



## Implementation of the Quick Fixes 2020 on the home straight – part 2

### 1 Continuation of part 1...

In Newsletter 39/2019 we reported on the developments in the implementation of the Quick Fixes 2020, in particular on the discussions in the VAT Expert Group and on the Explanatory Notes of the EU Directorate General for Taxation and Customs (TAXUD). After discussing the simplification rule for consignment stocks and the transport documents for intra-Community supplies, we now provide some further information on chain transactions and the use of the VAT-ID for intra-Community supplies.

In this context, the proposals of the Federal Council in its statement on the draft law of 20.09.2019 are also interesting. The statement proposes that it be determined whether:

- the issuance of a VAT-ID can be refused if there are serious indications of fraudulent conduct
- a VAT exemption can be introduced for the short-term rental of accommodation to students
- a legal definition must be inserted for "using" a VAT-ID
- the technical prerequisites for the obligation to report consignment sales in the ECSL will actually be in place as of 01.01.2020 (according to reports, the adjustment will not be possible before October 2021).

### 2 Chain transactions

In the draft Explanatory Notes, TAXUD states that the party to be considered as the one organizing the transport is the party who has concluded a contract with the third party and bears the risk of loss of or damage to the transported goods. The person responsible for the transport may also be another party in the chain transaction.



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

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

The TAXUD also provides information on fractionated transports. A direct transport can exist despite the use of several carriers if the order is placed by the same contractor. If several parties involved commission different transport stages, there will be no direct transport. In the opinion of TAXUD, interim storage should interrupt the transport if no sale to another contractor has yet taken place in the case of interim storage. If, on the other hand, a resale has already taken place prior to storage, the interim storage should be ignored. According to the draft Explanatory Notes, the taxable person who wishes to invoice the supply without VAT must prove who organised the transport.

With regard to the communication of the VAT-ID for the alternative allocation of the transport, TAXUD has a rather loose view, which is in contradiction of the German draft law. In the VAT Expert Group Meeting held in April this year it quickly became clear that TAXUD wanted to offer businesses the greatest possible flexibility. Accordingly, the draft Explanatory Notes provide that the communication of the VAT-ID should also be possible at a later date and not necessarily have to have taken place by the beginning of the transport. Invoices and VAT returns would then have to be corrected, if necessary. In addition, the communication should be possible in any form and also be possible for several supplies. It must only be possible to prove that a communication has occurred. If the VAT-ID of the intermediary operator in the country of departure is stated on the invoice and if VAT of the country of departure was invoiced, it should, however, be possible to assume, without proof, that the communication has taken place.

The draft Explanatory Notes also contain an interesting statement on triangular transactions. The simplification rule for triangular transactions should therefore be applicable in chain transactions with more than three parties to each position in the chain transaction, depending on the allocation of the transport.

### 3 VAT-ID as requirement for VAT exemption

While the EU VAT Directive states that the VAT-ID must be "indicated", the German draft law requires that the VAT-ID be "used" (as in the case of chain transactions). This already shows that the German approach is probably more restrictive than what the EU is demanding. At the last VAT Expert Group Meeting, a controversial discussion as to what is to be understood by "indication" took place. The fact that TAXUD views the requirement in a much looser light also results from the fact that, according to the draft Explanatory Notes, an indication is already assumed if the foreign VAT-ID of the acquirer is shown on the invoice. The Federal Council has also expressed reservations in this regard and demanded that a legal definition of "use" be included in the VAT Act.

According to TAXUD, in the event that the acquirer is not yet able to provide a VAT-ID because the tax authority is still processing his application for a VAT-ID, invoicing without VAT should not (initially) be possible. As soon as the acquirer informs the supplier of the VAT-ID valid at the beginning of the transport (i.e. issued retroactively), the supplier should, however, be able to correct his invoice and apply the VAT exemption.

In the following cases, according to the draft Explanatory Notes, a false ECSL should be harmless in terms of the VAT exemption:

- The supply was reported in a later ECSL.
- An incorrect value for the supply was accidentally reported.
- The acquirer received a new name and a new VAT-ID due to a restructuring and the supply was accidentally reported using the (still valid) previous VAT-ID.