Explanatory Meeting on the EU acquis

VAT

3 June 2019

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

Concept of the tax

- General tax on consumption
  - introduced in 1967
  - replacing existing systems (cascade system)
- Applied to supply of goods and services
- Proportional to price, whatever the number of transactions => neutral
- Fractional payment with right of deduction

Example

- VAT = 10%, profit margin = 50%

	A →	B →	C →	D
• **<u>Cascade</u>**:	1 000	1 650 (+550)	2 722 (+907)	
– duty	100	165	273	
– total	1 100	1 815	2 995	
• **<u>VAT:</u>**	1 000	1 500 (+500)	2 250 (+750)	
– VAT	100 (100)	150 (50)	225 (75)	
– total	1 100	1 650	2 475	

European Commission

The EU legislation on VAT

- Directive 2006/112/EC of 28 November 2006 : « The VAT directive », as amended by various directives.
- The VAT Directive is the recast of the former 6th VAT Directive 77/388/EEC of 17 May 1977
- The VAT Directive is complemented by Council Implementing Regulation (EU) No 282/2011 of 15 March 2011: « VAT Implementing Regulation », as amended.
- Some provisions concerning VAT remain outside the VAT Directive : for instance on VAT refunds to EU and non-EU non-established taxable persons.

The VAT Directive

- Scope *(Article 2)*
  - supply of goods or services
    - for consideration
    - within the country
    - by a taxable person
  - intra-Community acquisition of goods
  - importation of goods

The VAT Directive

- Territorial application *(Articles 5 to 7)*
  - fiscal territory
    - the territory of each Member State
    - defined in Article 355 of the TFEU (ex-Article 299 of the EC Treaty).
    - excluding certain EU territories due to their status
    - including certain non-EU territories because of their special status

European Commission

The VAT Directive

- Taxable persons *(Articles 9 to 13)*
  - any person
    - acting independently
    - carrying out any economic activity
    - whatever the purpose
  - Occasional basis: Option for Member States

European Commission

The VAT Directive

- Taxable persons *(Articles 9 to 13)*
  - public bodies
    - not when engaging in activities as public authorities
    - unless risk of significant distortion of competition
    - always when carrying out certain activities *(Annex I)*
  - particular case: anyone supplying a new means of transport to another Member State

The VAT Directive

- Taxable transactions
  - supply of goods *(Articles 14 to 19)*
    - transfer of right to dispose of tangible property as owner
  - supply of services *(Articles 24 to 29)*
    - transaction other than supply of goods
  - intra-Community acquisition of goods *(Articles 20 to 23)*
  - imports *(Article 30)*
    - only goods

The VAT Directive

- Place of taxable transactions
  - **supply of goods**

    - No transport: where located
    - Transport:

    - Where transport begins.

    - Assembly or installation by or on behalf of the supplier: where the assembly or installation is carried out

The VAT Directive

- Place of taxable transactions
  - **supply of goods**
    - At point of departure
      - when supplied on board ships, aircraft or trains during an intra-Community transport of passengers
    - At place of taxable dealer or at place where a customer effectively uses and consumes
      - with gas supplied through natural gas distribution system or electricity

The VAT Directive

Supply of goods – distance selling

- cross-border within EU
- responsible for transport - supplier
- customer
  - final – natural person
  - taxable person, or non-taxable legal person NOT obliged to account for VAT on its intra-Community acquisition.
- threshold
  - EUR 35 000 or EUR 100 000 (only 5 Member States)
  - above always taxed in Member State where transport ends
  - Below supplier may choose Member State where transport ends
- does not cover
  - where supplier is responsible for assembly or installation of goods supplied
  - new means of transport

The VAT Directive

- Place of taxable transactions
  - **supply of goods**

"Chain transaction"

- Consecutive supplies of the same goods
- Between three or more different parties
- Only one physical movement of the goods

The VAT Directive

- Place of taxable transactions
  - **supply of goods – chain transactions**

Problems:

- The VAT Directive did not clarify which transaction is deemed to be the intra-Community supply in a chain transaction
- Serious divergences between Member States when attributing the transport to one of the supplies in the chain of transactions

The VAT Directive

- Place of taxable transactions
  - **supply of goods – chain transactions**

The same goods:

- supplied successively
- dispatched or transported from one Member State to another Member State
- directly from the first supplier to the last customer in the chain

The place of supply rule = the dispatch or transport is ascribed only to the supply made **TO** the intermediary operator.

However …

The VAT Directive

- Place of taxable transactions
  - **supply of goods – chain transactions**

… when the intermediary operator

- communicates to his supplier
- the VAT identification number issued to him by the Member State from which the goods are dispatched or transported.

The place of supply rule (derogation from the first rule) = the dispatch or transport is ascribed only to the supply made **BY** the intermediary operator.

The VAT Directive

- Place of taxable transactions
  - **supply of goods – chain transactions**

Who is the 'intermediary operator'?

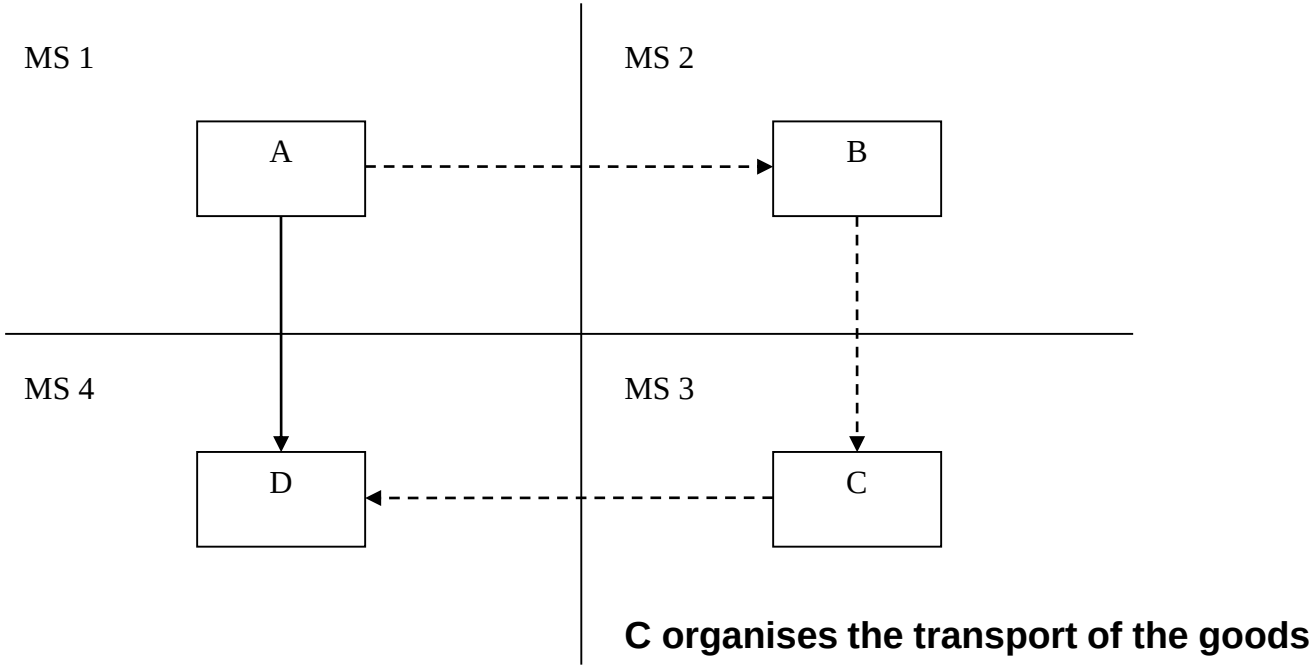
- A supplier in the chain other than the first supplier
- who dispatches or transports the goods -> himself or by a third party on his behalf.

What is excluded from the scope of Art 36a?

- The situations covered by Article 14a introduced by e-commerce Directive (entering into force 1.01.2021)

The VAT Directive

- Place of taxable transactions
  - **supply of goods – chain transactions**



European Commission

The VAT Directive

- **Place of taxable transactions**
  - **supply of services *(Articles 43 to 59b)***

    Significant changes as of 1 January 2010 (Directive 2008/8 of 12 February 2008)

  - **General rules**
    - separate rules for B2B and B2C services (Articles 44 and 45):
      - The place where the customer has established his business for B2B transactions.
      - The place where the supplier has established his business or has a fixed establishment for B2C transactions
    - extension of scope for B2B (Article 43)

European Commission

The VAT Directive

- **Place of taxable transactions**
  - many particular rules relevant for B2B and B2C supplies
    - immovable property
    - passenger transport
    - catering and restaurants including those provided on-board
    - short term hiring means of transport
  - The same treatment for B2B and B2C, but covered by different rules
    - admission to cultural, artistic …
    - telecom, broadcast and electronic services

European Commission

The VAT Directive

- **Place of taxable transactions**
  - particular rules relevant for B2C

    - intermediary services

    - transport of goods, including intra-Community transport of goods and ancillary services

    - services relating to cultural, artistic, sporting, scientific, educational, entertainment and similar activities other than admission

    - long-term hiring of means of transport

    - some services like advertising, services of consultants and lawyers, financial services supplied to customers established in a non-EU country

The VAT Directive

- Place of taxable transactions
  - intra-Community acquisitions *(Articles 40 to 42)*
    - where situated
      - at the end of transport or dispatch
  - imports *(Articles 60 and 61)*
    - where goods enter the EU
    - where goods cease to be covered by suspensive customs arrangements
    - aim is to ensure equal treatment between imported goods and those supplied within the EU

The VAT Directive

- Chargeable event and chargeability of tax *(Articles 62 to 71)*
  - chargeable event
    - when legal conditions are fulfilled for VAT to become chargeable
    - at supply of goods or services
    - at import of goods
  - chargeability of tax
    - when authorities are entitled to claim payment of the tax
    - at supply of goods or services
    - at time of payment, if before supply
    - at the issue of invoice
    - at import of goods

The VAT Directive

- Taxable amount *(Articles 72 to 92)*
  - basis for calculation of VAT
    - within the territory of the EU: consideration
    - upon importation: the customs value
  - includes
    - other taxes
    - incidental expenses
  - possibility for the Member States to apply in certain circumstances the market value as the taxable amount

The VAT Directive

- Taxable amount
  - excludes
    - price reductions
    - discounts and rebates
    - reimbursement of expenses
  - may be reduced
    - in cases of cancellation, refusal or non-payment

The VAT Directive

- Rates *(Articles 93 to 129)*
  - standard rate: minimum 15%
    - shall be the same for supply of goods and services
  - reduced rate(s) *(Annex III):* one or two reduced rates of at least 5%
    - only for categories listed
    - optional for Member States
  - parking rates *(Article 118)* – zero rates
  - transitional measure
    - authorised temporary measure

The VAT Directive

- Rates – *e-publications*

  - Member States **can** align VAT rates for electronically supplied publications with those of publications on any means of physical support

  - Optional for Member States

The VAT Directive

- Exemptions (without right of deduction)
  - certain activities of public interest *(Articles 132 to 134)*
    - health, education, culture
  - other activities *(Article 135)*
    - insurance, financial transactions, leasing and letting of immovable property
  - option to tax *(Article 137)*
    - certain financial transactions, leasing and letting of immovable property

The VAT Directive

- Exemptions on importation *(Article 143)*
  - goods qualifying for customs duty exemption
    - certain imports *(Directive 2009/132/EC)*
      - personal property (at marriage, inheritance …)
      - imports of negligible value (mail order)
      - intended for charitable or philanthropic organisations (articles for handicapped persons, disaster victims …)
      - in the context of international relations (decorations, presents …)
    - small consignments *(Directive 2006/79/EC)*
      - non commercial nature

The VAT Directive

- Exemptions on importation *(Article 143)*
    - travellers' allowances *(Directive 2007/74/EC)*
        - qualitative limits (alcohol, tobacco)
        - quantitative limits (threshold)
  - re-importation
  - diplomatic arrangements, ...

The VAT Directive

- Exemptions (with right of deduction)
  - exports and international transport *(Articles 143 to 152)*
    - supply of goods dispatched or transported outside the EU
    - tourist scheme
    - work on movable property to be exported
    - supply related to vessels and aircraft in international traffic
    - diplomatic arrangements, international organisations, NATO forces, ...

The VAT Directive

- Exemptions (with right of deduction)
  - international goods traffic *(Articles 154 to 165)*
    - goods placed under customs arrangements
      - customs warehouses
      - transit
      - inward processing
    - goods placed in fiscal warehouses *(Article 160)*
      - tax warehouses for excise goods
      - VAT warehouses *(Annex V)*

European Commission

The VAT Directive

- Deductions
  - origin and scope *(Articles 167 to 169)*
    - fixing when right of deduction arises
    - expenditures giving rise to deduction: if business expenses
      - goods and services supplied
      - imported goods
      - [goods acquired]
    - when used for the purposes of taxed transactions
      - even if carried out in another country
      - although, in some cases, exempt from tax

The VAT Directive

- Deductions
  - origin and scope *(Articles 167 to 169)*
    - refund to non-established persons – see later
    - partial deduction *(Article 173)*
      - when used also for non-deductible purposes
      - on a proportional basis
    - proportion determined *(Articles 174 and 175)*
      - for all transactions
      - sector by sector
      - actual use

The VAT Directive

- Deductions
  - exercise of right of deduction *(Articles 178 to 183)*
    - formal conditions
      - invoice
      - import document
      - possible additional requirements
    - deduction effected by subtraction
    - input tax exceeds output tax
      - refund
      - carry forward

The VAT Directive

- Deductions
  - calculation of deductible proportion *(Articles 174 and 175)*
    - fraction made up by
      - deductible transactions (numerator)
      - total turnover (denominator)

The VAT Directive

- Deductions
  - adjustments of deductions *(Articles 184 to 192)*
    - initial deduction incorrect
    - change in use after deduction is made
  - especially relevant for capital goods
    - five year adjustment
    - may be extended up to 20 years in the case of immovable property

The VAT Directive

- Persons liable for payment for tax *(Articles 192a to 205)*
  - internal
    - supplier of goods and services
    - recipient of certain services
    - acquirer of goods
    - anyone invoicing VAT
  - on imports
    - person making the import

European Commission

The VAT Directive

- Obligations for persons liable for payment
  - under the internal system *(Articles 213 to 273)*
    - statement of start of business
    - attribution of VAT identification number
    - keeping accounts
    - issue of invoice in respect of goods and services supplied
    - submission of VAT return
    - payment of net VAT amount due
    - submission of recapitulative statements
    - simplification measures possible

The VAT Directive

- Obligations for persons liable for payment
  - in respect of imports *(Articles 211, 260, 274 to 277)*
    - payment of tax at import
    - can instead allow for this to be included in the VAT return

European Commission

The VAT Directive

- Special schemes
  - small undertakings *(Articles 281 to 292)*
    - specific for each country
    - thresholds
      - based on annual turnover (for new Member States the maximum turnover is mentioned in the Accession Treaty, see Article 287)
      - provides for exemption without right of deduction
    - optional scheme
      - can opt for taxation
      - gives right of deduction

European Commission

The VAT Directive

- Special schemes
  - flat-rate farmers *(Articles 295 to 305)*
    - not compulsory for Member States
    - compensation system
      - no right of deduction
      - fixed flat-rate percentage
      - compensates for tax incurred
    - optional scheme
      - can opt for taxation
      - gives right of deduction

The VAT Directive

- Special schemes
  - travel agents *(Articles 306 to 310)*
    - compulsory for Member States
    - ensures that tax revenues of underlying services accrue to Member State of consumption
    - taxes only margin = total amount to be paid by traveller minus costs of the journey for the travel agent
    - no right of deduction

The VAT Directive

- Special schemes
  - second-hand goods, works of art, collectors' items and antiques *(Articles 311 to 341 and Annex IX)*
    - compulsory for Member States
    - taxes margin
    - avoids cascade effect
    - no right of deduction
    - optional scheme
      - can opt to tax under normal rules
      - may be of interest with export

The VAT Directive

- Special schemes
  - Investment gold *(Articles 344 to 356)*
    - compulsory for Member States
    - applies to investment gold
    - provides for exemption
    - optional scheme
      - can opt to tax
      - gives right of deduction

The VAT Directive

- Special schemes
  - **Non-established taxable persons supplying telecommunication, broadcasting and electronic services to non-taxable persons** *(Articles 358 to 369k)*
    - compulsory for Member States
    - One-stop shop system
    - covers all supplies to EU private customers made by suppliers non-established in the Member State where the supply takes place
    - Two schemes: suppliers not established in the EU and suppliers established within the EU
    - optional scheme
      - can opt to register under the normal rules

European Commission

The VAT Directive

- Simplification procedure
  - derogative measures *(Articles 394 to 396)*
    - objective
      - simplifying procedure for charging VAT
      - preventing evasion or avoidance
    - requirement
      - not effect tax collected at final consumption stage
    - legislative procedure
      - authorisation by Council

The VAT Directive

- Transitional provisions *(Articles 370 to 393)*
  - taxation *(Article 370 and Annex X, Part A)*
  - exemption *(Article 371 and Annex X, Part B)*
  - option to tax *(Article 391)*

The VAT Directive

- VAT Committee *(Article 398)*
  - objective
    - ensuring uniform application of common VAT rules
  - tasks
    - consultations regarding specific measures taken by Member States
    - questions on the application of common VAT provisions
  - means
    - agreeing guidelines
    - serving as basis for implementing measures

The VAT Directive

- Implementing measures *(Article 397)*
  - simplified procedure
    - measures taken by Council
    - based on guidelines unanimously agreed in the VAT Committee
  - outcome
    - directly applicable legal act *(Council Regulation (EU) No 282/2011 of 15.3.2011, amended by Council Regulation (EU) No 967/2012 of 9.10.2012 and No 1042/2013 of 7.10.2013).*

The VAT Directive

- Miscellaneous
  - international agreements *(Article 396)*
  - unit of account = EURO *(Article 399 and 400)*
  - other turnover taxes than VAT prohibited *(Article 401)*
    - protective measure
    - own resources
- Final provisions *(Articles 402 to 414)*

The VAT Directive
Intra-Community transactions

Phases of harmonisation of VAT in EU: a short reminder

- 1968 – introduction of VAT – replacement of national cascade-type taxes
- 1977 – 6th VAT Directive – further harmonisation of VAT as VAT becomes own resource of the EU
- 1993 – Internal Market – abolition of fiscal frontiers – **VAT transitional system** for intra-Community transactions in goods which are not any longer importations and exportations.
- 2007 – the legislation on the transitional regime is integrated in the VAT Directive

The VAT Directive
Intra-Community transactions

- Scope *(Article 2(1)(b))*
  - within scope
    - intra-Community acquisitions (ICAs)
      - all goods acquired by taxable person or non-taxable legal person acting as such, including those acquired by transfer
      - new means of transport acquired by taxable person or any other person
      - excise goods acquired by taxable person or non-taxable legal person

The VAT Directive
Intra-Community transactions

- Definition of new means of transport (Article 2(2))
  - cars (>48 cc or 7.2 kW); vessels (>7.5 m); aircraft (>1 500 kg)
  - supplied less than 3 months after first entry into service; for cars 6 months

  AND
  - travelled less than 6 000 km; sailed less than 100 hours; flown less than 40 hours
- Tax treatment of new means of transport
  - supplier always regarded as taxable person
  - supply to customer in another Member States exempt
  - acquisition by that customer taxed

The VAT Directive
Intra-Community transactions

- Right of deduction when selling new means of transport
  - right of deduction to be exercised only at time of supply
  - deduct VAT included in purchase price or paid at importation
  - deduction limited so as not to exceed the tax for which the supplier would otherwise be liable

The VAT Directive
Intra-Community transactions

- New means of transport (example)
  - the owner of a car decides to sell it
    - it is a new means of transport (the car is sold within 6 months of first entry and/or it has travelled less then 6 000 km)
    - the buyer is situated in another Member State
    - the sale is exempt from VAT; the purchase is an ICA and will be subject to VAT

The VAT Directive
Intra-Community transactions

- New means of transport (example)
  - the seller will be entitled to deduct the tax he paid when purchasing the car but not beyond the amount of tax for which he would have been liable, had the supply not been exempt
  - if the sales price is below the purchase price, the right of deduction will be limited

The VAT Directive
Intra-Community transactions

- New means of transport (example)
  - the car was bought at a price of €25 000 plus €5 000 (20% VAT)
  - if sold at a price of
    - €30 000 plus €6 000 (20% VAT)
      - owner entitled to deduct €5 000 (not €6 000)
    - €25 000 plus €5 000 (20% VAT)
      - owner entitled to deduct €5 000
    - €20 000 plus €4 000 (20% VAT)
      - owner entitled to deduct €4 000 (not €5 000)

European Commission

The VAT Directive
Intra-Community transactions

- Scope *(Article 3)*
  - out of scope
    - ICAs
      - by special group (farmers, SMEs with only supplies for which VAT is not deductible and non-taxable legal persons)
      - if total yearly amount of ICAs is < €10 000
      - provided not new means of transport or excise products

The VAT Directive
Intra-Community transactions

- Special group (example)
  - a local town decides to purchase some paper and 15 PCs in another Member State because VAT rate is 15%, while locally it is 25%
  - paper costs €2 000 and PCs €15 000
  - paper is bought in April and PCs in September
  - paper can be bought in other Member State with 15% VAT, but PCs will be subject to ICA, and therefore 25% VAT will be due

European Commission

The VAT Directive
Intra-Community transactions

- Scope
  - non-transfer
    - goods installed in other Member State
    - goods delivered during IC passenger transport
    - related to exports or international transport
    - for supply of service and goods return
    - temporary use in other Member State for supply goods/service
    - temporary use (less 24 months) if imports would also be exempted from import duties

The VAT Directive
Intra-Community transactions

- Place of transaction
  - IC acquisition of goods = where transport ends
  - supply of goods *(Article 40)*
    - distance selling (threshold €35 000 or €100 000) *(Articles 33 to 35)*
  - supply of services (exceptions)
    - in the IC transport of goods = place of departure
    - ancillary to the IC transport of goods = where materially carried out
    - rendered by intermediaries = see main transaction
    - in the case of valuations of or work on movable tangible property = where materially carried out
    - exception = Member State that attributed VAT ID N° to client *(Article 41)*

The VAT Directive
Intra-Community transactions

- Place of transaction for transport (example)
  - transport by French company from Belgium to Spain

BE → ES

1) for Belgian company: place = Belgium
2) for French company: place = France
3) for German company: place = Germany

European Commission

The VAT Directive
Intra-Community transactions

- Exemptions *(Articles 138 to 142)*
  - supply of goods
  - intra-Community acquisition of goods
    - if supply/import within the territory would in all circumstances be exempt
    - if IC acquisition in all circumstances would entitle to full reimbursement of VAT
  - transport services to/from the Azores and Madeira
  - importation of goods in other Member State than that of arrival
  - other (e.g. triangular transactions)

European Commission

The VAT Directive
Intra-Community transactions

- Exemption *Articles 138*

VAT identification number

- The problem:

  - The VAT number is only a formal requirement for the exemption of intra-Community supplies - weakness making the fighting of the carousel fraud more difficult

- From 1 January 2020:

  - substantive value assigned to the VAT identification number of the customer for the exemption

  -exemption linked to the good faith of the supplier if he provides incorrect information in the recapitulative statements

European Commission

The VAT Directive
Intra-Community transactions

- Exemption *Article 138 – Proof of transport*
  - Article 45a of VAT Implementing Regulation
  - Applicable to exemptions of intra-Community supplies in Article 138 of the VAT Directive
  - Rebuttable presumption
  - Two different situations are targeted by the provision:
    - The supplier is responsible for the transport or dispatch
    - The acquirer is responsible for the transport or dispatch

European Commission

The VAT Directive
Intra-Community transactions

- Exemptions *Article 138 – Proof of transport*

Two list of valid proofs in paragraph 3 of Article 45a:

(a) Documents relating to the transport or dispatch of the goods such as a signed CMR document or note, a bill of lading, an airfreight invoice, an invoice from the carrier of the goods;

(b) Other documents:

i. Insurance policy with regard to the transport or dispatch of the goods or bank documents proving payment of the transport or dispatch of the goods;

ii. Official documents issued by a public authority confirming the arrival of the goods in the Member State of destination;

iii. Receipt issued by a warehouse keeper in the Member State of destination confirming the storage of the goods in that Member State.

European Commission

The VAT Directive
Intra-Community transactions

- Exemption *Article 138 – Proof of transport*

The supplier is responsible for the transport or dispatch:

1) he indicates that the goods have been transported or dispatched by him or by a third party on his behalf, and

2) has at least **two items of non-contradictory evidence**

I) referred to in 3 point (a), or

II) any single item referred to point (a) in combination with any single item referred to in point (b)

- confirming the transport or dispatch

- issued by two parties independent of each other, of the vendor and the acquirer

The VAT Directive
Intra-Community transactions

- Exemption *Article 138 – Proof of transport*

The acquirer is responsible for the transport or dispatch.

The supplier needs:

1) **a written statement** sent to him

(i) no later than 10th day of the month following the supply

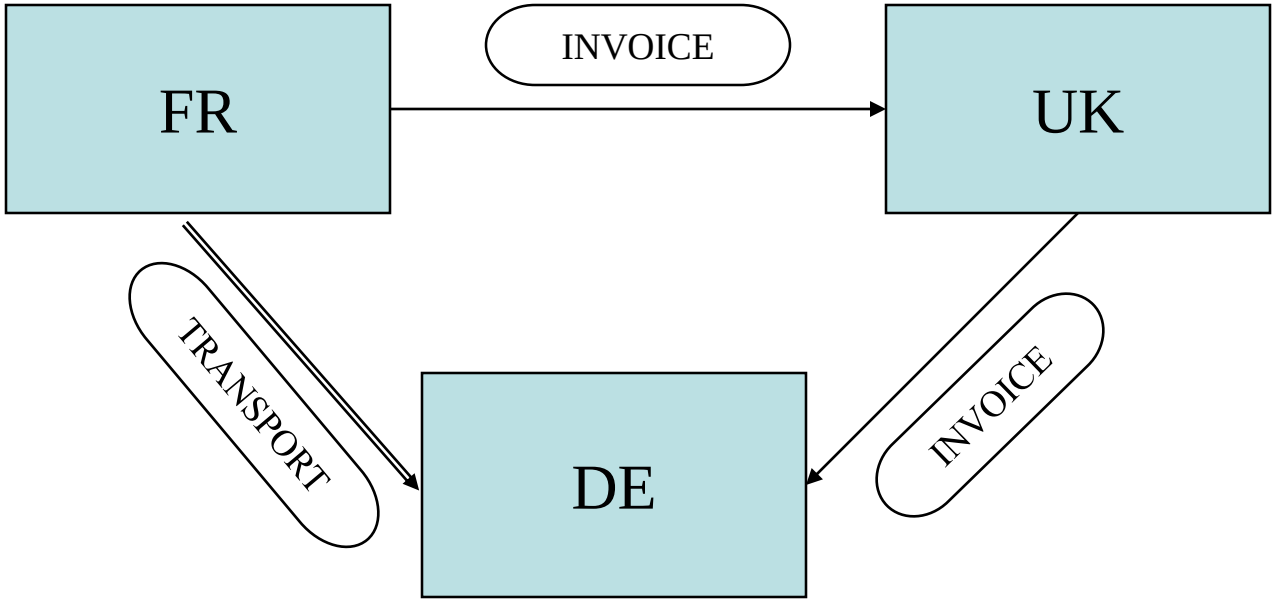
(ii) from the person acquiring the goods

(iii) saying that the goods were transported by the acquirer or by a third party on his behalf and indicating the Member State of destination of the goods;

2) **at least two items of non-contradictory evidence** collected in the same way as in the case when supplier is responsible for transport.

The VAT Directive
Intra-Community transactions

- Triangular transactions (example) *(Articles 42 and 141)*



The VAT Directive
Intra-Community transactions

- Chargeable event and chargeability of tax *(Articles 68 and 69)*
  - when IC acquisition of goods is effected
  - tax chargeable on 15th day of month following chargeable event
- Taxable amount and rate applicable *(Articles 83, 84, 93 and 94)*
- Right of deduction *(Articles 178 to 181)*

The VAT Directive
Intra-Community transactions

- **Persons liable for payment of tax** *(Articles 193 to 200)*
  - as a rule, the person liable for payment is <u>the supplier</u>
    - if supplier is not established, the purchaser may be designated as person liable for VAT payment (Article 194)
  - in a number of cases, the <u>receiver</u> remains liable for payment of VAT :
    - Intra-Community acquisition of goods *(Article 200)*
    - B2B services, triangular operations, ...
  - no fiscal representative to be imposed on EU-established suppliers
  - fiscal representative may be required from supplier established in third country if no agreement on mutual assistance

The VAT Directive
Intra-Community transactions

- Persons liable for payment VAT (example)
  - transport by French company from Belgium to Spain

BE ⟶ ES

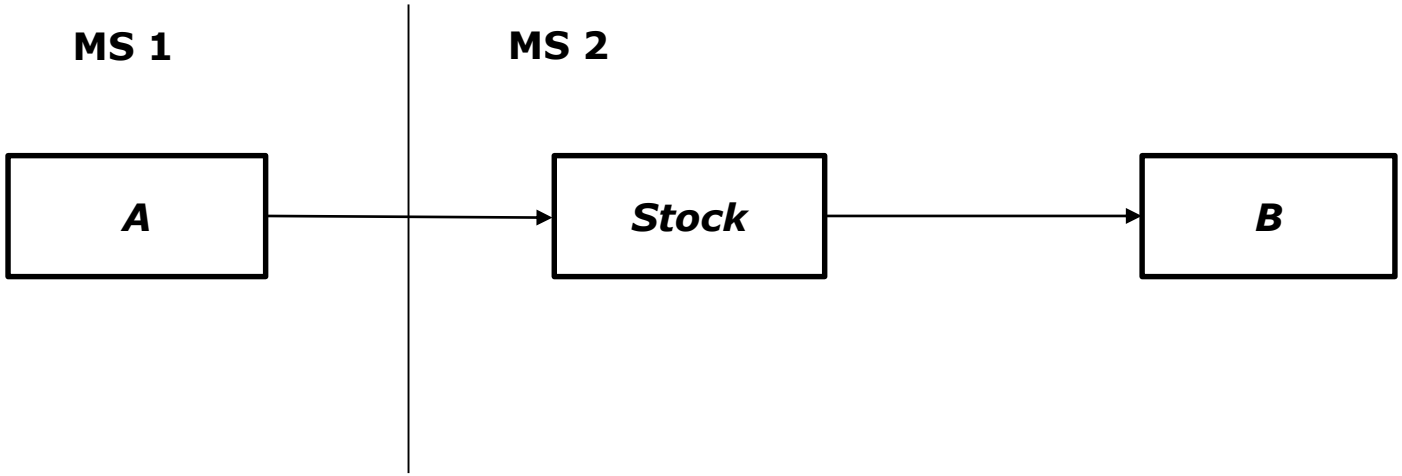
1) for French company: liable person = supplier
2) for Belgian company: liable person = Belgian receiver
3) for German company: liable person = German receiver

European Commission

The VAT Directive
Intra-Community transactions

- Obligations for persons liable for payment
  - e.g. VAT identification number, invoicing, listing, return, accounting : normal rules
  - Obligation to submit recapitulative statement of IC transactions on goods or services *(Articles 262 to 271)*
- Special schemes
  - small undertakings (no exemption for new means of transport) *(Article 283(1)(b))*
  - flat-rate scheme farmers (extension to IC trade)

Call-off stock arrangements



- Situation now: intra-Comm transfer by supplier/registration of supplier in MS2/domestic supply in MS2 (Art 194).
- New rule from 1 January 2020: Identification of supplier: only in MS 1; Identification of customer: MS 2; Intra-Comm supply when goods are taken from stock/intra-Comm acquisition at that time by customer; Register + recapitulative statement.

European Commission

Thank you for your attention