



AEAJ Seminar: Intra-Community Supplies and Triangular Transactions

Change of the VAT Directive -recent developments

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Plan of the presentation

Proposals adopted by the Commission and by the Council – an overview

Changes focusing on Intra-Community supplies – detailed presentation



Commission's Proposals adopted or soon to be formally adopted by the Council

- *VAT e-Commerce package;*
- *Proposal amending the VAT Administrative Cooperation Regulation;*
- *Proposal General Reverse Charge Mechanism – temporary measure;*
- *e-books proposal;*
- *Proposals introducing cornerstones of the definitive VAT system, CTP notion and provisions harmonising and simplifying certain rules in the current VAT system*



Proposals adopted by the Commission

- *Proposal for a definitive VAT system for intra-Union B2B trade – technical details;*
- *Proposal on the VAT rates;*
- *Proposal simplifying the VAT rules for SMEs.*



The October 2017 proposals quick fixes + definitive VAT system

VAT Directive

- CTP
- CORNERSTONES
- QUICK FIXES
 - Chain transactions (CTP)
 - Call off stock (CTP)
 - VAT identification number

VAT Implementing Regulation

- BURDEN OF PROOF FOR CROSS BORDER SUPPLIES (CTP)

Regulation on Administrative Cooperation

- CTP information recorded and exchanged by MSS



Outcome of the discussions in the Council

- *CTP is no longer linked with Quick Fixes;*
- *Modifications in call-off stock and chain transactions arrangements as well as on the proof for cross-border transport within EU;*
- *Modifications in value of VAT number for exempt intra-Community supplies of goods;*

The latest texts of the proposals publicly available on the Council webpage (28.09.2018) are presented in this presentation

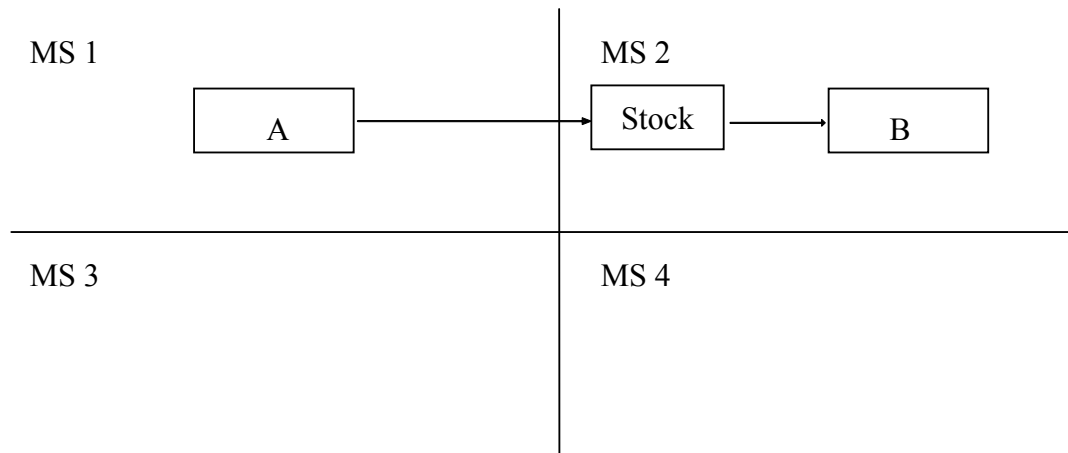


Call-off stock arrangements

Modifications in call-off stock in comparison with the original proposals:

- *Art. 17a of the VAT Directive (changed and extended);*
- *Art. 54a of the VAT Implementing Regulation (introduced);*

Call-off stock arrangements



- **Situation now: intra-Comm transfer by supplier/registration of supplier in MS2/domestic supply in MS2 (Art 194).**
- **Modified proposal (No CTPs): Identification of supplier: only in MS 1; Identification of customer: MS 2; Intra-Comm supply where goods are taken from stock/intra-Comm acquisition at that time by customer; Register + recapitulative statement.**



Value of VAT identification number

The problem:

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

The modified proposal:

- *substantive value assigned to the VAT identification number of the customer for the exemption*
- *limitations in the exemption linked with the good faith of the supplier in respect of obligations connected with recapitulative statements*

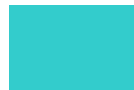


Chain Transactions – the current situation

"chain transaction" =

- *consecutive supplies of the same goods*
- *between three or more different parties*
- *with only one physical movement of the goods*

No rules set out in the VAT Directive clarifying which transaction is deemed to be the intra-Community supply in a chain transaction.





Chain Transactions – the current situation

The Court of Justice of the European Union (CJEU): limited guidance for determining the VAT treatment of an intra-Community cross-border chain supply.

In a chain of supplies with a single intra-Community dispatch or transport of the goods:

- *the dispatch or transport can only be linked to one of the supplies within the chain (benefiting from the exemption as an intra-Community supply);*
- *assessment of all specific circumstances needed;*
- *crucial to ascertain who among the parties has the power to dispose of the goods as owner at the time of the transport.*



Chain Transactions – the current situation

Triangular transactions

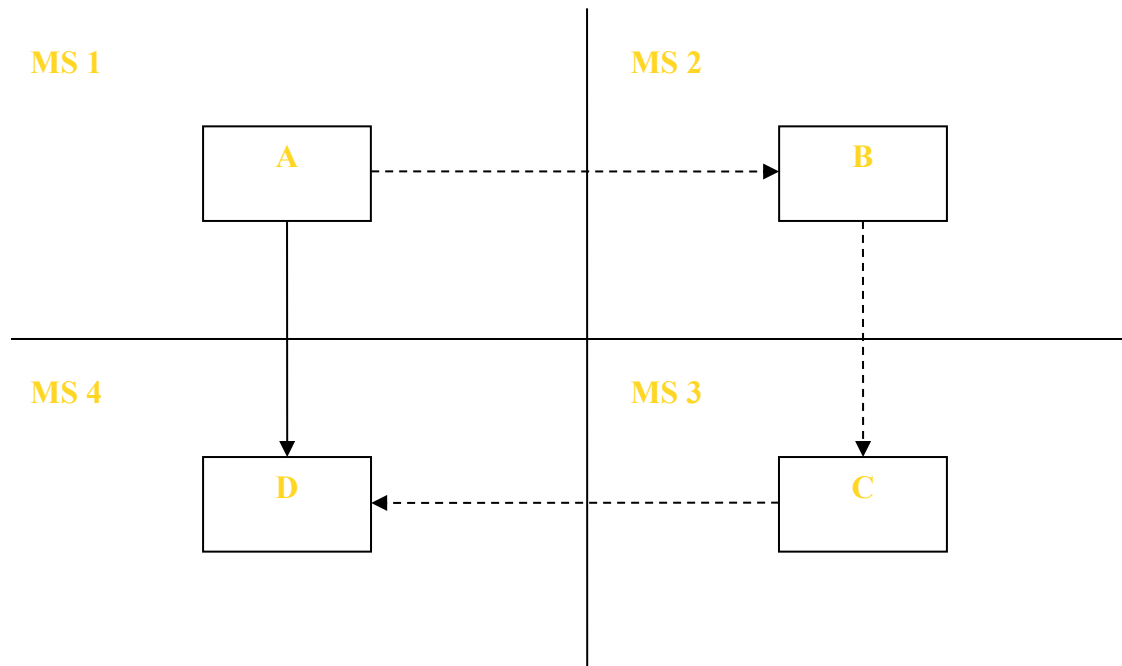
- *the only solution available today*
- *when certain conditions are fulfilled*

The Problem:

Serious divergences between Member States when attributing the transport to one of the supplies in the chain of transactions



Chain Transactions – the current situation





Chain Transactions simplification – the proposal

Elements of the provision:

1) *Three types of participants:*

(i) the intermediary operator; (ii) the provider; (iii) the customer.

2) *Targeted situations - definition of "chain transaction situation" - Article 138a (3)(a):*

(i) there are successive supplies of the same goods by taxable persons;

(ii) there is only one intra-Community transport;

(iii) the provider and the intermediary operator are both Certified Taxable Persons (CTPs).



Chain Transactions simplification – the proposal

Elements of the provision (cont):

3) Conditions for the simplification.

(i) the intermediary operator informs the provider of the Member State where the goods arrive and

(ii) the intermediary operator is identified for VAT purposes in a Member State other than the one where the dispatch or the transport of the goods begins.

Conditions fulfilled = transport is linked to the supply made to intermediary operator by the provider

Any or both ***conditions NOT fulfilled*** = transport is linked to the supply made by intermediary operator to the customer



Chain transactions – the new solution

Modifications in the solution for the chain transactions in comparison with the original proposals:

- *Art. 138a of the VAT Directive (proposed by the Commission and removed in the Council);*
- *Art. 36a of the VAT Directive - the place of supply rules (introduced in the Council);*



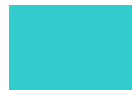
Chain transactions – the new solution Art. 36a of the VAT Directive

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 ...





Chain transactions – the new solution Art. 36a of the VAT Directive

... 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.*



Chain transactions – the new solution Art. 36a of the VAT Directive

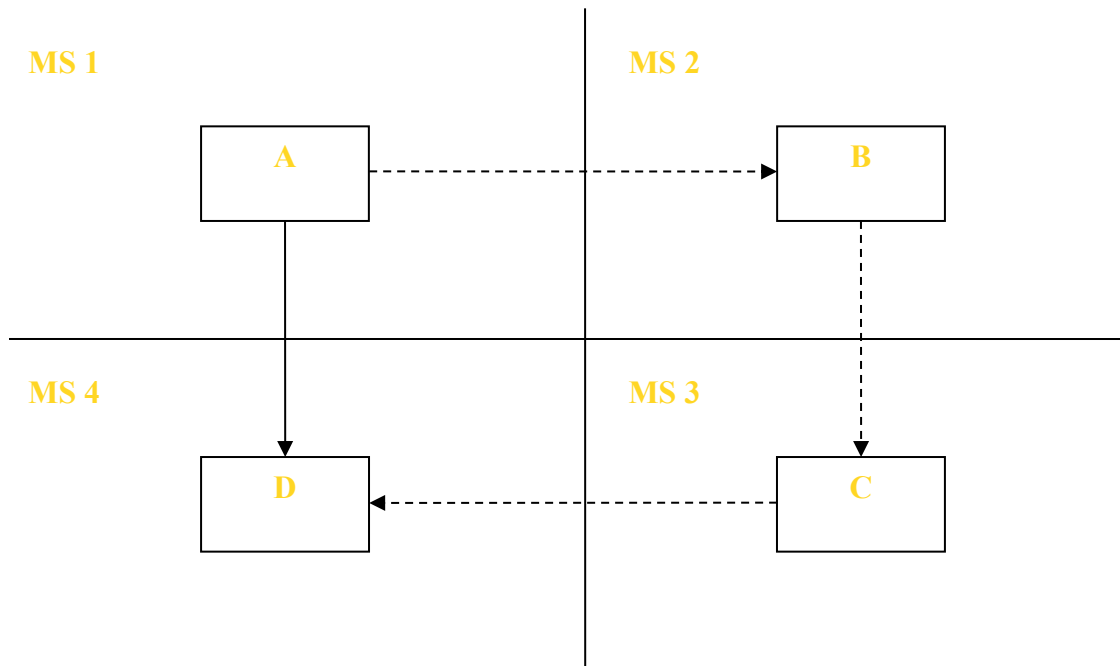
Who is the 'intermediary operator'?

- *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.*

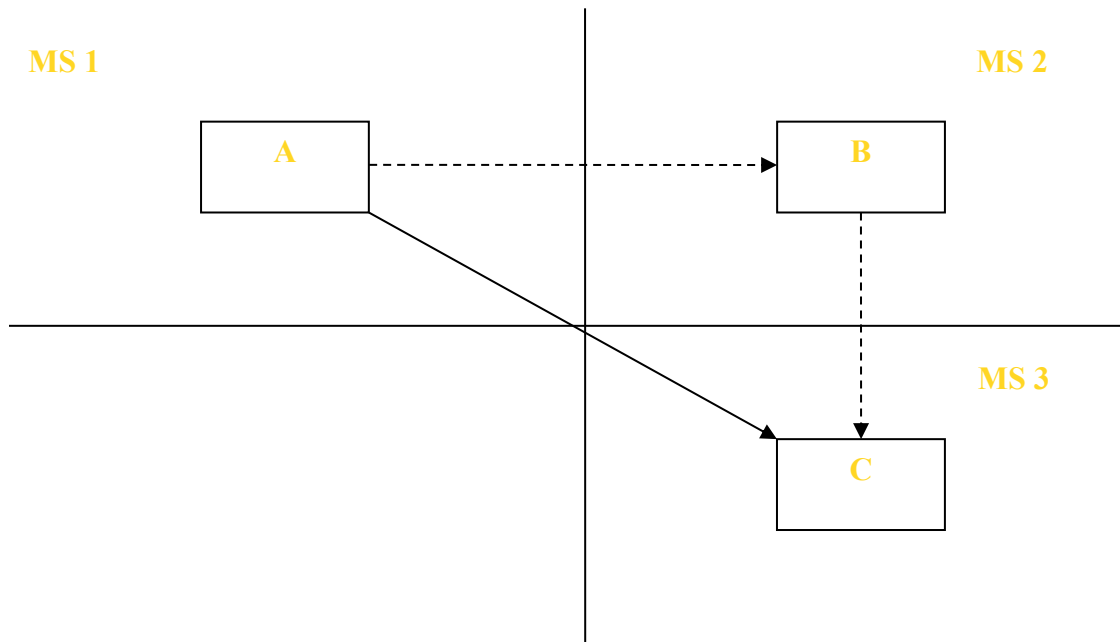
What is excluded from the scope of Art 36a?

- *The situations covered by Article 14a introduced by e-commerce Directive (entering into force 1.01.2021).*
- *Deeming provision including in the supply chain – in between the supplier of goods and the final customer – electronic interfaces (marketplaces, portals, etc...)*

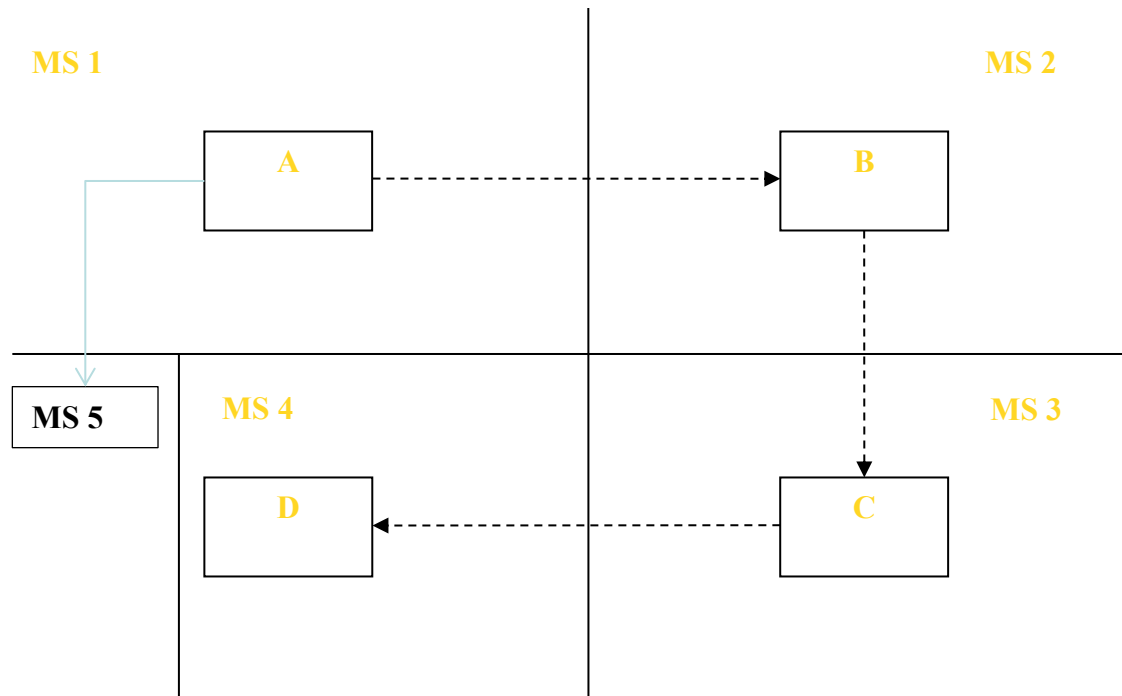
Chain transactions – the new solution



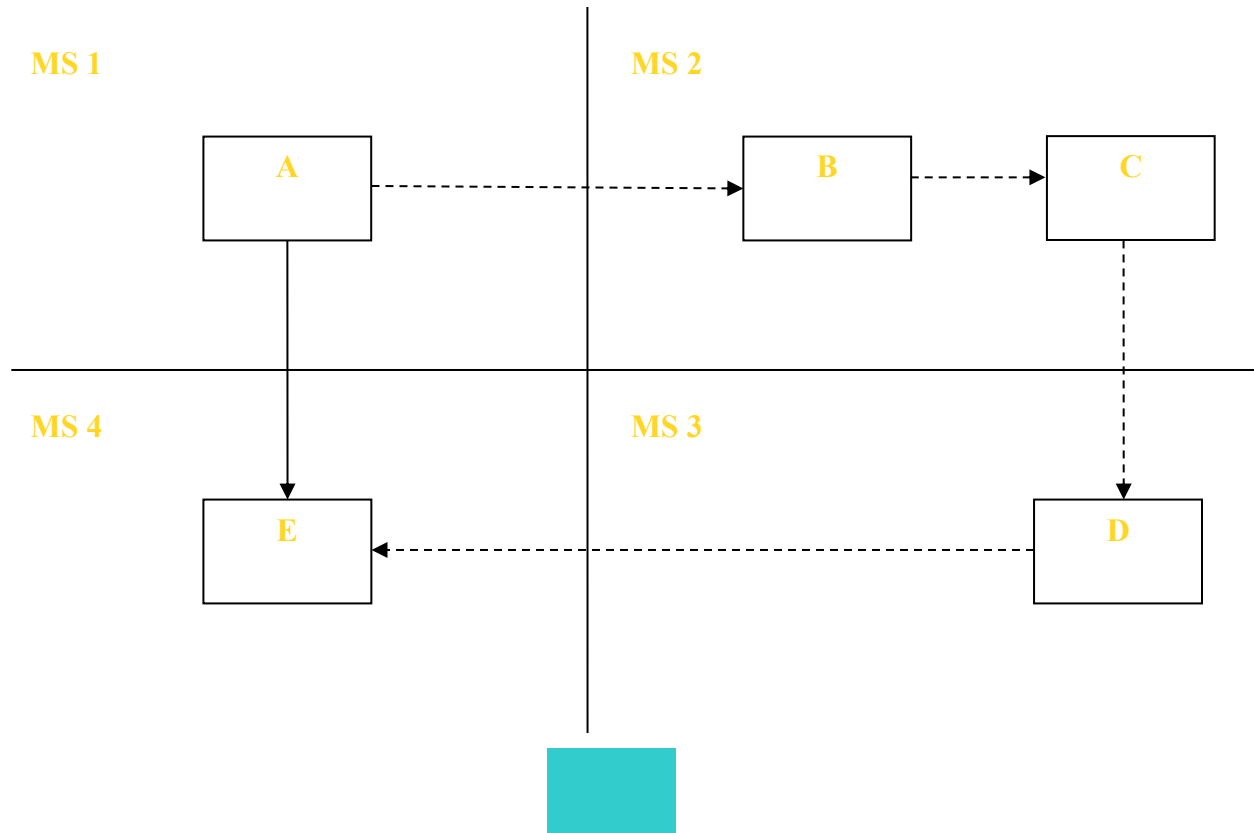
Chain transactions – the new solution



Chain transactions – the new solution



Chain transactions – the new solution





The burden of proof for cross-border supplies – Art 45a of VAT Implementing Regulation

Article 45a

- Applicable to exemptions of intra-Community supplies
- Article 138 of VAT Directive
- more harmonized solution -> less burdensome for business

It is a rebuttable presumption:

– gives conditions when the goods are to be seen as dispatched or transported from a Member State to a destination outside its territory but within the Community

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





The burden of proof for cross-border supplies – Art 45a of VAT Implementing Regulation

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. an 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, such as a notary, confirming the arrival of the goods in the Member State of destination;
 - iii. a receipt issued by a warehouse keeper in the Member State of destination confirming the storage of the goods in that Member State.



The burden of proof for cross-border supplies

- The supplier is responsible for the transport or dispatch

The supplier (responsible for the transport or dispatch):

- 1) 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** -
 - confirming the transport or dispatch
 - issued by two parties independent of each other, of the vendor and the acquirer:
 - 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)



The burden of proof for cross-border supplies

- The acquirer is responsible for the transport or dispatch

The supplier (responsible for the transport or dispatch) has:

1) **a written statement** (i) sent to the supplier

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

(iii) from the person acquiring the goods

(iv) saying:

- that goods were transported by him by a third party on his behalf and

- what is the Member State of destination of the goods;

The full list of what should be included in a written statement – Art 45a (1)(b)(i)

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



Thank you for your attention

