

The European Commission's so-called "Quick Fixes" for intra-Community VAT transactions have now entered into force

In an attempt to resolve the main problems arising in intra-Community trade between Member States and to prevent VAT fraud, the European Commission drew up an Action Plan in April 2016 which was to be enforceable from 1 January 2020 to 2022. The first changes, referred to as the so-called "**Quick Fixes**" were to be implemented in Spain and immediately enforceable as of 1 January 2020¹. However, it was not until 5 February 2020 that Spain's Official State Gazette (the "BOE") published Royal Decree-Law 3/2020, dated 4 February, on *urgent measures incorporating various European Union directives into the Spanish legal system*. The amendments in question were set out in Council Directive (EU) 2018/1910, dated 4 December 2018; Council Directive (EU) 2019/475, dated 18 February 2019; and Council Implementing Regulation (EU) 2018/1912 dated 4 December 2018.

The **Quick Fixes** are four specific measures that may impact intra-Community trade. Said measures are as follows:

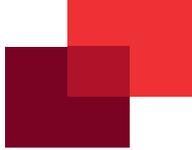
- **Consignment sales or call-off stock**². The consignment system applies to cases where a intra-Community supplier keeps a stock in the Member State where their customer is located (in their own or someone else's warehouse) so that the latter can use the goods in accordance with their sales for a maximum period of 12 months. The intra-Community supplier retains ownership of the stock until their customer uses it. Provided that certain registration requirements are met by the intra-Community supplier and that the supplier is not an established entity in the Member State of destination, this measure allows the supplier to avoid registering for VAT purposes in the Member State of destination. While it is true that in other jurisdictions this measure was already being applied, the procedure is now common throughout the European Community.

Until now, Spain forced intra-Community suppliers that transported their own goods from a foreign Member State to the tax territory where the goods were stored and later sold, to register for VAT and to comply with certain information obligations.

Pursuant to this measure, an exempt intra-Community delivery only takes place in the Member State of origin, when the consignee withdraws the goods from the consignment. Likewise, it is at such time that

¹ If a taxpayer considers that the measures are beneficial, he could invoke their application from 1 January 2020 by virtue of the direct vertical effect of EU legislation (i.e. ECJ case Van Gend & Loos, of 5 February 1963).

² The European Commission has published a guiding document called "**Explanatory Notes**" in which the implementation of these measures is shown through practical cases. [Link](#).



an intra-Community acquisition of goods takes place in the Member State of destination. This avoids the registration requirement mentioned above.

On the other hand, certain substantive registration and reporting requirements are established for the application of this tax regime; such as the Supplier's registering and deregistering the goods and subsequent transactions in the "Register of Certain Intra-Community Transactions", as well as the requirement to report taxable transactions using Tax Form 349.

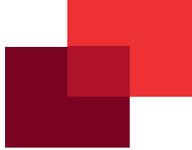
By applying this measure, the Commission provides a single and simplified procedure, which will provide increased legal certainty for intra-Community suppliers. The new regime will enter into force on 1 March 2020.

- **Supply chain sales.** A chain sale is when the same goods, which are to be sent or transported to another Member State directly from the first supplier to the final purchaser in the chain, are subject to successive deliveries between different businesses. That is to say, there is only one intra-Community transport but it involves successive merchandise deliveries. This measure is intended to simplify and provide increased legal certainty for such situations, given that chain deliveries were previously subject to dissimilar interpretations in the various Member States.

The new law (introduced by amending Article 68.2.1 of the Spanish VAT Act), clarifies which delivery in the chain should be considered intra-Community deliveries; the rest are domestic deliveries at origin or at destination. The amendment establishes an additional rule to the existing general rule, whereby the transport is deemed to be linked to the supplier's delivering the goods to the intermediary (a delivery that would constitute the intra-Community delivery), provided that said intermediary has given its supplier a tax identification number for the purposes of this tax in a Member State that is different from the Member State where the goods were dispatched. For the purposes herein, an "intermediary" is understood to be a business that is not the first supplier which dispatches or transports the goods directly or via a third party acting on the intermediary's behalf. If the intermediary has informed its supplier, providing it with a VAT Identification Number supplied by the Member State where the goods are dispatched (e.g. by the Kingdom of Spain if the goods are dispatched from that Member State), said first delivery would be treated as a domestic sale, and the delivery by the intermediary to the next business in the sales chain would be considered the intra-Community delivery.

Thus, this measure seeks to ensure uniform treatment of these situations at the Community level, thus avoiding different interpretations by the different tax authorities, which often led to double taxation or non-taxation in the past. The amendment will enter into force on 1 March 2020.

- **Substantive condition for exemption in intra-Community deliveries.** By amending Article 25.1 and Article 164.1.5 of the of the Spanish VAT Act, the requirements that must be met to apply the exemption for intra-Community delivery of goods have been amended in order to better tackle fraud in this type of transaction. The conditions necessary to apply the exemption are: (i) the person acquiring the goods



has a tax identification number for the purposes of VAT in a Member State that is not the Kingdom of Spain and the acquirer has given the supplier said tax ID number; and, (ii) the supplier included the relevant transactions in its Intra-Community Transaction Declaration (Tax Form 349). Meeting said requirements is a substantive condition to applying the exemption stipulated for intra-Community deliveries. If the person acquiring the goods is not registered for VAT in a Member State that is different from the one where the transport starts, then the VAT exemption is not applicable.

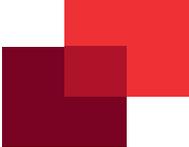
Until now, several judgments of the ³ECJ have ruled against a strict enforcement of this requirement, based on grounds of tax neutrality. That criterion of case-law is now superseded by this measure, given that, to apply the exemption stipulated for intra-Community deliveries, the person acquiring the goods must be registered in the VAT Information Exchange System (VIES) in a Member State different from the one where the transport starts. The new requirements enter into force on 1 March 2020.

- **Evidence of intra-Community transport** in the delivery of goods. Finally, Article 13 of the VAT Regulation has been amended so that the proof of inter-Community transport of goods and the application of the exemption for intra-Community delivery of goods is the same throughout the EU. For the purposes of proving a transport is intra-Community, said article refers the new Article 45a of the Council's Implementing Regulation (EU) 282/2011, dated 15 March 2011, which establishes various types of evidence the seller or purchaser may use to prove the transport was of an intra-Community nature. Thus, intra-Community transport is presumed to have taken place when the seller arranges for the transport and has two non-coinciding means of evidence issued by independent parties (such as a signed letter or CMR document, bill of lading, air freight invoice or invoice from the carrier of the goods). Where only one piece of evidence is available, it can be supplemented by an insurance policy covering the transport of the goods, by official documents confirming the goods arrived to their destination, or by a receipt issued by the depositary of the goods in the Member State of destination, confirming the goods were stored at destination. The aforementioned evidence may also be replaced by a written declaration issued by the party who acquires the goods, certifying that the goods were transported by them or by some third party on their behalf. Said declaration must mention the Member State of destination and that the acquirer has certain means of evidence, of those cited previously.

It should be noted that although the amendment to Article 13 of the VAT Regulation entered into force on 6 February 2020, said regulation refers, in turn, to the aforementioned Implementing Regulation 282/2011, which did enter into force in Spain on 1 January 2020, given that Community Regulations directly affect national legislation.

In short, these four measures are aimed at attaining greater simplification, legal certainty, and uniformity at the Community level, which may have a major impact on intra-Community trade and will undoubtedly make it

³ C-24/15 C-21/16 among others.



necessary for Spain to review its internal procedures for monitoring intra-Community transport, as well as the means used to record and report intra-Community transactions. These measures will enable intra-Community traders to benefit from simplified VAT registration in the Member States where the goods are consumed, and provide greater legal certainty when applying the exemption for intra-Community deliveries.

Finally, we would like to inform you that Baker & McKenzie will host on next March 6th the "[International VAT Conference](#)" in Paris, where we will discuss these and other current issues that you may be interested on.

More information:



Ana Royuela
Ana.royuela@bakermckenzie.com



Antonio Albarrán
Antonio.albarran@bakermckenzie.com

Baker McKenzie Barcelona, S.L.P.
Av. Diagonal, 652 - Edif. D, 8th Floor
Barcelona 08034
España
Tel: +34 93 206 0820
Fax: +34 93 205 4959
www.bakermckenzie.com

Baker McKenzie Madrid, S.L.P.
C/ José Ortega y Gasset, 29
Madrid 28006
España
Tel: +34 91 230 4500
Fax: +34 91 391 5149
www.bakermckenzie.com

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