



Implementation of the Quick Fixes 2020 on the home straight – part 1

1 Status of developments

The turn of the year 2019 / 2020 promises to be an exciting time from a VAT perspective. There are many changes on the agenda, above all, of course, the Quick Fixes initiated by the EU. On 31.07.2019, the German Government published the draft of the Annual Tax Act 2019, which is intended to transpose the EU requirements into national law. On 20.09.2019, the Federal Council took a position on this and suggested changes. Work is also being done at EU level for the purposes of providing the member states and companies with assistance in implementing these changes. The VAT Committee, composed of representatives of the Member States and the EU Commission, intends to offer further assistance by issuing guidelines. Additionally, the EU's Directorate-General for Taxation and Customs (TAXUD) is already working on Explanatory Notes with a view to clarifying details. The draft, published on 26.09.2019, is currently comprised of 70 pages and contains a number of important developments, which are worth considering now:

2 Call-off stock simplification

The Explanatory Notes contain more than ten pages detailing what consequences will arise in which situations and what has to be reported by the parties involved. In particular, the reporting required in the EC Sales List (ECSL) now becomes clear. It is also made clear, once again, that no values are to be entered in the ECSL for the transfer of goods to the warehouse. Rather, only the VAT-ID numbers of the intended acquirers are to be recorded and, if necessary, even two numbers when replacing the acquirer.



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Another important clarification is that businesses are not obliged to apply the simplification rules, but can choose whether they do so. Finally, the new rules present some practical hurdles and there are quite a few businesses who want to opt out. At the last VAT Expert Group Meeting, the representatives of TAXUD made it clear that non-compliance with the requirements and conclusive behaviour should be sufficient for opting out.

It has not yet been conclusively clarified whether the simplification rule is applicable to bulk ware. The 12-month period is difficult to comprehend for these businesses. In the draft Explanatory Notes, reference is made to the fact that the FIFO method could be suitable for determining the storage period. However, at the last VAT Expert Group Meeting, it was controversially discussed whether the application of an accounting rule could be sufficient, due to it being generally impossible to determine how long the various parts of bulk ware are stored.

Regarding the transition phase at the turn of the year, the Explanatory Notes only contain the indication that goods transported to the warehouse prior to 01.01.2020 are still subject to the old regulations. The new simplification rule can only be applied if transport to the warehouse began after 31.12.2019. For this reason, goods already in the warehouse would have to be separated accordingly by 31.12.2019 and invoiced differently. At the last VAT Expert Group Meeting, the representatives of TAXUD also took the view that the old simplification rules, which pre-existed in some EU Member States, should apply to goods brought into the warehouse before the turn of the year but removed after that date beyond the cut-off date.

It will be interesting to see how the technical difficulties, that have revealed themselves in the course of dealing with the necessary adjustments to the recapitulative statements, are ultimately dealt with. In its recent statement, the Federal Council pointed out that it was questionable how the legal requirement of the declaration in the EC SL would be fulfilled if the necessary adjustments in fact cannot be completed before October 2021.

3 Proof of transport for intra-Community supplies

The Explanatory Notes contain a very important statement for business, which hopefully will be taken into account by Member States in their implementation process. According to the TAXUD, the new rules in Art. 45a of the Implementing Regulation represent the maximum level of transport documents that Member States may require. This leaves Member States free to retain or create national rules, which impose less stringent requirements on proof.

In addition, TAXUD makes it clear that the VAT exemption is not automatically refused if the requirements of Art. 45a of the Implementing Regulation are not fulfilled. The taxable person can then still provide evidence in another way. He only has to hope that the tax authorities consider the proof to be sufficient.

To be continued...

Details on the chain transactions and the VAT-ID as a requirement for exempting intra-Community supplies will follow in the next newsletter.