



## Austria

### 1. Current Law

#### 1.1. Chain transactions

In Austria, the VAT treatment of chain transactions is currently not regulated by law. However, several court decisions from the Highest Administrative Court (VwGH) dealing with the issue are available. To sum up, in a chain transaction with three parties involved (A-B-C), whereby the middleman B is organizing the transport, in general the transport shall be allocated to the first supply from A to B, unless one can prove “certain circumstances” that require different allocation. However, it was never further stipulated what those “certain circumstances” may consist of. In case transport is organized by the last party in the chain, the transport shall be allocated to the supply from B to C. Following the jurisprudence of VwGH, the Austrian tax authorities laid down in its VAT Guidelines concerning a cross border chain transaction with 3 parties involved (A-B-C) whereby the middleman B is organizing the transport, that the intra community transport shall be ascribed to the supply from A to B with no further choice to deviate (see e.g. VAT guidelines No 450).

#### 1.2. Consignment stocks

In the Austrian VAT Act there is no simplification rule concerning consignment stocks and therefore the “regular” rules would apply. However, the Austrian tax authorities provide for a simplification rule in the Austrian VAT Guidelines (No 3603) for consignment stock and call off stock. The simplification measure is exclusively applicable towards the Member State Belgium, Finland, Ireland, the Netherlands, United Kingdom, France and Italy or to Member States that allow the simplification on reciprocity.

According to the simplification rule the consignment stock will be deemed transparent for VAT purposes with the result that suppliers have not to register in the member state where the stock is located but is deemed to carry out directly an iC supply to its customer at the time customer withdraws goods from stock. Precondition for that treatment is that the stock is only at the disposal of one taxable person and that the goods are taken out from the stock within six months after their storage. Further, that the competent tax authorities will be informed before the application and that goods shipped to or taken out of the stock is recorded properly.

#### 1.3. Proof of Intra-Community transport

In order to benefit from zero rate for iC supplies, the VAT law requires that transportation of goods to another EU member state has to be proven according to VAT regulation BGBl Nr. 401/1996.

Depending on the fact whether the dispatch or transport was carried out on behalf of the supplier or the customer, the proof may be exercised as follows:

Transport by supplier or customer

- Copy of the invoice
- Commercial document with reference to place of destination in another member state
- Signed declaration of the customer or his representative that the goods have arrived on place of destination or will be transported to the place of destination in another member state

Dispatch on behalf of supplier or customer

- Copy of the invoice
- Commercial transport document from the carrier (e.g. bill of lading, a completed CMR waybill etc.)

## 2. Draft Law

### 2.1 Chain transactions

The new regulation of Art 36a VAT directive will be according to existing draft law implemented properly. Thus, the definition on (i) chain transaction and (ii) intermediary operator as well as rules to which the supply the transport has to be ascribed, will be implemented in Sec 3 (15) Austrian VAT law. However, according to local draft law following regulations will derogate or go further than the European specifications

- The dispatch or transport shall be ascribed to the supply made by first supply in the chain in case the first supplier organizes the transport.
- The dispatch or transport shall be ascribed is ascribed to the supply made by last customer in the chain in case the last customer organizes the transport.
- Rules on chain transaction shall be applicable even if the goods are dispatched or transported from outside the EU into the EU or from the EU to territories outside the EU.

Rules on chain transactions shall be applicable even if last customer is a non-taxable person

- If a supplier in the chain orders the dispatch or transport by another supplier in the chain, the later will be deemed the intermediary operator

### 2.2 Consignment stocks

According to the wording of the draft law, the relevant provision In the VAT directive will be implemented correctly into national VAT law without any derogations.

### 2.3 Proof of Intra-Community transport

As Art 45a of the implementing regulation (EU) No 282/2011 is binding local law without any act of implementation, the Austrian law maker explicitly restrain from any implementing acts.

However, according to the explanatory notes to the draft law taxable person may decide to proof the intra community transport by applying either Art 45a of the implementing regulation (EU) No 282/2011 or VAT regulation BGBl No 401/1996 that still will be in force.

## 3. Other relevant information

For the time being, no guidelines from the tax authorities with detailed informations or examples to the new regulations are published but expected to come into force by end of the year.