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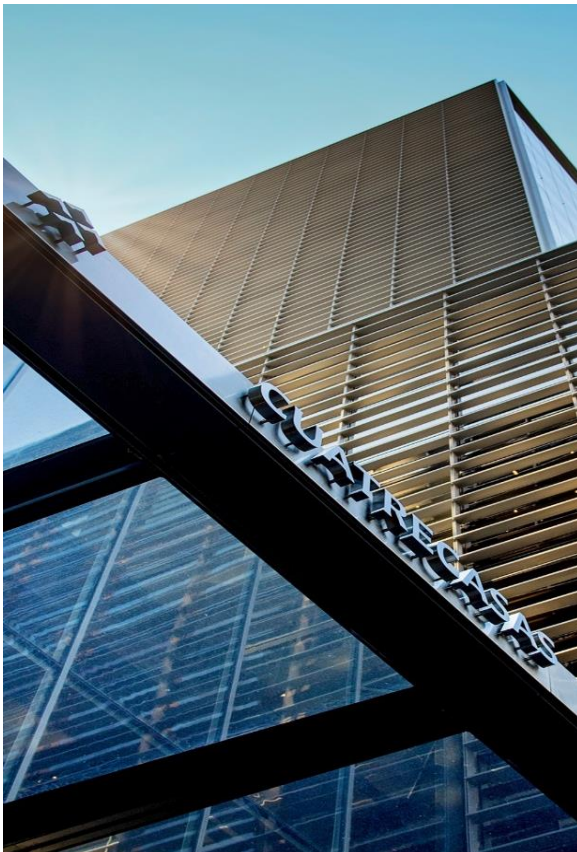
# “Quick fixes”: new developments in intra-Community VAT system

Legal Flash: Finance and Tax

February 2020

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## Analysis of quick fixes that will change the intra-Community VAT system in 2020



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## Key aspects

- > With Royal Decree Law 3/2020, four VAT quick fixes have been introduced to harmonize and simplify certain rules in the VAT system for taxation of supply of goods between Member States.
- > These four quick fixes clarify VAT taxation on call-off stock and chain transactions; harmonize proof of transport in intra-Community supply of goods; and establish new material requirements for intra-Community supplies of goods to be VAT-exempt.
- > Except for the quick fix relating to the proof of transport for the intra-Community supply of goods, which came into force on January 1, these new measures will come into force on March 1, 2020; therefore, they have been introduced with a slight delay in respect with the date imposed by the Directive.



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## Introduction

In April 2016, the European Commission approved a value-added tax (VAT) action plan to deal with the VAT gap (i.e., the difference between the estimated VAT revenue and the actual revenue collected for VAT by Member States) and to adapt the VAT system to the digital economy and the needs of small and medium-sized enterprises.

One of the areas on which the Commission Plan focuses is establishing a definitive Union VAT system for intra-Community transactions that will reduce the possibility of fraud. As the approval of this definitive system requires the Member States' unanimous agreement, debating it is expected to take a long time, and its coming into force will most likely be delayed for several years (currently foreseen for July 2022).

Until the definitive system comes into force, the Commission has decided to implement a number of quick fixes that are regulated in Council Directive (EU) 2018/1910 of December 4, 2018, and in Council Implementing Regulation (EU) 2018/1912 of December 4, 2018, amending Council Implementing Regulation (EU) 282/2011 on certain exemptions for intra-Community transactions.

The four quick fixes reviewed below, which were planned to enter into force on January 1, 2020, are intended to ensure that all Member States uniformly apply the same taxation treatment to certain intra-Community transactions. In October 2019, the Spanish Ministry of Public Finance published a draft bill to amend the VAT Act and to transpose the directive into Spanish legislation. However, because elections were called, this bill could not be approved by January 1, 2020.

The Royal Decree Law 3/2020 approves the quick fixes, whose entry into force on March 1, 2020, for three of them may raise some doubts.

Below we briefly analyze the four quick fixes.



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## Analysis of the four quick fixes

### Quick fix 1 - Call-off stock transactions

Call-off stock are sales of growing importance in recent years. They take place when a business transfers goods from a Member State to the territory of another Member State to maintain stock in the facilities of its customers (known in advance), speeding up the delivery when necessary.

Under the criterion of the Spanish Directorate-General for Taxation in many binding rulings, if, from the moment the goods are received in Spanish territory for VAT purposes, regardless of when the customer takes ownership of the goods, the customer assumes the risk regarding the goods stored and can use them for industrial or commercial purposes, without any limitation to dispose of them (at least of an essential nature), the supplier must be understood to make an intra-Community supply of goods in the Member State of departure, and the customer to make an intra-Community acquisition of goods in Spanish territory. If they did not meet this condition, the non-established supplier was forced to register in Spain and had to meet several formal requirements.

To simplify these transactions and reduce the administrative burdens on intra-Community suppliers established in Member States other than the destination of the goods, they are harmonized at Union level, with the supplier carrying out an intra-Community supply of goods, followed by its corresponding intra-Community acquisition of goods at the destination, and the customer being the taxpayer, if they meet the following requirements:

- The supplier is not established and does not have a permanent establishment in the destination Member State for the goods (Spain, in this case).
- The customer has a VAT identification number attributed by the destination Member State, and its identity is known by the supplier when the transport of the goods starts.
- The supplier records the dispatch of the goods in a register and mentions the VAT identification number of the intended acquirer in his recapitulative statement.
- The sale to the customer takes place within 12 months from the arrival of the goods to the Member State to which they have been transported. If this deadline has elapsed and the sale has not occurred, a deemed transfer of goods will be understood to have taken place.

The new regulation clarifies when the accrual of the intra-Community supply of goods is understood to have occurred in this type of call-off stock transaction: generally, the 15<sup>th</sup> day of



the month following the one in which the customer disposes of the goods. If the invoice is issued before that date, the accrual date must be understood as the date the invoice is expedited.

### Quick fix 2 - Harmonization of chain transactions criteria

To prevent different interpretations in Member States, from March 1, 2020, harmonized treatment will apply to chain transactions, understood as successive sales of the same goods when they are subject to a single intra-Community transport between two Member States. The key point in this kind of transaction, and hence its complexity, lies in the fact that only one of these sales can benefit from the VAT exemption established for intra-Community supply of goods.

Under the approved amendment to article 68.Two.1 of the Spanish VAT Act, for this type of transaction, transport or dispatch will be attributed to the first sale in the chain (i.e., the sale made by the first supplier to the intermediary). That supply will be considered an intra-Community supply, and it will be the one to benefit from the VAT exemption.

However, this dispatch or transport will be understood as connected to the supply by the intermediary to its customer when the intermediary:

- 1º. notifies a Spanish VAT identification number to the supplier; and
- 2º. transports the goods, by itself or through a third party acting on its behalf, from Spanish territory for VAT purposes to another Member State.

In that case, the supply by the first supplier will be domestic for VAT purposes (subject to and not exempt from VAT), and the supply by the intermediary will be the VAT-exempt intra-Community supply.

### Quick fix 3 - Material requirements for exemption in intra-Community supply of goods: VAT identification number and Form 349

From March 1, 2020, article 25 of the Spanish VAT Act expands the requirements for applying the VAT exemption in intra-Community supply of goods. To be able to apply the exemption, (i) the customer must notify the business or professional making the supply of a valid VAT identification number assigned by a Member State other than Spain (this is already required); and (ii) the business or professional making the supply must have already included this transaction in the summary declaration of intra-Community transactions (Form 349).



In multiple judgments,<sup>1</sup> the Court of Justice of the European Union has established that “*the authorities of a Member State cannot refuse an exemption from VAT for an intra-Community supply merely because the customer is not registered in the VIES system.*” However, in the framework of fighting against fraud in the Union, from March 1, 2020, both requirements will become material rather than formal requirements.

### Quick fix 4 - Proof of intra-Community transport

Applying the VAT exemption in intra-Community supplies for VAT purposes is conditional on the goods being dispatched or transported from a Member State to another one and on evidence of the dispatch of those goods. This is where the main problem lies.

As the European Commission itself acknowledges, the diverging approaches among Member States have generated difficulties and legal uncertainty for businesses, so it is important to specify and harmonize the proof of transport to apply the VAT exemption in intra-Community supplies of goods.

Effective from January 1, 2020, the Council Implementing Regulation (EU) 282/2011 of March 15, 2011, introduces a new article (45a), which specifies a list of evidence in two separate sections: a) the CMR document will remain key proof, and b) e.g., an insurance policy for the transport or an official document issued by a public authority that proves the arrival of the goods in the destination Member State. More or less probatory documentation will be required depending on which party (the customer or the seller) oversees transport.

When the goods have been transported by the seller or by a third party on his behalf, the seller must have at least two non-contradictory evidence. When the customer transports the goods, the seller must have (i) a written statement from the customer certifying that the goods have been transported by it, and (ii) at least two non-contradictory evidence.

Although this quick fix did not require transposition into the Spanish legal system, the Royal Decree Law has modified article 13 of the VAT Regulation, stating that the dispatch or transport of goods to the destination Member State must be justified by any proof admitted by law, particularly by any means of proof established in article 45a of the Council Implementing Regulation 282/2011.

As the remaining three quick fixes will soon enter into force, we suggest that all businesses and professionals analyze their current operation and invoicing systems to be ready and take the

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<sup>1</sup> Paragraph 37 of the judgment of February 9, 2017, Euro Tyre BV - Sucursal em Portugal, case C21/16.



necessary measures to comply with the new VAT rules that will apply to the intra-Community system for the trade of goods.

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IS 713573