



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax Administration  
**Value Added Tax**

**VAT expert group**  
**23<sup>rd</sup> meeting – 19 September 2019**

**taxud.c.1(2019)6272765 – EN**

Brussels, 9 September 2019

## **VAT EXPERT GROUP**

### **VEG N° 84**

#### **Explanatory notes on the “2020 Quick Fixes”**

## **Introduction**

The following document is a draft version of the Explanatory Notes that the Commission services intend to publish in relation to the so-called Quick Fixes and which is submitted for discussion to the VEG.



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Indirect Taxation and Tax administration  
Value Added Tax

Published XXX 20XX

# 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”)

Council Directive (EU) 2018/1910

Council Implementing Regulation (EU) 2018/1912

Council Regulation (EU) 2018/1909

*Disclaimer: These explanatory notes are not legally binding and only contain practical and informal guidance about how EU law should be applied on the basis of the views of the Commission’s Directorate General for Taxation and Customs Union.*

**The Explanatory Notes aim at providing a better understanding of the EU VAT legislation. They were prepared by the Commission services and as indicated in the disclaimer on the first page they are not legally binding.**

**These Explanatory Notes are not exhaustive. It means that although they provide a lot of detailed information there are elements which are not included in this document.**

**It is advisable and can be recommended for any user of the Explanatory Notes interested in a particular topic to read the whole chapter which is dealing with that specific subject.**

- **Why explanatory notes?**

The objective of these explanatory notes is to provide a **better understanding of legislation adopted at EU level** and in this case in particular: (i) Council Directive (EU) No 2018/1910 amending Council Directive 2006/112/EC and (ii) Council Implementing Regulation (EU) No 2018/1912 amending Implementing Regulation (EU) No 282/2011.

The explanatory notes are expected to help Member States and businesses to apply the changes in a more uniform way.

- **What will you find in the explanatory notes?**

The ‘Explanatory Notes’ are intended to be seen as a **guidance tool** that can be used to clarify the practical application of the new rules concerning call-off stock, chain transactions and the exemption of the intra-Community supplies of goods (“2020 Quick Fixes”). They provide help in understanding the meaning of certain issues contained in the articles of Council Directive (EU) No 2018/1910 and Council Implementing Regulation (EU) No 2018/1912.

- **Characteristics of the explanatory notes**

**The explanatory notes are a collaborative work:** although the notes are issued by the Directorate General for Taxation and Customs Union (DG TAXUD) for presentation on its website they are the result of discussions with both Member States and businesses respectively in the Group on the Future of VAT (GFV) and in the VAT Expert Group (VEG). Whilst the input provided in the GFV and the VEG have been largely taken into account in the drafting, it should be recalled that the Commission services ultimately were not bound by the views expressed by either Member States or businesses.

**These explanatory notes are not legally binding.** The notes are practical and informal guidance about how EU law is to be applied on the basis of the views of DG TAXUD. They do not represent the views of the Commission nor is the Commission bound by any of the views expressed therein.

The explanatory notes do not replace VAT Committee guidelines which have their own role in the legislative process. Furthermore, the VAT Committee may in future issue guidelines in this field.

Over time, it is expected that case law, VAT Committee guidelines and practice will complement the views given in the notes.

Member States may also prepare their own national guidance for the application of the new VAT rules on “2020 Quick Fixes”.

**The notes are not comprehensive:** only certain issues have been included for which it was seen as desirable to provide explanations.

**They are a work in progress:** these notes are not a final product but reflect the state of play at a specific point in time in accordance with the knowledge and experience available.

## TABLE OF CONTENTS

1.	KEY ELEMENTS OF THE EU VAT CHANGES ENTERING INTO FORCE IN 2020 .....	9
1.1.	General background.....	9
1.2.	Relevant legal acts .....	9
2.	THE CALL-OFF STOCK ARRANGEMENTS .....	11
2.1.	Relevant provisions .....	11
2.2.	What do the provisions do? .....	11
2.3.	Different scenarios - examples .....	13
2.3.1.	General case covered by the simplification.....	13
2.3.2.	Substitution of the customer.....	14
2.3.3.	Supply to another person.....	16
2.3.4.	Return of the goods. ....	17
2.3.5.	Exceeding of the period of 12 months.....	18
2.3.6.	Goods sent to another Member State.....	20
2.3.7.	Goods exported.....	22
2.3.8.	Destruction or loss of the goods.....	23
2.4.	Call-off stock simplifications and national VAT rules.....	24
2.5.	Detailed issues arising from these provisions .....	24
2.5.1.	[...] .....	24
2.5.2.	Is the call-off stock an obligatory system ? Can a business choose not to apply it? .....	24
2.5.3.	Is the business making the transfer of goods, when the call-off stock simplification does not apply, always required/allowed to register for VAT purposes in the Member State of arrival of the goods in relation to the intra-Community acquisitions made there? What is the situation in case those intra-Community acquisitions are exempt?.....	25
2.5.4.	Difference between “conditions needed for the call off stock simplification to apply” and “additional obligations linked to the call off stock simplification” .....	26
2.5.5.	Can the simplification be applied in case the supplier is registered for VAT purposes (but not established) in the Member State where the goods are sent to? .....	26
2.5.6.	Can the simplification be applied in case the intended acquirer is registered for VAT purposes (but not established) in the Member State where the goods are sent to? .....	27
2.5.7.	Can the simplification apply in case the transport is done by the intended acquirer on behalf of the supplier? .....	27

2.5.8.	What is to be considered as a ‘supply’ to the intended acquirer? .....	27
2.5.9.	Can the simplification apply in relation to several intended acquirers?.....	28
2.5.10.	In case of substitution, should a new contract already be concluded at the time the first is cancelled? .....	28
2.5.11.	Is partial substitution possible? .....	28
2.5.12.	What is the meaning of “other applicable conditions” for the substitution? Which point in time should be taken into account? 28	
2.5.13.	How to determine the 12-month period ?.....	29
2.5.14.	How to determine the 12-month period in case of bulk goods?.....	30
2.5.15.	In which format can or should registers be kept? .....	30
2.5.16.	Can Member States impose additional obligations in relation to the register on the warehouse keeper when he is a third party? .....	30
2.5.17.	How to declare in the recapitulative statement a call-off stock and a substitution (or several substitutions) that take place within the same declaration period for the recapitulative statement? (Idem for call-off stock and return of the goods taking place in the same declaration period for the recapitulative statement).....	31
2.5.18.	Global practical example as regards the recapitulative statement 32	
2.5.19.	What means the “change in the submitted information” in Article 262 of the VD? .....	34
2.5.20.	What is to be understood as the “identity” of the intended acquirer in Art. 17a(2)(d) VD? .....	35
2.5.21.	Have transitional measures been foreseen as for transport before and arrivals after the entry into force of the call-off stock simplification ?.....	35
2.5.22.	Can a supplier, non-established in the EU, use the call-off stock simplification?.....	36
2.5.23.	Identity of the intended acquirer - how must the identity be known by the supplier? Is a sales contract sufficient? .....	36
2.5.24.	What is meant by “agreement” in Article 17a(2)(a) VD? Is this always a sales contract?.....	36
2.5.25.	Are the conditions for the call-off stock arrangements met, if the goods to be delivered to the intended customer need to be sorted first by a third party at the warehouse?.....	36
2.5.26.	Can the register(s) be maintained by a third party (such as a warehouse manager) on behalf of the seller and/or the intended customer?.....	36

2.5.27.	In case of a transport beginning in month 1 and ending in month 2, what is the relevant period for the purposes of the recapitulative statement? .....	37
3.	THE CHAIN TRANSACTIONS .....	38
3.1.	Relevant provision.....	38
3.2.	Background.....	38
3.3.	What does the provision do? .....	38
3.4.	Different scenarios - examples .....	39
3.4.1.	Example 1 – a simple case of a chain transaction .....	39
3.4.2.	Example 2 – a more complex situation involving different transports .....	40
3.5.	Assigning the transport to one of the supplies in the chain – explanations for examples 1 and 2 .....	40
3.5.1.	The attribution of transport in example 1.....	41
3.5.2.	The attribution of transport in example 2.....	41
3.6.	Detailed issues arising from this provision .....	43
3.6.1.	[...]. .....	43
3.6.2.	What is the scope of the provision?.....	43
3.6.3.	Who can be an intermediary operator?.....	44
3.6.4.	Who cannot be the intermediary operator? .....	44
3.6.5.	What does “dispatches or transports the goods either himself or through a third party acting on his behalf” mean? .....	44
3.6.6.	A supplier in the chain different from the intermediary operator carries out the transport of the goods on behalf of the intermediary operator. ....	44
3.6.7.	Several persons involved in the transport of the goods .....	45
3.6.8.	Fractioned transport and breaks in the chain .....	46
3.6.9.	Proof of the organisation of the transport.....	49
3.6.10.	The communication of the VAT identification number by the intermediary operator has to be done to his supplier.....	50
3.6.11.	How should the intermediary operator communicate his VAT identification number.....	51
3.6.12.	Means of proof of the communication of the VAT identification number.....	51
3.6.13.	What happens if the intermediary operator cannot prove that communication? .....	51
3.6.14.	When has the intermediary operator to do this communication? .....	52
3.6.15.	What happens if the intermediary operator has multiple VAT identification numbers. ....	52



3.6.16.	What happens if the intermediary operator does not provide any VAT identification number.....	53
3.6.17.	Triangular transactions simplification.....	54
3.6.17.1.	More than three operators in the chain.....	55
3.6.17.2.	Subsequent supply of the goods following the triangular transaction.....	56
3.6.18.	The last person in the chain being a final customer .....	57
4.	THE EXEMPTION OF INTRA-COMMUNITY SUPPLIES OF GOODS .....	59
4.1.	Relevant provision.....	59
4.2.	What does the provision do? .....	59
4.3.	Detailed issues arising from Article 138, paragraphs (1) and (1a) VD.....	60
4.3.1.	[...]. .....	60
4.3.2.	What happens if the acquirer does not give an indication to the supplier of his VAT identification number issued in a Member State other than the one from which the goods are dispatched or transported? .....	60
4.3.3.	What happens when the acquirer has submitted a request for obtaining a VAT identification number to the tax authorities but has not obtained that VAT identification number at the moment the supplier has to issue the invoice? .....	60
4.3.4.	Certain Member States make a distinction between a VAT identification number only valid for certain domestic transactions and a VAT identification number which, in accordance with Article 215 VD, has a prefix by which the Member State of issue may be identified. Can both numbers be used for the exemption of Article 138 VD? .....	60
4.3.5.	Which VAT identification number is to be used for applying the exemption of Article 138 VD when the acquirer is part of a VAT group in accordance with Article 11 VD?.....	61
4.3.6.	What is meant by the terms “unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities” in Article 138(1a) VD? .....	61
5.	THE PROOF OF TRANSPORT .....	62
5.1.	Relevant provision.....	62
5.2.	What does the provision do? .....	62
5.3.	Detailed issues arising from this provision .....	63
5.3.1.	[...]. .....	63
5.3.2.	What happens with the existing national rules of Member States regarding proof of transport after the entry into force of Article 45a IR? Will these national rules continue to be applied?.....	63

5.3.3.	What happens if the conditions for the presumption of transport in Article 45a IR are not fulfilled? Does it mean that in this case the exemption of Article 138 VD will not apply? .....	63
5.3.4.	What happens if a tax authority can demonstrate that one of the documents, enumerated in paragraph 3 of Article 45a IR, that is submitted as evidence either contains incorrect information or is even fake? Can the vendor still rely on the presumption of the dispatch or transport?.....	63
5.3.5.	What happens if the supplier or the acquirer makes the transport using their own means of transport? .....	63
5.3.6.	What is to be considered a “written statement” by the acquirer for the purposes of Article 45a(1)(b)(i) IR? In what format (paper and/or electronic) will it be accepted by the tax authorities, e.g. an e-mail or a signed original document? .....	64
5.3.7.	What happens if the acquirer does not provide the vendor with the written statement referred to in Article 45a(1)(b)(i) IR by the tenth day of the month following the supply? .....	64
6.	RELEVANT LEGAL PROVISIONS .....	65
6.1.	VAT Directive (hereabove referred to as “VD”) .....	65
6.2.	VAT Implementing Regulation .....	68

## 1. KEY ELEMENTS OF THE EU VAT CHANGES ENTERING INTO FORCE IN 2020

### 1.1. General background

In its conclusions of 8 November 2016<sup>1</sup> the Council invited the Commission to come up with proposals on certain improvements to the current VAT system. Four areas were mentioned in this regard.

First, the **VAT identification number** of the customer, allocated by a Member State other than that in which dispatch or transport of the goods began, should constitute an additional substantive condition for the application of the exemption in respect of an intra-Community supply of goods.

Second, the Commission was invited to propose uniform criteria and appropriate legislative improvements which would lead to increased legal certainty and harmonised application of VAT rules when determining the VAT treatment of the chain **transactions** including triangular transactions.

Third, the Commission was invited to analyse and propose how to modify the VAT rules in order to allow simplification for **call-off stock arrangements** to be applied in a more uniform manner in the EU.

Fourth, the Commission was invited to continue exploring possibilities for a common framework of recommended criteria for the documentary evidence required to claim an **exemption for intra-Community supplies**.

On 4 October 2017 amendments to the VAT Directive and the VAT Implementing Regulation were proposed by the Commission for the four aforementioned areas. The relevant amendments were adopted by the Council on 4 December 2018 and are now referred to as “2020 Quick Fixes<sup>2</sup>”.

### 1.2. Relevant legal acts

The legal acts which introduced the VAT changes addressed in these explanatory notes include:

- a) Council Directive (EU) 2018/1910 of 4 December 2018 amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States;
- b) Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending Implementing Regulation (EU) No 282/2011;
- c) Council Regulation (EU) 2018/1909 of 4 December 2018 amending Regulation (EU) No 904/2010 as regards the exchange of information for the purpose of monitoring the correct application of call-off stock arrangements.

---

<sup>1</sup> <https://data.consilium.europa.eu/doc/document/ST-12764-2016-INIT/en/pdf>

<sup>2</sup> The changes enter into force on the 1<sup>st</sup> January 2020.

All relevant legal provisions are cited at the end of the explanatory notes in the wording applicable as from **1 January 2020**.

Whenever reference is made to an article of the VAT Directive (Directive 2006/112/EC as amended), the reference is accompanied by “**VD**”. When the VAT Implementing Regulation (Implementing Regulation (EU) No 282/2011 as amended) is mentioned, the reference to articles is accompanied by “**IR**”. In all other instances, it is specified to which legal act reference is made.

Draft version 9/9/2019

## 2. THE CALL-OFF STOCK ARRANGEMENTS

### 2.1. Relevant provisions

The articles of the VD relating to the call-off stock simplification are:

- **Article 17a:** (main provision) contains the simplification rules;
- **Article 243(3):** includes the obligation to keep certain registers for the call-off stock purposes;
- **Article 262:** includes the obligation to mention in the recapitulative statement the identity of the intended acquirer for whom goods have been transported under call off stock arrangements and to inform about any changes that might happen regarding the submitted information.

**Article 54a** IR provides more detailed rules on registers kept for the purposes of call-off stock arrangements.

### 2.2. What do the provisions do?

The wording “call-off stock arrangements” makes reference to a situation in which a taxable person dispatches or transports goods to a stock in another Member State for an intended acquirer whose identity and VAT identification number are known at the time of the transport or dispatch and who has the right to take goods out of this stock at his own discretion, at which time the property on the goods is transferred.

Under the current VAT rules, a business (a taxable person) moving his goods from one Member State to a stock located in another Member State is deemed to have made an exempt intra-Community supply in the Member State of departure of the goods. At the same time, this business has to account for VAT on the intra-Community acquisition of goods in the Member State where the goods arrive. In practice, it means that a business, moving goods to another Member State, has also to comply with the VAT obligations in the Member State of arrival (registration for VAT purposes, filing of a VAT return and accounting of the VAT due on the intra-Community acquisition in that return).

Where the goods are transferred from one Member State to a stock located in another Member State with a view to supplying them at a later stage to a customer, the business transferring and supplying these goods, apart from declaring an intra-Community acquisition of goods, normally also has to account for the VAT on the (domestic) supply in the Member State where the stock is located (unless the reverse charge mechanism is applicable, normally on the basis of Article 194 of the VD).

The simplification for call-off stock arrangements, adopted by the Council, does away for businesses, moving goods between two Member States in view of supplying them at a later stage to an already known intended acquirer, with the administrative burden linked with the obligation to fulfill VAT requirements in the Member State of the location of the stock.

The simplification does **not** cover the situation whereby a business transfers goods from one Member State to another without knowing yet the intended acquirer in that latter Member State.

The adopted solution establishes that:

- no intra-Community supply and no intra-Community acquisition take place at the time of dispatch or transport of the goods to the stock located in another Member State;
- an exempt intra-Community supply in the Member State of departure and a taxed intra-Community acquisition in the Member State where the stock is situated only take place at a later stage when the acquirer takes ownership of the goods.

In order to use this simplification for call-off stock arrangements, certain conditions have to be fulfilled:

- both the supplier<sup>3</sup> and the intended acquirer are taxable persons;
- the supplier has not established his business nor does he have a fixed establishment in the Member State to which the goods are dispatched or transported;
- the supplier records the dispatch/transport of the goods to the stock in a register;
- the goods are transported from one Member State to another with a view to being supplied there at a later stage and after arrival to an intended customer;
- the supplier mentions the VAT identification number of the intended acquirer in his recapitulative statement (only that, not the value of the goods) submitted for the period of the transport of the goods.
- the intended acquirer is identified for VAT purposes in the Member State to which the goods are transferred;
- the acquirer's identity and VAT identification number are known by the supplier at the time when dispatch or transport begins;
- the goods are transported from one Member State to another, thus excluding imports, exports and supplies within a single Member State from the simplification.

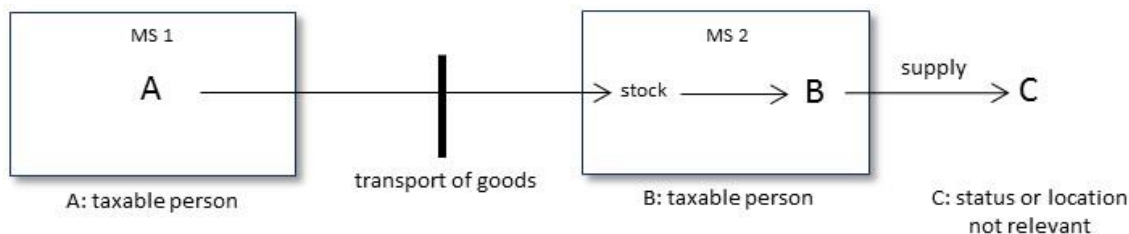
To note that there are also obligations the non-fulfilment of which does not imply that the simplification could not (or no longer) be applied (although national penalties may apply). This is for example the case for the obligation of the warehouse keeper to indicate the arrival of the goods in the stock in the register to be held by him (Article 243(3), second subparagraph VD and Article 54a(2) IR).

---

<sup>3</sup> The word 'supplier' refers here to the taxable person dispatching or transporting the goods, himself or by a third party on his behalf, according to Article 17a(2)(a) VD. This same word, with this same meaning, is used on other occasions within these Explanatory Notes in the chapters related to call off stock arrangements.

### 2.3. Different scenarios - examples

#### 2.3.1. General case covered by the simplification.



#### Situation:

- Business A, established in Member State 1 (and not in Member State 2), transports goods in January under a call-off stock arrangement to Member State 2. These goods are intended for business B which is identified (established or otherwise) in Member State 2.
- In September of the same year, B takes ownership (of part) of the goods.
- B might use the goods in e.g. his production process or sell them onwards to C (situation in the graph). C's status (taxable person or private individual) and his place of establishment/residence are not as such relevant for the application of the rules on call-off stock arrangements.

#### VAT treatment of the call-off stock:

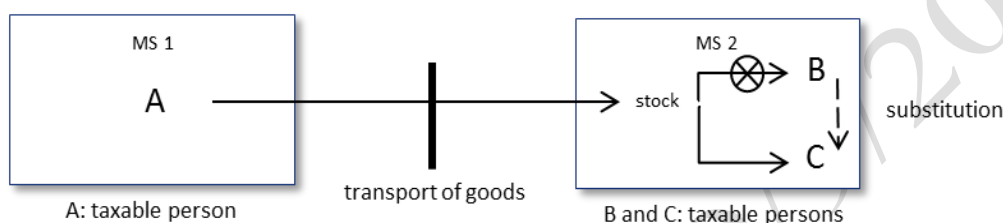
- In January, A has to indicate the transport of the goods in the register held by him (Article 243(3), first subparagraph VD and Article 54a(1) IR).
- In his recapitulative statement, A has to mention the VAT number of B, who is the person for whom goods have been sent under the call-off stock arrangements (Article 262(2)).
- In January, the warehouse keeper (B or third party) has to indicate the arrival of the goods to the stock in the register held by him (Article 243(3), second subparagraph VD and Article 54a(2) IR).
- In September, A is deemed to make an exempt intra-Community supply in Member State 1 and B an intra-Community acquisition in Member State 2 (Article 17a(3) VD).
- Chargeability for VAT purposes will occur no later than on 15 October (Articles 67 and 69 VD).
- A will have to declare the intra-Community supply in his VAT return and include the transaction in his recapitulative statement by indicating B as the person acquiring the goods as well as the taxable amount for that intra-Community supply.
- B will have to account for the VAT due on the intra-Community acquisition via his VAT return.
- A will have to make the necessary indications in the register held by him in order to keep it updated (Article 243(3), first subparagraph VD and Article 54a(1)(f) IR).

- B will have to indicate the goods acquired by him in a register held by him at the time he takes ownership of the goods (Article 243(3), second subparagraph VD and Article 54a(2)(d) IR).

### Other observations

- The supply from B to C, of the goods taken out of the stock, follows its own rules ('domestic' supply in Member State 2, intra-Community supply, export) and is outside the scope of the simplification measure for call-off stock.

### 2.3.2. Substitution of the customer.



### Situation:

- Business A, established in Member State 1 (and not established in Member State 2), transports goods in January under a call-off stock arrangement to Member State 2. These goods are intended for business B which is identified (established or otherwise) in Member State 2.
- In September of the same year, the call-off contract between A and B is changed (or even terminated). However, the (part of the) goods which were not already sold to B stay in Member State 2. At the same time, A agrees a call-off stock arrangement with business C, also identified (established or otherwise) in Member State 2, covering the remaining (part of the) goods that are in the stock in Member State 2<sup>4</sup>. The goods may be transported to another storage place in Member State 2 or they could physically remain in the same storage place whereby only the contractual arrangements between A - B and A - C would change.

### VAT treatment of the call-off stock:

- In January, A has to indicate the transport of the goods in the register held by him (Article 243(3), first subparagraph VD and Article 54a(1) IR).
- In his recapitulative statement, A has to mention B as the person for whom goods have been sent under the call-off stock arrangements (Article 262(2) VD).
- In January, the warehouse keeper (B or a third party) has to indicate the arrival of the goods to the stock in the register held by him (Article 243(3), second subparagraph VD and Article 54a(2) IR).

<sup>4</sup> This contract could e.g. also cover goods still situated in Member State 1. However, these goods will not be covered by the 'substitution' rules but by the overall arrangements of the call-off stock scheme.



- Concerning the goods for which B has taken ownership before the alteration or termination of the call-off stock contract, the rules set out under section 2.3.1 above apply.
- In September, when the call-off contract is altered/terminated, there is neither an intra-Community supply nor an intra-Community acquisition in the relation between A and B for the part of the goods for which B is not taking ownership.
- As regards the substitution (replacement) of B by C, no “Article 17 intra-Community supply of goods” by A is deemed to take place in Member State 1, nor any “Article 21 intra-Community acquisition of goods” by A is deemed to take place in Member State 2 provided that two conditions are fulfilled (Article 17a(6) VD):
  - 1] The general conditions of the call-off stock simplification apply in relation to C (Article 17a(6)(a) VD). This implies, inter alia, that C, on the basis of an existing agreement with A, is entitled to take ownership of the goods. Although not stipulated in the VD, the ‘substitution’ seems to imply that B is contractually no longer in a position to take ownership of the goods and that, to that end, the necessary arrangements were made with A. Further, C must be a taxable person identified in Member State 2.
  - 2] A records the substitution of B by C in the register held by him (Article 17a(6)(b) and Article 243(3), first subparagraph VD and Article 54a(1)(e) IR) and mentions the VAT identification number of C in his recapitulative statement<sup>5</sup>.
- The substitution will have an impact on the relevant registers in accordance with Articles 54(1)(e) and (2)(a)(b) and (c) IR.

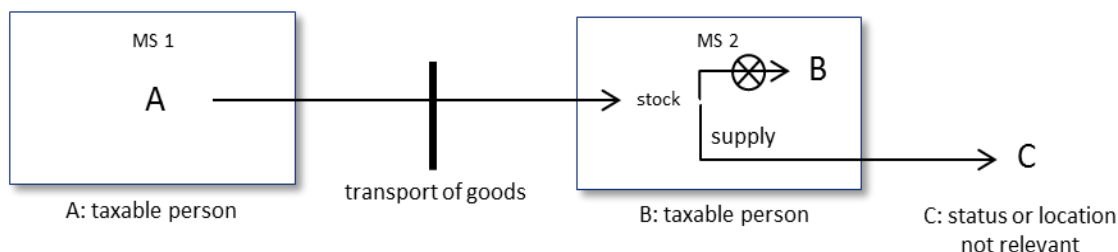
#### Other observations

- For the described situation it is necessary that the substitution (B being replaced by C) takes place before the goods are called-off by C (i.e. supplied to C).
- It is also required that at the moment when the call-off stock arrangements with B cease to exist A has already identified the intended acquirer C who substitutes B.
- The period of 12 months referred to in Article 17a(4) VD (see also section 2.3.5) does not restart at the time of substitution. That period starts at the time of the initial arrival of the goods in the Member State to which they were dispatched or transported. It is the only applicable time-limit and has not been extended by the provision on substitution (Article 17a(6) VD) or by any other provision. Moreover, the rule regarding the possible non-fulfilment of the conditions for substitution (Article 17a(7) VD) explicitly refers to the ‘time limit referred to in paragraph 4’ (i.e. Article 17a(4) VD) which reaffirms that this is the only relevant period. This is again confirmed by the fact that a reference to the VAT identification number of the person substituting the initial intended acquirer is to be mentioned in the register held by the supplier, while no reference to the date of the substitution itself is provided for in the relevant provision (Article 54a(1)(e) IR).
- Where the conditions for the substitution to take place are not fulfilled and C (from the example) takes anyway the goods from the stock then the situation in section 2.3.3. occurs (supply to another person).

---

<sup>5</sup> In accordance with the IT specifications, both the VAT number of the previous consignee (B in the example) and the VAT number of the new consignee (C in the example) have to be mentioned.

### 2.3.3. Supply to another person.



#### Situation:

- Business A, established in Member State 1 (and not in Member State 2), transports goods in January under a call-off stock arrangement to Member State 2. These goods are intended for business B which is identified (established or otherwise) in Member State 2.
- In September, A instead supplies the goods to business C (e.g. because C is willing to pay a higher price) and, as a result, ends the call-off stock contract with B. It could also happen in the example that A and B keep the call-off stock contract for other (types of) goods than those that are being supplied to C.
- A does not transport the sold goods back to Member State 1. The goods are moved directly to C who was not indicated as an intended acquirer at the time the goods were originally moved from Member State 1 **and** who did not substitute the initial intended acquirer in accordance with Article 17(6) VD.

#### VAT treatment of the call-off stock:

- In January, A has to indicate the transport of the goods in the register held by him (Article 243(3), first subparagraph VD and Article 54a(1) IR).
- In his recapitulative statement, A has to mention B as the person for whom goods have been sent under the call-off stock arrangements (Article 262(2) VD).
- In January, the warehouse keeper (B or a third party) has to indicate the arrival of the goods to the stock in the register held by him (Article 243(3), second subparagraph VD and Article 54a(2) IR).
- Concerning the goods for which B has taken ownership before the alteration or termination of the call-off stock contract, the rules set out under section 2.3.1 above apply.
- In September, when the relevant goods are sold to C and as a result the call-off stock contract between A and B is altered/terminated, there is neither an intra-Community supply nor an intra-Community acquisition in the relation between A and B for the part of the goods for which B is not taking ownership. Where necessary, B or the warehouse keeper will have to adapt the register held by one or the other in relation to the goods supplied to C (Article 54a(2)(b) and (e) IR. Also A will have to modify his own register (Article 54a(1)(g) IR).
- Also in September, the conditions for the call-off stock arrangements cease to be fulfilled in relation to the goods mentioned in the previous point. Since A and C agreed a sale of goods and not a call-off stock contract, the provisions concerning substitution set out under section 2.3.2 do not apply in relation to the goods

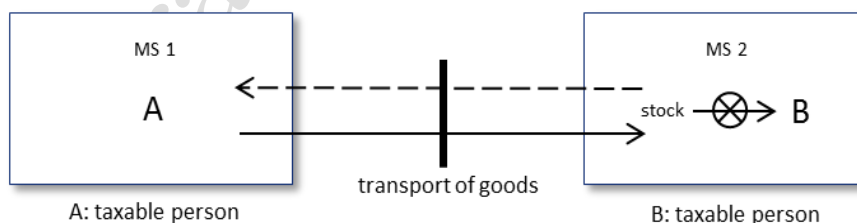
supplied to C. Therefore, a transfer of goods ex Article 17 VD is deemed to take place from Member State 1 to Member State 2 for the goods supplied to C. Since the conditions cease to be fulfilled for these goods, a transfer is deemed to take place immediately before the supply to C (Article 17a(7) , second subparagraph VD).

- The concept of “immediately before”, although not explicitly explained in the Directive, is to be seen, within the overall functioning of the system, as being on the same day as the day of the supply made by A to C.
- In relation to the goods sold to C, A is deemed to make an exempt intra-Community supply in Member State 1 and an intra-Community acquisition in Member State 2 (as mentioned above, other goods could remain under the call-off stock contract between A and B). The taxable event takes place in September and the chargeability will occur no later than on 15 October. In order to declare his intra-Community acquisition in Member State 2, A will have to be identified for VAT purposes in Member State 2.
- A will have to declare the intra-Community supply in his VAT return in Member State 1 and include the transaction in his recapitulative statement by indicating himself, under his VAT identification number in Member State 2, as well as the taxable amount (Article 76 VD).
- A will also have to account for the VAT due on his intra-Community acquisition via his VAT return in Member State 2.
- A will have to make the necessary indications in the register held by him in order to keep it updated (Article 243(3), first subparagraph VD and Article 54a(1)(g) IR).

#### Other observations

- The supply from A to C follows its own rules (‘domestic’ supply in Member State 2, intra-Community supply, export) and is outside the scope of the simplification measure for call-off stocks.

#### 2.3.4. Return of the goods.



#### Situation:

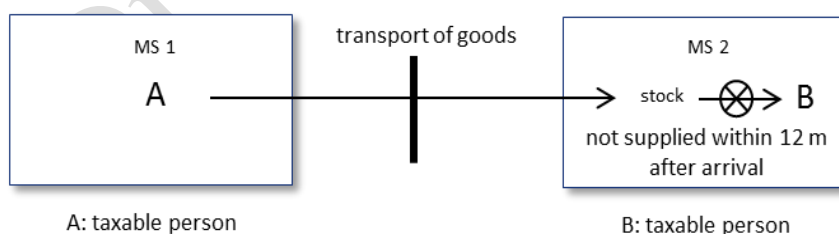
- Business A, established in Member State 1 (and not in Member State 2), transports goods in January under a call-off stock arrangement to Member State 2. These goods are intended for business B which is identified (established or otherwise) in Member State 2.

- In September of the same year, it is agreed that A will take back the remaining goods that were not sold or used by B and transport them from Member State 2 back to Member State 1.

#### VAT treatment of the call-off stock

- In January, A has to indicate the transport of the goods in the register held by him (Article 243(3), first subparagraph VD and Article 54a(1) IR).
- In his recapitulative statement, A has to mention B as the person for whom goods have been sent under the call-off stock arrangements (Article 262(2) VD).
- In January, the warehouse keeper (B or a third party) has to indicate the arrival of the goods to the stock in the register held by him (Article 243(3), second subparagraph VD and Article 54a(2) IR).
- Concerning the goods for which B has effectively taken ownership, the rules set out under section 2.3.1 above apply.
- Regarding those goods for which B did not take ownership, there is neither an intra-Community supply nor an intra-Community acquisition in the relation between A and B.
- Regarding the returned goods, there is also no deemed intra-Community supply according to Article 17 VD made by A in Member State 1, nor is there any intra-Community supply according to Article 17 VD made by A in Member State 2 if A records the return of the goods in the register held by him as provided for in Article 243(3), first subparagraph VD and Article 54a(1)(h) IR (Article 17a(5)(b) VD).
- Further A will have to mention the VAT identification number of the intended acquirer in his recapitulative statement (which is to be seen as including the identity of the acquirer) and a “flag” indicating that the goods have been returned<sup>6</sup> (Article 262(2) VD, since this is a “change in the submitted information”<sup>7</sup>).
- The warehouse keeper (B or a third party) will have to adapt the register held by him (Article 54a(2)(e) IR).

#### 2.3.5. Exceeding of the period of 12 months.



<sup>6</sup> In accordance with the IT specifications.

<sup>7</sup> See also section 4.

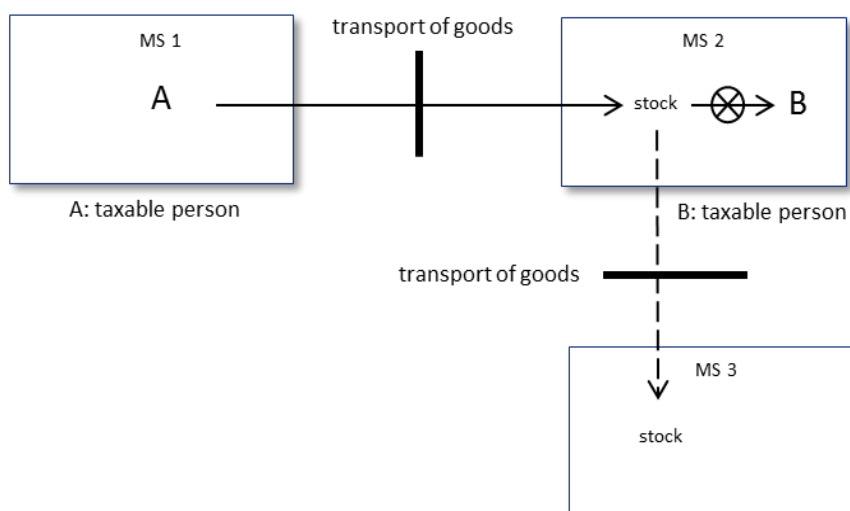
### Situation:

- Business A, established in Member State 1 (and not in Member State 2), transports goods on 5 January of year N under a call-off stock arrangement to Member State 2. The goods arrive in Member State 2 on that same date. These goods are intended for business B which is identified (established or otherwise) in Member State 2.
- A year later (year N+1), the goods or part of them have not yet been supplied to B but are still on the territory of Member State 2.

### VAT treatment of the call-off stock

- A has to indicate the transport of the goods on 5 January of year N in the register held by him (Article 243(3) VD and Article 54a(1) IR).
- In his recapitulative statement, A has to mention B as the person for whom goods have been sent under the call-off stock arrangements (Article 262(2) VD).
- The warehouse keeper (B or a third party) has to indicate the arrival of the goods on 5 January of year N to the stock in the register held by him (Article 243(3), second subparagraph VD and Article 54a(2) IR).
- Concerning the goods for which B has taken ownership before the termination of the call-off stock contract, the rules set out under section 2.3.1 above apply.
- By the end of 6 January of year N+1 (for the correct calculation of the 12 month period see section 2.5.13), B has not taken ownership of the goods or part of them. For these remaining goods, there is neither an intra-Community supply nor an intra-Community acquisition in the relation between A and B.
- As from 7 January of year N+1, the day following the expiry of the 12-month period, the conditions for the call-off stock arrangements are no longer fulfilled and a transfer according to Article 17 VD by A of the remaining goods is deemed to take place from Member State 1 to Member State 2 (Article 17a(4) VD).
- A is deemed to make an exempt intra-Community supply according to Article 17 VD in Member State 1 and an intra-Community acquisition according to Article 21 VD in Member State 2. The taxable event takes place on 7 January of year N+1 and the chargeability will occur no later than on 15 February of year N+1 (Articles 67 and 69 VD). In order to declare his intra-Community acquisition in Member State 2, A will have to be identified for VAT purposes in Member State 2.
- A will have to declare the deemed intra-Community supply in his VAT return in Member State 1 and include the transaction in his recapitulative statement by indicating himself, under his VAT identification number in Member State 2, as well as the taxable amount for that supply (Article 76 VD).
- A will have to account for the VAT due on his intra-Community acquisition via his VAT return in Member State 2.
- Both the registers of A and of the warehouse keeper (either the intended customer or a third party) will have to clearly reflect the situation of the goods in respect of which the 12-month period has been exceeded (Article 243(3), first subparagraph and Article 54a(1)(c) and (2)(c) IR).

### 2.3.6. Goods sent to another Member State.



#### Situation:

- Business A, established in Member State 1 (and not in Member State 2), transports goods in January under a call-off stock arrangement to Member State 2. These goods are intended for business B which is identified (established or otherwise) in Member State 2.
- In September of the same year, A takes back (part of) the goods that were not supplied to B from the stock but does not transport them back to Member State 1. Instead, the goods are transported to Member State 3 where the goods are stored on behalf of A (situation in the graph).
- This situation is different from the situation whereby the remaining goods are transported in the context of a sale to C, a business established in Member State 3 (situation covered by section 2.3.3 above).

#### VAT treatment of the call-off stock

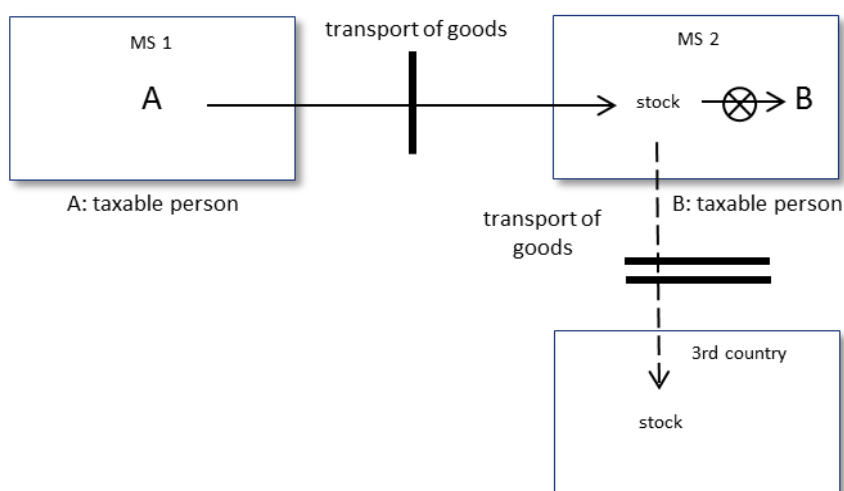
- In January, A has to indicate the transport of the goods in the register held by him (Article 243(3), first subparagraph VD and Article 54a(1) IR).
- In his recapitulative statement, A has to mention B as the person for whom goods have been sent under the call-off stock arrangements (Article 262(2) VD).
- In January, the warehouse keeper (B or a third party) has to indicate the arrival of the goods to the stock in the register held by him (Article 243(3), second subparagraph VD and Article 54a(2) IR).
- Concerning the goods for which B has effectively taken ownership, the rules set out under section 2.3.1 above apply.
- In September, when the remaining goods are transported to Member State 3, the conditions for the call-off stock arrangements, regarding the transport from Member State 1 to Member State 2, cease to be fulfilled. Therefore, a transfer of goods according to Article 17 VD from Member State 1 to Member State 2 will be taking place. The conditions cease to be fulfilled, and the transfer is therefore deemed to take place, immediately before the dispatch or the transport to Member State 3 starts (Article 17a(7), third subparagraph VD).

- The concept of “immediately before”, although not explicitly explained in the Directive, is to be seen, within the overall functioning of the system, as being on the same day as the start of the dispatch or the transport to Member State 3.
- A is deemed to make an exempt intra-Community supply in Member State 1 (Article 17 VD) and an intra-Community acquisition in Member State 2 (Article 21 VD) of the remaining goods. The taxable event takes place in September and the chargeability will occur no later than on 15 October (Articles 67 and 69 of the VD). In order to declare his intra-Community acquisition in Member State 2, A will have to be identified for VAT purposes in Member State 2.
- A will have to declare the supply in his VAT return in Member State 1 and include the transaction in his recapitulative statement by indicating himself, under his VAT identification number in Member State 2, as well as the taxable amount for the supply (Article 76 VD).
- A will have to account for the VAT due on his intra-Community acquisition via his VAT return in Member State 2.
- A will also have to make the necessary indications in the register held by him in order to keep it updated (Article 243(3), first subparagraph VD and Article 54a(1)(g) IR). B or the third party warehouse keeper will also have to update his register (Article 54a(2)(e) IR).

#### Other observations

- A makes another transfer, from Member State 2 to Member State 3, in relation to the transport of the goods to Member State 3 in September. Therefore, A is deemed to make an exempt intra-Community supply according to Article 17 VD in Member State 2 and an intra-Community acquisition according to Article 21 VD in Member State 3. For the latter taxable event, he will have to be identified for VAT purposes in Member State 3. Declarations in VAT returns and recapitulative statements follow the normal rules and are, as such, not linked to the call-off stock simplification rules.
- It might happen that this second transport of the goods from Member State 2 to Member State 3 falls under the rules on call-off stock arrangements provided that all the conditions for that are met. That would however require for A not to be established in Member State 3; there would have to be an existing agreement with an intended customer who would have to be identified in Member State 3; A would have to record the transport in the register held by him and A would also have to mention the new intended acquirer in the recapitulative statement submitted in Member State 2. Any such new situation will need to be subject to an entirely separate assessment.
- In case that the goods are directly sold to C (outside the call-off stock arrangements) in Member State 3, the intra-Community supply in Member State 2 and the intra-Community acquisition in Member State 3 follow the normal rules and are, again, not linked to the call-off stock simplification rules (see also section 2.3.3)

### 2.3.7. Goods exported.



#### Situation:

- Business A, established in Member State 1 (and not in Member State 2), transports goods in January under a call-off stock arrangement to Member State 2. These goods are intended for business B which is identified (established or otherwise) in Member State 2.
- In September of the same year, A, regarding the goods that were not supplied to B, exports them in view of further activities outside the European Union.

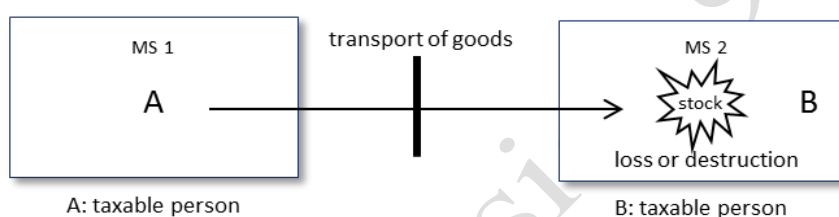
#### VAT treatment of the call-off stock

- In January, A has to indicate the transport of the goods in the register held by him (Article 243(3), first subparagraph VD and Article 54a(1) IR).
- In his recapitulative statement, A has to mention B as the person for whom goods have been sent under the call-off stock arrangements (Article 262(2) VD).
- In January, the warehouse keeper (B or a third party) has to indicate the arrival of the goods to the stock in the register held by him (Article 243(3), second subparagraph VD and Article 54a(2) IR).
- Concerning the goods for which B has effectively taken ownership, the rules set out under section 2.3.1 above apply.
- In September, when the remaining goods are transported outside the European Union, the conditions for the call-off stock arrangements cease to be fulfilled. Therefore, a transfer according to Article 17 VD of those remaining goods will be taking place from Member State 1 to Member State 2. Since the conditions cease to be fulfilled upon exportation, the transfer is deemed to take place immediately before the dispatch or the transport to a third country (Article 17a(7), third subparagraph VD).
- The concept of “immediately before”, although not explicitly explained in the Directive, is to be seen, within the overall functioning of the system, as being on the same day as the start of the dispatch or the transport.



- A is deemed to make an exempt intra-Community supply according to Article 17 VD in Member State 1 and an intra-Community acquisition according to Article 21 VD in Member State 2. The taxable event takes place in September and the chargeability will occur no later than on 15 October (Articles 67 and 69 VD). In order to declare his intra-Community acquisition in Member State 2, A will have to be identified for VAT purposes in Member State 2.
- A will have to declare the intra-Community supply in his VAT return in Member State 1 and include the transaction in his recapitulative statement by indicating himself, under his VAT identification number in Member State 2, as well as the taxable amount for the supply (Article 76 VD).
- A will have to account for the VAT due on his intra-Community acquisition via his VAT return in Member State 2.
- A will have to make the necessary indications in the register held by him in order to keep it updated (Article 243(3), first subparagraph VD and Article 54a(1)(g) IR). B or the third party warehouse keeper will also have to update his register (Article 54a(2)(e) IR).

### 2.3.8. Destruction or loss of the goods.



#### Situation:

- Business A, established in Member State 1 (and not in Member State 2), transports goods in January under a call-off stock arrangement to Member State 2. These goods are intended for business B which is identified (established or otherwise) in Member State 2.
- In September of the same year, and before B took ownership of all the goods received, the remaining part of the goods are destroyed in a fire.

#### VAT treatment of the call-off stock:

- In January, A has to indicate the transport of the goods in the register held by him (Article 243(3), first subparagraph VD and Article 54a(1) IR).
- In his recapitulative statement, A has to mention B as the person for whom goods have been sent under the call-off stock arrangements (Article 262(2) VD).
- In January, the warehouse keeper (B or third person) has to indicate the arrival of the goods to the stock in the register held by him (Article 243(3), second subparagraph VD and Article 54a(2) IR).

- Concerning the goods for which B has effectively taken ownership, the rules set out under section 2.3.1 above apply.
- In September, when the remaining goods are destroyed, the conditions for the call-off stock arrangements cease to be fulfilled. Therefore, a transfer of goods according to Article 17 VD is deemed to take place from Member State 1 to Member State 2. Since the conditions for the call off stock simplification cease to be fulfilled, the transfer is deemed to take place at the time the goods were actually destroyed (Article 17a(7), fourth subparagraph VD).
- A is deemed to make an exempt intra-Community supply according to Article 17 VD in Member State 1 and an intra-Community acquisition according to Article 21 VD in Member State 2 of the destroyed goods.
- The taxable event takes place in September and the chargeability will occur no later than on 15 October (Articles 67 and 69 VD). In order to declare his intra-Community acquisition in Member State 2, A will have to be identified for VAT purposes in Member State 2.
- A will have to declare the intra-Community supply in his VAT return in Member State 1 and include the transaction in his recapitulative statement by indicating himself, under his VAT identification number in Member State 2. The taxable amount is the purchase price or, in absence of such price, the cost price of the goods (Article 76 VD).
- A will have to account for the VAT due on his intra-Community acquisition via his VAT return in Member State 2. Article 185(2) VD will apply and no exclusion or limitation of the right to deduct the VAT on the intra-Community acquisition will arise out of the destruction of the goods, provided that such destruction is “duly proved or confirmed”.
- A will have to make the necessary indications in the register held by him in order to keep it updated (Article 243(3), first subparagraph VD and Article 54a(1)(g) IR). B or the third party warehouse keeper will also have to update his register (Article 54a(2)(f) IR).

#### 2.4. Call-off stock simplifications and national VAT rules

The simplification measure for the call-off stock laid down in Article 17a VD enters into force as from 1 January 2020 and is to be applied by all Member States. This implies that all other possible national arrangements regarding call-off stock and which deviate from Articles 17 and 17a VD are not in conformity with EU Law. Member States do not have the option to apply any such deviating national rules in relation to cross-border call-off stock situations even if those national rules are broader or more flexible for businesses than the ones provided for in Articles 17 and 17a VD.

#### 2.5. Detailed issues arising from these provisions

##### 2.5.1. [...]

##### 2.5.2. Is the call-off stock an obligatory system ? Can a business choose not to apply it?

The simplification is applicable provided all conditions in Article 17a(2) VD are fulfilled. If, for any reason, one of the conditions is not fulfilled, a ‘transfer’ within the meaning of Article 17 of the VD takes place, which will give rise to an intra-Community supply in the

Member State of departure and to an intra-Community acquisition (according to Article 21 VD) in the Member State of arrival.

Therefore a business may choose to apply or not the call off stock simplification by fulfilling or not the necessary conditions envisaged for these arrangements in Article 17a VD. If those conditions are not met, the transfer of the goods to another Member State will fall under the scope of Articles 17 and 21 VD and the subsequent supply to the intended acquirer will qualify as a domestic supply in the Member State where the goods arrived. Of course, that will imply that the supplier will have to be identified for VAT purposes in that Member State. This VAT number will have to be used by the transferor/supplier/the taxable person moving the goods from one Member State to another Member State to declare the (deemed) intra-Community acquisition in relation to the 'transfer' of his own goods and the subsequent supply of the goods. Of course, the main purpose of the simplification was precisely to avoid that the supplier had to be identified in the Member State to which the goods were transported.

2.5.3. Is the business making the transfer of goods, when the call-off stock simplification does not apply, always required/allowed to register for VAT purposes in the Member State of arrival of the goods in relation to the intra-Community acquisitions made there? What is the situation in case those intra-Community acquisitions are exempt?

For a clear comprehension of the matter, it should first be explained that:

- 1) According to Article 194 VD Member States may determine that, in case a supplier is not established in their territory, the acquirer is liable for the payment of the VAT (generally referred to as 'reverse charge'). In such case the acquirer accounts for the VAT (instead of being charged by the supplier) and deducts in the same VAT return.
- 2) According to Article 140(c) VD intra-Community acquisitions of goods are exempt from VAT where, according to the criteria in Articles 170 and 171 VD, the person acquiring the goods would in all circumstances be entitled to full reimbursement of the VAT due on the intraCommunity acquisition. One of the criteria in the aforementioned Articles is that the person in question makes no other supplies, in the Member State where the intraCommunity acquisition has taken place, than those for which the acquirer is liable under the reverse charge.

When a "transfer" of goods from Member State 1 to Member State 2 takes place, followed by a subsequent supply in Member State 2 of those goods, and the conditions laid down in Article 17a VD for the call off stock simplification are not met, the combination of Articles 17, 194 (if Member State 2 has made use of the option in that provision) and 140(c) VD can result in (i) a supply of goods according to Article 17 VD in Member State 1 made by the transferor/ the taxable person moving the goods from one Member State to another Member State (ii) a deemed intraCommunity acquisition according to Article 21 VD made by the transferor/ the taxable person moving the goods from one Member State to another Member State in Member State 2; (iii) a subsequent 'domestic' supply under reverse charge for which the person liable for VAT will be the acquirer. The deemed intra-Community acquisition referred to in (ii) can therefore be exempt.

The question was raised whether the business, making the transfer of goods, could or should be identified for VAT purposes in relation to the exempt intra-Community acquisitions that are made in the Member State of arrival of the goods.

The answer to that question is that, even if the intra-Community acquisition is exempt, the business will have to be registered for VAT purposes in the Member State where the intraCommunity acquisition has taken place (on the basis of Article 214(1)(b) of the VD). There is no possibility for businesses to be relieved from this obligation (under Article 272 of the VD) and Member States cannot refuse the registration.

Further that registration might be necessary for the purposes of Article 138(1) VD, according to which the exemption from VAT of the deemed intra-Community supply of goods made in the Member State of departure of the goods by the transferor/ the taxable person moving the goods from one Member State to another Member State is conditional upon that person being identified for VAT purposes in another Member State.

2.5.4. *Difference between “conditions needed for the call off stock simplification to apply” and “additional obligations linked to the call off stock simplification”*

A distinction has to be made between, on the one hand, the conditions which necessarily have to be fulfilled for the call-off stock arrangement to be deemed to exist and, on the other hand, additional obligations linked to this scheme. The former are the conditions laid down in Article 17a(2) VD; in case any of them is not fulfilled the consequence is that the call off stock simplification in Article 17a does not apply. The latter are any other obligations laid down by the legislation in relation to the call off stock simplification; the fact that any of them is not met does not prevent the application of that simplification, although national penalties may apply in this case.

Example: on the basis of Article 17(a)(2)(d) VD, the supplier has to indicate the transport of the goods under call-off stock arrangements in his register (see Article 243(3), first subparagraph VD and Article 54a(1) IR) and to mention the intended acquirer in his recapitulative statement (Article 262(2) VD). These are some of the conditions (listed in Article 17 a(2) VD), which have to be fulfilled in order for the simplification to apply.

Continuing the example, also the intended acquirer) has to mention the “description and quantity of the goods intended for him” in the register held by him (Article 243(3), second subparagraph VD and Article 54a(2)(b) IR). However, this is no condition for the application of the simplification according to Article 17a(2) VD. This is just an obligation arising from Article 243(3) VD. The non-fulfilment of this obligation does not impede the application of the call-off stock arrangements. Of course, national penalties may be applicable in this case.

2.5.5. *Can the simplification be applied in case the supplier is registered for VAT purposes (but not established) in the Member State where the goods are sent to?*

The legislation determines that the supplier should not have established his business or have a fixed establishment in the Member State to which the goods are dispatched or transported (Article 17a(2)(b) VD). This implies that the VAT registration of the supplier in the Member State of the stock is not sufficient, on its own, to exclude the application of the simplification; what matters is whether he has established his business or has a fixed establishment in that Member State.

2.5.6. Can the simplification be applied in case the intended acquirer is registered for VAT purposes (but not established) in the Member State where the goods are sent to?

It is further stipulated that the person to whom the goods are to be supplied has to be identified in the Member State of the stock (Art. 17a(2)(c) VD). Therefore, it is not necessary for the intended acquirer to be established in the Member State of the storage; VAT identification is sufficient.

2.5.7. Can the simplification apply in case the transport is done by the intended acquirer on behalf of the supplier?

Article 17a(2)(a) VD mentions that the goods have to be dispatched or transported by the supplier or 'by a third party on his behalf'. It is further not stipulated who this 'third party' should be.

The legal text does not exclude that the third party in question be the intended acquirer but it is important to underline that in this case the intended acquirer should transport the goods 'on behalf' of the supplier, which implies that the supplier is still the owner of the goods during the transport. If this were not the case, it would not be a call-off stock situation but directly an intra-Community supply followed by an intra-Community acquisition.

2.5.8. What is to be considered as a 'supply' to the intended acquirer?

According to Article 17a(2)(a) VD the goods are dispatched or transported "with a view to those goods being supplied there" at a later stage to the intended acquirer. The term 'supply' has to be understood in this context within the meaning of Article 14 of the VD rather than on the basis of national civil law. This includes, in the first place, the transfer of the right to dispose of tangible property as owner according to Article 14(1) VD but also the other cases enumerated in Article 14(2) VD. In practice, the application of some of the situations included in Article 14 (e.g. the transfer by order of the public authority of the ownership of the goods against payment of compensation) will rather be exceptional or not be used at all in the context of call-off stock.

However, one specific case, which is likely to happen in practice in the context of the call-off stock, is the situation of the "commissionaire" (Article 14(2)(c) VD). Such a "commissionaire" receives a commission which is payable when goods are sold. For VAT purposes, this constitutes a "supply" from the owner to the "commissionaire", even if on the basis of civil law this might not be the case. Also another "supply" is for VAT purposes supposed to take place between the "commissionaire" and the acquirer.

The situation could occur whereby the intended acquirer is a "commissionaire" who has multiple customers and who takes goods out of the stock to sell them to these customers. The question was raised whether this situation would be covered by the call-off stock simplification.

The reply is that in that case if supplies of goods are deemed to take place in the framework of the 'commissionaire' concept, the call-off stock scheme would be applicable insofar all conditions are fulfilled.

2.5.9. Can the simplification apply in relation to several intended acquirers?

It is indeed possible that the supplier dispatches or transports goods for several intended acquirers. In this case the conditions for applying the call-off stock arrangements for each individual acquirer have to be fulfilled. In particular, it is important that goods are identified as destined for a particular intended customer. Further each intended customer has to reflect in his register the “description and quantity of the goods intended for him” (Article 54a(2)(b) IR) and the supplier will have to mention in his own register the value, description and quantity of the goods corresponding to each of the intended customers (Article 54a(1)(a) and (c) IR).

2.5.10. In case of substitution, should a new contract already be concluded at the time the first is cancelled?

It is required that a contract with a new intended acquirer is concluded before or at the same time as the contract with the previous intended acquirer comes to an end. In that sense, there should be no ‘time gap’ between the two periods whereby the goods would remain in the Member State of arrival without being covered by a call-off stock arrangement. If this would occur, a deemed intra-Community supply according to Article 17 VD and a deemed intra-Community acquisition according to Article 21 VD would take place and a ‘substitution’ (within the meaning of the call-off stock simplification in Article 17(6) VD) would not be possible.

2.5.11. Is partial substitution possible?

Partial substitution, whereby an intended acquirer is replaced by another one in the same Member State for a part of the goods which were under the initial call-off stock agreement is indeed possible. The same conditions have to be fulfilled and, in this context, the contract should also be concluded before or at the same time when the initial contract, in relation to the goods to which the substitution refers, comes to an end.

In case of such partial substitution, the VAT number of the new intended acquirer has to be mentioned in the recapitulative statement in which the substitution occurs (without the value of the goods). This constitutes a new reference in the recapitulative statement of the period of the substitution and is not to be seen or treated as a correction of the previous recapitulative statement in which the original intended acquirer (now “substituted”) was mentioned. In case the substitution, or partial substitution, takes place within the same declaration period in which the transport of the goods for the initial intended acquirer is made, both intended acquirers have to be mentioned. (see also section 2.5.18).

The partial substitution has to be recorded by the supplier in the register foreseen in Article 243(3), first subparagraph VD and in Article 54a(1) IR. Also the new intended acquirer will have to fulfil his own obligations relating to the register (Article 243(3), second subparagraph VD and Article 54a(2) IR).

2.5.12. What is the meaning of “other applicable conditions” for the substitution? Which point in time should be taken into account?

Article 17(6) VD lays down that no supply according to Article 17 VD takes place when the intended acquirer is replaced by another, this substitution is recorded in the register of the supplier and “all other applicable conditions” (of paragraph 2 of Article 17(a) VD) are met. In other words, the same conditions have to be fulfilled for a ‘substitution’ as for an initial call-off stock situation.

It is however to be understood that these conditions should be assessed reasonably (hence the word “applicable” in the legal text) and normally at the time of the substitution and not at the time of the initial transport. For example, the “agreement” referred to in Article 17a(2)(a) VD between the supplier and the substitutor (the new intended acquirer) must exist at the time of the substitution but not at the time of the initial transport. Further for instance the substitutor (the new intended acquirer) has to be registered in the Member State of the stock at the time of the substitution but not necessarily at the time of the initial transport. Equally the supplier will have to mention the VAT number of the substitutor (the new intended acquirer) in the recapitulative statement of the period in which the substitution occurs but not in the recapitulative statement of the period of the initial transport. Further the substitution is not connected with any “new transport” of the goods, since it is the initial transport of those goods which is relevant here.

However, as already stated in section 2.3.2, the 12-month period referred to in Article 17(4) VD starts at the time of the initial call-off stock arrangement and does not re-start at the time of any substitution. Overall, the goods can remain no longer than 12 months under the call-off stock arrangements.

#### *2.5.13. How to determine the 12-month period ?*

Article 17a(4) VD lays down a 12-month deadline “after the arrival of the goods in the Member State to which they were dispatched or transported”. For the practical implementation of this Article, it is necessary to determine whether “arrival” in this provision refers to the moment in which the goods materially enter the territory of the Member State of destination or to the moment in which the goods arrive in the warehouse in which they will be stored. Although not expressly laid down in the legislation, it seems that “arrival” within the meaning of Article 17a(4) VD refers to the arrival of the goods in the warehouse where they are stored in the Member State of destination. This corresponds with the obligation to mention in the register the date on which the goods arrive in the warehouse according to Article 54a(2)(c) VD. This is further supported by the fact that it might be difficult for the parties to know the exact date of entry in the Member State of destination. The criterion of the “arrival in the warehouse” is therefore more in line with the principle of legal certainty.

For calculating the 12-month period itself, no specific rules have been stipulated. Therefore, the general EU rules for determining periods, dates and time limits are applicable (Regulation (EEC, Euratom) No 1182/71). This implies that the 12-month period starts at the first hour of the first day of the period and will end with the expiry of the last hour of the same date as the day from which the period runs. If that last day is a public holiday, Saturday or Sunday, then the period shall end with the expiry of the last hour of the following working day. To this effect, “the first day of the period” is the day following the day in which the arrival of the goods took place<sup>8</sup>.

---

<sup>8</sup> Article 3 of Regulation (ECC,Euratom) No 1182/71 establishes the following: 1. Where a period expressed in hours is to be calculated from the moment at which an event occurs or an action takes place, the hour during which that event occurs or that action takes place shall not be considered as falling within the period in question.

Where a period expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be considered as falling within the period in question.

Some practical examples: a transport of goods under call-off stock arrangements starts on 6 January 2020 from Member State A to Member State B and arrives the same day at the storage place in Member State B. The 12-month period starts at 7 January 2020 (00:00) expires at the end of Thursday 7 January 2021 (24:00).

*2.5.14. How to determine the 12-month period in case of bulk goods?*

The question was raised which accounting methods [LIFO (last in – first out) or FIFO (first in – first out)] are to be used in determining the 12-month period in relation to ‘bulk’ goods. The call-off stock legislation does not provide any rule in this respect. However, in practical terms, it would appear that the FIFO method would be the most appropriate system in demonstrating the period during which the bulk goods have been kept under the call-off stock arrangements.

*2.5.15. In which format can or should registers be kept?*

The call-off stock legislation does not stipulate in which format the registers should be kept. To that extent, Member States have to determine the conditions. It would however be reasonable to expect that Member States apply certain flexibility and would not impose too strict limitations e.g. only a paper-based separate register but would also accept e.g. electronic registers

*2.5.16. Can Member States impose additional obligations in relation to the register on the warehouse keeper when he is a third party?*

Where the warehouse keeper is different from the intended customer, it can be considered that a useful interpretation of Article 54a(2) requires that the former keeps a register which will have to reflect the elements mentioned in letters (c), (e) and (f) of that provision. Additional obligations on the warehouse keeper are in principle still possible on the basis of Article 273 VD (“Member States may impose other obligations (...)”). However, it should be emphasised that proportionality should be respected.

---

2. Subject to the provisions of paragraphs 1 and 4:

- (a) a period expressed in hours shall start at the beginning of the first hour and shall end with the expiry of the last hour of the period;
- (b) a period expressed in days shall start at the beginning of the first hour of the first day and shall end with the expiry of the last hour of the last day of the period;
- (c) a period expressed in weeks, months or years shall start at the beginning of the first hour of the first day of the period, and shall end with the expiry of the last hour of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day from which the period runs. If, in a period expressed in months or in years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last hour of the last day of that month;
- (d) if a period includes parts of months, the month shall, for the purpose of calculating such parts, be considered as having thirty days.

3. The periods concerned shall include public holidays, Sundays and Saturdays, save where these are expressly excepted or where the periods are expressed in working days.

4. Where the last day of a period expressed otherwise than in hours is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day.

This provision shall not apply to periods calculated retroactively from a given date or event.

5. Any period of two days or more shall include at least two working days.



2.5.17. How to declare in the recapitulative statement a call-off stock and a substitution (or several substitutions) that take place within the same declaration period for the recapitulative statement? (Idem for call-off stock and return of the goods taking place in the same declaration period for the recapitulative statement)

According to Article 262(2) VD both the initial transfer of goods under call off stock arrangements and also “any change in the submitted information” must be reflected in the recapitulative statement. This means that transfers of goods under the call-off stock arrangements substitutions of the intended customer and returns of goods have to be reflected in the recapitulative statement.

Therefore, the VAT identification number of each intended customer for whom transfers were made within the declaration period has to be included in the recapitulative statement. When there are several transfers of goods within the same declaration period for one and the same customer it is sufficient to mention his/her VAT identification number only once. However, where transports are intended for different customers, all the relevant numbers have to be included in the recapitulative statement.

For substitutions, each VAT identification number of a new intended customer has to be included in the recapitulative statement even if several consecutive substitutions took place within the same declaration period.

And finally, in case of the return of goods the VAT identification number of each customer, for whom the goods being returned were intended, has to be included in the recapitulative statement. Here, the relevant VAT identification number of the customer is the number of the customer for whom goods were intended at the moment when the return of the goods begins.

A practical example:

Company A, established in Member State 1, and submitting monthly recapitulative statements for intra-Community supplies, makes the following transactions (listed under the bullet points below).

For these examples we will consider that, whenever the customer takes ownership of goods placed under call-off stock agreements, the chargeability of the VAT (governed by Article 67 of the VD) takes place in the same month:

January

- A sends from MS1 20 000 units of goods to company B in MS2 under call-off stock arrangements.
- A decides that 5 000 of the units under the call-off stocks arrangements with B will be placed under the call-off stock arrangements with C in MS2.
- 5 000 of the units under the call-off stocks arrangements with B are returned to A in MS1.

In the recapitulative statement presented in Member State 1 corresponding to the month of January, A should included the following:

- The VAT identification number of company B in Member State 2 without any amounts.

- The VAT identification numbers of company B and C in Member State 2 without any amounts.
- The VAT identification number of company B in Member State 2 without amounts but with a flag indicating the return of the goods.

For partial substitution see also point 2.5.11.

#### *2.5.18. Global practical example as regards the recapitulative statement*

Company A, established in MS1, and submitting monthly recapitulative statements for intra-Community supplies, makes the following transactions listed below. For these examples it will be considered that, whenever the customer takes ownership of goods placed under call-off stock agreements, the chargeability of the VAT (governed by Article 67 of the VAT Directive) takes place in the same month:

##### **January**

- 1) A sends from MS1 10 000 units of goods to company B in MS2 under call-off stock arrangements.
- 2) A sends from MS1 5 000 units of goods to company C in MS2 under call-off stock arrangements.
- 3) A sends from MS1 10 000 additional units of goods to company B in MS 2 under call-off stock arrangements.
- 4) A decides that 5 000 of the units under the call-off stocks arrangements with B will be placed under the call-off stock arrangements with C in MS2.
- 5) 5 000 of the units under the call-off stocks arrangements with B are returned to A in MS1.
- 6) B takes ownership of 5 000 units. Consideration paid EUR 100 000.
- 7) 2 000 units of the call-off stock with C are sold to company D in MS2. Consideration paid EUR 40 000.

##### **February**

- 8) A sends from MS1 10 000 units to company B in MS2 under call-off stock arrangements.
- 9) A sends from MS1 10 000 units to company C in MS 2 under call-off stock arrangements.
- 10) A sends 2 000 units which were already in MS2 under the call-off stock arrangements with B, to company E in MS3 to be placed under call-off stock arrangements there.
- 11) A sends from MS1 2 000 units to company D in MS2 under call-off stock arrangements.
- 12) All units sent to D are returned to A in MS1.
- 13) A sends from MS1 5 000 units to company F in MS2 under call-off stock arrangements.

- 14) B takes ownership of 8 000 units. Consideration paid EUR 160 000.
- 15) C takes ownership of 6 000 units. Consideration paid EUR 120 000.
- 16) A returns to MS1 2000 units of goods which had been sent before under call off to F.
- 17) 1 000 of the units of F are placed under call-off stock arrangements with H in MS2.
- 18) F takes ownership of the other 2 000 units. Consideration paid EUR 40 000.
- 19) A sells directly 5 000 units placed under the call-off stock of C to G in MS3. Consideration paid EUR 100 000.
- 20) A decides that 2 000 units placed under call-off stock arrangements with B will be moved to the call-off stock with C in MS 2. Later during the month of February those same 2 000 units are placed under call-off stock arrangements with H in MS 2.
- 21) Another 2 000 units of the call-off stock with B in MS 2 are moved to the call-off stock with H in MS 2.

### **Information to be included in the recapitulative statements by A**

#### **January**

In the recapitulative statement presented in MS1 corresponding to the month of January A should include the following information:

- The VAT identification number of company B in MS2 without any amounts (this number shall only be included once and will cover transactions 1 and 3).
- The VAT identification number of company C in MS2 without any amounts (transaction 2).
- The VAT identification numbers of B and C in MS2 in the same line (transaction 4).
- The VAT identification number of B in MS2 with a flag indicating the return of the goods, and no amounts (transaction 5).
- The VAT identification number of B and the amount of EUR 100 000 (transaction 6).
- The own VAT identification number of A in MS2 with the taxable amount determined for the deemed intra-Community supply according to Article 76 VD. (transaction 7). The VAT identification number of D does not have to be included for this transaction as it is considered a domestic supply from A to D in MS2.

#### **February**

In the recapitulative statement presented in MS1 corresponding to the month of February A should include the following information:

- The VAT identification number of company B in MS2 without any amounts (transaction 8).
- The VAT identification number of company C in MS2 without any amounts (transaction 9).
- The own VAT identification number of A in MS2 with the taxable amount determined for the deemed intra-Community supply according to Article 76 VD (transaction 10). In

addition, for this transaction A will have to submit a recapitulative statement in MS2 showing the VAT identification number of E in MS3 without including any amounts.

- The VAT identification number of D in MS2 without any amounts (transaction 11).
- The VAT identification number of D in MS2 with a flag indicating the return of the goods, and no amounts (transaction 12).
- The VAT identification number of F in MS2 and no amounts (transaction 13).
- The VAT identification number of B and the amount of EUR 160 000 (transaction 14).
- The VAT identification number of C and the amount of EUR 120 000 (transaction 15).
- The VAT identification number of F in MS2 with a flag indicating the return of the goods, and no amounts (transaction 16).
- The VAT identification number of companies F and H in MS2 without any amounts in the same line (transaction 17).
- The VAT identification number of company F with an amount of EUR 40 000 (transaction 18).
- The own VAT identification number of A in MS2 with the taxable amount determined for the deemed intraCommunity supply according to Article 76 VD (transaction 19). This transaction should be merged in one single line with transaction 10 in the recapitulative statement. Therefore, there would be only one line where the VAT identification number of A in MS2 is shown for a total taxable amount determined for both deemed intraCommunity supplies according to Article 76 VD (transactions 10 and 19). In addition, for this transaction (transaction 19) A will have to submit a recapitulative statement in MS2 showing the VAT identification number of G and the amount of EUR 100 000.
- The VAT identification number of companies B and C in MS 2 in the same line, and the VAT identification number of companies C and H in MS 2 in another line, without any amounts (transaction 20).
- The VAT identification number of companies B and H in MS 2 in the same line, without any amounts (transaction 21).

#### 2.5.19. What means the “change in the submitted information” in Article 262 of the VD?

Article 262 VD stipulates that, under the call-off stock arrangements, the supplier has to mention the VAT identification number of the intended acquirer (without the value of the goods) in his recapitulative statement. Further the supplier has to mention in his recapitulative statement “any change in the submitted information”.

This last part, added by the Council (where all Member States adopt unanimously VAT legislation), implies in practice that not only the intended acquirer of the goods at the time the initial transport takes place should be mentioned in the recapitulative statement. Further the following situations will also have to be mentioned/reflected in the recapitulative statement:

- 1) substitution or partial substitution of the intended acquirer<sup>9</sup>
- 2) return or partial return of the goods

2.5.20. What is to be understood as the “identity” of the intended acquirer in Art. 17a(2)(d) VD?

One of the conditions in Article 17a(2)(d) VD for the application of the call-off stock simplification is the obligation for the supplier to include in the recapitulative statement the identity of the intended customer and the intended customer's VAT identification number assigned by the Member State to which goods are sent or transported.

In practical terms, in the recapitulative statement there is only place to put the intended customer's VAT identification number. So the question is how to fulfil the requirement from Article 17a(2)(d) to include the identity of the customer in the recapitulative statement.

The identification of a taxable person using an individual VAT identification number means in practice that each number is assigned to one concrete taxable person. Member States are obliged to store in an electronic system data on the identity, activity, legal form and address of a person to whom a VAT identification number was issued (Article 17(1)(b) of Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax).

In other words, the identity of a taxable person and its VAT identification number are closely linked (and are as a rule inseparable) in the system.

Therefore, the requirement to include the identity of the intended customer should be seen as being fulfilled when the VAT number of that intended customer is put in the recapitulative statement. This is confirmed by the wording of Article 262(2) VD which only refers to the VAT identification number of the intended customer, without any reference to his identity.

2.5.21. Have transitional measures been foreseen as for transport before and arrivals after the entry into force of the call-off stock simplification ?

Legal provisions do not envisage any transitional measures in respect of transports of goods that would start before 1 January 2020 and would end after that date (entry into force of the call-off stock simplification). However, taking into account that the call off stock simplification rules, and the definition of the call off stock arrangements therein, pay heed to the fact that “goods are dispatched or transported... to another Member State” (Article 17a(2)(a) VD) the following rules should apply:

- if the transport starts before 1 January 2020, the call-off stock simplification cannot be applied, even when the arrival of the goods in the Member State of destination takes place after that date;

---

<sup>9</sup> The obligation to reflect the VAT number of the new intended acquirer in case of substitution stems primarily from Article 17a(6) VD which stipulates that, as a substantive condition for the call-off stock simplification to be continued in case of substitution, “all other applicable conditions” of the call-off stock simplification (in paragraph 2 of Article 17a(2) VD) have to be met; therefore including the mentioning of the new intended acquirer in the recapitulative statement (Article 17a(6) VD in connection with Article 17a(2)(d) VD). See also section 2.5.4.

- in case the transport starts on or after 1 January 2020, the new rules on the call-off stock simplification are applicable. If the simplification applies, the recapitulative statement for the declaration period that includes the start date of the transport, is to be filled in accordingly.

*2.5.22. Can a supplier, non-established in the EU, use the call-off stock simplification?*

For the purposes of the call off stock simplification, the supplier cannot have established his business, nor can he have a fixed establishment, in the Member State to which the goods are transported or dispatched. Apart from that, there is no other condition regarding the establishment of the supplier, who can be established in another Member State or otherwise.

The question could be raised whether the CP42 exemption on importation would be applicable in case this import is followed by a call-off stock transport. Since at the time of import there is not yet certainty about any supply to a customer, the CP42 procedure cannot be applied. This could be a situation in which the sender would prefer not to apply the call-off stock arrangements in order not to lose the exemption at import (on the basis of Article 143(1)(d)).

*2.5.23. Identity of the intended acquirer - how must the identity be known by the supplier? Is a sales contract sufficient?*

There are as such no specific rules in the Directive on this but the contract between the seller and the intended acquirer which is the base for the call off stock transaction should be enough in this regard. Not only the identity of the intended customer must be known by the supplier but also the VAT number assigned to that intended customer by the Member State to which the goods are transported. The supplier has to mention the VAT identification number of the intended acquirer in this recapitulative statement submitted for the period of the transport of the goods.

*2.5.24. What is meant by “agreement” in Article 17a(2)(a) VD? Is this always a sales contract?*

The Directive does not stipulate or prescribe the type of agreement which must exist between the seller and the intended customer. Nevertheless, it is reasonable to assume that where a contract between the two parties exists according to which the intended acquirer is authorised to take goods of a certain kind out of the stock against payment of a certain price (thus acquiring the property of those goods), then the condition in Art 17a (2)(a) VD is fulfilled.

*2.5.25. Are the conditions for the call-off stock arrangements met, if the goods to be delivered to the intended costumer need to be sorted first by a third party at the warehouse?*

Nothing is stipulated on this point in the Directive; it is therefore not excluded that the conditions for the call-off stock can be fulfilled in this case.

*2.5.26. Can the register(s) be maintained by a third party (such as a warehouse manager) on behalf of the seller and/or the intended customer?*

A third party could keep the register, but the relevant taxable persons, seller and intended acquirer, remain accountable for the fulfillment of this obligation (except, as far as the

intended customer is concerned, for the elements mentioned in Article 54a(2)(c), (e) and (f) IR, according to the last paragraph of Article 54a(2) IR).

2.5.27. *In case of a transport beginning in month 1 and ending in month 2, what is the relevant period for the purposes of the recapitulative statement?*

Similarly to what has been stated in point 2.5.21 in relation to the transitional measures, the relevant date here is the date of the beginning of the transport. Therefore, the VAT number of the intended customer will have to be reflected by the supplier in the recapitulative statement of month 1.

Draft version 9/9/2019

### 3. THE CHAIN TRANSACTIONS

#### 3.1. Relevant provision

Article 36a VD.

#### 3.2. Background

Chain transactions within the meaning of Article 36a VD refer to successive supplies of the same goods (which means that there are two or more consecutive supplies) where the goods supplied are subject to a single intra-Community transport between two Member States.

The Court of Justice of the European Union (CJEU) has consistently ruled that, in these situations, the intra-Community transport of the goods can only be attributed to one of the supplies in the chain, which has the possibility to benefit from the exemption in Article 138 VD for intra-Community supplies<sup>10</sup>.

However, the VAT Directive did in its wording prior to 1 January 2020 not provide for any concrete rule for the allocation of the intra-Community transport of the goods. The case law of the CJEU provided some guidance, but in any event an overall assessment of all the specific circumstances had to be made in each particular case.

Therefore, no general rule was applicable to these situations and the assessment on how to ascribe the intra-Community supply of goods to a concrete transaction within the chain had to be done on a case-by-case basis. That situation could lead to different approaches amongst Member States, resulting in situations of double or non-taxation, depriving operators from legal certainty.

The new provision in Article 36a VD addresses this issue, laying down rules in order to attribute the intra-Community transport of the goods to a concrete supply within a chain of transactions.

#### 3.3. What does the provision do?

Directive 2018/1910 has introduced a new Article 36a in the VAT Directive. This Article addresses the issue of what is the supply to which the transport or dispatch of the goods is to be ascribed when a chain transaction takes place, that is to say, what supply is the intra-Community supply.

In order for Article 36a VD to apply, the following conditions have to be met:

- The goods must be supplied successively. Therefore, it is necessary that at least three persons are involved in the chain transaction.
- The goods must be dispatched or transported from one Member State to another Member State. As a result, chain transactions involving imports and exports, or involving only supplies within the territory of a Member State, are excluded from the provision.

---

<sup>10</sup> This was first held by the CJEU in its ruling of 6 April 2006 in Case C-245/04, *Emag Handel Eder*.



- The goods must be transported or dispatched directly from the first supplier to the last customer in the chain.

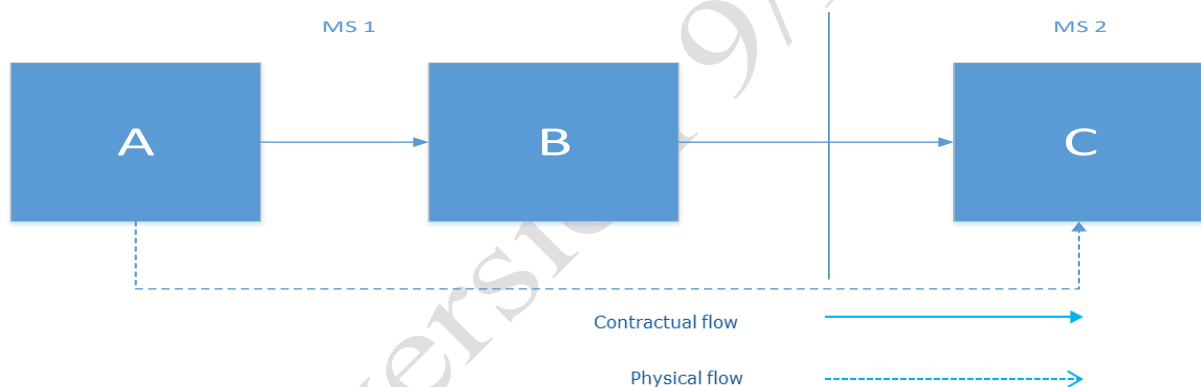
If these conditions are met, Article 36a(1) VD lays down the general rule: the dispatch or transport of the goods is ascribed to the supply made **to** the intermediary operator.

However, Article 36a(2) VD provides for the possibility to derogate from the general rule. That will be the case when the intermediary operator communicates to his supplier his VAT identification number issued by the Member State from which the goods are dispatched or transported. In this case the dispatch or transport of the goods is ascribed to the supply made **by** the intermediary operator.

The intermediary operator is defined in Article 36a(3) VD. This is the supplier in the chain other than the first supplier, who dispatches or transports the goods, himself or by a third party on his behalf. To prove his status of intermediary operator, he will need to keep evidence that he transported the goods or that he arranged the transport of the goods with a third party acting on his behalf.

### 3.4. Different scenarios - examples

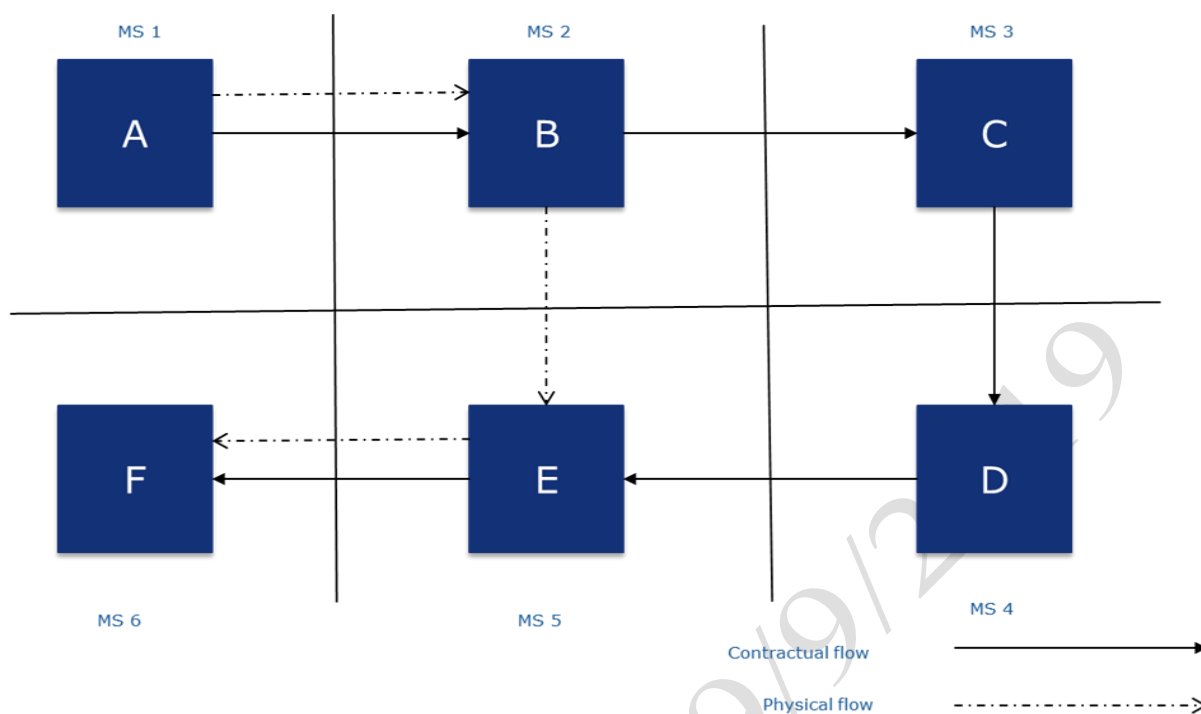
#### 3.4.1. Example 1 – a simple case of a chain transaction



Here we have consecutive supplies of goods from A to B and B to C, where the goods are transported only once, from A in MS 1 to C in MS 2. The problem in this case is determining whether the intra-Community transport has to be ascribed to the supply from A to B or to the supply from B to C.

However, there are more complex cases, which could even involve several transports of the goods within the EU. In these situations, it is important to analyse which transactions fall within the scope of the measure put in place by Article 36a(1) VD and which are not covered and therefore have to be considered separately. Therefore, the first thing to do is to delimit the chain transaction.

### 3.4.2. Example 2 – a more complex situation involving different transports



In this example there are three different transports: from A to B, from B to E and from E to F. It is assumed not only that the transports take place successively in time but also that there is a clear break between them so as to make it impossible to consider them as one single transport. In that case the supply from A to B and the supply from E to F fall outside the scope of the measure put in place for the chain transactions, as they do not meet the conditions set out in Article 36a(1) VD, in particular the direct transport from the first supplier to the last customer in a chain comprising successive supplies of the same goods. Therefore, the supplies between A and B, and from E to F are “normal” intra-Community supplies.

Conversely, the transactions between B, C, D and E are covered by the measure put in place for chain transactions: the goods are supplied successively between these four parties, the goods are dispatched or transported from one Member State (MS 2) to another Member State (MS 5), and the goods are transported directly from the first supplier (B) to the last customer (E) in the chain.

Only the three transactions between these four parties have therefore to be considered for assigning the transport in accordance with Article 36a VD.

### 3.5. Assigning the transport to one of the supplies in the chain – explanations for examples 1 and 2

Article 36a(1) VD lays down the general rule. The transport will be ascribed **only** to the supply made to the “**intermediary operator**”.

One first conclusion can be inferred from this rule, namely that the transport or dispatch can only be ascribed to one supply. Therefore, the other supplies in the chain will follow the rules on supplies of goods without transport and will qualify as domestic supplies, either in the Member State of departure of the goods or in the Member State of arrival of the goods.

The second conclusion that can be drawn from the rule is that in order to ascribe the transport or dispatch of the goods to one supply it is necessary to identify the “intermediary operator”, according to the definition mentioned in point 3.3 above.

It should be noted that the scope of the rules in Article 36a VD is limited to clarify which transaction in the chain the transport is assigned to. These rules do not have any impact on the liability for the tax, which is determined according to the general rules.

### *3.5.1. The attribution of transport in example 1.*

In this situation, we are going to consider that the intermediary operator is B. This means that B dispatches or transports the goods from MS 1 to MS 2, himself or by a third party on his behalf.

The general rule in Article 36a(1) VD is that the dispatch or transport of the goods shall be ascribed only to the supply made to the intermediary operator. Therefore, the intra-Community supply of the goods will be the supply from A to B. In that situation, B will have to provide A with the VAT identification number issued to him by a Member State other than MS 1 in order for the supply made by A to benefit from the exemption in Article 138 VD. B will make an intra-Community acquisition of the goods in MS 2. The supply from B to C will be a domestic supply in MS 2 and B will be liable in MS 2 for the VAT charged on that supply<sup>11</sup>. B will have to be registered in MS 2, and present a VAT return in that MS.

However, as we see in example 1, B is established in MS 1. Therefore, he could provide to his supplier, A, with his VAT identification number issued by MS 1. In that case, instead of the general rule in Article 36a(1) VD, the applicable rule would be the one in Article 36a(2) VD. Therefore, the dispatch or transport of the goods would be ascribed not to the supply made to B, but to the supply made by B.

In that case, A will make a domestic supply to B in MS 1. B will make an intra-Community supply of goods to C. C will make an intra-Community acquisition of goods in MS 2. Thus, B does not need to be identified in MS 2, nor does he need to present any VAT return in that MS.

### *3.5.2. The attribution of transport in example 2.*

As explained before, in that example only the supplies between B, C, D and E were part of the chain transaction.

#### *a) The first supplier in the chain organising the dispatch or transport*<sup>12</sup>

The legal provision explicitly excludes the first supplier from the concept of intermediary operator. Consequently, such situations are excluded from the scope of the rule laid down in Article 36a VD.

---

<sup>11</sup> Unless MS 2 has availed itself of the option in Article 194 VD. If that is the case, C will be liable for VAT under the reverse charge mechanism.

<sup>12</sup> Within this section of the Explanatory Notes when reference is made to a taxable person “organising the transport” of goods it must be taken to mean that that taxable person transports the goods either himself or through a third party acting on his behalf.

In that regard, it should be kept in mind that the first supplier only participates in one transaction within the chain transaction, the supply made by him. Therefore, if the first supplier is the one organising the dispatch or transport of the goods, the transport or dispatch can only be ascribed to the transaction in which he intervenes, the supply made by him. That transaction will then be the intra-Community supply of goods, exempt according to Article 138 VD if the conditions laid down in that Article are fulfilled.

In the scheme set out in example 2, the chain transaction involves a transport of goods from MS 2 to MS 5 directly from B to E and comprises the supplies between B, C, D and E, so B is the first supplier in the chain. Hence, if B is organising the transport or dispatch of the goods, that transport will be ascribed to the supply made by B to C, which leads to an intra-Community supply of goods by B exempt in MS 2 (if the conditions in Article 138 VD are fulfilled) and an intra-Community acquisition by C taxable in MS 5. The supplies from C to D and from D to E will in that case be domestic transactions in MS 5.

As indicated above, the supply of goods from A to B, which gives rise to a specific transport from MS 1 to MS 2 directly from A to B is excluded from the chain transaction. The supply from A to B is, in its own right, an intra-Community supply of goods exempt in MS 1 (if the conditions in Article 138 VD are fulfilled), leading to an intra-Community acquisition by B taxable in MS 2.

**b) The last customer in the chain organising the dispatch or transport**

The last customer in the chain cannot be the intermediary operator either. This is because he can never meet the condition of being a “**supplier**” in the chain” as referred to in Article 36a(3) VD. Consequently, the situations where the last customer in the chain is organising the transport are excluded from the scope of the rule laid down in Article 36a VD.

The last customer only participates in one transaction within the chain, the supply made to him. Therefore, if he organises the dispatch or transport of the goods, such dispatch or transport can only be ascribed to that transaction, the supply made to the last customer.

Going back to example 2, the chain transaction involves the supplies between B, C, D and E, so E is the last customer in the chain. Hence, if E is organising the transport or dispatch of the goods, that transport or dispatch will be ascribed to the supply made by D to E, which leads to an intra-Community supply of goods by D exempt in MS 2 (if the conditions in Article 138 VD are fulfilled) and an intra-Community acquisition by E taxable in MS 5. The supplies from B to C and from C to D will be domestic transactions in MS 2.

As indicated above, the supply of goods from E to F is excluded from the chain transaction since it involves a specific transport from E to F, different from the transport from B to E. The supply from E to F is an intra-Community supply of goods exempt in MS 5 (if the conditions in Article 138 VD are fulfilled) leading to an intra-Community acquisition made by F taxable in MS 6.

**c) An operator in the chain other than the first supplier or the last customer organises the dispatch or transport**

Now we are going to analyse what happens when in example 2 the intermediary operator is either C or D.

As previously said, Article 36a(1) VD lays down the general rule: the transport is ascribed to the supply made to the intermediary operator (who cannot be the first or the last person in the chain of supplies).

However, Article 36a(2) VD lays down a derogation to the general rule. In case the intermediary operator communicates to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported, then the dispatch or transport shall be ascribed to the supply of goods made by this intermediary operator.

For instance, if the intermediary operator is C, the general rule would lead to the transport being ascribed to the supply made to the intermediary operator, that is to say the supply from B to C. Thus, the supply by B will be an intra-Community supply of goods exempt in MS 2 (if the conditions in Article 138 VD are fulfilled) and there would be an intra-Community acquisition by C taxable in MS 5. The supplies from C to D and from D to E will be domestic transactions in MS 5.

However, the transaction to which the transport is ascribed would change if C communicates to his supplier, B, the VAT identification number issued to him by the Member State from which the goods are dispatched or transported, MS 2. If that is the case, then the dispatch or transport would be ascribed to the supply made by C, that is to say to the supply from C to D.

Thus, there would be an intra-Community supply of goods by C exempt in MS 2 (if the conditions in Article 138 VD are fulfilled), and an intra-Community acquisition by D taxable in MS 5. The supply from B to C will be a domestic transaction in MS 2 and the supply from D to E will be a domestic transaction in MS 5.

### 3.6. Detailed issues arising from this provision

#### 3.6.1. [...].

#### 3.6.2. What is the scope of the provision?

There are certain transactions which are excluded from the scope of the rules in Article 36a VD.

As stated in point 3.3, the goods must be dispatched or transported from one Member State to another Member State. Therefore, chain transactions involving imports and exports, or involving only supplies within the territory of a Member State, are excluded from the provision.

Besides, Article 36a(4) VD excludes the application of the rule for chain transactions to the situations covered by Article 14a VD. Therefore, the rule is not applicable to the cases where a taxable person facilitates through the use of an electronic interface such as a marketplace, platform, portal or similar means:

- a) distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150, or
- b) the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person.

In those cases, the taxable person facilitating the supply is deemed to have received and supplied those goods himself; however the rule regarding chain transactions cannot be applied to these supplies.

#### 3.6.3. Who can be an intermediary operator?

The intermediary operator is of the utmost importance for the application of the rule. Depending on the option taken by this intermediary operator, the dispatch or transport of the goods will be assigned to the supply made to him or to the supply made by him.

Therefore, once a chain transaction has been identified, the next step is determining who is the intermediary operator.

As stated in point 3.3, Article 36a(3) VD defines the “intermediary operator” as a supplier within the chain other than the first supplier who dispatches or transports the goods either himself or through a third party acting on his behalf.

#### 3.6.4. Who cannot be the intermediary operator?

As explained in point 3.5.2 when analyzing example 2, neither the first supplier nor the last customer in the chain can be the intermediary operator. The first supplier is expressly excluded by the wording of the provision and the last customer is not a supplier within the chain. Therefore, none of them can be the intermediary operator.

It should be noted that if they are the ones organising the transport of the goods, there are no doubts on how to assign the intra-Community transport. If the first supplier has organised it, the transport will be assigned to the supply made by him. If it is the last customer the one who organised the transport, the transport will be assigned to the supply made to him.

#### 3.6.5. What does “dispatches or transports the goods either himself or through a third party acting on his behalf” mean?

This wording reproduces the one in Article 138(1) VD, which refers to the “supply of goods dispatched or transported...by or on behalf of the vendor or the person acquiring the goods”. Therefore, the interpretation should be the same given to the latter provision.

In general, the intermediary operator will be the supplier who organizes (either directly himself or through a third party acting on his behalf) the transport of the goods; the person who either makes the transport himself on his own behalf, or contracts the transport with a third party bearing the risks of that transport in case of loss or damage to the goods.

#### 3.6.6. A supplier in the chain different from the intermediary operator carries out the transport of the goods on behalf of the intermediary operator.

The intermediary operator can transport the goods by himself or through another party on his behalf. The party transporting the goods on behalf of the intermediary operator does not have to be necessarily a third party outside the chain or a company specialised in the transport of goods. It could be any of the other suppliers involved in the chain transaction or even the last customer.

For instance, one of the intermediary suppliers in the chain can ask the first supplier to transport the goods to the last customer. In this situation, it is important to check the

conditions agreed between the first supplier and the intermediary supplier. Two situations might happen.

First, if the risks of the transport are borne by the first supplier (in the sense that, if the goods are lost or damaged during the transport, the loss or damage will be suffered by that first supplier<sup>13</sup>), he will then be the person making the intra-Community supply of the goods. As stated when analysing the scope of the provision, he cannot be the intermediary operator. In fact, in this case there would not be an “intermediary operator” in the sense of Article 36a(3) VD.

Second, if the risks of the transport are borne by the intermediary supplier, then the rules in Article 36a VD apply. The fact that the transport is materially carried out by the first supplier has no influence in the qualification of the intermediary supplier as intermediary operator, since in fact in this case, as far as the transport is concerned, the first supplier acts on behalf of that intermediary supplier.

### 3.6.7. Several persons involved in the transport of the goods

The relevant element for determining the intermediary operator is the fact that one operator organises the transport, contracting with the parties which materially will carry out the transport and bearing the risk of loss or damage of the goods during the transport. He can contract the transport with one person or with more than one. For instance, in example 2, C is the intermediary operator. C can contract with different persons the transport of the goods by truck from the premises of B in MS 2 to a harbour in another Member State, MS X; the transport of those goods by boat to MS 5 and the transport by truck of the said goods from the harbour in MS 5 to the premises of E. As long as C is the one party responsible for the three contracts, he remains as intermediary operator. Of course, there must be continuity in the transport operation, so that the whole itinerary can be considered as a single transport from MS 2 to MS 5 and not as three different transports.

That fact does not change, for instance, if the transport of the goods from the premises of B to the harbour in MS X is carried out using the means of B, as long as the intermediary operator C bears the risk of loss or damage of the goods during that transport.

A different conclusion would be reached if the transport from the premises of B in MS 2 to the harbour in MS X is organised by C, but the other two transports (the transport by boat to MS 5 and the transport by truck to the premises of E) are organised by the other supplier D. In that case we could not apply the rules for chain transactions for the whole chain B-C-D-E since there is not one transport, but two different transports. Indeed, in that case it cannot be said that the goods are dispatched or transported “directly from the first supplier to the last customer in the chain” (namely from B to E) as required by Article 36a(1) VD. Rather than that, the goods are first dispatched or transported from B to D and only later, through a different transport, from D to E. If that is the case, instead of an intra-Community supply in MS 2 and an intra-Community acquisition in MS 5, there would be an intra-Community supply of the goods in MS 2, an intra-Community acquisition of the goods in MS X, an intra-Community supply of the goods in MS X made by D, and an intra-Community acquisition of the goods in MS 5 made by E. Further, while in the

---

<sup>13</sup> This is irrespective of the fact that the first supplier may have an insurance contract, so he receives a compensation in case of loss or damage of the goods.

relationship B-C-D there would be a chain transaction (since there would be two successive supplies with one intra-Community transport and C would be the intermediary operator) the relationship D-E would not entail successive supplies, nor would it give rise to any chain transaction.

#### 3.6.8. *Fractioned transport and breaks in the chain*

When we discussed example 2 in point 3.4.2, we stated that the supplies from A to B and from E to F were excluded from the chain, as there was a “clear break” in the transport.

Thus, it is important to analyse, in the framework of transport with stops, when there is a clear break, giving rise to different transports, and when it can be considered as a single transport.

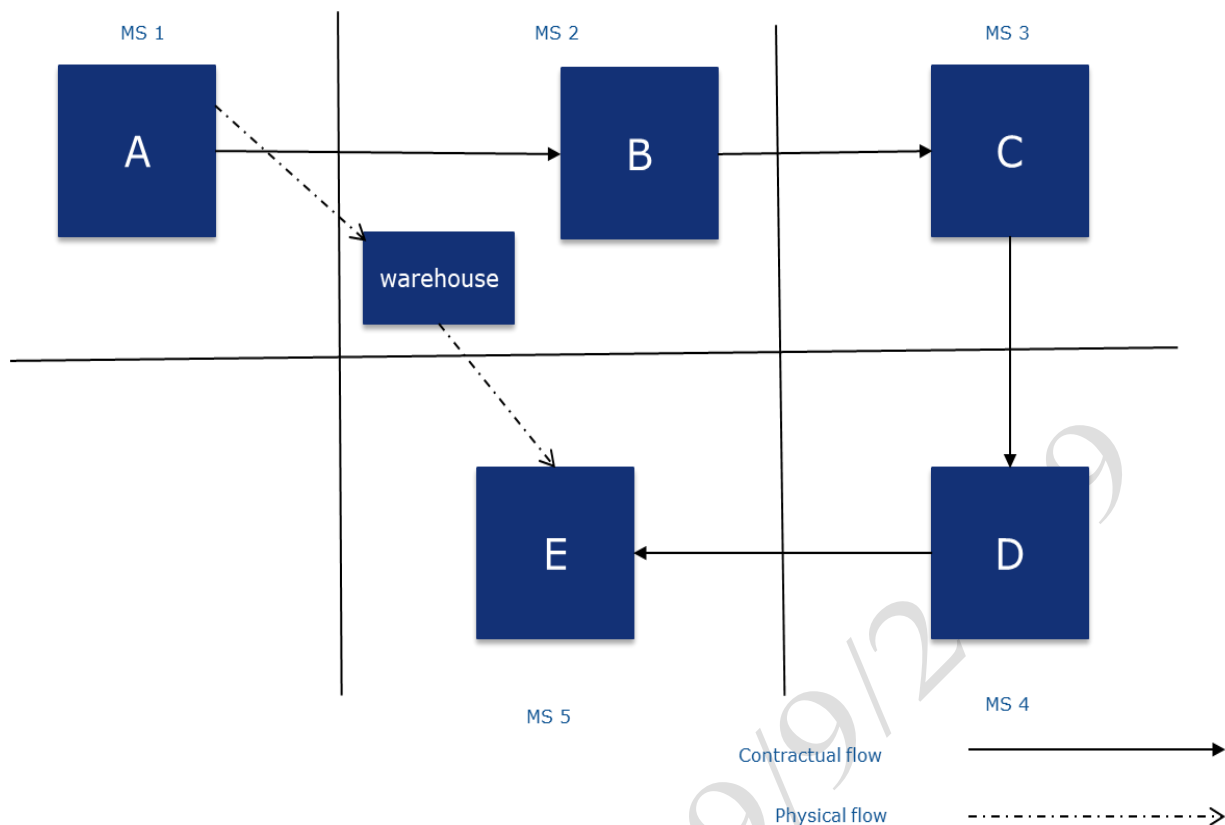
For instance, a situation where the chain is broken is the one analysed in the previous point 3.6.7, where there were two different “movements” of the goods between different Member States, the operator organising the transport being a different one for each “movement”. In that case the rules intended for chain transactions could not be applied to all transactions B-C-D-E, but only to the transactions between B-C-D, as the rule of the single transport could only be applied to these latter transactions.

However, the fact that there are different means of transport involved, so that the goods are transshipped from a truck to a boat or between different trucks, does not necessarily alter the consideration of the transport as a single transport.

Moreover, if goods are transported from MS 2 to MS 5, but part of them are disembarked in Member State X, the rest of the goods that immediately continue to MS 5 are considered to be directly transported from MS 2 to MS 5 for the application of the rules on chain transactions, as long as the intermediary operator organises the whole transport operation.

To analyse the possibilities of breaks in the chain we are going to focus in the following example (**example 3**):





There are two "movements" of the goods: from A to a warehouse in MS 2 and from the warehouse in MS 2 to E. When can we consider both "movements" as a single transport or as different transports? We are going to analyse different scenarios:

a) *Scenario 1*: To consider this scenario as one with a single transport for the application of the rule in Article 36a VD, certain conditions should be met. First, it is necessary that one operator amongst B, C or D organises both movements<sup>14</sup>, acting as the intermediary operator.

However, it is possible that even though one of them is organising both "movements", the two "movements" mentioned cannot be considered as a single transport. For instance, B is the one organising both "movements". When the goods are received by B in MS 2, he has not sold the goods yet, so he is the owner of the goods. At a later stage, the successive transactions between B, C, D and E take place and the goods are transported from B to E. In this case, we would consider that the chain A-B-C-D-E has been broken.

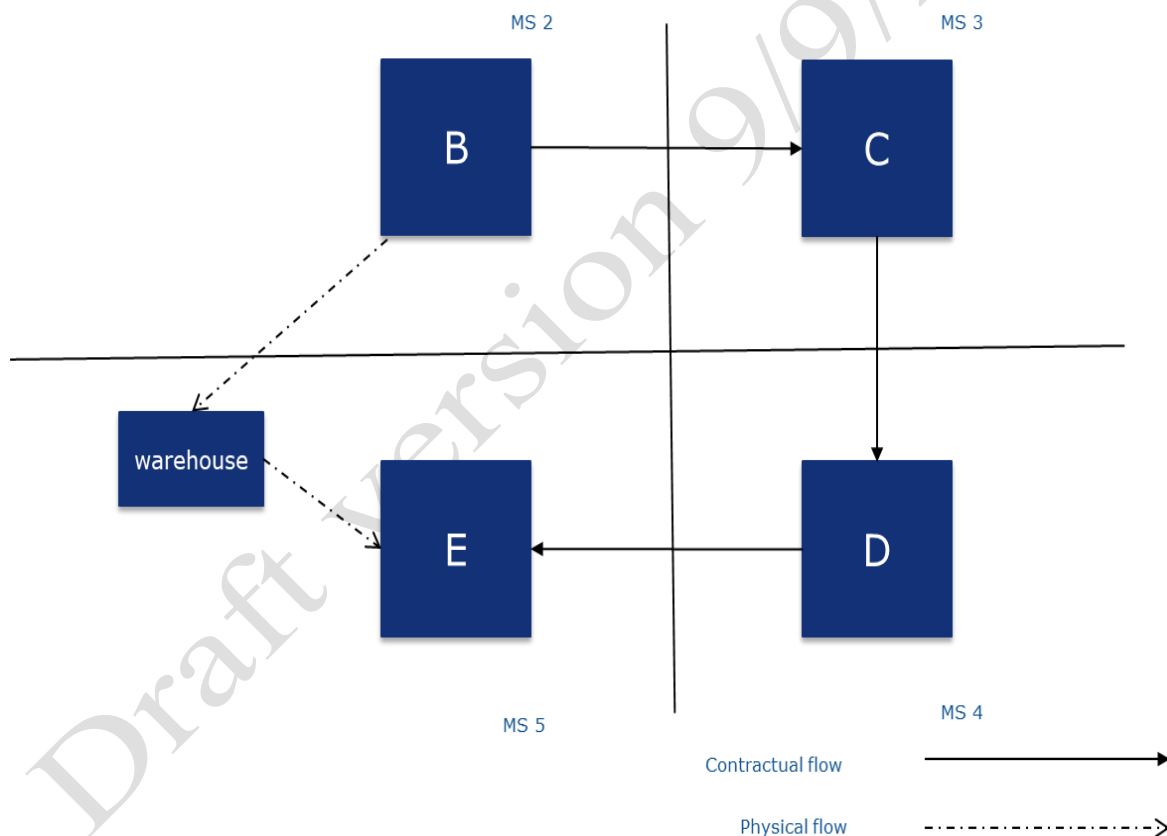
Therefore, when the goods are transported from MS 1 to MS 2 there would be an intra-Community supply by A in MS 1 and an intra-Community acquisition by B in MS 2. The series of transactions between B, C, D and E give rise to a single intra-Community transport from MS 2 to MS 5 which will be assigned to the supply made by B (there is no other option, since B is the first supplier in the chain B-C-D-E). The subsequent supplies C-D and D-E will be domestic supplies in MS 5.

<sup>14</sup> If either A or E organizes both "movements", the possibility would exist to consider them as a single transport, but in any case the rule in Article 36a VD would not apply, since there would be no intermediary operator within the meaning of that provision.

On the other hand, if B, when he acquires the goods, has already sold them and knows that they have to be transported to E in MS 5, then the fact that there are two “movements” of the goods does not impede the consideration of the series of transactions as a chain transaction, even if there is a small gap in time between both “movements” which for the purposes of Article 36a VD can be considered as a single transport. In that case, A will be the first supplier, E the last customer and B, who has organised both transports, will be the intermediary operator.

b) Scenario 2: A different conclusion would be reached if the first “movement” is organised by B, who bears the risk of that “movement”, and the second “movement” is organised by C, who bears the risk of that second “movement”. In that case we are confronted with two different transports. The supply from A to B will be taken out of the chain, so that there would be an intra-Community supply by A in MS 1 and an intra-Community acquisition by B in MS 2. The transactions between B, C, D and E would give rise to a chain transaction where B is the first supplier, E the last customer and C the intermediary operator.

c) Scenario 3: For this scenario we will use another example (**example 4**):



The goods are transported from the premises of B in MS 2 to a warehouse in MS 5. The person organising that transport is C. At the moment of the transport only B has sold the goods to C, while C has not sold the goods to anyone, so he remains owner of the goods. Later, after the goods have arrived in MS 5, the transactions between C, D and E take place. The person responsible for the transport of the goods from the warehouse to the premises of E in MS 5 is C.

In this case we have to pay attention to what is the contractual situation of the goods when the initial transport takes place. When the intra-Community transport takes place, C is still the owner of the goods. There are no successive supplies of the same goods, just a single

supply B-C. Therefore, an intra-Community supply of goods in MS 2 by B followed by an intra-Community acquisition of goods by C in MS 5 will take place. That intra-Community supply of goods will be exempt if the conditions in Article 138 VD are fulfilled.

In this case there is no chain transaction. The supplies from C to D and from D to E will be domestic supplies in MS 5 in both cases.

After analysing the different scenarios explained regarding fractioned transport and breaks in the chain, we can conclude that when there are several “movements” of the goods or several persons involved in the transport, it is important to examine on a case-by-case basis the circumstances in order to determine whether the rules for chain transactions can be applied. The most important elements will be determining where the goods are located, and not where the suppliers are located, and what transactions have taken place when the movements of the goods are carried out.

### *3.6.9. Proof of the organisation of the transport.*

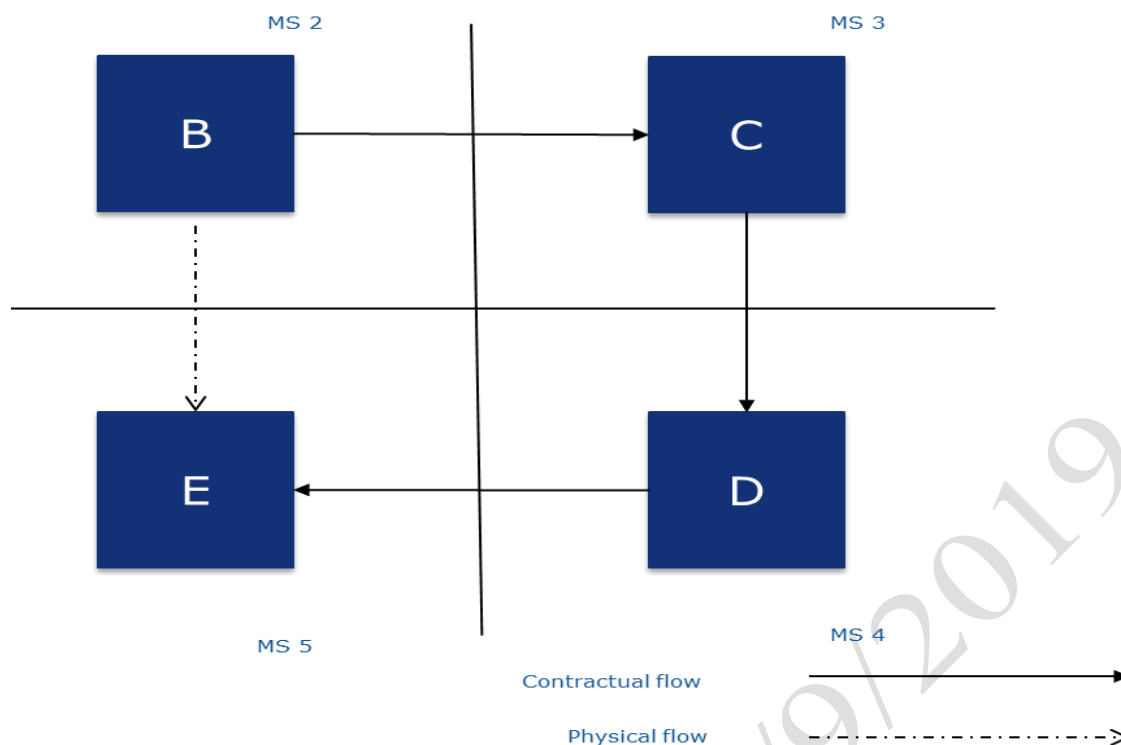
The intermediary operator needs to keep evidence that the goods have been transported or dispatched by himself or by a third party on his behalf. Such evidence is necessary to determine that he is the intermediary operator and therefore, to which transaction in the chain the transport is ascribed. However, this proof is different and needs to be assessed separately from that needed in order to benefit from the exemption in Article 138(1) VD. The party applying the exemption, who may or may not coincide with the intermediary operator, will indeed have to submit on his side evidence before the tax authorities certifying that the conditions to apply that exemption are met<sup>15</sup>.

Therefore, there are two different proofs that are necessary: the proof of the organisation of the transport (meaning the proof that the transport has been made “by or on behalf” of a certain taxable person) and the proof of the transport itself (meaning the proof that the goods have indeed been transported from one Member State to another).

We are going to use the following example (**example 5**) to better understand how two different proofs are needed:

---

<sup>15</sup> Therefore, where the transport is assigned to the supply made to the intermediary operator, the supplier will have to keep evidence of the transport in order to justify the exemption of the intra-Community supply. Further, in order to benefit from the presumption in Article 45a(1)(b) IR the supplier will have to be in possession of the documents required by that provision.



We are going to consider that the transport of the goods is assigned to the supply made to the intermediary operator and that C is the intermediary operator. The transport is assigned to the supply to C, so the intra-Community supply is the one made by B to C. For B to apply the exemption, as he is not organising the transport of the goods, in principle he will need (i) the VAT identification number issued to C by a Member State other than MS 2; (ii) proof that the goods have been transported out of MS 2 to another MS; and (iii) proof that the goods have been transported by C or by a third party on his behalf (since Article 138(1) VD requires, for the application of the exemption, that the goods have been transported by either the supplier or the acquirer, or by a third party on behalf of any of them).

Thus C will need to prove before B, not only that the transport took place but also that he organised the transport. It should be noted that, if according to the proofs, D is the one organising the transport and not C, then the intermediary operator would be D. In that case, the intra-Community transport would be assigned to the supply made by C to D or to the supply made by D to E, but it cannot be assigned to the supply from B to C. That latter supply becomes a domestic transaction in MS 2, and B will need to charge VAT to C. Therefore, C has to provide evidence to B that he is the one organising the transport, which is an additional and different evidence from that about the mere fact that the transport has taken place.

### 3.6.10. The communication of the VAT identification number by the intermediary operator has to be done to his supplier.

In order to apply the rule in Article 36a(2) VD the intermediary operator has to communicate the VAT identification number of the Member State from where the goods are dispatched or transported **to his supplier**.

Article 36a(2) VD does not require a communication to any of the tax administrations involved, only to the supplier.

That communication has to be made to his supplier; it is irrelevant if the intermediary operator communicates the VAT identification number to any of the other participants in the chain transaction.

In our example 2, if D is the intermediary operator and he communicates to C the VAT identification number assigned to him (D) by MS 2, then the transport will be ascribed to the supply made by D to E. Any communication by D of his VAT identification number to B or E would not be relevant for the purposes of Article 36a(2) VD. Therefore, if D communicates that number to B or E but fails to communicate it to C, then the general rule will apply and the transport or dispatch will be ascribed to the supply made by C to D.

*3.6.11. How should the intermediary operator communicate his VAT identification number.*

The communication of the VAT identification number does not need to be done according to any special formality. It can be done by any means allowing to prove that the communication has been received by the supplier. In that regard, an exchange of emails could be enough.

The communication does not have to be done transaction by transaction. It is possible that the intermediary operator indicates only once to his supplier the VAT identification number that should be used for all supplies to a certain Member State.

*3.6.12. Means of proof of the communication of the VAT identification number.*

The intermediary operator has to keep proof of the communication and present such proof to the tax authorities when required in order to verify the correct application of the rule. Therefore, some kind of written communication, electronically or not, is required in order to prove that the VAT identification number has been communicated.

However, even if the intermediary operator or his supplier are not able to submit any evidence that the intermediary operator communicated to his supplier the VAT number assigned to him by the Member State from which the goods are dispatched, that will be considered to be the case if the following conditions are met:

- 1) the VAT identification number of the intermediary operator issued by the Member State from which the goods are dispatched or transported is shown in the invoice issued to him by his supplier, and
- 2) the VAT amount payable in the Member State from which the goods are dispatched or transported has been charged in the invoice.

The authorities of the Member States involved should also be able to verify that the behaviour of the supplier and the intermediary operator is consistent with what is shown in the invoice. Therefore, if the supplier has charged VAT in the transaction according to the invoice, that VAT should be included in his VAT registers if he is obliged to keep them, and in his VAT return. The same will happen with the intermediary operator.

*3.6.13. What happens if the intermediary operator cannot prove that communication?*

In case the intermediary operator and his supplier cannot prove that the intermediary operator communicated to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported, and the conditions

mentioned in section 3.6.12 above are not fulfilled, it can be presumed that the conditions for the application of the rule in Article 36a(2) VD are not met and the general rule in Article 36a(1) VD will apply.

#### *3.6.14. When has the intermediary operator to do this communication?*

Article 36a VD does not specify when the communication of the VAT identification number to the supplier has to take place. In principle, it would seem that, under normal circumstances, this communication should be done before the chargeable event takes place, as the supplier has to know at that moment whether or not to charge VAT on the supply.

In case the intermediary operator has not communicated to his supplier his VAT identification number issued by the Member State of departure of the goods by that date, then the general rule in Article 36a(1) VD will apply, so the transport of the goods will be ascribed to the supply made to the intermediary operator and that will be the intra-Community supply. Therefore, no VAT will be charged by the supplier to the intermediary operator, as long as the intermediary operator has communicated to the supplier a VAT identification number issued by a Member State other than that of departure of the goods and the supplier is satisfied that the goods are being transported to another Member State by the intermediary operator, or by someone on his behalf.

However, the communication of the VAT identification number issued by the Member State of departure of the goods could take place after the chargeable event takes place. The consequences of this belated communication will vary depending on the circumstances of the case.

If the communication takes place after the chargeable event but before the deadline to submit the VAT return of that period, then the supplier will simply correct the invoice including now the VAT due on the transaction and he will declare that amount of VAT in his VAT return.

If the communication takes place after the chargeable event takes place and after the deadline to submit the VAT return of that period, then the supplier can also correct the invoice including the VAT due on the transaction. The supplier will correct the VAT return according to the procedures laid down in that Member State.

Similar consequences will apply in case the customer provided the supplier with a wrong VAT identification number, for instance because he wanted to provide the number issued by one Member State and provides the number issued by another Member State.

#### *3.6.15. What happens if the intermediary operator has multiple VAT identification numbers.*

In our example 2, if C is the intermediary operator, it is possible that he has a VAT identification number issued by the Member State where he is established (MS 3), plus a VAT identification number issued by the Member State of departure of the goods (MS 2) and a VAT identification number issued by the Member State of arrival of the goods (MS 5).

The fact that C has a VAT identification number issued by MS 2 does not oblige him to use that VAT identification number for transactions involving suppliers established and/or goods located in that Member State. He can use the VAT identification number issued by

that Member State or any VAT identification number issued by any other Member State. However, the consequences of the election of one or another VAT identification number are not neutral.

We have already analysed the consequences of C providing the VAT identification number of MS 2. Then the supply from B to C will be a domestic supply in MS 2 and the transport of the goods will be assigned to the supply made by C. Therefore, C will make an intra-Community supply in MS 2 (exempt if the conditions in Article 138 VD are fulfilled).

However, C can provide his VAT identification number issued by MS 5 to B. In that case, the general rule in Article 36a(1) VD applies and the transport is assigned to the supply to C. The intra-Community supply from B to C will be exempt. C will make an intra-Community acquisition in MS 5.

In case C provides to B his VAT identification number issued by MS 3, the general rule in Article 36a(1) VD also applies and the transport is assigned to the supply to C. The intra-Community supply from B to C will be exempt, as Article 138 only requires a VAT identification number issued by a Member State other than that of the Member State from which the dispatch or transport of the goods begins.

According to Article 40 VD, C will be making an intra-Community acquisition of goods in MS 5, the Member State where dispatch or transport of the goods ends, so the intra-Community acquisition will be taxed in MS 5. However, according to Article 41 of the VAT Directive, MS 3 could also tax the intra-Community acquisition, as the number under which C made the acquisition was a VAT identification number issued by MS 3. In order to avoid double taxation, C will have to demonstrate to the tax authorities in MS 3 that VAT has been applied to the acquisition in accordance with Article 40, that is to say in the Member State where the dispatch or transport of the goods ends (MS 5).

#### 3.6.16. What happens if the intermediary operator does not provide any VAT identification number

It is possible that the intermediary operator does not provide any VAT identification number to his supplier. In example 2, we are going to consider that C is the intermediary operator and that he has not provided any VAT identification number to B. In that case, B will have to charge VAT on the transaction to C.

The fact that the goods have left the territory of MS 2 and that C is a taxable person acting as such are not enough to grant the VAT exemption to the intra-Community supply. Article 138(1)(b) VD requires as a condition for the exemption of the intra-Community supply that C indicates his VAT identification number, issued by a Member State other than that of departure of the goods, to B. As he has not done it, B will have to charge VAT in the intra-Community supply.

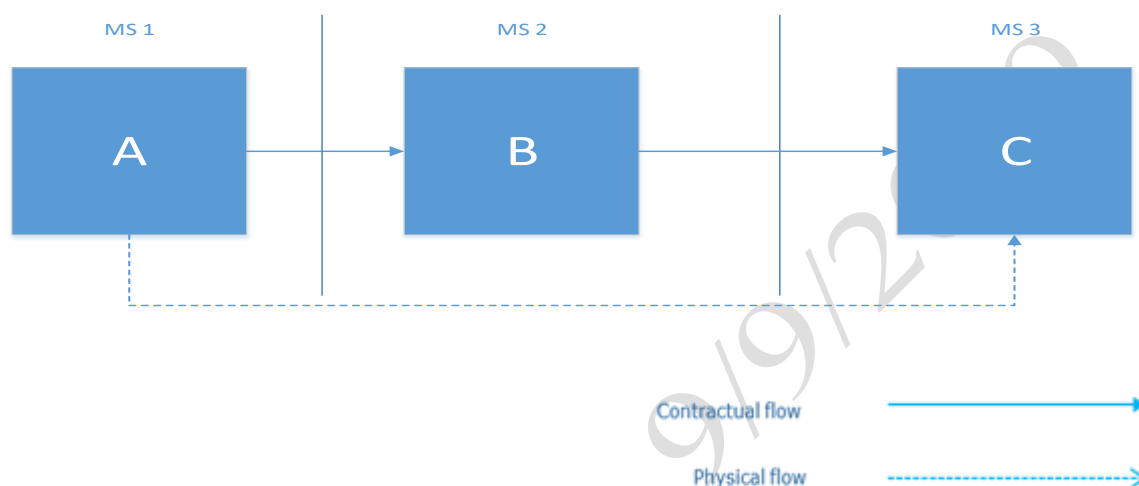
It should be noted that the taxation of the intra-Community supply in MS 2 does not impede the taxation of the intra-Community acquisition by C in MS 5 according to Article 40 VD and Article 16 IR.

This situation can be rectified by C communicating at a later stage his VAT identification number. He could provide his VAT identification number of MS 2, MS 3 or MS 5 with the consequences explained in the previous section. The rules on correction of invoices as laid down in MS2 will then apply.

### 3.6.17. Triangular transactions simplification

As already said, the scope of the rules in Article 36a VD is limited to clarifying which transaction in the chain the transport is assigned to. These rules do not have any impact on the liability of the tax, which is determined according to the general rules. Nor do they have an impact on the possibility to apply the simplification laid down for triangular transactions when all conditions in Article 141 VD are met.

We can think of a simple chain transaction where the simplification for triangular transactions can be applied in the following example (**example 6**):



B is the intermediary operator. The general rule in Article 36a(1) VD is that the transport or dispatch is assigned to the supply made to the intermediary operator, that is to say to the supply made by A to B. Therefore, A will make an intra-Community supply in MS 1 and B will make an intra-Community acquisition in MS 3. We are going to analyse if the requirements laid down in Article 141 VD in order to apply the simplification for triangular transactions are fulfilled:

- a) The intra-Community acquisition of goods is made by a taxable person (B) not established in the Member State concerned (MS 3) but identified for VAT purposes in another Member State (MS 2).
- b) The acquisition of goods is made for the purposes of the subsequent supply of those goods, in the Member State concerned (MS 3), by B.
- c) The goods are directly transported from a Member State (MS 1) other than that in which B is identified (MS 2) to the person for whom he is to carry out the subsequent supply (C).
- d) The person to whom the subsequent supply is to be made (C) is another taxable person identified in the Member State concerned (MS 3).
- e) C has been designated in accordance with Article 197 VD as liable for payment of the VAT due on the supply carried out by B.

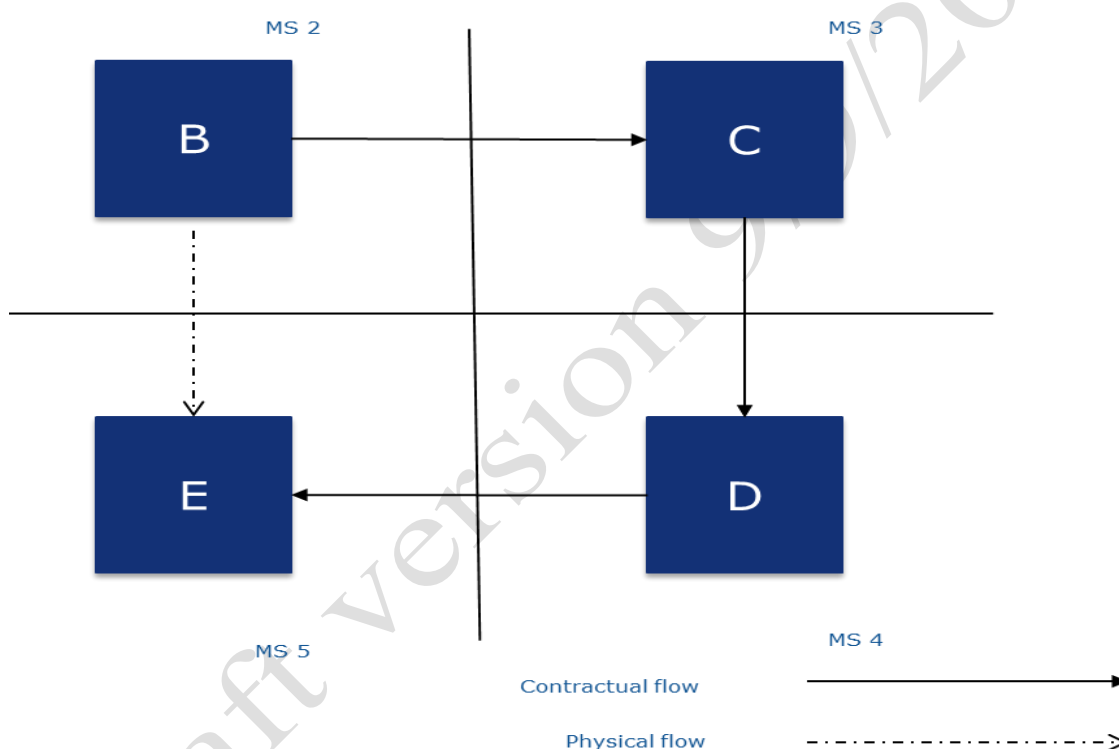
Therefore, the conditions for the application of the triangular simplification are met. As a result, the taxation of the transaction will be the following:



- A will make an intra-Community supply in MS 1. That supply will be exempt if all conditions in Article 138 VD are met.
- B will make an intra-Community acquisition in MS 3. No VAT will be charged in that acquisition as a result of the application of Article 141 VD.
- B will make a domestic supply to C in MS 3. C will be liable for payment of VAT on that supply according to Article 197 VD.
- Therefore, B will have to register and account for VAT neither in MS 1 nor in MS 3. Further, in order to ensure that B is not taxed in MS 2 on account of an intra-Community acquisition, he should fulfil the conditions in Article 42 VD.

#### 3.6.17.1. More than three operators in the chain.

We will include again our example with four operators in the chain (**example 7**):



In our example 7, C is the intermediary operator. C communicates to B his VAT identification number issued by MS 2. Therefore, instead of the general rule in Article 36a(1) VD, the rule in Article 36a(2) VD applies, so the transport is assigned to the supply made by C. Thus, the supply made by B to C will be a domestic supply in MS 2 and the supply made by C to D will be an intra-Community supply of goods exempt in MS 2 (if the conditions in Article 138 VD are fulfilled).

The intra-Community acquisition is made by D, who is not established in MS 5, the Member State of arrival of the goods, but is registered in MS 4. The goods are acquired by D for the purposes of a subsequent supply of goods to E in that same Member State, MS 5. The goods have been directly transported from a Member State (MS 2) other than that in which D is identified for VAT purposes (MS 4), to the person for whom he is to carry out the subsequent supply (E). E is a taxable person identified for VAT purposes in MS 5. Therefore, if E is the person liable for payment of the VAT due on the supply carried out

by the person not established in MS 5 (D) in accordance with Article 197 VD, the rule in Article 141 VD applies.

In that situation, no VAT should be charged on the intra-Community acquisition made by D in MS 5. The person liable for the VAT on the supply made from D to E in MS 5 will be E according to Article 197 VD.

Therefore, D will not need to register or account for VAT in MS 5. Further, in order to ensure that D is not taxed in MS 4 on account of an intra-Community acquisition, he should fulfil the conditions in Article 42 VD.

### *3.6.17.2. Subsequent supply of the goods following the triangular transaction.*

In our example 7, C was the intermediary operator. C communicates to B his VAT identification number in MS 3 and not his VAT identification number in MS 2. Then, the general rule for chain transactions will apply and the transport will be assigned to the supply made by B to C. C will be making an intra-Community acquisition in MS 5. In view of the literal wording of Article 141 VD, it might be thought that this exemption could not be applied to that intra-Community acquisition by C. This is because the condition in Article 141(c) VD could be considered as not being met: the goods are not dispatched or transported to the person for whom C carries out his supply, D, but to another person, E, who is further down the chain. If so, C would need to get registered in MS 5 and account for the VAT on the intra-Community acquisition in MS 5<sup>16</sup>.

However, the exemption in Article 141 VD could still be applied in that situation.

In that regard, it should be noted that for C, the intermediary operator, when selling the goods to D, it is irrelevant what D intends to do with the goods.

C fulfils his obligations with D by sending the goods to the place agreed by C and D. This place could be the premises of D or a warehouse managed by a third party. But it could be also the premises of E, as a result of a transaction between D and E of which C is not necessarily aware.

Thus, C is complying with the requirements in Article 141 VD as he is sending the goods to the place D has designated, therefore sending the goods directly to D. The fact that there has been a sale from D to E of which C may or may not be aware, does not affect the fulfilment by C of the requirements to apply the exemption.

We could have a look at the differences between this scenario (a triangular transaction between B, C and D even though the goods are sent to E) and the case where there is a triangular transaction between B, C and D, the goods are sent to the premises of D, and there is a subsequent supply from D to E outside the chain transaction.

In both cases, the intra-Community acquisition of the goods by C in Member State 5 will be exempt and C will not need to register there. D would in those cases need to be

---

<sup>16</sup> However, if the exemption in Article 140(c) of the VAT Directive applies (which would be the case if MS 5 applies the optional reverse charge provided for by Article 194 in the subsequent supply between C and D) then C would be obliged to register in MS 5 owing to the intra-Community acquisition made but would not be obliged to account for that intra-Community acquisition since the acquisition would be exempt.

registered in Member State 5 and would be liable for payment of the VAT on the domestic supply that C is making to him in that Member State.

Further, Article 42(b) VD must be taken into account. This means that in both cases C will have to satisfy ‘the obligations laid down in Article 265 relating to submission of the recapitulative statement’, so that the subsequent supply to D, and the VAT identification number of D, will have to be included by C in his recapitulative statement submitted in Member State 3. Otherwise, in both cases C would be liable in Member State 3 for the intra-Community acquisition made, given that for that acquisition he has used the VAT number issued by Member State 3 (Article 41 VD).

The supply from D to E would in any case be a domestic supply taxed in Member State 5.

As we can see, there are no differences for C, D and E if the simplification for triangular transactions is applied when the goods are sent to E and the case where the simplification for triangular transactions is applied when the goods are sent to D, who later sells and sends the goods to E. However, if the simplification is not applied, C would be obliged to register and account for VAT in MS 5.

After analysing the abovementioned circumstances, it can be considered that all conditions for the application of the simplification for triangular transactions are fulfilled in this case in example 7, as long as C transports the goods to the place D has indicated to him in MS 5 and D is identified for VAT purposes in that MS 5. The goods are transported directly to D given that they have been transported to the place D has indicated to C.

Therefore, the intra-Community acquisition of the goods by C in MS 5 should be exempt and C will not need to register in MS 5. D would be liable for the payment of VAT in MS 5 regarding the domestic supply made in that Member State by C to D, and the supply from D to E would also be a domestic supply taxed in MS 5. C would be obliged to submit a recapitulative statement in MS 3 showing the VAT identification number of D in MS 5.

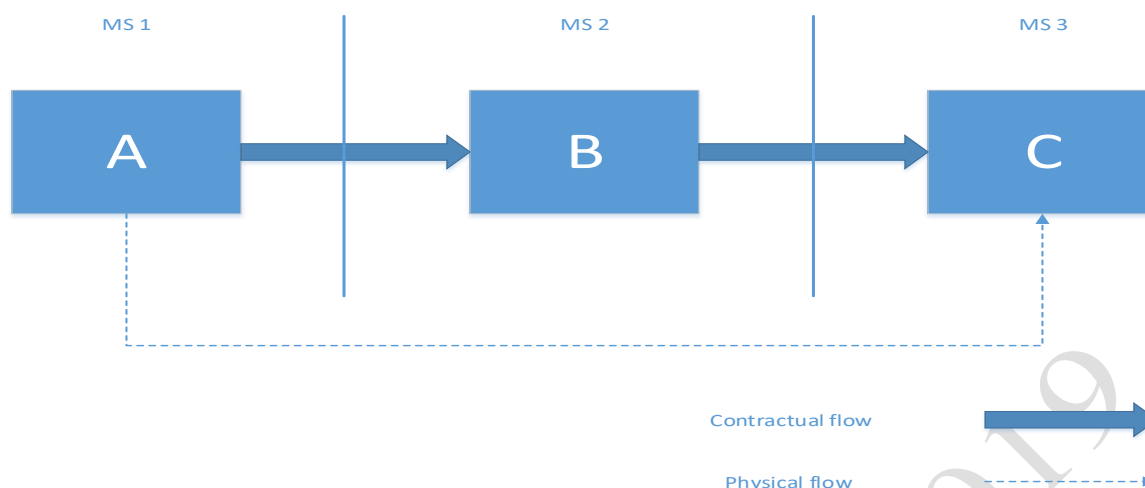
To sum up, the rules for chain transactions apply independently of the number of parties involved in the chain. However, the simplification for triangular transactions is applicable only when for the transactions involving three parties in that chain, all the conditions for that triangular simplification are met. In practice, only one of the taxable persons involved in the chain of transactions, that is the one in that chain making the intra-Community acquisition, can potentially benefit from the triangular simplification. In the example above, this will be C whilst D cannot benefit from it.

### *3.6.18. The last person in the chain being a final customer*

As said in section 3.3, the minimum number of persons involved in a chain transaction is three. However, it is not necessary that all of them are taxable persons.

Indeed, it is possible that the last person in the chain could be a non-taxable person, that is a final consumer. Therefore, we could apply the rules on chain transactions to a situation where a taxable person A sells goods to a taxable person B, who sells the same goods to a non-taxable individual C. The transport is done directly from A to C, from MS 1 to MS 3.

### **Example 8**



In this situation, the only person that can be the intermediary operator to apply the rules on the chain transactions is B.

If the general rule applies, the transport will be assigned to the supply made by A to B. Therefore, the supply by A will be an intra-Community supply of goods exempt in MS 1 (if the conditions in Article 138 VD are fulfilled), and there would be an intra-Community acquisition by B taxable in MS 3. The supply from B to C will be a domestic transaction in MS 3.

If B, intermediary operator, communicates to A the VAT identification number issued to him by the Member State from which the goods are dispatched or transported, MS 1, then the dispatch or transport would be ascribed to the supply made by him, that is to say to the supply from B to C. The supply from A to B will be a domestic transaction taxable in MS 1. The supply from B to C would qualify as a distance sale of goods taxable in MS 3, unless the conditions in Article 34 VD are met, in which case the transaction would be taxed in MS 1.

#### **4. THE EXEMPTION OF INTRA-COMMUNITY SUPPLIES OF GOODS**

##### **4.1. Relevant provision**

Article 138 VD

##### **4.2. What does the provision do?**

The amendment of Article 138 VD consists of 2 elements:

- paragraph 1 is re-structured and a new condition is added;
- a paragraph 1a is added.

Regarding Article 138(1) VD, the following must be taken into account:

- The content of point (a) in Article 138(1) VD corresponds to the content of Article 138(1) in the version applicable until 31 December 2019.
- Point (b) sets a new condition for the application of the exemption which consists of two elements, namely:
  - o the taxable person or non-taxable legal person for whom the supply is made is identified for VAT purposes in a Member State other than that in which the dispatch or transport beginsand
  - o this taxable person or non-taxable legal person for whom the supply is made has indicated this VAT identification number to the supplier.

As regards the first element, it is to be noted that the VAT identification number of the taxable person or non-taxable legal person to whom the supply is made does not necessarily have to be a VAT identification number issued by the Member State to which the goods are transported; it is sufficient that it is a VAT identification number attributed by a Member State other than that in which the dispatch or the transport begins.

As regards the second element, it is to be noted that the way in which the VAT identification number is shared amongst the contracting parties is not spelled out in the legal text. This should therefore be left to the discretion of the contracting parties and not be subject to any formal requirements (use of a specific document, for instance). Similar to what is stipulated above in the context of Article 36a(2) VD, by the fact that the supplier has mentioned the VAT identification number of his customer in the invoice, it can be considered that the customer has indicated his VAT identification number to the supplier.

Article 138(1a) VD

As far as Article 138(1a) VD is concerned, it must be underlined that a new paragraph 1a is added to Article 138, according to which the exemption provided for in paragraph 1 shall not apply where the supplier has not complied with the obligation provided for in Articles 262 and 263 VD to submit a recapitulative statement or the recapitulative statement already submitted by him does not set out the correct information concerning

the supply in question as required under Article 264 VD, unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities.

4.3. Detailed issues arising from Article 138, paragraphs (1) and (1a) VD

4.3.1. [...].

4.3.2. What happens if the acquirer does not give an indication to the supplier of his VAT identification number issued in a Member State other than the one from which the goods are dispatched or transported?

In case the acquirer does not give any indication of his VAT identification number to the supplier, or if the VAT identification number indicated has been issued by the Member State from which the goods are dispatched or transported, then at least one of the conditions for applying the exemption of Article 138 VD [in particular the condition set out in Article 138(1)(b) VD] will not have been fulfilled and the supplier has to charge VAT.

This will be the case even where all other conditions for applying the exemption are met and the supplier has reasons to believe, for instance because of the type or quantity of the goods supplied, that the customer is a taxable person or a non-taxable legal person.

The fact the supplier charges VAT on the supply because the conditions of Article 138 VD are not met does not have an effect on the VAT treatment of the intra-Community acquisition made by the customer in the Member State where the dispatch or transport of the goods ends (Article 16 IR).

4.3.3. What happens when the acquirer has submitted a request for obtaining a VAT identification number to the tax authorities but has not obtained that VAT identification number at the moment the supplier has to issue the invoice?

When at the moment the supplier is issuing the invoice the acquirer has not been able to indicate to the supplier a VAT identification number because the tax authorities are still processing the acquirer's request for obtaining such a number, the supplier cannot apply the exemption of Article 138 VD since all conditions are not fulfilled.

Once the acquirer obtains a VAT identification number that is valid at the moment VAT on the intra-Community supply became chargeable, he shall inform the supplier thereof who shall correct the initial invoice and apply the exemption provided by Article 138 VD, subject to all other conditions for applying that exemption being fulfilled.

4.3.4. Certain Member States make a distinction between a VAT identification number only valid for certain domestic transactions and a VAT identification number which, in accordance with Article 215 VD, has a prefix by which the Member State of issue may be identified. Can both numbers be used for the exemption of Article 138 VD?

No. Only the VAT identification number with a prefix by which the Member State of issue may be identified is relevant for the purposes of Article 138 VD. This is the only VAT identification number that the Member State of identification includes in the VIES database and therefore the only VAT identification number the supplier is able to verify.

4.3.5. Which VAT identification number is to be used for applying the exemption of Article 138 VD when the acquirer is part of a VAT group in accordance with Article 11 VD?

The European Court of Justice stated that the effect of implementing Article 11 VD is that national legislation adopted on the basis of that provision allows persons, in particular companies, which are bound to one another by financial, economic and organisational links no longer to be treated as separate taxable persons for the purposes of VAT but to be treated as a single taxable person. Thus, where that provision is implemented by a Member State, the closely linked person or persons within the meaning of Article 11 VD cannot be treated distinctly as a taxable person or persons within the meaning of Article 9 VD. It follows that treatment as a single taxable person precludes persons who are thus closely linked from continuing to be identified as individual taxable persons<sup>17</sup>.

This implies that de facto only the VAT group has a VAT identification number which is to be used for the exemption of Article 138 VD.

4.3.6. What is meant by the terms “unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities” in Article 138(1a) VD?

The first part of Article 138(1a) lays down the principle that the exemption shall not apply in case of non-compliance with Articles 262, 263 and 264 VD. The last part of Article 138(1a) VD implies that the exemption however still applies when the supplier can duly justify his shortcoming to the satisfaction of the competent authorities.

This last part of paragraph (1a) hints at situations of non-compliance being handled on a case-by-case basis between the supplier and the competent authorities of the Member State in which the supply took place.

Nevertheless, it could be considered that in the following situations, the shortcoming of a supplier is duly justified (unless the tax authorities have reasons to believe that the shortcoming is an element of a fraud scheme):

- o The supplier has not included the exempt intra-Community supply in the recapitulative statement covering the period in which the supply took place but has included it in a recapitulative statement covering the subsequent period;
- o The supplier has included the exempt intra-Community supply in the recapitulative statement covering the period in which the supply took place but made an unintentional mistake as regards the value of the supply in question;
- o A re-structuring of the company acquiring the goods has resulted in a new name and a new VAT identification number but the old name and VAT identification number continue to exist during a short interim period. On the recapitulative statement, the supplier has by mistake included the transactions under that old VAT identification number.

---

<sup>17</sup> See ECJ, C-162/07 Amplifin, 22 May 2008

## 5. THE PROOF OF TRANSPORT

### 5.1. Relevant provision

Article 45a IR.

### 5.2. What does the provision do?

Article 45a IR provides that a condition for exempting an intra-Community supply of goods according to Article 138 VD, namely that the goods have been dispatched or transported from a Member State to a destination outside its territory but within the Community, is presumed to be fulfilled in the cases set out in points (a) or (b) of Article 45a(1).

This also means that:

- being in one of the cases set out in points (a) or (b) is not on its own sufficient for the supply to be exempt according to Article 138 VD. It is presumed that a basic condition is fulfilled but for the exemption to be applicable, also the other conditions set out in Article 138 VD will need to be fulfilled;
- applying the presumption in the reversed way is not possible. In other words, the fact that the conditions of the presumption are not met does not mean automatically that the exemption of Article 138 VD does not apply. In such case, it will remain up to the supplier to prove, to the satisfaction of the tax authorities, that the conditions for the exemption (transport included) are met. In other words where the presumption does not apply, the situation will stay the same as it was prior to the entry into force of Article 45a IR.

Article 45(a)(2) IR stipulates that a tax authority may rebut the presumption that has been put in place under paragraph 1, namely that goods have been dispatched or transported from a Member State to a destination outside its territory but within the Community.

Rebutting the presumption implies therefore that the tax authorities are able to provide the necessary elements demonstrating that the goods have in fact not been dispatched or transported from a Member State to a destination outside its territory but within the Community. This can for instance be the case when during a control the tax authorities find out that the goods are still present in the warehouse of the supplier or the tax authorities are aware of an incident during transport that resulted in the goods being destroyed before leaving the territory.

When the tax authorities have the necessary elements for rebutting the presumption (given the nature of the elements required for these to serve that purpose), obviously the exemption of Article 138 VD does not apply. In this regard, “rebutting the presumption” means that the tax authorities are in possession of evidence showing that the transport of the goods has not taken place.

“Rebutting the presumption” is different to the situation whereby a tax authority can demonstrate that one of the documents enumerated in paragraph 3 of Article 45a IR that is submitted as evidence either contains incorrect information or is even fake. The consequence would then be that the conditions for being in one of the cases set out under points (a) or (b) of paragraph 1 are not fulfilled. Therefore the supplier can no longer rely on the presumption of the dispatch or transport having been made from a Member State to



a destination outside its territory but within the Community. However, the supplier might still be in a position to either provide other documents as referred to in Article 45a IR, which would enable him to benefit from the presumption (unless the tax authorities prove again that those documents are incorrect or fake) or provide sufficient evidence to substantiate that the conditions of the exemption of Article 138 VD are fulfilled.

5.3. Detailed issues arising from this provision

5.3.1. [...].

5.3.2. What happens with the existing national rules of Member States regarding proof of transport after the entry into force of Article 45a IR? Will these national rules continue to be applied?

Member States are obliged to apply Article 45a IR. This means that where the conditions in that provision are met, the supplier will be entitled to enjoy the benefit of the relevant presumption. Further to this, Member States could also lay down in their national VAT legislation other presumptions regarding proof of transport, in so far as they are compatible with EU Law and do not undermine the effect of Article 45a IR. If that were the case, the supplier could benefit from the presumptions in Article 45a IR and/or from those in the national VAT legislation, provided the relevant conditions are met.

5.3.3. What happens if the conditions for the presumption of transport in Article 45a IR are not fulfilled? Does it mean that in this case the exemption of Article 138 VD will not apply?

The fact that the conditions for being in one of the cases set out under points (a) or (b) of paragraph 1 of Article 45a IR are not fulfilled does not mean automatically that the exemption of Article 138 VD will not apply. In this case it will remain up to the supplier to prove, to the satisfaction of the tax authorities, that the conditions for the exemption (transport included) of Article 138 VD are met.

5.3.4. What happens if a tax authority can demonstrate that one of the documents, enumerated in paragraph 3 of Article 45a IR, that is submitted as evidence either contains incorrect information or is even fake? Can the vendor still rely on the presumption of the dispatch or transport?

When a tax authority can demonstrate that one of the documents that is submitted as evidence either contains incorrect information or is even fake, the vendor can no longer rely on the presumption due to the fact that the conditions for being in one of the cases set out under points (a) or (b) of paragraph 1 of Article 45a IR are not fulfilled.

However, the vendor might still be in a position to either provide other documents as referred to in Article 45a IR, which would enable him to benefit from the presumption (unless the tax authorities prove again that those documents are incorrect or fake), or provide sufficient evidence to substantiate that the conditions of the exemption of Article 138 VD are fulfilled.

5.3.5. What happens if the supplier or the acquirer makes the transport using their own means of transport?

In this case the presumption does not apply as the requirement laid down in Article 45a(1) (a) and (b)(ii) IR for the items of non-contradictory evidence to be issued by two different

parties that are independent of each other, of the vendor and of the acquirer will not be fulfilled.

5.3.6. What is to be considered a “written statement” by the acquirer for the purposes of Article 45a(1)(b)(i) IR? In what format (paper and/or electronic) will it be accepted by the tax authorities, e.g. an e-mail or a signed original document?

Any document that contains all the elements mentioned in point (b)(i) of Article 45a (1) IR is to be considered a “written statement” for the purposes of that provision.

There are no specific rules in the IR regarding the format in which the written statement is to be provided. It would be reasonable to expect that Member States would be flexible in this respect and would not impose strict limitations e.g. only a paper-based document, but would also accept an electronic version in so far as it contains all the information required in point (b)(i) of Article 45a (1) IR.

5.3.7. What happens if the acquirer does not provide the vendor with the written statement referred to in Article 45a(1)(b)(i) IR by the tenth day of the month following the supply?

If the acquirer does not comply with its obligation to provide the vendor with the written statement by the tenth day of the month following the month of the supply this implies that the condition for being in the case set out under point (b) of paragraph 1 of Article 45a IR is not fulfilled and the vendor therefore cannot benefit from the presumption.

## 6. RELEVANT LEGAL PROVISIONS

### 6.1. VAT Directive (hereabove referred to as “VD”)

#### *‘Article 17a*

1. The transfer by a taxable person of goods forming part of his business assets to another Member State under call-off stock arrangements shall not be treated as a supply of goods for consideration.
2. For the purposes of this Article, call-off stock arrangements shall be deemed to exist where the following conditions are met:
  - (a) goods are dispatched or transported by a taxable person, or by a third party on his behalf, to another Member State with a view to those goods being supplied there, at a later stage and after arrival, to another taxable person who is entitled to take ownership of those goods in accordance with an existing agreement between both taxable persons;
  - (b) the taxable person dispatching or transporting the goods has not established his business nor has a fixed establishment in the Member State to which the goods are dispatched or transported;
  - (c) the taxable person to whom the goods are intended to be supplied is identified for VAT purposes in the Member State to which the goods are dispatched or transported and both his identity and the VAT identification number assigned to him by that Member State are known to the taxable person referred to in point (b) at the time when the dispatch or transport begins;
  - (d) the taxable person dispatching or transporting the goods records the transfer of the goods in the register provided for in Article 243(3) and includes the identity of the taxable person acquiring the goods and the VAT identification number assigned to him by the Member State to which the goods are dispatched or transported in the recapitulative statement provided for in Article 262(2).
3. Where the conditions laid down in paragraph 2 are met, the following rules shall apply at the time of the transfer of the right to dispose of the goods as owner to the taxable person referred to in point (c) of paragraph 2, provided that the transfer occurs within the deadline referred to in paragraph 4:
  - (a) a supply of goods in accordance with Article 138(1) shall be deemed to be made by the taxable person that dispatched or transported the goods either by himself or by a third party on his behalf in the Member State from which the goods were dispatched or transported;
  - (b) an intra-Community acquisition of goods shall be deemed to be made by the taxable person to whom those goods are supplied in the Member State to which the goods were dispatched or transported.
4. If, within 12 months after the arrival of the goods in the Member State to which they were dispatched or transported, the goods have not been supplied to the taxable person for whom they were intended, referred to in point (c) of paragraph 2 and paragraph 6, and none of the circumstances laid down in paragraph 7 have occurred, a transfer within the meaning of Article 17 shall be deemed to take place on the day following the expiry of the 12-month period.

5. No transfer within the meaning of Article 17 shall be deemed to take place where the following conditions are met:

- (a) the right to dispose of the goods has not been transferred, and those goods are returned to the Member State from which they were dispatched or transported within the time limit referred to in paragraph 4; and
- (b) the taxable person who dispatched or transported the goods records their return in the register provided for in Article 243(3).

6. Where, within the period referred to in paragraph 4, the taxable person referred to in point (c) of paragraph 2 is substituted by another taxable person, no transfer within the meaning of Article 17 shall be deemed to take place at the time of the substitution, provided that:

- (a) all other applicable conditions in paragraph 2 are met; and
- (b) the substitution is recorded by the taxable person referred to in point (b) of paragraph 2 in the register provided for in Article 243(3).

7. Where, within the time limit referred to in paragraph 4, any of the conditions set out in paragraphs 2 and 6 ceases to be fulfilled, a transfer of goods according to Article 17 shall be deemed to take place at the time that the relevant condition is no longer fulfilled.

If the goods are supplied to a person other than the taxable person referred to in point (c) of paragraph 2 or in paragraph 6, it shall be deemed that the conditions set out in paragraphs 2 and 6 cease to be fulfilled immediately before such supply.

If the goods are dispatched or transported to a country other than the Member State from which they were initially moved, it shall be deemed that the conditions set out in paragraphs 2 and 6 cease to be fulfilled immediately before such dispatch or transport starts.

In the event of the destruction, loss or theft of the goods, it shall be deemed that the conditions set out in paragraphs 2 and 6 cease to be fulfilled on the date that the goods were actually removed or destroyed, or, if it is impossible to determine that date, the date on which the goods were found to be destroyed or missing.’;

#### *Article 36a*

1. Where the same goods are supplied successively and those goods are dispatched or transported from one Member State to another Member State directly from the first supplier to the last customer in the chain, the dispatch or transport shall be ascribed only to the supply made to the intermediary operator.

2. By way of derogation from paragraph 1, the dispatch or transport shall be ascribed only to the supply of goods by the intermediary operator where the intermediary operator has communicated to his supplier the VAT identification number issued to him by the Member State from which the goods are dispatched or transported.

3. For the purposes of this Article, ‘intermediary operator’ means a supplier within the chain other than the first supplier in the chain who dispatches or transports the goods either himself or through a third party acting on his behalf.

4. This Article shall not apply to the situations covered by Article 14a.’;

### *Article 138*

‘1. Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, where the following conditions are met:

- (a) the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods begins;
- (b) the taxable person or non-taxable legal person for whom the supply is made is identified for VAT purposes in a Member State other than that in which the dispatch or transport of the goods begins and has indicated this VAT identification number to the supplier.’;

‘1a. The exemption provided for in paragraph 1 shall not apply where the supplier has not complied with the obligation provided for in Articles 262 and 263 to submit a recapitulative statement or the recapitulative statement submitted by him does not set out the correct information concerning this supply as required under Article 264, unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities.’;

...

### *Article 243*

...

3. Every taxable person who transfers goods under the call-off stock arrangements referred to in Article 17a shall keep a register that permits the tax authorities to verify the correct application of that Article.

Every taxable person to whom goods are supplied under the call-off stock arrangements referred to in Article 17a shall keep a register of those goods.’

### *Article 262*

1. Every taxable person identified for VAT purposes shall submit a recapitulative statement of the following:

- (a) the acquirers identified for VAT purposes to whom he has supplied goods in accordance with the conditions specified in Article 138(1) and point (c) of Article 138(2);
- (b) the persons identified for VAT purposes to whom he has supplied goods which were supplied to him by way of intra-Community acquisition of goods referred to in Article 42;
- (c) the taxable persons, and the non-taxable legal persons identified for VAT purposes, to

whom he has supplied services other than services that are exempted from VAT in the Member State where the transaction is taxable and for which the recipient is liable to pay the tax pursuant to Article 196.

2. In addition to the information referred to in paragraph 1, every taxable person shall submit information about the VAT identification number of the taxable persons for whom goods, dispatched or transported under call-off stock arrangements in accordance with the conditions set out in Article 17a, are intended and about any change in the submitted information.’;

## 6.2. VAT Implementing Regulation

### *Article 45a*

1. For the purpose of applying the exemptions laid down in Article 138 of Directive 2006/112/EC, it shall be presumed that goods have been dispatched or transported from a Member State to a destination outside its territory but within the Community in either of the following cases:

(a) the vendor indicates that the goods have been dispatched or transported by him or by a third party on his behalf, and either the vendor is in possession of at least two items of non-contradictory evidence referred to in point (a) of paragraph 3 which were issued by two different parties that are independent of each other, of the vendor and of the acquirer, or the vendor is in possession of any single item referred to in point (a) of paragraph 3 together with any single item of non-contradictory evidence referred to in point (b) of paragraph 3 confirming the dispatch or transport which were issued by two different parties that are independent of each other, of the vendor and of the acquirer;

(b) the vendor is in possession of the following:

(i) a written statement from the acquirer, stating that the goods have been dispatched or transported by the acquirer, or by a third party on behalf of the acquirer, and identifying the Member State of destination of the goods; that written statement shall state: the date of issue; the name and address of the acquirer; the quantity and nature of the goods; the date and place of the arrival of the goods; in the case of the supply of means of transport, the identification number of the means of transport; and the identification of the individual accepting the goods on behalf of the acquirer; and

(ii) at least two items of non-contradictory evidence referred to in point (a) of paragraph 3 that were issued by two different parties that are independent of each other, of the vendor and of the acquirer, or any single item referred to in point (a) of paragraph 3 together with any single item of non-contradictory evidence referred to in point (b) of paragraph 3 confirming the dispatch or transport which were issued by two different parties that are independent of each other, of the vendor and of the acquirer.

The acquirer shall furnish the vendor with the written statement referred to in point (b)(i) by the tenth day of the month following the supply.

2. A tax authority may rebut a presumption that has been made under paragraph 1.

3. For the purposes of paragraph 1, the following shall be accepted as evidence of dispatch or transport:

(a) documents relating to the dispatch or transport of the goods, such as a signed CMR

document or note, a bill of lading, an airfreight invoice or an invoice from the carrier of the goods;

(b) the following documents:

- (i) an insurance policy with regard to the dispatch or transport of the goods, or bank documents proving payment for the dispatch or transport of the goods;
- (ii) official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination;
- (iii) a receipt issued by a warehouse keeper in the Member State of destination, confirming the storage of the goods in that Member State.';

#### *Article 54a*

1. The register referred to in Article 243(3) of Directive 2006/112/EC that is to be kept by every taxable person who transfers goods under call-off stock arrangements shall contain the following information:

- (a) the Member State from which the goods were dispatched or transported, and the date of dispatch or transport of the goods;
- (b) the VAT identification number of the taxable person for whom the goods are intended, issued by the Member State to which the goods are dispatched or transported;
- (c) the Member State to which the goods are dispatched or transported, the VAT identification number of the warehouse keeper, the address of the warehouse at which the goods are stored upon arrival, and the date of arrival of the goods in the warehouse;
- (d) the value, description and quantity of the goods that arrived in the warehouse;
- (e) the VAT identification number of the taxable person substituting for the person referred to in point (b) of this paragraph under the conditions referred to in Article 17a(6) of Directive 2006/112/EC;
- (f) the taxable amount, description and quantity of the goods supplied and the date on which the supply of the goods referred to in point (a) of Article 17a(3) of Directive 2006/112/EC is made and the VAT identification number of the buyer;
- (g) the taxable amount, description and quantity of the goods, and the date of occurrence of any of the conditions and the respective ground in accordance with Article 17a(7) of Directive 2006/112/EC;
- (h) the value, description and quantity of the returned goods and the date of the return of the goods referred to in Article 17a(5) of Directive 2006/112/EC.

2. The register referred to in Article 243(3) of Directive 2006/112/EC that is to be kept by every taxable person to whom goods are supplied under call-off stock arrangements shall contain the following information:

- (a) the VAT identification number of the taxable person who transfers goods under call-off stock arrangements;
- (b) the description and quantity of the goods intended for him;
- (c) the date on which the goods intended for him arrive in the warehouse;
- (d) the taxable amount, description and quantity of the goods supplied to him and the date

on which the intra-Community acquisition of the goods referred to in point (b) of Article 17a(3) of Directive 2006/112/EC is made;

(e) the description and quantity of the goods, and the date on which the goods are removed from the warehouse by order of the taxable person referred to in point (a);

(f) the description and quantity of the goods destroyed or missing and the date of destruction, loss or theft of the goods that previously arrived in the warehouse or the date on which the goods were found to be destroyed or missing.

Where the goods are dispatched or transported under call-off stock arrangements to a warehouse keeper different from the taxable person for whom the goods are intended to be supplied, the register of that taxable person does not need to contain the information referred to in points (c), (e) and (f) of the first subparagraph.’