

## Introduction

The EU “quick fixes” package relating to cross-border trade will come into effect from 1 January 2020.

These short-term measures are designed to improve the day-to-day functioning of the current VAT system, until the definitive regime has been fully agreed and implemented (which is now expected to be delayed beyond the original proposed date of 2022). The aim of the quick fixes is to reduce compliance costs and increase legal certainty for businesses.

Here we provide an overview of the chain transaction quick fix and highlight what businesses need to be doing to prepare for the new rules.

## What are “chain transactions”?

Chain transactions refer to successive supplies of the same goods (involving two or more consecutive supplies) where the goods supplied are subject to a single intra-Community transport between two Member States.

## The current rules

The Court of Justice of the European Union (CJEU) has consistently ruled that the intra-Community transport of goods can only be attributed to one of the supplies in the chain. However, the VAT Directive until now did not include any rules for the allocation of the intra-Community transport of the goods to a particular leg in the supply chain.

This led to different approaches amongst Member States, giving rise to situations of double or non-taxation and resulting in legal uncertainty for businesses.

## What is changing?

The chain transaction quick fix lays down new rules that attribute the intra-Community transport of the goods to a specific supply within a chain of transactions when a middle party in the chain (an intermediary operator) arranges the transport.

## Conditions to be met

For the quick fix to apply the following conditions have to be met:

- the goods must be supplied successively, so there must be at least three parties involved in the chain transaction
- the goods must be transported from one Member State to another Member State (chain transactions involving imports, exports, or supplies only within the territory of a single Member State are excluded from the provision, as are a couple of other specific scenarios)
- the goods must be transported or dispatched directly from the first supplier to the last customer in the chain.

## The new rules

If the above conditions are met the quick fix general rule is that the dispatch or transport of the goods is ascribed to the supply made **to** the intermediary operator.

However, the quick fix also provides for a derogation from the general rule when the intermediary operator communicates to his supplier his VAT identification number issued by the Member State from which the goods are dispatched or transported. In this situation the dispatch or transport of the goods is ascribed to the supply made **by** the intermediary operator.

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An intermediary operator is defined as the supplier in the chain, other than the first supplier, who dispatches or transports the goods, or arranges transport by a third party acting on its behalf.

To prove its intermediary operator status, a business will need to keep evidence that it transported the goods, or that it arranged the transport of the goods with a third party acting on its behalf.

### Points to note

It should be noted that the new rules are obligatory so businesses must comply with them where all the conditions are met.

Key points to be aware of are that:

- determining which supplier is the intermediary operator is key to correctly applying the new rules
- the intermediary operator cannot be the first or last party in a chain
- the VAT treatment of the supplies in the chain depends on whether or not the intermediary operator chooses to apply the derogation (where applicable)
- the rules are limited to clarifying which transaction in the chain the transport is assigned to and do not have any impact on the tax liability which is determined according to the normal rules
- the party transporting the goods on behalf of the intermediary operator does not have to be a third party outside the chain or a company specialised in the transport of goods - it could be any of the

other parties involved in the chain transaction including the end customer

- it will be necessary to retain two different pieces of evidence: proof of the organisation of the transport (meaning the proof that the transport has been made “by or on behalf” of a certain taxable person), and proof of the transport itself (meaning the proof that the goods have actually been transported from one Member State to another)
- for the derogation to apply the intermediary operator must communicate its VAT identification number of the Member State from where the goods are dispatched or transported to *his supplier*

### What businesses need to be doing now

Businesses need to ensure they understand the new rules and can comply with them from January 2020. The cost of non-compliance in terms of penalties and interest charges can be substantial.

We recommend that all businesses :

- review their EU chain transactions to identify any revision to their processes or VAT treatment required to comply with the new rules
- assess whether any existing VAT registrations are no longer required
- decide whether to apply the general rule or derogation where they are the intermediary operator
- implement any changes required to billing and accounting systems