

INDIRECT TAX: DEVELOPMENTS IN VAT

BARBARA
FLECKENSTEIN-WEILAND
ANDREAS ERDBRÜGGER
CARLOS GOMEZ
JUDIT JANSKA PEK
HANNES GURTNER
MARTIJN JAEGRS

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- Call-off stock
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QUICK FIXES



QUICK FIXES
CHAIN TRANSACTIONS

DEFINITION



Chain transactions

- ❖ A chain of successive supplies of the same goods
- ❖ From one Member State to another Member State
- ❖ Directly dispatched or transported from first supplier to last customer in the chain.

Intermediary Operator

- ❖ Supplier in the chain other than the first supplier [and last customer] who dispatches or transports the goods, himself or by a third party on his behalf.

ASSIGNING THE IC TRANSPORT TO ONE OF THE SUPPLIES IN THE CHAIN



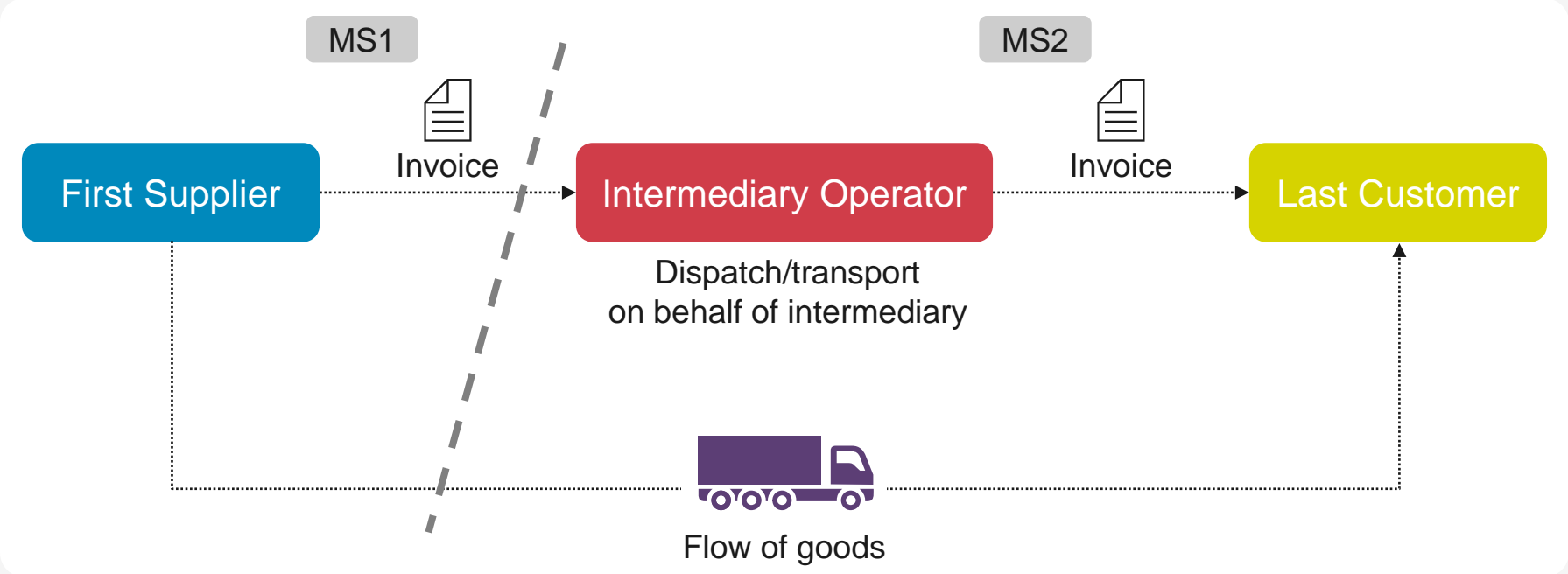
General rule: (Art 36a (1) VAT Dir)

- ❖ Transport will be ascribed only to the supply made **to** the 'intermediary operator'; POS: supply with transport acc to Art 32 VAT Dir
- ❖ All other supplies in the chain follow the rules on supplies of goods without transport; POS: supplies without transport acc to Art 31 VAT Dir.

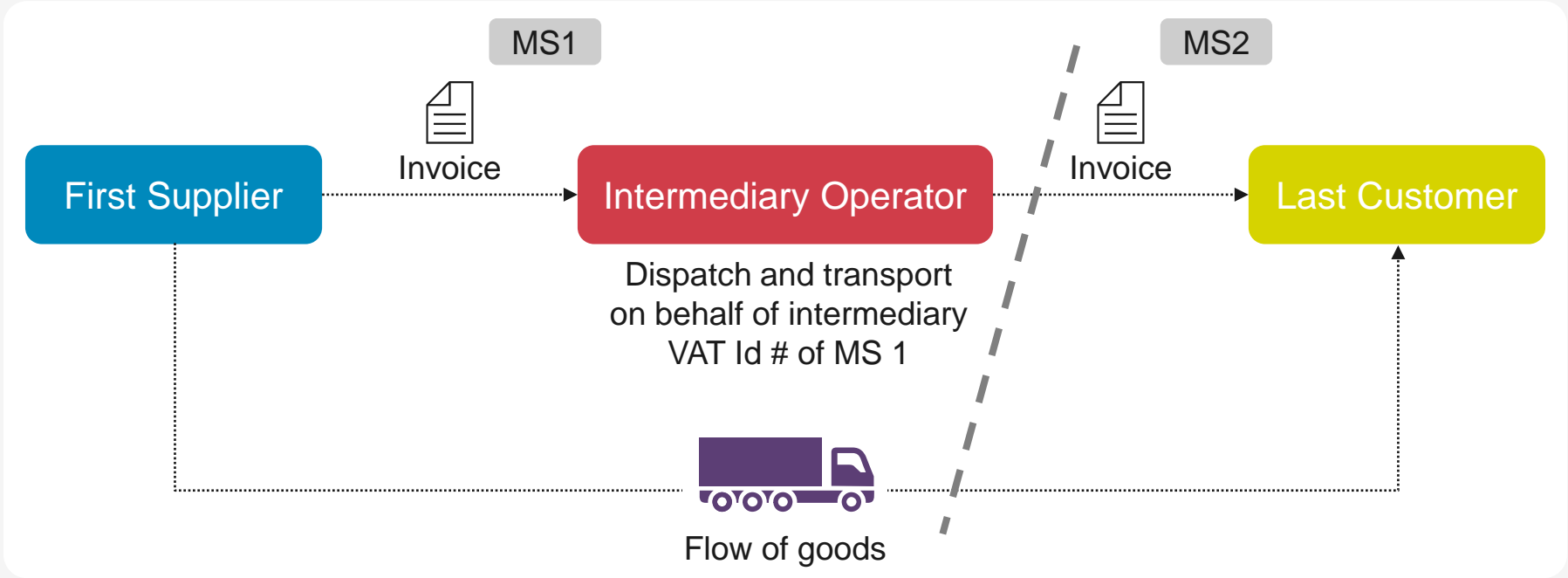
Derogation rule: (Art 36a (2) VAT Dir)

- ❖ Transport will be ascribed only to the supply made **by** the 'intermediary operator' if he communicates to his supplier VAT ID issued to him by MS of departure.

CASE 1



CASE 2



ALTERNATIVES/FURTHER ASPECTS TO CONSIDER



New Art 36a VAT Dir is only **place of supply** rule (which supply is iC supply) but does not automatically rule on **tax exemption** for iC supplies (Art 138 VAT Dir)!



Dispatch or transport on behalf of first supplier/ last customer?



Chain transaction involving imports and exports?



Only taxable persons involved?



Transactions with more than three parties involved?



Coexistence/overruling simplification rule for triangulations?





QUICK FIXES
CALL-OFF STOCK

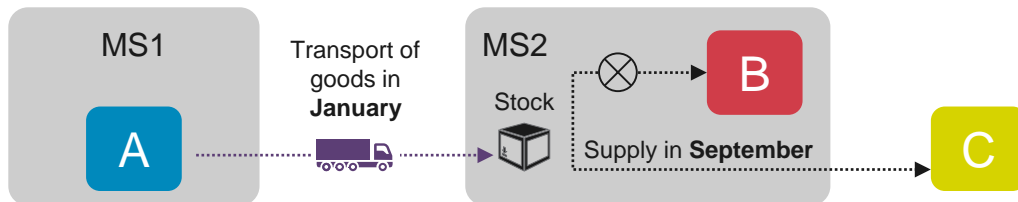
QUICK FIXES: CALL-OFF STOCK



1. General case covered by the simplification



2. Supply to another person



A Taxable person **B** Taxable person **C** Status or location not relevant

- ❖ **In January**, A has to indicate the transport of the goods in a register and has to mention in this recapitulative statement that B is the person for whom goods have been sent under the call-off stock arrangements
- ❖ **In January**, the stock keeper (B or third person) has to indicate the arrival of the goods to the stock in a register held by him
- ❖ **In September**, A and B have to declare an intra community supply/acquisition in the VAT return (and in the recapitulative statement). A and B will have to make the necessary indications in their registers.

QUICK FIXES: CALL-OFF STOCK



3. Return of the goods



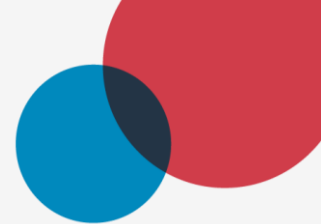
4. Exceeding of the period of 12 months



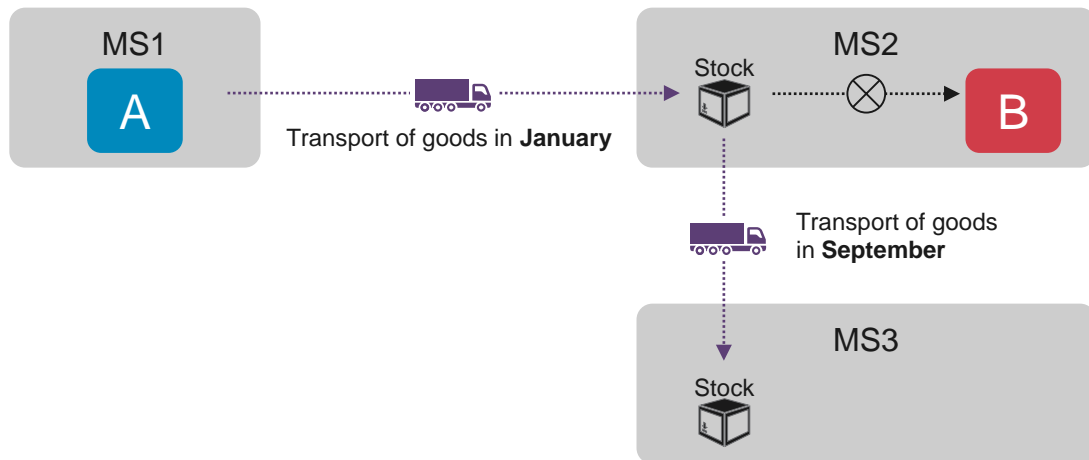
A Taxable person

B Taxable person

QUICK FIXES: CALL-OFF STOCK



5. Goods sent to another member state



A Taxable person

B Taxable person



QUICK FIXES
VAT-ID-NO/PROOF
OF TRANSPORT



❖ **Example 1:** Entrepreneur A in MS 1 supplies goods to Entrepreneur B in MS 2. (P): B has no VAT ID. Is the supply VAT exempt?

- The new Art.138 VAT Directive requires that the recipient of the goods has to be registered for VAT purposes and has indicated his VAT ID to the supplier
- VAT ID becomes a legal requirement for the VAT exemption
- The ECJ judgements concerning formal errors (eg Plöckl) won't help
- The requirements set by new Art.138 VAT Directive are not fulfilled
- Thus, the VAT exemption for intra-Community supplies isn't applicable.

VAT ID



- ❖ **Example 2:** Entrepreneur A in MS 1 supplies goods to Entrepreneur B in MS 2.
(P): B's VAT ID has not been granted on time but is granted afterwards.
 - Question whether a new invoice is sufficient even if the VAT ID is not valid at the moment of delivery
 - A clarification of the European Commission is necessary.

- ❖ **Keep in mind:**
According to new Art.138 para. 1a VAT Directive the VAT exemption for intra-Community supplies requires that the recapitulative statement concerning the supply is complete and correct.

ART. 45A IMPLEMENTING REGULATION

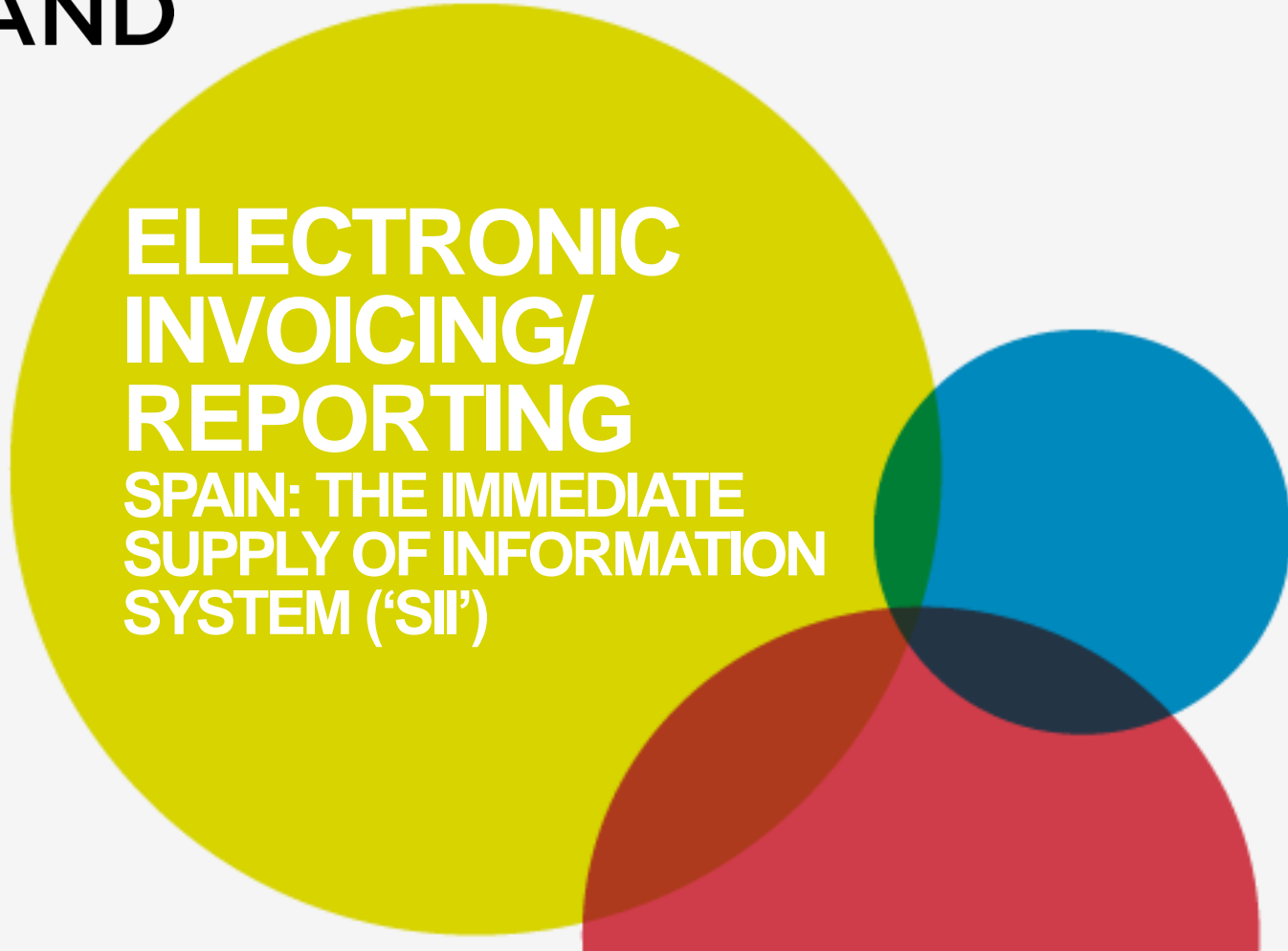


- ❖ **Example 1:** Entrepreneur A from MS 1 supplies goods to entrepreneur B in MS 2. A receives a CMR consignment bill and an invoice concerning the transport from the carrier.
 - These documents don't meet the requirements set by Art.45a VAT Implementation Directive. It is necessary that the documents are issued by two distinct parties who are different from the supplier and the purchaser.

- ❖ **Example 2*:** Entrepreneur A receives a CMR consignment bill and an account statement about the payment of the transport.
 - Here, the documents are issued from two distinct parties: the carrier and the bank. The requirements of Art.45a VAT Implementation Directive are fulfilled.



**ELECTRONIC
INVOICING/
REPORTING**



**ELECTRONIC
INVOICING/
REPORTING
SPAIN: THE IMMEDIATE
SUPPLY OF INFORMATION
SYSTEM ('SII')**

WHAT IS THE SII AND WHO HAS TO APPLY IT?



- ❖ Way in which certain VATpayers (those who have to file monthly VAT returns) have to comply with their VAT accounting obligations (register books)
- ❖ Altogether, they represent 80% of the total VAT invoiced in Spain
- ❖ The information on invoices received and issued has to be posted within four days in the website of the State Tax Agency
- ❖ The Tax Agency cross-checks the information when this is possible. That should allow them to react faster in case of fraud/underpayment
- ❖ Penalties for non-compliance/delays foreseen. Proportionality?

THE LEGAL BASIS



Accounting obligations, in general, are based on Arts. 242 (and 243 of the PVD): Accounts in sufficient detail for VAT to be **applied** and its application **checked** by the tax authorities.



Additional reference is made to Art. 273 (which, in fact, must be the real basis for the new system): Member States may impose other obligations which they deem necessary to ensure the **correct collection** of VAT and to **prevent evasion**.



WHAT IS HAPPENING TODAY?



Probably too early to tell, as fighting VAT fraud in Spain is concerned (the VAT gap is apparently the second lowest in Europe).



However, several tax payers have been notified that the amount of input VAT reported in the system does not match their deductions in the VAT return, so that the difference is not deductible.



Principle of rejection of formalism?





**HUNGARY
ONLINE
INVOICING DATA
EXCHANGE**

AS OF 1 JULY 2018



Data resource

Accounting | ERP |
Manual data | Excel

Invoicing software

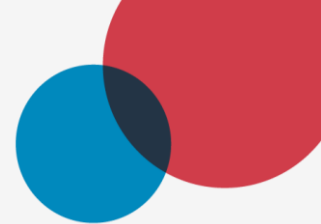
Data processing
| XML

Hungarian tax authority (HTA)



National Tax and
Customs Administration

IN CASE OF INVOICES ISSUED BY INVOICING SOFTWARES



Personal scope

- ❖ Outgoing invoices between taxable persons (B2B) with HU VAT ID.

Material scope

- ❖ Invoices containing output VAT exceeding **HUF 100,000 (EUR 320)**
(but: tax-exempt and reverse charge invoices are out of scope)
- ❖ Computer generated invoices (paper-based and e-invoices) and manual invoices.

Content

- ❖ Data report shall comply at least with the data content of an invoice or invoice-equivalent documents (eg modifying invoice, cancelling invoice) (VAT Act 169. § és 170. §) (non-mandatory data can also be included).

MAIN RULES



- ❖ Software-to-software connection (invoicing software or +module)
- ❖ Automated, real time (Token time), without human intervention
- ❖ Registration of taxpayer, endpoint and invoicing program
- ❖ Online data exchange v Data export v Domestic itemised report
- ❖ Error management:

Within 24 hours
after error correction.

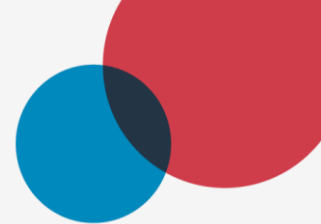


Malfunction exceeding 48 hours:
reporting to HTA, manual data exchange
within 24 hours after the 48-hour period.



❖ TAXAND

STANDARD RESPONSE MESSAGES



SERVICES



XML



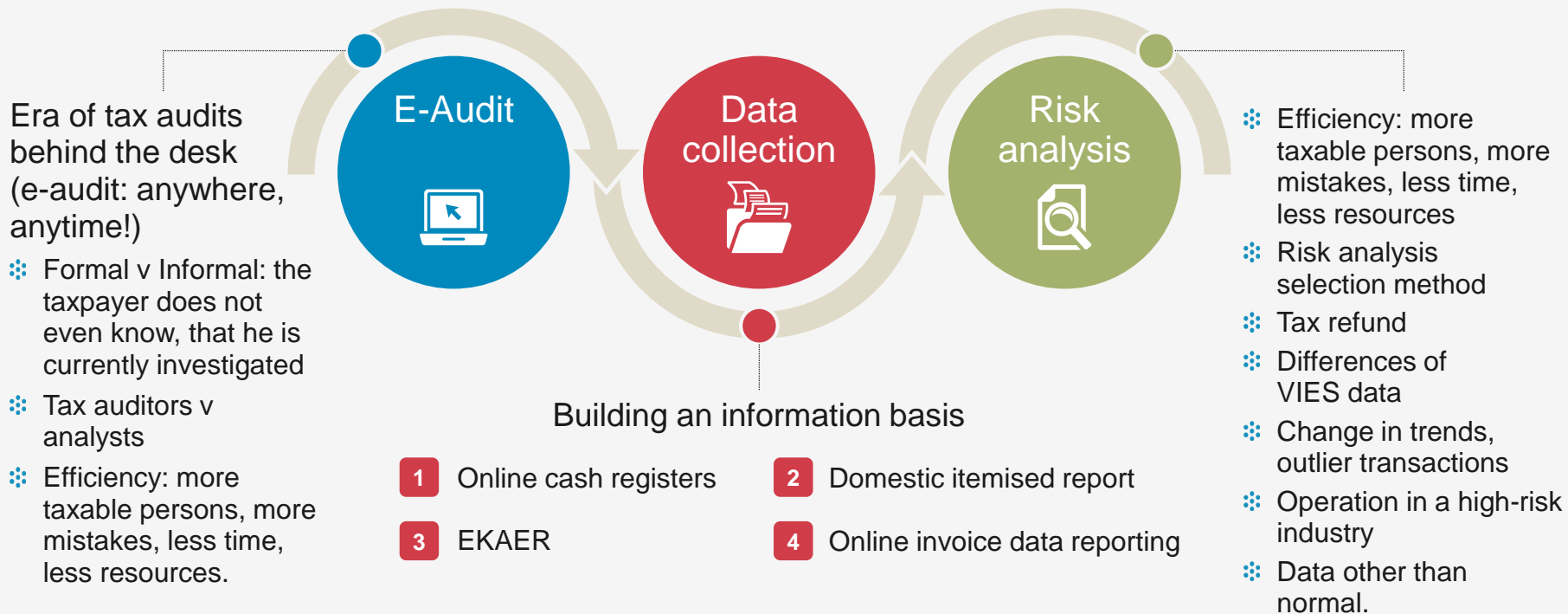
MANUAL INVOICES



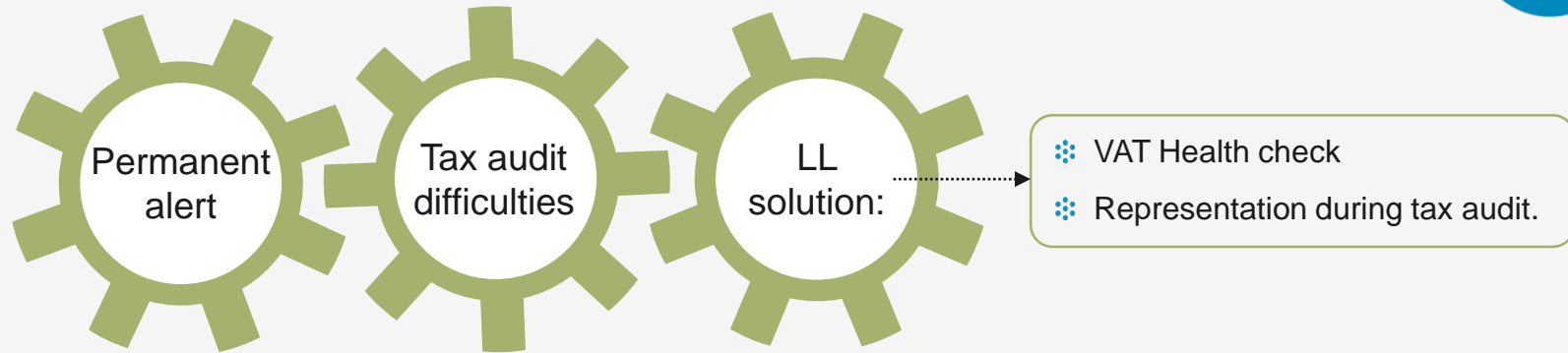
- ❖ **Reporting manually**
(also Modification/Cancellation):
 - **Weekly:** invoice containing VAT of HUF 100,000-499,999
 - **Daily:** invoice containing minimum HUF 500,000 VAT.

- ❖ Obvious pressure for using an invoicing software instead of manual invoicing.

- ❖ HTA invoicing program (free-of-charge, but easy).



PREPARATION FOR A TAX AUDIT



- ❖ Serving tax auditors: difficult, time consuming
- ❖ Inappropriate VAT treatment: tax shortage, 50% tax penalty + late payment interest
- ❖ Legal remedy

- ❖ Identifying basic data of VAT
- ❖ Review and structuring Master Data
- ❖ Providing correct VAT treatment
- ❖ Identification and management of data to be exchanged
- ❖ Performing cross-checkings
- ❖ Detecting inappropriate documentation
- ❖ Connection to accounting and IT systems
- ❖ Data retention
- ❖ Preparing and revising a code of invoicing



**SPEAKER
PROFILES**

SPEAKER PROFILE



Barbara Fleckenstein-Weiland

Flick Gocke Schaumburg, Taxand Germany

T: +49 69 71703 0 | E: barbara.fleckenstein-weiland@fgs.de

Barbara Fleckenstein-Weiland is a member of Taxand's global indirect tax leadership team and partner of Flick Gocke Schaumburg, which is Taxand Germany. Barbara is specialised in VAT, Customs and Energy taxes.

She represents Taxand in the VAT expert group of the European Commission.

SPEAKER PROFILE



Andreas Erdbrügger

Flick Gocke Schaumburg, Taxand Germany

T: +49 30/21 00 20-0 | E: andreas.erdbuegger@fgs.de

Andreas Erdbrügger is a partner at Flick Gocke Schaumburg in Berlin.

Andreas has more than 15 years experience in German and European VAT law. He advises national and international clients on VAT in connection with transactions, business modelling, tax audits, litigation and compliance management. Additionally he is experienced in the tax advice of not-for-profit organisations.

Andreas is a qualified lawyer (Rechtsanwalt) and tax advisor (Steuerberater). He got his PhD from the Free University of Berlin in accounting law. Andreas is a lecturer in VAT at the Free University of Berlin and regularly publishes in VAT journals and commentaries.

SPEAKER PROFILE



Hannes Gurtner

LeitnerLeitner, Taxand Austria

T: +43 732 70 93-329 | E: hannes.gurtner@leitnerleitner.com

Hannes Gurtner, tax partner with more than 20 years' experience in the field of European VAT is heading the VAT department of LeitnerLeitner. He regularly publishes articles and commentaries on international VAT topics, acts as a speaker at various seminars and congresses, and leads VAT training courses and educational sessions in businesses as well as in public educational organisations and universities.

In October 2014 he became a member of the European Commission's VAT Expert Group, and in October 2016 his mandate was prolonged for another three years. With his long-standing experience in European VAT, especially with respect to the CEE region, he is a sought-after advisor for various international companies already doing business or just starting up in countries in which they are non-resident.

SPEAKER PROFILE



Judit Jancsa-Pék

LeitnerLeitner, Budapest, Hungary

T: +36 1 279 29-30 | E: jancsa-pek.judit@leitnerleitner.com

Judit Jancsa-Pék is a leading tax advisor and partner by LeitnerLeitner since 2006.

She is an economist and certified tax consultant under Hungarian law with special focus on Transfer Pricing, International corporate taxation, Mergers and acquisitions & reorganizations and VAT. In addition to her Hungarian professional education, she gained a diploma in international taxation at the International Tax Institute of the WU Vienna University of Economics and Business.

She is frequent lecturer at national and international tax seminars, conferences and publisher of articles in various topics of national and international taxation.

SPEAKER PROFILE



Martijn Jaegers

Taxand Netherlands

T: +31 20 435 64 14 | E: martijn.jaegers@taxand.nl

Martijn Jaegers is a VAT and Customs partner at Taxand Netherlands. He has been advising clients active in various industries for almost 20 years. The assignments extend beyond the rendering of tax advice alone, as dispute resolution and court representation have become increasingly important. Martijn is an attorney-at-law and is admitted to the Amsterdam Bar.

SPEAKER PROFILE



Carlos Gómez Barrero

GARRIGUES, Spain

T: +34 91 514 52 00 | E: carlos.gomez.barrero@garrigues.com

Carlos Gómez Barrero is a partner at Garrigues. He joined the Firm in 1991 and specialized in VAT in 1995. He is the Head of the VAT practice since 2009.

He predominantly works with major companies on VAT matters, particularly in the telecommunications, energy & utilities and financial services industries and has extensive experience in dealings with the VAT authorities.

He was appointed as a member of the VAT Expert Group in 2012 in his individual capacity and represents Taxand in the Group since 2014.