



## Quick Fixes: EU VAT Committee comments on questions in doubt

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### 1 EU VAT Committee's Working Paper

In the EU VAT Committee's Working Paper No. 968 of 15 May 2019 (taxud.c.1(2019)3533969), the EU Commission comments on questions in doubt regarding the quick fixes that will come into force as from 2020. Discussions concerning these issues took place on 1 April 2019 with stakeholders in the VAT Expert Group (VEG) and on 5 April 2019 with representatives of the administrations of the Member States in the Group on the Future of VAT (GFV). As a result, the EU Commission considered it necessary to publish guidelines to ensure uniform application within the EU and has now published its initial thoughts on the subject and asked for further comments.

### 2 Consignment stocks

The simplification rule is not applicable if the stored items disappear as a result of **loss, destruction or theft**. In practice, this happens quite frequently. Consequently the simplification rule, in this situation, would partly lose its effect. The EU Commission therefore proposes determining a tolerance level according to which the simplification remains applicable despite "small" losses of stock items. It refers to the corresponding EU regulations for customs and excise, according to which losses are irrelevant if they are caused by the nature of the goods themselves (e.g. spoilage and evaporation) and result from unforeseeable events or force majeure. The European Commission has asked the Member States to share their experience in this area.

Furthermore, the simplification rule does not apply if the **supplier is established in the country of destination**. The results of the EU Commission's examination give rise to the following descriptions of the case constellations:



Ronny Langer  
Certified Tax Consultant,  
Dipl.-FW (FH)

+49 (0) 89 217 50 12-50  
ronny.langer@kmlz.de

- warehouse owned and operated by customer: supplier not established
- warehouse owned and operated by third party: supplier not established
- warehouse owned by supplier and operated by supplier / third party or leased to third party: supplier domiciled
- warehouse rented from third party and sublet to operator or operated by supplier / third party: supplier domiciled

The EU Commission also makes two clarifications: Firstly, being registered for VAT does not equate to being established. Secondly, a fixed establishment of the supplier in the country of destination does not allow for the application of the simplification even if it is not involved in the supplies via the warehouse.

### 3 Chain transactions

The EU Commission offers an example involving four parties in order to demonstrate that the **simplification rule for triangular transactions** should also be applicable if more than three parties are involved. The only prerequisite is that an intermediary trader makes an intra-Community acquisition and that all conditions of Art. 141 of the VAT Directive are fulfilled. The exact position of the three parties in the chain should be irrelevant.

### 4 Zero-rating for intra-Community supplies

**Input VAT deduction:** The EU Commission confirms that the VAT invoiced for an intra-Community supply due to a missing VAT ID number can be refunded via the special VAT refund procedure for non-established persons. Art. 4 of Directive 2008/9/EU does not apply in these cases, as only the refund of input VAT is excluded for supplies that would be zero-rated under Art. 138 VAT Directive.

**EC Sales List (ECSL):** The European Commission comments on Article 138(1a) of the VAT Directive, according to which the zero rate does not apply if the ECSL has not been submitted or if it contains false information about the supply. The question as to when the zero-rating would be refused was left open, as a certain period of time lies between delivery and the filing of the ECSL and its verification. According to the EU Commission, intra-Community supplies should be zero-rated until the tax authorities have established that the ECSL reporting obligation has been breached.

**Registration obligation and reverse charge scheme:** The EU Commission explains constellations in which the intra-Community acquisition in the country of destination is zero-rated or is not taxed, e.g. due to a subsequent supply under the reverse charge scheme pursuant to Art. 194 VAT Directive (supplier not resident in the country of destination) or due to the simplification for triangular transactions with the reverse charge scheme pursuant to Art. 197 VAT Directive. It is clarified in which cases the purchaser is obliged / entitled to register in the country of destination.

**Proof of transport of independent parties:** The EU Commission specifies what it understands by the fact that evidence within the meaning of Art. 45a of the VAT Implementing Regulation is issued by a third party who is independent of the supplier and the customer. Accordingly, a third party cannot be independent if financial, organisational and economic links exist in accordance with Art. 11 VAT Directive and, as a result, a VAT group may exist. The same shall apply to related parties according to Art. 80 VAT Directive. These are also not to be regarded as independent.

### 5 Outlook

The questions in doubt raised in the Working Paper are only a fraction of those that actually exist. At the last VEG meeting, a number of other important issues were discussed, including VAT liability for the transfer of own goods and the lack of input VAT deduction. Nevertheless, it is positive to note that the EU Commission is striving to achieve a uniform view within the EU. It is therefore likely that explanatory notes from the EU Commission will be forthcoming in the course of the year, in which the views of the member states are presented.