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TAX FRESH



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Dear business partners,

In this issue of the Bulletin, we would like to introduce you to Quick Fixes — the new VAT rules concerning certain cross-border transactions of goods that will take effect beginning 1 January 2020.

With best regards,



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VAT QUICK FIXES



The current VAT system concerning the trade of goods can be labelled as temporary, at least until mid-2022 when the definitive VAT system is expected to enter into force.

In order to harmonise the rules concerning select cross-border transactions of goods, the following four Quick Fixes for the current VAT system will enter into force beginning 1 January 2020.

1. CONSIGNMENT (CALL-OFF) STOCK

Consignment stock is a business model in which the seller transfers their goods from one Member State to another for the purpose of later local delivery to another taxable person in the second Member State. Within this context, some EU Member States have introduced certain simplifying rules that aim to avoid the mandatory VAT registration of foreign suppliers in the country concerned (e.g. Article 16 Paragraph 4 of the Czech VAT Act).

Under the new Quick Fixes, the transfer of goods between EU Member States to a consignment warehouse will not constitute a taxable transaction for purposes of VAT, but the supplier of goods will, nevertheless, continue to be obliged to declare the transfer of goods in their EC Sales List / VAT Recapitulative Statement as part of the stock procedure between Member States.

Only when the right to dispose of the goods as the owner is transferred to the buyer within the consignment warehouse can the seller declare an exemption for the supply of goods to another Member State in their VAT return, and the buyer will declare the acquisition of goods from another Member State. The seller shall not be obliged to register for VAT in the buyer's country, which already applies in the Czech Republic when certain conditions are met.

Furthermore, both the seller and the buyer will be obliged to keep a register of goods independent of each other. The procedural requirements for this relatively detailed register are set out in Council Implementing Regulation (EU) 2018/1912 (e.g. the description and quantity of the goods in connection with their transfer).

One of the additional conditions for applying this procedure will be the seller's obligation to deliver the goods to the buyer within 12 months after receipt of the goods in the second EU Member State. In the event that the goods become destroyed, lost, or stolen, the conditions for utilising this simplified procedure will not be met.

2. INTRA-EU CHAIN TRANSACTIONS – TRANSPORT ALLOCATIONS

This fix focuses on the cross-border, intra-EU supply of goods between multiple taxable persons. In practice, disputes arose concerning transport allocations, since only the supply of goods with transport can be exempt from VAT and considered an intra-Community supply.

The following text assumes that the supply of goods and transport will take place in a chain of 3 companies between A → B → C.

In the event that the transport is provided by the first person (i.e. A), the transport is always allocated between companies A and B.

In situations where transport was provided by the second person in the chain (B), it was difficult to allocate the transport correctly. From 2020, the transport of goods will generally be credited to the first supply between the first seller and the first buyer (i.e. between A and B).

Only when the first buyer (B) provides the first seller (A) with their VAT registration number issued by the state of person A (the 1st person's state) will the transport be allocated to the supply of goods between persons B and C. In other words, the supply of goods between person A and person B shall constitute a local taxable event.

3. CONDITIONS FOR THE EXEMPTION OF SUPPLIES IN THE EU

An additional fix is associated with additional conditions for obtaining an exemption from VAT for the supply of goods to another Member State.

It is now necessary for the customer to provide a VAT registration number to the supplier as a condition for obtaining an exemption from VAT (this condition has so far resulted directly from the VAT Act but not from the European VAT Directive). It is not yet clear from the proposed amendment to the VAT Act when exactly the supplier will be required to have a valid VAT registration number of the customer at their disposal, i.e. whether they become obliged to have it from the date of the supply of goods or from the date the invoice was issued. We therefore assume that the tax administration will publish additional information on this issue. We will keep you posted on this in future issues of Tax Fresh.

Another substantive new condition for obtaining an exemption from VAT will be the supplier's obligation to declare the supply of goods to another Member State in their EC Sales List / VAT Recapitulative Statement. The text of the amendment to the VAT Act does not indicate whether the exemption from VAT will be maintained in cases where the supply of goods to another Member State is not stated in the submitted EC Sales List / VAT Recapitulative Statement by mistake.

In this case, not even submitting a corrective EC Sales List / VAT Recapitulative Statement would be enough to remedy the defect referred to in the previous sentence and the claim for exemption from VAT would no longer be applicable. We again expect that the tax administration will publish additional information on this case as well.

4. METHOD OF PROVING THE TRANSPORT OF GOODS TO ANOTHER MEMBER STATE

The practical applicability of this last fix will certainly continue to be discussed among the professional public. This fix introduces a new set of rules regarding evidence of the transport of goods to another Member State as one of the conditions for obtaining an exemption from VAT for the supply of goods.

The supplier will now be obliged to have at least two documents at their disposal that confirm the transport of goods to another Member State (e.g. an invoice from the carrier, a signed CMR consignment note, a confirmation from the warehouse-keeper that goods were received at the warehouse

in the state of final destination, or proof from their bank that the transport was paid for). Regardless, these documents must be issued by independent parties and additionally must be independent of the supplier and the customer. However, the term “independence” is not explicitly defined anywhere in the new act.

Thus, the question remains what documents can be used to prove the supply of goods to another Member State in cases where transport was provided by the supplier’s own means.

The practical application of this condition will certainly be the subject of further discussions, which we will inform you of in future issues of Tax Fresh.

EXEMPTION FROM VAT FOR THE EXPORT OF GOODS



Going above and beyond our introduction to the Quick Fixes, we conclude that under the current wording of the VAT Act, tax exemptions for the export of goods are conditional on the release of those goods under the customs export procedure, outward processing procedure or external transit procedure, or the re-exportation of those goods.

As this condition is not fully in line with recent case law of the EU Court of Justice, the condition for releasing goods under one of the aforementioned customs procedures has been omitted from the text under the proposed amendment to the VAT Act.

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