New guidance on intra-Community VAT regime and Quick Fixes

On 3 April 2020, the Belgian VAT authorities published a new circular letter that provides a comprehensive overview of the practical application of the VAT rules for intra-Community supplies of goods (Dutch | French). It is a comprehensive, 270 page overview of administrative positions developed since 1993 in this field, including a detailed overview of the EU VAT Quick Fixes, which came into force on 1 January 2020 (VAT alert of 30 September 2019).

Further guidance on EU VAT Quick Fixes

The circular letter contains detailed guidance across different topics where the EU VAT Quick Fixes have brought changes to the intra-Community VAT regime. It integrates a significant part of the EU VAT Quick Fixes Explanatory Notes developed by the European Commission into Belgian administrative guidance.

The circular letter not only explains the importance of communicating and checking the VAT number as a substantive condition for exempting intra-Community supplies, but also lays down detailed practical rules for situations where a valid VAT number would not be available at the time of supply. In such a case, Belgian VAT must be charged on the invoice if Belgium is the country of the goods’ despatch. Upon subsequent presentation of the customer’s valid VAT number, the supplier can annul this VAT and reimburse it to the customer, under specific conditions. Any
VAT charged because a VAT number was not available upon intra-Community supplies will not be recoverable by the foreign customer through a VAT Refund request, except in exceptional cases where such refund would be the only way for the purchaser to recover the VAT (e.g. if the seller faces bankruptcy).

Regarding the **proof of transport for intra-Community supplies**, the circular letter explains the two “safe haven” rules that have been laid down in Belgian legislation, namely the EU VAT Quick Fix solution and the pre-existing Belgian regime to accept a “destination document” as key evidence. The possibility to prove transport with a collection of documents remains as well.

For the remaining two Quick Fixes, the **allocation of transport in chain supplies** and the **simplified call off stock regime**, the Belgian guidance very much aligns with the EU VAT Quick Fixes Explanatory Notes.

**Integrated commentary on the intra-Community VAT regime**

The Belgian VAT authorities have embedded changes triggered by the EU VAT Quick Fixes in a fully updated and structured overview of all aspects of the VAT regime applicable to intra-Community supplies and assimilated transactions.

The requirements and consequences of intra-Community supplies, acquisitions and transfers, as well as chain transactions and triangular supplies, are thoroughly explained with practical examples and details in terms of VAT reporting requirements.

The circular letter also provides insights into some specific topics where the Belgian VAT authorities approach intra-Community transactions in a particular way, sometimes deviating from the same legislation’s application in other EU Member States.

Examples include:

- The possibility for suppliers, making cross border supplies of goods to another EU Member State, to split this transaction into in an intra-Community transfer of own goods, whereby they make an acquisition themselves under a local VAT number, followed by a domestic supply to the customer in the destination country. Such approach allows the supplier to alleviate their customers from the formalities linked to intra-EU purchases and from any uncertainty regarding missing or invalid VAT numbers of such clients. Although this system is based on an unpublished agreement between EU Member States in 1993, it is observed in practice that not all Member States accept the split of an Intracommunity Supply into a transfer followed by a local supply.

- The determination of the tax point for intra-Community supplies in relation to the actual delivery date, rather than the invoice date where this precedes the delivery date. This means that advance invoices for intra-Community supplies, even if they cover the full price, cannot be reported in the VAT return and European Sales Listing according to the invoice date, leading to administrative complexities for businesses.
Changes to the European Sales Listing

The circular letter also clarifies changes made to the European Sales Listing (ESL or “btw-opgave van intracommunautaire handelingen”; “relevé à la TVA des operations intracommunautaires”) as of 1 January 2020.

To integrate specific reporting obligations for goods despatched to business partners in other EU Member States, under the simplified call off stock regime, a second part was added to the ESL on the Intervat portal, which should only be filled by companies engaging in such transactions. Another change concerns the situation when transactions of previous reporting periods need to be corrected and where specific instructions on how to report such corrections are applicable.

Entry into force

The circular letter aims to provide a better understanding of legislation covering the intra-Community VAT regime, and is hence applicable for both past and future situations. For rules that are part of the EU VAT Quick Fixes, the entry into force begins as of 1 January 2020.

The guidance published by the VAT authorities is not only a very instructive overview for practitioners, but also a guide that businesses can check to see whether they apply these rules in the most compliant and efficient way in their day-to-day operations.

Deloitte has assembled a team of experts that is readily available to assist companies in making such assessment based on the methodology developed around the EU VAT Quick Fixes implementation. More information is available in the “Quick Fixes” entry package.

Contacts

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium or:

- Johan Van der Paal, jvanderpaal@deloitte.com, +32 2 600 66 39
- Pieter Van Hoecke, pivanhoecke@deloitte.com, +32 3 800 86 74
- Danny Stas (Deloitte Legal), dstas@deloitte.com, +32 2 800 70 11

For general inquiries, please contact: bedeloittetax@deloitte.com, + 32 2 600 60 00

Be sure to visit us at our website: http://www.deloitte.com/be/tax | http://www.deloittelegal.be
Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

Deloitte provides audit, tax and legal, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte has in the region of 225,000 professionals, all committed to becoming the standard of excellence.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. No entity in the Deloitte network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

Deloitte Legal - Lawyers CVBA in Belgium

Deloitte Legal - Lawyers CVBA is part of a privileged multidisciplinary cost-sharing association with Deloitte Belastingconsulenten CVBA.

© 2020. For information, contact Deloitte Belgium.