

A Guide to cross-border B2B distribution and tolling transactions in Europe”: the staggering cost of VAT ...

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The EU internal market is governed by dual rules: national ones' and those applicable to international trade. Until 1992, customs procedures were applicable on intra-EU movements of goods. Since 1993, the physical controls and customs procedures have been replaced by documentary controls on movements of goods. This has accelerated the fluidity of the cross-border intra-EU transactions. But at the same time, for intra-EU transactions on goods, it put a stress on logistic and accounting business procedures that are not designed to monitor taxes and that are completed by subordinate staff not aware of the financial consequences of the completion of routine formalities. This was a short-term compromise that made sense in a common market in formation, at a time customs procedures were the obstacle to trade.

The author describes (i) the points of attention on Business to Business (B2B) transactions involving more than one EU Member State (place of supply, VAT identification in multiple EU Member States, national reverse-charge, different procedures between the payment of the VAT and deduction, the mandatory VAT-specific documentation), (ii) standard transactions on cross-border movements of goods and tolling, (iii) the structural weaknesses of current EU VAT concepts, and (iv) possible alternatives. It is suggested that the distinction between goods/services makes no sense in intra-EU transactions and that the rules applicable to services could be applicable also to transactions on goods, except those with third countries.

According to the President of the European Commission, internal barriers within the Single Market are equivalent to a 45% tariff on goods and a 110% on services².The present contribution illustrates difficulties faced by business and the cost of inaction of the EU Legislature in the field of VAT, i.e. deficiencies of rules that do not bring any advantage to business, nor revenue to authorities.

¹ This document is updated on November 26, 2025

² "Opening keynote speech by President von der Leyen at the 'One Year After the Draghi Report\ Conference"(16 September 2025). European Commission; European Parliament resolution of 9 October 2025 on the role of simple tax rules and tax fragmentation in European competitiveness (2024/2118(INI)) Empirical evidence shows that the total compliance costs of companies with cross-border trade activities are about 67 % higher than in companies which operate only domestically.

The EU VAT is one of the indirect taxes, i.e. the persons liable for tax (the taxable persons) are only tax collectors and the economic burden of such taxes is supported by the acquirer. Although VAT is a single tax, it is levied at multiple stages (i.e. on each supply). It applies on all supplies of goods and services until the retail stage, and on imports of goods, whatever the place of establishment of the business intervening in the process of production or of commercialization. These characteristics combined with the fact that VAT is chargeable after the deduction of input VAT allow a neutrality of the tax on the commercial and technological decisions that contributes to a better allocation of scarce resources. Since 1967, when an EU VAT has been adopted, the economic environment, but also EU VAT system itself has deeply evolved, mainly in the area of services and B2C supplies. In addition, the procedures of joint monitoring of the transactions by the EU Member States have improved. However, for B2B supplies of goods and cross-border tolling, the improvement has been limited to the abolition of physical controls on intra-EU movements of goods and the replacement of customs procedures by existing commercial documents.

1. Determine the actual cost of intra-EU transactions - Points of attention in a current context

When a business intends to perform an intra-EU B2B transaction, the determination of the actual costs /benefits of a B2B cross-border transaction within the EU requires to knowing:

- 1° the countries competent to monitor the transaction (place of supply) ;
- 2° the obligation (or not) to register for VAT in another EU Member State ;
- 3° the taxable event and the VAT chargeability on (i) supplies, (ii) intra-EU acquisitions of goods or international acquisitions of services in another country, or (iii) on imports;
- 4° the possible payment of VAT to suppliers in another country ;
- 5° the possible deduction of VAT in another country;
- 6° the standard administrative formalities (invoices, booking, returns) in addition to the VAT registration.

The information necessary is threefold: (i) strictly legal, (ii) operational (status of the supplier or the acquirer, transport documents), and (iii) formalities.

In theory, information about the rules and the formalities is available at the time of the commercial decision. However, in practice, accountants or the legal advisers are generally involved at a later stage. In the case of new commercial circuits, the completion of VAT formalities may take months, or sometimes years in the case of adaptation of IT systems to the requirements of a particular country. In addition, legal solutions may depend on operational details that cannot envisage in detail at the time of the commercial decision. Such details will be determined later or will depend on changes

such as temporary shortages or unexpected changes in the market conditions. In particular, this is the case of the determination of the place of supply and the tax liability. And this may have unexpected consequences on the cost of transactions.

1.1. Countries competent and the underlying formalities

As a rule, every EU Member State is entitled to collect VAT on each transaction deemed to take place within its jurisdiction. But at the end, by application of the deduction of input VAT on transactions subject to VAT, the revenue is exclusively attributed to one treasury, the one where the final consumption is deemed to be localized. This consumption may be performed by (i) a physical person, by (ii) a taxable person performing a VAT exempt activity, by (iii) a non-taxable legal entity that is deemed to be a final consumer, or by (iv) a taxable person for some goods and sometimes services.

1.1.1. The place of supply rules

A pivotal concept of this EU VAT is the “place of supply rules”. These are rules of conflict of competence between states³ (or more precisely tax jurisdictions⁴) that have agreed to create progressively a common market where all the producers should be treated equally, regardless of their country of establishment or the technology used. Such rules are different for supplies of goods and supplies of services. For services, since 2010, such rules are, in general, based on the concept of “establishment”. For goods, such rules are based on the physical movements (like for customs procedures) as they appear from commercial documents, although, since 1993, the customs procedures on intra-EU movements of goods have been abolished.⁵

Since 1993 for goods and 2010 for services, two or more EU Member States are jointly competent to monitor each individual cross-border intra-EU transaction (by the recapitulative statement)⁶ and to engage the financial liability of each participant in case of errors: (i) the member state of the supplier, (ii) of the acquirer, (iii) of establishment, etc⁷. Even when a transaction has no link with the Member State of the establishment, it will generally be mentioned in the VAT returns of the country where the transaction takes

³ CJEU, 23 January 1986, C-283/84, *Trans Tirreno Express* para. 15

⁴ Some EU Member States are composed of tax jurisdictions, such as the Canarian Islands that are part of the Customs territory of the EU but not of the VAT territory of Spain. Monaco is not part of the EU, but part of the French VAT territory (see art. 6 of the Directive 2006/112/EC).

⁵ The actual abolition of customs duties between EC Member States occurred on July 1, 1968

⁶ Art. 262 to 272 of the Directive 2006/112/EC

⁷ This CJEU settled case-law is based on the premise that the VAT deduction is a benefit granted the EU law and that nobody is entitled to claim a benefit of the EU Law for the purpose of tax fraud or tax evasion. The first decisions concerned corporate taxes (CJEU, 27 September 1988, C-81/87, *Daily Mail*) and social security (CJEU, 2 May 1996, C-45/90 *Paletta v Bennet*)

place and, in the country, where the supplier is established (a reporting obligation, even if no tax is due at all).

These rules of place of supply are composed of general rules for respectively goods or services, and exceptions to these general rules. In practice, one should first read all the exceptions (that are interpreted restrictively) and afterwards, when applicable, apply the general rule.

These rules of place of supply are locks between jurisdictions having different tax rates, different rights of deduction of input VAT and, of course, different tax authorities. These locks are located where the mechanism of taxation/deduction is suspended (the so-called “VAT exemption”) and shared with two or more tax authorities requiring different procedures and, sometimes, having different interpretations of the same EU rules. In addition, what concerns movements of goods, they are not based on simple and clear information. These rules of place of supply have crucial consequences for the application of the VAT system.

1.1.2. Upward conditions and downward consequences of the place of supply rules

Upwards, the place of supply depends on the concepts of “economic activity”⁸ and on the distinction “goods or services”⁹. There are different rules of place of supply for goods and services. These concepts have received a uniform content either by the case law of the Court of Justice, or by the VAT Directive, but still present divergences, for example, for the concept of supply and install, tolling/manufacturing, or long-term lease¹⁰.

Downwards, the place of supply has immediate consequences on a chain of legal qualifications and procedures particular to goods or to services, such as taxation/VAT exemption, taxable event/chargeability, taxable amount, deduction and refunds, registration, and multiple formalities, a.o. invoices and their mentions, VAT returns, recapitulative statements, verification of VAT number, etc.

The problem is that even if they present similarities across Europe, such rules differ from country to country on points of detail. This may be the consequence of the fact that Member States have not implemented correctly a Directive, but most of the time because the Directive itself allows an option to Member States either by a provision of the Directive

⁸ Art. 9(1) of the Directive 2006/112/EC

⁹ Art. 14 to 19 and art. 24 to 29 of the Directive 2006/112/EC

¹⁰ CJEU, 22 December 2010, C-277/09, RBS *Deutschland*

itself¹¹ or by “ Statements to be written into the minutes of the Council meeting at when the Directive is adopted”¹² . And this has huge procedural and economic consequences.

1.1.2. Information necessary to determine the place of supply of goods and services

The determination of the place of supply of an intra-EU transaction will depend on operational elements that are not necessarily known at the time of the commercial decision.

Goods

For goods, the key criteria are the place of delivery of the goods or, in the case of intra-EU deliveries, the physical movement of the goods. In addition, it is linked to the concepts of (i) the person for whom the transport is organized, (ii) the proof of the transport itself, (iii) the communication of the correct and appropriate VAT number of the acquirer, (iv) the communication of the VAT number of the acquirer to the tax authorities, and (v) although it is a criterion added by the case law, the obligation to verify that the customer or the supplier is not a fraudster, or the transaction is not “abnormal”.

Services

For services, the key criteria are (i) the VAT number of the establishment/fixed establishment of the customer, (ii) the communication of this VAT number to the tax authorities and (iii) the verification that this customer is not a fraudster.

For services, the concept of place of supply of intra-EU transactions is linked with the place of “business establishment” or of “fixed establishment” (i.e. part of a business) of the recipient.

Business establishment is where the functions of business central administration are carried out. When identifying that location, account must be taken of the place where essential decisions concerning the general management of the business are taken, the place where the registered office of the business is located, and where the management meets¹³.

A “fixed establishment” is any establishment, other than the place of establishment of a business, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services

¹¹ The numerous “may provisions” and the articles 370 to 396 of the VAT Directive

¹² For the Sixth VAT Directive see Brussels, 25 March 1977 R/716/77 (FIN 151) accessible on <https://archives.eui.eu/>

¹³ Regulation 282/2011, art. 10; KPE Lasok, *EU Value Added Tax Law*, Edward Elgar Publishing nr. 6.29

supplied to it for its own needs¹⁴. It presents similarities with the concept of “permanent establishment” in Double Tax Conventions, but it is different.

1.2. When obligation to register for VAT in another EU Member State ?

A distinction should be made between the concepts of “Place of supply” (competence of a State/national tax authorities to collect the tax), VAT registration (a formality), the taxable event (i.e., the right of a Member State to collect VAT), the VAT liability (obligation of a business to pay the tax on certain transactions) and the actual payment to the authorities.

The VAT registration (or VAT identification)¹⁵ is the procedure of obtaining of a VAT identification number in a particular Member State, and it will depend on the existence of taxable transactions or taxable events in a particular Member State. It is a formal requirement whose purpose is to ensure that the VAT system operates properly.¹⁶ It is the information to a national tax authority that a business is performing transactions that will lead to a provisional taxation in B2B transactions or possibly a definitive taxation (generally in B2C transactions). And of course, such taxable transactions are different for goods and services.

VAT registration is not yet centralized in the EU, although there is a database of VAT registrations (the VIES) that is sometimes diversely updated (see *infra* 2.3.1.). VAT registration requires the national tax authorities to obtain information, and it incurs costs for businesses. This formality may take some time, and it is incompatible with the speed of business transactions.

The VAT registration is the consequence of three elements (i) of economic activity, (ii) place of supply and (iii) taxable event.

1.2.1. Goods

There are three taxable events: (i) the supply of goods (including intra-EU supplies, transfers, and exports), (ii) the imports of goods and the subsequent transfers to another EU Member State and (iii) the intra-community acquisitions of goods and assimilated transactions (the transfers).

As explained *infra* 2.2., the VAT Directive and the VAT Committee have introduced various exceptions to the obligation of VAT registration in another EU Member State:

¹⁴ Regulation 282/2011, art. 11

¹⁵ Art. 213 of the Directive 2006/112/EC

¹⁶ CJEU, 14 March 2013, C-527/11, *Ablissio* para. 31-33

- either by deciding that some transactions are not intra-EU supplies (annulment of transactions, non-transfers, call of stock);
- or granting simplification measures (triangular transactions, transactions within a VAT warehouse).

1.2.2. Services

Since 2010, the general rules of place of supply of B2B services depend only on two concepts, i.e. the place of (i) the business establishment and (ii) the fixed establishment. These rules are applicable to most services.

1.3. When pay VAT to the tax authorities in another country?

A payment of the VAT to the tax authorities should be distinguished from the “chargeable event” (i.e. what entitles the tax authorities to collect the tax) and the “chargeability” (i.e. the obligation of a person to account for VAT to the tax authorities)¹⁷. A payment to the tax authorities will happen only when, during a certain period, the amount of VAT due during each period exceeds the amount of VAT deductible by this taxable person.

When a business is VAT registered in another Member State, and it performs an activity leading to a chargeable event and the VAT becomes chargeable, this will not necessarily lead to a payment to the authorities. Indeed,

- In case of intra-EU acquisition, there is an obligation to register for VAT, but due to the reverse charge-mechanism¹⁸ and the immediate compensation¹⁹, there is no obligation to pay VAT to the tax authorities;
- In case of imports, VAT is payable by “any person or person designated or recognized as liable by the Member State of importation”.²⁰ Some Member States offer simplified VAT registration and a reverse-charge. Simplified registration is combined with the joint liability of a local VAT representative and is a cost;
- In case of local supplies by a business that is not established, most of the Member States offer a local reverse charge, i.e. that VAT is due by the customer identified for VAT or established²¹. And this reverse-charge will become compulsory on July 1, 2028, with some differences.

¹⁷ Art. 62 of the Directive 2006/112/EC

¹⁸ Art. 195 and 196 of the Directive 2006/112/EC

¹⁹ Art. 167 of the Directive 2006/112/EC

²⁰ Art. 201 of the Directive 2006/112/EC

²¹ Exceptions are observed in Greece, Luxembourg, Bulgaria, Lithuania. For details see Fabiola Annacondia *VAT Options Exercised by the Member States* IBFD 2025

1.4. When pay VAT to a supplier in another country?

A business not established in a Member State will receive an invoice with VAT from a supplier only when he acquires goods that are not dispatched to him from another EU Member State. This VAT will be normally deductible, but the actual refund will take place after a certain time. This is most of the time applicable to goods.

This is an incentive not to acquire goods from a purchaser established in this country.

For services, a business not disposing of a fixed establishment will exceptionally receive an invoice with VAT of the country of the supplier, except for immovable property services and minor services like accommodation, etc.

1.5. When deduct VAT charged in another country?

If a business suffers input VAT in a country where it is not established or identified for VAT, it still has the possibility to obtain the refund of VAT according to the 8th Directive (EU business), 13th Directive (non-EU business) or sometimes a VAT return only used for VAT deduction. This creates a huge difference in time depending on the countries for legal reasons or simply for budgetary reasons.

1.6. Formalities in addition to VAT registration

Conceptually, this is probably not the most difficult, but in practice it will cause major IT costs. Some formalities are uniform (like recapitulative statements), others are only harmonized (like invoices), and most of them are not harmonized at all (like VAT returns, accounting books).

2. Intra-EU Supplies and Distribution of goods

From a business perspective, in a single market, goods could be stored everywhere and dispatched without tax consequences for locations where they are needed in priority, without tax consequences. Goods could be transformed everywhere, and the most efficient means of transport could be used.

From a VAT perspective, there are (i) rules, (ii) simplification measures provided for by the Directive, and (iii) simplification measures provided for by the guidelines of the VAT Committee or by Member States. The rules are designed for basic transactions. The simplification measures filled major gaps, but only for a few categories of transactions.

2.1. General rule: supply of goods by A in MS1 to B in MS 2

Intra-EU transactions on goods are characterized by a physical movement and the involvement of at least two tax authorities to monitor each individual transaction.

The rules are set out:

- for the place of supply: in article 40 of the VAT Directive;
- for the VAT exemption by the supplier: in articles 138(1) and 138(4) of the VAT Directive, as well as the case law of the Court of Justice concerning the obligation of prudence imposed on the operators, i.e. “you knew or should have known”;
- for the chargeable event and chargeability: in art. 68 and 69 of the VAT Directive;
- for the person liable for the payment of the VAT: art. 200 of the VAT Directive.

These rules have not been shaped by long experience but adopted rushing in the fall of 1989 for a few years²². Tax authorities had warned their governments and the Commission that such system was highly sensitive to fraud²³. Pursuant to the rejection of the European Commission proposals of VAT in the country of origin, it was a temporary compromise between old customs rules and the necessity to abolish physical controls at the crossing of intra-EU borders in the context of much broader political and economic decisions (see *infra* 5.1.).

2.1.1. Information to be provided by the supplier

The supplier should be able to provide the following information:

1° the proof of the organization of the transport “*by or behalf of the vendor or the person acquiring the goods*”²⁴ i.e. the person organizing the transport;

²² On this episode see C Amand - EU VAT or the Emergence of an Efficient Consumption Tax in the internal Market in *CFE 60th Anniversary liber Amicorum*, Servaas van Thiel Ed, 2019 p. 383 to 392

²³ See Council Document of 11 April 1988,

²⁴ Art. 138 (1) of the Directive 2006/112/EC

2° the proof of the transport “to a destination outside their respective territory - but within the Community - other than in which the dispatch of transport began” (meaning the proof that the goods have indeed been transported from one Member State to another);

3° the communication of the VAT identification number of the acquirer or intermediary to his supplier;

4° the VAT number of the customer, with a summary of the total value of the supplies per customer in the recapitulative statement submitted by the supplier;

5° knowledge of the supplier or the customer or the supplier.

In addition, the supplier has to issue invoices and submit recapitulative statements of intra-EU supplies, VAT returns and statistical information (INTRASTAT).

The VAT number should be communicated immediately, while the other information (transport documents, knowledge of the customer) should be available at the time of a tax audit. Transport documents may be spread among the business, his customer, the transporter, the person organizing the transports. For SME’s transporting goods with their own means of transport, such documents do not exist at all.

2.1.2. *The transport*

At first glance, when there are only two parties, this is simple. But in practice, the transport is most of the time a complex transaction and even is SMEs the person dealing with evidence for tax purposes is not the one responsible for such documents for operational purposes.

Multiple transport, consolidated hubs, multiple shipping parties²⁵

The proof of transport is essential for the supplier because it is a condition for (i) the exemption on the intra-EU supply and (ii) of the right of deduction on its acquisitions.

Frequently, there is more than one transport for a single intra-EU supply, and the questions that arise are, first, which is the relevant transport, and second, how does one attribute a document to a specific supply? The development of the Single Market has resulted in an increase in the diversity of suppliers and the use of consolidated hubs in Member States before the onward dispatch of goods to purchasers. Such arrangements are particularly attractive for businesses, as it is more cost-effective to group traffic (i.e. maximizing loads in fewer vehicles). The issues associated with hubs become more complex where these arrangements are used by members of the same corporate group (rather than just a

²⁵ C Amand The impossible proofs of intra-Community supplies of goods *International VAT Monitor* 2016 (Volume 27), No. 2

single legal entity) and the hub is used as a consolidation and dispatch point to a number of different Member States and legal entities.

Unfortunately, the concept of “transport” covers complex realities²⁶. Indeed, several persons may be involved in the transport of the goods, a supplier may be different from the intermediary operator carrying out the transport, there are fractioned transport and breaks in the chain, operator organising the transport is sometimes a different one for each movement, there are different means of transport involved, so the goods are transhipped e.g. from a truck to a boat or between different trucks but being considered as a single transport, etc.

Such arrangements can be particularly challenging in trying to match transport documentation with individual supplies and their invoices.

The fact that goods are stored temporarily with other goods in another Member State is considered an incident of transport without impact on the intra-EU supply, as far as the goods do not change of destination or of customer during the storage.

While the supplier will often have a direct contractual relationship with the first carrier, the latter may not be the carrier responsible for that portion of the movement when the goods leave the supplier’ Member State. The supplier will need documents from a transporter with whom he has never had direct contact, nor a contract. Of course, this can be solved by inserting appropriate contractual provisions with the first transporter. But the economic benefits obtained by better organization are reduced by the additional administrative compliance.²⁷

Proof of the intra-EU supplies when transport by the supplier

Since 2020, the proof of intra-community supplies has been governed by article 45a of Regulation (EU) No 282/2011, which introduces some rebuttable presumptions regarding proof of intra-community supplies of goods. If the conditions for the presumptions are not fulfilled, it will remain up to the supplier to prove that the conditions for the exemption of article 138 of the Directive 2006/112/EC are met²⁸.

If the goods are transported or dispatched by the seller, the goods are deemed to have been sent to the Member State of destination if the seller is in possession of:

²⁶ Explanatory Notes on the EU VAT changes in respect of call-off stock arrangements, chain transactions and the exemption for intra-Community supplies of goods (“2020 Quick Fixes”), European Commission December 2019, p.54 to 59

²⁷ C Amand The impossible proofs of intra-Community supplies of goods *International VAT Monitor* 2016 (Volume 27), No. 2

²⁸ CJEU, 13 November 2025, C-639/24, *Flo Veneer*; *Explanatory Notes on the EU VAT changes in respect of call-off stock arrangements, chain transactions and the exemption for intra-Community supplies of goods (“2020 Quick Fixes”), European Commission December 2019, p. 78*

- at least two of the following documents relating to the dispatch or transport of the goods: such as a signed CMR, a bill of lading, an air freight invoice, or an invoice issued by the carrier; or
- at least one of the above-mentioned documents, together with one of the following additional supporting documents:
 - an insurance policy relating to the dispatch or transport of the goods;
 - bank documents proving payment for the dispatch or transport of the goods;
 - official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination;
 - a receipt issued by a warehouse keeper in the Member State of destination, confirming the storage of the goods in that Member State.

The supporting documents must in any case be issued by two different parties that are independent of each other, as well as of the seller and of the buyer.

Proof when transport by the acquirer

Where goods are transported or dispatched by the buyer, article 45a of the Implementing Regulation requires that the seller, in addition to the documents referred to above, also obtain a written declaration from the buyer who certifies that the goods have been transported or dispatched by the buyer and identifies the Member State of destination of the goods; such written declaration must indicate:

- the date of issue;
- the name and address of the buyer;
- the quantity and nature of the goods;
- the date and place of arrival of the goods (in the case of supply of means of transport, the identification number of the means of transport);
- the identification of the individual accepting the goods on behalf of the buyer.

The said written declaration must be provided by the buyer to the supplier by the tenth day of the month following that in which the intra-community supply took place.

The tax authorities of the Member States are always entitled to overcome the presumption by providing evidence to the contrary, that is to say, by demonstrating that the intra-community transport of goods to the Member State of destination did not actually take place.

According to the explanatory notes published by the European Commission, the presumptions regarding proof of the transport of goods in intra-community supplies do

not apply where the transport or dispatch is carried out directly by the seller or by the buyer with his own means of transport, without the intervention of a shipper or a carrier²⁹.

Using their own means of transport does not preclude VAT exemption, but the burden of proof regarding cross-border transport is greater compared to when third-party carriers are used. This is particularly relevant for SMEs operating in cross-border areas: it has been observed that when such businesses do not use an independent transporter, suppliers systematically charge local VAT until the moment the acquirer is in a position to bring serious evidence that the goods have actually been transported to another Member State³⁰.

For business using their own means of transport, HM Revenue « Single Market » (Notice 725) recommended

- Written order from your customer which shows their name, address and EC VAT number and the address where the goods are to be delivered.
- Copy sales invoice showing customer's name, EC VAT number, a description of the goods and an invoice number.
- Date of departure of goods from your premises and from the UK.
- Name and address of the haulier collecting the goods.
- Registration number of the vehicle collecting the goods and the name and signature of the driver and, where the goods are to be taken out of the UK by a different haulier or vehicle, the name and address of that haulier, that vehicle registration number and a signature for the goods.
- Route, for example, Channel Tunnel, port of exit.
- Copy of travel tickets.
- Name of ferry or shipping company and date of sailing or airway number and airport.
- Trailer number (if applicable).
- Full container number (if applicable).
- Name and address for consolidation, groupage, or processing (if applicable).

²⁹ Explanatory Notes on the EU VAT changes in respect of call-off stock arrangements, chain transactions and the exemption for intra-Community supplies of goods ("2020 Quick Fixes"), European Commission December 2019, p.54 to 59

³⁰ C. Amand, *Exemption des livraisons intracommunautaires: comment prouver l'expédition vers un autre Etat membre?*, *Comptabilité et Fiscalité Pratique* n° 5 (2014)

Production of the evidence

The seller must have been prudent enough to insert contractual clauses obliging the buyer to provide such evidence. Otherwise, to be able to provide proof of intra-Community delivery, the seller will depend on the goodwill of the buyer. This places the seller in a weak position vis-à-vis the buyer (who sometimes has good or bad reasons for refusing to provide him with essential documents to enable him to benefit from the exemption)³¹ or a carrier with whom he does not necessarily have a contractual relationship. The seller still depends on the proper functioning of his own administrative organization which, like any organization, is made up of fallible human beings, or simply, those who do not dare to imagine that legislation can be absurd and who are confronted with the rigidities of computer systems or the fear of calling on external advisors. Unfortunately, tax audits happen generally several years later, when logically, there will no longer be the slightest trace of the goods for which the shipment is required, and the people involved have reoriented their careers. It is not a question of a physical control of the goods, nor of a control based on an accounting system constituting a reliable audit trail as required for electronic invoices³², but of the control of isolated documents scattered throughout the company, or business established in several countries, and having their own functions, which may be incomplete for reasons specific to legislation that has nothing to do with VAT³³.

In case of disputes before courts, the number of the documents, their complexity (because they are not tax documents) and the fact that they are digitalized makes difficult a discussion on the evidence.

In addition, no VAT is due in the case of an advance payment related to an intra-EU supply, because the taxable event did not happen yet³⁴. Indeed, some goods are sold before being produced and are materially delivered to a person who has acquired a title on such goods from a person who has never been directly in contact with the actual supplier.

2.1.3. Proof of VAT identification abroad of the customer

For the application of the VAT exemption on intra-EU supply, the person for whom an intra-EU supply is made should be identified for VAT in a Member State other than that in which the dispatch or transport of the goods begins³⁵. In other words, the goods may be

³¹ It has been observed that some companies which supply *ex works* stipulate in the contracts that if all intra-Community transport documents are not communicated at intervals fixed in advance, the supplier claims VAT.

³² Art. 60 §5 of the Belgian VAT Code.

³³ This is how the RMC specifies the responsibility of the road transporter.

³⁴ Art. 67 al. 2 of the Directive 2006/112/EC

³⁵ Art. 138 (1) (b) of the Directive 2006/112/EC

dispatched to a Member State other than the one where the customer provides his VAT number. The supplier must show that the goods are supplied to a recipient having a status of a taxable person in another member state and provide the evidence necessary to verify that the recipient has such status.³⁶

The supplier has to mention on the invoices and on the recapitulative statement the customer's VAT identification number under which the customer received an exempt intra-EU supply of goods on the invoices.³⁷

When the purchaser or an intermediary has multiple VAT identification numbers, the election of one or another VAT identification number is not neutral. It has been observed that invoices have been recorded by the accounting department of the purchaser under the VAT number of the place of establishment or of the place of a fixed establishment instead of the VAT number of a country where the taxable person is directly registered without any fixed establishment: indeed, the only difference between the invoices is the VAT number attributed by a different country, and this is confusing. But since there is a difference between the data communicated by the supplier or his representative to their national tax authorities which in turn pass the information to the national authorities competent to audit the acquirer of the goods: this triggers VAT audits and international requests of information communicated to other tax authorities that consider that such a question is the evidence of a fraud, and the repressive machine starts....

Suppliers can check online the validity of a VAT ID number on VIES³⁸, a website managed by the European Commission. Unfortunately, the VIES database has proven to suffer major flaws:

- ViES can only confirm if a VAT number is valid and provide the registered name and address. But it does not offer any further details about the company, such as its legitimacy or trustworthiness. This limitation means that fraudulent or non-compliant businesses can still have valid VAT numbers;
- The ViES tool validates only one number at a time, and the process is extremely manual. For companies handling multiple VAT checks across the EU, this is inefficient and does not scale well with business growth;
- There are reported cases of both false positives (recognizing incorrect VAT numbers as valid) and false negatives (valid VAT numbers shown as invalid). Errors can also arise from entering a VAT tax number instead of the official VAT ID, which especially affects sole proprietorships in some countries;

³⁶ CJEU, 29 February 2024, C-676/24, *B2 Energy*

³⁷ Art. 226, 4 of the Directive 2006/112/EC

³⁸ Article 31 of the Regulation Council Regulation (EU) No 904/2010

- As ViES does not verify the reputation, existence, or ethical standing of a business, relying exclusively on it for compliance and partner verification is inadequate;
- Some Member states retroactively delete VAT numbers. Therefore, it is prudent to keep a copy of each verification of such VAT numbers³⁹;
- Absence of availability of the systems has been frequently reported;
- According to a joint report of the courts of auditors of Belgium, Germany and the Netherlands:⁴⁰
 - some Member States allow the use of global VAT numbers in customs declarations, which weakens control and encourages fraud. In Belgium, it has been pointed out that it is possible to import under a special regime with an invalid or fictitious VAT number on official documents, without sufficient automated verification with VIES;
 - Automatic VAT number validity checks in VIES are not systematic in all countries, leading to disparities in the fight against fraud within the EU. For example, some countries, such as Denmark and Slovenia carry out direct electronic verification, while others are less rigorous;
 - The study also finds a lack of systematic cross-referencing between VIES data and national VAT returns or customs documents, making it difficult to detect complex frauds such as VAT carousels

National databases contain reliable and detailed information about VAT numbers but also financial data, etc. (see enclosure I). Unfortunately, not all of them contain data about “direct VAT registration”, or identification via a VAT representative or a collective by non-established businesses, as is frequently the case for intra-EU transactions on goods.

2.1.4. Knowledge of the client

These national databases are also very useful to know the clients or the suppliers.

The case law of the Court of justice of the European Union establishes that both suppliers and customers involved in VAT transactions have obligations to exercise due diligence to know their business partners to prevent and detect VAT fraud. If a supplier or client is involved in VAT fraud, or if there are indications of fraudulent activities in the supply chain, tax authorities have the right to challenge the deduction of input VAT and

³⁹ CJEU, 19 October 2017, C-101/16, *Paper Consult*

⁴⁰ Cour des comptes « Fraude intracommunautaire à la TVA. Audit conjoint réalisé en collaboration avec les cours des comptes des Pays-Bas et d’Allemagne » (2009)

other associated rights⁴¹. Businesses are required to perform “reasonable and proportionate checks on their suppliers or customers”. This includes verifying the identity, VAT registration status, and capacity of counterparties to legitimately participate in the transaction.

Such a requirement is normal for judges or lawyers that have the time and resources to spend days on decisions that took a few minutes by business and a few hours by tax authorities. This is an example of the failure of the European Commission to propose general workable solutions beneficial to the commonwealth.

In the real life, It may happen that at the time of issuance of an invoice, the products do not exist yet and the person who takes the delivery will be another person than the one to whom the first invoice is addressed. And this is not fraud, but business as usual.

2.1.5. Transfers by A in MS1 to A' in MS 2 (art. 138 (2)(c) of the VAT Directive)

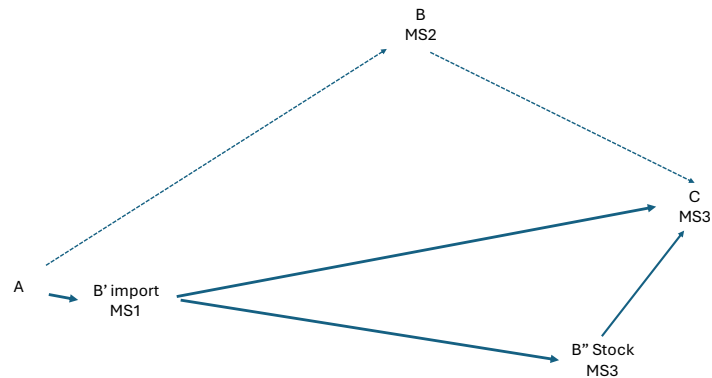
Transfers of goods to another Member State (i.e. the simple dispatch of goods to another EU Member State in absence of a title on these goods) are treated as an intra-EU supply⁴². Logically, the same conditions and procedures should be applicable. However, there is a significant difference with a standard intra-EU supply between different legal entities. According to the VAT committee, the transferor is obliged to register in the Member State where the goods arrive⁴³. And therefore, when the owner of the goods is not identified in the Member State where the goods physically arrive, tax authorities of the country of dispatch of the goods deny to the transferor (or its VAT representative) the VAT exemption and the right of deduction of input VAT.

⁴¹ CJEU, 12 December 2024, C-331/23 *Dranken Van Eetvelde* ; CJEU, C-108/20, *Finanzamt Wilmersdorf*; CJEU, 10 July 2025, C-276/24, *KONREO*

⁴² Art. 17 of the Directive 2006/112/EC

⁴³ Guidelines resulting from the 113th meeting of 3 June 2019 document D – taxud.c.1(2019)7899573 – 975

2.1.6. Import followed by an intra-EU supply



B is established in MS2. He imports goods in MS1, where he is registered as B' with a VAT representative. The supplies to C in MS 3 are subject to two types of contracts

- some goods are directly dispatched to C in MS3: there is an exempt intra-EU supply from B' identified for VAT in MS1 to C in MS3
- some goods are also dispatched under stock of consignment in the premises of C, but the document issued by the VAT representative mentions B in MS 2 as the acquirer. It is observed that tax authorities reject the exemption on the transfer from MS1 to MS3 because B is not registered in MS3. Therefore, they claim the VAT from the VAT representative in MS1, unless the representative brings a correction. This is very complex when, after years, the VAT representative and the importer do not have any more commercial relations.

It is questionable whether such a practice is in line with art. 138 (4) of the VAT Directive that expressly mentions that tax authorities are not entitled to deny the right of deduction “when the supplier can duly justify his shortcoming to the satisfaction of the competent authorities”.

2.2. Exceptions to the general rules

Exceptions to the general rules intend to relieve VAT obligations to register for VAT in another MS, and in this way, facilitate standard transactions that would normally require a VAT identification in another country.

2.2.1. Annulment purchase (VAT Committee Guidance)

In the case of intra-EU supply of goods, the supplier in MS1 should not register for VAT in the country where the goods are arriving (MS 2). But if the supply is cancelled for one or

another reason after the goods physically arrive in this MS2, a strict application of the rules would require that the supplier register for VAT.

In 1994, the VAT Committee unanimously took the view that the supplier in MS1 should not register for VAT in MS2 in the following situations⁴⁴:

1° return of goods by the customer in MS2 to his supplier in MS1 before accepting them: this is a temporary movement of goods constituting a non-taxable transfer, the supplier is not required to identify himself in MS2⁴⁵.

2° if the goods are not returned to MS1 but either remain in MS2 or are dispatched or transported to another country, the supplier will be deemed to have carried out a taxable transfer and must identify himself in MS2. However, if a short time has elapsed between the first dispatch and the supply to a new purchaser, the first refused supply can be ignored.

3° The return of goods by the customer in MS2 to his supplier in MS1 after the right to dispose of them as their owner has been transferred must be regarded as a cancellation of the initial transaction (supply/purchase). Thus, it does not give rise to a supply of goods from MS2 to MS1.

4° if the goods are not returned to MS2 but either remain in MS1 or are dispatched to another country, the supplier will be deemed to have carried out a taxable transfer and must identify himself in MS2. However, if a short time has elapsed between the first dispatch and the supply to a new purchaser, the first refused supply can be ignored.

The problem with such unanimous guidelines of the VAT Committee is that Member States are not legally bound to follow the guidelines unless they transpose to an implementing regulation subject to the unanimity rule (the Implementing Regulation 282/2011).

2.2.2. *Non-Transfers (art. 17(2) of the VAT Directive)*

Non-transfers transpose in the VAT rules the customs concepts of temporary exports/imports and outward and inward processing. This allows the owner of the goods not to register in the MS of arrival of the goods. This simplification has been extended to supply and install, as well as call of stock.

⁴⁴ VAT Committee Guidelines resulting from the 41st meeting of 28 February-1 March 1994 XXI/711/94 (1/2)

⁴⁵ Article 28a(5)(b) of the Sixth VAT Directive; Art. 17(2)(f) of the Directive 2006/112/EC

When the goods are returning to the country of dispatch

The distinction between transfer (assimilated to an intra-EU supply) and non-transfer is difficult. The main difference is that in case of non-transfer, the goods are returning to the Member state of dispatch⁴⁶. On the contrary, there is a transfer where the goods that are dispatched are not returning to the country of dispatch either because they are transported to another EU Member State, or they may not return after a certain period of time.

Depending on the country, these goods have to return to the country of dispatch after a certain time (for example, 6 months in France)⁴⁷ or for an unlimited period of time (for example, Belgium).

When the goods are not returning to country of dispatch

Where goods dispatched or transported by the supplier, by the customer, or by a third person are installed or assembled, with or without a trial run, by or on behalf of the supplier, the place of supply shall be deemed to be the place where the goods are installed or assembled⁴⁸, but the transfer of materials necessary of supply of goods is treated as a non-transfer. When the customer is a business, in most of the EU Member States, the supply will be subject to a reverse-charge, and therefore national tax authorities will not require a registration....By this way, numerous goods is circulating, without any control within the EU

2.2.3. Call of stock (exception to the general rule) (art. 17a(2) of the VAT Directive)

Call-off stock refers to goods sent from one EU country to a warehouse in another, where title remains with the supplier until the customer takes the goods. The Directive provides specific simplification rules to avoid VAT registration in the destination country under certain conditions:

- there should be a transfer;
- both supplier and client are VAT-registered businesses;
- the supplier has no fixed establishment in the customer's country;
- the goods are called off and ownership transferred within 12 months;
- details are properly reported in VAT returns and Intrastat, as required.

The final transaction is treated as an intra-Community supply (zero-rated for the seller); the customer accounts for acquisition VAT in the destination country

⁴⁶ Except in the case of non-transfer pursuant a supply and install contract (see hereunder)

⁴⁷ BOI-TVA-CHAMP-10-10-40-10

⁴⁸ Art.17(2) (b) *juncto.* 36 al. 1 of the Directive 2006/112/EC

It should be noted that existing arrangements remain valid until 30 June 2029 under current rules. After that date, call-off stock rules will be abolished in favour of the OSS simplification framework⁴⁹.

2.2.4. Simplification measure: A-B-C supply and simplification measure (exception to the general rule)

A-B-C supplies, or triangular transactions, are a simple category of chain transactions that involve more than 2 participants during one transport of goods. They are frequent in trading transactions. Trading is the act of buying and purchasing goods with the goal of profiting from price fluctuations. Traders aim to buy low and sell high, or sell high and buy back low, by speculating on the future direction of these assets' prices. Most of the large commercial contracts are concluded for a long term and a price fixed in advance. A portion of the production is subject to auction, and this creates a spiral of transactions whose price is variable depending on the demand of consumers in particular countries, temporary problems of transport, the existence of new models, etc. This can involve frequent, short-term transactions on online platforms, making it a strategy distinct from long-term investing. Trading plays an essential role in the reduction of temporary shortages, indication of new market orientations. Due to the nature of the players, this activity does not need infrastructure, nor deep technical knowledge.

In the example hereunder, without a simplification measure, B established in MS2 should register in MS3 as far as the transport takes place in the relation A to B. However, if the transport would take place in the relation B to C in MS3, B should register for VAT in MS1⁵⁰.

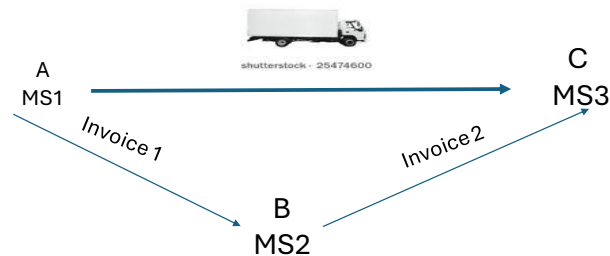
The Directive has introduced a simplification measure allowing B not to register in MS3, as far as the transport takes place in the relation A to B⁵¹ and B communicates appropriate information in its VAT return in MS2 and in its recapitulative statement⁵².

⁴⁹ New art. 369xa to art 369xj of the Directive 2006/112/EC introduced by the Directive 2025/516

⁵⁰ CJEU, 16 December 2010, C-430/09, *Euro Tyre Holding*

⁵¹ Art. 42 and 197 of the Directive 2006/112/EC

⁵² Art. 265 of the Directive 2006/112/EC



If the transport takes place in the relation B-C, there would be no intra-EU transport in the relations A to B and B should register for VAT in MS1. The legal consequences are totally different from the situation where the transport takes place in the relation A-B. If the legal consequences of the transport are important, the economic importance is rather limited, and the decision and the document are performed by persons who are not aware of the importance of what they do.

The weak points of the simplification measures in favor of triangular transactions on intra-EU movements of goods mainly revolve around inconsistent application, formal requirements, and compliance burdens:

- If the transport is performed by or for the account of C (and not by A or B), there is an intra-EU supply B to C and therefore, the simplification measure is not applicable: B should be obliged to register for VAT in MS1;
- C will know the country from where the goods have been dispatched, and therefore it can easily bypass B. Businesses set up structures to prevent the customer from knowing where the goods are dispatched;
- Tax authorities have little information to monitor the transaction because the supply by A in MS 1 to B in MS2 is very similar to standard A to B intra-EU supply. But there is no reverse charge on an intra-EU acquisition by B in MS2 and therefore, it should not be mentioned in the VAT return. The only way the tax authorities in MS2 can know that he is not entitled to levy the VAT is if B mentions a specific

mention of it on its invoice to C and on the recapitulative statement submitted by B to the tax authorities of MS2;

- In MS 2, the tax authorities have as their only means of control a specific mention on the VAT invoices and in the recapitulative statement;
- Strict Formal Requirements: the Court of justice requires that invoices issued by the intermediary in triangular transactions must explicitly state that the reverse charge mechanism applies. Failure to include this statement invalidates the use of the simplification scheme and cannot be corrected retrospectively, increasing VAT compliance burdens⁵³;
- Non-uniform Interpretation: Different EU Member States interpret the scope of simplified triangulation rules inconsistently. Some restrict application to chains involving exactly three parties registered in three different Member States, while others allow more complex chains or different registration scenarios. This leads to inconsistent treatment across the EU and complicates compliance for businesses⁵⁴;
- Reporting and documentation challenges: the inconsistent rules and strict administrative requirements cause issues with VAT reporting and declarations, potentially leading to errors in intra-EU trade documentation and increased scrutiny;
- Risk of Financial Implications: failure to meet conditions for the simplification measures or formal errors such as incorrect invoicing can lead to increased VAT liabilities, penalties, and administrative burdens for businesses involved in these transactions.

But the most important consequence is the sensitivity to cross-border fraud at large scale by criminal organizations⁵⁵. The gates to such fraud is not only the suspension of the VAT on intra-EU transactions, but also the imports from third countries.

⁵³ CJEU, 8 December 2022, C-247/21, *Luxury Trust Automobil*

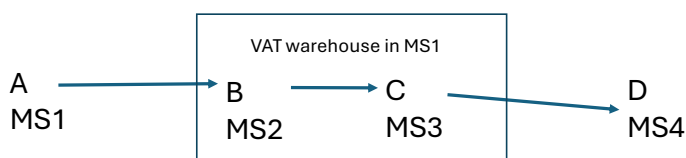
⁵⁴ Edvinas Sutkaitis *Intra-EU trade and chain transactions under EU VAT –between simplification measures and inconsistent results*, Lund University, 25 May 2012; S. Maunz & H. Marchal, *Zero Rating Cross-Border Triangular Transactions under EU VAT*, 23 *Intl. VAT Monitor* 5 (2012); M. Pozvek, *VAT Regime – Triangular Intra-Community Operations and Recent ECJ Case Law*, 58 *Eur. Taxn.* 10 (2018) A. Torres Pereira, *Squaring the Triangle – The Triangulation Simplification and the ECJ Decision in Hans Bühler*, 36 *Intl. VAT Monitor* 5 (2025)

⁵⁵ M. van de Leur, *Triangulation or Strangulation?*, 21 *Intl. VAT Monitor* 6 (2010) C. Amand, *Exemption des livraisons intracommunautaires: comment prouver l'expédition vers un autre Etat membre?*, *Comptabilité et Fiscalité Pratique* n° 5 p. 41 (2014); E. Sutkaitis, *Intra-EU trade and chain transactions under EU VAT between simplification measures and inconsistent results* (Lund University 2012); P. Hughes, *EU VAT*

In summary, the key weaknesses are inconsistent application of rules between Member States, strict and non-flexible invoicing requirements, and the heavy compliance burden if simplification cannot be applied, all making the intra-EU triangular transaction VAT handling complex and sometimes inefficient for businesses.

2.2.5. A-B-C-D and warehousing (suspension of the tax)⁵⁶

Member States may exempt (with right of deduction of input VAT) domestic supplies of goods intended to be placed into a VAT warehouse within the territory of the Member State concerned and supplies of services relating to the mentioned domestic supplies of goods. Furthermore, domestic supplies of goods and related services performed within the territory of a VAT warehouse, in the case they remain in the VAT warehouse concerned or are intended to be placed into another VAT warehouse.



A - B: VAT exempt (placement is a VAT warehouse)

B - C: VAT exempt (supply within a VAT warehouse)

B has not to register for VAT in MS1

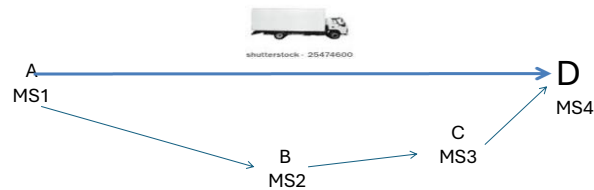
C - D: VAT exempt intra community supply, reverse charge by D in MS4

This is a very important structure, but unfortunately, it is optional for Member States. It is only applicable to certain goods. In addition, it imposes a substantial liability on the warehouse keeper and this has a price.

Aspects of Longer Chains of Triangular transactions, vol 23 Intl. VAT Monitor 4, p. 230 (2012), Journal Articles & Papers IBFD. See also R.T. Ainsworth, *VAT Fraud and Triangulation*, (2012); VAT Expert Group, VEG no. 46, p. 5 (31 Aug. 2015); and C. Amand, *The Impossible Proof of Intra-Community Supplies of Goods*, 27 Intl. VAT Monitor 2 (2016), Journal Articles & Papers IBFD.

⁵⁶ Art. 154 *juncto* Annex V of the Directive 2006/112/EC; Aniko Emese Boros *Warehouses in the VAT System of the European Union* *International VAT Monitor*, 2024 (Volume 35), No. 1

2.3. Outside of the simplification measures: A-B-C-D supplies (more than 3 parties)



There is one transport from A in MS1 to D in MS4:

- As far as the goods are leaving MS1 and that A invoices B under a VAT number other than in MS1, the supply A-B is VAT exempt in MS1
- The supply B-C may benefit from the simplification measure if C is identified for VAT in MS4 and the subsequent supply C-D is taxable in MS4.

But what if C is not identified for VAT in MS4 ?

- B would be legally obliged to register for VAT in MS4 and charge C local VAT in MS4
- C not established in MS4 should not charge VAT to D established for VAT in MS4 and therefore he will have to require the refund of the VAT charged by B to the tax authorities of MS4.

3. Cross-border tolling or manufacturing

Tolling in manufacturing (or toll processing), is an arrangement where a company outsources the production of its goods to a third-party manufacturer but retains control over sourcing and supplying the raw materials or semifinished components. The toll manufacturer then processes these materials according to the customer's specifications and charges a pre-agreed flat fee known as a "toll" for the service. The customer supplies raw materials or partially finished goods to the toll manufacturer. The toll manufacturer provides the specialized equipment, facilities, and skilled labour required for production. After processing, the finished product is returned to the customer or sent to another destination as specified. The customer pays a fixed fee for the manufacturing service, not for the materials themselves.

Cross-border tolling is a service on which place of supply of services is applicable (art. 44 of the Directive 2006/112/EC) combined with movements of goods on which place of supply of goods is applicable. The Directive contains specific provisions concerning such movements of goods, and the VAT Committee adopted unanimous guidelines.

The literature⁵⁷ makes a distinction between:

- Toll manufacturing (or tolling) that qualifies as a service: it is a process where manufacturing tasks or specific segments are outsourced to external entities;
- Contract manufacturing that qualifies as a supply of goods: this involves outsourcing of production to an external company that manages the entire manufacturing process, including sourcing materials and ensuring the final product meets specified criteria.

3.1. The rule: simplification measure (art. 17(2)(f) of the VAT Directive)

Is not regarded as a transfer of goods:

the supply of a service performed for the taxable person and consisting of work on the goods in question physically carried out within the territory of the Member State in which dispatch or transport of the goods ends, provided that the goods, after being worked upon, are returned to that taxable person in the Member State from which they were initially dispatched or transported;

The problem is where the goods are not returned to the Member State from which they were initially dispatched, this simplification measure does not apply (see *infra* 3.1.4.).

⁵⁷ F.J. Sánchez Gallardo & G. Echevarría Zubeldia, Tolling and Contract Manufacturing Structures under EU VAT, 35 *Intl. VAT Monitor* 4 (2024), Journal Articles & Opinion Pieces IBFD

3.1.1. VAT Committee guidelines on ABC tolling

The VAT Committee unanimously agreed in 1993⁵⁸ that in the specific cases set out below, the owner of the goods to be processed would not have to register for VAT in the Member State of process:

- a) Where the supplier of the unprocessed goods and the processor are based in the same member state, and the customer for the finished goods is in a second Member States, and where the customer instructs the processor, the customer can avoid having to register in the Member State of processing if the accounts for VAT under the reverse-charge on the full value of both the processing and the goods. The supplier of the unprocessed goods therefore needs the VAT ID number of his customer and evidence the goods have left his Member States after processing
- b) Where the supplier of unprocessed goods, the processor, and the customer are each in different Member States, and where the customer instructs the processor, the goods are deemed to go through the customer's Member State before processing. The supplier of the unprocessed goods must obtain the evidence that finished goods eventually reach the Member State of his customer. Once again, the customer must account for VAT on the full cost of his acquisition in his own Member State
- c) Where the owner sends the goods for processing in one Member State from where the goods are dispatched to a second Member State for further processing before returning to the owner in his own Member State, neither processor needs to charge VAT, but both require evidence of the owner's VAT registration and proof of dispatch of the finished goods to the owner⁵⁹

It is not clear whether such simplification measure are actually implemented by most of the Member States. References to such simplification measures may be found in administrative comments in Belgium (Commentaire de la TVA, Chapitre 5, Section 5, 4, D), France (BOI-TVA-CHAMP-10-10-50-40), Ireland (Revenue Tax Briefing Issue 43, April 2001⁶⁰ and Sweden.

⁵⁸ Working Party No 1 at its meeting on 25 and 26 May 1993; see also Commission working paper n° 894 of 8 February 2016

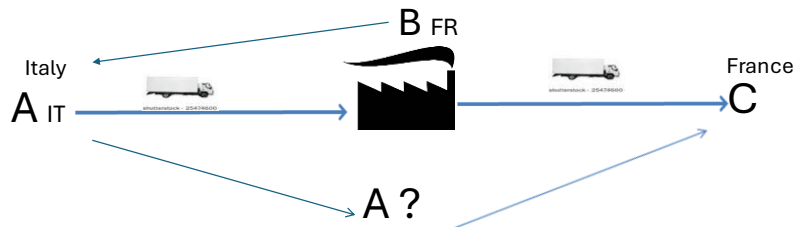
⁵⁹ Tolley's VAT Planning, 2003-04, 10.12 p. 460

⁶⁰ <https://www.charteredaccountants.ie/taxsourcetotal/2010/en/act/pub/0031/tb/sched1-2-tb.html>

3.1.2. Situations not foreseen by the Directive and the VAT Committee

Case *Fonderie 2A*⁶¹

A IT dispatches goods to the premises of B FR to be transformed. B FR charges to A IT a tolling work: VAT exempt service (art. 44 of the VAT Directive). After tolling by B, A IT supplies the goods directly to C FR in France. A IT considers that there is a VAT exempt intra-EU supply of goods from Italy to C in France



In *Fonderie 2A*, the Court of Justice observed that, according to the Directive, there are two transactions:

- 1° a transfer from A IT to A under its French VAT number
- 2° a local supply from A FR to C (with French VAT, with a possible reverse charge).

Therefore, the Court decided that A was obliged to register for VAT in France, even if it had never been liable for the payment of French VAT because of the national reverse charge system.

Case *Dresser Rand*⁶²

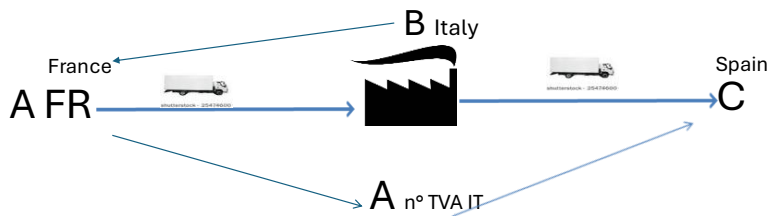
A FR dispatches goods at the premises of B IT to be transformed

⁶¹ CJEU, 2 October 2014, C-446/13, *Fonderie 2A*

⁶² CJEU, 6 March 2014, C-606/12, *Dresser-Rand*

B IT charges its work to A FR without VAT

After tolling, A dispatches the goods from Italy to C in Spain



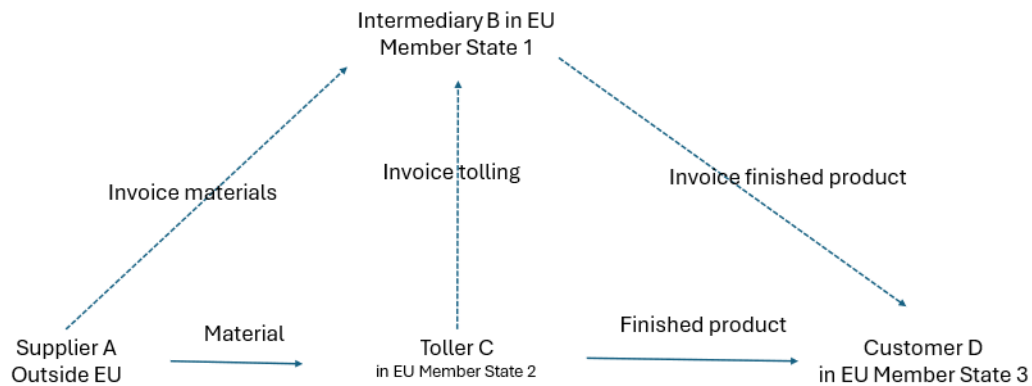
The Court of Justice observes that according to the Directive:

- 1° there is a transfer from A FR to A IT
- 2° followed by a supply from A FR to C ES

Therefore, the Court decided that A should register for VAT in Italy and perform an intra-EU supply from Italy to Spain.

3.1.3. Import and intra-EU tolling

B in MS1 imports goods directly in MS2 or acquires goods with VAT into MS2 or performs an intra-EU acquisition in MS2. Therefore, B has to register for VAT in MS 2. Imports or intra-EU acquisitions will be subject to a reverse-charge. Acquisitions by B in MS2 will be subject to local VAT deductible via its periodical VAT return. The VAT is deductible, but after a certain time because there is no output VAT in MS2. C in MS2 invoices its service to B in MS1 where a reverse-charge is applicable. After tolling, B in MS 1 invoices D in MS3 under its VAT number in MS2 and this will be subject to VAT exempt intra-EU supply that will be taxable by D in MS3 (reverse-charge).



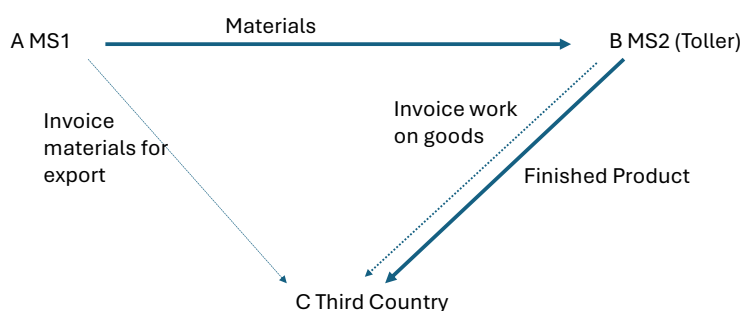
A similar reasoning is applicable when, after tolling by C in MS2, the goods are dispatched to D in Member State 3 to perform an additional processing

The situation is more complex when C acquires the raw materials directly and performs the work. Various Member States consider that C does not supply B with a service but a good as far as the total value of the goods exceed 50 %.

This situation also raises other issues: (i) who is importing? According to art. 201, VAT is payable by any person or persons designated or recognized as liable by the Member State of importation; (ii) supplies by a business not established to another business are generally subject to a national reverse-charge.

3.1.4. Exports and intra-EU tolling⁶³

A paper submitted by the European Commission implicitly referred to a simplification measure adopted by Germany.



When B is the country where the toll is established, some Member States like Germany allow that the exemption on exports can be applied. Unfortunately, this document does not mention official reactions of the Member States and not even the reaction of a majority of Member States. This highlights a particular difficulty of unanimous decisions at EU level: those using a veto right are not obliged to expose their motivations, like in any academic discussion, and therefore unanimity is an obstacle to rational discussions allowing the discovery of new solutions.

⁶³ VAT Committee Working Paper n° 894, Brussels 8 February 2016 – Question raised by the European Commission

4. Key issues and adverse consequences

From the examples above, it appears that major financial consequences are dependent on factual information that is not necessarily available at the time of the commercial decisions. In addition, this information is not easily available. This situation has not been carefully anticipated but was a temporary solution adopted pursuant to the unsuccessful attempt of the European Commission to impose a VAT in the “country of origin”⁶⁴ (see *infra* 5.3.). And it should have ended by 1997⁶⁵.

4.1. Distinction goods and services

As observed *supra* 1.1.2, the distinction between goods/services has multiple consequences on the procedures of collection of the VAT. It is not straightforward⁶⁶. For common transactions such as “supply and install”, it has been subject to guidelines of the VAT Committee that unanimously agreed “that is an analysis on an ad hoc basis, case by case” (sic!)⁶⁷.

This distinction between goods/services is definitively less important for VAT than for customs duties because VAT concerns both goods and services, there are fewer rates, and VAT is supposed to be neutral on business transactions and decisions. Of course, such distinction is still necessary for imports and exports of goods.

The question is whether such distinction is useful in the absence of physical control, and the question has never been raised whether such controls are possible.

4.2. VAT identification versus establishment and fixed establishment

VAT identification/registration is a simple formality (see *supra* 1.2). For intra-EU supplies of goods, it depends on (i) transport modalities that are difficult to establish and (ii) the existence of a VAT registration via different methods (direct registration, VAT representative, global VAT registration, etc.) that can only be verified with the VIES system (see *supra* 2.1.3.).

For intra-EU supplies of services, since 2010, it generally depends on the existence of an establishment or a fixed establishment.

According to the CJEU case law, the existence of a fixed establishment for VAT purposes requires an adequate degree of permanence in the concerned jurisdiction, the

⁶⁴ Mariya Senyk, *The Origin and Destination Principles as Alternative Approaches Towards VAT Allocation*, IBFD Doctoral Series 53, 2020

⁶⁵ Last preamble of Council Directive 91/680/EC of 16 December 1991

⁶⁶ In addition, the supply of electricity is expressly considered by the VAT Directive as a supply of goods while for other Directives it qualifies as services.

⁶⁷ Guideline resulting from the 60th meeting of 20-21 March 2000, Taxud D/1876/200

conjunction of human and material resources, and the capability to provide or to receive supplies⁶⁸. The concepts of “establishment” and of “fixed establishment” offer a major advantage: detailed information about these establishments is contained in national databases of all EU Member States⁶⁹. Data about direct VAT registration and via VAT representatives are only accessible via the VIES system that presents major deficiencies (see *supra* 2.1.3.).

4.3. Absence of harmonization of formalities

The absence of uniform accounting formalities across Europe is a tremendous cost for business. Unfortunately, uniformization of formalities for all businesses at the national level would present an impossible effort of adaptation for both businesses and tax authorities. For SMEs, formalities may prevent cross-border business. But does it mean that uniform formalities would be an unattainable dream?

For large businesses, the problem is not so much complexity, it is multiplicity. But is there an obstacle that large businesses propose a uniform set of formalities across Europe, as long as these formalities would be optional for other businesses? As such, this would not be more discriminating than special schemes of SMEs or agriculture. And if such rules are efficient, they will be quickly adopted by most businesses.

4.4. Interpretation methodology flaws

In EU law, the principle of legal certainty requires that laws be clear, precise, stable, and predictable, allowing individuals and businesses to understand their rights and obligations and to foresee the legal effects of their actions. It is a general principle of EU law, stemming from Member States' constitutional orders, and aims to ensure stability in legal relationships governed by EU law. This principle is particularly important in areas with financial consequences and is closely linked to the protection of legitimate expectations.

Lawyers use to say that the application of a legal provision is a question of facts. This is correct, but only when the application of a legal provision is unclear or when the facts on which rules⁷⁰ are applicable have not been foreseen by the rules. Clarity of the rules is not an ethical issue, it is a question of efficient organization and, in the long term, a question of survival of a community. This is the “art of the Legislature” deciding in general terms for the future by opposition to the “art of the Judge” deciding on particular past situations to implement the general rules decided by the Legislature for the future.

⁶⁸ Javier Sánchez Gallardo and Amparis Sanchis Sierra, *ECJ case-law on VAT*, Manual Francis Lefebvre 2019 n° 3732 and more recently CJEU, 27 June 2023, C-232/22, *Cabot Plastics Belgium SA*

⁶⁹ See enclosure I

⁷⁰ But this is exceptional, because the EU VAT system is characterized by a few general rules.

The law is a process of joint creation by the Legislature, the Courts and the professional literature. For the future: the art of the Legislature lies in seeking for each issue those principles that are most beneficial to the commonwealth. For the past: the art of the Judge lies in putting those principles into practice, in developing them and extending them wisely to individual cases⁷¹. In the long term, defective legislation is damaging and unacceptable when it must guide day-to-day actions, like it is the case for intra-EU transactions.

The judge should intervene only when legal provisions do not have a clear meaning, for example, in situations that have not been envisaged by the legislature, in contradictions with legal provisions, or in linguistic difficulties. This process is normal. It is acceptable for accidents, conflicts, and important transactions managed by experienced personnel. Indeed, legislation, like any human action, is not perfect.

An examination of a situation case by case is definitively part of the task of the Courts, the lawyers, and the consultants, but this is not part of the obligations of the legislature and of the tax authorities (except in their position of controller of the application of the general rules), even when they issue unanimous guidance at the level of the VAT Committee.

The literature tries to make a link between the rules decided by Legislature for the future and their interpretation by the case law for the past.

4.5. Productivity/fraud

Maximizing use of scarce resources through efficient rules was the way the Treaty of Rome intended to improve the commonwealth in Europe, and this is a continuous process.

The Draghi report (September 2024) positions VAT reform within a broader push for tax simplification and harmonization to support EU competitiveness. The main recommendations are to reduce administrative burdens, particularly for SMEs, and to use tax policy—including VAT—as a tool to foster investment and growth, rather than to propose significant changes to VAT rates or structures⁷².

Evidence that VAT is conceptually efficient legislation is that it has been adopted by most of the countries of the world, not because of the neutrality requested by the EU Treaties but because of its capacity to collect revenue at minimal costs for the tax

⁷¹ Koen Lenaerts and José A. Gutiérrez-Fons, *To Say what the Law of the EU Is: Methods of Interpretation and the European Court Of Justice*, EUI Working Papers AEL 2013/9, p. 2; C. Amand, Litteral versus restrictive interpretation (limits of the wording) in CJEU case law in VAT, in *CJEU Recent Developments in Value Added Tax 2024*, Linde

⁷² The future of European competitiveness, September 2024

authorities. This demonstrates that efficient rules and fighting against fraud are two sides of the same objective to improve this commonwealth.

VAT fraud has three sources: (i) the stage immediately before the consumption, (ii) the import, and (iii) the suspension of the VAT on the intra-EU movements of goods combined with the slow reactions of the tax authorities that have structural difficulties to discover on time fraudsters.

Since the case *Kittel*⁷³, the case law of the CJEU has considerably extended the joint and several liability of the economic operators as far as they participate in a fraudulent transaction. But as pointed out by the AG Kokkott in the conclusions before the case *Van Eetveld*, “On closer consideration, that inappropriate level of penalty for a participant in a third party’s tax fraud is also detrimental to the prevention of VAT evasion. In practice, the tax authorities may (and will) confine themselves to prosecuting third parties involved in VAT evasion, with the result that the actual perpetrators will remain largely undiscovered and unprosecuted”.⁷⁴

Historically, repressive legislation is the evidence of inefficient legislation and unstable economic situations.

⁷³ CJEU, 6 July 2006, C-440/04, *Kittel*

⁷⁴ Opinion of Advocate General Kokkott delivered on 5 September 2024 C-331/23 *Dranken Van Eetvelde*; see also R. de la Feria, “Tax Fraud and Selective Law Enforcement” (2020) *Journal of Law and Society* 47(2), 193-359

5. Looking forward

The constellation of procedures based on multiple data imposes a staggering cost for both business and the tax authorities. The question is not whether the European Commission has or has not addressed problems in the field of VAT. The question is rather that why the Commission has not adopted methods for finding solutions.

Since 24 August 2018, the working documents and reports of the Group for the Future of VAT (GFV), the VAT Experts Group (VEG) and the EU VAT Forum, as well most of the reports requested by the Commission, have been uploaded on CIRCA and are now accessible to the public. From a closer examination, it appears that the scope of these documents is strictly limited by specific requirements imposed by the Commission, and only alternatives allowed by the Commission can be examined. It is questionable whether such a working method can provide the Council and economic operators with complete information on the various solutions to the issues and their respective advantages and disadvantages of possible alternatives.

From an examination of the Council Archives that are publicly available until 1995⁷⁵, it appears that the motivations of the Commission, the Parliament, and the Member States are divergent. As such, difference in motivations are normal, but they are problematic when the Commission has a monopoly on the proposals and each individual Member States a right of veto that is not necessarily motivated. This prevents rational discussions and debates on alternatives.

From an examination of the history of European VAT, the effectiveness of VAT as a tool for tax collection has never been a priority, but rather an unintended consequence. However, it is this efficiency that has prompted most countries in the world to adopt VAT, on the recommendations of the International Monetary Fund⁷⁶. It is only since the early 2000s that the Court of Justice has considerably extended the liability of interveners for errors they did not make⁷⁷, even when it leads to multiple collections of the VAT⁷⁸.

5.1. *Current situation: a succession of underestimated successes*

The adoption of the EU VAT system is the consequence of the Campet Report (1957) which envisaged all the possible solutions in the light of (i) an examination of indirect taxes in Europe at that time and (ii) an increase in the productivity of the European economy. Productivity was the core objective of Lauré in France and Smolders in Germany. The classifications adopted by Campet were simple: one or multiple points of

⁷⁵ Most of the Council Archives are only publicly available after 30 years

⁷⁶ United States encouraged many developing countries to introduce VAT because this was perceived a means to reduce customs tariffs.

⁷⁷ CJEU, 6 July 2006, C-439/04 and C440/04, *Kittel*

⁷⁸ CJUE, 10 July 2025, C-276/24, *Konreo*

collection and the impact of the point of collection on business decisions: the closer the proximity with the consumers, the higher the neutrality of the tax systems on the production decisions⁷⁹.

Almost 70 years later, the business environment in Europe and in the world has totally changed. The VAT system has also deeply evolved, but for reasons other than productivity. The long-term objectives of the European Commission is generally very far from the short term of the Member States.

- *The First and Second VAT Directives (1967)*

In the long term, the system intended to complete the abolition of customs duties between members of a common market and the prohibition of States aid and the abolition of obstacles similar to customs duties.

On the short term, VAT was perceived as the solution to the difficulty of objectively determining the refund of indirect taxes on exports and the taxation on imports.

- *The 6th VAT Directive (1977)*

In the short term, the adoption of the Sixth Directive intended to adopt a uniform base of assessment to determine objectively own resources attributed to the European institutions. For Member States and for the European Parliament, this was the political driver. The objective of a uniform base of assessment for the determination of the own resources has led to a system with a few general rules with multiple exceptions. These exceptions are strictly interpreted, but unfortunately the intention of the legislature can only be found in national legislation, sometimes from the years 1930s or in financial arrangements between Member States during the negotiation of the Sixth Directive⁸⁰. These non-tax requirements contributed to the complexity and the rigidity of the EU tax system.

In the longer term, the Sixth Directive was perceived by the European Commission as a step towards a VAT system in the country of origin, i.e. the intra-community supplies would have been taxed in the country of the supplier and the tax redistributed to the Member States⁸¹. This would have eliminated all the obstacles to intracommunity movements of goods.

⁷⁹ l'Agence Européenne de productivité l'OECE, *Le Régime Fiscal du Chiffre d'Affaires et son incidence sur la productivité*, Project no 315 (1957).

⁸⁰ For references see C. Amand, Literal versus restrictive interpretation (limits of the wording) in *CJEU-Recent Developments in Value Added Tax 2024* Linde International Georg Kofler e.a. Ed.

⁸¹ See on this point C. Amand, Literal versus restrictive interpretation (limits of the wording) in *CJEU-Recent Developments in Value Added Tax 2024* Linde International Georg Kofler e.a. Ed. p. 72

- *The abolition of the fiscal borders (“1992”)*

In 1985, the European Commission proposed an ambitious program and timetable for achieving a single market by 1992 by implementing more than 300 measures. This was the short-term political objective of the Member States.

For VAT, the Commission took the opportunity to push its VAT project to the country of origin. From a legal point of view, it was sufficient to adapt a few articles of the Sixth Directive. This would have allowed the Commission to distribute the resources collected by the States and indirectly to increase the resources and powers of the Commission. But this would have led to massive change in revenue for the Member States.

Therefore, Member States agreed on abolition of physical controls, but at the price of major complexities and massive frauds, i.e. the system that is still applicable today for goods.

Again, the non-tax objectives (abolition of physical controls on movements of goods) have led to a system highly sensitive to fraud and criteria almost impossible to respect.

- *Simplification of rules of place of supply of services (since 2010) and the introduction of OSS for B2C transactions for both e-supplies and distance sales.*

The 2008 VAT package (that entered into force in January 2010) has drastically simplified the rules of place of supply of services that were designed to be those applicable when VAT in the country of origin would be applicable. It has completed for services the joint monitoring of intra-EU transactions in place since 1993 for goods. It has also extended the very promising concept of “One Stop Shop” or OSS (see *infra* 5.3.).

In retrospect, these steps are successes that have profoundly changed the VAT system, and future steps should take these developments into account.

5.2. Sales tax/Excise/ General reverse-charge system: a single stage of collection

VAT is a single tax, but unlike other indirect taxes, it is collected in multiple stages.

5.2.1. Sales tax/General reverse-charge

Like VAT, a sales tax is taxing the consumption, but it is collected exclusively by the retailers. Such a tax has the great advantage of being neutral to the business organization and limiting their costs. This is the system adopted in the US, and it is favourable to producers of goods and services. The disadvantage is that there is a huge pressure on retailers, and it is observed that the percentage of such tax cannot exceed 7 to 8 %.

A variant of this sales tax is the General Reverse Charge system (see *infra* 5.2.3).

5.2.2. Excises/transfer taxes

Excise is a single tax, like VAT or sales tax, collected once like a sales tax. Contrary to VAT, excises, are not neutral on production and they generally intend to discourage the use or the consumption of some categories of goods (excises on tobacco or alcoholic products) and services (such as gambling). But excise taxes are generally not collected at the retail level. In addition, they impose a huge cost on intra-EU movements of goods.

To avoid a concentration of production of such products in some countries, a solution could be the creation of EU excises whose revenue would be an own resource of the European institutions, like it is already the case for customs duties. This would allow extending the own resources attributed to the European institutions and at the same time ensure a neutrality at the European level⁸².

5.2.3. General Reverse charge

A particular type of sales tax is the “General reverse-charge system” strongly advocated by Germany, Austria, the Czech Republic and more recently by the VAT Expert Group. The General Reverse Charge system is a mechanism that shifts the responsibility for paying VAT from the supplier to the customer in business-to-business (B2B) transactions within the EU. Instead of the supplier charging VAT on their invoice and remitting it to tax authorities, the supplier issues an invoice without VAT but with a reference indicating the reverse-charge applies. The buyer then self-assesses the VAT, reporting and paying it to the tax authorities in their country, while also potentially reclaiming it in the same VAT return, making the transaction VAT-neutral overall. The system keeps the invoice, without the financial movements.

In its December 2024 report, the VAT Expert Group suggested that it is time to consider options to minimize the friction for businesses caused by the mechanism having to charge, collect, and pay a VAT, while the recipient of the goods or services will deduct it. VEG members suggest exploring alternative VAT collection mechanisms that are less burdensome (aiming to reduce the impact on the cash flow of taxable persons)⁸³. The new Digital Real-Time Reporting (DRR) introduced on cross-border B2B transactions by the Vida Directive applicable from 1 July 2030⁸⁴ would make such system possible.

5.3. VAT in the country of origin and OSS

Since 2002, the concept of OSS has been progressively extended. But such a concept is much older.

⁸² Christian Amand, *The VEG Report “VAT after Vida”: neutrality and broadening of the VAT base*

⁸³ VAT Expert Group (VEG) Report December 2, 2024, p. 17

⁸⁴ New article 262 of the VAT Directive

5.3.1. VAT in the country of origin or the “definitive VAT system”

At the time of the creation of the European Coal and Steel Community in 1952, it was logical that in a common market, the transfer taxes applicable at that time would be levied in the country where the supplier was established and later redistributed between the members of this common market. Even today, this is the way VAT functions in a federal state like Germany where VAT is collected by the Länder and afterward the revenue is redistributed between the different member-states.

This has been the system openly proposed by the European Commission in 1987 but wisely rejected by the Council⁸⁵. In 1991, the Council agreed that this system of VAT in the Country of origin should be applicable as from 1997⁸⁶. In December 2011, the Commission announced, that it came to the conclusion that there are no valid reasons for keeping the principle of origin because it is “politically unachievable”⁸⁷.

5.3.2. One stop Shop

At the same time the Commission officially gave up the concept of VAT in the country of origin, it implemented at a smaller scale procedures that are actually a collection of VAT in the country of origin, but at a rate applicable in the Member State of destination and not at the VAT rate applicable in the country of origin. The only difference between the “VAT in the country of origin” and the OSS is the fact that the VAT rate is the one applicable in the country of the purchaser and not in the country of the supplier. In both systems, VAT is paid by the supplier to its national tax authorities, the tax is collected for the account of the Member State where the purchaser is established, and the Commission supervises the distribution of the revenue to each Member State.

The One Stop Shop started from a temporary modification of the Sixth Directive allowing non-EU suppliers of e-services a single point of registration in the European Union⁸⁸. This anti-abuse provision has been progressively extended to all intra-EU electronic B2C services (Mini-One Stop Shop of MOSS) as of January 1, 2015⁸⁹, B2C intra-EU distance

⁸⁵ For a summary of the reasons to reject the Commission proposal at that time see C Amand -EU VAT or the Emergence of an Efficient Consumption Tax in the internal Market in *CFE 60th Anniversary liber Amicorum*, Servaas van Thiel Ed, 2019 p. 383 to 392

⁸⁶ Council Directive 91/680/EC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers, OJ L 376.

⁸⁷ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the future of VAT: Towards a simpler, more robust and efficient VAT system tailored to the single market, COM(2011) 851 final, p. 5 (6 Dec. 2011).

⁸⁸ Council Directive 2002/38/EC of 7 May 2002 amending and amending temporarily Directive 77/388/EEC as regards the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services, OJ L 128.

⁸⁹ Art. 58 of the Directive 2006/112/EC introduced by the Directive 2008/8/EC

sales (One Stop Shop or OSS) as of July 1, 2021⁹⁰, the non-Union OSS for B2C distance sales by non-EU suppliers. An important aspect of the Vida Directive is also the extension of an OSS by the establishment of a "deemed supplier" model for online platforms facilitating short-term accommodation rentals (up to 30 nights) and passenger transport services, making platforms like Airbnb and Booking responsible for charging and remitting VAT if the underlying providers are not VAT-registered, introduction of an OSS for call of stock transactions.⁹¹

5.4. *Vida and the electronic age*

The electronic invoicing is not new. When, in 2001, the Council adopted a first modification of the Sixth VAT Directive⁹², electronic invoicing was for many years implemented by businesses, outside any legal rules and with a permanent risk of disallowance of input VAT. This first system was not satisfactory, and the Directive had to be modified again in 2010⁹³. The Vida Directive or VAT in the Digital Age introduces mandatory use of electronic invoices by 2030 and digital reporting and e-invoicing obligations⁹⁴.

Like the Sixth VAT Directive (1977) and the “abolition of the fiscal borders” (1992), the driver of the Vida Directive is the existence of projects that are much broader than VAT. According to the official terminology, it is aiming “to transform the EU into a modern, competitive, and climate-neutral digital economy by 2050. These proposals focus on empowering citizens and businesses online, strengthening digital sovereignty, enhancing data sharing, promoting artificial intelligence, ensuring cybersecurity, boosting digital skills, and supporting industrial and space technology leadership”⁹⁵. Like in the cases of the Sixth VAT Directive and the abolition of the fiscal borders, the changes of the VAT system are driven by general objectives disconnected with the characteristics of the VAT system itself.

After compulsory electronic invoicing, there will be the DRR (Digital Reporting Requirements). DRR will oblige VAT-taxable persons to periodically or continuously digitally submit data on all or most of their transactions to the relevant tax authority

⁹⁰ Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods, OJ L 348, Primary Sources IBFD.

⁹¹ Council Directive (EU) 2025/516 of 11 March 2025 amending Directive 2006/112/EC as regards VAT rules for the digital age

⁹² Directive 2001/115/EC

⁹³ Directive 2010/45/EU

⁹⁴ New art. 217 and following introduced by the Directive 2025/516/UE

⁹⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Brussels, 16.6.2025 COM(2025) 290 final

electronically. Faster identification of suspicious patterns and anomalies in transactions using advanced data analytics, machine learning, and predictive AI techniques that analyse millions of records will detect potential fraud, such as missing trader fraud or VAT number misuse. It is questionable if this information will be only used for monitoring the fraud. It will be used by foreign states to systematically plunder the know-how of the European businesses. And this may have major adverse consequences for European business. It is certain that this will make it easy to detect errors often caused by misunderstandings of the rules by companies or by the tax authorities and, at the same time, to find those responsible and tax revenues. However, the long-term effectiveness of an essentially repressive system is questionable.

Nazar Paradiivskyy, a Peppol specialist, declared during the IVA conference held on 24 October 2025 that after the submission of the invoices, it is planned to oblige businesses to communicate electronically each transport documents. And indeed, this is necessary, according to the existing VAT rules on intra-EU movements of goods. He also declared that the Peppol technology had two faces, (i) a tool of communication of information between business and (ii) a tool of online and permanent control by governments. The Peppol system introduced by many European countries could easily switch from one system to another. Finally, he declared that the question is not if such a system can be controlled by criminal organizations, but when it will happen. And the open question was to limit the consequences of such an event when it will happen.

The Vida aspects that are not dealing with OSS are clearly the prevalence of a repressive approach and not the improvement of the rules.

5.5. Beyond Vida and OSS

Since its introduction, the OSS has proven to be a challenging concept that would merit being carefully examined and extended.

As exposed above (*supra* 4.1.), the distinction between goods /services is useless, and a single rule of place of supply for goods and services within the EU would consist of a major simplification. But as such, this would not reduce the fraud caused by the suspension of the VAT on intra-EU transactions, mainly on goods.

A possible solution to the intra-EU missing trader fraud would be the taxation of the B2B intra-EU transactions, like it is already the case for B2C transactions. But the major difference between B2B and B2C transactions is that the VAT charged in B2B transactions is deductible by the acquirer. And the deduction of input VAT is probably outside the capacities of the OSS as currently existing.

This is why a suggestion of Professor Frans Vanistendael in 1995 would have merited further examination.⁹⁶ Vanistendael had suggested a One Stop Shop System, but instead the supplier would pay the VAT applicable at the rate in the country of the customer to his national tax authorities (like in the current OSS) and the supplier would have paid the VAT directly to the tax authorities of the customer. And if the rules of place of supply for goods and services were identical and based on the concepts of establishment and of fixed establishment, the current VAT identification would be sufficient. To our knowledge, this point has never been the subject of systematic studies.

However, businesses strongly oppose such a system: VAT as it is currently applied, causes a major financial cost to businesses due to bad debts. The current VAT mechanism consists of a subsidy of defaulters by their suppliers: VAT is deductible immediately, whereas it will not be paid to the taxpayer until a long time later or never. And business rejects any alternative that would increase a problem that is already critical. The problem is all the more serious because the rules on bad debts are not harmonized at the European level and the case law scarce. The question is whether the bad debt obstacle is insurmountable. To our knowledge, this point has never been the subject of systematic studies that would make it possible to identify solutions. And yet, the solution to the problem of bad debts would facilitate a consensus on the taxation of intra-Community transactions that could solve the problems of missing trader fraud, administrative procedures, and legal certainty.

Another major objection to a taxation of intra-EU transactions is the rate issue. As such, rates should not be an issue in intra-EU B2B transactions because of the mechanism of deduction. Rates are relevant at the retail level (B2C or possibly B2G) or in the case of supplies to businesses performing VAT exempt supplies. In other cases, it is not relevant.

Solutions for bad debts reliefs and determination of rates in B2B transactions could possibly open the way to other improvements.

⁹⁶ F. Vanistendael, A Proposal for a definitive VAT System: Taxation in the country of origin at the rate of the country of destination without clearing, *EC Tax Review 1*, pp. 45-53 (1995).

Conclusion

Today, the obstacle to intra-EU trade is not borders any more. It is rather a constellation of procedures that are based on business procedures that have other purposes than the collection of taxes, such as, for example, the determination of the liability during a transport, and therefore are difficult to anticipate. The practical implementation of the VAT rules requires documentation incompatible with the level of automation and standardization required by today's business organizations.

Digitalization should not mean only an increase in controls and sanctions. Digitalisation should go hand in hand with an approach to legal rules in light of their effectiveness. And this imperatively requires an examination of all possible solutions, without the slightest exclusion.

This is the message of Mrs von der Leyen or at least what the competent services of the European Commission should do.

Annex I National Databases on business

Updated: October 17th, 2025

Country	Link
Austria	https://justizonline.gv.at/jop/web/firmenbuchabfrage
Belgium	https://kbopub.economie.fgov.be/kbopub/zoeknummerform
Bulgaria	https://portal.registryagency.bg/CR/Reports/VerificationPersonOrg
Croatia	https://sudreg.pravosudje.hr/ords/r/esudreg/public/1#rez_1
Cyprus	https://www.companies.gov.cy/en/
Czech Republic	https://lookuptax.com/docs/check-vat-number-free-links-to-official-national-database-search-VAT-number https://ares.gov.cz/ekonomicke-subjekty

	https://adisspr.mfcr.cz/ https://or.justice.cz/
Denmark	https://datacvr.virk.dk/
Estonia	https://www.rik.ee/et/e-ariregister/ariregistri-paringud
Finland	https://www.ytj.fi/en/index.html Suomen Asiakastieto Oy - Parhaat päätökset helposti - Suomen Asiakastieto Oy Kirjaudu Tietopalveluihin Alma Insights Alma Insights Tietopalvelut
France	https://www.pappers.fr/ https://www.societe.com/ https://avis-situation-sirene.insee.fr/ https://www.infogreffe.fr/ https://annuaire-entreprises.data.gouv.fr/ https://www.cyplom.com/en/vat-checker-free
Germany	Company Register - The central platform for making company data accessible

Greece	https://services.businessportal.gr/welcomeNonGemi/nonGemiRegistrationForm
Hungary	https://nav.gov.hu/adatbazisok/adatbleker/afaalanyok/afaalanyok_egyszeru https://nav.gov.hu/adatbazisok/adoslista https://www.e-cegjegyzek.hu/ https://e-beszamolo.im.gov.hu/oldal/beszamolo_kereses
Ireland	https://core.cro.ie/
Italy	https://italianbusinessregister.it/en/home https://telematici.agenziaentrate.gov.it/VerificaPIVA/Scegli.do?parameter=verificaPiva
Latvia	https://info.ur.gov.lv/#/data-search
Lithuania	https://www.registrucentras.lt/jar/p/index.php https://www.registrucentras.lt/jar/p/a.php?gyv_id=1&gyv_pav=*&gat_id=22221&gat_pav=*&gyv=&gat=&nam=&but=&a=&p=1 https://rekvizitai.vz.lt/ https://www.vmi.lt/evmi/rinkmenos/lt/mokesciu-moketoju-informacija https://www.vmi.lt/evmi/asmenys-laiku-vykdanstys-mokestinius-isipareigojimus-turintys-mokestine-nepriemoka https://www.vmi.lt/evmi/rinkmenos
Luxembourg	https://www.lbr.lu/mjrscs-web-front/

Malta	https://register.mbr.mt/app/query/search_for_company
Netherlands	www.kvk.nl
Poland	https://www.podatki.gov.pl/wykaz-podatnikow-vat-wyszukiwarka Wykaz podatników VAT - wyszukiwarka
Portugal	https://publicacoes.mj.pt/Pesquisa.aspx
Romania	https://www.onrc.ro/index.php/ro/ https://myportal.onrc.ro/ https://membri.listafirme.ro/
Slovakia	https://www.orsr.sk/Default.asp?lan=en https://www.financnasprava.sk/
Slovenia	https://pisrs.si/pregledPredpisa?id=NAVO838

Spain	https://sede.agenciatributaria.gob.es/Sede/en_gb/iva/iva-operaciones-comercio-exterior/identificacion-realizar-operaciones-otros-empresarios-ue/vies.html
Sweden	https://verksamt.se/en/
Norway	https://handelsregister.li/cr-portal/suche/suche.xhtml
Switzerland	https://www.uid.admin.ch/ UID Version: 4.24.0.0
United Kingdom	https://find-and-update.company-information.service.gov.uk/

Source: members of the International VAT Association (IVA) September 2025

At EU level see also: https://e-justice.europa.eu/topics/registers-business-insolvency-land/business-registers-eu-countries_en