

3. NEW LEGISLATION – MATTERS CONCERNING THE IMPLEMENTATION OF RECENTLY ADOPTED EU VAT PROVISIONS

- 3.1 Origin:** Commission
References: Articles 17a, 36a, 138(1) and (1a), 243(3) and 262(2) of the VAT Directive
Articles 45a and 54a of the VAT Implementing Regulation
Subject: Implementation of the Quick Fixes Package:
Council Directive (EU) 2018/1910 and Council Implementing Regulation (EU) 2018/1912
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Exemption of an intra-Community supply of goods: Application of Article 138(1a) (section 3.3.2.)

1. The VAT Committee **unanimously** acknowledges that the fact that the exemption provided for in paragraph 1 of Article 138 of the VAT Directive shall not apply in cases of non-compliance by the supplier as set out in paragraph 1a can *de facto* only be established a certain period after the moment the supply was made and invoiced.

Indeed, the VAT Committee **unanimously** agrees that it is inevitable that there will be a time span between the moment the supply is made and invoiced to the acquirer and the moment when the supplier has to comply with the obligation provided for in Articles 262 and 263 of the VAT Directive to submit a recapitulative statement. The VAT Committee also agrees **unanimously** that a time span cannot be avoided between the moment when the supplier had to submit the recapitulative statement and the moment where the tax authorities take action as such action can only be triggered by the recapitulative statement not having been submitted or by the submitted recapitulative statement being found not to contain the correct information.

2. The VAT Committee **unanimously** agrees that the supplier shall therefore be able to exempt the supply, at the time the supply is made, subject to the conditions of Article 138(1) of the VAT Directive being met since these are the only conditions relevant at the time of the supply to determine whether or not the exemption applies.

As to the cases envisaged by Article 138(1a) of the VAT Directive, the VAT Committee **almost unanimously** agrees that the exemption may only be revoked retroactively, if and when the tax authorities establish non-compliance of the supplier with the obligation provided for in Articles 262 and 263 of the VAT Directive to submit a recapitulative statement or where the recapitulative statement already submitted by him does not set out the correct information concerning the supply in question as required under Article 264 of the VAT Directive, unless that supplier can duly justify his shortcoming to the satisfaction of the competent authorities.