

Spain

General Information

The Quick Fixes have been transposed into domestic VAT law by the Royal Decree-Law 3/2020 of February 4th, published in the Official Gazette (BOE) on February 5 2020, which amends the legal provisions and secondary legislation.

These amendments enter into force on March 1st 2020.

1. Chain supplies

1.1 Previous rules.

In Spain, the VAT treatment of chain supplies – as now defined in the VAT Directive - is not specifically foreseen in the law.

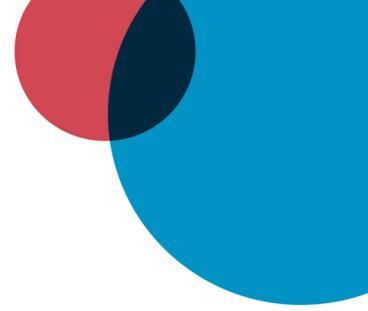
The Directorate General of Taxes has echoed the interpretation which the Court of Justice of the European Union (CJEU) has made of article 31 and 32 of the Directive, to determine to which supply of goods the intra-Community transport should be ascribed and, therefore, which should benefit from the exemption.

1.2 Regulation after implementation of EU provisions.

The Royal Decree-Law has introduced the amendment of the place-of-supply rule of article 68.Two.1 of the VAT Law, for the specific cases involving supplies of goods that entail successive supplies with intra-Community transport. In line with EU provisions, these rules will permit determining which supply must be linked to the transport and, thus, which will benefit from the exemption.

As established in article 36a of the VAT Directive (as amended):

- The dispatch or transport shall be deemed linked to the supply of goods made in favor of the intermediary operator.
- It may however be deemed linked to the supply made by the intermediary operator in the cases where it has communicated to the supplier a VAT number issued by the Kingdom of Spain.
- The rest of supplies in the chain will be local supplies either in the Spanish VAT territory or in the territory of the Member State of destination of the goods.



1.3 Wording introduced by the Royal Decree-Law 3/2020.

- Amendment of article 68.Two.1 of the VAT Law (we underline the provisions introduced).

1. A). Supplies of movable tangible property to be dispatched or transported for the purpose of being made available to the purchaser, where dispatch or transportation begins in said territory, without prejudice to the provisions of Subarticle 4 herein

Notwithstanding the provisions of the foregoing paragraph, where the place in which the dispatch or transportation of the goods to be imported begins is situated in a third country, supplies of those goods by the importer and, as the case may be, by successive purchasers shall be deemed made in the territory where the tax applies.

B) For the purpose of the provisions of the first paragraph of letter A) above, in the case of goods which are the subject-matter of successive supplies, shipped or transported to another Member State directly from the first supplier to the final purchaser of the chain, the dispatch or transport shall be deemed linked solely to the supply of goods made in favor of the intermediary operator.

However, the dispatch or transport shall be deemed linked solely to the supply made by the intermediary operator when it has communicated to its supplier a tax identification number for value added tax purposes provided by the Kingdom of Spain.

For the purposes of the two preceding paragraphs, “intermediary operator” shall mean a trader or professional other than the first supplier, which dispatches or transports the goods directly, or a third party in his name and behalf.

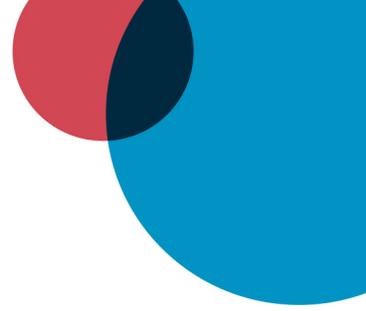
2. Call-off stock

2.1 Previous rules.

Spain had not legally adopted any measure to simplify the treatment of this type of situations. Thus, under the previous provisions, the dispatch of the goods to Spain was treated as a deemed intra-EU acquisition of goods (which may be zero-rated if the taxable person is entitled to a refund of VAT through procedure envisaged for non-established entrepreneurs), followed by a local supply of goods when transfer of title took place. VAT in this local supply is reverse chargeable by the recipient again to the extent the supplier is not established in Spain.

Despite of this, in some occasions there has been a more flexible interpretation by the Directorate of Taxes for very specific cases such as those in which goods are received in Spanish VAT territory from another Member State with destination to the client’s warehouse, where the client acquires possession and fully assumes the risk of their loss upon receipt.

In these cases, the DGT has ruled that there is not a transfer of goods, but a direct intra-Community supply with its corresponding intra-Community acquisition in Spanish VAT territory as from the time the goods arrive to the client’s warehouse.



2.2 Regulation after implementation of EU provisions.

Royal Decree-Law 3/2020 has provided for the inclusion in Spanish law on the same terms as those provided for in article 17a of the VAT Directive.

The VAT Regulations approved by Royal Decree 1624/1992, of 29 December 1992 (VAT Regulations), also include the provisions referred to in article 54a of Council Implementing Regulation regarding the obligation to record specify certain information in the specific register book to be kept by taxable persons carrying out this type of supplies.

Specifically, that inclusion has been made in the amendment of articles 66, 79 and 80 of the VAT Regulations, regulating both the obligation to include these transactions in the “register book of certain intra-Community transactions” and in the recapitulative statements.

Lastly, it amends article 15 of the VAT Law, relating to intra-Community acquisitions of goods, to include acquisitions made in the context of a call-off stock arrangements, as well as article 25 of the VAT Law, to include these supplies, where applicable, in the scope of the exemption for intra-Community supplies of goods.

2.3 Wording introduced by Royal Decree-Law 3/2020:

- Amendment of article 9. 3 of the VAT Law (insertions underlined).

3. The transfer by a taxable person of a tangible asset from his business to another Member State to meet his requirements in that other Member State That shall not include transfers made in the context of an agreement for the sale of goods on consignment on the terms established in article 9.bis of this Law.

- Inclusion of the new article 9. bis of the VAT Law.

“Article 9 bis. Agreement for the sale of goods on consignment

One. For the purposes of the provisions of this Law, an agreement for the sale of goods on consignment shall mean that in which the following requirements are met:

a) The goods must be dispatched or transported to another Member State by the vendor, or by a third party in his name and behalf, in order for those goods to be acquired, at a time after their arrival, by another authorized trader or professional, in accordance with a prior agreement between both parties.

b) The vendor that dispatches or transports the goods must not have its place of business or a fixed establishment in the Member State of arrival of the dispatch or transport thereof.

c) The trader or professional that is going to acquire the goods must be identified for value added tax purposes in the Member State of arrival of the dispatch or transport, and that tax identification number, as well as his first and last names, or full business name must be known by the vendor at the moment of commencement of the dispatch or transport.



d) The vendor must have included the shipment of those goods both in the book determined by regulations and in the recapitulative statement mentioned in article 164. One.5 of this Law, in the manner determined by regulations.

Two: Where, in the period of twelve months following the arrival of the goods in the Member State of destination in the context of an agreement for the sale of goods on consignment, the trader or professional mentioned in letter c) of the preceding subarticle, or in letter a') of the second paragraph of the following subarticle, acquires the right to dispose of the goods, it shall be considered that in the territory where VAT applies, there is, as the case may be:

- A supply of goods of those envisaged in article 68.2.1.A), first paragraph, of this Law, by the vendor, to which the exemption established in article 25 of this Law will apply, or

- An intra-Community acquisition of goods of those envisaged in article 15.1.b) of this Law, by the trader or professional that acquires them.

Three. It shall be deemed that there has been a transfer of goods such as that referred to in article 9.3 of this Law, when, in the context of an agreement for the sale of goods on consignment, within the period of twelve months established in the preceding subarticle, any of the conditions established in subarticle one above is breached, in particular:

a) When the goods have not been acquired by the trader or professional for which they were initially intended.

b) When the goods were dispatched or transported to a destination other than the Member State for which they were initially intended according to the agreement for the sale of goods on consignment.

c) In the case of destruction, loss or robbery of the goods.

However, the requirements of subarticle one above shall be deemed met when, within that period:

a') The goods are acquired by a trader or professional who replaces the one mentioned in letter c) of subarticle one above, fulfilling the requirements established in that letter.

b') The right to dispose of the goods has not been transferred and the goods are returned to the Member State from which they were dispatched or transported.

c') The circumstances set forth in letters a') and b') have been included by the vendor in the book established by regulations.

Four. It shall be considered that the transfer of goods mentioned in article 9.3 of this Law has taken place when, in the context of an agreement for the sale of goods on consignment with the conditions established in subarticle one above being met, the period of twelve months from the arrival of the goods in the Member State of destination has elapsed without the trader or professional mentioned in letter c) of subarticle one or in letter a') of the second paragraph of subarticle three of article 9bis having acquired the right to dispose of the goods.



Five. The traders or professionals that sign an agreement for the sale of goods on consignment and those who replace the one to whom the goods were initially intended must keep a book of these transactions on the conditions established by regulations.”

- Amendment of article 15. One of the VAT Law.

One. “Intra-Community acquisitions of goods” means:

a) The acquisition of the right to dispose of movable tangible property dispatched or transported to the Spanish VAT territory, to the person acquiring the goods, from another Member State, by the transferor, the person acquiring the goods himself or a third party for and on behalf of either of the foregoing

b) The acquisition of the right to dispose of movable tangible property in the context of an agreement for the sale of goods on consignment, on the terms established in article 9.bis, subarticle two, of this Law.

- Inclusion of subarticle four in article 25 of the VAT Law.

Four. The supplies of goods carried out in the context of an agreement for the sale of goods on consignment, on the conditions established in article 9.bis of this Law.

- Amendment of article 75. 8 of the VAT Law.

8. In the supplies of goods included in article 25 of this Law, other than those specified in the preceding number, the tax shall become chargeable on the 15th day of the month following that:

a) In which the dispatch or the transport of the goods to the acquirer commences.

b) In which the goods are placed at the disposal of the acquirer, in the supplies of goods carried out on the conditions specified in article 9.bis, subarticle two, of this Law.

For the purposes of letters a) and b) above, if, prior to that date, an invoice has been issued for those transactions, the tax will be chargeable on the date of issuance thereof.

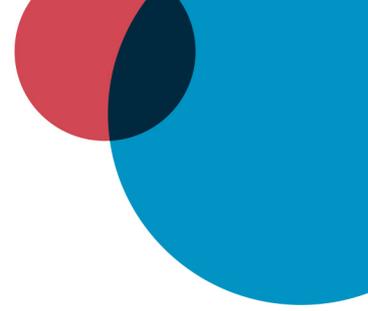
c) At the time of breach of the conditions referred to in subarticle three of article 9.bis of this Law.

d) At the end of the twelve-month period referred to in subarticle four of article 9.bis of this Law.

3. Conditions for the exemption of intra-Community supplies of goods: VAT identification number and inclusion of the supply in the VAT recapitulative statement

3.1 Previous regulation.

The Spanish relevant provisions already required the VAT identification of the recipient, for the exemption to apply (art 25 of the VAT Law). Article 13.3 of the VAT Regulations, stated that the



trader, professional or legal entity not acting as a trader or professional had to be identified for VAT purposes in a Member State other than the Kingdom of Spain, and that this fact were to be evidenced by communicating that number. Administrative courts have interpreted this, however, as a formal requirement following EU Case Law.

The legislation does not contain any condition for the exemption based on compliance with the recapitulative statement, despite the general obligation for taxable persons to file periodically or at the request of the tax authorities, information relating to their economic transactions with third persons (article 164 One. 5 of the VAT Law).

3.2 Regulation after implementation of EU provisions.

Royal Decree-Law 3/2020 gives the same treatment as that established by the Directive so that article 25 of the VAT Law is amended to include:

- The obligation for the acquirer to be identified for VAT purposes in a Member State other than Spain to have communicated it to its supplier.
- The obligation for the vendor to have included the transactions in the recapitulative statement of intra-Community transactions.

In this regard, article 164. One. 5 of the VAT Law mentioned previously will be amended by adding a specific reference to in particular, a recapitulative statement of intra-Community transactions.

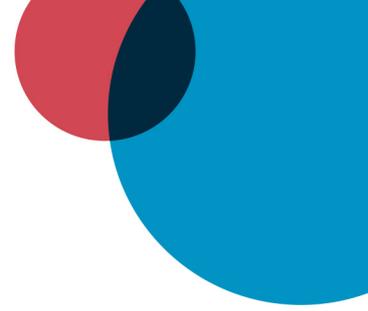
3.3 Wording introduced by Royal Decree-Law 3/2020:

- Amendment of article 25. One and inclusion of subarticle four (we underline the provisions inserted in the current texts).

One. Supplies of goods, as defined in article 8 of this Law, dispatched or transported by the vendor or by the purchaser, or by a third party on behalf of either, to the territory of another Member State, provided that the purchaser is a trader or professional or a legal entity not acting as such, that has an identification number for value added tax purposes assigned by a Member State other than the Kingdom of Spain, that has communicated that tax identification number to the vendor.

The application of this exemption shall be conditional on the vendor having included those transactions in the recapitulative statement of intra-Community transactions provided for in article 164, subarticle one, number 5 of this Law, on the conditions established by regulations.

The exemption described in this subarticle shall not apply to the supplies of goods carried out for those persons whose intra-Community acquisitions of goods are not subject to the Tax in the Member State of destination pursuant to the criteria contained in article 14, subarticles one and two, of this Law.



This exemption will also not apply to supplies of goods carried out under the special scheme for used goods, works of art, antiques and collectors' items, regulated in Chapter IV of Title IX of this Law.

- Amendment of article 164. 5 of the VAT Law.

5. File periodically or at the tax authorities' request, information relating to their economic transactions with third persons and, in particular, a recapitulative statement of intra-Community transactions.

4. Proof of intra-Community dispatch

4.1 Previous regulation.

Proof of intra-Community transport was ruled under article 13 of the VAT Regulations, which permits justification by any legally valid means of proof and, in particular, as follows:

- If carried out by the vendor or on its behalf, through the relevant transport contracts or invoices issued by the carrier.
- If carried out by the purchaser or on its behalf, through the acknowledgment of receipt from the purchaser, a duplicate of the invoice bearing the stamp of the purchaser, copies of the transport documents, or any other proof of the transaction.

4.2 Regulation after implementation of EU provisions.

The Spanish provisions include now a specific reference to the means of proof contained in art 45a of Implementing Regulation 282/2011.

This reference is made without prejudice to the fact that the transport can be proven by any legally valid means of proof.

4.3 Wording introduced by Royal Decree-Law 3/2020:

- Amendment of article 13, subarticles 2, 3 and 4. 1. of the VAT Regulations.
 2. The dispatch or transport of the goods to the Member State of destination shall be justified by any legally valid means of proof and, in particular, through the elements of proof established in each case, by article 45a of Council Implementing Regulation (EU) no. 282/2011 of 15 March 2011, laying down implementing measures for Directive 2006/112/EC on the common system of value added tax according to whether it has been carried out by the vendor, the purchaser or on behalf of either of them.
 3. The purchaser's status shall be proven through the VAT identification number which he provides to the seller.
 4. 1. The dispatch or transport of the goods to the Member State of destination on the same terms as those of subarticle 2 above.