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## IMPACTS OF THE COVID-19 SANITARY CRISIS ON THE « QUICK FIXES » DIRECTIVE

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*Businesses are now focusing on implementing the exceptional tax measures taken by the Government in order to optimally manage their cash flow. However, it should not be overlooked the fact that the Covid-19 crisis may have significant consequences regarding specific existing tax rules.*

*As a result, we focus our attention below on the consequences that the current health crisis may have on the application of the so-called « Quick Fixes » VAT rules applicable since January 1, 2020.*

*As a reminder, the « Quick Fixes » rules are based on three main points: (i) the call-of stock regime, (ii) the exemption of intra-Community supplies of goods and related proof of transport rules and (iii) the chain transactions.*

### *I – Impact of the Covid-19 crisis on the call-of stock arrangements regime*

Among the overall Quick Fixes rules, it appears that the call-of stock arrangements regime may be the most affected by the actual health crisis.

1 – As a reminder, the new regime provides that when goods are dispatched / transported by a taxable person A to another Member State in the view to being supplied at a later stage to an intended taxable person B, within 12 months of their arrival in that Member State, the transfer of the stored goods to B is treated as an exempt intra-Community supply by A (in the State of dispatch) and as a taxable intra-Community acquisition by B (in the State of arrival).



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For this purpose, the following conditions must be met:

- Both the supplier and the intended acquirer are taxable persons,
- The supplier has not established his business, nor does he have a fixed establishment in the Member State to which the goods are dispatched or transported,
- The goods are transported from one Member State to another with a view to being supplied there at a later stage and after arrival to an intended acquirer,
- The intended acquirer is identified for VAT purposes in the Member State into which the goods are transferred,
- The intended acquirer's identity and VAT identification number are known by the supplier at the time when dispatch or transport begins,
- The supplier must file a recapitulative statement (i.e. exchange of goods declaration, the so-called Déclaration d'Echange des Biens in French),
- The goods cannot be imported or exported; only intra-Community supplies of goods are concerned by this regime.

If the above conditions are not met, the transaction will be subject to VAT in two steps:

- At the time of the dispatch by A to the Member State of B: realization of an exempt intra-Community supply by A and a taxable intra-Community acquisition by A in the Member State of B (generally entailing the need for A to register for VAT in that State);
- At the time of the transfer of stock to B: realization of a taxable local sale in the Member State of arrival of the goods carried out by A.

In the context of the Covid-19 crisis, the **risk of non-compliance with these new conditions may occur in two main cases:**

- **Termination of contracts:** unfortunately, this is today common practice. Practically speaking, in the event of the cancellation of the contract of deposit concluded between taxpayers A and B, in order for the new call-of stock arrangements regime to be continuously applied, it should be necessary for A to pre-identified a new intended acquirer in the Member State of B within the 12 month delay after the arrival of the goods. In practice, taking into account the current situation, it seems almost impossible.
- **Exceeded storage time:** in addition, due to the slowdown or even the stop of the goods flows traffic, **it is possible that the goods may be stored for a longer period than the 12 months planned.** Yet, the new regime expressly provides that the stored goods must be transferred within a maximum period of 12 months from the date of their entry into the Member State of arrival of the goods.

In both cases, **the conditions of the new regime might no longer be met ...** so that the subsequent transfer of the stocks would be **subject to VAT locally** in the Member State of arrival of the goods. This would also likely entail an obligation for A to register for VAT in that State.

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2 – Furthermore, in order for this simplification scheme to apply, two declarative obligations must be fulfilled.

Indeed, the supplier must keep (i) a **recapitulative statement** of the transferred goods comprising a description of these goods and the VAT identification number of the intended acquirer of the stocks (much known as the **Intrastat return**) as well as (ii) a **register** allowing the tax authorities to verify the correct application of the call-of stock arrangements.

As these new measures are of recent application, the practical implementation of all these reporting obligations was already raising questions before the current crisis. In this respect, the explanatory notes<sup>1</sup> published by the European Union authorities simply indicate **that different forms of registers could be accepted, notably electronic ones**. In the absence of specific communication on this point by the French tax authorities, it is to be hoped that such a format would be accepted in this particular time. Otherwise, keeping a typewritten register during a period of containment would really complicate the task of taxpayers.

Either way, taking into account the upheaval in work organization methods, to be compliant with these reporting obligations is undoubtedly more complicated. However, the Quick Fixes Directive (EU Council Directive 2018/1910 of December 4, 2018), as well as the explanatory notes published in December 2019, obviously **do not provide for a derogation regime concerning these obligations in relation to the current pandemic**.

As of now and in the post-crisis period, it is therefore necessary to be particularly vigilant to ensure compliance with the above-mentioned conditions, and especially to set up a rigorous monitoring of these operations in order to be prepared to regularize any operations that would not be strictly compliant with the new call-of stock arrangements conditions.

## *II – Impact of the Covid-19 crisis on the new exemption of intra-Community supplies of goods regime*

In order to control intra-Community supplies of goods, the European Union has tightened the conditions for exempting intra-Community supplies (Livraison Intra-Communautaire, « LIC » in French) by making taxpayers responsible to report information about these transactions and provide significant evidence.

1 – In particular, to be exempt from VAT, the intended acquirer of the stored goods must **communicate to the supplier its VAT identification number and the latter must ascertain the validity of this number**.

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<sup>1</sup> Explanatory Notes on the EU VAT changes in respect of call-off stock arrangements, chain transactions and the exemption for intra-Community supplies of goods (“2020 Quick Fixes”).



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Even if the new work systems introduced in response to containment (e.g. short-time working or teleworking measures) will undoubtedly disrupt the logistical organizations of companies, it is and will remain crucial to verify, as soon as possible, the validity of the VAT identification numbers provided by acquirers. To this end, a global monitoring file of the overall intra-Community supplies of goods carried out during the crisis should be kept in order to track, on a daily basis, the verification status of these VAT numbers (and retroactive verifications if this was not done during the crisis).

2 – Exemption from VAT of the LIC is also **conditional on the effective dispatch / transport of the goods from one Member State to another Member State**. To ensure it, the Quick Fixes Directive presumes that such dispatch / transport has been made when **some specific evidence of the transport have been communicated** by the supplier or the intended acquirer depending on whether one or the other is responsible of the transport.

For example, the vendor must provide as proof of transport a **shipping note, or official documents issued by a public authority** such as a notary, confirming the arrival of the goods in the Member State of destination. On the other hand, where the acquirer is responsible for the transport, he must provide, for example, a **written statement** to the supplier, confirming that the goods have been transported by him, by the tenth day of the month following the supply.

Many companies and plants are forced to close during the containment period. Therefore, **it is unlikely that such evidence can be provided quickly given the relatively short time allotted**. Once again, it should be appropriate to keep an accurate and rigorous tracking of the intra-EU operations that continue to be realized, and those that will be carried out when business will resume, so that adequate evidence can be gathered as quickly as possible.

### *III – Impact of the Covid-19 crisis on the chain transactions regime*

This regime, which allocates transport to one of the successive supplies of goods between different operators, seems to be the one that could be least affected by the health crisis.

However, the **same difficulties of providing evidence of transport** by taxpayers and in **communicating their VAT identification numbers** may arise. In addition, the **same issues of reviewing or even terminating transport contracts** will necessarily impact the identification of the supply of goods to which the transport will be attributed and therefore the VAT exemption.

## Conclusion

Therefore, even if other issues need to be addressed urgently, we believe it is essential to **document, as much and as far as possible, contractual changes within the supply chain** (see our dedicated article on this issue in relation to transfer pricing policies), as well as to carefully

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monitor the receipt of transport evidence and the procurement of VAT identification numbers from commercial partners.

Otherwise, in the event of a tax audit, the financial consequences could be significant (VAT registration in the Member States concerned, VAT adjustments and application of related penalties).

At this stage, **no communication has been made on the impact of the Covid-19 crisis on the "Quick Fixes" rules** by either the European Union nor the French tax authorities. In this context, and in order to avoid any unpleasant surprises once the crisis will be over, we recommend to **remain vigilant on the application conditions of the above rules, and to set up, as of now and during the post-crisis period, a more stringent monitoring of operations than usual.**

However, it is to be hoped that easing measures will be taken by the tax authorities. In this respect, for you, we continue to analyze European and French announcements on a daily basis.



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