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VAT treatment of chain supplies (2) (2/16/18)

To pick up where we left off about the VAT treatment of chain supplies last week, this article explores some more triangular supplies and their implications.

False triangle 1 and its implications

B, a Latvian company, uses its Latvian VAT identification number to buy goods from company A in France and agrees that A will carry the goods to B's designated address in Latvia. B then undertakes to deliver the goods to C, another Latvian company, and asks A to ship directly to C.

Although the goods are transported to C directly from another member state, this situation fails to meet the conditions for triangulation simplification, and we cannot presume that two intra-Community supplies/acquisitions of goods have taken place.

The CJEU has stated in a number of rulings (see EMAG Handel Eder OHG C 245/04 and Euro Tyre Holding C-430/09) that it is not possible to make two acquisitions of goods with a single transportation and that two supplies should be consecutive in time. This means that intermediary B cannot pass title to C until after taking it from A. Given these conditions, we need to establish the timing and place of title transfer in each situation and determine which supply involves transportation.

It is clear in this example that B could not pass title to C until after taking it from A, and so the supplies were consecutive: A→B, then B→C. Since a single transportation covers two consecutive supplies, we need to find out which supply involved the transportation. Company A was responsible for transportation and passed title after releasing the goods to the customer at his designated address in Latvia. Accordingly, there is no doubt that the transportation is linked to the first supply and that B→C is considered a domestic supply without transportation.

As a result, A→B is an intra-Community supply that may be zero-rated for VAT (B makes an intra-Community acquisition of goods in Latvia), while B→C attracts 21% VAT (the place of supply is Latvia because that is where the goods are located at the time of supply).

False triangle 2 and its implications

B, a Latvian company, uses its Latvian VAT ID number to buy goods from company A in France and agrees to carry the goods from France to Latvia. Title passes to B in France. B sells on to C, another Latvian-registered company, and makes C responsible for transportation from France to Latvia. Being aware that the triangulation simplification rules do not apply because B and C are both registered in the same member state, B invoices C with 21% Latvian VAT.

The following conclusions can be drawn from the criteria described earlier:

1. Company A makes a supply to B and passes title in France, but no transportation takes place during A→B, which is essentially a domestic supply in France attracting French VAT.
2. B→C is an intra-Community supply because the goods are transported from one member state to

another, and the place of supply is France because that is where the goods are located when transportation to the final customer begins.

3. As a result, neither supply received correct VAT treatment.
4. While it might appear that the companies acted prudently in charging 21% VAT on B→C, the CJEU's recent ruling Kreuzmayr C-628/16 implies that C would not be permitted to deduct such input VAT wrongly appearing on B's invoice.