AEAJ Seminar: Intra-Community Supplies and Triangular Transactions

Change of the VAT Directive - recent developments

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Plan of the presentation

Proposals adopted by the Commission and by the Council – an overview

Changes focusing on Intra-Community supplies – detailed presentation
Commission’s Proposals adopted or soon to be formally adopted by the Council

- VAT e-Commerce package;
- Proposal amending the VAT Administrative Cooperation Regulation;
- Proposal General Reverse Charge Mechanism – temporary measure;
- e-books proposal;
- Proposals introducing cornerstones of the definitive VAT system, CTP notion and provisions harmonising and simplifying certain rules in the current VAT system.
Proposals adopted by the Commission

- Proposal for a definitive VAT system for intra-Union B2B trade – technical details;
- Proposal on the VAT rates;
- Proposal simplifying the VAT rules for SMEs.
## The October 2017 proposals

**quick fixes + definitive VAT system**

### VAT Directive
- CTP
- CORNERSTONES
- QUICK FIXES
  - Chain transactions (CTP)
  - Call off stock (CTP)
  - VAT identification number

### VAT Implementing Regulation
- **BURDEN OF PROOF FOR CROSS BORDER SUPPLIES (CTP)**

### Regulation on Administrative Cooperation
- CTP information recorded and exchanged by MSS
Outcome of the discussions in the Council

- CTP is no longer linked with Quick Fixes;
- Modifications in call-off stock and chain transactions arrangements as well as on the proof for cross-border transport within EU;
- Modifications in value of VAT number for exempt intra-Community supplies of goods;

The latest texts of the proposals publicly available on the Council webpage (28.09.2018) are presented in this presentation
Call-off stock arrangements

Modifications in call-off stock in comparison with the original proposals:

- Art. 17a of the VAT Directive (changed and extended);
- Art. 54a of the VAT Implementing Regulation (introduced);
Call-off stock arrangements

- Situation now: intra-Comm transfer by supplier/registration of supplier in MS2/domestic supply in MS2 (Art 194).
- Modified proposal (No CTPs): Identification of supplier: only in MS 1; Identification of customer: MS 2; Intra-Comm supply where goods are taken from stock/intra-Comm acquisition at that time by customer; Register + recapitulative statement.
Value of VAT identification number

The problem:
- the VAT number is only a formal requirement for the exemptions of intra-Community supplies - weakness making the fighting of the carousel fraud more difficult

The modified proposal:
- substantive value assigned to the VAT identification number of the customer for the exemption
- limitations in the exemption linked with the good faith of the supplier in respect of obligations connected with recapitulative statements
Chain Transactions – the current situation

"chain transaction" =
- consecutive supplies of the same goods
- between three or more different parties
- with only one physical movement of the goods

No rules set out in the VAT Directive clarifying which transaction is deemed to be the intra-Community supply in a chain transaction.
Chain Transactions – the current situation

The Court of Justice of the European Union (CJEU): limited guidance for determining the VAT treatment of an intra-Community cross-border chain supply.

In a chain of supplies with a single intra-Community dispatch or transport of the goods:
- the dispatch or transport can only be linked to one of the supplies within the chain (benefiting from the exemption as an intra-Community supply);
- assessment of all specific circumstances needed;
- crucial to ascertain who among the parties has the power to dispose of the goods as owner at the time of the transport.
Chain Transactions – the current situation

Triangular transactions
- the only solution available today
- when certain conditions are fulfilled

The Problem:
Serious divergences between Member States when attributing the transport to one of the supplies in the chain of transactions
Chain Transactions – the current situation
Chain Transactions simplification – the proposal

Elements of the provision:

1) Three types of participants:
   (i) the intermediary operator; (ii) the provider; (iii) the customer.

2) Targeted situations - definition of "chain transaction situation" - Article 138a (3)(a):
   (i) there are successive supplies of the same goods by taxable persons;
   (ii) there is only one intra-Community transport;
   (iii) the provider and the intermediary operator are both Certified Taxable Persons (CTPs).
Chain Transactions simplification – the proposal

Elements of the provision (cont):

3) Conditions for the simplification.
   (i) the intermediary operator informs the provider of the Member State where the goods arrive and
   (ii) the intermediary operator is identified for VAT purposes in a Member State other than the one where the dispatch or the transport of the goods begins.

Conditions fulfilled = transport is linked to the supply made to intermediary operator by the provider
Any or both conditions NOT fulfilled = transport is linked to the supply made by intermediary operator to the customer
Chain transactions – the new solution

Modifications in the solution for the chain transactions in comparison with the original proposals:

- Art. 138a of the VAT Directive (proposed by the Commission and removed in the Council);

- Art. 36a of the VAT Directive - the place of supply rules (introduced in the Council);
Chain transactions – the new solution Art. 36a of the VAT Directive

The same goods:
- supplied successively
- dispatched or transported from one Member State to another Member State
- directly from the first supplier to the last customer in the chain

The place of supply rule = the dispatch or transport is ascribed only to the supply made TO the intermediary operator.

However ...
Chain transactions – the new solution Art. 36a of the VAT Directive

... 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 place of supply rule (derogation from the first rule) = the dispatch or transport is ascribed only to the supply made **BY** the intermediary operator.
Chain transactions – the new solution Art. 36a of the VAT Directive

Who is the ‘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.

What is excluded from the scope of Art 36a?
- The situations covered by Article 14a introduced by e-commerce Directive (entering into force 1.01.2021).
- Deeming provision including in the supply chain – in between the supplier of goods and the final customer – electronic interfaces (marketplaces, portals, etc...).
Chain transactions – the new solution
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The burden of proof for cross-border supplies – Art 45a of VAT Implementing Regulation

Article 45a
- Applicable to exemptions of intra-Community supplies
- Article 138 of VAT Directive
- more harmonized solution -> less burdensome for business

It is a rebuttable presumption:
- gives conditions when the goods are to be seen as dispatched or transported from a Member State to a destination outside its territory but within the Community

Two different situations are targeted by the provision:
- The supplier is responsible for the transport or dispatch
- The acquirer is responsible for the transport or dispatch
The burden of proof for cross-border supplies – Art 45a of VAT Implementing Regulation

Two list of valid proofs in paragraph 3 of Article 45a:

(a) documents relating to the transport or dispatch of the goods such as a signed CMR document or note, a bill of lading, an airfreight invoice, an invoice from the carrier of the goods;

(b) 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.
The burden of proof for cross-border supplies
- The supplier is responsible for the transport or dispatch

The supplier (responsible for the transport or dispatch):

1) indicates that the goods have been transported or dispatched by him or by a third party on his behalf, and

2) has at least two items of non-contradictory evidence - confirming the transport or dispatch - issued by two parties independent of each other, of the vendor and the acquirer:
I) referred to in 3 point (a),
or
II) any single item referred to point (a) in combination with any single item referred to in point (b)
The burden of proof for cross-border supplies
- The acquirer is responsible for the transport or dispatch

The supplier (responsible for the transport or dispatch) has:
1) a written statement (i) sent to the supplier
   (ii) no later than 10\textsuperscript{th} day of the month following the supply
   (iii) from the person acquiring the goods
   (iv) saying:
   - that goods were transported by him by a third party on his behalf and
   - what is the Member State of destination of the goods;
   The full list of what should be included in a written statement – Art 45a (1)(b)(i)

2) at least two items of non-contradictory evidence collected in the same way as in the case when supplier is responsible for transport.
Thank you for your attention