

On October 4, the EU Commission published a proposal for the Definitive VAT System for Cross Border EU Trade



Dear Sir, Dear Madam,

As part of the VAT action plan introduced on 7 April 2016, the EU Commission announced a legislative Proposal for the Definitive VAT System for Cross Border EU Trade. This proposal was published on October 4th, 2017 (hereafter referred to as the “Proposal”) and introduces the cornerstones of the [Definitive VAT System for Cross Border B2B EU trade\[1\]](#). This will be followed by a second proposal which is expected to be published in 2018 which will provide detailed technical provisions and guidelines on the application of the Definitive VAT System and the use of the transitional measure (two-step approach: quick wins in 2019 and definitive VAT regime in 2022).

The current VAT system characterizes each EU B2B cross border supply of goods in (1) an exempt intra-Community supply in the Member State of departure and (2) a taxable intra-Community acquisition in the Member State of arrival of the goods. The Proposal foresees in the introduction of **one taxable supply in the Member State of destination of the goods, the so-called intra-Union supply**. As a first step of the Definitive VAT System, the Proposal introduces the concept of a Certified Taxable Person or CTP. This concept allows for an attestation that a business can globally be considered as a reliable taxpayer. Only when the intra-Union supply is performed for a CTP, the supplier can apply the reverse charge mechanism. This means that when the buyer is not a CTP, the supplier will be liable for the payment of VAT in the destination country through a one stop shop mechanism.

To meet the request of the Council, as stated in the Council Conclusions of November 2016, the Proposal also foresees further amendments to the VAT Directive (so-called quick wins) in regards to VAT Identification Numbers, Chain Transactions and Call Off Stocks. The Council also requested the Commission to draft a common framework with respect to the documentation required to claim an exemption for intra-Community supplies, the latter is included in the **proposal amending the VAT Implementing Regulation**.

In respect to Call off Stocks (i.e. the situation where a vendor transfers goods to a warehouse for the disposal of a known acquirer to another Member State and that acquirer becomes the owner of the goods upon withdrawing the goods from the warehouse), the proposed solution considers the Call Off Stock as giving rise to one single transaction i.e. intra-community supply in the Member State of departure and an intra-Community acquisition in the Member State of arrival provided this is performed between two CTPs. In addition the application of the VAT exemption for intra-Community supplies is made conditional upon the valid EU VAT registration of the acquirer.

That said, in the case where one party in the transaction to Call Off Stocks is not a CTP, it is likely that the vendor will have to obtain a VAT registration in the country where the warehouse is located and to account for the VAT in the destination country. Given this added complication introduced as part of the Proposal, it is unlikely that the Member States will be able to maintain their existing specific regimes in their respective territories.

Last but not least, the Proposal foresees that in cases involving Chain Transactions the transport is to be assigned to the first leg of the chain transactions if (i) the intermediate supplier has a VAT registration in another Member State than the Member State of departure, (ii) this intermediate supplier communicates to the initial supplier that the name of the Member State of arrival and (iii) both the intermediate supplier and the initial supplier are CTPs. When one of the conditions (i) or (ii) is not met the transport is allocated to the second leg of the chain transactions

In the event that a non-CTP is involved, the automatic allocation of the transport will not apply and, thus, the parties will still have to document and demonstrate to which transaction the transport is allocated and apply the related VAT regime to the said transaction (domestic supply, intracommunity supply, etc.).

The Proposal for implementing regulations requires the Member States to apply the provisions as of **1 January 2019**. Although there is still more than a year to go, companies should already be planning and evaluating what implications this can have on their supply chains.

In addition if these provisions focus primarily on the cross border EU trade of goods, one cannot exclude that the concept of Certified Tax Person will be extend to the B2B supply of services taking into account the existing background and the fact that such concept was discussed and considered during the implementation of the VAT package in 2010.

Within the next three months, companies should take the following actions:

- ***Map Intra-Union Flows***
Detailed mapping of intra-Union flows will allow you to measure potential impacts of the change on your business and adopt an action plan (e.g., update IT systems, adjust invoice templates, manage VAT registration requirements, train your staff, review offers, contracts and agreements, etc.)
- ***Assess Applying for Certified Tax Person Status***
Depending on your business flows and organisation, obtaining Certified Tax Person status could be required.

We look forward to supporting you in enabling your employees, IT systems and processes to deal with the new intra-Union VAT regime and managing your VAT position.

Kind regards