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# VAT compliance issues in the EU

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# Overview

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1. Value added tax (VAT) v. sales tax
2. Import VAT – chargeable event
3. Import VAT – the debtor
4. Import VAT – basis of assessment
5. Import VAT and subsequent supply
6. Different rules for goods and services and VAT exemptions
7. Place of supply for goods
8. Place of supply for goods exported
9. Place of supply for goods imported
10. Chain transactions
11. Triangular transactions
12. Proof for VAT exempt exports
13. Proof for VAT exempt intra-EU supplies
14. VAT deduction or recovery for foreign traders

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# 1. Value added tax (VAT) versus sales tax (1)

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## **Common elements:**

- The consumer in the country concerned bears the burden
- The trader pays the tax to the fiscal authority in the country concerned

## **Differences:**

- VAT is charged both on goods and on services (sales tax is charged only on goods but there may be also a service tax)
- VAT is charged on all phases of the production and sales chain (for sales tax only the last buyer – the consumer – is charged)
- VAT is charged also on importations and on supplies from other EU Member States

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# 1. Value added tax (VAT) versus sales tax (2)

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- A VAT deduction is granted to traders with regard to goods and services they have received so that only the consumer bears the burden (as in the case of a sales tax)
- Exports are VAT exempt (for sales tax no exemption is needed as there is no sale to a consumer in the country concerned)
- Supplies to another EU-Member State are VAT exempt if the buyer is a registered trader because he will pay VAT in his Member State (sales tax is only applied in the country concerned)
- A number of other VAT exemptions exist (e. g. for certain international transport services, VAT warehouses, supplies prior to importation)

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## 2. Import VAT – chargeable event

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Import VAT becomes due when goods coming into the EU fiscal territory

- are released for free circulation (this includes goods from a EU territory outside the fiscal territory, e. g. Canary Islands)
- are not declared to the first customs office in the EU (this includes the non-declaration or wrong declaration of goods)
- leave a suspensive regime (e. g. transit, customs warehousing) legally or illegally

**Example:** A container coming from Japan arrives in Hamburg. It is put on a truck for transport under the transit procedure to Munich.

While the driver has made a stop for lunch, the container is stolen. Import VAT is due on the value of the goods in the container.

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### 3. Import VAT – the debtor (1)

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#### **The persons liable to pay import VAT are designated by the Member States**

In Germany the person liable to pay the customs duty is also liable to

pay import VAT

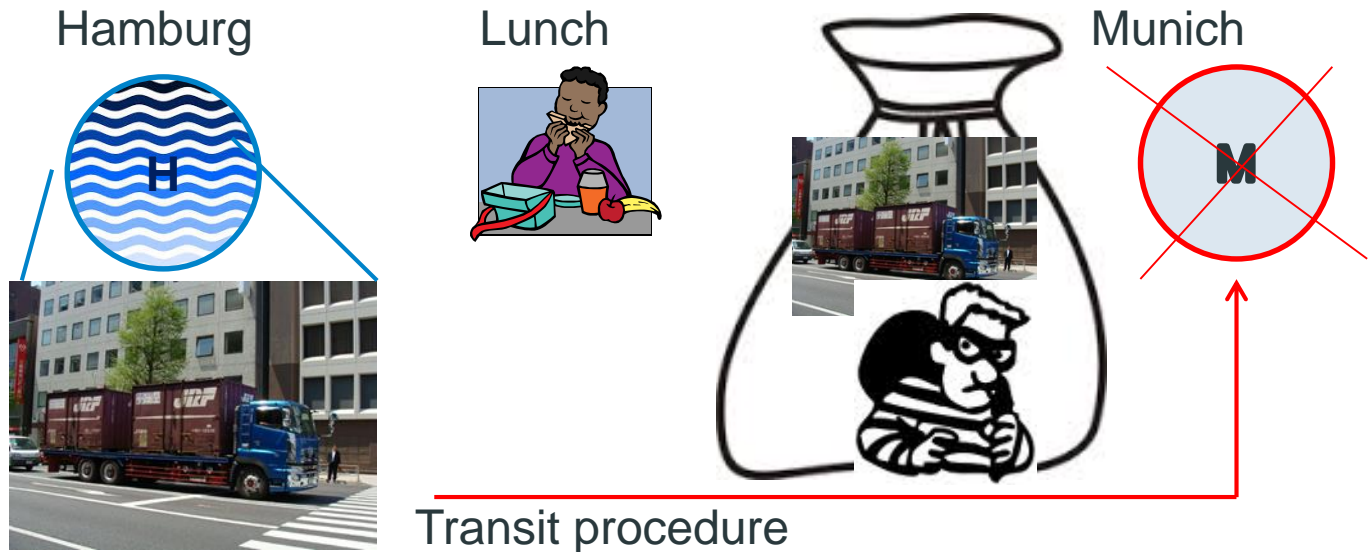
- both for a regular debt (i. e. in the context of a release for free circulation)
- and for an irregular debt (i. e. in the context of an infringement of the customs rules)

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### 3. Import VAT – the debtor (2)

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**Example:** For the container stolen while it was under the transit procedure both the **thief**, the **carrier** and the **holder** of the transit procedure are **debtors**



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## 4. Import VAT – basis of assessment (1)

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### **Customs value +**

- customs duty
- excise duty
- cost of transport and insurance within the EU



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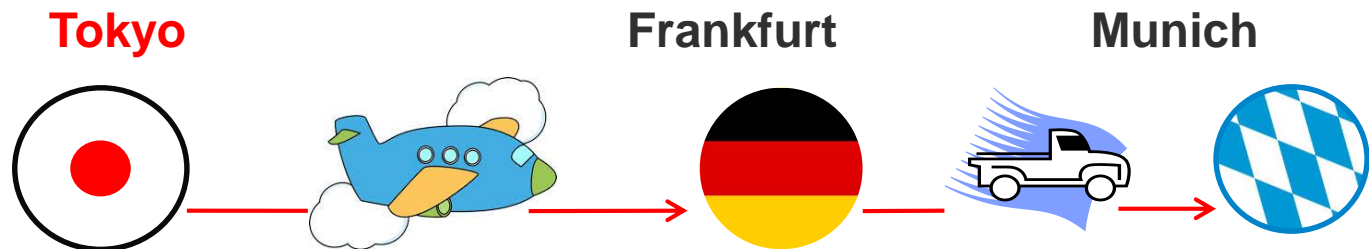
## 4. Import VAT – basis of assessment (2)

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**Example:** Goods are brought by air from Tokyo to Frankfurt where they are released for free circulation and then transported by truck to

Munich

- a) The cost of transport to Munich is known at the time of release for free circulation
- b) The cost of transport is not known at the time of release into free circulation



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## 4. Import VAT – Basis of assessment (3)

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For the assessment of the **customs value** only the cost of transport to

the EU border (Poland) or the Turkish border needs to be taken into

account. For **import VAT** the whole cost of the flight to Frankfurt is taken into account.

For the subsequent transport to Munich, for **VAT** two options exist:

- a) The cost of transport to Munich is included in the value for purposes of import VAT; in that case VAT on the transport service is not due
- b) If the cost of the transport service is not included in the customs value, VAT on services is due unless a VAT exemption (e. g. for international transport) is applicable

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## 5. Import VAT and subsequent supply

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- If the import clearance is made by or on behalf of the importer (taxable or private person), only import VAT is due
- If the import clearance is made by or on behalf of the exporter (this is only possible if the import declaration is made by an indirect representative), besides import VAT also VAT for a supply to the customer (taxable or private person) must be charged to the customer

**Example:** A Japanese exporter supplies goods to a German customer under the DDP (delivered duty paid) clause; he and his indirect representative become debtor of the customs duty and import VAT

**The Japanese exporter must register for VAT in Germany and fulfill the VAT reporting requirements in Germany**

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## 6. Different rules for goods and services and VAT exemptions

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### Examples:

- Off-the-shelf software on a CD
- Customized software on a CD
- Software downloaded on-line
- Supplies for certain hospitals
- Supplies for pharmacies

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## 7. Place of supply for goods (1)

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When goods are sold between persons located in different countries, the country whose VAT is applied must be identified

The VAT rules on the place of supply are the following:

1. If goods are not moved to another country, the place of supply is where the goods are physically located at the time of supply

**Example:** A computer located in Germany is supplied within Germany; it is subject to German VAT at 19% (it does not matter where the supplier or purchaser are located, e.g. in Japan)

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## 7. Place of supply for goods (2)

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2. Goods are sold and are sent by or on behalf of the supplier to a purchaser in another Member State; the purchaser is a private person. According to the distance sale rules
  - a) the place of supply is in the Member State from where the goods are sent until the threshold in the Member State of destination is reached (DE: 100.000 €, BE: 35.000 €)
  - b) the place of supply is in the Member State to which the goods are sent if the threshold is reached or if the supplier has declared that he will not apply the above-mentioned rule

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## 7. Place of supply for goods (3)

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**Example:** A computer is sold by a German trader to a private customer in Belgium; under case

- a) German VAT (19%) is charged on the invoice
- b) Belgian VAT (21%) is charged on the invoice, and the supplier needs to register in Belgium or use a fiscal representative; furthermore he needs to fulfill the VAT reporting requirements in Belgium

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## 7. Place of supply for goods (4)

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3. Goods are installed or assembled by or on behalf of the supplier in another Member State: VAT is due in the Member State where the goods are installed

**Example:** A German company (D) supplies and installs computer equipment in a factory in Belgium (B); the place of supply is in Belgium. As B is a taxable person with a VAT-ID No., D refers in his invoice to this number and indicates „reverse charge“ or „Steuerschuldnerschaft des Leistungsempfängers“, so that no VAT is charged on the invoice. B has to declare and pay Belgian VAT on an intra-EU acquisition; the intra-EU supply by D is VAT exempt; both D and B have to report the intra-EU supply/acquisition



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## 7. Place of supply for goods (5)

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4. Goods are sold and sent to a purchaser in another Member State; the purchaser is – as the supplier – a trader with a VAT-ID No.: the place of supply is in the Member State of destination

**Example:** A German company (D) supplies computer equipment to a factory in Belgium (B). VAT is due in Belgium. D refers in his invoice to the VAT-ID No. of B and indicates “VAT exempt intra-EU supply”. **D charges no VAT.** B has to declare and pay Belgian VAT on an **intra-EU acquisition**; the intra-EU supply by D is VAT exempt

D (VAT-exempt intra-EU supply)



Invoice ref. “VAT exempt intra-EU supply”  
and VAT-ID No. of B

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## 8. Place of supply for goods exported

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Goods are sold and sent to a purchaser (private or taxable person) outside the fiscal territory of the EU: The place of supply is in the EU, but the supply is VAT exempt if the required proof is available

**Example:** A German company (D) supplies computer equipment to a customer in Switzerland (S). D indicates in his invoice „VAT exempt export“ and charges no VAT. S has to declare the import and to pay Swiss import VAT (computer equipment is duty-free). D has to prove the export.



Export invoice no VAT charged

No indication of VAT-ID No. of customer

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## 9. Place of supply for goods imported (1)

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- **Basic rule:** Place of supply is the place from where the goods are dispatched or transported (i. e. from outside the EU); consequence: import VAT is only due if the goods are released for free circulation

**Example:** The German trader D buys from the Japanese trader J a computer. D declares the computer for free circulation and has to pay import VAT. J has no VAT obligations in Germany.

**Exception:** Place of supply is the place where the dispatch or transport of the goods into the EU fiscal territory ends, if the goods are released for free circulation by or on behalf of the seller who becomes debtor of import VAT

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## 9. Place of supply for goods imported (2)

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**Example:** The German trader D buys from the Japanese trader J a computer under the condition „DDP“ (delivered duty-paid). The computer arrives in Hamburg where an indirect representative of J declares the computer for free circulation and pays the import VAT. The place of supply is in Germany, so that J, or his representative has to issue an invoice to D with German VAT. J has to register for VAT in Germany and to file the required reports.

**Exception:** The goods are released for free circulation by or on behalf of the seller who becomes, in principle, debtor of import VAT, but the import takes place in another Member State, so that an exemption of import VAT can be applied due to the subsequent intra-EU supply (so called customs procedure code 42 regime)

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## 9. Place of supply for goods imported (2)

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**Example:** The German trader D buys from the Japanese trader J a computer under the condition „DDP“. The computer arrives in Rotterdam (Netherlands) where an indirect representative of J declares the goods for free circulation under customs procedure code 42. No import VAT is charged. The supply from the Netherlands is VAT exempt as intra-EU supply and D pays German VAT on an intra-EU acquisition. The Dutch fiscal representative fulfills the VAT reporting requirements of J.

**J does not need to register for VAT in the Netherlands**

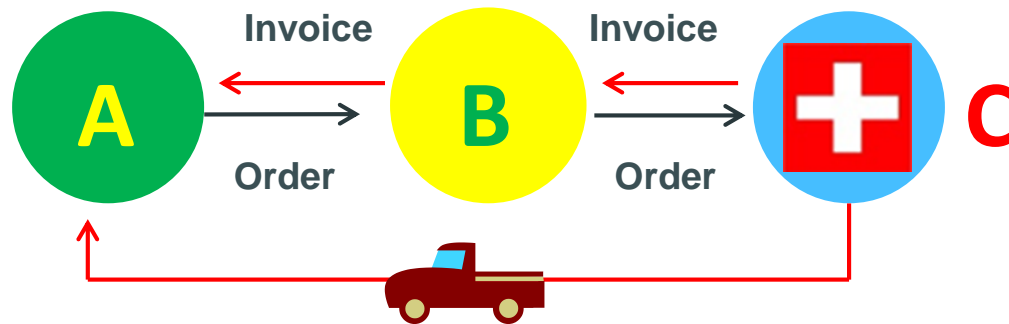
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## 10. Chain transactions (1)

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A chain transaction exists where at least three traders conclude a contract on the same commodity and the commodity is dispatched or transported directly from the first trader to the last.

**Example:** A buys a computer from B that B buys from C. The computer is brought directly from C to A.



If the goods are transported or dispatched to another Member State or out of the EU fiscal territory, it is important to establish the trader to whom the transport has to be attributed, because only that trader can benefit from a VAT-exempt intra-EU supply or export.

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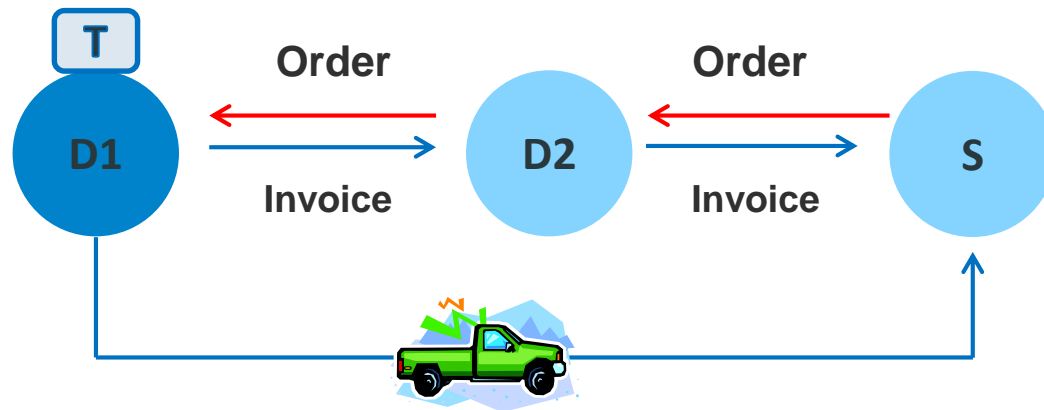
## 10. Chain transactions (2)

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The basic rules are the following:

1. If the goods are transported by, or dispatched on behalf of, the first trader in the chain, the movement is attributed to the first trader.

**Example:** The Swiss trader S buys a computer from the German trader D2. D2 buys the computer from D1. D1 charges a carrier to bring the computer to S.



There are two subsequent supplies (from D1 to D2 and from D2 to S). As D1 dispatches the computer to S, this is the rolling supply for which D1 is entitled to the VAT exemption for export goods.

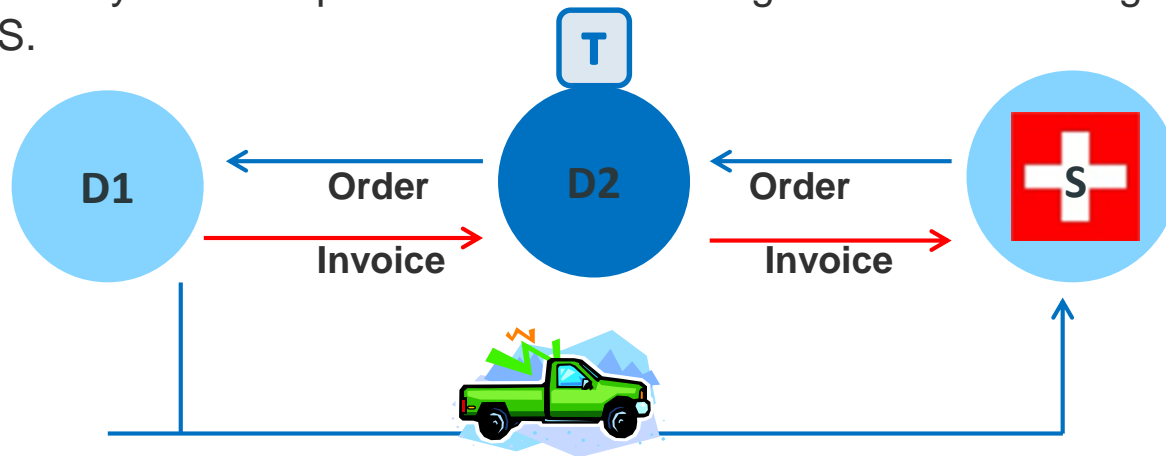
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## 10. Chain transactions (3)

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2. If the goods are transported by, or dispatched on behalf of, the trader in the middle, the movement is – unless proof to the contrary is provided – attributed to this trader.

**Example:** The Swiss trader S buys a computer from the German trader D2. D2 buys the computer from D1. D2 charges a carrier to bring the computer to S.



As D2 dispatches the computer to S, this is the rolling supply for which D2 is entitled to the VAT exemption for export goods.



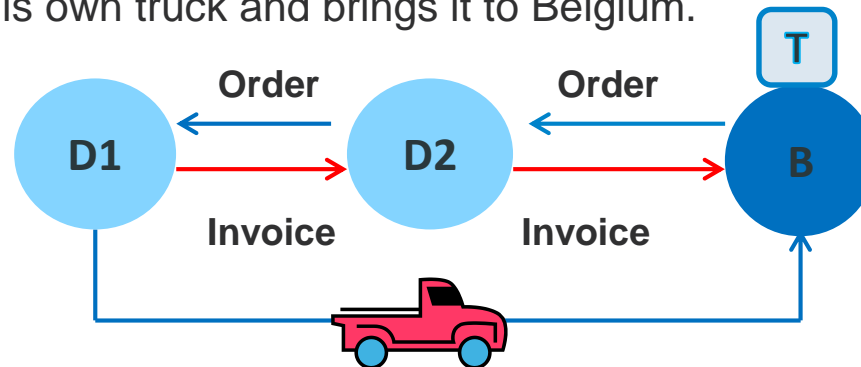
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## 10. Chain transactions (4)

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3. If the goods are transported by, or dispatched on behalf of, the last trader, the movement is attributed to this trader.

**Example:** The Belgian trader B buys a computer from the German trader D2. D2 buys the computer from D1. B picks up the computer from D1 with his own truck and brings it to Belgium.



As B transports the computer from Germany to Belgium, this is the rolling supply for which D2 is entitled to the VAT exemption for an intra-EU supply.

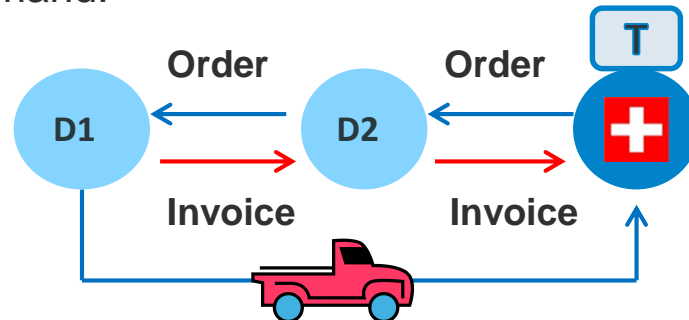
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## 10. Chain transactions (5)

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4. In the previous examples, the rolling supply has been identified. For the other supply (which is not attributed to the movement of the goods) the following rules apply:
- a) The supply which precedes the rolling supply is deemed to take place where the transport or dispatch begins

**Example:** The Swiss trader S buys a computer from D2. D2 buys it from D1. S charges a carrier to pick up the computer from D1 and to bring it to Switzerland.



The rolling supply is the one from D2 to S, for which D2 is entitled to the VAT exemption for export goods. The preceding supply from D1 to D2 is subject to VAT in Germany.

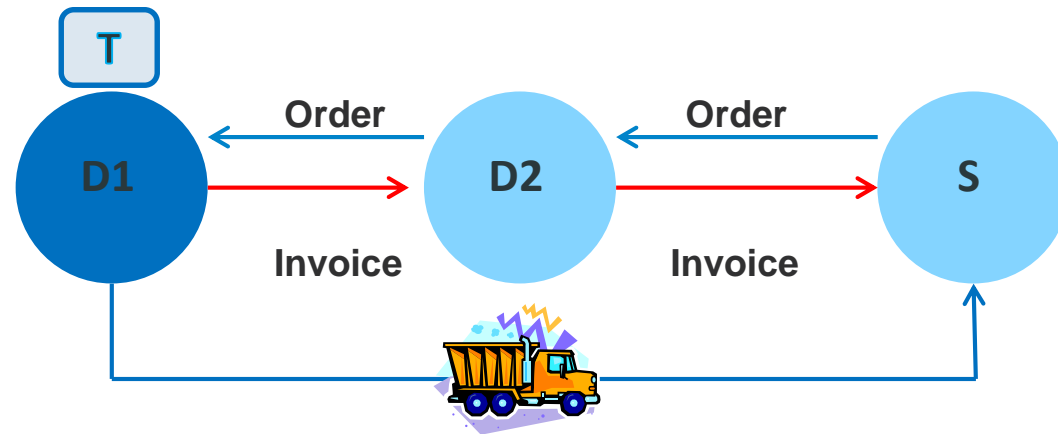
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## 10. Chain transactions (6)

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b) The supply which follows the rolling supply is deemed to take place where the transport or dispatch ends

**Example:** In contrast to the previous example, it is D1 who charges a carrier to bring the computer to S



The rolling supply is the one from D1 to D2, for which D1 is entitled to the VAT exemption for export goods. The subsequent supply from D2 to S is deemed to take place in Switzerland; it is therefore not subject to German VAT.

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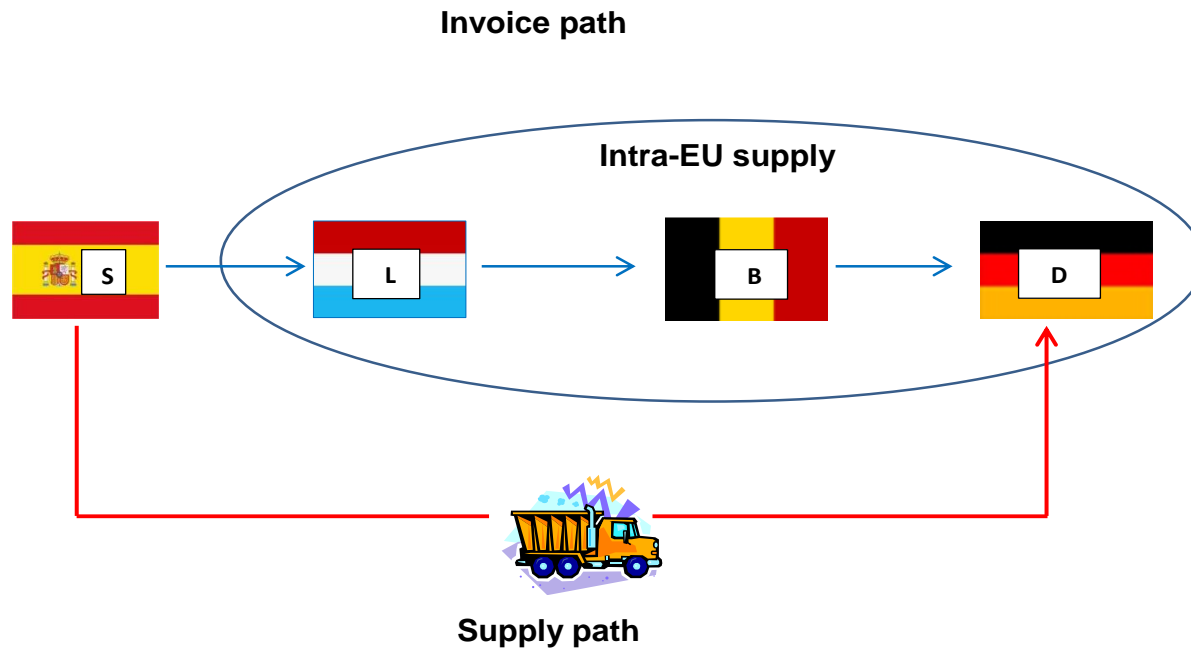
## 11. Triangular transactions (1)

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A special case of chain transactions are intra-EU triangular transactions involving at least three traders registered in three different Member States. In such cases the fiscal debt of the first purchaser in the chain (who is at the same time the intermediate trader) is transferred to his customer (§ 25b UStG).

**Example:** The German trader D orders special machine tools from the Belgian trader B. B orders them from the Luxemburg trader L and asks him to deliver directly to D. As L does not have this type of tools either, he orders them from S in Spain who dispatches them to D.

# 11. Triangular transactions (2)



This is a chain transaction between the four traders, and between L, B and D it is also an intra-EU triangular transaction, because L as first actor in the triangle dispatches the tools to the last trader (D). The place of supply is Spain (as the dispatch starts there). The supply from L to B is, as an intra-EU supply, VAT exempt.

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## 11. Triangular transactions (3)

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The following criteria determine whether the second purchaser and supplier performs a VAT exempt intra-EU supply:

1. The right to dispose of the goods as owner has been transferred  
to the second supplier before the transport or dispatch of the goods
2. The first purchaser has – after the transfer of the ownership and before the goods have left the Member State of supply – informed the supplier that the goods have been sold to a purchaser in another Member State
3. The first supplier or the last purchaser transports or dispatches the goods from the Member State of the first supplier to the Member State of the last purchaser

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## 12. Proof for VAT-exempt exports (1)

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If the goods have been exported under the electronic export procedure, the certification of exit provided by the customs office of export to the exporter or declarant (Art. 796e CCIP) serves as proof for the VAT exemption.

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## 12. Proof for VAT exempt exports (2)

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In his bookkeeping the exporter has to file the following (§13 UStDV):

- the quantity and description of the goods (for vehicles also the ID-No.)
- the name and address of the purchaser
- the date of supply
- the price
- the date of export
- the movement reference number of the electronic declaration

**Note:** If the supply has been entered in the bookkeeping, missing details can be added and errors can be corrected during the appeal procedure (ECJ 27.9.2007, C-146/05, Collée, and BFH, 28.5.2009 VR 23/08)



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## 12. Proof for VAT exempt exports (3)

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For exports made by other means than through the electronic export system the rules differ according to whether the supplier or purchaser has transported the goods or whether the goods were dispatched through an independent carrier:

If the supplier or purchaser has transported the goods, a document containing the following data is required (§ 9 UStDV):

- the name and address of the supplier
- the quantity and description of the goods (for vehicles also the ID-No.)
- the place and date of the export
- a confirmation by the customs office of exit

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## 12. Proof for VAT exempt export (4)

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If the goods are dispatched by an independent carrier, the following proof is required (§ 10 UStDV):

- either the waybill signed by the customer, the bill of lading or the postal receipt
- or other documents used for the carriage of goods, especially one made out by the forwarding agent, containing the following:
  - the name and address of the person issuing the document
  - the date at which the document was issued
  - the name and address of the supplier and of the customer of the transport service

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## 12. Proof for VAT exempt export (5)

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- the quantity and description of the goods (for vehicles also the ID-No.)
- the place and date of export or the place and date of the dispatch to a place outside the EU
- the recipient of the goods, and the place to which the goods are to be brought
- the assurance by the issuer of the document that the indications made in this document are based on business information which can be verified within the territory of the EU
- the signature of the person issuing the document

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## 13. Proof for VAT exempt intra-EU supplies (1)

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### § 17a UStDV stipulates the following proof for intra-EU supplies:

- A copy of the invoice
- A confirmation by the purchaser that the goods have arrived in another Member State with the following data (so-called “Gelangensbestätigung”) which may be added on the invoice
  - the name and address of the purchaser,
  - the quantity and description of the goods (for vehicles also the ID-No.)
  - the place and the month at which the goods arrived
  - the date at which the document was issued
  - the signature of the purchaser or his representative

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## 13. Proof for VAT exempt intra-EU supplies (2)

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**Note:** Electronic confirmation without signature is permitted, if the message comes from the purchaser or his representative; a recapitulative confirmation for a up to a quarter of the year is admitted

Instead of a “Gelangensbestätigung” the following alternative proof is admitted in the case of a dispatch on behalf of the supplier or his customer:

- Shipping evidence, such as the waybill signed by the customer, the bill of lading, the postal receipt together with the payment slip, or the transport order together with a tracking and tracing protocol

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## 13. Proof for VAT exempt intra-EU supplies (3)

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- A signed confirmation by the forwarder (“Spediteurbescheinigung”) containing the following:
  - the name and address of the forwarder, and the date of issue of the order
  - the name and address of the supplier and of the forwarder’s customer
  - the quantity and the commercial description of the goods (for vehicles also the ID-No.)
  - the person receiving the goods, the place where and the month in which the dispatch has ended
  - the assurance by the forwarder that the indications made are based on business information which can be verified within the territory of the EU

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## 13. Proof for VAT exempt intra-EU supplies (4)

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If the goods are dispatched on behalf of the purchaser, the following alternative proof is admitted:

- payment for the goods from an account of the purchaser, and
- a signed confirmation of the forwarder containing the following:
  - the name and address of the forwarder, and the date of issue of the order
  - the name and address of the supplier and of the forwarder's customer
  - the quantity and the commercial description of the goods (for vehicles also the ID-No.)
  - the person receiving the goods and the place
  - a statement that the goods will be transported to the place in the other Member State

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## 13. Proof for VAT exempt intra-EU supplies (5)

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If the goods are sent to another Member State under the Community transit procedure, the following proof:

- a confirmation by the office of departure
- provided it has received a confirmation by the office of destination that the goods have arrived in the other Member State

If goods subject to excise duty are supplied, the following proof:

- the EMCS message of arrival, or
- a copy of the simplified accompanying document required for excise duty relief

If vehicles for which a registration is necessary are transported by the purchaser, the following proof:

- Registration of the vehicle in the Member State of registration



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## 13. Proof for VAT-exempt intra-EU supplies (6)

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**In his bookkeeping the supplier has to file the following (§ 17c UStDV):**

- the name and address of the purchaser
- the name and address of the person charged by the purchaser if it is a retail supply
- the business branch or profession of the purchaser
- the quantity and description of the goods (for vehicles also the ID-No.)

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## 13. Proof for VAT-exempt intra-EU supplies (7)

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**In his bookkeeping the supplier has to file the following (§ 17c UStDV): (continued)**

- the date of supply
- the price
- the transport or dispatch to another Member State
- the place of destination in the other Member State

**Note:** If the supply has been entered in the bookkeeping, missing details can be added and errors can be corrected during the appeal procedure (ECJ 27.9.2007, C-146/05, Collée)

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## 14. VAT deduction or recovery for foreign traders (1)

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1. If a foreign trader registers for VAT in Germany (he does not need a business establishment for that), he must file a VAT return and can get import VAT refunded
2. If the trader does not register for VAT in Germany, he can use a fiscal representative in Germany (who would claim import VAT on his behalf) only if he delivers in Germany only VAT exempt supplies (main situation: use of customs procedure code 42); in other Member States (e. g. Netherlands) this restrictive condition does not exist.

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## 14. VAT deduction or recovery for foreign traders (2)

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3. If the foreign trader is neither registered for VAT nor uses a fiscal representative
  - the electronic refund procedure is used for traders established in another Member State
  - the paper-based refund procedure is used for traders established outside the EU under the condition that reciprocity exists between Germany and the country in which the trader is established

**Note:** Reciprocity exists between Germany and Japan

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# Open questions

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