documentary evidence of transport – new art. 45bis Implementing regulation 282/2011**

▶ Recipient arranges for the transport (incoterm EXW/FCA):

- Supplier has to gather 2 non-contradictory pieces of proof of transportation
- Issued by 2 different third parties
- That are independent of each other, of the supplier and of the recipient
- 2 pieces of category A or 1 of category A and 1 of category B

AND

- Supplier needs a written declaration from the recipient confirming that the latter has arranged for the transportation
 - Belgian “confirmation of receipt” (Decision nr. E.T.129.460 dd. 01.07.2016) should be ok

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IC supply – proof of transport – new rules (3)

- ▶ Category A - documents relating to the dispatch of the goods, **such as**
 - signed CMR document
 - delivery note
 - a bill of lading
 - an airfreight invoice
 - an invoice from the carrier of the goods

- ▶ Category B
 - an insurance policy with regard to the dispatch or transport of the goods, bank documents proving payment for the dispatch or transport of the goods;
 - official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination;
 - a receipt issued by a warehouse keeper in the Member State of destination, confirming the storage of the goods in that Member State.

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IC supply – proof of transport – issues/concerns

- ▶ Rebuttable presumption
 - Goods have not left the MS but are still in a warehouse in MS, were destroyed before transport, etc.
 - Documents contain incorrect information / false documents

- ▶ Quid other documents than listed?
 - Other means of proof should still be accepted
 - Belgium: flexible approach
 - What will other VAT authorities do?

- ▶ Meaning of ‘independent’?
 - Quid if seller or purchaser does transport with their own means?
 - Quid group companies doing the transport?

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IC supply – proof of transport – recommendation

- ▶ **Try to comply as much as possible with presumption**

- ▶ **Belgium: old means of proof still accepted**
 - However, risk local VAT audit?
 - Quid other EU Member States?

- ▶ **EXW/FCA supplies: obtain confirmation of receipt**

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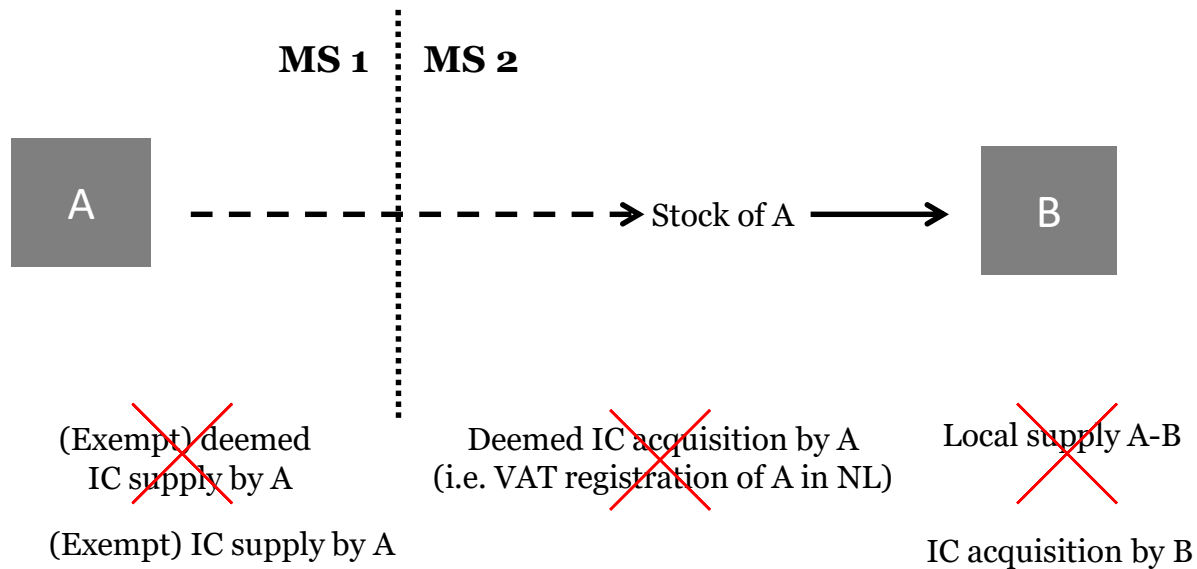
*Call-off stock
arrangements*

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Call-off stock arrangements - basics

Simplification for call-off stock arrangements (art. 17a VAT dir.)



New rules:

- No transfer of own goods from MS 1 to MS 2
- Direct intra-Community (IC) supply of goods from MS 1 to MS 2
- No VAT registration of A in MS 2

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Call-off stock arrangements – conditions (1)

- ▶ Conditions (mandatory, if fulfilled!):
 - ▶ Supplier and intended acquirer are taxable persons
 - ▶ Supplier and intended acquirer have concluded an agreement
 - If conditions of art. 17a EU VAT directive are met, a call-off stock model is presumed
 - Can be any kind of contract, such as call-off stock agreement, consignment agreement, warehousing agreement etc.
 - ▶ Supplier is not established and does not have a fixed establishment (FE) in Member State (MS) to which goods are dispatched to
 - ▶ Transport between EU MS, by or on behalf of the supplier
 - Not within one MS or outside the EU
 - ▶ Supplier records the dispatch/transport of the goods to the stock in a register
 - ▶ Supplier mentions the VAT number of the intended acquirer (not value of the goods) in the European Sales Listing at the moment of dispatch
 - Check new code for the sales listing?

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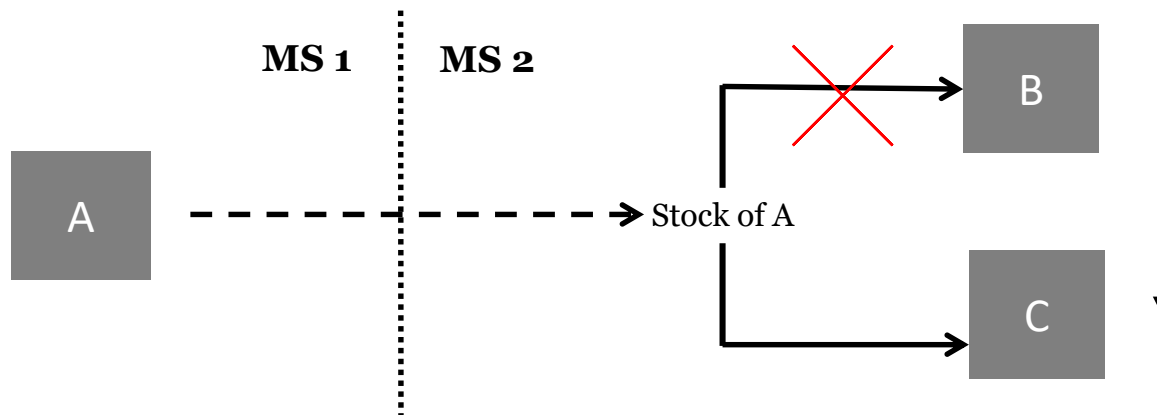
Call-off stock arrangements – conditions (2)

- ▶ Intended acquirer is registered for VAT purposes in MS to which goods are transferred
- ▶ Acquirer's identity and VAT number are known by the supplier at the time of the transport
 - Contract
- ▶ Recipient (intended acquirer or warehouse keeper) records the arrival of the goods in a register
- ▶ Goods are supplied within a period of 12 months after arrival
 - See alternatives
- ▶ At the moment of supply: (second) reporting in EU sales listing by supplier
 - VAT number of customer
 - Value of the goods
 - Specific code? Or "L" for IC supply as is now the case.

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Call-off stock arrangements – alternatives (1)

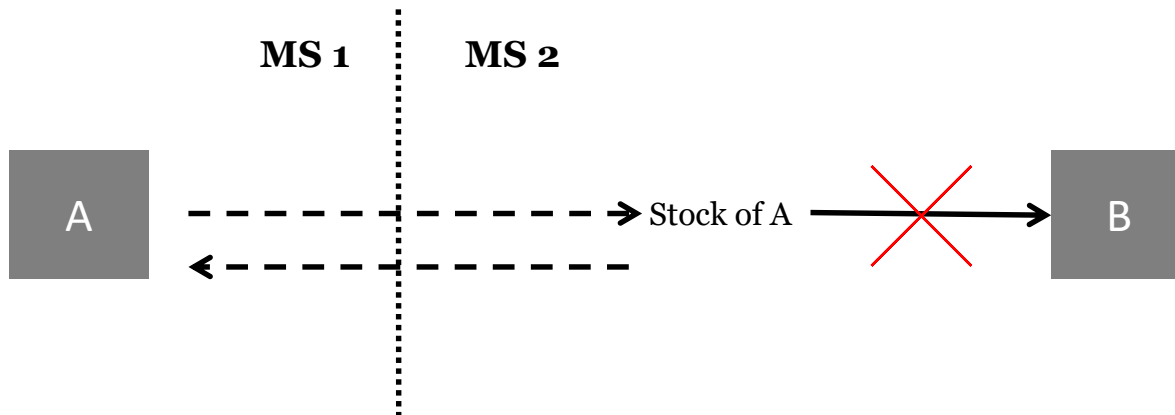
- ▶ Within the 12 months period, the supplier can:
 - ▶ (Partially) Substitute initial customer with another customer, provided that:
 - All other applicable conditions are met
 - The substitution is recorded by the supplier in the specific register
 - ▶ No transfer of own goods from MS 1 to MS 2 so no VAT registration of A in NL



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Call-off stock arrangements – alternatives (2)

- ▶ Within the 12 months period, the supplier can:
 - ▶ Return the goods to the initial MS of dispatch
 - The return must be recorded in the specific register.
 - ▶ No transfer of own goods from MS 1 to MS 2 so no VAT registration of A in NL



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Call-off stock arrangements – issues/observations (1)

▶ **Period of 12 months:**

- How to monitor this period?
 - Start date?
 - Bulk goods -> FIFO?

▶ **Destruction, loss or theft:**

- Tolerance level (cf. small/limited losses)
 - Happens on a daily basis in businesses
 - ∴ VAT registration in any way required
 - Customs and Excise legislation as guidance?
- Proof
 - To counter presumption art. 64, §1 Belgian VAT Code
 - To counter deemed self-supply art. 12 Belgian VAT code

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Call-off stock arrangements – issues/observations (2)

▶ **Administrative (too) burden(some)**

■ Transfer Register

- Supplier
- 3rd party stock keeper
- Change of customer
- Return of goods

■ European sales listing

- At least two reportings
- Record change of customer
- Record return of goods
- Currently from an IT perspective not yet possible

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Call-off stock arrangements – issues/observations (3)

▶ **Call-off stock warehouse as a FE of the supplier**

(view of the European Commission, not supported by all MS)

- Warehouse owned and run by acquirer: NO
- Warehouse owned and run by 3rd party: NO
- Warehouse owned by the supplier: YES
- Warehouse owned by 3rd party, rented to supplier: YES

▶ **Abolishment of national simplification measures**

- Some are more beneficial (eg. France and Italy)
- Administrative Circular Letter nr. 16/1994

▶ **(Too many) uncertainties (due to ambiguous wording) of art. 17a**

- See also Draft Explanatory notes: 30+ pages on guidance

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Call-off stock arrangements – recommendation

- ▶ **Check if local call-off simplifications can continue**

- ▶ **Check whether foreign VAT registrations are still required**
 - mandatory application of new call-off stock rules if conditions are met
 - Change set-up foreign stock if you do not want new call-off stock rules to apply

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*Chain
transactions
– Allocating
transport*

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Chain transactions – definition (1)

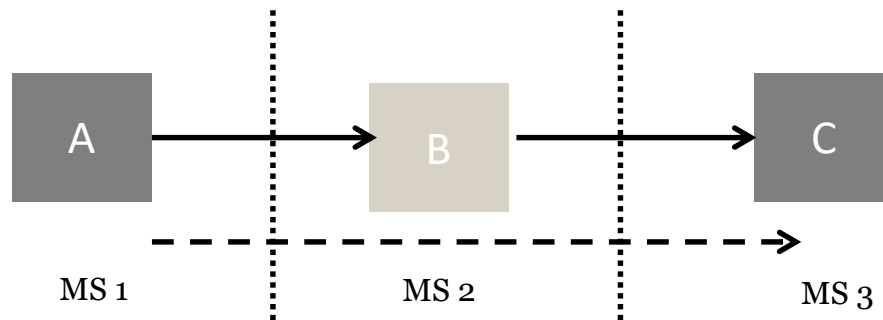
What is a chain transaction?

- ▶ Past: no definition in the law
 - CJEU in EMAG (C-245/04): two successive supplies of the same goods, effected for consideration between taxable persons acting as such, giving rise to a single intra-Community dispatch or a single intra-Community transport of those goods

- ▶ Future - new article 36a:
 - Where the same goods are supplied successively and those goods are dispatched or transported from one Member State to another Member State directly from the first supplier to the last customer in the chain

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Chain transactions – definition (2)



Issue:

- Transport can only be ascribed to one supply so only one supply can be the VAT exempt IC supply (CJEU, case EMAG)
- To which supply should the transport be allocated?

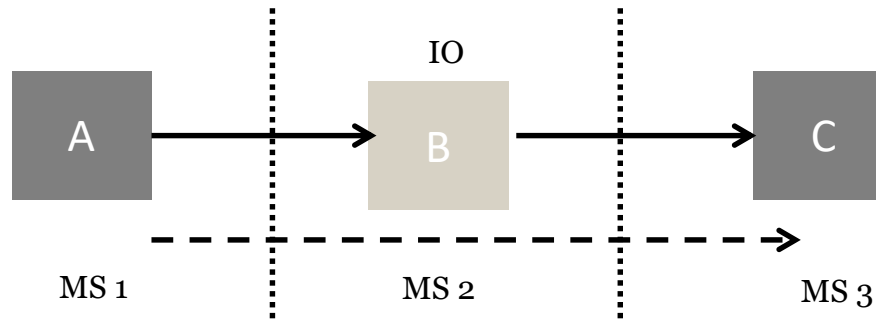
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Chain transactions – transport allocation (1)

- ▶ **Where is the transport to be allocated?**
 - ▶ **General rule (new art. 36a (1) VAT dir.):** transport will be ascribed only to the supply made to the “intermediary operator” (IO)
 - ▶ **Derogation (new art. 36a (2) VAT dir.):** in case the intermediary operator communicates to his supplier the VAT identification number issued to him by the MS from which the goods are transported or dispatched, then the transport will be ascribed to the supply of goods made **by** this intermediary operator

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Chain transactions – transport allocation (2)



B communicates VAT identification number of MS 2 to A → Supply between A and B is VAT exempt IC supply

B communicates VAT identification number of MS 1 to A → Supply between B and C is VAT exempt IC supply

In line with current Belgian practice

IMPORTANT: other conditions to VAT exempt the IC supply should also be met

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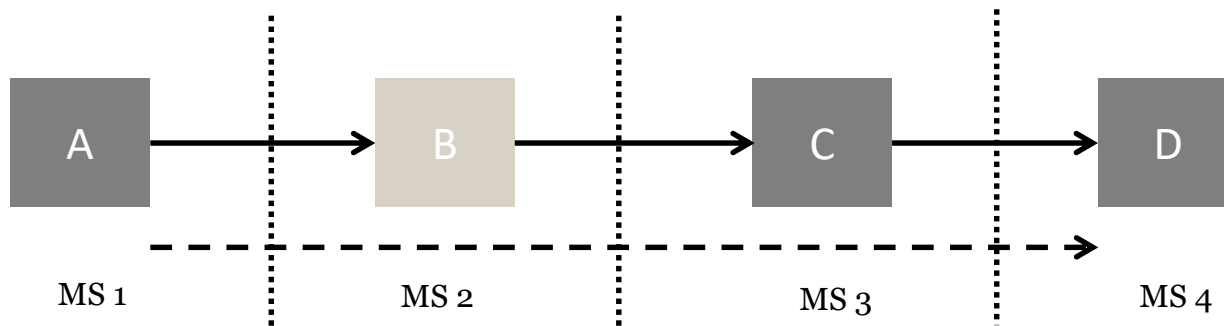
Chain transactions – issues/concerns (1)

- ▶ Definition ‘intermediary operator’:
 - *“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”*
 - Who transports the goods = who bears the risk of loss/damage/theft/etc.
 - Only paying the transport invoice is not sufficient
 - Transport done by/on behalf of first supplier or (last) customer = new rule not applicable
 - More than three parties in the supply chain (see next slide)

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Chain transactions – issues/concerns (2)

- Chain transactions with at least 4 parties involved
 - B or C can be the IO



- Simplified rules on triangular traffic can also apply (issue in the past in some MS)

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Chain transactions – issues/concerns (3)

▶ Transport: issues

- Fractioned / broken transport
- Warehouse

▶ Proof of:

- The organisation of the transport (as this has to be done by an IO)
- The transport itself to apply the VAT exemption for IC supplies
- The communication of the VAT number to the supplier
 - Only communication or also instruction to use the communicated VAT number?
 - When? Before or after the transport?
 - How? Email?
 - Invoice should be decisive
 - EU commission: possibility to adapt afterwards

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Chain transactions – recommendation

- ▶ **Supplier A, not doing the transport, applies VAT exemption for IC supplies:**
 - Collect proof of crossborder transport as much as possible
 - Try to verify that your customer is not involved in a chain transaction
 - Incoterm EXW/FCA: most secure is applying VAT.

- ▶ **If you are an IO:**
 - Proof that you are responsible for transport
 - Proof regarding communication of VAT number to supplier

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Recap

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Recap (1)

- ▶ **Procedure to check VAT number customer - periodically**
- ▶ **Strict procedures for correctly submitting EU sales listing**
- ▶ **Comply as much as possible with minimum proof transport**
 - **Supplies EXW/FCA: secure position – confirmation of receipt**
- ▶ **Call-off stock: check current simplifications and foreign VAT registrations after 1/1/2020**
- ▶ **Chain transactions:**
 - **IO should proof responsibility for transport**

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Recap (2)

▶ **Four quick fixes**

▶ **In theory,**

- **Harmonization**
- **Simplification**
- **Less formalities**

▶ **In practice,**

- **Differentiation?**
- **Complexity?**
- **More red tape?**

... time will tell...

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Questions?

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Stijn Vastmans
Partner

stijn.vastmans@tiberghien.com



Gert Vranckx
Senior Associate

gert.vranckx@tiberghien.com

Tour & Taxis
Havenlaan 86C B419 Ave du Port
BE1000 **Brussels**
t +32 2 773 40 00

Grote Steenweg 214 B4
BE2600 **Antwerp**
t +32 3 443 20 00

Esplanade O. Van De Voorde 1
BE9000 **Ghent**
t+32 9 265 95 51

Koningin Astridlaan 35
BE3500 **Hasselt**
t+32 11 57 00 13

23, Boulevard Joseph II
LU-1840 **Luxembourg**
t +352 27 47 51 11