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OPINION STATEMENT

Opinion Statement FC 1/2025 on the VAT Treatment of Chain Transactions Involving Imports into the EU

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1. Introduction

Council Directive 2006/112/EC ("VAT Directive") does not currently offer explicit rules to establish the VAT place of supply in relation to chain transactions involving imports into the EU ("import chain transactions"). The case law of the Court of Justice of the European Union (CJEU) equally does not provide guidance on this specific topic. The resulting uncertainty has led some Member States to proactively introduce rules in this area. This in turn has heightened the level of uncertainty in other Member States. Further, as chain transactions can involve more than one Member State after import of the goods into the EU, this legal landscape is prone to lead to frictions between Member States, double taxation or non-taxation.

Our opinion seeks to outline the issue and offer a resolution, which we hope will be considered favourably by the EU Commission.

2. The Issue

A chain transaction involves successive supplies of the same goods between three or more parties which are subject to a single supply of transport, transporting the goods directly from the first supplier to the final customer.

Where the goods are transported exclusively within the EU, the CJEU has consistently ruled that the transport can only be attributed to one of the supplies in the chain transaction and that only this supply can benefit from the exemption offered in Article 138 VAT Directive. The CJEU has not yet given guidance on determining the transport supply in a chain transaction involving an import into the EU, or in fact whether or not the transport supply must be established at all.[1]

Article 36a VAT Directive clarifies the CJEU's case law insofar as it defines which of the supplies can be ascribed to the transport when an intermediary supplier dispatches or transports the goods from one Member State to another. By its clear wording[2] Article 36a VAT Directive does not extend to chain transactions where the goods begin their journey in a country outside the EU and arrive in the EU country of import or in a subsequent EU country.

Article 32 VAT Directive rules that the place of the supply by the importer and the place of any subsequent supply is deemed to be within the Member State of importation of the goods. It is unclear whether this provision presupposes that the transport has already been ascribed to a supply as the wording in Article 32 (1) VAT Directive seems to suggest[3], or if it is in fact not necessary to ascribe the transport to any supply as the wording in Article 32 (2) VAT Directive seems to indicate.[4] It is possible that only 'a' transport, by whomever, suffices.

[1] We do not regard the CJEU's judgement in the case *Daňové riaditeľstvo Slovenskej republiky v Profitube spol. s r.o.* (C-165/11) as being directly relevant although it concerns a chain of supplies involving goods from a non-EU country. The goods were sold after they had been put under a warehousing procedure and had been processed in the EU. They had also remained in the same customs warehouse throughout. The fact set therefore does not match that of a chain transaction with a direct transport from the first supplier outside the EU to the last customer in the EU.

[2] *"(…) and those goods are dispatched or transported **from one Member State to another Member** State directly from the first supplier to the last customer in the chain (…)" [emphasis added].*

[3] *"Where the goods **are dispatched or transported by** the supplier, or by the customer, or by a third person (…)", "the place where the goods are located at the time **when dispatch or transport** of the goods to the customer **begins**" [emphasis added].*

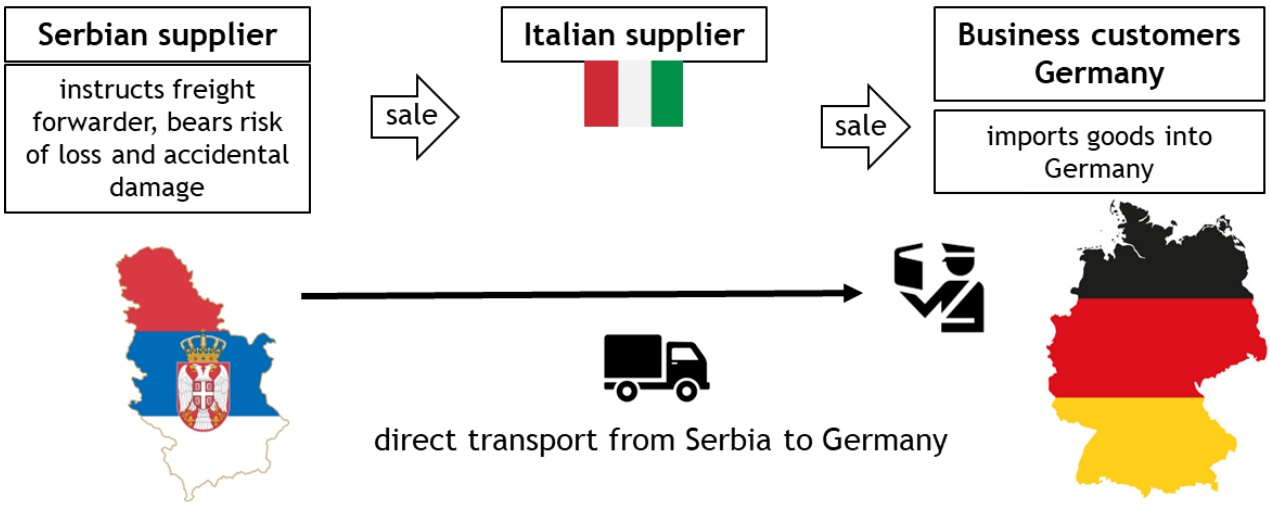
[4] *"(…) if dispatch or transport of the goods begins in a third territory or third country (…)".*

This indecisiveness has led Germany to introduce primary legislation [5] in this area for *"simplification and improvement of legal certainty for economic operators"*[6]. § 3 Absatz 6a Satz 7 UStG/ German Value Added Tax Act extends the rules for intermediary suppliers in intra-Community chain transactions to intermediary suppliers in import chain transactions. Austria has implemented public VAT guidelines to almost identical legal effect.[7]

The implications are best illustrated by the following examples which are based on a real-life business case:

- Country of import is identical to country of arrival

An Italian company buys vegetables from a Serbian business and sells them to German customers. The freight forwarder is instructed by the Serbian supplier. The risk of accidental loss and damage of the goods lies with him too. The goods are imported into Germany in the name of the German business customers.



From a German VAT perspective, the first supply in the chain is the transport supply as it is the Serbian company who has instructed the freight forwarder and bears the risk of accidental loss and damage of the goods. Germany applies § 3 Abs. 8 UStG - the equivalent to Article 32 (2) VAT Directive – only to the transport supply. However, § 3 Abs. 8 UStG would require the Serbian supplier to import the goods, which he doesn't. Therefore, the supply from the Serbian business to the Italian company is not taxable in Germany, but in Serbia where the goods movement starts.[8] As the supply from the Italian company to the German customers follows the transport supply it is taxable in Germany as the country of arrival of the goods.[9,10] This is independent from the identity of the importer because, as mentioned before, the supply from the Italian supplier to the German customers is not a transport supply and therefore § 3 Abs. 8 UStG, which is focussed on the identity of the importer, is not in scope.

[5] Effective from 1/1/2020.
[6] Bundestags-Drucksache 19/13436, page 143.
[7] Abschnitt 3.14.2. (Rz 474i) UStR 2000, effective from 1/1/2020.
[8] § 3 Abs. 6 Satz 1 UStG.
[9] § 3 Abs. 7 Satz 1 Nr. 2 UStG.
[10] However, as the supply takes place before the import of the goods into Germany it is VAT zero rated according to § 4 Nr. 4b UStG. The Italian supplier will therefore not be eligible for the 8th Directive Claim-procedure, but must VAT register in Germany in case he wishes to reclaim German input VAT.

- Country of import is *not* identical to country of arrival

An Italian company buys vegetables from a Serbian business and sells them to German customers. The freight forwarder is instructed by the Serbian supplier. The risk of accidental loss and damage of the goods lies with him too. The goods are imported into Austria in the name of the Italian company and then shipped by the latter from Austria to Germany.

direct transport from Serbia to Germany
via Austria

From a German VAT perspective, the first supply in the chain is the transport supply as it is the Serbian company who has instructed the freight forwarder and bears the risk of accidental loss and damage of the goods. The supply from the Italian business to the German customer which follows the transport supply must therefore be a local supply taxable in Germany as the country of arrival of the goods.[11] Generally, Germany applies § 3 Abs. 8 UStG - the equivalent to Article 32 (2) VAT Directive - to the transport supply. However, § 3 Abs. 8 UStG would require the Serbian supplier to import the goods, which he doesn't. The Italian supplier must VAT register in Germany to declare the local sale. [12]

In addition, German[13] and Austrian[14] VAT guidelines suggest that the Italian supplier is deemed to hold power to dispose of the goods as owner at import into Austria and that he is therefore obliged to report an intra-Community movement of own goods from Austria to Germany ahead of the local supply to the German customer as well. This would make the Italian supplier VAT registrable in Austria as well (unless he appoints a fiscal representative in Austria who declares the intra-Community movement for him). Therefore, logically, the Italian supplier should also be required to account for the EC acquisition of the goods in Germany. It is entirely unclear how this outcome could be reconciled with the application of chain transaction rules to the case. The chain transaction would encompass two transport supplies.

[11] § 3 Abs. 7 Satz 1 Nr. 2 UStG.
[12] See A 3.14 (16), example 2, (17) UStAE.
[13] See A 3.14 (15), example 2 UStAE.
[14] Umsatzsteuer Protokoll 2011, Erlass des BMF of 28 September 2011, BMF-010219/0225-VI/4/2011

Alternative 1:

As before, but Italian company instructs the freight forwarder and bears the risk of accidental loss and damage of the goods.

Under German VAT law it is presumed that the transport is still ascribed to the supply from the Serbian business to the Italian company as the Italian company, as the intermediary supplier, instructs the freight forwarder. However, as the Italian company imports the goods the presumption can be rebutted and the transport can be ascribed to the supply from the Italian company to the German customers. § 3 Absatz 8 UStG - the equivalent of Article 32 VAT Directive – can now apply as the transport supply is ascribed to the supply from the Italian company and he acts as importer. The Italian company needs to declare an intra-Community supply from Austria to Germany in Austria. There is no obligation for the Italian company to VAT register in Germany[15] but it will be required to VAT register in Austria to declare the intra-EU supply to Germany (and recover the Austrian import VAT) (unless he appoints a fiscal representative in Austria who declares the intra-Community movement for him).

Alternative 2:

Serbian or Italian supplier instructs the freight forwarder and bears the risk of accidental loss or damage. Goods are imported by Italian supplier into Germany and sold to Czech customers.

Our understanding is that other tax authorities like the Czech have not adopted or clearly adopted the approach taken by the German and Austrian authorities. On this alternative analysis the Italian company may perform an intra-Community supply to the Czech customers taxable in Germany as the Italian company imported the goods. The Italian company would not be required to VAT register in the Czech Republic, irrespective of the identity of the party instructing the freight forwarder and bearing the risk of accidental loss or damage of the goods.

3. CFE Comments and Suggestion for Resolution

The aforementioned demonstrates that extending the rules for EU chain transactions to import chain transactions introduces a significant layer of complexity, in practice would currently appear to lead to a non-uniform application of VAT in the Single Market and would allocate VAT revenues to Member States in a way dissonant to the principles of the VAT Directive.

Further, Article 32 (2) VAT Directive determines from which place and time the EU assumes a right to taxation in an unequivocal way by aligning with formal customs documentation. Blurring this important definition of the EU's regulatory scope in the case of import chain transactions is concerning.

We are of the opinion that Article 32 (2) VAT Directive affects all goods imported into the EU, in whatever way their transport to EU customers might have been conducted. Illustrated by way of an import chain ABC where A sells to B and B to C and the goods are directly transported from A to C, we believe that Article 32 (2) VAT Directive should be interpreted as follows:

[15] See A 3.14 (16), example 3 UStAE.

- First scenario: Goods are imported for free circulation in the EU in A's name or by way of indirect customs representation on his account.

  The supply by A and any subsequent supply is subject to VAT in the Member State of importation.

- Second scenario: Goods are imported for free circulation in the EU in B's name or by way of indirect customs representation on his account.

  The supply by B to C is subject to VAT in the Member State of importation. The supply from A to B is not.

- Third scenario: Goods are imported for free circulation in the EU in C's name or by way of indirect customs representation on his account.

  Neither the supply from A to B nor from B to C is subject to VAT in the Member State of importation.

In all three scenarios it is irrelevant who instructs the freight forwarder and/ or bears the risk of loss and damage of the goods.

In order to codify the aforementioned and therefore clarify the VAT place of the supply in import chain transactions we suggest including a new Article 14 in Section 2, *Place of supply of goods (Articles 31 to 39 of Directive 2006/112/EC)* of Council Implementing Regulation (EU) No 282/2011 with the following wording:

> *Article 32 second paragraph of Directive 2006/112/EC shall apply to any supply or chain of supplies which involves goods being dispatched or transported from a third territory or third country to a Member State by any participant in the supply or chain of supplies.*

4. Conclusion

Import chain transactions are amongst the most commonly occurring business transactions for the EU as an outward looking union of important economies trading with the rest of the world. It is therefore of paramount importance that the VAT treatment of these types of transactions should be clear and certain throughout the EU. Unilateral regulations by single Member States are a warning sign that the system is not working properly in this area and should not be ignored. To support trade, businesses must have an environment of legal certainty. They cannot be left guessing their VAT position or left having to VAT register in multiple countries for no evident reason. The suggested change to the Council Implementing Regulation (EU) No 282/2011 could be an effective and legally economical way of instating legal certainty for import chain transactions, thereby helping the development of the EU economy. Alternatively having clear guidance at a European Union level would be of assistance.