The CPD Fest 2020

Topical Vat Updates

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VAT UPDATE
Gabrielle Dillon – Twomey Moran

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AGENDA

1. Finance Act 2020 – VAT changes
2. Revenue Guidance – updated/new Tax & Duty Manuals
3. E-Commerce Package – 2021 changes
4. Movement of Goods – 2020 EU measures
5. VAT implications of Brexit
6. VAT Cases round-up

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FINANCE ACT 2020

Section 36 FA20

Amendment to S2 – definition of immovable goods

Immovable goods has same meaning as "immovable property" has in Article 13b of Council Implementing Regulation 282/2011/EU (as inserted by Council IR 1042/2013)

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FINANCE ACT 2020

Section 37 FA20

Amends section 46(1) VATCA10 - Effective 1 November 2020 until 31 December 2021

VAT rate reduced from 13.5% to 9% for certain supplies - supplies covered in Schedule 3 VATCA10 =

- food and drink items sold via vending machine/course of catering which would normally be zero-rated
- hot takeaway food and drink
- brochures, leaflets, programmes
- catalogues and similar printed matter
- maps, hydrographics and similar charts
- printed music (other than in book or booklet form)
- promotion and admission to the cinema
- hotel and holiday accommodation
- hairdressing services

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FINANCE ACT 2020

Section 38 FA20

Flat rate addition for farmers

Section 86 VATCA10 amended

Rate increased to 5.6% from 5.4%

Applies to non-VAT registered farmers

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FINANCE ACT 2020

Section 39 FA20

Amendments related to suppliers of telecommunications, broadcasting and eServices

Revenue may require supplier to appoint an EU tax representative – will be liable for the VAT due and payable by the supplier (joint and several liability applies)

Applies to suppliers not established in Ireland and where there is no mutual assistance agreement in place with the country of residence of the supplier

Will not apply where non-EU supplier is registered for MOSS

Penalty applies for failure to comply

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FINANCE ACT 2020

Section 40 FA20

Amendments to S24 VATCA10 and Schedules 1 and 2

Exemption for supplies of goods and services to NATO forces

Zero-rating of supplies of goods and services to CSDP forces (common security and defence policy) – effective from 1 July 2022

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FINANCE ACT 2020

Section 41 FA 20

Supply of restaurant and catering services

Wording in Schedule 2 and 3 aligned with VAT Directive

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FINANCE ACT 2020

Section 42 FA20

Zero-rating – amendments to Schedule 2 VATCA10

- Concessionary treatment converted to legislative provisions
- Applies to certain goods - used for delivery of CV19 health care services
- PPE Thermometers / Hand sanitiser / Oxygen
- Medical ventilators and specialist respiratory equipment
- Applies to supplies to HSE, hospitals, nursing homes, care homes, GPs etc
- Supplies to other operators = 23%/21%
- Period of application can be extended if EU Commission extends it

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FINANCE ACT 2020

Section 43 FA20

Amendments to S120 and Schedule 1 and 3

Guest and holiday accommodation

Liable at reduced rate of VAT

Wording amendments to bring VAT Act into line with VAT Directive

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FINANCE ACT 2020

Section 44 FA20

Changes to Schedules 2 and 3

Zero-rating for services relating to vessels and aircraft – wording aligned with VAT Directive

Standard rate of VAT for all candles (wef 1/1/2021)

Reduced rate for certain sanitary products (wef 1/1/2021)

Reduced rate for admissions to amusement parks/fairgrounds

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REVENUE GUIDANCE

VAT Groups - TDM Updated in March 2020

- More detail provided on the 3 pillars = financial, economic and organisational links
- No policy change
- Discretion of Revenue to grant VAT group status
  - Closely bound by financial, organisational and economic links. “Control” for VAT grouping = e.g. 50% shareholding
  - Resident in Ireland
  - At least one member must be a taxable person
- Clarity added on territorial scope (CJEU cases)
- Examples added
- Read in conjunction with TDM on Holding Companies – VAT recovery

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REVENUE GUIDANCE

Revenue eBrief No. 077/20

- Application of the Capital Goods Scheme and the VAT treatment of Donations or Gifts of goods or meals.
- Revenue clarified that PPE equipment etc must be supplied directly to hospitals/nursing homes/medical practice in order to avail of the VAT exemption.
- Exemption will apply to the supply of emergency accommodation for Covid 19 related purposes.
- Donations of hot/ cold meals, non-alcoholic drinks, PPE equipment, etc to frontline staff/ charities will be liable to the temporary zero-rate.

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REVENUE GUIDANCE

Revenue eBrief No. 088/20 - Charities VAT Compensation Scheme.

- Deadline for claims submitted under the VAT Compensation Scheme was extended from 30 June 2020 to 31 August 2020

Revenue eBrief No. 112/20 – VAT treatment of medical services.

- Guidance in TDM VAT Treatment of Medical Services updated to include medical locum services and certain services performed by pharmacists

Revenue eBrief No. 110/20 - new TDMs

- New TDMs available on the VAT treatment of Betting, Remote Betting Services and Lotteries & The VAT treatment of Gaming, Gaming Machines and Amusements Machines

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REVENUE GUIDANCE

Revenue eBrief No. 186/20 – Education and Training

- TDM updated to include clarification on education and training by bodies in receipt of Exchequer funds and place of supply rules for lecturing services from abroad

Revenue eBrief No. 206/20 – Hire of means of transport

- TDM on hiring of means of transport updated – additional info on short-term hire of passenger motor vehicles – hire of passenger vehicles for short term 13.5% but hire of goods vehicle liable at standard rate

Revenue eBrief No. 208/20 E-Commerce rules

- New TDM – overview of new rules coming into effect 1 July 2020 (see later slides for more detail)

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E-COMMERCE PACKAGE

Goods - key areas

1. Selling goods online to customers in other EU MS.
2. Online marketplaces to collect VAT on sales on their platforms - made by non-EU sellers to EU customers.
3. Changes to VAT exemption for imported goods valued at under €22.

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E-COMMERCE PACKAGE

1.Selling goods to consumers online in other EU MS

- Current position – distance selling rules
- July 2021 (deferred from Jan 2021 due to CV19)
- Thresholds in each EU MS replaced by single threshold across EU = €10,000
- €10,000 threshold applies to total value of sales to all EU customers pa
- VAT can be remitted via OSS
- Supplies below threshold – treated as domestic supplies
- Supplies above threshold - obliged to charge VAT of customer's MS
- Advantage = reduce compliance burden
- Challenge = requirement to know VAT rates in all MS, requirement to update systems and capture data

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E-COMMERCE PACKAGE

2.Online platform/marketplaces - sales by non-EU sellers

- Current position - Sales of goods done via 3P platforms
- Future position – July 2021 onwards – online platform directly liable to charge and pay the VAT on sales
- Applies to imports up to value of €150
- Applies to intra-EU sales by non-EU suppliers
- Platform required to register for VAT & charge VAT of MS where customer based – could use OSS
- Includes goods already stored in fulfilment centres in the EU

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E-COMMERCE PACKAGE

3.Sales to EU consumers by non-EU suppliers (i.e. imports)

- Current position - VAT exemption for goods valued at under €22
- Relief applied to reduce cost but resulted in distortion of competition and undervaluing goods
- Future position - Low value relief exemption abolished in 2021
- New reporting mechanisms – can use OSS for goods with value <€150 (excl excisable goods)
- OSS can be used by EU & non-EU suppliers
- Non-EU will need to appoint an EU based intermediary
- OSS hosted by own tax authority and in own language
- New payment mechanisms – charged and collected at point of sale (not at importation)
- If OSS not used – VAT dealt with by entity importing and delivering to customer
- Payment on a monthly basis where value <€150
- >€150 full VAT & duty due & full customs declaration

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MOVEMENT OF GOODS

Four Quick Fixes effective since 1 January 2020

1. Call-off stock (simplified and uniform treatment)
2. VAT number (condition for zero-rating of intra-EU supplies)
3. Chain supplies (enhanced legal certainty)
4. Proof of intra-EU supply (establishment of common framework for documentary evidence)

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MOVEMENT OF GOODS

1. **Call-off stock relief**
   - Call-off stock – movement of goods cross border to be held at 3P warehouse or warehouse of purchaser
   - Purchaser's identity is known before goods transported
   - Ownership only transfers as purchaser calls off the goods
   - Absence of relief = registration, account for ICA, charge VAT
   - Relief = purchaser accounts for VAT when goods acquired (as called off)
   - New rule – relief to be applied by all EUMS

- Simplification measure but strict conditions attached

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MOVEMENT OF GOODS

1. Call-off stock relief - Conditions

- Supplier must know identity of purchaser
- Time limit – goods can only be held for up to 1 year in destination EUMS
- Record keeping – separate record to be kept by supplier of all supplies using the relief
- Sales list (VIES) – transport must be recorded – VAT number of purchaser
- Supplier and purchaser to be VAT registered
- Supplier cannot be established in destination EUMS

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MOVEMENT OF GOODS

2. VAT number

- Intra-Community supplies can be zero-rated where:-
  - customer's VAT number is supplied to the vendor &
  - where proof is provided that the goods have left the MS
- CJEU rulings to date – VAT number is not a substantive condition for zero-rating
- If substantive conditions met in bona fide cases, then zero-rate can apply in absence of VAT number
- New rules = obtaining VAT number and validating it will be a substantive condition
- So will filing a correct VIES return
- Failure to meet conditions – VAT of EUMS of dispatch to be charged

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MOVEMENT OF GOODS

3. Chain supplies

- Chain supplies = supplies of goods between parties of 3 or more
- Involves one transport of the goods between EUMS (could be preceded by a number of domestic supplies)
- Numerous CJEU cases to determine which movement of the goods qualifies as an ICS (and zero-rated)
- New rules try to determine which supply link in the chain is the ICS
- New rule = the ICS is the one where the goods are supplied to an intermediary (link in the chain) that is responsible for arranging the transport

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MOVEMENT OF GOODS

4. Proof of intra-Community supply

- Documentation required to prove an ICS supply took place (i.e. proof that goods left EUMS)
- New rules – plan is to harmonize the documentary requirements as they vary from EUMS to EUMS
- Requirement – provide 2 non-contradictory documents that prove that the goods were transported to another EUMS
- Evidentiary documents to be issued independently of each other

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BREXIT – VAT IMPLICATIONS

IMPORTS

- Goods arriving into Ireland from o/s EU are imports
  - import VAT is accounted via the customs declaration
- Imported goods are declared to Customs – new system AIS (automated import system – 23/11/2020)
- Import duties, including import VAT, must be paid (or applied to a deferred payment account) to enable the goods to be released into 'free circulation'
- Import VAT generally arises at time customs duties due
- 'Official Receipt' for import VAT paid issued
- Import VAT may be reclaimed in box T2 of the importer's VAT return – retain supporting documentation as evidence.

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BREXIT – VAT IMPLICATIONS

IMPORTS – deferment scheme

- Deferred payment scheme may be used to expedite release of imported goods, and defer payment of import VAT and other duties
  - Guarantee is required
  - Payment is made by direct debit on the 15th of the following month
- Importers may use their freight agent's deferment account
  - Agent will usually levy a charge for this facility

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BREXIT – VAT IMPLICATIONS

IMPORTS

- Brexit Omnibus Bill 2019
- Postponed accounting will apply to imports from outside EU
- Ministerial Order required for date of effect
- Accountable person will self-account for VAT on importation of goods
- Accountable person will take a deduction if so entitled
- Reverse charge therefore applies
- Revenue can serve Notice of Exclusion to exclude accountable person from the postponed accounting regime
- **Customs Duty – big issue**

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BREXIT – VAT IMPLICATIONS

EXPORTS

- Export of goods is zero rated
- Goods are declared to Customs
- Supplier must retain documentary evidence that the goods have left the EU
  - documentation to prove that a transaction involving the specified goods has taken place
  - proof that the specified goods have physically left the EU
- Unsatisfactory evidence - supplier could be held liable for the VAT due.

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BREXIT – VAT IMPLICATIONS

UK = Non-EU country

Post 1/1/2021 UK treated as third country i.e. non-EU

Impact on movement of goods

Movements between N Ireland and Republic of Ireland and vice vearsa = normal VAT rules apply i.e. Intra-Community supplies and acquisitions [N Ireland continues to be part of EU regime] – XI before EORI number for reporting supplies to N Ireland

Movements between N Ireland and Britain = import/export rules apply for VAT and customs duty

Movements between republic and Britain = import/export rules apply for VAT and customs duty

VAT simplification measures such as chain supplies, call-off stocks, consignment stocks and triangulation rules no longer applicable where Britain part of the supply chain

Distance selling from Ireland to Britain – threshold n/a

MOSS – sales from Ireland to Britain not covered by MOSS – may need to register in Britain

VIES and Intrastat not applicable for supplies to Britain

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BREXIT – VAT IMPLICATIONS

UK = Non-EU country

Services – supplies between N Ireland/UK/Ireland not covered by Protocol

Services – N Ireland to EU – reverse charge for recipient (unless exceptions apply)

Services – Ireland to UK – same as third country supply

Services – UK/N Ireland to Ireland – same as from third country – reverse charge applies to receipt of services from abroad

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VAT CASES

46TACD2019

UK taxable person incurred Irish VAT on goods and services supplied to it in Ireland.

Application for refund of VAT in the amount of €523.31 submitted via the HMRC website.

Claim was forwarded through the EVR system to Revenue for approval and payment.

Part of the claim was refused on the basis of the type of invoices submitted (e.g. till receipts or copy invoices).

TAC gave a determination in respect of each category of invoice and agreed that the VAT amounts were not reclaimable.

TAC agreed with Revenue that; "*In the circumstances, it is submitted that the onus is on the appellant to establish clear entitlement to an Electronic VAT refund under the legislation and requirements of the refunding State*".

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VAT CASES

68TACD2020

Appellant, involved in the resale of petrol and diesel, reclaimed VAT in respect of the purchase of fuel.

Revenue disallowed the input VAT in respect of certain supplies and raised assessments.

Grounds = that the appellant knew or ought to have known that he was participating in a transaction connected with the fraudulent evasion of VAT.

It was agued that there were a number of red flags that should have alerted the Appellant in relation to his suppliers – including the triangular payment arrangements between two traders, the lower prices offered and the presence of vehicles which were not regularly liveried.

No evidence that the Appellant had actual knowledge of the fraud.

So the legal test applied was whether he "should have known" that he was taking part in transactions that were connected with fraudulent evasion of VAT.

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VAT CASES

68TACD2020

TAC considered the legal test in the CJEU case of Kittel v Belgian State.

Determination sets out the objective factors which were reviewed and the evidence and indicates that

"*the cumulative effect of each of the objective factors set out above, together with the evidence, leads to the conclusion that the only reasonable explanation for the purchases was the purchases were connected to the fraudulent evasion of VAT*".

Determination has been the subject of a request for appeal to the High Court by way of case stated.

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VAT CASES

03TACD2020

Application of the 4 year rule in the case of VAT refunds.

Appellant engaged in exempt activities and operated on the basis that it had no entitlement to input VAT.

But some of its customers were located outside the EU, reviewed its recovery position and submitted amended VAT return to reclaim VAT on its qualifying activities.

In December 2013 VAT3 submitted for Nov-Dec 2009 VAT period - included inputs incurred earlier than this VAT period i.e. other taxable periods in 2009.

Claim for the Nov-Dec 2009 inputs allowed but claim for earlier inputs disallowed as it fell outside the 4 year time limit.

Issue = whether the rules and regulations for apportioning dual use inputs and the VAT refund provisions entitled the Appellant to reclaim VAT incurred prior to Nov-Dec 2009.

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VAT CASES

03TACD2020

Detailed review of the various provisions and the interaction between the apportionment rules and the time limits for VAT recovery

Held that "*the taxpayer has a right to deduct from the moment VAT becomes chargeable in accordance with Article 167 and not otherwise. It is in light of this right to deduct that time limits must be read and interpreted*" and "*that there is no basis for characterising the amended VAT return in respect of the taxable period November-December 2009 as a return in relation to the review of apportionment of dual-use inputs in accordance with section 61 VATCA 2010 and Regulation 17 of S.I. 639/2010*".

Amended VAT return for Nov-Dec 2009 did not constitute an effective means for reclaiming VAT incurred in earlier periods and as such the claim for the earlier periods was not valid.

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VAT CASES

119TACD2020

Whether certain church candles produced by the Appellant company are to be zero rated for VAT purposes.

Paragraph 13(4) of Schedule 2 VATCA2010, candles and night-lights are zero rated for VAT purposes if they are white and cylindrical.

Paragraph 13(4) excludes candles and night-lights that are 'decorated, spiralled, tapered or perfumed.'

Revenue assessed the Appellant to VAT at the standard rate in respect of certain candles - the candles were tapered in shape and excluded by the provisions of paragraph 13(4).

Appellant submitted that the church candles were not 'tapered' but were frustoconical i.e. that the shape of the candle resembled the truncated frustum of a cone and part cylindrical in shape.

Based on the wording contained in paragraph 13(4) and express exclusion from the zero-rate for candles that are 'tapered' the candles are considered tapered – zero-rate not applicable

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VAT CASES

121TACD2020

Refusal by Revenue of a refund of VAT in relation to the importation of a vessel.

Appellant purchased a boat from a supplier in the UK – approx. 18 metres in length and equipped with a 52hp engine.

VAT of €13,967 at the rate of 23% on the importation of the vessel was paid - refund claim totalled €5,770

Appellant made a claim for a refund of VAT in excess of the reduced rate of 13.5% which relates to caravans, mobile homes or any similar structure designed primarily for residential purpose.

Basis of claim - the boat was her home and permanent residence and submitted that the boat was a 'similar structure' to a caravan or mobile home for the purposes of VAT

Revenue did not accept that the Appellant's boat was a 'similar structure' to a mobile home or a caravan.

Revenue contended that a seaworthy vessel capable of the transportation of persons was incomparable to a caravan or mobile home and could not be regarded as a 'similar structure' for the purposes of the statutory instrument.

TAC determined that the refusal of the VAT refund stands.

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VAT CASES

126TACD2020

Appellant worked for ZZ at the weekends and on some evenings.

Appellant arrived at the appropriate ZZ clinic, was assigned to a room with a computer and an examination couch and saw patients as they arrived, either by appointment or walk in.

Appellant performed the normal GP functions and made the appropriate decisions about referrals or subsequent treatments.

As every patient was different, the diagnosis and decisions were between him and the patient. As such, he was not directed by anyone on how to perform his medical duties.

There was no written contract, between the Appellant and ZZ.

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VAT CASES

126TACD2020

Issue for determination = did the services supplied by the Appellant qualify for exemption from VAT under paragraph 2(3) of Schedule 1 of the VATCA10.

TAC found that the Appellant through its employee, Dr AA, provided medical care to patients presenting at the clinics of ZZ and that the only services provided by ZZ was the provision of the infrastructure and the backup administrative and financial functions.

TAC held that the Appellant was engaged in the provision of medical care services which were exempt from VAT; so that the assessment raised should be reduced to nil.

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VAT CASES

Segler-Vereinigung Cuxhaven eV ("SVC") v Finanzamt Cuxhaven (C-715/18) - CJEU

VAT rate applicable to the letting of boat moorings in a marina.

MS permitted to apply one/two reduced rates of VAT to certain goods and services i.e. to those listed in Annex III of the Directive.

Point 12 of Annex III, reduced rate of VAT applies to "accommodation provided in hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites'. These supplies are excluded from the exemption for the letting of immovable goods.

SVC = registered non-profit making association which promotes sailing and motorised water sports.

It has approx. 300 boat moorings which are allocated to the members (approx. 50% and let to guests when not in use by members) and let to guests.

SVC applied the reduced rate of German VAT of 7% to the use of the moorings by guests but tax office applied the standard rate.

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VAT CASES

Segler-Vereinigung Cuxhaven eV ("SVC") v Finanzamt Cuxhaven (C-715/18) - CJEU

Question = was the letting of boat moorings treated as the letting of places on camping or caravan sites for the purposes of applying a reduced rate of VAT.

Court indicated the concepts used in Annex III must be interpreted with the usual meaning of the terms at issue.

Court pointed out that the letting of boat moorings is not listed in Annex III Point 12 – main purpose of enabling boats to be immobile and secure when moored and as such it is not intrinsically linked to the concept of accommodation.

So Point 12 of Annex III does not allow MS to apply a reduced rate of VAT to the letting of boat moorings.

Reviewed purpose behind the reduced rates and stated that the "*EU legislature intended that essential commodities, and goods and services serving social or cultural objectives, may be subject to a reduced rate of VAT, provided that they pose little or no risk of distortion to competition*".

By providing that the reduced rate applies to certain types of accommodation facilitates wide access to the services in question (social objective).

Whereas sailing boats and motor boats are not in the main regarded as "accommodation" and as such the same social objective is not justified.

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VAT CASES

Dong Yang Electronics v Dyrektor Izby Administracji Skarbowej we Wrocławiu Case C-547/18

Place of supply of services (Article 44 of VAT Directive) and the Implementing Regulation ("IR") (No 282/2011).

Korean company (LG Korea) commissioned a Polish company (Dong Yang) to supply assembly services in respect of printed circuit boards. The materials and components were owned by LG Korea.

LG Korea had a Polish subsidiary LG Poland which was involved in the supply.

Dong Yang invoiced LG Korea for the assembly services without VAT on the basis of confirmation by LG Korea that it did not have a fixed establishment in Poland

Polish tax authority argued that LG Poland comprised a fixed establishment of LG Korea and as such the supply was liable to Polish VAT (i.e. the assembly services were supplied in Poland).

Also argued that Dong Yang was required to examine who the actual beneficiary of its services was.

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VAT CASES

Dong Yang Electronics v Dyrektor Izby Administracji Skarbowej we Wrocławiu Case C-547/18

Question = whether the existence of a fixed establishment in a MS of a non-EU established co is to be inferred from the mere fact that the non-EU established co has a subsidiary there or whether the supplier of the services is required to inquire into the contractual relationships between the two entities?

Article 44 = place of supply rule = where the recipients business is established and in the alternative where the services are supplied to a fixed establishment, the place where the fixed establishment is located.

Article 11 of the IR - fixed establishment = any establishment, "*other than the place of establishment of a business referred to in Article 10 of that Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs*".

Under Free Trade Agreement, undertakings incorporated under Korean law are precluded from directly conducting economic activity in Poland.

The subsidiary held for the purposes of conducting economic activity by the parent co established in South Korea could constitute a fixed establishment of that parent co in a MS of the EU.

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VAT CASES

Dong Yang Electronics v Dyrektor Izby Administracji Skarbowej we Wrocławiu Case C-547/18

Court noted that the treatment of an establishment as a fixed establishment cannot depend solely on the legal status of the entity concerned

Supplier of services cannot infer that there is a fixed establishment in the MS on the basis of the existence of a subsidiary in that MS

Article 22 of the IR reviewed to determining whether a supplier of services must consider the contractual relationship between the parent and subsidiary.

Article 22 has a series of criteria which a supplier must take into account in determining the existence of a fixed establishment – the nature and use of the service provided to the taxable person constituting the customer

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VAT CASES

Dong Yang Electronics v Dyrektor Izby Administracji Skarbowej we Wrocławiu Case C-547/18

If insufficient, pay attention to whether the contract, the order form and the VAT number given by the MS of the customer identify the fixed establishment as the customer of the service and whether the fixed establishment is the entity paying for the service.

If still insufficient, supplier may legitimately consider that the services have been supplied at the place where the customer has established his business.

Article 22 does not require the supplier to examine the contractual relationship between the parent and subsidiary.

Article 22(1) concerns the contract for the supply of services between the supplier and the taxable person constituting the customer of the services and not the contractual relationships between that customer and an entity which could, depending on the case, be identified as its fixed establishment.

Court held that “the existence, in the territory of a MS, of a fixed establishment of a company established in a non-MS may not be inferred by a supplier of services from the mere fact that that company has a subsidiary there, and that supplier is not required to inquire, for the purposes of such an assessment, into contractual relationships between the two entities.

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Thank you.

Questions?

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VAT Groups

This document should be read in conjunction with section 15 of the VAT Consolidation Act 2010 (VATCA 2010) and regulation 4 of S.I. no. 639 of 2010

Document Created March 2020

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Introduction

This guidance sets out the Revenue position on VAT groups as provided for in section 15 of the VATCA 2010.

1 VAT Groups

A VAT Group is a group of two or more persons who have been approved by Revenue to operate as a single taxable person for the purposes of VAT. A VAT group is established when Revenue approves an application from two or more persons to form such a group; Revenue may also direct that specified persons are established as a VAT group where it is satisfied that it is appropriate for the efficient and effective administration of the tax to do so. In either case, a member of the group must be designated as the 'group remitter' responsible for making VAT returns on behalf of the VAT group.

Where a VAT Group has been established all transactions carried out by the individual group members are considered to have been carried out by the VAT group as a single taxable person.

Each member of a VAT group is jointly and severally liable for the VAT liabilities of the group.

2 Membership of a VAT Group

Both taxable and non-taxable persons can join a VAT group provided at least one member of the VAT group is a taxable person. A taxable person is any person who independently carries on a business.

In order to become a member of a VAT group a person must be established in the State. The type of establishment has not been specified; a person may have either a business established or a fixed establishment within the State.

3 Formation of a VAT Group

A VAT group can be formed by two or more persons, at least one of whom is a taxable person, subject to the conditions outlined in paragraph 4.

Persons that wish to form or join a VAT group must apply to Revenue using the prescribed application forms. The person applying to be the remitter of a VAT group should complete and submit a Form VAT 52. The other person(s) applying to be members of the VAT group should complete and submit a Form VAT 53.

If Revenue approves the VAT group application, it will take effect from a date specified by Revenue. A refusal by Revenue of an application to form or join a VAT group may be appealed to the Tax Appeal Commission.

Revenue also has the power to compulsorily VAT group persons where Revenue determines the conditions for a VAT group have been met. The compulsory

registration, by Revenue, of a group of persons as a VAT group may be appealed to the Tax Appeal Commission.

4 Conditions to be met to form a VAT Group

To be approved as a VAT group, Revenue must be satisfied that the applicants are closely bound by financial, economic and organisational links and that the granting of a VAT group application would be necessary or appropriate for the efficient and effective administration of the tax. These conditions are cumulative and to qualify to establish a VAT group all of them must be met.

4.1 Financial Link

The financial link can be demonstrated by considering common control. In this respect, one measure of demonstrating common control would be the holding of fifty per cent or more of the issued share capital or voting rights or the power to appoint fifty per cent or more of the Board of Directors.

Whilst a subordinate relationship, such as a parent and subsidiary, would clearly satisfy the common control requirements, it is not the only kind of relationship that would meet the requirements. For example, two companies could meet the common control test if they had a common shareholder who holds fifty per cent or more of the issued share capital or voting rights or the power to appoint fifty per cent or more of the Board of Directors of each company.

In addition, the holding of fifty per cent or more of the issued share capital or voting rights or the power to appoint fifty per cent or more of the Board of Directors does not have to result from a direct relationship, it can also be met indirectly. For example, Company A owns 100% of the share capital of Company B who in turn holds 60% of the share capital of Company C. Company A indirectly holds 60% of the share capital of Company C.

Whilst considering common control in terms of share capital, voting rights and power to appoint board members is an appropriate assessment of control when looking at corporate entities seeking to form a VAT group, it may not be appropriate when looking at non-corporate bodies such as partnerships, etc. In this regard other factors such as the allocation of decision-making powers under formal agreements, the level of debt funding provided to the non-corporate person or the level of capital contribution, may be taken into account on a case by case basis.

4.2 Economic Link

An economic link must exist between persons who wish to form a VAT group. The following list outlines the circumstances which Revenue will accept as satisfactorily demonstrating the existence of an economic link;

- The principal activity of the group members is of the same nature, or
- The activities of the group members are complementary or interdependent, or

- One member of the group carries out activities which are wholly or substantially to the benefit of the other members.

An example of group members having a principal activity of the same nature would be two companies that manufacture different kinds of medical devices.

An example of complementary activities would be a vehicle leasing company and a company that provides vehicle maintenance services.

A company that carries out activities which are wholly or substantially to the benefit of the other members could include a shared service centre or a group treasury company.

4.3 Organisational Link

Organisational links between persons can take different forms and are generally designed to assist the persons concerned achieve a shared purpose. The existence of a link can be determined based on whether there is a shared, or partially shared, management or corporate structure involving the persons.

In most cases, the applicants will be members of the same corporate group and this would normally satisfy the requirement for an organisational link.

5 Application of VAT group provisions

5.1 Effective date of a VAT Group

A VAT group only comes into existence upon the issuing of a notification in writing by Revenue to each person who is a member of the VAT group. The notification will specify the date from which the VAT group is effective, and this will be a date no earlier than the start of the VAT period in which the application was made.

5.2 Nominated Group Remitter

In relation to carrying out its taxable activities, the VAT group must nominate one of the members, known as the group remitter, to be responsible for fulfilling all the statutory VAT obligations of the group. The nominated remitter is responsible for submitting a single VAT return and any associated payments on behalf of the entire VAT group. This return and payment are made under the VAT number of the remitter.

The remitter may file an INTRASTAT return for transactions concerning some or all of the members of the VAT group. A VIES return must be filed under each of the group members' own VAT numbers.

5.3 VAT numbers and invoicing

While supplies by each member of the VAT group to persons outside the group are considered to have been made by the group as a single taxable person, each

member of the group must issue an invoice for its individual supplies under its own name and quoting its individual VAT number.

5.4 Section 56 authorisations

If a VAT group or a member of a VAT group applies for a section 56 authorisation, the turnover of the entire VAT group must be considered when assessing whether the conditions for a section 56 authorisation have been met. Provided the group meets the qualifying criteria, each member must obtain an individual section 56 authorisation to present to suppliers.

6 Consequences of a VAT Group

6.1 Joint and several liability

Each member of the VAT group is jointly and severally liable for ensuring that the VAT group, a single taxable person, complies with the requirements of the VATCA 2010. This includes the requirement of the group to pay tax.

6.2 Intra-Group transactions

Internal transactions between members of the VAT group do not constitute taxable supplies by the VAT group and are therefore outside the scope of VAT. Please see paragraph 9 for exceptions to this general rule.

6.3 Supplies to and from third parties

The members of a VAT group form a single taxable person and therefore, even though the members of the VAT group are required to quote their individual VAT numbers on invoices issued, supplies made by the individual member are deemed to be made by the VAT group. Similarly, supplies received by individual members of the group from third parties are deemed to have been received by the VAT group as a single taxable person rather than by the individual members of the group.

6.4 Non-taxable persons joining a VAT Group

The place of supply of services received by a non-taxable person can change on becoming a member of a VAT group. In general, where a non-taxable person receives a service from outside the State the place of supply is the place where the supplier is established.

However, when a non-taxable person joins a VAT group, the services received by that person, are now received by the VAT group for VAT purposes. Where a taxable person including a VAT group, receives a service from outside the State the place of supply is where the recipient is established. The VAT group must therefore account for VAT on all services received by each member of the group.

6.5 Registration within a VAT Group

Unregistered non-taxable persons or VAT exempt entities within a VAT group may be required to register for VAT.

Some examples of when a non-taxable person or VAT exempt person in a VAT group will need to register for VAT include:

- If they receive services from a non-Irish supplier to which the reverse charge applies;
- If they make an Intra-Community acquisition of goods.

Further information on VAT registration and VAT thresholds can be found on Revenue's website.

VAT thresholds for registration apply on a group wide basis; the turnover from all of the supplies of goods and services by VAT Group members to persons outside the group must be taken into account.

6.6 Outstanding returns or liabilities upon joining a VAT Group

Specific provisions apply where two or more persons have formed a VAT group and one or more members of the VAT group have outstanding returns or have not remitted all tax payable prior to the group formation. In this case, if one or more of the other group members have VAT refund claims that arose prior to the formation of the VAT group, Revenue may defer payment of the refundable VAT until such time as the outstanding obligations of the other group members have been satisfied.

7 VAT Deductibility for a VAT Group

Entitlement to deductibility for costs incurred by a VAT group is subject to the same conditions as would apply to any other taxable person, in that the costs must be used for the purposes of the Group's activities which give rise to an entitlement to deductibility.

The entitlement of a VAT group to a deduction for costs incurred by any person within the group will depend on establishing a link, whether a direct and immediate link or a link as a general cost of the economic activity of the VAT group. As the members of the group are no longer taxable persons in their own right and as transactions between members of the group are deemed not to take place for VAT purposes, the matter of consideration between members of the group is not relevant for the purposes of determining the existence of that link.

The CJEU has confirmed in the European Commission v Ireland (C-85/11) that normal VAT deductibility rules must continue to apply while considering the VAT group's overall position. As a result, VAT grouping should produce the same VAT deductibility outcome as that which would apply in a situation where all of the activities of the VAT group are carried out by a single legal entity.

Also, the Advocate General in this case recognised that VAT grouping may result in economic advantages accruing to group members. It was stated that **"In certain situations members of a VAT group may gain economic benefits from belonging to the group. This, in my opinion, is simply an inevitable consequence flowing from the basic fiscal policy choice of a Member State to permit VAT grouping."** An example of such an economic advantage is an increase in VAT deductibility.

Revenue will not challenge cases where legitimate economic advantages arise from VAT grouping. However, Revenue will be alert to situations that may arise where VAT grouping is utilised as part of a series of transactions whose main purpose is to generate a tax advantage that is contrary to the purposes of the VAT Directive. In such circumstances, Revenue will take appropriate action to challenge such cases.

Specific examples of VAT deductibility for VAT groups that contain a holding company can be found in the VAT Deductibility for Holding Companies guidance .

8 Cancelling membership of a VAT Group

8.1 Exiting a VAT Group

It is the responsibility of the VAT group members to ensure that the conditions for a VAT group continue to be met.

Where a member of a VAT group ceases to meet the conditions for inclusion as a member of a VAT group, Revenue should be informed so that the member can be removed from the VAT group.

Where a member is to be removed from a VAT group, in circumstances where the VAT grouping conditions for that member are still met, Revenue should be contacted setting out the reasons to remove that member. It should be noted that it is at the discretion of Revenue to remove a member from a VAT group in circumstances where the VAT grouping conditions are still met.

Where Revenue no longer considers the existence of a VAT group to be appropriate, whether on the request of the members of the group or otherwise, it may cancel the group.

The date of cessation of VAT group membership or cancellation of a VAT group will be notified in writing by Revenue. Until the date of cessation is specified by Revenue the group is not cancelled and all transactions must continue to be treated under VAT grouping rules.

8.2 Consequences of exiting or cancelling a VAT Group

Once a member of a VAT group is notified by Revenue of the date that their VAT group membership ceases, any VAT that becomes chargeable or reclaimable by that member from that date must be included on their own individual VAT return with effect from that date.

Where a person leaves a VAT group during a VAT period, any VAT chargeable or deductible that arose prior to the date of exit must be included in the VAT return of the VAT group.

Where a former member of a VAT group is under Revenue audit and unreported liabilities are discovered from a period when they were a member of the VAT group, assessments to tax will be raised on the VAT group as the liabilities are the responsibility of the group.

Where a former VAT group member discovers input tax that has not been claimed relating to a period when they were a member of the VAT group, it is the VAT group that must submit a claim for repayment of the input tax as it was incurred by the VAT group.

9 Transactions excluded from VAT Grouping provisions

9.1 Supply of property

The supply of immovable goods between members of a VAT group is subject to VAT under the normal rules as if those persons were not members of the VAT group.

9.2 Transfer of business relief

The provisions relating to VAT grouping will not apply to a transfer of goods between two members of a VAT group, where transfer of business provisions would have applied to that transfer if the transferor and transferee were not members of the group. This restriction in the application of VAT grouping provisions does not apply where all the members of the VAT group would, themselves, be accountable persons if they were not members of the VAT group.

10 The territorial scope of VAT Groups

The Court of Justice of the European Union in the FCE Bank case[1] confirmed that a Head Office and a Branch, not being independent of each other, are part of the same person. If a person has either a fixed or business establishment in Ireland and applies to join an Irish VAT group, it is the entire person, including any overseas Head Office or Branches, that must join the Irish VAT Group.

The consequence is that any transactions between the overseas establishments of the person and members of the Irish VAT group being intra-group transactions are outside the scope of VAT, subject to the exclusions in section 15 of the VATCA 2010.

Revenue is aware that some Member States have introduced VAT grouping rules that restrict VAT group membership to the establishment in that Member State only. Businesses should take account of the potential implications of transactions with persons established in such jurisdictions.

[1] Ministero dell'Economia e delle Finanze,Agenzia delle Entrate v FCE Bank plc (C-210/04)

11 Double taxation

If the interaction of Ireland's VAT grouping rules and the VAT grouping rules of another Member State results in double taxation for a taxpayer, please contact your Revenue Branch.

12 Further information

Any issue arising for a taxpayer from this guidance should be raised with the Revenue Branch responsible for the taxpayer's affairs.

13 Examples

Example 1 – deductibility

Company A is a company that makes taxable supplies of staff to Company B, a Bank. There is no VAT group in place. Company A charges VAT on its supplies to Company B and is generally entitled to full VAT recovery on its input costs.

Company A and Company B decide to form a VAT group. The outputs of the VAT group are VAT exempt banking activities. No VAT recovery is available for any costs incurred by the VAT group as the outputs of the VAT group are exempt from VAT.

Example 2 – deductibility

Company A is an insurance company that underwrites risks for a related Company B, a fully taxable entity. There is no VAT group in place. Company A is not entitled to any VAT deductibility as its activities are exempt from VAT.

Company A and Company B decide to form a VAT group. The only outputs of the VAT group are fully taxable. VAT recovery is available for the costs incurred by the VAT group on the basis that the outputs of the VAT group are fully taxable.

Example 3 – conditions for grouping

Company A, an airline, and Company B, a medical facility, apply to join a VAT group. Both entities are 100% subsidiaries of Company C and, as such, meet the financial and organisational link conditions to form a VAT group. However, it is clear they do not meet the economic link condition and, therefore, cannot be VAT grouped.

Example 4 – territorial scope

Company A and Company B form a VAT group. Company A has a branch in another EU Member State. Company B supplies services directly to the branch of Company A.

The supplies by Company B are outside the scope of VAT as the entirety of Company A is a member of the VAT group, including the branch. It is a person that joins a VAT group and the FCE Bank decision confirmed that a Head Office and a branch are the same person.

Any supplies by the branch of Company A to the Head Office or to Company B are also outside the scope of Irish VAT.

Example 5 – territorial scope

Company A and Company B form a VAT group. Company A has a branch in another EU Member State. The branch in the other Member State is in a local VAT group with Company C, a company established only in the other EU Member State. Company C makes a supply of administration services to the Irish VAT group.

The supply is subject to Irish VAT in the normal manner and the Irish VAT group is required to self-account for Irish VAT on the supplies received from Company C.

Charities VAT Compensation Scheme
Guidelines for Charities Manual

Document updated May 2020

Please consult the COVID-19 pages on the Revenue website for further information in relation to the subject matter of this manual.

Table of Contents

1 Introduction

1.1 This manual

This Tax and Duty Manual contains information and guidance for charitable bodies in respect of the Charities VAT Compensation Scheme.

1.2 VAT Compensation Scheme overview

To reduce the VAT burden on charities and to partially compensate for VAT paid in the day to day running of the charity, a VAT Compensation Scheme for charities has been introduced. The scheme applies to tax paid on expenditure on or after 1 January 2018 and so VAT paid in years prior to that cannot be claimed. Refunds will be paid one year in arrears.

A total annual capped fund of €5m is available for payment under the scheme, and the scheme will be subject to review after three years. Charities will be entitled to claim a refund of a proportion of their VAT costs based on the level of non-public funding they receive. Where the total amount of eligible claims from all charities in each year exceeds the capped amount, claims will be paid on a pro rata basis.

1.3 Revenue website

Information on the Charities VAT Compensation Scheme is available on the Revenue website at VAT Compensation Scheme for Charities

2 Qualification to make a claim

2.1 Qualifying criteria

To be a qualifying charity for this scheme, a charity must at the date of claim and at the time that the qualifying expenditure was incurred:

- be registered with Revenue and hold a charitable tax exemption (CHY) under section 207 Taxes Consolidation Act (TCA) 1997
- be registered with the Charities Regulatory Authority (CRA).

2.2 Period for which a charity may make a claim

Claims should relate to one calendar year only and can be submitted up to 30th June of the year following the calendar year to which the claim relates.

2.3 Income and expenditure

It is important to note that any reference to income received or expenditure paid is to actual monies received and paid out in the calendar year to which the claim relates. The scheme operates on a cash basis. This means that if a charity orders goods and services in Year 1 and does not pay for them until Year 2, the amount due to be paid cannot be included as expenditure of Year 1.

3 Calculation of the claim

The amount which a charity may claim in this scheme, known as the claim amount, is calculated with reference to income and expenditure. The amount must be calculated subject to the expenditure being "qualifying expenditure" (see section 6) and based on the proportion of privately funded income to publicly funded income, which is known as "qualifying income" (see section 5).

The sections that follow describe how to calculate the claim amount and are based on the following example:

Example

In 2018, a charity receives total income of €37,000 from the following sources:

- **Government grants of €2,000,**
- **Donations of €25,000,**
- **Donations from a flag day of €10,000.**

The charity also has total expenditure in 2018 of:

- **€24,600,**
- **of which €2,460 is for non-charitable purposes.**

4 Total income in respect of claims

Total income is all income received by a qualifying charity in the year to which the claim relates, excluding:

- amounts collected for and transferred directly to another charity* and
- any loans to a charity

* where funds have been collected by one qualifying charity for another qualifying charity, only the receiving charity can include those funds in the claim calculation. Where such funds are collected on behalf of another charity, those funds should not be included by the collecting charity in the calculation of its Total Income or Qualifying Income.

Funding or payments received from all sources should be added together to calculate the total income figure.

Charities must exclude from both Total Income and Qualifying Income any funding received directly or indirectly from the State or from a public body where that funding is simply for onward transfer to other bodies or individuals. The funding in these cases is not reflected as income in the financial statements of the charity and the charity's role is simply to manage and transfer the funds onwards as set out in the agreement with the transferring body.

For example, the State may provide funding to a charity to administer a housing support scheme and these funds are managed by the charity who pay the landlord directly. This funding is not regarded as being income in the financial accounts of the charity, they are merely receiving and transferring the funds onwards so should not be included in the Total or Qualifying Income calculations.

Where the charity receives payment from the State or the public body for processing these funds, this payment should be included in Total Income but excluded from Qualifying Income calculations.

In cases of doubt, please contact Charities and Sports Exemption Unit at 01738 3680.

5 Qualifying income in respect of claims

5.1 Qualifying income

The proportion of a charity's income that is privately funded is known as "qualifying income". This excludes publicly funded income.

To calculate qualifying income, a charity should deduct from its total income for the year to which the claim relates, all or any of the following, if applicable:

- educational fees received if the charity is a school, university, institute of technology or educational establishment (charities not included in these categories, but which received educational fees are considered as educational bodies for that portion of their activities and must exclude any such fees received from their total income)
- income from shops, restaurants and retail outlets
- refunds or reliefs received under any other scheme or legislation administered by the Revenue Commissioners
- income collected for and transferred to another charity
- funding, refunds, and reliefs received directly or indirectly from:
    - the State, a public body, State bodies, bodies established by statute or bodies which received that funding directly or indirectly from the State

- the European Union or European Union bodies or from bodies which received that funding directly or indirectly from the European Union
- the public funding of any Member State of the European Union, or from a body which received that funding directly or indirectly from the public funding of a Member State of the European Union
- international organisations which received that funding directly or indirectly from the public funding of any country or from a body which received the funds from an international organisation which previously received that funding directly or indirectly from the public funding of any country.

Some examples of non-qualifying income are:

County Council grants	CAS funding (not repayable)
Pobal funding	Charity shop income
HAP payments	HSE Fair Deal payments*
CES payments	Charitable Donation Scheme refunds
Café Income	RAS payments

This is not an exhaustive list and is for guidance purposes only.

Paragraph 4, which sets out the circumstances where some of the above-mentioned funding should also be excluded from the Total Income calculation.

*Funding for nursing home care which comes from the HSE cannot be regarded as Qualifying Income, however, payments from private citizens for such care may be included as Qualifying Income.

Where a charity making a claim is in receipt of a grant and is unsure regarding this aspect of the claim calculation, the applicant charity should contact Charities and Sports Exemptions Unit staff who will assist further. Telephone 01 738 3680.

In the example above, the total income for the year is €37,000 and qualifying income is €35,000 – total income less Government grants of €2,000.

6 Qualifying expenditure

Expenditure in respect of which a VAT refund may be sought under this scheme is described as “qualifying expenditure”. Conditions apply to the calculation of qualifying expenditure:

- compensation may be sought in respect of VAT which was paid in the State on certain expenditure and in the year to which the claim relates

- that expenditure must have been for goods or services used by the charity only for its charitable purpose
- if a charity is entitled to receive any kind of relief, refund, repayment or deductibility under any other scheme or legislation administered by Revenue, it may not include that amount in the calculation of a claim.

In the example above, as non-qualifying expenditure for the year to which the claim relates is €2,460, qualifying expenditure is €22,140.

7 Qualifying tax

"Qualifying tax" means the VAT that has been paid by the claimant in respect of qualifying expenditure.

So, to continue with the example from above, and if qualifying expenditure of €22,140 includes VAT paid in the amount of €4,140, then qualifying tax is €4,140.

8 Claim amount or eligible tax

8.1 The amount which may be claimed under the scheme or eligible tax

The claim amount is referred to as "eligible tax" in the legislation and is the amount which a charity may claim under the scheme i.e. the amount which is eligible to be claimed based on the level of non-public funding received. It is determined by a formula set out in legislation as follows:

"**qualifying tax" X ("qualifying income"/" total income")**

To continue with the example above, this would mean that the claim amount or "eligible tax" is:

€4,140 X (€35,000/€37,000) = €3,916.21

A charity which meets the qualifying criteria in paragraph 2, may therefore submit a claim for €3,916.21 for that year.

The minimum claim which may be submitted is €500, so claims less than this will not be accepted. Also, the total annual amount available to be paid out under the scheme is capped at €5 million, so the amount which may be paid to a charity depends on the total value of claims from all eligible applicants. Consequently, Revenue may pay individual charities less than the amount that they claimed.

9 Submitting a claim

9.1 What you need to submit a claim

Charities wishing to submit a claim must comply with the criteria already described above. The following will be required to submit a claim:

- tax registration number issued by Revenue
- bank account details
- Registered Charity Number (issued by the Charities Regulatory Authority).

It should be noted that a claimant must hold a current tax clearance certificate when making a claim.

9.2 How to submit a claim

Claims for VAT compensation must be submitted through e-Repayments on Revenue's Online System (ROS). Charities must be registered for ROS to submit a claim. To become a ROS customer, go to Useful Links on www.Revenue.ie and select Register for ROS. The following conditions also apply:

- claims and any supporting documentation must be submitted in the format required, and in accordance with the deadlines specified by Revenue
- claims can be submitted between January 1st and June 30th in the year following the year to which the claim relates
- **claims submitted after the June 30th deadline will not be accepted under any circumstances**
- claims can be submitted annually for one calendar year and should relate to VAT paid in the previous year only
- claims may be amended up to 30th June of the year of claim submission but not afterwards
- the minimum amount that can be claimed is €500 and the minimum repayment is €5
- claimants must declare and certify that all information they provide for the purposes of the claim is correct.

A claim can be made by a charity directly or an agent can make a claim on behalf of a charity. For an agent to make a claim on behalf of a charity, the agent must be linked to the charity on Revenue's records. If an agent is not already linked to the charity, they can link to any existing tax head under agent services in ROS.

If, for some reason, an option does not appear in ROS for a charity to submit a claim on ROS, they should contact Charities and Sports Exemption Unit at 01 738 3680.

9.3 Guide to submitting a claim on ROS

- log into ROS at www.ros.ie
- input password and Login

- on “My Services” Tab Scroll to page end
- under “Other Services” select “eRepayment claims” and Make a Claim
- to amend an existing claim select “Manage a Claim”
- select “VAT-Value Added Tax” and Continue
- select a “claim type”; Charities VAT Compensation Scheme and Continue
- review details in Overview and Continue
- select “Claim details”, complete all fields and Continue
- attach any required supporting documentation and Continue
- select “Bank Details”, input bank details for refund and Continue
- select “Summary” and Review details
- complete declaration and select “Submit”
- enter password and select “Sign and Submit”.

A notice number will issue if the file upload is successful. If a file does not upload successfully an error message will appear indicating that there was a problem processing the claim and advising to try again later. This will be followed by an error id number.

The status of a claim can be viewed by the claimant in ROS.

9.4 Details to support a claim

The following may be requested to support a claim:

- detailed breakdown of total income, qualifying income and qualifying expenditure
- written declaration on the charity’s headed paper, from CEO or Chief Financial Officer as to the validity of the claim
- VAT records which form the basis for the claim e.g. invoices, receipts etc. Charities must retain all books, records and documents relevant to the claim for a period of 6 years
- evidence that the goods and services on which they are claiming VAT were applied to their charitable purpose
- evidence that the VAT for which they are seeking a refund was paid in the year to which the claim relates
- evidence that the income on which their calculation is based was received by the charity in the year to which the claim relates
- a most recent set of audited accounts. These accounts must be for the charity’s financial year and the year end of the financial year must be the year to which the claim relates or the year in which the claim is being made
- evidence that the charity was not entitled to a deduction or refund of the tax being claimed under any other legislation administered by Revenue
- evidence of compliance with all the obligations of the VAT Consolidation Act 2010, the Taxes Consolidation Act 1997, the Stamp Duties Consolidation Act 1999 and secondary legislation made under these Acts.

9.5 Calculation

The annual amount available under the scheme is capped at €5m, so the amount to be paid out to each qualifying charity is calculated having regard not only to the amount claimed, but also to the annual amount available to the scheme.

The pay-out calculation will take place once annually and it will not be possible to recalculate the payments or accept late applications.

9.6 Review of claims

Claims will be subject to review. In this regard:

- claimants should ensure that all supporting documentation is retained and produced to Revenue within the timeframe requested
- claimants should ensure that they have complied with all the obligations of the VAT Consolidation Act 2010, the Taxes Consolidation Act 1997, the Stamp Duties Consolidation Act 1999 and secondary legislation made under these Acts
- where Revenue is satisfied that the claim is in order, it will be processed further
- where review documentation is not submitted or is not in order, a claim cannot be processed further
- Revenue may reject a claim
- Revenue may make any changes considered necessary to any claim, including changes to the amount of total income, qualifying income or amount of eligible tax being claimed. Claimants will be advised if this occurs and the reasons for any changes will be explained.

9.7 Payment

The following should be noted regarding payments issued under this scheme:

- where the total amount of claims in each year exceeds the capped amount, any refunds due will be paid to charities on a pro rata basis
- Revenue is not obliged to refund the full amount, or any amount claimed
- any refunds due to charities will be paid through Revenue's e-Repayments system
- it is expected that payment will be made no later than October of the year of submission of a claim
- claimants will receive a message in their ROS Inbox providing details of any payment due
- payments will be made by Electronic Fund Transfer unless an error in the bank details provided causes the payment to reject. In this case a cheque will issue.

It should be noted that where a charity submits a claim under the scheme, the Secretary or the trustee who makes the claim on behalf of the charity is responsible, along with the charity, for complying with the conditions of the scheme.

Revenue may seek a repayment of an amount paid over or can deduct it from any future payments due to the charity from Revenue if it finds that:

- the charity failed to comply with the conditions of the scheme or
- was not entitled to all or any part of the refund.

10 Queries

Any questions regarding the contents of this Manual can be directed to Revenue's Charities and Sports Exemptions Unit. Telephone: 01 738 3680

VAT treatment of call-off stock arrangements

This document should be read in conjunction with sections 23 and 23A of the Value-Added Tax Consolidation Act, 2010.

Document created December 2019

Table of Contents

1 Introduction

This guidance sets out details of the VAT treatment of call-off stock arrangements.

While goods can continue to be supplied under call-off stock arrangements under the provisions of section 23 of the Value-Added Tax Consolidation Act, 2010 until the 31st of December 2019, all goods supplied under call-off stock arrangements are specifically excluded from those provisions from the 1st of January 2020.

The guidance also sets out the details on the application of a simplification measure for call-off stock arrangements which must be applied from the 1st of January 2020. This measure provides for a simplified VAT treatment of goods transferred under call-off stock arrangements where certain prescribed conditions are met.

The measures set out in the guidance do not apply to a transfer of goods to or from non-EU Member States.

1.1 Consignment stock

It should be noted that the call-off stock arrangements measure does not apply to goods transferred as consignment stock. Consignment stock is a term used to describe a movement of goods by a supplier in one Member State to another Member State to be held in stock there and provided to customers as required. The goods remain under the control of the supplier and are not intended for any one known customer at the time of transport. It is therefore important to note the difference between call-off stock arrangements and consignment stock arrangements.

2 Call-off stock arrangements

In practical terms the call-off stock arrangements will normally operate as follows;

- goods are dispatched from one Member State to another under a pre-existing agreement between the supplier and the intended purchaser
- when the goods are transported, the identity of the intended purchaser of the goods is known to the supplier
- the goods are warehoused in the Member State to which they have been dispatched, so that they are available for call-off by the purchaser as required, and
- the agreement provides that ownership of the goods only transfers to the purchaser at a time later than their arrival in the Member State to which they have been dispatched.

It should be noted that the call-off stock arrangements can apply where there are multiple intended purchasers for the stock of goods transferred, as long as all conditions are met, and the details of the goods intended to be supplied to each purchaser are known by the supplier at the time of transport of the goods.

3 Simplification measure

Where certain conditions are met the simplification measure must apply to call-off stock and at the time ownership of the goods transfers to the purchaser:

- the supplier will be deemed to have made an intra-Community supply of goods in the Member State from which the goods were dispatched
- the purchaser will be deemed to have made an intra-Community acquisition of those goods in the Member State to which the goods have been dispatched, and
- the transfer of ownership of goods in the Member State to which the goods have been dispatched will be deemed not to be a supply for VAT purposes.

4 The conditions for the simplification measure to apply

The simplification measure must be applied where **all** of the following conditions are met:

- the supplier has neither established his business nor does he have a fixed establishment in the Member State to which the goods are dispatched
- the goods are dispatched by or on behalf of the supplier to the other Member State, in accordance with a pre-existing agreement between the supplier and the intended purchaser
- ownership of the goods only transfers to the purchaser at a time after the arrival of the goods in the other Member State but within 12 months of that arrival
- the purchaser is identified for VAT in the Member State to which the goods were dispatched
- the identity and VAT number of the intended purchaser is known to the supplier at the time the goods are dispatched, and
- the supplier keeps a record in relation to all transactions to which the simplification measures apply.

In relation to these conditions it should be noted that:

- the conditions for the simplification measure to apply are not met if the supplier is established or has a fixed establishment in the Member State to which the goods have been dispatched or transported, irrespective of whether that establishment intervenes in the supply of call-off stock
- the supplier may be registered for VAT in the Member State to which the goods were dispatched and still meet the conditions for the simplification measure to apply.

4.1 Business and fixed establishment

The warehousing of call-off stock may or may not constitute an established business or fixed establishment depending on the particular circumstances:

- where the warehouse to which the goods are transported under call-off stock arrangements is owned and run by a person other than the supplier, the warehouse will not be seen as a fixed establishment of the supplier
- where the warehouse is owned (or rented) and is directly run by the supplier with its own means/resources present in the Member State where the warehouse is located, this warehouse shall be seen as a fixed establishment of the supplier
- where the warehouse is owned (or rented) by the supplier, it will not be seen as a fixed establishment of the supplier where it is not run by the supplier with its own means/resources or if those means/resources of the supplier used to run the warehouse are not located in the Member State where the warehouse is located.

5 Obligations of the supplier

The obligations of the supplier, in circumstances where the simplification measure applies, must be considered both when the goods are dispatched to the other Member State and when the ownership of the goods transfers to the purchaser.

At the time the goods are dispatched or transported to another Member State:

- the supplier is deemed not to have made a supply of those goods in the Member State from which the goods are dispatched, and
- the supplier is deemed not to have made an intra-Community acquisition of those goods in the Member State to which the goods have been dispatched.

However, the supplier of the goods must retain information in his or her books and records in relation to the call-off stock and must record the transfer in the VIES return in the Member State from which the goods were transferred.

The entry on the VIES return in relation to the movement of the goods should consist **solely** of the VAT identification number of the intended purchaser of the goods. The absence of an entry indicating the value of the goods transferred will identify the entry on the return as relating to the transfer of goods under the simplification measure.

When ownership of the goods transfers to the purchaser:

- the supplier will be deemed to have made an intra-Community supply of goods in the Member State from which the goods were dispatched, and
- the transfer of ownership of the goods from the supplier to the purchaser is deemed not to be a supply of goods for VAT purposes in the Member State to which the goods are dispatched, i.e. no domestic supply is considered to have been made by the supplier in the Member State to which the goods have been dispatched.

6 Records to be retained by the supplier

The records retained by the supplier in relation to the application of the simplification measure must include the following:

- the Member State from which the goods were dispatched or transported, and the date of dispatch or transport of the goods
- 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
- 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
- the taxable amount, description and quantity of the goods that arrived in the warehouse
- the VAT identification number of the taxable person substituting for the intended purchaser, if required
- the taxable amount, description and quantity of the goods in respect of which ownership has transferred to the purchaser, the date ownership of those goods transferred and VAT identification number of the purchaser
- the taxable amount, description and quantity of the returned goods and the date of the return of the goods, being goods, which have been returned to the original Member State of dispatch within 12 months of arriving in the State, without ownership of the goods having transferred to another person, and
- in the case where any of the conditions for the application of the simplification measure is no longer met, the taxable amount, description and quantity of the goods, together with information identifying;
    - the condition which has ceased to be met
    - the date on which that condition ceased to be met.

7 Obligations of the purchaser

When a purchaser acquires goods in such circumstances that the simplification measure for call-off stock arrangements apply, information must be retained in relation to the goods acquired from the date of their arrival in the State.

When ownership of the goods transfers from the supplier to the purchaser, the purchaser:

- is deemed to have made an intra-community acquisition of those goods at that time and should account for VAT on the acquisition as appropriate, and
- is obliged to retain information in his/her books and records about the goods purchased under the simplification measure.

8 Records to be retained by the purchaser

The records retained by the purchaser in relation to the simplification measure must include the following:

- the VAT identification number of the supplier who transferred the goods under simplified call-off stock arrangements
- the description and quantity of the goods intended to be supplied to that purchaser
- the date on which the goods arrived in the warehouse
- the taxable amount, description and quantity of the goods actually supplied/ drawn from stock and the date of the intra-Community acquisition of those goods by the customer
- where relevant the description and quantity of goods, and the date on which those goods are removed from the warehouse by order of the supplier, for example where the goods are returned by the supplier to the Member State of dispatch
- where relevant the description and quantity of goods destroyed or missing and the date of destruction, loss or theft of those goods or the date on which the goods were found to be destroyed or missing.

Where, however, the goods are transferred by the supplier to be held in stock by a warehouse keeper, who is a third party and not the intended purchaser, the purchaser does not need to record the following information in their records:

- The date on which the goods arrive in the warehouse
- where relevant, the description and quantity of goods, and the date on which those goods are removed from the warehouse by order of the supplier
- where relevant, the description and quantity of goods destroyed or missing and the date of destruction, loss or theft of those goods or the date on which the goods were found to be destroyed or missing.

This information will be retained by the third-party warehouse keeper.

9 Change of circumstances following dispatch of goods under the simplification measure

The following paragraphs outline whether, following a change in circumstances, the conditions for the simplification measure continue to apply:

9.1 The twelve-month time limit

In relation to the application of the twelve-month time limit for goods held under the simplification measure, the time limit is determined by reference to the date of arrival of the goods in the Member State to which they were dispatched, and this is so regardless of whether there is a change in the intended customer after that date.

In the case of bulk goods held, such as oil or grain, a "first in first out" basis should be used in respect of each individual purchaser, to determine the date of arrival of the goods in the State.

9.2 Substitution of intended customer within 12 months

If, after the goods have been dispatched to another Member State under the simplification measure, there is a change in the intended purchaser of those goods, the simplification measure continues to apply where:

- the change in the intended customer occurs within 12 months of the goods having arrived in the Member State to which the goods were dispatched
- all other conditions necessary for the application of the measure continues to be met, and
- the supplier retains details of the change in intended purchaser in his/her records.

It should be noted that if the agreement with an intended purchaser is cancelled prior to the agreement with the substitute purchaser being in place, the conditions for the simplification measure to continue would cease to be met at the time that agreement was cancelled.

The treatment outlined above applies equally where there is a change in intended purchaser in respect of part only of the stock held under the simplification measure or where there are multiple consecutive changes in the intended purchaser.

Where there is a substitution of an intended purchaser, the supplier is required to record the substitution on his/her VIES return for the period in which the substitution takes place. The entry on the VIES return should consist of the VAT identification number of the substitute intended purchaser and the VAT identification number of the previous intended purchaser.

9.3 Goods returned to Member State of dispatch within 12 months, without transfer of ownership

If goods are returned to the Member State from which they were dispatch within 12 months of arrival into stock in the Member State to which they were originally dispatched, the intra-Community movement of such goods will not be deemed to be a supply for VAT purposes where:

- ownership of the goods has not transferred, and
- the supplier retains in his or her records the description, quantity, value and the date of return of the goods.

The supplier also has an obligation to record the return of the goods in their VIES return, by entering the VAT identification number of the intended purchaser and a prescribed marker which indicates the goods are returns.

10 What happens when the conditions cease to be met

The simplification measure will cease to apply where any of the conditions necessary for its application are no longer met.

At the time when the conditions cease to be met, the supplier:

- will be deemed to have made an intra-Community supply of goods in the Member State from which the goods were dispatched: this supply will be reported on the supplier's VIES return, and
- will be deemed to have made an intra-Community acquisition of those goods in the Member State to which the goods were dispatched.

The time at which the conditions for the simplification measure ceases to be met is clarified in relation to certain circumstances, as follows.

10.1 Where the goods are transferred to a person other than the intended purchaser

Where the call-off stock is transferred to a person other than the intended purchaser or a substitute purchaser, the simplification measure will cease to apply. This cessation will be deemed to occur immediately before the transfer to that other person.

The supplier will treat the transfer of ownership of the stock to the new purchaser as a domestic supply in the Member State to which the goods were originally dispatched.

10.2 Where goods are transferred to another country

If call-off stock, dispatched or transported to a country and held in that country under the simplification measure, is subsequently transferred to another country (other than the country from which they were originally dispatched), the conditions for the simplification measure to exist will cease to be met immediately before the dispatch or transport of those goods to that other country.

The transfer of stock to the other country will be treated as a separate supply of goods in the Member State to which they were originally dispatched. This new supply, being an intra-Community transfer of goods, may require to be dealt with under the simplification measure depending on the circumstances of their transfer.

10.3 Destruction, loss or theft of goods

In the event of the theft, loss or destruction of goods to which the simplification measure applied, the time when the conditions for those arrangements will cease to be met in respect of those goods is the date of theft, loss or destruction. If the date of theft, loss or destruction cannot be determined, that date is assumed to occur on the date on which the theft, loss or destruction becomes known.

Details of any goods that are destroyed, lost or stolen must be included in the books and records maintained by the supplier and maintained by the customer.

Notwithstanding the above, Revenue will accept that the conditions for the simplification measure can continue, in the event of small losses of goods, arising from:

- the actual nature of the goods
- unforeseeable circumstances, or
- an authorisation or instruction by the competent authorities.

For this purpose, a “small loss of goods” means losses that amount to less than 5% of the value or quantity of the total goods held under the simplification measure as it stands on the date this condition would otherwise have ceased to be met.

10.4 Ownership of the call-off stock is not transferred within 12 months

The simplification measure ceases to apply where ownership of goods is not transferred to the intended purchaser, or to a substitute purchaser, within 12 months of the date of arrival of the goods in the Member State to which they were dispatched. Where the ownership of the goods is not transferred within the 12-month period, the following will occur on the day after the 12-month period ends:

- the supplier will be deemed to have made an intra-Community supply of goods in the Member State from which the goods were dispatched, and
- the supplier will be deemed to have made an intra-Community acquisition of those goods in the Member State to which the goods were dispatched.

11 VAT treatment where the simplification measure does not apply

Where the simplification measure does not apply the supplier is required to register for VAT in the Member State to which the goods have been dispatched or transported. He or she must apply VAT to those supplies as follows:

- the dispatch or transport of those goods will be treated as an intra-Community supply of goods by the supplier in the State from which the goods are dispatched or transported
- the supplier the goods will be deemed to have made an intra-Community acquisition of those goods in the Member State to which the goods are dispatched. VAT must be accounted for on that intra-Community acquisition of the goods and a claim for a deduction can be made, as appropriate, for that VAT paid, and
- the supplier will be obliged to charge VAT, as appropriate, on the transfer of ownership of the goods to the purchaser, under the call-off stock arrangements in place, as a domestic supply of goods in the Member State to which the goods are dispatched or transported.

The Chain Transactions rule

This document should be read in conjunction with section 32A of the Value-Added Tax Consolidation Act, 2010 ('VATCA 2010').

Document created December 2019

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Table of Contents

Introduction

This guidance sets out new VAT rules for chain transactions that apply from 1 January 2020.

A chain transaction is a series of successive supplies of the same goods where the goods supplied are subject to a single intra-Community transport between two Member States.

The new rules have been introduced to assign the intra-Community transport of the goods to one of the supplies in these types of chain transactions. Only the supplier who has been assigned the intra-Community transport can avail of the zero rate of VAT for intra-Community supplies of goods, subject to the normal rules. Further guidance on zero rating intra-Community supplies is available on Revenue.ie.

1. The chain transaction rule

The chain transaction rule assigns the intra-Community transport of the goods to either the supply made **to** the intermediary operator or, by exception, the supply made **by** the intermediary operator.

The chain transactions rule will only apply when the following conditions are met:

1. the goods must be supplied successively but with only one single intra-Community transport of the goods
2. the goods must be transported from one Member State to another Member State
3. the goods must be transported directly from the first supplier to the last customer in the chain, and
4. the transport of the goods must be carried out by the intermediary operator or by a third party on the intermediary operator's behalf.

Chain transactions must be made up of a minimum of three persons:

- the intermediary operator
- the first supplier, and
- the last customer.

1.1 The intermediary operator

The intermediary operator is a supplier in the chain, other than the first supplier, who either:

- transports the goods himself / herself

or

- engages a third party to transport the goods on his or her behalf.

To assign the intra-Community transport of the goods in a chain transaction it is necessary to identify the intermediary operator. The intermediary operator is the most important person in the chain as the chain transaction rule only applies when the intermediary operator transports the goods or engages a third party to transport the goods on his or her behalf.

The first supplier and the last customer can never be the intermediary operator. The first supplier is specifically excluded from being the intermediary operator and the last customer is not a supplier in the chain.

1.2 The first supplier

The first supplier is simply the first person in a chain transaction. The goods must be transported from one Member State to another Member State, directly from the first supplier to the last customer in the chain for the chain transaction rules to apply. The transport must be carried out by the intermediary operator or by a third party on his or her behalf.

1.3 The last customer

The last customer in the chain is the customer to whom the goods have been dispatched or transported. The last customer does not have to be a taxable person. A taxable person or a non-taxable person can be the last customer.

2. Assigning the intra-Community transport of the goods

The general rule for chain transactions is that the intra-Community transport of the goods will be assigned to the supply made **to** the intermediary operator. This supply can benefit from the zero rate of VAT for intra-Community supplies of goods subject to the normal rules.

Example 1

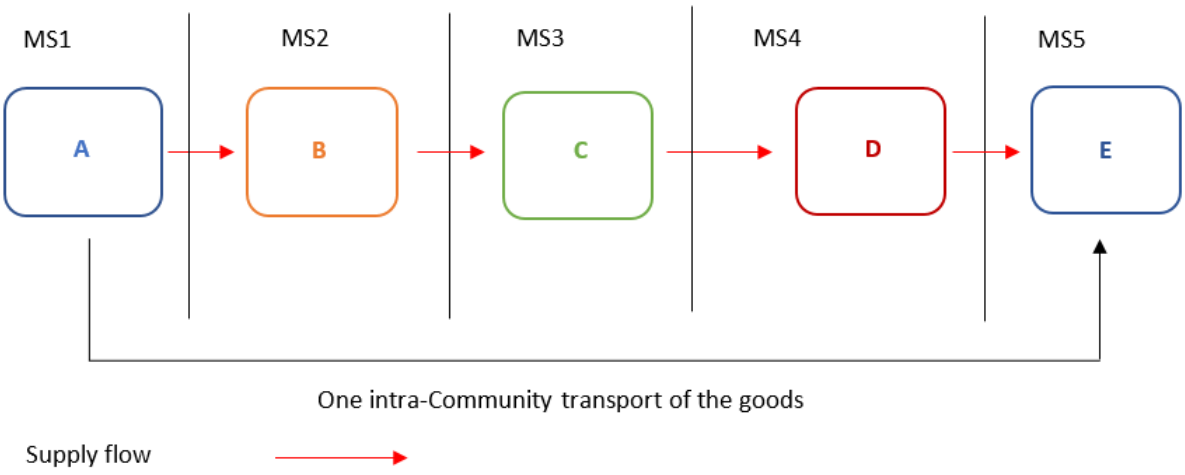

Figure 1 - Assigning the transport to the supply made to the intermediary operator

A chain transaction of goods involves companies A, B, C, D and E.

A, B, C and D are in MS 1, 2, 3 and 4 respectively, and company E is in MS5. Successive supplies are made between the chain of companies, from A to B, B to C, C to D, and D to E. B organises the transport of the goods from MS1 to MS5, directly from the first supplier (A) to the last customer (E).

B is the intermediary operator and A is the first supplier for the purposes of the general chain transaction rule. A's supply to B, the intermediary operator, will have the intra-Community transport assigned to it.

The transactions are treated as follows:

- the first supply between A and B will be considered an intra-Community supply, which occurs in MS1. A will zero rate its supply to B. B has made an intra-Community acquisition in MS5
- the next supply between B to C is a domestic supply in MS5
- the following supply between C and D is a domestic supply in MS5
- the final supply between D and E is also a domestic supply in MS5.

If C organised the transport of the goods to the last customer instead of B, the transaction would be treated as follows:

- the first supply between A and B will considered a domestic supply in MS1
- the next supply between B to C will be considered an intra-Community supply in MS1. B will zero rate its supply to C. C has made an intra-Community acquisition in MS5
- the following supply between C and D is a domestic supply in MS5
- the final supply between D and E is also a domestic supply in MS5.

2.1. Assigning the transport to the supply made by intermediary operator

The intra-Community transport of the goods can be assigned to the supply made **by** the intermediary operator. The intermediary operator's VAT number must be issued by the Member State from which the goods are transported. The intermediary operator must **communicate** his or her VAT number issued by the Member State from which the goods are transported to his or her supplier. In this scenario, the intermediary operator's supply can benefit from the zero rate of VAT for intra-Community supplies of goods subject to the normal rules.

If the VAT number issued by the Member State from which the goods are transported is not communicated to his or her supplier, the intra-Community transport of the goods will be assigned to the supply made to the intermediary operator and not by the intermediary operator.

2.2. Communicating the VAT number

There is no particular means by which the VAT number is to be communicated. It can be communicated via email, invoice or by telephone. It does not need to be communicated for each transaction. The number need only be communicated once to the supplier.

2.3. Proof of intermediary operator's VAT number

Where the intermediary operator communicates its VAT number to its supplier, the intermediary operator and his or her supplier must keep proof of this communication (i.e. written, electronic).

It is sufficient that the intermediary operator's VAT number is on the supplier's invoice.

Example 2

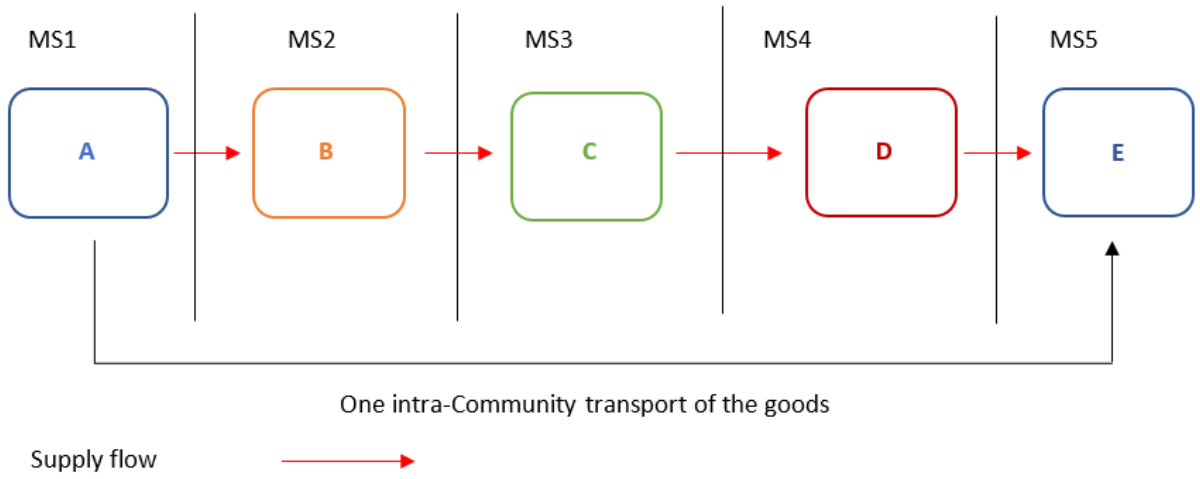

Figure 2 - Assigning the supply made by the intermediary operator

In this scenario, the goods are transported directly from MS1 to MS5. B organises the transport of the goods and is the intermediary operator. B holds a VAT number issued by MS1, the place where the goods are transported from. B communicates this VAT number to A, its supplier in the chain (who is also the first supplier in this example).

As B has a VAT number issued by MS1, and has communicated this to A, the conditions for assigning the intra-Community transport of the goods to the intermediary operator have been met. The transport is assigned to the supply made by B (the intermediary operator) to C.

The transactions are treated as follows:

- the first supply from A to B is a domestic supply in MS1
- the next supply from B to C is the intra-Community supply of the goods and is zero rated. Company C makes an intra-Community acquisition of the goods in MS5
- the subsequent supply from C to D is a domestic supply in MS5
- the final supply from Company D to Company E is also a domestic supply in MS5.

3. Proofs of the organisation of the intra-Community transport

The intermediary operator needs to keep proof that they or a third party acting on their behalf carried out the intra-Community transport of the goods. This proof is required to determine that they are the intermediary operator to which the intra-Community transport of the goods is assigned (see paragraph 5). This proof concerns the organisation of the transport and is separate to the conditions for zero rating an intra-Community supply of the goods (see paragraph 4). The first supplier will also need proof that the goods were transported.

For supplies to the intermediary operator, the following proofs are required to be retained by the supplier:

(i) the intermediary operator's VAT number issued by a Member State other than the Member State where the goods were transported from
(ii) proof that the goods have been transported out of the Member State in which the goods were located to another Member State (see paragraph 3.1), and
(iii) proof that the goods have been transported by the intermediary operator or by a third party on the intermediary operator's behalf (see paragraph 5).

3.1. Proof of transportation of the goods

Proof of transportation of the goods includes:

- order documents
- delivery dockets
- supplier's invoice
- transport document, such as a bill of lading
- proof of transfer of funds from foreign banks for payment
- copies of warehouse receipts.

The details of the means of transport used for the transportation of the goods should also be retained, such as:

- vehicle registration number
- flight number
- ship sailing details.

4. Conditions for zero rating an intra-Community supply

For the zero rate of VAT to apply to an intra-Community supply of goods, certain conditions must be met. These conditions are available on the Revenue website.

5. Establishing who carried out the intra-Community transport of the goods

For the chain transaction rule to apply, the intermediary operator must carry out the intra-Community transport of the goods or engage a third party to transport the goods on his or her behalf. The person considered to have carried out the intra-Community transport of the goods will be determined by the:

- contracts
- payments made
- any other documentation available
- the economic reality bearing in mind the full facts and circumstances of the case.

These factors will help determine who carried the risk (loss or damage of the goods) and therefore who carried out the intra-Community transport of the goods.

5.1. Third parties acting on the intermediary operator's behalf

The third party who transports the goods on behalf of the intermediary operator does not have to be a party outside the chain or a specialised transport company. Any of the parties in the chain (including the first supplier and the last customer) can transport the goods on the intermediary operator's behalf.

5.2. Last customer organises the intra-Community transport

The last customer in the chain cannot be the intermediary operator because the last customer is not a supplier in the chain. Where the last customer organises the transport, the chain transaction rule cannot apply.

Where the last customer organises the transport, the transport will be assigned to the supply made to them as there is no doubt who made the transport and the normal rules apply. However, this does not mean that they cannot transport the goods on behalf of the intermediary operator.

5.3. First supplier organises the intra-Community transport

The first supplier only participates in one transaction within a chain transaction, the supply made by that first supplier. If the first supplier carries out the transport, on their own behalf, the chain transaction rule will not apply. In these cases, it will be clear that the first supplier transported the goods. However, this does not mean that they cannot transport the goods on behalf of the intermediary operator.

6. Transport operators

Several operators can be involved in the transport of the goods; however, they must only form part of one single transport operation involving the intra-Community transport of the goods from the first supplier to the last customer in the chain. There must be continuity in the transport operation with one itinerary for the transport of

the goods which could involve transport by boat, truck or plane. Using different modes of transport will not affect the application of the new rules. The most important factor is that there is a single transport operation.

If there is more than one transport operation, then the chain transaction rule cannot apply. This occurs when the transport is carried out by different supplier(s) in the chain, this is considered to break the chain of the single transport ('fractioned transport'). Fractioned transport occurs when there is more than one transport of the goods in a chain.

Example 3

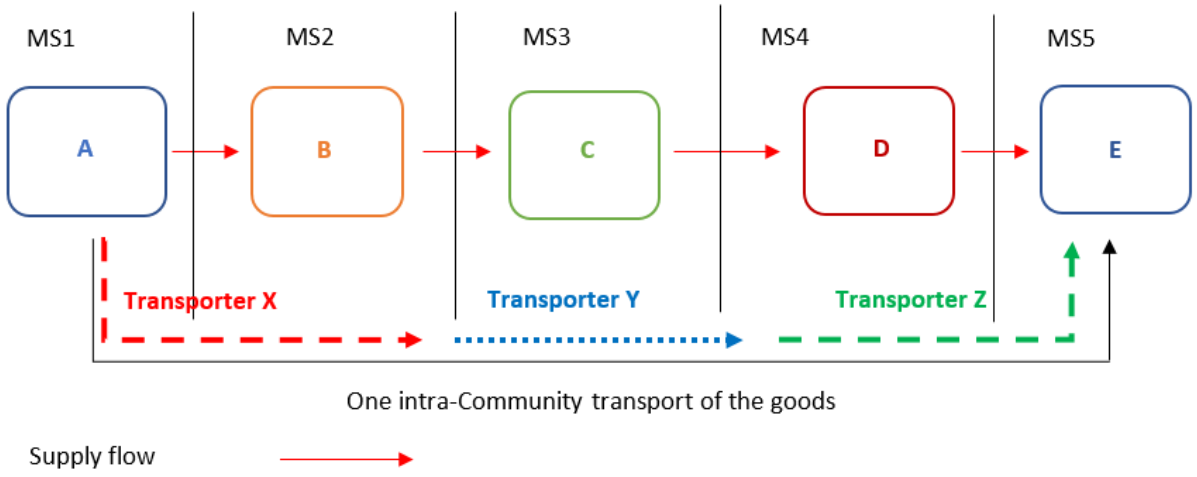

Figure 3 - Chain transactions and transport operators

In this example, B (the intermediary operator) organises the transport. B hires transporters X, Y and Z to carry out the transport on its behalf. The transport is planned in one movement of the goods with a single itinerary. The goods are transported directly by truck and boat from MS1 to MS5. This is considered a single transport, so the chain transaction rule can apply.

However, if company Z was hired by Company D to transport the goods for part of the transport, this would be considered a break and constitute a second transport. Therefore, the chain transaction rule could not apply.

7. Diversion of goods

If goods are being transported from one Member State to another Member State and part of the goods are left in a different Member State on the way, the chain transaction rule can continue to apply:

- to those goods which continue to be transported directly to their original destination
- provided that there is a single transport operation.

All the other conditions of the chain transaction rule must also apply.

8. Export / Imports

The chain transaction only applies to intra-Community transactions and cannot apply to imports or exports. However, a chain transaction can be preceded or followed by an import or export.

9. Triangulation

The triangulation simplification measure can apply in tandem with chain transactions. All the conditions of the triangulation rule must apply.

Substantive Requirements for zero-rating intra-Community supplies

This document should be read in conjunction with Council Implementing Regulation (EU) 2018/1912 which amends Implementing Regulation (EU) 282/2011 and paragraph 1(1) of Schedule 2 to the VAT Consolidation Act 2010 (VATCA)

Document reviewed May 2020.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Introduction

This guidance sets out the substantive requirements for the application of the zero-rate of VAT to an intra-Community supply (ICS) of goods and the evidence required to be retained by the supplier of the goods relating to the transport of the goods. These new measures take effect from 1 January 2020.

1 Substantive requirements

The place of supply of an ICS of goods is the place where the transport begins.

The zero rate of VAT can apply to the ICS of goods if all of the following substantive requirements are met:

- the customer must be registered for VAT in another Member State
- the customer's VAT registration number (including country prefix) must be obtained and retained by the supplier
- the supplier's VAT number and the customer's VAT number must be quoted on the sales invoice
- the goods must be dispatched or transported to another Member State, and
- correct VIES Returns must be made by the supplier.

2 The presumption that goods have been transported

The condition that goods are dispatched or transported to another Member State is a critical condition for the application of the zero-rate to an ICS. The new amendment to the Implementing Regulation outlines circumstances where it will be presumed that the goods have been transported from one Member State to another, provided certain information or documentation is available. The other conditions contained in paragraph 1(1) of Schedule 2 to the VATCA must also be fulfilled for the zero-rating to apply to the supply.

3 Obligations regarding the presumption that goods have been transported

In order for the presumption that goods have been transported to apply in the context of an ICS, the supplier of the goods must retain the relevant documents, as outlined below.

The documentation required differs depending on which party to the transaction organised the transport of the goods. In both scenarios however, the supplier is the person who must retain the relevant documents in order for the presumption that transport has taken place to apply. This presumption may be rebutted by Revenue.

The information to be retained by the supplier is not a substantive condition for the zero-rating of an ICS. Instead, the information is required for it to be presumed that the transport of the goods from the State to another Member State has, in fact, taken place.

Where the conditions for the presumption to transport of goods are not met, this does not automatically mean that the zero-rating provided for in paragraph 1(1) of Schedule 2 to the VATCA does not apply. In that case, it will be up to the supplier to prove that all the conditions contained in paragraph 1(1) of Schedule 2 to the VATCA, including the transport of the goods have been met, as the presumption would not have arisen.

3.1 Supplier organises transport of goods

Where the supplier is responsible for organising the transport of the goods, there are two sets of proof which they can produce. The supplier may:

- have two pieces of evidence from column A of the table at 3.1.1, from two unconnected parties, or
- one piece of evidence from column A, along with another non-contradictory piece of evidence from column B, from two unconnected parties.

An unconnected party is one which is independent of the supplier, the customer, and the other unconnected party who provides documents.

3.1.1 Table of Documentation

Column A	**Column B**
Two documents relating to the dispatch or transport of goods, such as: • A signed CMR (Convention Relative au Contrat de Transport International de Marchandises par la Route) document/CMR note • A bill of lading • An airfreight invoice • An invoice from the carrier/transporter of the goods	One of the documents below, as well as one document from column A: • An insurance policy relating to the transport of the goods • A bank document proving payment for dispatch/ transport • Official documents, for example from a notary, confirming the arrival of the goods in the MS of destination • A receipt from a warehouse keeper in the Member State of destination, confirming the goods are being stored there

The items contained in Column A are not prescriptive or exhaustive. The items contained in column B are prescriptive.

3.2 Customer organises transport of goods

Where the customer of the goods is responsible for organising transport, the supplier remains responsible for retaining the relevant documents for the purposes of availing of the presumption of transport.

In this scenario, the supplier must retain:

- two pieces of evidence from column A of the table at 3.1.1, from two unconnected parties, or,
- one piece of evidence from column A of the table at 3.1.1, along with another non-contradictory piece of evidence from column B, from two unconnected parties.

3.2.1 Statement from the customer

Where the customer organises the transport of the goods, the supplier must also retain a statement from the customer that goods have been transported by them or on their behalf which identifies the MS of destination.

The statement must contain the following:

- the date of issue (of the statement)
- the name and address of the customer
- the quantity and nature of the goods, and
- the date and place of arrival of the goods.

Furthermore, where the supply of goods is a 'means of transport', the statement must also include:

- the identification number of the 'means of transport' e.g. the vehicle identification number or boat identification number, and
- the identification of the individual accepting the goods on behalf of the customer.

Note that this additional information in the statement is for **all** 'means of transport', and not just for '**new** means of transport' as defined in section 2 of the VATCA.

The customer of the goods must furnish the statement containing the information above to the supplier of the goods by the tenth day of the month following the supply.

4 Rebuttal of Presumption of Transport

Where the supplier has provided the required documents outlined above but Revenue has evidence that the goods in question have not, in fact, been transported, Revenue may rebut the presumption that transport has occurred.

