

## **VAT and intra-EU trade: companies should prepare for the 4 ‘quick fixes’ from 1 January 2020**

VAT rules on intra-EU trade are currently subject to a major review on an EU level. This reform is deemed necessary to counter intra-EU fraud. It is the intention of the EU Commission to replace the current system whereby cross-border intra-Community supplies are VAT exempt and intra-Community acquisitions are VAT taxable in the country of destination by a principle of taxation of intra-EU supplies at the country of destination (see [link](#)).

Although the outcome of this major reform is still uncertain, the European Council on 2 October 2018 already agreed on certain corrective measures in order to counter some actual problems of VAT and intra-EU trade. These measures are bundled in four “quick fixes”, which will come into force from 1 January 2020 (see our previous [newsflash](#)).

- a simplified and uniform treatment for **call-off stock arrangements**;
- an acquirer’s valid **VAT identification number** being a substantive condition for applying the exemption for intra-Community supplies of goods;
- a common framework for the **documentary evidence** for claiming the exemption for intra-Community supplies of goods; and
- uniform criteria for determining the VAT treatment of **chain transactions**.

These four quick fixes are explained as “simplifications” for businesses. At first glance, these might look innocent and logic but the introduction of these quick fixes could, in our view, require important changes of current VAT compliance for intra-EU business. Therefore it is important to take a closer look at the practical consequences of these quick fixes.

In the below article, we assess these ‘quick fixes’ further below and identify the most important consequences they will have in practice and how they might affect your business.

### **1) Call-off stock arrangements**

When goods are transported to another Member State in order to be supplied, at a later date after their arrival, the supplier first carries out a so-called ‘transfer of own goods’. This transfer will, in principle, trigger a VAT registration in the Member State of arrival. However, certain Member States already apply simplification measures for call-off stock arrangements to avoid multiple VAT registrations by the same supplier. The problem is that not all Member States have adopted simplification measures and, out of those who have, the conditions vary across the Member States.

In this context, an EU-wide simplification measure for call-off stock arrangements is coming into force. According to this simplification measure, the supplier will be deemed to have made an exempt intra-Community supply of goods and the acquirer will be deemed to have made an intra-Community acquisition at the moment that the latter takes title to the goods. As such, the transfer of own goods by the supplier is disregarded.



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The simplification measure is subject to a number of cumulative requirements. As the list of cumulative requirements is rather large, it is highly likely that in practice one or more requirements will not be, or will cease to be, fulfilled. For instance, the goods should be supplied to the supplier within 12 months as from the arrival in the call-off stock in order for the simplification to apply. This requirement might be very difficult to monitor for goods which are stored in bulk. A flexible FIFO approach could be the solution but it is unclear whether this will be accepted in all Member States. Moreover, in the case of the goods' destruction, loss or theft, it will be deemed that the conditions cease to be fulfilled. In such a case, the supplier might face serious VAT levies and penalties in both the Member State to which the goods were dispatched (intra-Community acquisition/local supply) as well as in the Member State from which the goods were dispatched (as the deemed intra-Community supply might not benefit from the exemption, see the second 'quick fix' below).

Therefore, it might be safer for the supplier to waive the application of the simplification rule. However, since the rule is not an option but mandatory, the supplier can only do so by deliberately not fulfilling all the criteria. On the other hand, businesses that currently do not apply existing simplification measures (for instance because the conditions vary across the Member States) might be forced into these new rules.

**In summary: businesses that want to apply the simplification measure for call-off stock arrangements should make sure that all requirements are fulfilled and should closely monitor that all requirements remain fulfilled during the period prior to the transfer of title. Businesses that do not want to apply the simplification measure and would like to maintain a local VAT number should also take into consideration these new rules since they are not optional but mandatory.**

## **2) Intra-Community supplies: the recipient's valid VAT identification number**

Intra-Community supplies of goods are zero-rated under Article 138 of the European VAT Directive. To apply the zero-rate it is important for the supplier to gather sufficient proof that the substantive conditions are met, namely (i) that the goods are dispatched to another EU Member State and (ii) that the purchaser is liable to declare an intra-Community acquisition in the Member State of arrival.

The first substantive condition comes down to the proof of transportation and traditionally leads to discussions with the VAT authorities about when goods are dispatched Ex Works (see under 'documentary evidence' below). Regarding the second condition, the supplier can assume that the purchaser is indeed another taxable person liable to declare an intra-Community acquisition in the Member State of arrival when the latter provides the supplier with a valid VAT number from a Member State other than that in which the dispatch of the good begins. However, the Court of Justice of the EU has repeatedly stated that the transfer of a valid EU VAT number is a mere formal requirement and hence cannot be considered as a sufficient ground for Member States to deny the application of the zero-rate.

It is against this background that, from 1 January 2020, the EU VAT rules will be adapted. The recipient having a valid VAT number will become a substantive requirement for applying the VAT exemption. Intra-Community supplies will only be zero-rated where the purchaser is registered for VAT purposes in another EU Member State other than that in which the transportation begins and where the purchaser has indicated this VAT number to the supplier.

Moreover, and perhaps even more importantly, the new rules will require that the supply is correctly reported in the recapitulative statements for applying the VAT exemption, unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities. For the moment, it is not clear under which conditions the supplier can duly justify his shortcoming to the competent authorities. In this respect, the Commission services have listed some examples:

- The supplier has not included the exempt intra-Community supply in the recapitulative statement covering the period in which the supply took place but has included it in a recapitulative statement covering the subsequent period;
- The supplier has included the exempt intra-Community supply in the recapitulative statement covering the period in which the supply took place but made an unintentional mistake as regards the value of the supply in question;
- A re-structuring of the company acquiring the goods has resulted in a new name and a new VAT identification number but the old name and VAT identification number continue to exist during a short interim period. On the recapitulative statement, the supplier has by mistake included the transactions under that old VAT identification number.

It goes without saying that this amendment to the EU VAT Directive entails a great risk in the hands of the supplier as he or she will be liable for the payment of the VAT if at least one of these new conditions is not met. If the application of the zero-rate were to be denied by the local VAT authorities, such as because the supply was not correctly reported in the IC sales listing, it will probably be very difficult for the supplier to recover the VAT from the purchaser. Assuming that the purchaser is willing to pay the VAT amount to the supplier (such as because both parties are related), the purchaser will incur VAT from both the Member State of departure as well as VAT from the Member State of arrival (as the purchaser remains liable to declare an intra-Community acquisition) on the same transaction.

If the acquirer is not established in the Member State from where the goods are dispatched, the acquirer should be able to ask for a VAT refund under the EU refund scheme (EU Directive 2008/9/EC). It follows from the discussions held in the Group on the Future of VAT (GFV N° 85) and in the VAT Expert Group (VEG N° 80), that Member States and stakeholders are of the opinion that the exclusion set out in article 4 of Directive 2008/9/EC may not apply in this particular case since the supplier has no other choice than to charge VAT. However, it remains to be seen whether all Member States will follow this view in practice.

Similar issues can be triggered if a valid VAT number at the time of supply is retroactively cancelled in the Member State of arrival.

Finally, these amendments might also have an impact on other transactions such as the transfer of own goods to other EU Member States, supplies with installation, tolling services, distance sales and even call-off stock arrangements. For example, if one of the cumulative conditions for the simplification of call-off stock arrangements would no longer be met, then the supplier will be deemed to have made a transfer of own goods to another EU Member State. Assuming that the supplier was not registered for VAT purposes at the time the transfer was made, the deemed intra-Community supply will in principle not be zero-rated in the Member State of departure. This may even trigger a VAT cost since the EU VAT Directive does not foresee input VAT deduction for VAT taxable transfers of own goods.

**In any case, it remains clear that this amendment entails a serious risk for companies carrying out intra-Community supplies of goods on a regular basis. Businesses should anticipate these amendments by making sure that valid EU VAT numbers are at hand for all their customers and a correct reporting in the recapitulative statements is secured.**

### **3) Intra-Community supplies: documentary evidence of transport**

As set out above, sufficient proof of transport to another EU Member State is another substantive condition for zero-rating intra-Community supplies of goods. To date, Member States are free to determine from which point the gathered proof is considered sufficient. As a result, the rules on documentary evidence vary significantly across the EU Member States and hence cause legal uncertainty and administrative burden for companies involved in cross-border trade.

To harmonize the rules on documentary evidence, the Implementing Regulation 282/2011 has been amended. Under this amendment, the documentary proof that needs to be gathered will primarily depend on which party arranges for the transportation.

If the supplier arranges for the transportation, the supplier should gather at least two non-contradictory pieces of proof of transportation that should be issued by two different third parties that are independent of both the taxable person and the purchaser (e.g. a signed CMR bill and a freight invoice). In this respect, it is unclear to which extent a party can be considered as independent of both the vendor and the purchaser when that party has a financial dependency on either the vendor or the purchaser (e.g. logistic provider).

If the supplier can gather only one of these documents, he or she can provide for the necessary evidence by using this document in combination with another document (the amendment outlines a list of documents that should be accepted).

When the purchaser arranges for the transportation (e.g. Ex Works supplies), the supplier also needs a written declaration from the purchaser confirming that the latter has arranged for the transportation.

It remains to be seen whether this amendment will indeed harmonize the rules on documentary evidence in practice as it is not clear from the outset whether Member States can still impose other requirements.

From a Belgian VAT perspective, we do not expect that this amendment will lead to significant changes in practice since the requirements above are more or less similar to the current requirements. In practice, businesses should make sure that they have compliance procedures in place that guarantee that the required minimum proof for transport is always guaranteed.

However, for Ex Works supplies, the supplier will always need a written declaration from the purchaser confirming that the latter has arranged for the transportation. Since the so-called 'destination document' (which was introduced in 2016 for exactly the same reason) is in principle drafted by the supplier, it remains to be seen whether the current rules will be aligned with this 'quick fix'.

#### **4) Chain transactions**

Where 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, the intra-Community transport can only be attributed to one supply. As a result, only one supply can be the zero-rated supply. For example: in an A-B-C transaction in which B arranges for the transportation, there is often discussion regarding which supply should be the zero-rated supply (A-B or B-C?).

Therefore, the VAT Directive has been amended so that the dispatch or transportation will be ascribed only to the supply made **to** the intermediary operator unless the intermediary operator has communicated to his/her supplier its VAT identification number from the Member State in which the goods are dispatched or transported. In the latter case, transportation will be allocated to the supply made **by** the intermediary operator.

An 'intermediary operator' is defined as a supplier in the chain other than the first supplier, who dispatches or transports the goods, him-/herself or by a third party on his/her behalf. In this respect, discussions might still arise in transactions with at least 4 parties when B asks C to carry out the transportation on its behalf (C can charge the cost of transportation to B or even pay a lesser price for the purchase of the goods). In this case, both B and C might, according to the definition, be considered as an 'intermediary operator' leading to a different allocation of transportation.

Intermediary operators with multiple VAT registrations will thus be able to influence the allocation of transportation in chain transactions. When they decide to provide the supplier with their VAT registration number from the Member State in which the goods are dispatched, they should keep sufficient proof of this communication in order to verify the correct application of the measure in case of a tax audit. Moreover, they should also gather sufficient proof in order to substantiate the application of the zero-rate for intra-Community supplies. In this respect, they

should definitely take into account the new substantive conditions to apply the zero-rate on their subsequent supply in the chain as well as the new requirements on documentary evidence.

In order for this new measure to apply, it is required that the goods are transported or dispatched directly from the first supplier to the last customer in the chain. In the case of chain transactions whereby transport is broken down into several different transactions, it should first be analyzed which transport transaction falls within the scope of this new measure. In this respect, discussions might arise as regards the question as from which point a transport should be considered as one single transport (instead of transport broken down in several different transactions). Practice shows that there is no uniform interpretation on this point between the different EU Member States.

From a Belgian VAT point of view, transportation can be allocated to the first or to the second supply when transport is made by or on behalf of the intermediary. In the case where the intermediary would provide a foreign VAT number to the first supplier, the latter will, in principle, treat his/her supply as an intra-Community supply. This 'quick fix' is therefore already being applied in practice.

As these adjustments will apply from 1 January 2020, it clearly follows from the above that businesses should definitely be getting ready for the upcoming 'quick fixes'. This requires an in-depth assessment of current internal compliance procedures for VAT and intra-EU trade.

Our VAT and international trade law specialists have extensive experience in this area and are very well-placed to assist your business in preparing for these changes.