



Quick Fix for documentary evidence – Introduction of a consistent presumption rule applicable throughout the EU

1 Background

In order to attain zero-rating for an intra-Community supply, a taxable person must, in principle, prove that the relevant goods actually entered another Member State. Currently, neither the VAT Directive nor the Council Implementing Regulation (CIR) contain any regulation dealing with so-called “documentary evidence”. National legislators are free to determine the requirements for documentary evidence or to refrain from doing so. The European Court of Justice has repeatedly confirmed this legal status in its decisions. The result is that the inconsistent legal situation, particularly in the case of internationally operating companies, has led to high costs and significant legal uncertainty.

2 New regulations in the Council Implementing Regulation

As regards the Quick Fixes, Art. 45a will be added to the CIR with effect from 01.01.2020 (Implementing Regulation (EU) 2018/1912). This provision contains regulations concerning documentary evidence, by means of which the taxable person must prove that the goods actually entered another Member State. Art. 45a of the CIR is structured as follows:

- **Paragraph 1** contains a presumption rule in favour of the taxable person requesting zero-rating for intra-Community supplies. With regard to the requirements for the presumption regulation, a differentiation is made depending on whether it is the supplier or the purchaser who initiates the transport.
- **Paragraph 2** states that the relevant tax authority may disprove the presumption resulting from paragraph 1.
- **Paragraph 3** lists the evidence, which the taxable person must produce in accordance with paragraph 1, in order to benefit from the presumption rule in para 1. Paragraph 3 also differentiates between which of the operators involved (supplier or purchaser) initiates the transport.



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In general, the presumption rule pursuant to paragraph 1 requires that the taxable person has possession of at least two of the documents referred to in paragraph 3 and that these documents do not contradict each other, in terms of content.

If the taxable person initiates the transport to the purchaser, he can provide non-contradictory proof of the transport of the goods by means of e.g. a signed CMR bill of lading and a freight invoice. These two documents are required to be issued by two different third parties who are independent of both the taxable person and the purchaser. Alternatively, the taxable person can provide the necessary evidence using one of the aforementioned documents together with one of the following:

- An insurance policy for the transport of goods
- bank documents showing payment of transport costs
- confirmation of receipt of goods in the Member State of destination by a public authority (e.g. notary)
- confirmation, provided by a warehouse keeper in the Member State of destination, that the delivered items are in storage.

If, on the other hand, the purchaser arranges for the transport of goods (collection case), the taxable person also requires a written declaration from the purchaser that he has arranged for transport. The declaration must contain certain information, e.g. date and place of arrival of the goods, and it must also identify the person receiving the goods on behalf of the purchaser. It is thus very similar to the entry certificate currently required in Germany.

The provision does not contain a more precise statement as to how the tax authority can rebut the presumption of para 1.

3 Assessment

In principle, the creation of a uniform and Union-wide regulation on the requirements for documentary evidence should be viewed in a positive light. The current legal situation is, especially for companies exporting intra-Community supplies from several Member States, unsatisfactory and demanding. It is necessary to establish different verification processes for the individual countries on a regular basis and to keep them up to date in accordance with national jurisprudence and the changing view of the tax authorities. If this can be achieved, the current difficulties could be permanently overcome.

However, to date it remains unclear whether the new regulation is exclusive, in the sense of leaving no room for consideration of additional national regulations and requirements. It follows from the relevant legal material that the new regulation is based on the idea of unification. However, it does not follow from the wording of the provision itself that it is an exclusive regulation. So far, the German legislator has not positioned itself as to whether the regulations on documentary evidence in the German VAT Implementing Regulation will continue to apply after 1 January 2020 and what relationship they will have in terms of the new regulation. A short-term adjustment of the business process may, once again, be necessary.

Irrespective of this question, it can be assumed that the requirements for collecting and retaining documentary evidence will continue to increase in the future. Thus, the administrative burden on companies wanting to ensure zero-rating for intra-Community supplies will continue to be heavy. It is particularly regrettable that the provision does not contain any concrete requirements on how tax authorities can rebut the presumption rule. This represents an enormous potential risk for companies and a missed opportunity for the legislator to restore proportionality in this field.