



Quick Fix re chain transactions within the EU – Implementation of a definition and regulations concerning the allocation of the transport

05 | 2019

1 Background

Chain transactions have been in existence for many years and, correspondingly, uncertainty about their VAT treatment has existed for the same length of time. One of the reasons for this is that the EU VAT Directive does not contain any provisions on this subject. Some countries, such as Germany, have introduced legal regulations and extensive administrative guidelines, while other countries have very few regulations/guidelines or none at all. Against this background, Art. 36a will be included in the EU VAT Directive, which will, at least, provide a definition of an intra-Community chain transaction and how the transport is to be allocated.

2 Definition of chain transaction

A chain transaction is deemed to exist where the same goods are supplied successively and are directly transported from the first supplier to the last purchaser in the chain. However, Art. 36a only applies where the transport takes place from one EU Member State to another i.e. an intra-Community chain transaction exists. There are still no regulations regarding chain transactions from third countries to the EU or vice versa. Other aspects of chain transactions, with regard to which different approaches are taken by the various Member States, e.g. whether a fractionated transport breaks the chain transaction, continue to remain unregulated. Moreover, the new rules do not apply to distance sales, within the meaning of Art. 14a of the EU VAT Directive, where a transaction, involving a platform, will be deemed to be a chain transaction.

3 Allocation of transport – initiated by first supplier or last recipient

Firstly, it should be noted, that allocation rules only exist for cases in which the intermediary ordered the transport. There is still no clear regulation as regards those cases where the first supplier or the last recipient ordered the transport. For the



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EU Commission it seems to be clear that, in these cases, the allocation must be made as follows – in the same way as defined in sec. 3.14 of the German VAT Circular:

- The first supplier orders the transport: The supply to the first intermediary is deemed to be the intra-Community supply;
- The last recipient orders the transport: The supply to the last recipient is deemed to be the intra-Community supply.

However, a degree of uncertainty continues to exist here. In particular, due to the Federal Fiscal Court's decision XI R 30/13, where it ascribed the transport to the first supply, despite the fact that the last purchaser ordered the transport. In accordance with ECJ case law, the country in which the right to dispose of the goods was transferred to the last recipient would thus continue to be decisive in such cases. Determining where this happens is, however, extremely difficult.

4 Allocation of transport – initiated by intermediary

In cases where the intermediary orders the transport, the transport should generally be ascribed to the supply made to the intermediary and thus it constitutes the intra-Community supply. This will be the case unless the special regulation provided for in para. 2 of Art. 36a of the EU VAT Directive applies.

The special regulation states that the transport and thus the intra-Community supply can be ascribed to the supply of the intermediary to his customer. However, two conditions must be met for this to happen.

1. The intermediary must order the transport.
2. The intermediary must communicate to his supplier, the VAT identification number issued to him by the Member State of departure.

The intermediary ordering the transport may therefore choose as to how to allocate the intra-Community supply. He does this by either communicating or choosing not to communicate the VAT identification number, issued to him by the Member State of departure, to his supplier. It will be interesting to see whether the tax authorities will require evidence in this respect. If the intermediary wants to deduct input VAT from purchase invoices showing local VAT of the country of departure, he will possibly have to prove that he communicated the VAT identification number, issued to him by the country of departure, to his supplier. A further question is whether the supplier, who wants to invoice as a zero-rated intra-Community supply, will have to prove that his customer did not communicate the relevant VAT identification number to him. This would, of course, be difficult. Moreover, this would be precisely the general allocation principle legally defined, which should be free of the burden of proof.

5 Allocation of transport for third country transactions

As mentioned above, the new regulation does not apply to chain transactions from third countries to the EU and vice versa. Thus, the issue of uncertainty of treatment will presumably remain here. In any case, the EU Member States have different approaches. Many assign the zero-rated export according to who initiated the transport. Some, however, orient themselves on who declared the export. Furthermore, the chain transaction can be regarded as broken by the import. The fact that not all Member States apply the zero-rate to supplies carried out prior to importation, pursuant to Article 143 of the EU VAT Directive (§ 4 No. 4b German VAT Act), makes the situation even more difficult.