

## **Court of Justice of the European Union gives strict interpretation of VAT invoicing requirements for simplified triangular transactions**

On December 8, 2022 the Court of Justice of the European Union (CJEU) rendered a notable judgment in the *Luxury Trust Automobil* case (C-247/21) concerning the application of simplified triangulation for VAT purposes. Because this judgment may have significant practical implications, the CJEU judgment and its practical impact are discussed in more detail in this memorandum.

### **1. Background**

If two VAT taxable persons successively supply the same goods and those goods are transported directly from the first supplier in one Member State to the last customer in another Member State, there is a triangular transaction for VAT purposes. Only one of these supplies qualifies as the intra-Community supply in the Member State of dispatch and is as such eligible for the zero VAT rate. For the customer, this supply results in an intra-Community acquisition in the Member State of destination.

If the supply by Party A to Party B (the intermediary) qualifies as the intra-Community supply, the intermediary must in principle report an intra-Community acquisition and subsequent domestic supply in the Member State of destination. The intermediary must register for VAT purposes in that Member State. In addition to this, the intermediary must report a 'number acquisition' in the Member State in which it is identified for VAT purposes ('Member State of identification') if it performs the intra-Community acquisition under a VAT identification number that was assigned by a Member State other than the Member State of destination. The intermediary can only reclaim the VAT payable in respect of this number acquisition if it can demonstrate that it had reported an intra-Community acquisition in the Member State of destination.

However, if the intermediary can apply simplified triangulation in the Member State of destination, the intra-Community acquisition is not subject to VAT in the Member State of destination and the VAT on the subsequent domestic supply is reverse-charged to Party C (the end customer). Under the simplified triangulation, the intermediary also does not have to report a number acquisition in the Member State of identification.

One of the conditions of the simplified triangulation is that the VAT on the domestic supply performed by the intermediary in the Member State of destination must be reverse-charged to the end customer. In that context, the EU VAT Directive requires the intermediary to issue a correct invoice to the end customer. One of the invoicing requirements is that 'Reverse charge' must be stated on the invoice.

If the intermediary applies simplified triangulation, it must report the supply to the end customer as a simplified triangular supply in the EC Sales List in the Member State of identification.

### **2. Facts**

Luxury Trust Automobil is a VAT taxable person established in Austria that had purchased goods (vehicles) from a supplier in the United Kingdom (at the time still an EU Member State) using its Austrian VAT identification number. Luxury Trust Automobil subsequently supplied these goods to M s.r.o., established in the Czech Republic. The

goods were transported directly from the supplier in the United Kingdom to M s.r.o. in the Czech Republic.

Luxury Trust Automobil had issued an invoice to M s.r.o. on which no VAT had been charged and with as reference 'VAT-exempt intra-Community triangular transaction'. Because it believed that the conditions for applying simplified triangulation had been met, it had not reported an intra-Community acquisition in the Czech Republic. Luxury Trust Automobil had reported the supply to M s.r.o. as a simplified triangular supply in its Austrian EC Sales List. It had not reported a number acquisition in its Austrian VAT return. M s.r.o. had not reported the VAT due on the supply performed by Luxury Trust Automobil in its Czech VAT return and according to the CJEU judgment was classified as a manifestly fraudulent missing trader.

After performing an audit, the Austrian tax authorities took the position that the invoice that Luxury Trust Automobil had issued to M s.r.o. did not include the required reference to the reverse-charge mechanism. Thus, in the view of the Austrian tax authorities, the conditions for reverse-charging the VAT to M s.r.o. and, by extension, for applying simplified triangulation had not been met. According to the Austrian tax authorities, Luxury Trust Automobil should therefore have reported a number acquisition in Austria (i.e. the Member State of identification) and should have paid VAT in respect of this number acquisition. After the audit, Luxury Trust Automobil corrected the invoices it had issued to M s.r.o. and added a reference to the transfer of the tax liability to M s.r.o.

### **3. Questions for which a preliminary ruling was sought**

The first question raised by the referring court was whether, for legally valid reverse-charging under the simplified triangulation, it is sufficient for a supplier to issue an invoice without VAT and to state on that invoice that it concerns an 'exempt intra-Community triangular transaction'. If this question has to be answered in the negative, the referring court asked whether the reference stated on the invoice can be amended so as to apply retroactively.

### **4. CJEU judgment**

With regard to the first question, the CJEU firstly pointed out that the simplified triangulation is an optional scheme that departs from the general rule. In order to apply this simplification, the VAT on the domestic supply performed by the intermediary in the Member State of destination must be reverse-charged to the end customer. According to the CJEU, in this respect the EU VAT Directive requires the intermediary to issue a correct invoice to the end customer. The CJEU is thus stating that issuing a correct invoice is a substantive condition for applying this reverse-charge mechanism and, by extension, for the simplified triangulation as such.

According to the CJEU, the purpose of the invoice is, among other things, to inform the customer about the legal qualification of the supply that the person issuing the invoice performed for them. The CJEU considers this purpose to be even more relevant if the person issuing the invoice believes that, by way of exception, it is not they who are liable for VAT but their customer.

Because the simplified triangulation is a scheme that departs from the general rule, the CJEU is of the view that the 'Reverse charge' reference on the invoice ensures that the end customer is aware of their tax obligations arising from the intermediary having opted to apply the scheme. According to the CJEU, there must be no uncertainty about this. In light of this, the CJEU therefore concluded that for the purposes of applying the reverse-charge mechanism under simplified triangulation, the intermediary must specifically state 'Reverse charge' on invoices it issues.

With regard to the second question, the CJEU concluded that the retroactive inclusion of the correct reference on the invoice does not mean that simplified triangulation applies retroactively. In this respect, the CJEU noted that the inclusion of the correct reference on the invoice is a substantive condition for this reverse-charge mechanism and thus for simplified triangulation as such. Retrospectively including the correct reference on an invoice is, in the view of the CJEU, not a correction of an earlier invoice, but the first time the required invoice is issued. According to the CJEU, that cannot have retroactive effect.

## **5. Practical importance**

In this judgment the CJEU stressed the importance of using 'Reverse charge' as a reference on invoices when an intermediary applies simplified triangulation. According to the CJEU, omitting this reference consequently means that the intermediary cannot apply simplified triangulation, and as such it is not possible to correct this error retroactively. That means that the intermediary will have to register for VAT purposes in the Member of State of destination so that it can report an intra-Community acquisition and subsequent domestic supply there. Furthermore, in that case the intermediary must report a number acquisition in the Member State of identification.

In the Netherlands, the Dutch Tax and Customs Administration has (for the time being) approved the use of 'reverse charge simplified triangulation scheme' or 'intra-Community supply' as a reference on invoices in such cases. The latter reference in any case does not seem to us to be compatible with the CJEU judgment.

Although the CJEU's judgment is clear, we believe that it may have been different if the end customer had reported VAT in the Member State of destination. Therefore, we can imagine that Member States will apply the CJEU judgment less strictly in such cases. Nevertheless, it is advisable to use the correct reference on an invoice when applying simplified triangulation so that discussions with the tax authorities about this can be avoided.

For the sake of completeness we would like to point out that, with regard to other reverse-charge mechanisms, such as the reverse-charge mechanism for B2B main rule services or the domestic reverse-charge mechanism for domestic supplies of goods, the EU VAT Directive does not stipulate the use of 'Reverse charge' on issued invoices as a substantive condition for applying those mechanisms. In our view, the impact of the CJEU judgment therefore seems to be limited to the reverse-charge mechanism under the simplified triangulation.

Feel free to contact your Meijburg advisor if you would like to know more about how the above CJEU judgments could impact your company.

KPMG Meijburg & Co  
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