

Expected VAT changes in EU (2) (1/35/18)

Last week we wrote about the European Commission's proposals and member states' efforts to minimise VAT fraud in domestic transactions. This article explores the Commission's proposals for minimising VAT fraud in cross-border transactions.

Minimising VAT fraud in cross-border transactions

Back in 1967 a commitment was made to create a VAT system that would operate across the EU as if it were a single country. In the absence of political and technical conditions for such a VAT system, a transition regime was adopted that splits a cross-border supply of goods between businesses into two transactions:

1. a supply exempt from VAT in the member state of dispatch; and
2. an intra-Community acquisition taxable in the member state of arrival.

Although these rules were considered temporary because the possibility of acquiring goods without paying VAT increases the scope for fraud, we have operated under this transition regime for more than 20 years.

The Commission has repeatedly voiced the opinion that the principle of charging VAT on goods or services in the member state of dispatch should be replaced with charging VAT in the member state of arrival. Transactions would attract VAT at the rate applicable in the member state of arrival, to be collected by the supplier after making an online check of that rate.

As the work on the final VAT system goes on, the Commission has prepared proposals for improving the current VAT system.

A certified taxable person

No distinction is currently made between reliable and less reliable taxable persons. The concept of a certified taxable person (CTP) to be adopted by amending the VAT directive, will confirm that a company is generally considered a reliable taxable person. This concept has significant implications because some of the VAT simplification rules will apply only in a transaction with a CTP. For example, a cross-border transaction involving VAT applied only once in the member state of arrival, will attract reverse-charge VAT in the first stage of the scheme if the customer is a CTP.

The criteria against which member states can certify taxable persons are to be defined in the directive. Practical issues of CTP status will be handled by the regulation to ensure a sufficiently harmonised and standardised procedure for granting and removing CTP status across the EU. Also, the regulation on administrative cooperation is to be amended so that CTP status can be integrated into the VAT information exchange system (VIES), allowing the tax authorities and traders to make online checks of a particular trader's status.

The criteria for granting CTP status will be similar to those applied to an authorised economic operator (AEO) under the Union customs code. CTP status granted in one member state will be recognised by the tax authorities in all member states.

Supplies of call-off stock

In a call-off stock supply, goods are sent to the consignee without transferring ownership. Ownership does not pass until the consignee removes goods from the warehouse (including domestic supplies). Transporting goods to another member state for building call-off stock in the consignee's warehouse is an intra-Community supply of goods, while receipt of such goods is an intra-Community acquisition of goods. When the goods are removed from the consignee's warehouse and supplied to a customer, another supply of goods takes place. Some member states, including Latvia, have adopted simplification rules that help the consignor avoid having to register in the member state where the warehouse is located, requiring the warehouse keeper to report intra-Community acquisitions and onward supplies.

The Commission proposes an approach under which the rules for call-off stock supplies would mean a single intra-Community supply of goods in the consignor's member state and an intra-Community acquisition in the member state where the warehouse is located if the transaction is between two CTPs. This would help the consignor avoid having to identify himself in each member state where he has placed goods in the consignee's warehouse. However, to help the tax authorities monitor such goods properly, both the consignor and the consignee will be required to maintain a register of goods covered by these rules. Also, the consignor's summary statement should identify customers to which such goods will be later sent under the rules for call-off stock supplies.

Tighter conditions for exempting intra-Community supplies

The supplier's current obligation to file a summary statement of supplies is a technical condition rather than a substantive condition for claiming an exemption. In other words, a supplier that has not filed such a statement or has completed it incorrectly may be subject to penalties but cannot be denied the exemption he has claimed. As a result of the proposed amendments to the directive, not only the customer's VAT number (the seller should check the buyer's status in VIES) but also a correctly completed summary statement of supplies will become a substantive condition, and failure to comply with it will give tax authorities the power to deny an exemption.

Chain transactions

Chain transactions are consecutive supplies of the same goods involving a single intra-Community transportation between two member states. To adopt a clear and uniform approach, the rules will determine which of those supplies is covered by the transportation. These rules will apply only if the intermediary-supplier and the taxable person having supplied the goods are both CTPs. However, the rules will not be applicable if the transportation is done on behalf of the first supplier in the chain (in that case the transportation is attributable to the first supply only) or on behalf of the last taxable person in the chain (in that case the transportation is attributable only to the supply to that taxable person).

Member states are to adopt and publish all of the Commission's proposals by 31 December 2018 so they can begin to apply from 1 January 2019.