

A critical comparison of European documentary evidences in the context of intra-Community supplies

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Abstract

This thesis presents an analysis of the unification or rather harmonization potential of European requirements concerning documentary evidences. These evidences are necessary to exempt intra-Community supplies from value-added tax (VAT). The analysis concerns not only the concrete differences in the national requirements but also the fulfillment of European and entrepreneurial conditions and the existence of potential best solutions.

The results of the analysis are not only interesting for entrepreneurs but also for researches. The former ones benefit from this thesis as an overview of the differences is provided and along coming difficulties as additional efforts are studied. For the latter group this thesis contributes to research in general as no European-wide comparison is available and in particular as internationalization decisions are influenced or even affected by the design of documentary evidences in the respective EU Member States.

Hence, the review of literature, the VAT Directive, Council Directives and decisions of the European Court of Justice (ECJ) provide a theoretical basis that shows the need for documentary evidences, the reason for the national differences and their potential design. Furthermore, this basis is used to establish a catalogue of criteria that includes the EU as the initiator of the requirements and the entrepreneur as the person responsible for fulfilling these requirements in order to be able to compare and analyze the national differences.

The study of different national law texts and a survey aiming on the collection of further national requirements led to the comparison and analysis of 16 Member States. Hence, it was possible to conclude that the differences in the requirements on documentary evidences are partly striking but that a common requirement basis would be possible. This was also supported by the facts that none of the countries fulfills both the European and the entrepreneurial requirements and that no country provides a best solution. Therefore, a harmonization proposal is provided that takes also the national wish for sovereignty into account.

This study is restricted by certain limitations concerning formal requirements, facilitating definitions, quality of data and ignorance of further factors. Anyhow, the results that were drawn are valid and important in the limits of this thesis. They do not only indicate that a basic harmonization of requirements on documentary evidences would be advantageous but also that further research potential is available and necessary.

Keywords: Documentary evidences, European Union, Value-added tax (VAT), intra-Community supply, harmonization

Table of contents

Abstract.....	I
Table of contents	II
List of tables	IV
List of figures	V
List of abbreviations	VI
1 Introduction	1
1.1 Background	1
1.2 Research gap, problem and questions	3
1.3 Definitions and limitations	5
1.4 Structure of the study	7
2 VAT as part of the European Business landscape	9
2.1 Development of a European trading area	9
2.2 VAT harmonization in the European Union	13
2.2.1 Initial harmonization developments	16
2.2.2 The European Single Market.....	19
2.2.2.1 Important changes concerning cross-border trade.....	20
2.2.2.2 The meaning of the transitional arrangement	21
2.3 Intra-Community trade and the necessity of proofing documents	24
2.3.1 Change of the administration of VAT with the establishment of the Single Market	25
2.3.2 VAT fraud	28
2.3.3 Implications for the entrepreneur	32
2.4 Summary	33
3 Documentary evidence in the European Union	35
3.1 Demands of the EU on documentary evidence	35
3.1.1 General understanding of documentary evidence	36
3.1.2 Documentary evidence in the context of intra-Community trade	37
3.1.2.1 Interface of VAT-exempt IC supplies and documentary evidences....	37
3.1.2.2 Requirements on the national conditions	39
3.1.3 Possible evidence	43
3.1.4 Further legal requirements	47
3.2 Influences of documentary evidence on the entrepreneur	47
3.2.1 Influences on and demands of the entrepreneurs	48
3.2.2 Practice versus theory on the example of Germany	50

3.3	Catalogue of criteria	54
3.4	Summary	56
4	Research Methods	59
4.1	Method choice	59
4.1.1	Unit of analysis and sampling decisions	60
4.1.2	Data collection.....	61
4.1.3	Analysis and interpretation.....	65
4.2	Evaluation of this study	67
4.2.1	Reliability and validity of this study	67
4.2.2	Limitation of the study	68
5	Empirical analysis and findings	70
5.1	Comparison of documentary evidence in 15 EU Member States	70
5.2	Analysis based on findings.....	82
5.3	Critical summary	89
6	Conclusion	90
6.1	Final summary and answers to the research questions.....	90
6.2	Harmonization proposal	92
6.3	Final conclusion and potential future research.....	94
	References	VII
	List of Sources of Law	XXI
	List of Jurisdiction	XXV
	Appendices	XXVII

List of tables

Table 1 Timeline of changes concerning the new documentary evidence in Germany .	52
Table 2 Overview of responses to survey.....	64
Table 3 Existence of an official.....	71
Table 4 Taxable status of the customer	71
Table 5 Transfer of goods (Austria, Belgium)	73
Table 6 Transfer of goods (Bulgaria, Czech Republic).....	74
Table 7 Transfer of goods (France, Germany (2011))	75
Table 8 Transfer of goods (Germany (2012), Greece)	76
Table 9 Transfer of goods (Hungary, Italy).....	77
Table 10 Transfer of goods (Netherlands, Poland)	78
Table 11 Transfer of goods (Romania, Slovakia)	79
Table 12 Transfer of goods (Slovenia, UK)	80
Table 13 Connected obligations of proof	82
Table 14 Analysis of requirements by the EU.....	83
Table 15 Analysis of requirements by the entrepreneur.....	86

List of figures

Figure 1 Interdependencies of the general and the VAT harmonization efforts	15
Figure 2 VAT levy procedure prior to 1993	26
Figure 3 VAT levy procedure after 1993	27
Figure 4 Missing trader fraud (adapted from Keen & Smith, 2007, p.13)	30
Figure 5 Relationship of VAT-exemption of IC supplies and documentary evidences .	39
Figure 6 Research process	66

List of abbreviations

BMF	Bundesministerium der Finanzen (Federal Ministry of Finance)
BR-Drs.	Bundesrat-Drucksache
BstBK	Bundessteuerberaterkammer (Federal Chamber of Tax Consultants)
BStBl	Bundessteuerblatt (Federal Tax Gazette)
EC	European Community
ECJ	European Court of Justice
ECSL	EC Sales List
EEC	European Economic Community
EU	European Union
IB	International Business
Ibid.	Ibidem
IC supply	intra-Community supply
IDW	Institut der Wirtschaftsprüfer (Institute of Public Auditors)
MU	Monetary Union
SdW	Spitzenverbände der Wirtschaft (Central associations of German economy)
VAT	Value-added tax
VAT Directive	VAT Directive 2006/112/EC (Council Directive 2006/112/EC)
VAT ID number	VAT identification number
VATO	VAT Ordinance

1 Introduction

“Whoever hopes a faultless tax to see, hopes that ne'er was, is not, and ne'er shall be.” (adapted from Alexander Pope, 1711)

This quotation by Alexander Pope describes what people think, governments fear and researchers and specialist maybe hope to disprove sometime. Thus, also value-added tax (VAT) is one of the many different types of taxes that is not faultless but in terms of revenue for the government probably “the best tax ever invented” (Cnossen in Keen & Smith, 2007, p.3). In Europe, VAT amounts to almost 26% of the whole tax revenue (see Appendix 1). However, the advantages for the governments do not compensate the ‘faults’ coming along with it. They lead to examinations of occurring tax problems and analysis of their influence, e.g. on governments, businesses or individuals.

Also this Master Thesis aims at analyzing one of the issues coming along with VAT, the differences in documentary evidence among the European Member States. The question of a potential unification of these evidences that are used to proof the VAT-exemption conditions for inner-European supplies as well as the recent development in Germany led to this final assignment. Furthermore, it provides the opportunity to combine and fulfill the research aims of two different majors (‘Accounting’ and ‘International Business’) that are part of the Master’s double degree program of the University of Cologne (Germany) and the Aalto School of Economics (Finland). Moreover, the author’s work in the VAT department of a big tax consultancy made it possible to get a practical view into the topic.

1.1 Background

VAT holds an exceptional position in the European Union (EU). Once marked as a ‘child of distress’ (Hübschmann, 1967, p.3), mainly introduced in times of war und financial difficulties (Popitz, 1921, p.7; Wäckerle, 1930, p.7) and afterwards abolished (Grabower et al., 1962, p.99ff.), the development in the last century is incomparable with that of other taxes used in the EU as the following quotation by Alan Tait shows:

“The rise of the value-added tax (VAT) is an unparalleled tax phenomenon. The history of taxation reveals no other tax has swept the world in some thirty years, from theory to practice, and has carried along with it academics who were once dismissive and countries that once rejected it. It is no longer a tax associated solely with the European Community [EC].”
(Tait, 1988, p.3).

Thus, it can be deducted that VAT and the European Union¹ have a special connection. This is also supported by Keen and Smith (1996, p.377) who state that the VAT system in Europe influences other VAT designs because “VAT is after all a European creature”. Furthermore, this ‘European creature’ is the sole tax in the EU that is based on a harmonized system (Watrín & Rose, 2011, p.118). This makes it special as it indicates that the regulations of the EU Member States vary only in the limits of this common system. Furthermore, its application is not limited by the country borders like for other taxes in the EU, which indicates that the value of VAT within the scope of the European tax harmonization is very high (Seigel, 2002, p.228).

However, despite its exceptional position VAT is also not free of complications as the introductory paragraph of this chapter indicated. Especially, the creation of the Single European Market in 1993 led to serious changes in the VAT system, which implied extensive adjustments for the entrepreneurs (Schrader & Gohlke, 1993, p.1). Instead of a fiscal easement this important step for the EU rather led to a trade-off for its entrepreneurs trading in more than one European country. On the one hand fiscal border controls, customs duties and along with that extensive formalities were omitted while on the other hand new duties and formalities came along with newly created fiscal matters of fact (IDW, 1997, p.V; Schrader & Gohlke, 1993, p.1).

One of these matters of fact is the ‘intra-Community supply’ (IC supply), the supply of goods from one Member State of the EU to another one (Art. 138 VAT Directive). In this respect, entrepreneurs are obliged to proof that their IC supplies indeed took place

¹ The European Union is the successor of the European Community; see also Sub-Chapter 2.1.

in order to exempt them from VAT (Art. 131 VAT Directive). Thus, European tax authorities claim for comprehensive proofs of the transport from one EU Member State to another one in order to avoid VAT fraud (Lindgens, 2011, p.33). Thereby, it is important to know that the documentary evidences necessary to proof the transport are not harmonized among the EU but are dependent on the national requirements (Art. 131 VAT Directive)

However, the meaning of the fulfillment of documentary evidence is often underestimated, especially as requirement for VAT exemptions (IDW, 1997, p.VI). Moreover, ambiguities concerning extent and manner of these evidences often lead to disagreements between entrepreneurs on the one hand and the fiscal authorities on the other hand (Kurzenberger, 2008, p.1). Especially, the recent development in Germany where new documentary evidences were introduced in order to relief the burden on the entrepreneur but led to major protest by the economy shows that the theoretical claims by the government may cause grave problems in practice (IDW, 2012b, p.3).

This example shows that after 20 years of experiences there are still certain issues concerning documentary evidence that are not “ultimately clarified” (Philipp & R  th, 2008, para.120). Furthermore, it is questionable if the design of documentary evidence in other European countries is superior to the one in Germany. Especially, as the requirements of the EU, on the one hand, and the requests of the entrepreneurs, on the other hand, need be taken into account.

1.2 Research gap, problem and questions

As described above, the design of documentary evidence necessary to proof intra-Community supplies is not harmonized among the Member States which leads to different efforts for the entrepreneurs in the respective countries. However, even though the literature on VAT is manifold (e.g. Tumpel, 1997; Groels, 2001; Rose, 1992; Schrader & Gohlke, 1993; Sikorski, 1998,; Langer, 1992) most of the authors solely present the requirements on documentary evidence while only a few aim at analyzing their impact on international trade (e.g. Kurzenberger, 2008; Sopp, 2010; Fardon, 2011).

Furthermore, in the literature the focus is only laid on the national requirements which is limiting for two reasons. First, the examination of VAT in an international context is important for entrepreneurs either acting in several European countries or aiming at expanding their business in Europe. Second, as the examination is mostly limited to the national requirements the information are only available in the national language, which restricts information for the entrepreneurs. Hence, a comparison and analysis of documentary evidence necessary in different Member States is a research gap that has not been commonly filled with information yet. Of course, documentary evidences are not the main factor influencing international business and the decision for internationalization² in Europe but it is a factor that needs to be taken into account.

Filling the research gap does not only help to give entrepreneurs information and advice, it is also interesting with a view to the research on internationalization. The latter one is widespread (Welch & Luostarinen, 1993, p.44), especially, as the fast changes in the business environment in the last years have strongly influenced the internationalization process (Laanti et al., 2007, p.1104). Furthermore, the internationalization of a company affects all business areas of a company (Hummel, 2011, p.38), as e.g. human resource management (Evans et al., 2011, p.5), which holds an important cross-divisional function in an internationalizing company (Hummel, 2011, p.38). But also the government is concerned (Welch & Luostarinen, 1993, p.44) as the establishment of the Single European Market shows. Thus, the indirect influence of documentary evidences is great and the variety of effects in case of different national designs can only be assumed.

The objective of this study is to compare and analyze documentary evidence of different European countries based on the requirements of the EU and the influence on the European entrepreneur in order to answer the question:

² See Welch et al. (2007, p.18ff.) for the manifold theoretical approaches and especially Dunning (2009) for the popular eclectic framework.

(1) Is it advantageous to assess the same requirements for all Member States instead of giving the responsibility to the Member States?

The following sub-questions should help to answer this main research question.

(1a) What are the differences in the national documentary evidences?

(1b) In how far do the national requirements fulfill the EU's premises and the requirements of entrepreneurs?"

(1c) What can be said about a 'best solution' to the task of establishing national requirements?

The answer to sub-question (1a) shows if the national requirements are similar enough to unify them. This advantage of unification is especially interesting in case the answer to question (1b) would indicate that most of the EU's and the entrepreneurs' requirements on documentary evidences are not met. Moreover, the 'best solution' asked for in the last research (sub-) question (1c) is only available if the entrepreneurial and the European requirements are fulfilled. In case several countries provide a 'best solution' their respective potential as 'unified' requirements should be analyzed. Based on the answers to the three sub-questions the main research question will be answered.

1.3 Definitions and limitations

In order to follow the examination on documentary evidence, it is essential to understand the operating mode of VAT in the context of trade. Therefore, this sub-chapter provides the reader with a definition of VAT but also of the European entrepreneur and the kind of supply undertaken. Together with the limitations of the survey conducted for this study these specifications lead to certain boundaries which will be presented thereafter.

Value-added tax (VAT) consists of two elements: added value and tax. The obvious interpretation that VAT is, thus, a tax that is raised on added value comes along with further implications. It is important to know that the *economic process* of adding value

to raw materials or purchases takes place prior to the actual *economic transaction* of selling the ‘improved’ goods (Tait, 1988, p.4) because the assessment of VAT ties in with the latter one. Therefore, the taxation of the turnover instead of e.g. profit or income (Hömborg, 2008, p.25) makes VAT a *transaction tax* (Herzig et al. 2011, p.9; Bornhofen, 2010, p.121).

The fact that VAT is levied at all stages of business activities (Keen & Smith, 1996, p.378) characterizes it as an *all-phase tax* whereby input VAT deduction is allowed (Bornhofen, 2010, p.121). *Input VAT* is the tax on goods and services acquired by the company while *output VAT* is the equivalent on goods and services the company sells (Fardon, 2011, p.2). In order to avoid violations in production efficiency the input VAT on transactions between firms is chargeable with the output VAT so that only the consumption is burdened with VAT (Ebrill et al., 2001, p.15). This means that VAT is a (final) *consumption tax* (Völker & Karg, 2009, p.1); final because eventually the customer’s expenditure are taxed with VAT (Fardon, 2011, p.3).

As the private conditions of the person liable to pay tax are insignificant, VAT is also described as an *impersonal tax*. Furthermore, it is categorized as an *indirect tax* which means that the ultimate taxpayer, the commercially burdened, is not the person liable to pay this tax (Hömborg, 2008, p.27). Thus, VAT is imposed indirectly on the customer by including it in the sales price of goods or services while the seller afterwards conducts this special tax to the fiscal authorities (Fardon, 2011, p.3 ff.).

In this study a **(European) entrepreneur** is a taxable person who is not a small entrepreneur and who is resident in one of the EU *Member States* – the expressions ‘(Member) State’, ‘(European) country’ or similar refer to one of the 27 countries officially participating in the EU (see Appendix 2). He – a distinction of the taxable person in he, she (for natural persons) or it (for e.g. companies) will not be made – is doing business in at least two of the Member States by trading goods from these countries directly to other Member States (without crossing a non-EU country). Thus he can be distinguished from the group of entrepreneurs doing business only in the national

market and the ones exporting or rather importing. Also, deliveries to private persons (B2C supplies) are excluded by this definition.

The **goods** that are traded are movable, tangible assets in order to exclude services that may be complicated or connected with several exceptions. Furthermore, it is assumed that the delivered goods are taxable in the country where the supply ends. Also, work delivery, deemed intra-Community supply, chain transactions and reverse charge cases are excluded.

The most obvious **limitation** of this study is the geographical one, which is reasonable as the topic of this thesis limits the examinations to the European countries. Furthermore, the restrictions in terms of definitions are important as in this way a e.g. potential inspection of differences within the group of European entrepreneurs – in addition to the distinction of entrepreneurs conducting supply in the domestic market or with third countries – cannot be focused on, even though it would be interesting e.g. in terms of (international) experience, monetary assets and human resources.

But also the simplifying definition of goods as the subject of IC supplies leaves out a high number of exceptions and problems concerning, for instance, the place of supply or reverse-charge. Additionally, the focus solely on trade between entrepreneurs (B2B supplies) restricts the extent of the potential harmonization needs as also the trade to customers is affected by requirements on documentary evidences. Moreover, as this thesis tries to focus on both the governmental and entrepreneurial point of view some issues that would deepen the study need to be left out.

1.4 Structure of the study

This thesis is divided into six chapters. This first chapter puts the problem of different, national documentary evidences in a broader context and defines the research gap, problems and questions. Furthermore, important definitions and along coming limitations are presented. Chapter 2 reviews the VAT harmonization in order to show the problems that came along with the abolishment of the fiscal border controls and led to the necessity of proofing documents. Thereafter, Chapter 3 examines the theoretical

requirements on documentary evidence in order to establish a catalogue of criteria that sets the basis for the analysis of Chapter 5. Thereby, the premises of the European Union, represented by the VAT Directive, the decisions of the European Court of Justice (ECJ) and the effects on the European entrepreneurs are taken into account. In addition, Chapter 4 deals with the reasons and implications of the study conducted for this thesis. The findings and analysis based on the catalogue of criteria are presented in Chapter 5 so that the last chapter answers the research questions raised in this chapter and provides a harmonization proposal as well as an outlook on potential further research.

2 VAT as part of the European Business landscape

The ancestors of VAT have their origin around a chiliar B.C. (Grabower et al, 1962, p.11ff.) while the design of the ‘modern’ VAT is actually accredited to a German businessman called von Siemens at the beginning of the 20th century (Zerres, 1978, p.19ff.; Ebrill et al., 2001, p.4). The fact that the VAT systems have their basis in the development of economies (Grabower et al., 1962, p.7.) shows the strong dependence of value-added tax and trade. More particularly, on grounds of definition, economy must be seen as the basis for the development of VAT and its systems because only through economic processes value can be added to goods and services and only through economic transactions VAT can be levied.

Furthermore, the economic processes and transactions do not necessarily need to happen in only one country or rather culture. Cross-cultural – and in line with that – superregional trade has a long history as it has always played “a crucial role in human history” (Curtin, 1984, p.1). Thus, it is obvious that the common VAT system today is a result of the development of Europe in general and the European trade in particular and in addition of the evolution of VAT (see Appendix 3).

In order to focus more precisely on the harmonization of the national VAT systems in Europe this chapter is divided into four sub-chapters. The first one (2.1) concerns with the evolution and development of a European Business landscape as it is the basis for the VAT harmonization that is focused on in Sub-Chapter 2.2. Then, the third sub-chapter (2.3) focuses on intra-Community trade, a result of the harmonization process, and the problem of documentary evidence coming along with it. The last sub-chapter (2.4) provides a summary of the chapter and gives an outline of the following chapter focusing more closely on documentary evidence.

2.1 Development of a European trading area

“In the beginning there was no Europe” (Davies, 1996, p.XV). That is how Norman Davies book “Europe – a history” starts. Setting aside the local aspect, when looking at

the history and development of Europe – from a conglomerate of different tribes that most of the time fought with each other until the European Union with a single market today – one can say that in the beginning, there was really no Europe. It took ages before the concept of a united Europe appeared in the awareness of people.

The idea of a *unified Europe* evolved over several centuries. It has its origin in the philosophical and political thinking of people as Pierre Dubois (14th century), French Prime Minister Sully (17th century) and Victor Hugo (19th century). Taken together, they envisioned Europe as a ‘union’ in form of a common European area without internal borders where unified people could live together peacefully and in harmony. This Europe would be governed by a European Council and the different states would not need to envy or fear the others but would enjoy the advantages of the freedom of commerce (Dubois, 1891, p.3ff.; de Béthune, 1778, pp.143f.; Hugo, 1871). This vision is already very close to reality nowadays, even though it could only be seen as a mindgame at that time. Even more close to the actual system was in 1861 Pierre-Joseph Proudhon’s idea of Europe as a confederation of federal states (Proudhon, 1863, p.88).

The *PanEuropa movement* by Richard Coudenhove-Kalergi was the starting point of Europe’s unification (Schäfer, 2001, p.19f.; Suder, 2007, p.16). French Prime Minister Aristide Briand was the first politician in the 20th century to stress the idea and need of a political union of the 27 European Member States of the League of Nations (the so-called Briand-Plan of 1929) (Schäfer, 2001, p.30). However, the actual integration movements started after the peak of political differences within Europe, the Second World War, when several countries started to practically aim at peace and stability (EU, 2012b); also in order to avoid after-war instability, political stagnation and resignation. Winston Churchill emphasized this unification wish in a speech on September 19, 1946

in Zurich by talking about the need to install a ‘kind of United States of Europe’ (Schäfer, 2001, p.75).³

The realization of the political intentions slowly started in 1949. The creation of the Council of Europe on May 5, 1949, that aims at developing common and democratic principles based on Human Rights, (CoE, 2012) can be seen as the first step towards cooperation within Europe. The first legal step to a harmonized European area was taken in 1957 when Belgium, Germany, France, Italy, Luxemburg and the Netherlands founded the *European Economic Community (EEC)* (as one of the three organizations belonging to the European Community (EC)) that aimed at

“establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it”
(Art. 2 Treaty of Rome).

This shows that already in 1957 the basis for the establishment of a single European market was laid. With the growth of the community, several further agreements, treaties and conventions made the European Union – an idea first mentioned in the 14th century – slowly became true. Especially the ‘White Paper’ from June 14, 1985 about completing the Internal Market (COM(85) 310 final) and the ‘Single European Act’ from February, 28, 1986 forced the harmonization process, the abolishment of internal barriers and the stepwise installation of a common market until December 31, 1992.

Finally, on February 7, 1992, the European Union⁴ was established through the Treaty of Maastricht (Treaty on European Union, p.4), which main objectives were the

³ Other important supporters of a unified Europe were Ronald W.G. Mackay, Ernesto Rossi, Luigi Einaudi, Altiero Spinelli (Schäfer, 2001, p.48ff.). Konrad Adenauer, Joseph Bech, Johan Willem Beyen, Alcide De Gasperi, Walter Hallstein, Sicco Mansholt, Jean Monnet, Robert Schuman, Paul-Henri Spaak (EU, 2012c).

“accomplishment of the internal market [...] [and the establishment of] [...] an economic and monetary union including [...] a single and stable currency” (Treaty on European Union, p.1). After dropping the borders in 1993 and giving the opportunity of free trade (Suder, 2007, p.1ff.) the rest of the century was shaped by the enhancement of the single market, the Schengen agreement (1995) and the introduction of the Euro (1999) (EU, 2012d). In the new century the focal points of politics were democracy, limited global warming, freedom, security (EU, 2012e). Since 2007, there are 27 countries participating in the EU (Suder, 2007, p.1ff.).

From the mid-eighteenth century onwards the idea of a common European area aimed not only at peace and stability anymore but also on common economic growth and welfare. This development is especially important as superregional economic transactions are strongly related to VAT. However, trade across frontiers had already taken place for over hundreds of years. Thereby the different states and cultures were already able to adopt and exchange trade mechanisms and knowledge of economic systems (Suder, 2007, p.1f.).

While the legal realization of the European Union lasted until 1957, the trading focus shifted already hundred years earlier towards harmonized trade and profitable economic relations. Especially, the industrialization was essential for further growth, increased trade and economic coalescence (Suder, 2007, p.1f.). Finally, the signature of the coal and steel treaty in 1951 by the (later) founders of the EEC in order to manage their heavy industries collectively (EU, 2012f) was an important step towards harmonized European trade.

The vision of a single European market where no customs borders and quantitative limitations should restrict the trade of services and assets (Kempf, 1968, p.9) while a harmonized development of the economic life should be conveyed (Kurzenberger, 2008, p.3) boosted the development in terms of trade. On July 1, 1967 customs duties were

⁴The name “European Union” officially replaced “European Community” (Treaty on European Union, p.1).

removed (EU, 2012g), which did not work out directly due to differences in the Member States' regulations. The program of the Single European Act of 1986 aimed at sorting these problems out (EU, 2012h). Furthermore, in 1972 the exchange rate mechanism (ERM) was invented in order to maintain monetary stability. Moreover, agricultural policy and job creation as well as a research and development program should foster the exchange of goods and knowledge (EU, 2012i).

With the opening of the borders in 1993 the regulations about the future single currency, the foreign policies and the focus on close cooperation gained importance for the economy. However, not only sustainable development but also closer cooperation are intended to help the EU to overcome the financial crisis that started in autumn 2008 (EU, 2012e). The fail of the currency may also denote the weakening of the trade or even the fail of further achievements of the European Union.

2.2 VAT harmonization in the European Union

VAT, in contrast to trade, became steadily present in the European economic world not before the 20th century as it was subject to several recessions and revivals over the centuries (see Appendix 4). This indicates that discussions and changes in the European VAT landscape are not a problem of the present. A first hint for a constant and equal superregional VAT treatment and therefore an indicator for the importance of superregional trade within Europe was the abolishment of excises in Bremen in 1884 due to inconsistent treatment of locals and foreigners (Senate Bremen, 1886, p.260).

After VAT had become a constant factor in the business world of several European countries past the First World War (see Appendix 4) the signature of the contract founding the European Economic Union (EEC) in 1957 laid at the same time the legal basis for a harmonized European VAT system (Kurzenberger, 2008, p.3; Kempf, 1968, p.9). The legal aspect is based on the fact that the contractual Community law is the primary source of law in the autonomous European legal system (Lenz & Erhard, 1994, p.55; Fischer & Köck, 1995, p.315). Thus, the different treaties are the constitution of the EEC (and its successors) (Opinion of the Court of 14 December 1991, para.21) that

build the highest level of the common legal hierarchy of norms (Lenz & Erhardt, 1994, p.55f.).

Beside the legal basis, the treaties also show the relationship of the VAT harmonization to the general harmonization efforts. Only if both can be fulfilled, the general task established by Treaty of Rome – to establish a common market (Art. 2 Treaty of Rome) - can be achieved. Thus, activities with effect on VAT were established within the general harmonization activities as e.g. “the elimination, as between Member States, of customs duties” (Art. 3 Treaty of Rome; see Appendix 5).

Furthermore, the ‘tax provisions’ (Treaty of Rome, 1957, p.35) can be interpreted as orders to harmonize VAT in the interest of the Common Market. Thereby the important combination of the nondiscrimination rules (Articles 95 – 98) and the harmonization rule (Article 99) is seen as *reciprocal completing instruments to achieve the idea of a single market* (Waldhoff, 2007, para.5ff.; van der Groeben in Mick, 1995, § 24, para.4; Voß, 2009, Art. 93, para.1).

Therefore, the establishment of a unified VAT landscape with a harmonized VAT system is not only a result of the harmonization process. At the same time it is a premise for the EU’s aim of establishing a Single European market (Tait, 1988, p.48). This ‘internal market’ leads eventually to the coalescence of Europe (Pieper, 1995, §1 Rn. 32). In other words, diverse VAT systems or discrimination of VAT (Stumpf, 2009, para.2) would “distort conditions of competition or hinder the free movement of goods and services within the common market” (First Council Directive, p.1301). This in turn would hinder the achievement of the main objective of the Treaty of Rome – “a common market within which there is healthy competition and whose characteristics are similar to those of a domestic market” (First Council Directive, p.1301). Therefore, it was required from 1957 onwards to establish economic conditions and tax structures that were approximately the same in the whole economic area in order to realize the internal market (Lüdemann, 1992 p.1606).

This relationship presented above is illustrated Figure 1 below. It depicts that the Treaty of Rome led to harmonization efforts in general and in the area of VAT in particular. Both are interrelated and need to be fulfilled in order to achieve the main aim of the Treaty of Rome, the establishment of a Single European Market. The finalization of all premises and therefore the common European market leads eventually to the coalescence of Europe.

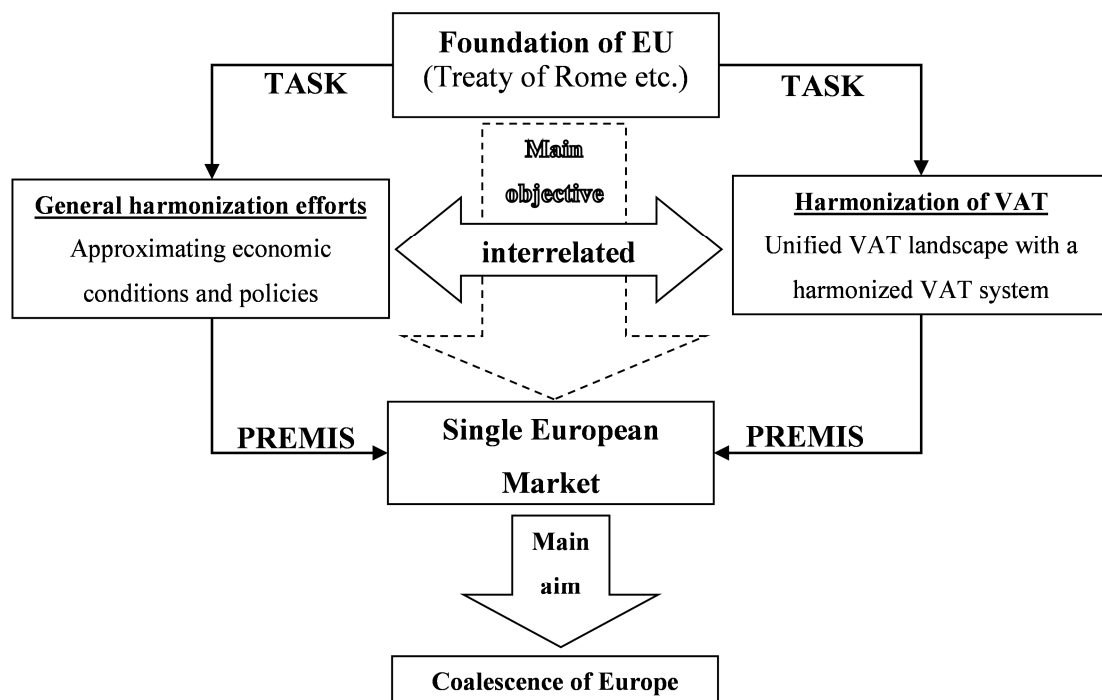


Figure 1 Interdependencies of the general and the VAT harmonization efforts

Thus, after having an understanding of the legal and general relationship of the EU and VAT harmonization, the following sections will focus more closely on the VAT harmonization since 1957. Therefore, the first section describes the initial initiatives until 1993 that focused on a harmonized tax area (2.2.1). Accordingly, the second section (2.2.2) will focus on the changes of the VAT system in terms of inner-European trade after the abolishment of the internal borders in 1993 as the treatment of VAT was even more important in the context of a common Europe market.

2.2.1 Initial harmonization developments

The actual VAT harmonization process started mainly in the 1960s (Zerres, 1978, p.49ff.)⁵. Highly important were the Council Directives on the legal harmonization of legislation of Member States concerning turnover taxes issued by the EU. In the context of the autonomous European legal system, these directives belong to the secondary source of law that is, on the one hand, based on the contractual Community law (Lenz & Erhard, 1994, p.55) and, on the other hand, preferential to the national law of the Member States (ECJ v. 05.02.1963, C-26/62 ‘Algemene’, p.11ff.; ECJ v. 15.07.1964, C-6/64 ‘Flaminio’, p.599 f.). Therefore, the Member States needed to amend their national laws in line with the directives (Spetzler, 1993, p.554; Tumpel, 1997, p.21).

Adjustments were necessary as the regulations on VAT in the EEC were not consistent with the requirements necessary to ensure healthy competition and free trade (First Council Directive, p.1301). Even though, all consumption taxes were subject to these regulations, the alignment of VAT in the Community took center stage in all Council Directives (Sikorski, 1998, p.21) due to its comparably high tax revenue (Lüdemann, 1992, p.1606).

There were mainly three Council Directives gave distinction to the harmonization efforts on VAT in the young EEC⁶. On April 11, 1967 the ‘first and second council directive on the harmonization of legislation of Member States concerning turnover taxes’ were issued and committed all Member States to adopt harmonized VAT rules to their national laws until January 1, 1970 (Art. 1(2) First Council Directive). This time slot for adoption was enlarged until January 1, 1972 due to implementation problems by some countries (Third Council Directive).

After the adoption of the harmonized VAT rules the enforcement of the Sixth Council Directive on May 17, 1977 was the next major step towards a unified VAT landscape as it aimed at a uniform assessment basis of all countries involved (Sixth Council

⁵ Preliminary work was done by the Tinbergen-Report, the Spaak-Report, the Neumark-Report and the ABC- Report (see Tumpel, 1997, p.113ff.; Behrendt, 1993, p.21).

⁶ For a list of all Council Directives before the establishment of the Single Market see Appendix 6).

Directive, p.1). However, the scope of regulations did not change significantly from the Second Directive, only the density of rules increased (Tumpel, 1997, p.120f.), especially due to specifications concerning matters of fact, levy of VAT and general definitions (e.g. taxable person (Art. 4 Sixth Council Directive) or taxable turnover (Art. 5 *ibid.*)). This Sixth Council Directive can be seen as the most important one as, on the one hand, it was the first real law with detailed regulations (Theile, 1995, p.45) and on the other hand, it was valid with several amendments almost 30 years – until it was repealed by VAT Directive on January 1, 2007 (Art. 413 VAT Directive).

Besides these three Directives, the Eighth Council Directive of December 6, 1979 was also important in terms of harmonization as it regulated the VAT refund of taxable persons not established inland but in another Member State. The Directive aimed at the same treatment of entrepreneurs, independent of the country of establishment in the ancestors of the EU, as well as the avoidance of “deflection of trade and distortion of competition” (Eighth Council Directive, p.11). Akin, the Thirteenth Council Directive (p.40 ff.) of November, 17, 1986 focused on the VAT refund procedure for taxable persons not belonging to the EEC.

The aims of the Council Directives presented in the paragraphs above already indicated the EU’s successive harmonization procedure. Thus, the main (long-term) aim of the VAT harmonization process – the abolishment of the “imposition of tax on importation and the remission of tax on exportation in trade between Member States” (Art. 4 (1) First Council Directive) – was approached by a stepwise reduction and abolishment of differences in national modalities concerning the application of VAT (First Council Directive, p.1303) so that a common VAT system could finally be implemented in the national tax structures. This successive adoption was important because the new tax structures were expected to lead to both practical and political difficulties on the national level. Therefore, the time frame and the technical transformation were rather undefined in the beginning (*ibid.*, p.1302).

Also, the final harmonization of VAT rates and exemptions was a goal that should rather come along with the development of the VAT system in order to ensure neutrality of competition (First Council Directive, p.1302 f.). This goal was set already at the beginning of the harmonization process because it is important in an internal market that “[w]ithin each country similar goods [should] bear the same tax burden, whatever the length of the production and distribution chain, and that in international trade the amount of the tax burden borne by goods is known so that an exact equalization of that amount may be ensured” (First Council Directive, p.1302; for further information on the concept of neutrality of competition, see THEILE (1995)).

Concerning the concrete changes of the VAT structures that came along with the harmonization process, the Member States had to implement the following regulations to their national VAT structures (Art. 1 (2) First Council Directive) in order to install a *simple and neutral* common VAT system (ibid., p.1301ff.). The widespread cumulative multi-stage tax systems – five of the six Member States at that time used an all-phase/multiphase-gross-tax system (Behrendt, 1993, p.21), e.g. the cascade turnover tax in Belgium and Germany (Keen & Smith, 1996, p.380) – needed to be replaced (First Council Directive, p.1301) by a **net-tax system with input VAT deduction**. That means that the levy of VAT was to be proportional to the price of the good or service and should take place only once, independent of the number of transactions prior to the stage at which VAT was charged. Though, the scope of VAT should cover all stages of production and distribution, including the retail trade stage. Furthermore, the deduction of input VAT which had influenced the different cost components was the sole compensation measure allowed (Art. 1, Art. 2 First Council Directive; Second Council Directive, p.1304; Völkel, 2009, p.1). In that way only the value added to a good or service was taxed.

Compared to the former systems, the reconstruction of production and distribution stages as well as the reconstruction of prices of materials and further components used for the goods or services was not necessary anymore. So, the calculation of VAT as well as the refund of input VAT was more accurate, especially in case of a high number of

intermediary transactions (Keen & Smith, 1996, p.380). The Second Council Directive (p.1303) gave more detailed information about “the structure and the procedure for applying the common system of value added tax”. This means that information concerning taxability, taxable matters of fact, definitions and assessment basis were provided by this directive (Art. 1 – 8). However, common agreements on the numbers and rates of VAT as well as the taxation of certain services, independent professions, small businesses and the agricultural sector were not concretized (Theile, 1995, p.43).

A significant change came along with the Sixth Council Directive as a common assessment basis was introduced. It would, first, lead to the same result in all Member States after applying a common tax rate (Sixth Council Directive, p.2), second, eliminate external fiscal effects and, third, reach the Community’s long-term aim of having a basis for financing the Community by using the levies on VAT of all countries (Sixth Council Directive, p.1; 70/243/EGKS, p. 21; Keen et al., 1996, p.381). However, putting the aim of financing forward was criticized from several authors (Wachweger, 1974, p.115; Wachweger, 1977, p.7; Sarrazin, 1974, p.281), also because the VAT-exemptions were not harmonized in such a way that the Member States would contribute to the same amount to the common household (Theile, 1995, p.46).

2.2.2 The European Single Market

The VAT system revision of 1993 was apparently necessary because the abolishment of the internal tax border controls led to the absence of a formerly essential element for the taxation of imports and exports between Member States (Tumpel, 1997, p.21; Chapter 3.1.2). Thereby, the new regulation should not only realize the functioning of the internal market but should also be based on the VAT system valid until that time (Tumpel, 1997, p.21). Therefore, entrepreneurs hoped that the harmonization process would be finished with the amendments of the VAT system concerning the Single Market.

However, in Council directive 91/680/EEC (p.1f.) it was reasoned that certain premises were not fulfilled so that a transitional arrangement was introduced. As these premises

should be fulfilled within four years, the transitional regulation was intended to be replaced until January 1, 1997 or automatically to be extended in case no definitive system was found at that time (Art. 28 1 Council directive 91/680/EEC). As this system is still in charge in 2012 (Art. 402 VAT Directive) and is not seen to be replaced in the near future (IDW, 1997, p.V; Scheffler, 2012, p.409) it can be seen that until now the premises are still not fulfilled and no definitive system could be agreed on by the Member States (even though there have been approaches, e.g. COM(96) 328 final; see also for several approaches Laubert, 2009, p.111ff.).

The transitional arrangement concerning the VAT system that was introduced with the establishment of the Single European Market will be focused on in the next two sub-sections. Sub-Section 2.2.2.1 aims at explaining what major VAT changes occurred in terms of intra-Community trade with the establishment of the Single Market while Sub-Section 2.2.2.2 describes what the transitional character of the new system means in this context.

2.2.2.1 Important changes concerning cross-border trade

Even though a final VAT harmonization had not been achieved, the changes of regulations for VAT taxation of European cross-border trade were adjusted (IDW, 1997, p.V; Tumpel, 1997, p.187). On the business level, the main change was the implementation of a third way of trade: the intra-Community transactions that now exist next to inland trade and trade with third-countries (Widmann, 1996, p.220ff.; Council Directive 91/680/EEC, p.2). This means, that one had to differentiate from 1993 onwards between delivery of goods and services to and from countries of the Community as well as to and from third-countries (Tumpel, 1997, p.22). The terms ‘export’ and ‘import’ did no longer apply to deliveries within the internal market. They were replaced by the notions ‘intra-Community supply’ and ‘intra-Community acquisition’ (Special report No 9/98, 1.5).

Furthermore, “the imposition of tax on importation and the remission of tax on exportation in trade between Member States” (First Council Directive, p.1301) – which

still apply to ‘third country’ exports and imports (Tumpel, 1997, p.23) – were replaced by the transitional arrangement so that a major aim, already mentioned in the First Council Directive, could be achieved. Even though the imposition and remission of customs duties on imports and exports are not comparable to the VAT levy of the respective intra-Community transactions (ECJ v. 27.09.2007, C-409/04, ‘Teleos’, para.56), similar VAT levy treatments were established. Thus, supplies from one EU Member State to another one are under certain conditions (see Section 3.1.2) VAT-exempt in the country of departure – with the allowance for input VAT deduction, which is normally only allowed for zero-rated turnovers (Keen & Smith, 1996, p.379; Keen & Smith, 2007, p.4). Acquisitions from another Member State are to be taxed in state of consumption (Special report No 9/98, 1.5.(a); Keen & Smith, 1996, p.382). Besides this significant change, it has to be mentioned that the aim of harmonizing the VAT rates – mentioned in the First Council Directive (p.1302) – was despite efforts in 2003 (COM(2003) 397final) – still not achieved by the changes in 1993.

2.2.2.2 The meaning of the transitional arrangement

The implementation of a transitional arrangement has to be differentiated from the implementation of transitional phases. The usage of the latter one was a common procedure in the harmonization process to ensure the correct and successful implementation of new regulations on the national level. Especially at the beginning of the VAT harmonization process, transitional phases made it possible to take the economic situation of the Member States into account of the implementation process (Art. 1 (1) First Council Directive). For example, Italy’s deadline for implementing the VAT system to its national law in the 1970s was expanded by three Council Directives (Third, Fourth and Fifth Council Directive). The stepwise adoption of harmonization regulations in coordination with this implementation phases were necessary as they would have major influence on the national tax structures as well as on budgeting, economy and social life (First Council Directive, p.1302).

In contrast, the implementation of a transitional arrangement affects the level of the EU as it commits the Community to (still) finalize the harmonization process. Thereby, the

reason for the transitional state of the VAT system is the inner-Communitarian trade as Title XVIa of the Sixth VAT Directive: “Transitional arrangements for the taxation between Member States” (Council Directive 91/680/EEC, p.5) shows. That means that even though the intra-Community trade was the main subject to changes in 1993, it was also the one that hindered the establishment of a final VAT system. Thus, the EU Member States need to agree – decisions on the VAT harmonization process need to be unanimous (Art. 113 Treaty of Rome) – on final answers to three questions that are important in terms of international transactions. First, it has to be decided which tax rate is put on the final burden, second, which jurisdiction receives the revenue and finally, which jurisdiction collects the revenue (Messere, 1994, p.665).

The answers to the questions above certainly depend on the aims of the Member States concerning the VAT system. The first problem they were mainly facing was the conflict of VAT being a consumption tax which should therefore be taxed in the country of final consumption and the wish for a single European market that allows the supply of goods without any “borders” like in a real Single market. Thus, the taxation should be based on the country where the goods were produced (Watrin & Rose, 2011, p.24). Facing these two conflicting options – the ‘destination principle’ and the ‘origin principle’ (Keen & Smith, 1996, p.379; Keen & Smith, 2007, p.4) – the initial idea of the Member States intended on taxing supplies between the Member States based on the ‘origin principle’ while the VAT revenues were supposed to be distributed based on ‘destination principle’ (Scheffler, 2012, p.409). This would have served both options.

Furthermore, a so-called intra-Community clearing procedure should have reassigned the respective VAT revenues to the Member States (Special report No 9/98, 1.12) as the ‘exporting countries’⁷ would have had higher VAT revenues than under the destination principles while the ‘importing countries’ would have had to refund the VAT paid in the export country as input VAT (Herzig et al., 2011, p.184; Scheffler, 2012, p.409).

⁷ In this context exporting (importing) countries are countries that supply goods to (get supplies of goods from) other member states of the European Union; not to (from) third-countries.

Accordingly, this system would have required the same VAT rates in all countries as otherwise entrepreneurs would have chosen a country with lower tax rates as ‘exporting country’ in order to exploit advantages in terms of higher input VAT refund (Special report No 9/98, 1.11). In that latter case the neutrality of a common VAT system would not have been preserved and the fostering of the competition in the internal market (Völkel, 2009, p.1) as well as the same assessment of intra-Community supplies and domestic sales (Seigel, 2002, p.228; Urbach, 2011, p.4) is not possible.

In the end, the ministers of Finance decided on a compromise as first, the Member States did not want to lose their fiscal sovereignty (Scheffler, 2012, p.409), second, only Germany insisted on using the origin principle (Herzig et al., 2011, p.184) and third, the Commission was neither able to agree on the configuration of a cross-border input VAT refund nor upon a common clearing procedure (Scheffler, 2012, p.184). This compromise was a result of the Community’s wish to achieve by all means its aim of establishing a Single Market without border controls (Urbach, 2011, p.4; Herzig et al., 2011, p.184).

Thus, intra-Community supplies from entrepreneurs to entrepreneurs are to be taxed in the country of consumption at the respective VAT rate and under the respective conditions of that country (Council Directive 91/680/EEC, p.1; Special report No 9/98, 1.5.(a); Tumpel, 1997, p.187; Watrin & Rose, 2011, p.24). With this regulation the tax revenue is directly transferred to the State of final consumption (ECJ v. 06.04.2006, C-245/04, ‘EMAG’, para.31) and distortion of competition through the different tax rates in the different countries in the case of the origin principle is avoided (Watrin & Rose, 2011, p.118). Even though, only the supplies of goods to other Member States is important for the further examination, it should be mentioned that in cases of supplies to private persons, supplies of services and supplies of cars also the origin principle was implemented in order to partly support the idea of a Single Market (Watrin & Rose, 2011, p.118).

Not only the aims of the Member States but also their wish to keep their fiscal sovereignty (Scheffler, 2012, p.409) was important for the answers to Messere's (1994, p.665) questions. Therefore, the fact that after over 25 years of experience the Member States were not able to establish a final VAT system can not only be interpreted as a result of *disagreements but also of mistrust*. However, it has to be kept in mind that the harmonization is an adjustment of regulations and not a unification of regulations (Mick, 1995, § 24, para.16). Therefore the challenge of a definitive VAT system is to find a tolerable balance in preserving the maximum degree of autonomy for Member States – in terms of VAT rates⁸, collection and auditing of VAT – and ensuring that the VAT structures and administrative procedures do not impede the Single Market (Keen & Smith, 1996, p.376; Special report No 9/98, 1.4).

The EU states on its official web site that “VAT does require a degree of EU involvement [...] because it is fundamental to a properly functioning single market and fair competition across the EU” (EU, 2012a). This shows that it is not planned to give the EU the full fiscal sovereignty. However, in terms of VAT collection and auditing it seems reasonable for organization reasons to leave the responsibility in the different countries but the harmonization of VAT rates as one of the first aims mentioned in the First Council Directive (p.1302) should be harmonized in order to fulfill another aim of the EU, the preservation of the neutrality of the VAT system.

2.3 Intra-Community trade and the necessity of proofing documents

The harmonization measures undertaken at the beginning of the 1990s led to new requirements concerning proofing documents (concerning the concrete documents, see section 3.1.3). As mentioned before, the abolishment of the borders in 1993 led to the absence of systematical controls (Special report No 9/98, 1.6) concerning trade between the Member States. In combination with the adopted, transitional arrangement concerning the common VAT structure, new regulations in the context of intra-

⁸ However, the transitional arrangement is not consistent with real national autonomy concerning tax rates, as they have a minimum rate. Therefore, it can be assumed that the rates would be a lot lower as the countries are able to co-operate because “competitive tax reductions may lead to spontaneous rate harmonization”. For further information see Keen & Smith, 1996, p.385.

Community trade, e.g. VAT levy on intra-Community acquisitions or VAT exemption of intra-Community supplies, were necessary. This shows that the step towards economic coalescence also came along with significant administration problems in terms of VAT (Keen & Smith, 1996, p.382).

Furthermore, the possibilities of VAT fraud, evasion and abuse increased significantly with the opening of the borders (Special report No 9/98, 1.6). Therefore, the new administrative regulations should also partly focus on avoiding the abuse of the new VAT system. To deepen this topic the following sections will focus more closely on the need for proofing documents in case of the changed VAT administration without the help of border controls (Section 2.3.1) and in case of the VAT fraud possibilities eased or even enforced by the falling of the barriers (Section 2.3.2). Furthermore, the implications for the entrepreneur are shortly presented in Section 2.3.3.

2.3.1 Change of the administration of VAT with the establishment of the Single Market

Prior to the establishment of the common market, the control of import and export was in the hand of the customs authorities at the borders (Stumpf, 2009, para.22). There, customs documents needed to be presented and the competent customs officers had the right to check if the content of the transport was identical to the information on the customs documents (Aronowitz et al., 1996, p.15f). In case of no protest, the documents were cleared and the supplier was able to proof that the goods were exported in order to apply the VAT-exemption for exports with the right to claim input VAT (Keen & Smith, 1996, p.381). Additionally, the VAT on imports was, in general, immediately levied at the borders when goods were about to enter a country (Urbach, 2011, p.6; Aronowitz et al., 1996, p.15). Thereby, the destination principle was ensured, as the same VAT rate was imposed on all imports, independent of their origin (Keen & Smith, 1996, p.381).

With the abolishment of the borders at the beginning of 1993, the border controls were abolished as well, which led to the absence of a formerly essential element for the

taxation of imports and exports between Member States (Tumpel, 1997, p.21). Therefore also the VAT levy procedure needed to be changed. The difference in the procedure prior and after 1993 is illustrated in Figure 2 and Figure 3.

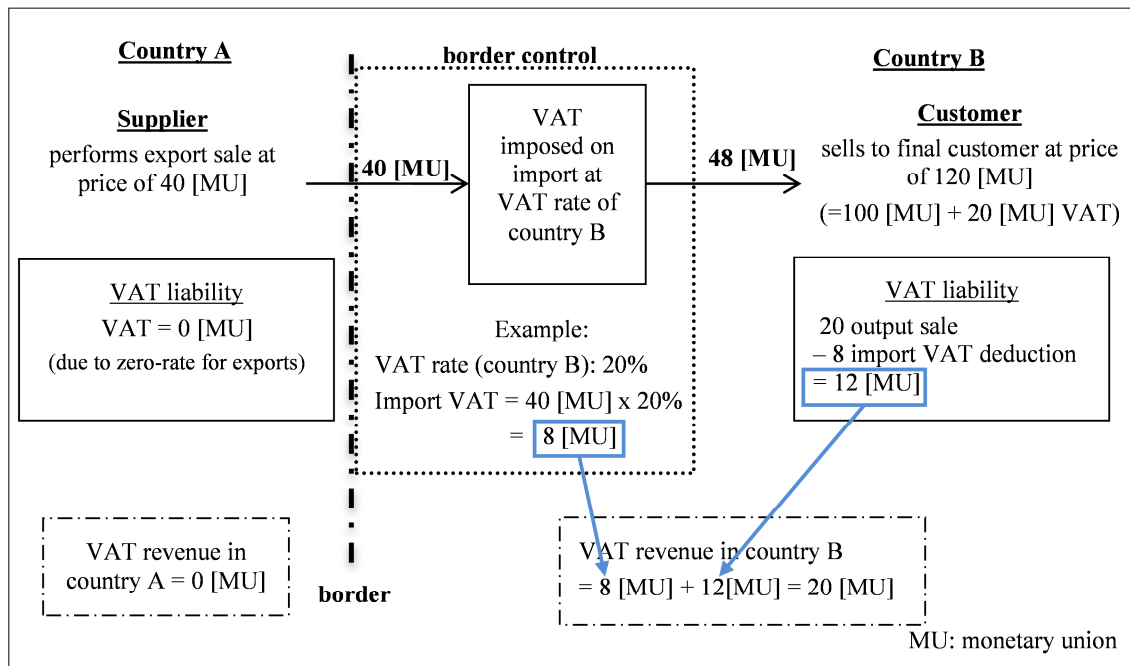


Figure 2 VAT levy procedure prior to 1993

The figures show that prior to 1993 the import VAT (amounting to 8 [MU] in the example in Figure 2 above) was directly levied at the borders and later on deducted by the customer in country B. From 1993 onwards the corresponding VAT on IC acquisitions (also amounting to 8 [MU], see Figure 3 below), is not levied at the border control anymore but considered in the calculation of the VAT liability and therefore in the VAT return(s) of the customer in country B. Even though, the administrative procedure changed, it is visible that the VAT revenue of both countries is the same due to a similar VAT treatment of exports and imports within the EU prior to 1993 and IC supplies and acquisition after 1993 in terms of taxation.

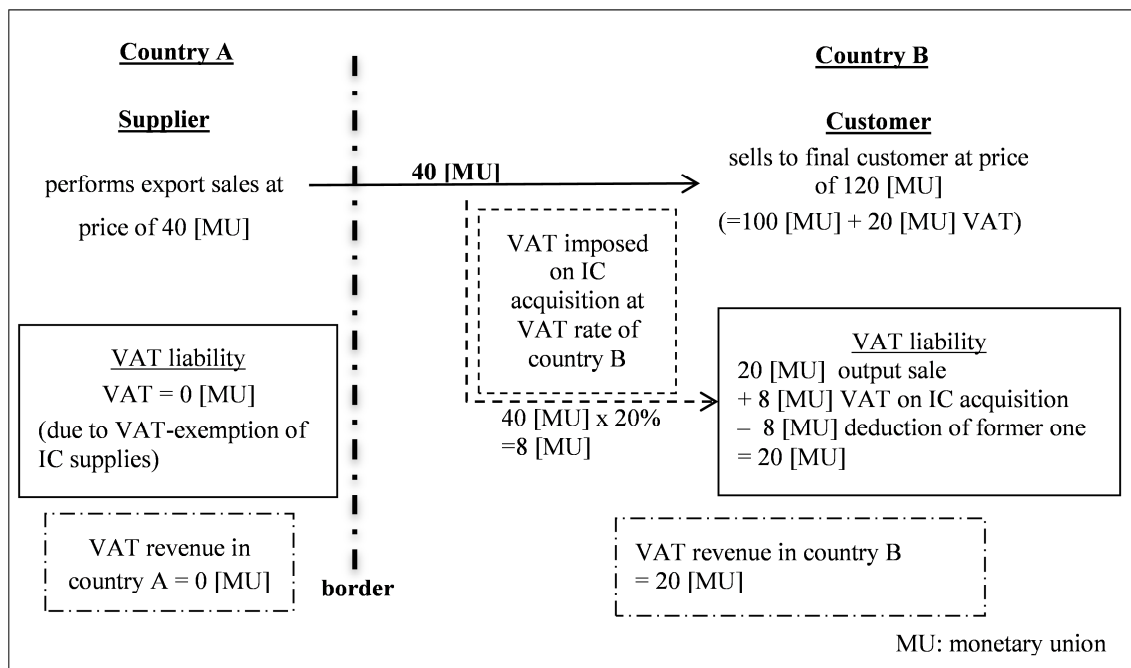


Figure 3 VAT levy procedure after 1993

This means that the changes coming along with the opening of the borders affected not only the economic substance but also “the administration of VAT in the EU” (Keen & Smith, 1996, p.382). As no longer documents and checks from the border controls were available new procedures had to be implemented in order to collect VAT from entrepreneurs conducting intra-Community acquisitions and to give entrepreneurs the possibility to VAT-exempt intra-Community supplies. In addition the computerized VAT information exchange system (VIES) was introduced in order to exchange information on the value of international trade automatically. In that way VAT losses should be avoided (Special report No 9/98, 1.5.(b); COM(2004) 260 final, p.5).

With the abolishment of the borders, the payment of VAT was postponed to the time when the VAT declaration was filed in order to ensure the VAT collection of intra-Community acquisitions (Special report No 9/98, 1.6). The problem of VAT-exempting intra-Community supplies was solved by committing the entrepreneurs to collect and present documentary evidences to the fiscal authorities in order to proof the intra-Community supply (Philipp & R  th, 2008: para.118). Furthermore, they were obliged to

obtain and report the VAT identification number (VAT ID number) of the customers (Keen & Smith. 1996, p.382).

Remarkable is that with this new procedure the assessment of VAT is highly dependent on the proofs and statements the taxable persons hand in (ECJ v. 27.09.2007, C-409/04, 'Teleos', para.44). However, without border controls it is otherwise hard to proof that the objective criteria of an intra-Community supply, e.g. the physical movement of goods between Member States, are met. These objective criteria, in turn, are essential for the classification of a supply as intra-Community supply. For example, the sole intention to accomplish a supply from one Member State to another is not sufficient (ibid., para.39f.) as it would imply that the fiscal authorities would be obliged to investigate on the intention of the suppliers. Though, this is not only inconsistent with the common VAT system that aims at ensuring legal certainty (ECJ v. 06.04.1995, C-4/94 'BLP Group', para.24), it would also pose a problem almost impossible to solve.

Therefore, it was decided that documentary evidence presented by an entrepreneur in case of a VAT audit should proof that the objective criteria to classify a supply as intra-Community supply are indeed met and eventually, the VAT-exemption of this supply could be granted. Though, a uniform design of documentary evidences has not evolved in the context of adapting the VAT Directive but the respective arrangements were delegated to the Member States (Art. 28c (A) (a) Council Directive 91/680/EEC).

2.3.2 VAT fraud

The abolishment of the borders did not only lead to new VAT administration procedures, it also increased the possibilities of VAT fraud (Special report No 9/98, 1.6). Before the opening of the borders, the fraud risk was seen as relatively low (Keen & Smith, 1996, p.386; Urbach, 2011, p.6) because controls took place systematically (Special report No 9/98, 1.6). However, fraudulent transactions were not as strictly inhibited as one could assume by the presented procedure in the section above. The possibility of checking the goods at the borders and the requirement of cleared customs documents were in reality rather psychological than physical controls. The controls of

the freight took place irregularly while the cleared documents were only used as a routine requirement in order to establish a support for investigation and enforcement (Aronowitz et al., 1996, p.15f.; Keen & Smith, 1996, p.381).

After 1993, these psychological controls were abandoned and mainly three kinds of VAT fraud, beside the general threats as under-reported sales or invoice mills (Keen & Smith, 2007, p.7ff.; Deliman et al., 2011) were detected by the EU in the context of intra-Community trade. First, goods are claimed as intra-Community supplies (in order to VAT-exempt the supply), while, in reality, the goods are sold in the country of origin and the VAT on final customer is evaded (Special report No 9/98, 1.7.(a)). The absence of crossing documents eased this way of evading tax a lot compared to the time before the Single Market.

Second, an entrepreneur does not declare VAT of intra-Community acquisitions and sells the goods on hidden chains of distribution in order to evade VAT on the final customer. This is a possibility of VAT fraud enabled by the opening of the borders and the changed VAT levy procedure. It also led to the feasibility of abuse concerning the VAT refund right on acquisitions (Special report No 9/98, 1.7.(b); von Bogdandy & Arndt, 2000, 3).

Also, the third possibility of VAT fraud, the so-called ‘missing trader fraud’, ‘missing trader intra-Community (MTIC)’ or ‘carousel fraud’, is a way to evade VAT that was also eased by the establishment of the common market. Thereby the possibility of VAT fraud described under the second point is used in the context of circulating chains of sales. Figure 4 below presents an example for a carousel fraud. Thereby, B, the ‘missing trade’, buys goods from a seller A established in another Member State (country A). Then he resells the goods domestically (in country B) to C including VAT but vanishes after that transaction. That means that B does not conduct the amount of VAT to the fiscal authorities that C paid him. Thereby, C as the buffer does not necessarily need to be involved in the fraud but is likely to be suspicious of the fraud.

However, he resells the goods to the broker D and uses the right for VAT refund. D, in turn, sells the goods as VAT-exempt intra-Community supply back to A and claims the input VAT paid to C. This procedure is known as carousel fraud as the round from A back to A can go for several times. The government loses every time (every round) the amount of VAT that B evaded (see number 3) in the box). Especially, the higher the number of buffers and the more countries involved the better the chance to cover the tracks of trading in order to make the investigations more difficult (COM(2004) 260 final, p.6f.; Ainsworth, 2006, p.444; Keen & Smith, 2007, p.14ff.; Fedeli, 2011).

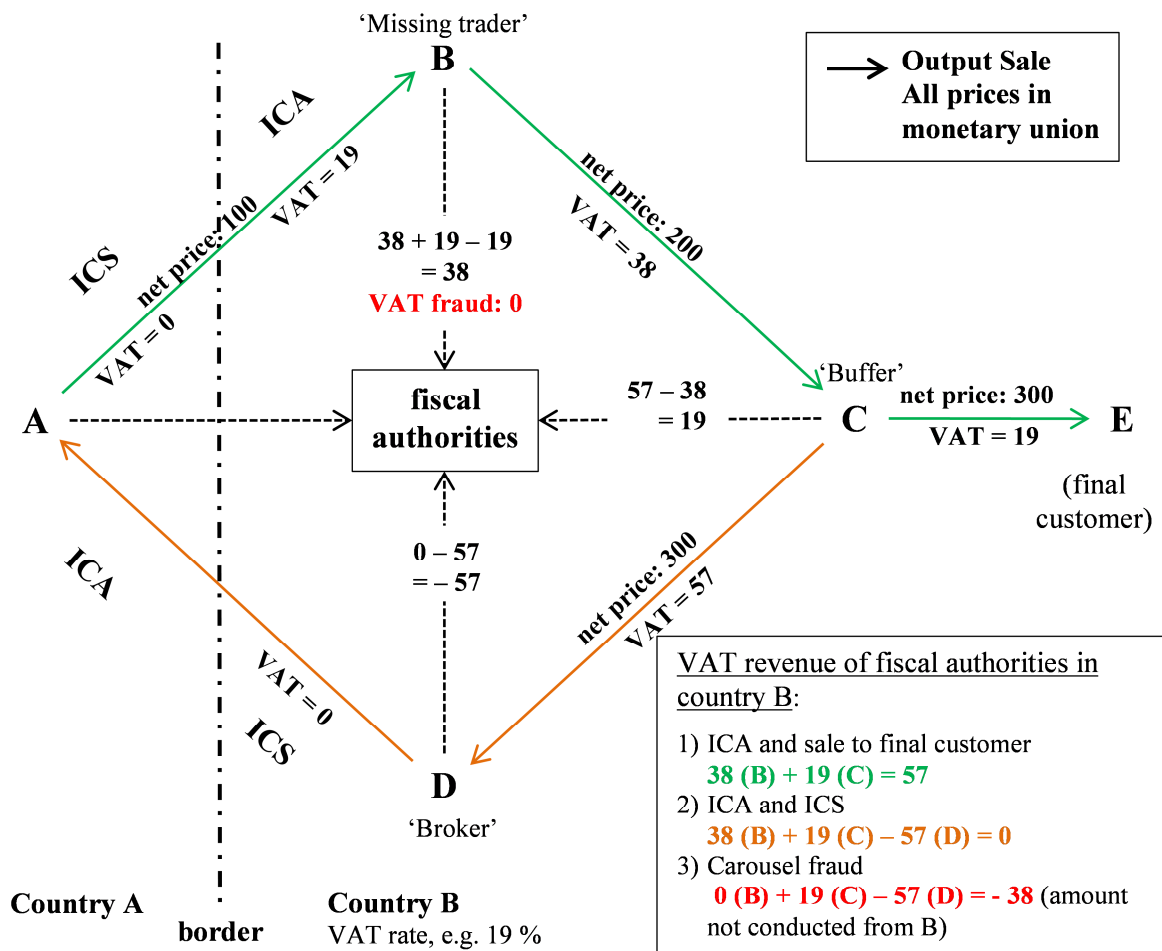


Figure 4 Missing trader fraud (adapted from Keen & Smith, 2007, p.13)

The increased possibility of abuse and the even new created ways of vulnerability for the governments (Keen & Smith, 2007, p.3) are a downside of the VAT system after

1993 (Keen & Smith, 1996, p.386). Especially the fractional payment of VAT makes it normally less vulnerable to fraud and evasion (Keen & Smith, 2007, p.3; Ainsworth, 2006, p.445). However, zero-rating and VAT-exemption of the supplies to other Member States (Keen & Smith, 1996, p.386) as well as the deferral of VAT payment in the context of intra-Community acquisitions enforced the possibility of VAT fraud and weakened the VAT chain at a special spot, the interface of two tax authorities (Ainsworth, 2006, p.444).

This shows that the idea of VAT being self-enforcing or even self-correcting (Keen & Smith, 2007, p.6) is inaccurate and that therefore methods are required to avoid such abuse. Would VAT be self-enforcing, the entrepreneurs would have the incentive to ensure the payment of VAT by their sellers as this payment would allow them to refund the respective input VAT themselves. However, entrepreneurs acquiring goods can only ensure the correct issue of the invoice but not that their sellers pay the VAT to the tax authorities. The same applies to the theoretical idea that VAT is self-correcting in the way that VAT not paid for one supply will be recovered at the next stage as there is no credit to offset against (*ibid.*, p.6f.). This cannot be achieved because the tax authorities are obliged to permit the input VAT claim even if the VAT obligation to pay VAT is ignored by the seller.

Besides the efforts of the EU to stop or impede developments in the area of fraudulent transactions, the documentary evidence required for proofing the objective criteria of an intra-Community supply, do at the same time proof that the first VAT fraud presented above was not performed. Therefore it is always advantageous if the evidences contain (further) information proofing that the entrepreneur did not participate in illegal abuse of the VAT system (ECJ v. 27.09.2007, C-409/04, 'Teleos', para.65). This may deter dishonest entrepreneurs of conducting VAT fraud. However, the high demanding evidence cannot ensure the declaration of VAT on intra-Community acquisitions or hinder carousel fraud but they can at least impede pretended supplies in carousel frauds. This shows that documentary evidences are not only necessary in order to proof intra-

Community supplies but can at the same time be used to proof the honesty of an entrepreneur in the context of the first mentioned VAT fraud.

2.3.3 Implications for the entrepreneur

In an economic view, intra-Community supply and intra-Community acquisitions are the same economic process although they are connected to different rights and duties for the participants and the fiscal authorities (ECJ v. 27.09.2007, C-409/04, 'Teleos', para.23). The reason is the clear differentiation of the different fiscal sovereignties (ECJ v. 06.04.2006, C-245/04, 'EMAG', para.30,40). Therefore it is obvious that any intra-Community acquisition that is taxed in the country of destination has as corollary a VAT-exempt intra-Community supply in the country of departure (ibid., para.28). Eventually, double taxation and the violation of the VAT system's basic principle of fiscal neutrality can be avoided (ECJ v. 27.09.2007, C-409/04, 'Teleos', para.25). For the entrepreneur this means that he has to take care of the corresponding part that he is involved in.

The fact that cross-border trade and its harmonization are important issues in the EU was already visible in the First Council Directive (Laubert, 2009, p.23). However, the enforcement of integrity undid the benefits that were achieved by abolishing the frontier formalities so that the EU decided on a trade-off between compliance costs and intra-Community trade (Keen & Smith, 1996, p.387). In other words, the formerly monetary burden for the entrepreneur due to the payment of import VAT directly at the border that was not refunded until the entrepreneur handed in his forthcoming preliminary VAT return was abandoned with the abolishment of the border controls in 1993 (Bertl & Eberhatinger in Tumpel, 1997, p.24). At the same time new costs in terms of document collection appeared.

Therefore an equal treatment of inland and intra-Community trade is still not possible. Especially concerning the collection of documents, the interaction of entrepreneurs and tax authorities increased. Without the border controls the responsibility of the national tax authorities changed in that way that they had to control the levy of VAT of both

domestic and intra-Community trade. This did not only lead to an increased exchange of information between Member States (COM(2004) 260 final, p.5 f.; Urbach, 2011, p.11ff.) but also between entrepreneurs and tax authorities.

It can even be said that they depend on each other: The national authorities rely on the evidences provided by entrepreneurs in order to perform their task to inspect if goods subject to intra-Community supplies really left the country (Philipp & R  th, 2008, para.118). The entrepreneurs in turn, need to collect and present the proofs (ECJ v. 27.09.2007, C-184/05, ‘Twoh’, para.27) based on the conditions set up by the fiscal authorities. Thus, the assessment of VAT is highly dependent on proofs and statements the taxable persons hand in (ECJ v. 27.09.2007, C-409/04, ‘Teleos’, para.44). For the European entrepreneurs this change of the proofing process did put an additional burden on them due to the responsibility and the high number of documents (see Section 3.2.1) compared to time prior to 1993.

2.4 Summary

The examination in this chapter aimed at giving an overview of the position and importance of VAT and its harmonization process in the European Business landscape that also seeks for convergence. Therefore, the harmonization efforts in terms of VAT prior and after the establishment of the common European Market were depicted. In addition, the matters of fact of intra-Community supply and acquisition as well as the along-coming problems in terms of higher administration efforts and increase VAT fraud possibilities were presented. They influence the cross-border trade in the EU so that the change of the business landscape and the along-coming adjustment of the VAT regulations concerning intra-Community trade in 1993 also impacted the entrepreneur doing cross-border business. In this context, the main burden of the entrepreneur is to collect evidence that he indeed conducted an intra-Community supply. As every Member State has the right to establish its own conditions and evidences (as the following Chapter 3 illustrates), the efforts and costs that an entrepreneur has to invest are significant, especially when he is active in several Member States from which he executes intra-Community supplies.

Therefore, it can be assumed that a unification of requirements (research questions 1) would be easier for entrepreneurs as they have increased efforts and costs due to the fact that they have to adjust their business and internal procedures to the collection of documents in every Member State they are active. However, from a national point of view this harmonization or unification of documentary evidence is not to be supported as the national, fiscal sovereignty would be undermined. This would be problematic as this request for fiscal autonomy was already a reason for not establishing a final VAT system. Concerning the research questions, it is not possible to give any concrete answers to the three sub-questions

(1a) What are the differences in the national documentary evidences?

(1b) In how far do the national requirements fulfill the EU's premises and the requirements of entrepreneurs? and

(1c) Is there a 'best solution' to the task of establishing national requirements?.

Summing up, it can be said that the harmonization process of the EU and of VAT is already very advanced but that there are still several issues that need to be finalized. However, to say that basically only the tax rates still differ (Seigel, 2002, p.228) is slightly narrow and superficial.

3 Documentary evidence in the European Union

Documentary evidences that are necessary to prove an intra-Community supply in order to get a VAT-exemption and avoid VAT fraud are one topic in the European VAT legislation that is not harmonized among the Member States. Thus, it can be assumed that the European requirements are implemented in different ways to the national regulations. This in turn leads to additional efforts for European entrepreneurs when doing IC supplies from more than one Member State.

Before the actual differences are analyzed (see Chapter 5) the intention of this chapter is to examine the theoretical implications of documentary evidence from two perspectives. First (Sub-Chapter 3.1), the requirements on documentary evidences based on the European legislation and the decisions by the ECJ will be focused on. Then, Sub-Chapter 3.2 presents the influences documentary evidences have in general on an entrepreneur's business and the along coming demands he has on the design. Based on these examinations the third sub-chapter (3.3) presents a catalogue of criteria that documentary evidence should fulfill in order to serve both the European and the entrepreneurs' requirements in the analysis in Chapter 5. The last Sub-Chapter 3.4 sums up the findings of this chapter.

3.1 Demands of the EU on documentary evidence

Documentary evidences have their legal basis in the European VAT Directive. Therefore, the directives in combination with the decisions of the ECJ are indications for the design of documentary evidence. Though, there is still a lot of insecurity from the tax authorities and further clarifications are missing (Philip & R  th, 2008, para.120; H  ink & Krebs, 2011, p.9). This indicates that the design is not as simple as one can assume. Therefore, first an examination of the term 'documentary evidence' in a general as well as in a tax (law) context is accomplished in order to understand the term and its meanings (Section 3.1.1). Thereafter, the theoretical requirements on documentary evidence in the context of intra-Community supply are assessed (Section 3.1.2) before potentially important evidence for proofing intra-Community supplies are collected

(Section 3.1.3). Finally (Section 3.1.4), further legal requirements that need to be observed in this context are shortly presented.

3.1.1 General understanding of documentary evidence

While most of the authors of literature concerning intra-Community supply, do not question the meaning of documentary evidence (e.g. Nightingale, 2002, p.536; Keen & Smith, 2007, p.13; Buchan, 2009, p.130; James, 2009, p.61), it is essential in order to analyze the differences in the form required by the Member States. Hence, when having a closer look at the wording of ‘documentary evidence’, it could be assume that this kind of evidence is either presented in form of documents or is based on documentation or both.

This is confirmed by the definitions in different areas in literature. In the area of research, Bell (2010, p.125) sees documentary evidence as a general term describing proofs that do not necessarily have to be printed, but are most of the time. In terms of law, evidences are in general divided in written (documentary) and unwritten (oral) evidence (Daniell, 1846, p.250) whereby “[d]ocumentary evidence usually consists of a document or a copy of a document, produced for inspection by the court” (Keane, 2008, p.10ff.) capable of making a truthful statement (Pozgar, 2012, p.226). Also in the general area of tax, documents as receipts are understood as the main form of documentary evidence in order to support the records concerning e.g. expenses (IRS, 2012, p.186). In the context of tax fraud, there are four main evidences – testimonial, documentary, physical and personal evidence. The documentary ones are mostly composed up of electronic and non-computer based evidence. This means that documented evidence as excerpts from the accounting and documents in forms of checks and confirmation letters are important (Albrecht et al., 2008, p.237).

Concluding it can be said that in most areas the evidences described by the term ‘documentary evidence’ can be understood as documents or copies of documents that exist in written or printed form and whose contents aim at supporting or proofing certain circumstances by providing truthful statements. As the documentary evidences

used to proof IC supplies aim also at avoiding VAT fraud, the last interpretation from the paragraph above is the most important one in this context. Therefore, the interpretation of the term includes not only evidence in form of documents but also in form of excerpts from documentation.

3.1.2 Documentary evidence in the context of intra-Community trade

Article 138 (1) of the VAT Directive states that the IC supply is VAT-exempt. However, the article does not provide any information on the presentation of documentary evidence. Also, Article 131 VAT Directive that legitimates the national tax authorities to establish requirements for the execution of VAT exemption does not mention the presentation of documentary evidence. Hence, it is necessary to examine the concrete interface of documentary evidences and intra-Community trade (see Sub-Section 3.1.2.1). Only with this understanding it is possible to follow the investigation on the requirements mentioned in Article 131 VAT Directive (see Sub-Section 3.1.2.2).

3.1.2.1 Interface of VAT-exempt IC supplies and documentary evidences

Looking at the VAT Directive, the legal basis of the European VAT system, Article 131 regulates the execution of all tax exemptions and therefore also the one concerning intra-Community supply (Art. 131 in conjunction with Art. 138 VAT Directive). However, no relevant information on the execution or the requirements on the exemption can be found in this or any other provision ((ECJ v. 27.09.2007, C-146/05, ‘Collée’, para.24);⁹ Philipp & Rüth, 2008: para.118). Instead, the article determines that the different Member States have to assess – independent of other regulations – certain ‘conditions’ to ensure the execution of tax exemption (Art. 131 VAT Directive).

Thus, the EU gives the task and responsibility to assess the requirements that need to be fulfilled in order to get the VAT-exemption to the national tax authorities (ECJ v. 27.09.2007, C-146/05, ‘Collée’, para.24). This is reasonable from a legal point of view as the countries still have the fiscal sovereignty in terms of VAT collection and VAT

⁹ Please note that, even though the decisions of the ECJ that are mentioned in this thesis all relate to the Sixth Council Directive, they can all be applied to the equivalent Articles in the VAT Directive.

audits. Therefore, they are more capable of deciding on the appropriate conditions to set in the different countries.

Though, two demands of the EU need to be taken into account when setting up the national conditions. First, the execution of the exemption has to be *correct* and *straightforward* and second, the prevention of tax fraud and evasion should be ensured (Art. 131 VAT Directive).¹⁰ This means that the EU gives the Member States the responsibility to establish conditions that allow the VAT-exemption of intra-Community supplies as long as they observe the two demands mentioned above.

An entrepreneur who meets the conditions laid down by the Member States has the right to VAT-exempt the respective intra-Community supplies (Pestana de Silva & Platteeuw, 2011, p.14-9). But the fiscal authorities need proof that the conditions are indeed met by the entrepreneur. Therefore, the latter one needs to keep evidences (Bornhofen et al., 2008, p.378) in order to proof the legitimacy of the VAT-exemption in case of a tax audit (Wobbermin, 2008, p.4). As these evidences mainly consist of documents or documented information they are called documentary evidence. Thus, documentary evidence proof that an entrepreneur met the conditions laid down by a Member State that are required to VAT-exempt an intra-Community supply. This relationship is illustrated in Figure 5.

¹⁰ Furthermore, of course, general legal principles need to be followed (ECJ v. 27.09.2007, C-409/04, 'Teleos', para.45f.).

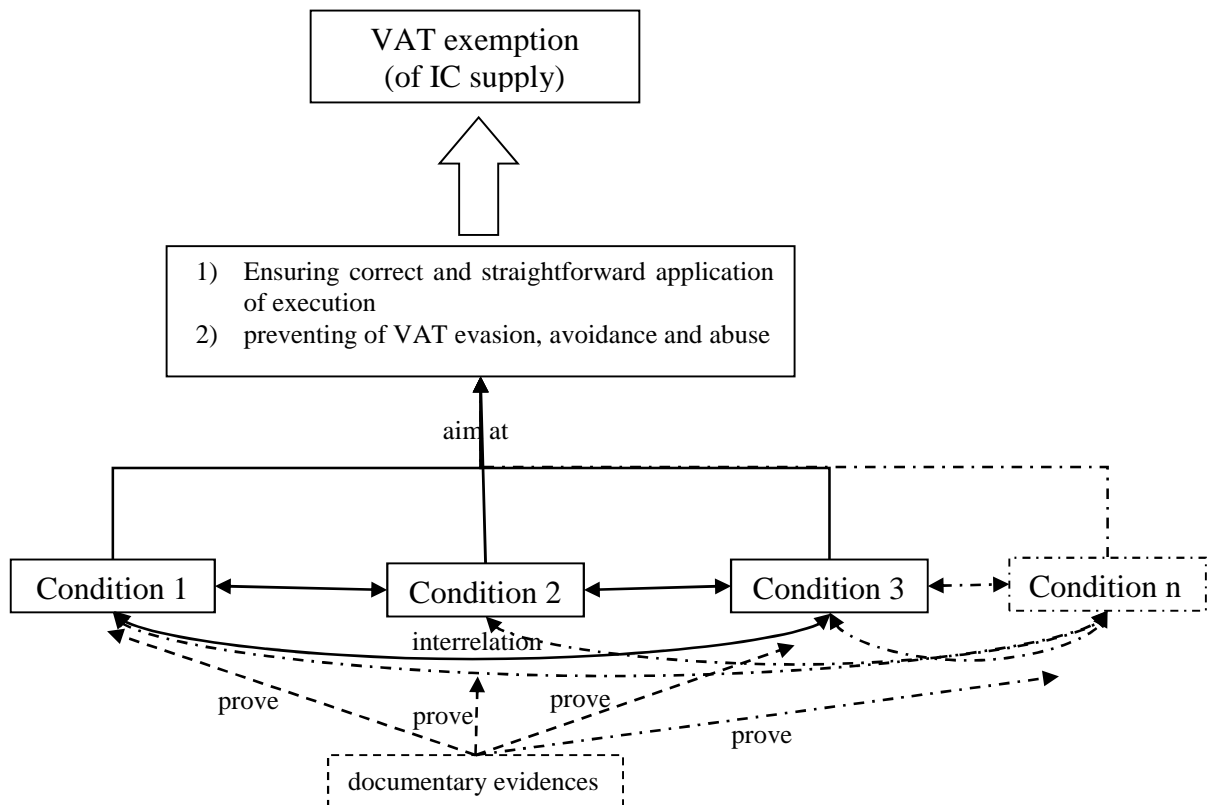


Figure 5 Relationship of VAT-exemption of IC supplies and documentary evidences

The figure above illustrates the interdependence of documentary evidence and the right to VAT-exempt intra-Community supplies. The Member States are allowed to establish certain conditions that aim at ensuring the correct and straightforward application of the execution of VAT exemption as well as the prevention of VAT evasion, avoidance and abuse. Only if these conditions that are often interrelated are proven with the help of documentary evidence, the respective IC supplies can be exempt from VAT.

3.1.2.2 Requirements on the national conditions

The examination of the last chapter has already shown that the national conditions for VAT-exemption are the crucial factor for determining documentary evidence. Besides the explicit demands of the EU mentioned in Article 131, the design of the conditions need to be done in such a way that they do not affect the definition of the respective matter (here the IC supply) as well as the exemption (ECJ v. 19.01.1982, C-8/81, ‘Becker’, para.32), which means that they need to be formulated precisely and

unconditionally (Terra & Kajus, 2011, p.154). Therefore no further conditions may be linked to the general conditions (ECJ v. 17.09.1996, C-246/94, ‘Cooperativa Agricola’, para.18).

However, in contrast to a *regulation* that has direct legal effect, the form of a *directive* gives the Member States certain discretionary powers concerning the translation into national laws (Cockfield, 1994, p.77) in order to ensure the binding effect and the efficiency of the national law (ECJ v. 01.02.1977, C-51/76, ‘Verbond’, para.22-24). Though, in the case that the national authorities would not set up these conditions, the entrepreneur would not be disadvantaged as an interdiction of VAT-exemption is not allowed if the taxable person executes a transaction that can actually be classified as intra-Community supply (ECJ v. 19.01.1982, C-8/81, ‘Becker’, para.32f.).

This means that the conditions are not supposed to put a further burden on the entrepreneur but that they need to ensure a correct and straightforward application of the exemption (ECJ v. 19.01.1982, C-8/81, ‘Becker’, para.32f.). Therefore, the purpose of these conditions should be the same as the one of the criteria concerning the content of electronic invoices: first, the tax administration has a certain level of security that the entrepreneur aims at fulfilling these conditions while, second, the entrepreneur has clear information concerning the criteria that need to be met (Terra & Kajus, 2011, p.1155).

Based on this information, it is possible to derive general conditions for the exemption of intra-Community supplies from the European VAT Directive. These conditions can be understood as potential requirements for the concrete formulation by the Member States. Thereby, the VAT Directive is used as the basis for these considerations as a correct application of the national regulations can only be ensured with a view to the Community law (Widmann, 2012, p.2). Hence, as the conditions concern the exemption of intra-Community supplies, the objective requirements of this kind of supply need to be fulfilled. They can be found in Article 138 (1) VAT Directive that defines IC supplies as “the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the

person acquiring the goods, for another taxable person [...] acting as such in a Member State other than that in which dispatch or transport of the goods began”.

From this definition two main conditions can be deducted: first, goods need to be transferred from one Member State to another and second, the vendor and the acquirer are taxable persons whereby the latter one needs to be registered for VAT purposes in a different Member State than the supplier. Thereby, the VAT ID number of the customer has to be issued by the country of destination in order to ensure the acquisition is subject to VAT in this country (ECJ v. 22.04.2010, C-536/08, ‘X’, para.33).

The second requirement was confirmed by the ECJ in a leading decision in 2007 concerning the proof of intra-Community supplies while the first requirement was specified. It was decided that the exemption can only be applied if the transfer from one Member State to another one includes the two following aspects: the ownership of the goods was transferred to the customer and it is proven that the goods have physically left the Member State of departure (ECJ v. 27.09.2007, C-409/04, ‘Teleos’, para.70). The first point was derived from the definition of the intra-Community acquisition (Art. 20 VAT Directive), which was taken into account as IC supply and IC acquisition are one economic transaction and therefore both requirements should be met (ECJ v. 27.09.2007, C-409/04, ‘Teleos’, para.28). The second point was derived from the fact that not only the transfer but especially the dispatch requires the physically movement of goods (ibid., para.37).

The ECJ states that the VAT-exemption is not applicable until these two requirements and the conditions concerning the taxable status of the entrepreneurs are met (ibid., para.42). In contrast, there is also no need for further conditions (ibid., para.70) that may proof the IC supply. However, Terra and Kajus (2011, p.916) assume that several Member States will overlook this fact. This is reasonable as Article 273 VAT Directive allows the Member States to set up additional conditions in order to ensure the correct levy of taxes and avoids VAT fraud as long as they do not lead to formalities at the time of the border crossing in the flow of trade (Art. 273 VAT Directive). Furthermore, they

should not exceed the duties that are necessary to ensure the exact levy of VAT and the avoidance of VAT fraud (ECJ v. 21.03.2000, C-110/98, ‘Gabalfrija’, para.52). Also, the neutrality of VAT should not be undermined (ECJ v. 19.09.2000, C-454/98, ‘Schmeink & Cofreth’, para.59).

Pestana de silva and Platteuw (2011, p.14-9) mention as (additional) conditions the inclusion of both the vendor’s and the acquirer’s VAT ID number in the invoice and the retention of the VAT ID number in the records. These requirements are comprehensible as they belong to formal requirements that come along with the categorization of a supply as intra-Community supply. Thus, the fulfillment of these connected obligations may be set as further conditions for the VAT-exemption, even though it is anyways required by the VAT Directive. One obligation may be the presentation a proper invoice that is based on Article 220 (3) VAT Directive, which obliges every entrepreneur accomplishing intra-Community supplies as specified in Article 138 VAT Directive to issue invoices that include the VAT ID number of the supplier (Art. 226 (3) VAT Directive) and of the customer (Art. 226 (4) VAT Directive).

In this context it has to be mentioned that the invoice is a crucial document with respect to VAT (Tait, 1991, p.4) as the VAT levy is invoice-based (Keen & Smith, 1996, p.378). For instance, entrepreneurs use the ‘invoice-credit method’ in normal transactions whereby the VAT paid on inputs is documented in invoices that the seller issues for the buyer. Thus, the latter one is able to offset these input VAT in form of a credit against his output VAT (Ebrill et al., 2001, p.2, Keen & Smith, 2007, p.4). Thereby, the invoice is especially an audit evidence for enforcement (Keen & Smith, 1996, p.378). However, in terms of VAT exemption the invoice showing the VAT ID of both seller and buyer and no VAT or rather the notice ‘Vat exempt due to intra-Community supply’ can also be used as an audit evidence. Thereby it does not only show that the seller classified the supply as intra-Community supply but more important that he fulfilled the relating obligation of this supply by issuing the invoice with the relevant information on it.

Furthermore, evidences based on the accounting and the records of a taxable person may be used as conditions for VAT-exemption as “[e]very taxable person shall keep accounts in sufficient detail for VAT to be applied and its application checked by the tax Authorities“ (Art. 242 VAT Directive). Thereby, the duties concerning accounting are both an instrument of self-control and a securing for tax authorities that the taxation is properly executed (Groels, 2001, p.535). Therefore, separate booking accounts for intra-Community supplies (Schrader & Gohlke, 1993, p.11) that show the net value of the goods supplied as well the capturing of the VAT ID number of a customer can support the VAT-exemption of IC supplies.

Moreover, these accounting records are not only related to the execution of intra-Community supplies but also to the submission of the preliminary and annual VAT returns (Art. 250 (1), Art. 252 VAT Directive) and the recapitulative statements (Art. 262 VAT Directive). They have to include the net value of the goods supplied to countries of the Community (Art. 251 (a) VAT Directive) and in case of the recapitulative statement the VAT ID number of the customer (Art. 264 (1) (b) VAT Directive). Therefore, the filing of the respective VAT returns and the recapitulative statement are also obligations related to the execution of intra-Community supplies, which can therefore also be set as conditions for the VAT-exemption.

When installing all of these conditions it can eventually be deducted from above that the different criteria are all interrelated. For instance, the fact of an intra-Community supply can be seen when having a look at the invoice. Furthermore, the information in the invoice should be stored in the accounting of a business and in turn, these accounting should include the information that the fact of an intra-Community supply contains.

3.1.3 Possible evidence

From the section above, it can be concluded that the basic requirement for the VAT-exemption that can be deducted from the VAT Directive and the decisions of the ECJ is the fulfillment of the objective criteria defining an intra-Community supply. Though, further formal requirements can also be set up in order to proof the VAT-exemption. As

the entrepreneur is liable to proof the fulfillment of these requirements, this section aims at finding examples of documentary evidence because there are no regulations that directly deal with the questions, which documentary evidence the taxable person has to present (ECJ v. 27.09.2007, C-146/05, ‘Collée’, para.24; ECJ v. 27.09.2007, C-184/05, ‘Twoh’, para.25). Therefore, this list will not be exhaustive as different evidence may prove the same condition or the Member States may require a special proof. But it should give an overview of possible proofs that are helpful for the comparison in Chapter 5.

The main condition for the VAT-exemption is to prove that the intra-Community supply indeed took place. Therefore, two requirements must be proven. The first requirement that should be satisfied to get the VAT-exemption of IC supplies is that both entrepreneurs involved in the transaction are *taxable persons*. The proof can be collected based on the VAT identification number as every taxable person in the EU is required to have such a number (Art. 214 in conjunction with Art. 9 VAT Directive). As the supplier knows his own number (supposed he is correctly registered) he may prove with documentary evidence that also the acquirer is VAT registered but in another Member State. As there is no pan-European database that contains all entrepreneurs registered for VAT purposes (EC, 2012, Q 20), the easiest way to do so is the use of the VIES homepage as it allows to verify that the VAT ID number of the potential acquirer in the other Member State is valid (EC, 2012, Q1, Q17). Thereby, the information is retrieved from the respective national databases (EC, 2012, Q20). However, as first, the use of the VIES homepage as a qualified source is questionable and second, not all Member States allow the divulgement of the name and the address belonging to that VAT ID number, a better source is the competent tax authorities, which will provide the supplier with the information (EC, 2012, Q15).

In order to completely meet the first condition the check of validity by the VIES website is a good option in case the name and address of the entrepreneur are provided. In case they are not, it is advantageous to request information of the competent tax authorities as they will receive the information from the foreign tax authorities (Council Regulation

(EC) No 1798/2003). Of course, with the proof of the validity of the customer's VAT ID number the vendor cannot prove that the business partner really uses it for his business (Langer, 1992, para.27), but the act of handing it over to the vendor means that the customer acquires the goods for his business (Groels, 2001, p.242).

The second requirement that needs to be fulfilled in the context of proving the intra-Community is the *transfer of goods to the territory of another Member State*, which consists of the transfer of ownership of the goods and the physical departure from the country of departure. In this context, the presentation of transport documents may be useful (Pestana de Silva & Plateeuw, 2011, p.14-11; Langer, 1992, para.38). Article 138 (1) VAT Directive mentions three possibilities of transfer: first, the transport by the customer, second, the transport by the supplier and third, the dispatch on the behalf of the vendor or acquirer. Depending on the kind of supply it is therefore advisable to use different evidences (IDW, 1997, para.343). In case the customer supplies the goods himself the delivery note or a confirmation issued by the recipient may be useful documents that prove the transfer of ownership and the physical departure. In case the customer transports the goods himself, the vendor has not many options to see if the customer really transported the goods abroad. Therefore, a confirmation stating that the customer received the goods inland and will transport the goods to another territory within the EU may be helpful to convince the tax authorities that the conditions of the IC supply are fulfilled.

In case the goods are dispatched via transport agent the documents proving the transport can be divided into 'document of title', which includes the bill of lading and is mainly used in the context of sea transport¹¹ and into waybills including waybills of air, train, road and sea, the CTD for combined transport and the receipt of posting when sending goods via post or courier. The difference is that the former documents have the function of a bond that represents the goods that are to be delivered (GDV, 2012). Therefore they are not only a contract of carriage but also a receipt and as the group name says a

¹¹ As well as the warehouse warrant that proofs the transit of ownership in case of the use of consignment warehouses (GDV, 2012), which is important in cases of transport by the acquirer.

document of title (Tetley, 1994, p.51; Hinkelman, 2005, p.316), which replaces the handover of goods by the handover of the paper (Schaps & Abraham, 2012: p.795). In this way the transfer of ownership (via transport agent) and the physical transport in another Member States' territory is directly proven with this document of title.

However, as within Europe the transport is mainly accomplished by train or road as most of the countries have a common border (WOR, 2010, p.164) waybills are used that are just a certificate of proof that does not fulfill the premise of a document of title, which means they are not negotiable (GDV, 2012; Hinkelman, 2005, p.162; Tetley, 1994, p.51). Therefore, also certificates of the freight forwarder confirming the dispatch are useful to prove the transfer, especially when the agent is not located inland and stores the waybills at his headquarter abroad (Langer, 1992, para.40). In addition to the transport documents, there are also other commercial documents that may help to prove the execution of intra-Community supplies, as e.g. brokers' slips, correspondence, copies of pay slips (OECD, 2011, p.42). Pestana de silva and Platteeuw (2011, p.14-11) name copies of warehouse receipts, delivery dockets or vehicle registration number in case of means of transport as further useful documentary evidence to prove the transfer of goods to another country.

Concerning the fulfillment of the formal conditions relating to *invoicing, accounts, returns and recapitulative statements*, proving is easier as the entrepreneur is anyways obliged to implement them in his business activities. Though, the entrepreneur has to take care that certain conditions concerning these formal requirements are met. Thus, both VAT ID numbers and a notice concerning the VAT exemption in case of IC supply on the invoice. Especially in case that the acquirer or a third party (Art. 220 VAT Directive) have the responsibility of issuing the invoice, the vendor needs to check if besides these two important conditions for IC supply the other requirements concerning the content (Art. 226) are fulfilled. Furthermore, the VAT returns should include the correct number of IC supplies. The EC Sales list (as form of the recapitulative statement) needs to imply the correct value of IC supplies to the respective customer.

3.1.4 Further legal requirements

When establishing conditions for VAT-exemption the respective regulations of the Member States need to be in line with general principles of Community law. One of these principles that should to be obeyed is the principle of legal certainty (ECJ v. 18.12.1997, C-286/94, ‘Molenheide’, p.48; ECJ v. 11.05.2006, C-384/04, ‘Federation of Technological’, para.29f.). It aims at certain legislation so that the entrepreneur is able to foresee the consequences of its application. Especially, when regulations may lead to a financial burden, this principle should ensure that the entrepreneur is able to recognize the scope of obligations concerning tax that are imposed on him when he closes a deal (ECJ v. 15.12.1987, C-326/85 ‘Netherlands’, para.24; ECJ v. 27.09.2007, C-409/04, ‘Teleos’, para.48).

This principle is also indirectly emphasized in the VAT Directive as the conditions set up by the different countries have the purpose to ensure a correct and straightforward application of the exemption. Thus, in case a Member State has set the conditions for VAT-exemption, e.g. by issuing a list, the entrepreneur cannot be obliged to the later payment of VAT when he meets the requirements and is not involved in any VAT fraud. Therefore, the requirement of providing *conclusive* proof would not guarantee a correct and straightforward application of the VAT-exemption but would rather lead to insecurity for the entrepreneur conducting intra-Community supplies (ECJ v. 27.09.2007, C-409/04, ‘Teleos’, para.50f.). This shows that the documentary evidence the different entrepreneurs require should be subject to legal certainty.

3.2 Influences of documentary evidence on the entrepreneur

After having an overview of the requirements the EU has on documentary evidence, also the entrepreneurial view is important as it is undoubted that the entrepreneur bears the burden of proof if he relies on the VAT-exemption (ECJ v. 27.09.2007, C-184/05, ‘Twoh’, para.26). That means that he cannot trust on the information exchange between the different tax authorities of the concerned Member States as the country of departure is not obliged to ask the authorities of the State of arrival for information based on the respective regulation concerning administrative cooperation (ibid., para.38). Thus, the

question is not if the entrepreneur has additional efforts with the collection of documentary evidence – compared to the time prior to 1993, he definitely has (Schrader & Gohlke, 1993, p.1) – but in what extent differences in evidences impact his business. Therefore, the aspects of the regulations concerning documentary evidence that are most important to entrepreneurs are focused on (3.2.1) while Section 3.2.2 presents these practical concerns on the concrete example of the actual change in the theoretical German requirements for documentary evidence.

3.2.1 Influences on and demands of the entrepreneurs

The main focus in the context of documentary evidences is not *with whom* an entrepreneur does business – except for the fact that this business partner should better not be involved with carousel fraud or similar – but rather *where* he is located when he does it. Therefore, it is important that the entrepreneur knows the tax conditions and their interpretation in the respective countries. Otherwise he cannot recognize the impact on his business.

When starting to do intra-Community supplies from an EU country, the compliance cost raise compared to transactions inland or exports (Keen & Smith, 1996, p.387). In addition the high level of duties concerning *administration and information* impact the *organization and the accounting* of the entrepreneurs (Rose, 1992, p.16). These **bureaucracy and formalities** (Keen & Smith, 1996, p.386) may also have an influence on the human resource management as competent employees are needed. However, all these issues are related to costs. Thus, the hope for a learning process, which would reduce the efforts (Keen & Smith, 1996, p.387) is reasonable as entrepreneurs in Europe use their knowledge of the taxation effects to construct intra-Community deliveries (Wöhe in Tumpel, 1997, p.22) so that costs can be minimized, e.g. by using the few freedoms in designs concerning modalities of supply and chose of customer (Rödder Mattausch in Tumpel, 1997, p.25). Though, the opportunities are limited and it is questionable if the learning process can be applied to all Member countries.

Thus, the entrepreneur would prefer to collect evidences that are **not too demanding** as he may be able to keep the costs within a limit. However, the ECJ sees demanding requirements on the objective criteria of an intra-Community supply in the context of the principle of proportionality as legitimate when it comes along with the prevention of VAT fraud (ECJ v. 27.09.2007, C-409/04, ‘Teleos’, para.58). Therefore, an entrepreneur should “take every step which could reasonably be required of him to satisfy himself that the transaction which he is effecting does not result in his participation in tax evasion” (ECJ v. 11.05.2006, C-384/04, ‘Federation of Technological’, para.33). Though, the demands on the entrepreneur should not exceed the duties necessary to ensure the exact levy of VAT and to avoid VAT fraud (ECJ v. 21.03.2000, C-110/98, ‘Gabalfrisa’, para.52). But also the honest entrepreneurs should be interested in a procedure that makes VAT fraud more difficult as they suffer from distortion of competition in favor of the dishonest entrepreneurs (COM (2004) 260 final, p.6). This means that demanding requirements are not only an additional burden to the entrepreneur but also a security for him to proof that he was not consciously involved in any fraudulent transaction.

Aside from the focus on cost reduction, entrepreneurs crossing borders also seek for **security** (Czinkota et al., 2009, p.147f.). Therefore, having concrete evidences that need to be provided is a certain security for the IC suppliers. But also the fact that documentary evidences are no *substantive* claim of the VAT-exemption anymore is a security for the entrepreneur. The evidences can consist of any relevant proof and are even seen as expandable in case the requirements for the exemption are proven with other circumstances (Höink & Krebs, 2011, p.9). That means that the VAT-exemption must also be granted when not all formal criteria are met as long as the substantive requirements are fulfilled. Only if the non-compliance with the formal criteria leads to not meeting the substantive requirements, the exemption cannot be granted (ECJ v. 27.09.2007, C-146/05, ‘Collée’, para.31).

However, this information should be handled with care. It does not mean that an entrepreneur should stop meeting the formal requirements when they are demanding

and he can proof that the substantive requirement of the IC supply are fulfilled. In the worst case, it means additional efforts when the tax authorities have problems to accept the proofs of the substantive requirements. For the entrepreneur it is therefore advantageous to focus on meeting the formal requirements and relying on the substantive requirements only in case the former one could not be provided.

Anyhow, as long as he takes all potential and reasonable measures (ECJ v. 27.09.2007, C-409/04, 'Teleos', para.66) to ensure that his participation in the IC supply does not lead to an involvement with VAT fraud (Treiber, 2008, §6a, para.17) he can rely on the *principle of good faith*. That means that the competent tax authorities of the country of departure are not allowed to commit a supplier to pay VAT on goods at a later date when it emerges that the proofs this entrepreneur presented were wrong, even though the right of VAT-exemption seem to be proven at the first appearance. This applies as long as it is proven that the entrepreneur is not engaged in the VAT fraud (ECJ v. 27.09.2007, C-409/04, 'Teleos', para.68).

In contrast, if the entrepreneur conceals the identity of the purchaser in order to enable him to evade VAT, he is not allowed to use his right of VAT-exemption even though an IC supply took place (ECJ v. 07.12.2010, C-285/09, 'R.', para.55). Thus, the entrepreneur needs to keep in mind that demanding requirements aim at supporting him and his business activities and give him a certain security as long as he takes every possible step to show that he is not involved in VAT fraud. Of course, the more demanding or specific the documents, the more effort the entrepreneur has in the respective country.

3.2.2 Practice versus theory on the example of Germany

The example of Germany shows that the implementation of requirements that theoretically aim at relieving the entrepreneurs while ensuring the VAT-exemption for the entrepreneur does not always work in a practical context. On December 2, 2011 the Federal Ministry of Finance announced the amendment of the documentary evidence in Germany with effect from January 1, 2012 (BGBl. 2011 I p. 2416.). This was the first

major alteration of the Value Added Tax Ordinance (VATO) – in which the regulations regarding documentary evidence for Germany (Articles 17a to 17c) can be found – since the sections concerning documentary evidence were implemented in 1993 (see Appendix 7). Due to discussions and critiques concerning the renewal of the documentary evidence (PWC, 2012a; Urban, 2012, p.104), a transitional phase was implemented so that entrepreneurs were allowed to use the old evidence requirements for supplies accomplished until March 31, 2012 (BStBl. 2011 I p. 1287). This deadline for not rejecting the old proofs was extended twice; first, until June 30, 2012 (BStBl. 2012 I p. 211) and second, until December 31, 2012 (BStBl. 2012 I p. 619). These three postponements and the notice ‘until the commencement of a new amendment’ show that it will still take a while until the public authorities will issue the final draft.

The Federal Ministry of Finance saw a necessary change in the provision concerning documentary evidence for intra-Community supplies so that the regulations would be simpler and clearer. Thereby, the abolishment of two conditions preliminary necessary in that context was calculated to lead to a potential reduction in costs of € 28.000 for the entrepreneurs (BR-Drs 628/11, p.2). It is questionable if this financial aim can be achieved because the new regulations led to manifold critique from the business world (Höink & Krebs, 2012, p.9; Anon., 2011, p.11) that rather sees additional burdens in the new evidence requirements mainly due to missing practical reality. It was even assumed that next to the financial risk amounting to VAT (Driftmann, 2012, p.1; BStBK, 2012, p.3) additional costs in the billions would be the result of the new documentary evidence in Germany (SdW, 2012c, p.1f.).

Already at the time that the Federal Ministry of Finance gave the elaborated provision to the Federal Council of Germany for approval (see Table 1 for a timeline) the National Regulatory Control Council criticized that the newly introduced ‘entry certificate’ as the main evidence would lead to an increase in efforts of fulfillment as the time of issuance was not before the arrival at the customer (NKR, 2012, p.1; Höink & Krebs, 2011, p.9f.). More important were the concerns of the freight forwarders who argued that it was not their area of influence to collect the entry certificates from the customers.

Moreover, they were afraid of recourses to them in case the certificate was incorrect and the seller had to pay VAT later (Anon., 2011, p.11; IHK Koblenz, 2012).

Date	Content	Source
05.08.2011	Ministerial Draft including changes of documentary evidence	BMF, 2011
13.10.2011	Request of BMF for approval from Federal Council of Germany	BR-Drs. 628/11
25.11.2011	Approval of amendment of VAT Ordinance	BR-Drs. 628/11
02.12.2011	Second ordinance of amendment of fiscal ordinance came into force	BGBI. 2011 I p. 2416.
09.12.2011	1. draft of the statement of BMF concerning changes of the Fiscal Code Application Decree	BStBl. I 2011 S. 1287
09.12.2011	Deadline for application of old regulations until 31.03.2012	BStBl. I 2011 S. 1287
13.01.2012	Opinion on 1. draft by IDW	IDW, 2012a
17.01.2012	Opinion on 1. draft by SdW	SdW, 2012b
06.02.2012	Deadline for application of old regulations until 30.06.2012	BStBl. 2012 I S. 211
21.03.2012	2. Draft of the statement of BMF concerning changes of the Fiscal Code Application Decree (not published at the moment)	Draft, IV D3 - S7141/11/1003-02
17.04.2012	Opinion on 2. draft by BStBK	BStBK, 2012
20.04.2012	Opinion on 2. draft by IDW	IDW, 2012d
24.04.2012	Opinion on 2. draft by SdW	SdW, 2012d
01.06.2012	Deadline for application of old regulations until 31.12.2012	BStBl. I p. 619.

Table 1 Timeline of changes concerning the new documentary evidence in Germany

Even after an amendment of the draft concerning the changes of the Fiscal Code Application Decree that took into account the critique mentioned by representatives of the business world there were still many aspects that were met with criticism. Mainly the discrepancy and even contradictory of VAT Ordinance and the Fiscal Code Application Decree led to insecurity on the part of the entrepreneur and the question of legal certainty in general (IDW, 2012b, p.1f.; Driftmann, 2012, p.1; BStBK, 2012,

p.2ff.). The amendment was rather seen as an effort to combine the regulations of the VAT Ordinance with manageable evidence in the Fiscal Code Application Decree (SdW, 2012c, p.2). Also, practical issues as well as examples not meeting reality in practice question the intention of easement of the new regulations.

Issues of concern were amongst others the collection of evidence that the person taking the delivery of goods acts by proxy of the customer (IDW, 2012b, p.3; SdW, 2012d, p.3f.), the collective entry certificate concerning detailed content, especially the date of arrival (SdW, 2012d, p.4) and its period of application in relation to returns (IDW, 2012d, p.3f.), the treatment in case of subcontractors (Anon., 2011, p.11; SdW, 2012b, p.6), the language of the entry certificate (Anon., 2011, p.11; IDW, 2012b, p.5), the abolishment of the difference between transport and dispatch (SdW, 2012d, p.10; Höink & Krebs, 2011, p.9f.), the terms of easement concerning transportation on certain goods on the one hand (IDW, 2012b, p.6f.; SdW, 2012d, p.8) and goods with low value on the other hand (SdW, 2012d, p.2).

Besides, the avoidance of VAT fraud is unlikely to be ensured with the entry certificate as main proof. Especially the compelling requirement of the customer's signature on the certificate is not only a problem in practice (Driftmann, 2012, p.1; SdW, 2012a, p.2; SdW, 2012d, p.1) but also a risk as the accuracy of the signature can hardly be proven without further efforts (Driftmann, 2012, p.1; SdW, 2012b, p.11). Therefore, the use of e.g. the CMR without any limitation is demanded (Anon., 2011, p.11) because the freight forwarder has no interest in providing the vendor with wrong information concerning the intra-Community supply as he would be involved with VAT evasion if so. In contrast, those who aim at VAT fraud have fewer problems as they are able to provide the apparently proper documents when no objective third party is involved (SdW, 2012b, p.11f.). Therefore, the BStBK has the impression that entry certificates have more weight than objective proofs as e.g. freight documents (BStBK, 2012, p.3).

However, besides the problems mentioned above, the efficiency of these new evidence is also mainly depended on the customers of IC supplies. Their incomprehension of the

additional efforts that do not lead to any advantages for them, the fear of legal consequences or just missing motivation may let them to choose suppliers from other countries (SdW, 2012b, p.2; BStBK, 2012, p.4; IHK Koblenz, 2012), especially when the German supplier only issues gross invoices in order to avoid complications (Höink & Krebs, 2011, p.9f; SdW, 2012b, p.10f.).

After the application of the new regulations was postponed until December it is unknown when a certain provision comes into force but it is unlikely that this happens before autumn or winter (PwC, 2012b). Even though the new regulations concerning proofs for IC supplies lead to more efforts than those for exports (SdW, 2012a, p.2; SdW, 2012c, p.2), a return to the former provisions is also unlikely (PwC, 2012a). But the fact that German businesses protest against the new regulations introduced by the government shows the disagreement potential of national authorities implementing theoretical requirements and businesses having practical experiences. Together with the 147 jurisdictions since 1997 in the context of receipt evidence (JID, 2012a) and 125 jurisdictions since 1996 in the context of accounting evidence (JID, 2012b), the development strongly reflects the insecurity of the tax authorities and the missing clarification of this topic (Philip & Rüth, 2008, para.120; Höink & Krebs, 2011, p.9).

3.3 Catalogue of criteria

The examination in the sub-chapters above shows that the findings of the survey should be analyzed with regards to certain criteria. These criteria should include the governmental view but also the one of the entrepreneur as both have certain ideas and requirements concerning documentary evidence. Therefore, the criteria will be divided into two parts, the part of the EU and the one of the entrepreneur.

Concerning the first part of criteria, it is in the interest of the EU that the national requirements concerning documentary evidence are in line with the Community law and the European jurisdiction as it is the basis to ensure the correct application of VAT-exemptions and the avoidance of VAT fraud in the context of intra-Community supplies after the fall of the internal borders. Therefore, the evidence will be analyzed on their

potential assignment to the conditions derived in Sub-Chapter 3.1. In that way it is possible to see if the requirements are met, even when the design of evidences is different. Thereby, the connected obligations as the issue of invoices, the bookkeeping of the IC supply and the filing of returns and the recapitulative statements are subject to the comparison but not to the analysis on the EU basis as these are conditions that need to be met anyways.

The EU basis therefore mainly focuses on the IC supply and its objective criteria. Thus, the first criterion is the *taxable status of the customer* as a proof of this status is an indicator for the honesty of the person and the acquisition in the context of his company. The second criterion will be the *transport to the customer in another EU Member State*. The two requirements by the ECJ, the transfer of ownership to the customer and the physical departure of goods, are taken together as the proof is most of the times done at the same time, e.g. a CMR signed by the customer shows that the acquirer has the ownership and that he received the goods, which means that they physically left the country. Beside these two criteria it will also be analyzed if the countries applied the *principle of legal certainty*. Even if this criterion seems to be more in the interest of the entrepreneur conducting IC supplies, one has to keep in mind that it is a principle of the Community law. That means that not meeting this requirement would definitely have an influence on the entrepreneur but the impact on the reliability of national tax authorities and furthermore, on the missing support by EU and ECJ is much worse from a European point of view.

The entrepreneur is more focused on the cost factor and therefore on as less additional effort as possible when conducting intra-Community supplies from several European countries. He is willing to fulfill a certain level of requirements as it is in his interest to give participants in VAT fraud less advantages and as he wants to have the right to exempt his IC supplies. However, it is obvious that for the entrepreneur it would be best if all Member States would require the same documentary evidence as he is interested in as less effort as possible. This applies especially when he is active in more than one EU country as all additional efforts are always connected to costs.

Thus, the more homogenous the requirements are, the more likely he conducts intra-Community supplies in several EU countries. The collection of as many evidence as possible in order to leave no doubt on the fulfillment of the criteria is therefore not one of his main objectives. Thus, the first criterion of the entrepreneur is the request for collecting evidences that only meet the *basic requirements* of the EU. The need to present additional documents as e.g. the connected obligations or even more specific, national requirements is not on the behalf of the entrepreneur as it would increase the level of demands and insecurity. Furthermore, in terms of security, not only certain evidences but also the *availability* of these evidences is important. That means that long ways of bureaucracy, the opening hours of agencies or the dependence on freight forwarders or customer limits the availability of the correct and straightforward application of the VAT-exemption that the entrepreneur wishes. Besides, these two criteria the request for *additional requirements* hinder the cost reduction intention of the entrepreneur. They are not to be seen as documents like the first criterion but more specific in the terms of e.g. content, language or similar.

3.4 Summary

Based on the examination in Chapter 2, this chapter aimed at providing an overview of the theoretical requirements of the EU and the entrepreneurs on documentary evidence in the context of intra-Community supply. Thereby, the interface of documentary evidence and the VAT-exemption of intra-Community supply, the requirements that the evidence should proof and the possible design of evidences were presented. Together with the legal requirements the point of view of the EU showed already a certain degree of potential differences in the design of documentary evidences.

Meanwhile, the second part of the chapter depicted the entrepreneur and his demands on and threats by the evidences. It has to be kept in mind that the legislation of the EU affects the entrepreneur in the end. Therefore, the national tax authorities should not only focus on the international perspective but also on the one of the entrepreneur. Otherwise, the aim of an increase in intra-Community trade with the abolishment of the borders cannot be achieved and is rather hindered by the establishment of barriers based

on bureaucracy. This was visible in the example of Germany where the national tax authorities did only partly include the practical effects of the new regulations in their thinking. Therefore, a catalogue of criteria was established that on the one hand focuses on the needs of the EU and on the other hand on the preferences of the entrepreneur. In that way it can be analyzed in how far the national legislations include both levels. Even though, this catalogue is by far not complete, it focuses on the main criteria that help to answer the research questions in the end.

From a theoretical point of view the research question can already be answered. Starting with question (1a) concerning the national differences it is, of course, not possible to mention the explicit differences. However, Article 131 VAT Directive allows certain freedom in the design of national requirements for the Member States so that this is likely to lead to differences between the different laws within the EU. Especially the section about evidences in the context of intra-Community trade showed that the design depends on the conditions set up by the Member States and furthermore, on the favor for the explicit evidence(s). Also, the will to prevent VAT fraud influences the differences. Hence, a huge discrepancy in the required documentary evidence is unrealistic as the possibilities to proof intra-Community supplies are not too various.

Thus, also research questions (1b) and (1c) are partly answered. As the requirements of the EU are based on the EU legislation, the requirements should be fulfilled by all Member States. As said before, differences in the concrete design are not limiting the meeting of the European requirements. In contrast, the burden on the entrepreneur may be higher in certain countries than in others. The German example shows a country where fulfilling the requirements on documentary evidence are highly connected with costs for the entrepreneur. Thus, a potential best solution in the context of this thesis would be the design of documentary evidences that fulfills all criteria of the catalogue. As depicted above, it is possible but requires the intensive examination with the topic.

Therefore, the theoretical answer to the main research question is that from the point of view of the entrepreneur it is definitely advantageous to unify the requirements on

documentary evidence. The more different and unusual the requirements are the less likely entrepreneurs are to invest in intra-Community trade and to do business in the respective countries, which would not be in the sense of the establishment of an internal market. Therefore, one can say that besides the legal accordance in terms of tax sovereignty, the unification of documentary evidence – at least to a certain extent – would be advantageous in order to follow the intentions of the European harmonization efforts.

4 Research Methods

The methodology used in research aims at ‘finding out’ certain information or knowledge that supports or answers questions in the area of studying (Case, 2012, p.202). The study on hand aims at finding out if the unification of the documentary evidence concerning IC supplies is advantageous. In this context, it is important to find information about the differences in national designs but also if certain requirements on the governmental and entrepreneurial level are met as well if a potential best solution exists. These three aspects should be investigated on with the help of research methods in order to be able to answer the main research question of this study. The research methods used in this thesis are further described in this chapter by presenting the method choice (Sub-Chapter 4.1) and in line with that the unit of analysis, the data collection process and the analysis and interpretation of the results. Furthermore, the evaluation (Sub-Chapter 4.2) aims at providing the reader with the reliability and validity of the study as well as with its limitations.

4.1 Method choice

Case (2012, p.204) divides research methods in techniques of measurement and techniques of analysis as first something has to be measured, which is afterwards analyzed. Thus, in this thesis the survey was chosen as technique of measurement in combination with a content analysis as technique of analysis. The survey is the best way to collect information about a defined sample (Bethlehem, 2009, p.1) as it is a measurement technique resulting in a high number of information (Wright & Marsden, 2010, p.14). Furthermore, it is a very common technique in the International Business (IB) literature (Case, 2012, p.222) as over one third of all IB investigations included some kind of survey methods (McKechnie et al., 2002, p.407ff.). The content analysis is the process of examining the contents of written texts (Insch et al., 1997, p.1), which can be seen as a methodological measurement of written words (Shapiro & Markoff, 1997, p.14). Therefore, the survey helps collecting information about documentary evidences used in the respective countries in form of written answers. These answers are

analyzed in line with the content analysis in order to be able to obtain answers to the questions about national differences, the fulfillment of the criteria derived in Chapter 3 and a potential best solution.

A qualitative approach was chosen as it is “coming to terms with the meaning not the frequency” (van Maanen, 1983, p.9). So, even though the frequency of the same answers in the context of documentary evidence may be important, the main focus is on the meaning of the different national approaches in order to answer the research questions. In other words, the number of countries using certain evidences may be an indicator that this is a useful proof. Though, it would not help to provide answers to the questions about differences, superior approaches or meeting of requirements among the European countries. Therefore, words instead of numbers are necessary in order to use “a source of well-grounded, rich descriptions and explanations of processes in identifiable local contexts” (Miles & Huberman, 1994, p.1). The survey and the content analysis are therefore able to provide the necessary information to eventually ‘find out’ about the use of unified documentary evidences.

4.1.1 Unit of analysis and sampling decisions

When defining the units of analysis it is important to distinguish it from the units of observation. The ‘units of analysis’ are the units that a researcher wants to collect information about (De Vaus, 2002, p.3) or the ‘what’ or ‘whom’ that is studied (Fletcher & Plakoyiannaki, 2011, p.173). Depending on the units of analysis the sample size and the sampling strategies are chosen (Patton, 2002, p.228). Therefore the units should be “appropriate” (Yin, 2011, p.82) in order to be able to analyze them in the respective context. To be able to conduct a content analysis, the unit of analysis appears in forms of “words, sentences and paragraphs” (Klenke, 2008, p.89).

The units of analysis in the thesis on hand are the national requirements on the VAT-exemption of intra-Community supplies or to be more precise the documentary evidences. After having collected the information about the national proofs, it is possible to analyze them based on the criteria derived in Chapter 3. Thus, the different

designs in the national legislations are the units that I “want to be able to say something about at the end of the study” (Patton, 2002, p.229). In contrast, the ‘units of observation’ aim not at providing information *about* something but they are the units *from* that the information are gathered (Hunter & Brewer, 2006, p.88). Thus, the information about documentary evidences are collected from the countries participating in the EU or to more precise the information are taken from the national VAT legislations of the respective countries.

The sampling decision is generally very complex (Fletcher & Plakoyiannaki, 2011, p.176). The decisions on sampling should not only include information-rich (Patton, 2002, p.242) but sometimes even multilevel approaches (Fletcher & Plakoyiannaki, 2011, p.181) that first aim at defining the sampling population, afterwards the sampling frame and then the sampling method and size before the sample is selected (Stevens et al., 2006, p.183). Thereby, the sample size that depends on the purpose of the study has to be carefully chosen and is normally relatively small in qualitative research (Patton, 2002, p.230). In the context of this thesis, it is fairly straightforward to choose the sample and the sample size as there are only 27 countries that actually participate in the EU and are therefore obliged to adopt the requirements of the EU’s VAT legislation. Thus the population of 27 Member States is also chosen as the sample size.

4.1.2 Data collection

Before the data of the survey was collected, the basis for the content analysis was set in the previous chapters. First, the harmonization process, which led to the national responsibility of establishing certain requirements on the evidences, was examined in Chapter 2 based on the existing literature and the published Council Directives. Then, the following Chapter 3 examined the requirements of the EU and the entrepreneurs on the design of the documentary evidence based on the European VAT Directive, decisions of the ECJ concerning this topic, relevant literature and the correspondence and publications concerning documentary evidence in Germany. Afterwards, the 27 Member States were chosen as possible candidates for further investigation on the

national requirements based on the reasoning above and the need for information about as many countries as possible in order to answer the research questions.

The respective information needed to be collected from the law texts. As this would have been complicated due to restrictions in language skills of the author and the availability of all specific law texts, the internal network of PricewaterhouseCoopers (PwC), the leading auditing and consulting company in Germany (PwC, 2012c) was used in order to collect the data needed. The VAT departments of PwC in all Member States were addressed by E-mail so that a comparison and analysis would be based on data as holistic as possible.

The E-Mail included a short questionnaire – as one of the several methods to choose between in terms of data collection (Case, 2012, p.235) – asking for answers to three short questions. The first question

(1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

is an open-ended question that provides information so that the national differences can be compared and the answers to the questions can be analyzed on their meeting of European and entrepreneurial requirements. Based on that, also answers to potential ‘best solutions’ can be given. In general, with this question the information most important to this study would have been collected. However, two more questions were asked in order to focus on the entrepreneur and the use of evidence in practice. Therefore, a question on transport documents as the main proofing document and a question on invoices as one of the connected obligation to IC supplies were asked. Thus, the second question was

(2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder

*(without confirmation of receipt issued by the recipient of the goods)
are sufficient as documentary evidence?*

This question aims at finding out about the importance of the signature of the customer. As described in Section 3.2.2 the confirmation from a freight forwarder should be sufficient as proof of the transport as he has no interest in providing the supplier with wrong information. The completely filled CMR is connected with several obstacles as it is not always that simple to collect the signature. However, in case it is done, the transport and in line with that the transfer of ownership and the physical departure of the goods should be sufficiently proven in all Member States. As issuing invoices is a connected liability in the context of intra-Community supply, the third question focuses on finding out, if

(3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

Also this question mainly aims at the requirements of the entrepreneur. As he is interested in as less effort as possible, the invoice as the most important document for VAT reasons was chosen as an indicator, if special additional requirements have to be met. In case all countries would accept this phrase, the entrepreneur has less effort as he can use the same invoice phrase for all countries he is active in.

Table 2 provides an overview of the countries that replied to the survey, the date of request, the date of answer as well as the grade in the company of the person answering.¹² Furthermore, the countries that did not answer (Germany was not explicitly addressed due to the law text and PwC experts on hand) and the countries from that information based on the law text were gathered are presented in the lower part of the table. The table shows that only 13 out of 26 countries answered to the questions of the survey. This limits the aim of providing a holistic view. Though, one has to keep in mind, surveys always depend on the willingness of people to answer the

¹² Please note that the grades relate to the intra-company grades.

questions (Baruch, 1999, p.421). Reasons for not answering might be that people do not receive the questionnaire or that they do not wish to respond (Baruch, 1999, p.422). In this case the second choice is more likely to apply as no mail delivery failure was received by the author. A reason is that free-of-charge questions might not be as likely to be answered by the PwC employees as their work load is very high (Squeaker, 2012).

Countries that answered			
Country	Date of request	Date of answer	Position of person answering
Austria	15.05.2012	23.05.2012	Senior consultant
Belgium	15.05.2012	21.05.2012	Senior manager, Director
Bulgaria	15.05.2012	25.05.2012	Senior consultant
Czech Republic	15.05.2012	23.05.2012	Senior consultant
France	15.05.2012	25.05.2012	Director
Greece	15.05.2012	23.05.2012	Senior consultant
Hungary	15.05.2012	23.05.2012	Consultant, Manager
Italy	15.05.2012	17.05.2012	Manager
Netherlands	15.05.2012	23.05.2012	Senior consultant
Poland	15.05.2012	23.05.2012	Consultant, Senior consultant
Romania	15.05.2012	25.05.2012	Manager
Slovakia	15.05.2012	22.05.2012	Manager
Slovenia	15.05.2012	25.05.2012	Senior consultant
No answers from			Use of law text
Denmark	Lithuania	Luxemburg	Great Britain
Sweden	Cyprus	Ireland	Germany (until 2011)
Finland	Malta	Estonia	Germany (2012)
Portugal	Latvia	Spain	

Table 2 Overview of responses to survey

Anyway, one can say that the quality of the answers as well as their reliability should be very high as the person replying is an expert working in the VAT field who knows the language as well as the legislation. However, unintended mistakes as well as misunderstandings due to language barriers are possible boundaries that may occur. Furthermore, even though there were only three questions to be answered the extent of the answers reach from very detailed to very short (see Appendix 8). In addition to the answers of the PwC experts, the requirements of Germany (the old and the new ones) and Great Britain could be collected, based on the information available on the internet and in the national laws. Thereby, the language skills of the author were able to add these two countries to the comparison. However, in that way information based on the experience with the tax authorities could not be collect.

4.1.3 Analysis and interpretation

The qualitative data, the inquiries and the analysis of the content belong to the constructive approach (Gliner & Morgan, 2000, p.28). Thereby, collection and analysis of data is the ‘execution of a plan’ (Riffe et al., 2005, p.41). In this thesis, the plan was to collect, compare and analyze the differences in the national requirements on documentary evidence, their application to a catalogue of criteria and the existence of a possible best solution in order to answer the question, if common European requirements would be better. The basis was laid in the chapters before so that the execution of the plan could be started.

After the data collection the aim of the analysis is to “draw conclusions from the data” (Kent, 2001, p.74). Therefore the answers are first displayed in a chart in order to give an overview of the different national evidence requirements. In this context the evidences are assigned to the requirements based on the VAT Directive (see Sub-Section 3.1.2.2). Thus, a comparison is possible so that the national differences are visible. Afterwards, it is analyzed if the data meets the criteria developed in Chapter 3. Thereby, the data is analyzed based on two levels of interest. The answers to the European level are already partly given in the former step, however, they are displayed in a compromised way together with the information if the entrepreneur is affected by

the different requirements in doing his business. The question about the superiority of one of the approaches will be derived from the results to the other two questions. Afterwards, it is possible to give an answer to the main research question by combining the information gathered in the literature review (Chapter 2 and 3) as well as the information gathered in the survey and content analysis (Chapter 5).

This procedure is summed up in Figure 6 which shows the different research steps and their interdependencies. With the help of the literature review, the examination of the Council Directives, the VAT Directives and the decisions of the ECJ, the harmonization background and the along coming issue of documentary evidences were assessed. A catalogue of criteria was established with the help of this information so that in the following research step the results of the survey could be analyzed based on this catalogue. The content analysis is the basis for the answers to the different research questions.

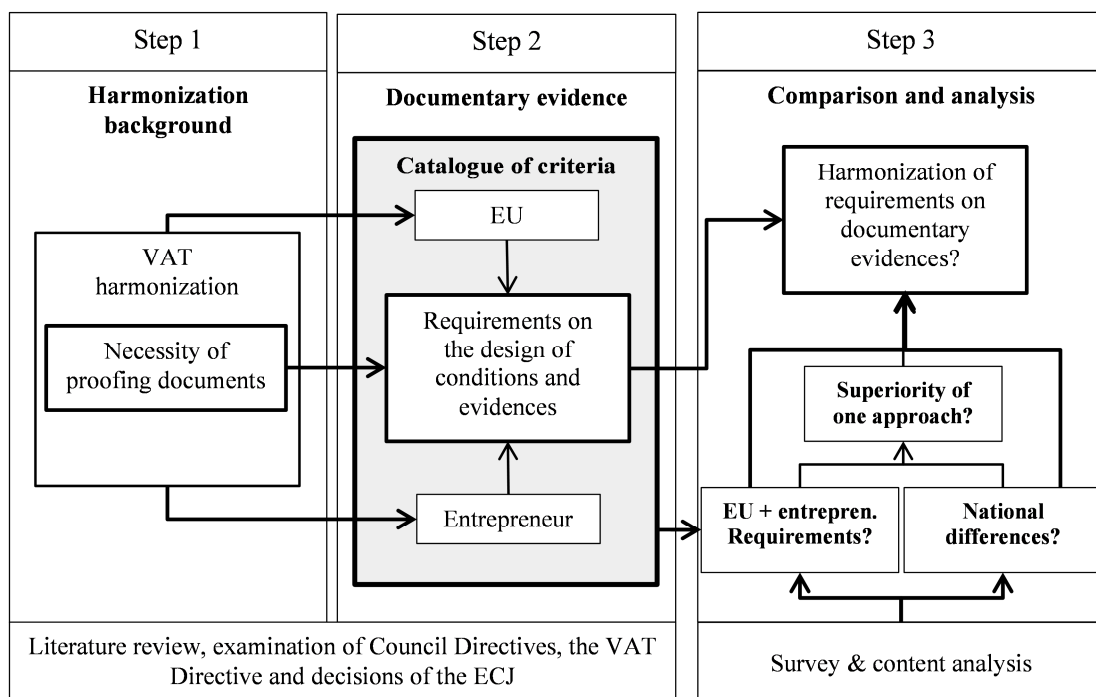


Figure 6 Research process

4.2 Evaluation of this study

In order to evaluate this study this sub-chapter concerns with its validity and limitations. They are the factors that belong to the ‘practice of evaluating’ (Denzin & Lincoln, 2011, p.669). Thereby, not only the survey but also the previous research in form of the review of literature, directives, ECJ decisions and law texts are taken into account. Also the analysis is included in the examinations below in order to “determine the value [...] of some entity [...] and the like” (Lincoln & Guba, 1986, p.550).

4.2.1 Reliability and validity of this study

Reliability and validity are two classic evaluation criteria (Eriksson & Kovalainen, 2008, p.292). Reliability is a part of the validity, which means that a study is only valid if it is reliable (Thomas et al., 2011, p.197). To be reliable a study needs to represent consistency as several repetitions or the same research undertaken by a different researcher would lead to the same results (Eriksson & Kovalainen, 2008, p.292). Therefore it is also characterized by repeatability (Thomas et al., 2011, p.197).

This thesis can be determined as reliable as the repetition of the research would lead to the same results. This applies to the review of literature, directives and law texts as well as to the results of the survey as neither the facts concerning the harmonization and the legal requirements nor the answers to the research questions would change if they would be examined again. Concerning the questionnaire it can be said that even if different employees in the respective countries were asked, the law text would not change, only the way the content is presented to the researcher might differ. However, the results of the analysis would to a great extent be the same. It can even be said that the results are reliable from a temporal perspective as the results of this study would only change if the European arrangement on VAT or rather the arrangements on intra-Community supplies were changed so that the documentary evidence were affected.

The concept of validity of a study “determines how compelling the results of [...] [a] study will be” (Case, 2012, p.208). Of course, every research aims at providing results that are truly compelling. Thereby “the extent that the measurement procedures

accurately reflect the concept we are studying” (Case, 2012, p.208) is important. Thus, a valid study stands for accuracy in conclusions drawn or rather for a “guarantee that the report or description is correct” (Eriksson & Kovalainen, 2008, p.292). That means in contrast that an invalid study is “worthless” (Cohen et al., 2007, p.133).

In research a lot of different validity types exist (see e.g. Cohen et al., 2007, p.133 ff., Thomas et al., 2011, p.193 ff.). For qualitative research mainly the internal and external validity is important. The first one represents the extent to which the results correctly mirror the object of study while the second one stands for the application of the findings to similar settings. Concerning the internal validity, one can say that this thesis highly reflects the research on differences and potential unification ideals in the context of documentary evidence. The study is able to give answers to the research questions concerning documentary evidence by providing information about all parts involved – the basis, the theoretical design, the national status quos and the results based on the former research efforts. Thus, it can be said that internally the study is accurate and correct.

Also the external validity can be approved, even though it is hard to find a similar setting to that this study can be applied. The reason is that the European Union as a harmonized VAT area is a special phenomenon that is almost unique in the world. However, depending on the future development in regions that also consist of a federation of states, as e.g. the USA or Asia, it might even be possible to apply the findings of this research to similar settings. Thus, also the external validity is met.

4.2.2 Limitation of the study

Certain limitations concerning the entire study as well as the quality of the data have already been mentioned in Sub-Chapter 1.3 and Section 4.1.2. The definitions of European entrepreneurs and of goods supplied restrict the application of the study in reality. In addition, the fact that only 16¹³ of 27 Member States’ national design of documentary evidence could be collected limits the aim of providing a holistic

¹³ Germany appears twice due to the change in requirements in 2012.

comparison. Based on the examination in Chapter 3 one can assume that the requirements of the missing countries should not differ too much from the ones of the other states but as will be seen, the differences in some Member State are quite fundamental.

Furthermore, due to the open-ended questions the answers to the research questions are only valid in the limits of the answers, provided by the PwC specialists. This should not mean that the information are incomplete or wrong but there is the chance that some information could be subject to limitations in the language capabilities of the respondent of the survey as well as the author. Furthermore, there are cases in that no official list of documentary evidences exists while other countries have a high number of required evidence. Also, some employees mention evidences, based on practical experiences while others do not. These differences do not restrict the study but they lead to complications in the comparison and analysis, which may have effects on the quality of the final results. Therefore, further research that may be based on this study should be conducted. The requirements of all Member States but also of just two or three countries could be examined further. Chapter 6 will give some more details about the possibilities of further research.

Moreover, the general problem of a Master thesis is the time limitation and the resource restrictions. In addition, this study is limited by the different formal criteria of the two universities. While Chapter 1 has already focused on the problem of combining two research aims, there are also different requirements regarding form and structure. In combination these differences have led to restrictions in the content while it was tried to not let this problem affect the quality at the same time.

5 Empirical analysis and findings

This chapter aims at presenting and analyzing the findings of the survey on documentary evidence in the EU. The answers to the survey questions can be found in Appendix 8. They are the basis for the following examinations, which rely on the information provided in Chapter 2 and 3. Thereby, first the similarities and differences of the national documentary evidence are deducted from the findings of the survey (Sub-Chapter 5.1) before these findings will be analyzed based on the catalogue of criteria presented at the end of Chapter 3 (Sub-Chapter 5.2). The last sub-chapter (5.3) summarizes the findings of this chapter and focuses on answering the research questions with the help of them.

5.1 Comparison of documentary evidence in 15 EU Member States

The comparison in this sub-chapter focuses on the most important findings or rather differences of documentary evidence with a view to four aspects that are based on the theoretical conditions for documentary evidences presented in Sub-Section 3.1.2.2. The first aspect is the existence of an official list issued by the respective Member States. This does not mean that a conclusive check-list should be available but rather that nationally required documents for proving the VAT-exemption of intra-Community supplies are either stated in the national VAT law or in an official publication. The next two aspects focus on meeting the objective criteria stated in the European definition of an intra-Community supply. Thus, the need to prove the taxable status of the customer and the evidences required to verify the physical dispatch or transportation to another European Member State are compared. Finally, the requirements of connected obligations are focused on.

First of all, it can be stated that all Member States have different requirements on the documentary evidence. Concerning the first aspect, it is interesting that not all tax authorities issued an **official list** stating the necessary documentary evidences (see Table 3). France, for example, is the only country that seems to have no official list or provision at all. The other countries, in contrast provide the entrepreneurs with lists that

are not exhaustive or conclusive (e.g. Belgium and the Netherlands) but sometimes very detailed, as e.g. in Austria, Bulgaria, Hungary or the UK.

1) Does an official list of documentary evidence exist?								
Country	Austria	Belgium	Bulgaria	Czech Republik	France	Germany (untill 2011)	Germany (2012)	Greece
Need of proof?	x	x ¹⁾	x	x	-	x	x	x
Country	Hungary	Italy	Netherlands	Poland	Romania	Slovakia	Slovenia	UK (Great Britain)
Need of proof?	x	x	x ²⁾	x	x	x	x	x
¹⁾ not exhaustive ²⁾ list not conclusive								
Sources: Survey; VATO, 2011; VATO, 2012; HMRC, 2011								

Table 3 Existence of an official

2) Recipient is a taxable person in another Member State								
Country	Austria	Belgium	Bulgaria	Czech Republik	France	Germany (untill 2011)	Germany (2012)	Greece
Need of proof?	x	x	(x) ⁵⁾	x	-	-	-	-
notice		No specific procedure		No official procedure				
via	VIES website	x ¹⁾	x ³⁾	x ⁵⁾				
	national agency	x ²⁾						
	further		x ⁴⁾					
Country	Hungary	Italy	Netherlands	Poland	Romania	Slovakia	Slovenia	UK (Great Britain)
Need of proof?	-	x	x	x	-	x	-	x
notice				No specific procedure		No further information		
via	VIES website	x						x
	national agency		x ⁶⁾					x ⁷⁾
	further							
¹⁾ in case of long-term relationship with the customer ²⁾ in case of doubts, first contact, pick up by customer, occasional contact ³⁾ qualified certificate ⁴⁾ commercial documentation and evidence ⁵⁾ recommendation of PwC ⁶⁾ written confirmation ⁷⁾ alternatively								
Sources: Survey; VATO, 2011; VATO, 2012; HMRC, 2011								

Table 4 Taxable status of the customer

Concerning the **status of the taxable person** (see Table 4), nine of the 16¹⁴ countries (Austria, Belgium, Czech Republic, Italy, the Netherlands, Poland, Slovakia and the UK) require a proof that the trading partner's VAT ID was valid at the time of supply. However, four of them (Belgium, Czech Republic, Poland, Slovakia) do not mention a

¹⁴ Germany is not counted twice. In case there are differences, they are explicitly mentioned.

specific procedure so that PwC recommends a copy of the VIES homepage. Austria has, in contrast, a very differentiated procedure that depends on the time and intensity of the trading relationship.

The comparison respective the **transfer of goods** to the territory of another Member States (see Table 5 to Table 12) shows that the CMR seems to be the most important transport document as, except for Germany (2012), all countries require and accept this document as a proof of an IC supply taking place. Nonetheless, the related requirement for a signature by the recipient varies. Thus, Hungary and the Great Britain explicitly call for the signature of the CMR while Bulgaria and Czech Republic advice it. Furthermore, Germany's new request of an entry certificate (that needs to include the customer's signature) can be equaled to the request for the customer's signature on the CMR. In case of no road transportation the respective waybills or a bill of lading are also accepted as suitable transport documents. It can be assumed that the request for signature also applies to them. Another important fact concerning the evidence on the transfer of goods is the distinction of the transporter.

While Austria and Belgium pay very much attention to the case when the customer or a third party on his behalf transport the goods, for instance, Czech Republic, France, Germany (2012), Hungary, Italy, Poland and Romania just want a confirmation that the goods indeed arrived in the country of destination. Thus, the national requirements on certificates of the freight forwarder (acting either on behalf of the vendor or the recipient) differ. A carrier's receipt is not always sufficient if the customer did not sign the receipt of the goods (e.g. Bulgaria, Greece, Germany (2011) and Hungary). However, Slovenia and the UK accept this document without signature in case the freight forwarder acts on behalf of the vendor and Poland requires additional proof to the carrier's receipt.

3) Dispatch/transportation to destination outside the respective territory				
Country		Austria		Belgium
Need of proof?		x		x
Notice				<u>Set of documentary evidence</u> ⁶⁾
via	Transport documents		x ¹⁾	x
	Notice		Place of destination needs to be visible	
	required evidences		- CMR - waybill - bill of lading - receipt of posting - any other suitable document	- CMR ⁷⁾ - waybill - bill of lading
	Additional information in the case of			
	Dispatch (use of e.g. transport agent, freight forwarder, post, courier)	on behalf of vendor	- carrier's receipt (without confirmation of recipient)	- certificate from freight forwarder (without signature of recipient)
		on behalf of purchaser		- copy of CMR (obtained by customer) - written order from the purchaser ²⁾ - formal receipt confirmation ⁸⁾ - certificate from freight forwarder (without signature of recipient)
	Transport carried out by <u>customer</u>		- declaration of purchaser ²⁾ (originally signed) - copy of passport or driver's license ³⁾ - proxy of collector	- payment documents ⁹⁾ - written order - acknowledge of receipt
	Transport carried out by <u>vendor</u>		- confirmation of arrival (originally signed ⁴⁾)	
	Other commercial evidence		x	x
	Notice		Place of destination needs to be visible	
			- invoice - further relevant documents ⁵⁾	<u>Documents stating VAT ID of customer</u> - purchase order mentioning delivery address - copy of ID card - proxy that person using VAT # acts on behalf of the taxable person - sales agreement - bank statements <u>In addition</u> - signed contracts - transport invoices - receipts - further payment documents - proof of reporting of IC acquisition in EU Member State of arrival (not required but supportive)

1)

to be provided with an invoice

2)

stating that the goods will be transported in another EU Member State

3)

showing identity of person picking up the goods

4)

by purchaser or authorized person

5)

only required in case of transport

6)

none of these documents have absolute power when presented separately

7)

CMR most essential element of proof, even though it has not absolute power of evidence

8)

including name, address, VAT number of customer, description of goods, place of arrival

9)

PwC advice: extra attention to evidential process by e.g. strict client acceptance, documentation and payment procedure

Source: Survey

Table 5 Transfer of goods (Austria, Belgium)

3) Dispatch/transportation to destination outside the respective territory				
Country		Bulgaria		Czech Republik
Need of proof?		X		X
Notice		Tax authorities may require the documents to be translated into national language		
via	Transport documents		X	X
	Notice		Supplier should be stated as dispatcher in the documents	
	required evidences		- CMR ¹⁾ - bill of lading - any other internationally approved transport document	- CMR (confirmed by the carrier or the recipient) - any other suitable document
	Additional information in the case of			
	Dispatch (use of e.g. transport agent, freight forwarder, post, courier)	on behalf of vendor	- certificate of freight forwarder ²⁾	EITHER - written statement of the recipient of the goods that goods were transported to another Member State OR - authorized third party confirming the transport of the goods to another Member State (without confirmation by recipient)
		on behalf of purchaser	- certificate of freight forwarder ²⁾ <u>ALTERNATIVELY (to transport documents):</u> - written confirmation signed by recipient or authorised person ³⁾	
	Transport carried out by <u>customer</u>		<u>ALTERNATIVELY (to transport documents):</u> - written confirmation signed by recipient or an authorised person ³⁾	- written statement of the recipient of the goods to transport goods to another Member State
	Transport carried out by <u>vendor</u>			- written statement of the recipient of the goods that goods were transported to another Member State
	Other commercial evidence		X	
	Notice			
			- further documents that prove the transport <u>IF SUPPLIER IS NOT INDICATED AS THE DISPATCHER</u> (in case of dispatch by freight forwarder) - forwarding agreement - payment documents - further documents relevant to the dispatch of goods	

¹⁾ better with signature and stamp of date and place of arrival as otherwise often challenged by tax authorities

²⁾ only with signature and stamp of customer and if it is an internationally approved agreement

³⁾ including date and place of receipt, type and quantity of the goods, type, brand and registration number of vehicle on which goods were transported, name of the person who delivered the goods

Source: Survey

Table 6 Transfer of goods (Bulgaria, Czech Republic)

3) Dispatch/transportation to destination outside the respective territory				
Country		France		Germany (until 2011)
Need of proof?		x		x
Notice		<u>Set</u> of documents should be kept		
via	Transport documents		x	x
	Notice			
	required evidences		- CMR ¹⁾ - any relevant document	- CMR - delivery note ²⁾ - bill of lading - receipt of posting - further relevant transport documents
	Additional information in the case of			
	Dispatch (use of e.g. transport agent, freight forwarder, post, courier)	on behalf of vendor	- certificate issued by freight forwarder (without confirmation of recipient) - receipt certificate from customer	- consignment note (signed by customer)
		on behalf of purchaser		
	Transport carried out by <u>customer</u>			- confirmation of receipt (by purchaser or authorized person) - written statement of the recipient (or authorized person) ³⁾
	Transport carried out by <u>vendor</u>		- receipt certificate from customer	- confirmation of receipt (by purchaser or authorized person)
	Other commercial evidence		x	x
	Notice			
			- transport agreement - proof of payment - any other relevant document	- copy of invoice

1)

with confirmation of customer key document of proof

2)

showing place of destination

3)

stating that goods will be transported to

Source: Survey; VATO, 2011

Table 7 Transfer of goods (France, Germany (2011))

3) Dispatch/transportation to destination outside the respective territory

Country		Germany (2012)	Greece	
Need of proof?		x	x	
Notice				
via	Transport documents		x	x
	Notice			Only original copies, no reprinted copies
	required evidences		- Entry certificate (Gelangensbestätigung) from customer or freight forwarder ¹⁾	- CMR - bill of lading - valid delivery note ³⁾
	Additional information in the case of			
	Dispatch (use of e.g. transport agent, freight forwarder, post, courier)	on behalf of vendor	the entry certificate needs to include in addition the following information: ²⁾ - date and place of receipt	- a certificate by the freight forwarder ⁴⁾
		on behalf of purchaser	the entry certificate needs to include in addition the following information: ²⁾ - day and place of end of transport	
	Transport carried out by customer			- confirmation of dispatch of goods into another EU Member State
	Transport carried out by vendor		the entry certificate needs to include in addition the following information: - date and place of receipt	- confirmation of receipt of goods (confirmed by recipient)
	Other commercial evidence		x	x
	Notice			
			- copy of invoice	- invoice

¹⁾ confirming that goods entered the other Member State (including name and address of the customer, the amount and description of goods, date of issue, signature recipient)

²⁾ in case of dispatch: confirmation that freight forwarder is in possession of the entry certificate (IF entry certificate can be provided by requested of the tax authorities)

³⁾ issued by person effecting the supply

⁴⁾ only with confirmation of the recipient

Source: Survey; VATO, 2012

Table 8 Transfer of goods (Germany (2012), Greece)

3) Dispatch/transportation to destination outside the respective territory				
Country		Hungary		Italy
Need of proof?		x		x ⁷⁾
Notice				
via	Transport documents		x	x
	Notice		CMR is the essential document of proof ¹⁾	
	required evidences		- CMR ²⁾³⁾	- CMR ⁸⁾
	Additional information in the case of			
	Dispatch (use of e.g. transport agent, freight forwarder, post, courier)	on behalf of vendor	<u>ALTERNATIVELY (in case no CMR is available or it is not seen as appropriate by the tax authorities):</u> - declaration certifying that goods were delivered to purchaser's place ⁴⁾	<u>IN CASE ONE OF THE FOUR CRITERIA IS NOT MET:</u> - confirmation of receipt of goods (by receipt)
		on behalf of purchaser		
	Transport carried out by <u>customer</u>			
	Transport carried out by <u>vendor</u>			
	Other commercial evidence		x	x
	Notice		only in combination with transport documents and ECSL/Intrastat	
			<u>ALTERNATIVELY (in case no CMR is available or it is not seen as appropriate by the tax authorities):</u> - certificate issued by the warehouse provider ⁵⁾ - <u>extract from purchaser's accounting system</u> ⁶⁾ <u>Any other document supporting the transportation outside the territory but within the EU</u> - any declaration - certification - contracts - purchase orders	- invoice - bank statement demonstration payment has been carried out

1) if not provided, as many documents as possible need to be collected to minimize VAT risk

2) fully completed: signed and stamped by supplier, freight forwarder (if any) and (most important) the purchaser)

3) PwC advice: methodology how CMR can be linked to invoices (e.g. if invoice numbers, quantity of goods are the same)

4) signed and stamped by purchaser; therefore a specimen of the signature of purchaser's representative or company extract should be collected

5) stating that goods are stocked in warehouse located in the country of destination

6) showing that delivery of goods is booked

7) invoice, ECSL/INTRASTAT declaration, bank statement and transport documents are the four criteria to be fulfilled for VAT-exemption

8) recipient does not have to sign reception

Source: Surv

Source: Survey

Table 9 Transfer of goods (Hungary, Italy)

3) Dispatch/transportation to destination outside the respective territory				
Country		Netherlands		Poland
Need of proof?		x ¹⁾		x ³⁾
Notice				
via	Transport documents			x
	Notice			
	required evidences		- CMR	- CMR ⁴⁾ - any other suitable evidence ⁵⁾
	Additional information in the case of			
	Dispatch (use of e.g. transport agent, freight forwarder, post, courier)	on behalf of vendor		IN CASE DELIVERY TO PURCHASER DOES NOT EXPLICITLY RESULT FROM THE DOCUMENTS ABOVE - certificate of freight forwarder ⁶⁾ - proof of reception by purchaser ⁷⁾
		on behalf of purchaser		
	Transport carried out by <u>customer</u>			IN CASE DELIVERY TO PURCHASER DOES NOT EXPLICITLY RESULT FROM THE DOCUMENTS ABOVE - proof of reception by purchaser ⁷⁾
	Transport carried out by <u>vendor</u>			
	Other commercial evidence		x	x
	Notice			
			- invoice - copy of invoice signed by purchaser ²⁾ - bank payment originating from abroad	- invoice - specification of sold goods ⁸⁾ IN CASE DELIVERY TO PURCHASER DOES NOT EXPLICITLY RESULT FROM THE DOCUMENTS ABOVE - business correspondence with customer (incl. order) - document confirming insurance and costs of freight - proof of payment for goods - any relevant proof

¹⁾ the evidences mentioned are the understanding of PwC based on the Dutch supreme court case law and should be sufficient to apply exemption

²⁾ indicating that purchaser received the goods at the designed location

³⁾ documents should be collecte before the lapse of time limit for filing tax return for a given settlement period

⁴⁾ CMR together with invoice and specification of goods are sufficient evidences

⁵⁾ depending on way of transportation

⁶⁾ only in combination with further confirmation by the customer

⁷⁾ e.g. written statement from customer, specifying purchased goods and date of their receipt

⁸⁾ also as part of the invoice

Source: Survey

Table 10 Transfer of goods (Netherlands, Poland)

3) Dispatch/transportation to destination outside the respective territory				
Country		Romania		Slovakia
Need of proof?		x ¹⁾		x
Notice				place of destination required
via	Transport documents		x ²⁾	
	Notice			
	required evidences		- CMR	- CMR - delivery note
	Additional information in the case of			
	Dispatch (use of e.g. transport agent, freight forwarder, post, courier)	on behalf of vendor	- certificate of the freight forwarder ³⁾ - confirmation of receipt issued by recipient	- suitable document of dispatch - certificate of the freight forwarder (also without signature of the recipient but better with)
		on behalf of purchaser		
	Transport carried out by <u>customer</u>		- confirmation of receipt issued by recipient	- written notice of customer or an authorized person stating that goods have been transported to EU Member State
	Transport carried out by <u>vendor</u>			- written confirmation of the acceptance of goods by the customer or an authorized person
	Other commercial evidence		x	
	Notice			
			- invoice <u>IF appropriate:</u> - contract - order of sale - insurance paper - any further documents	- copy of invoice - contract of supply of goods - document attesting acceptance of payment of goods

1) documents need to be cumulatively fulfilled

2) stating that goods were "shipped" from Romania to another Member State

3) signature of the recipient is recommend by PwC

Source: Survey

Table 11 Transfer of goods (Romania, Slovakia)

3) Dispatch/transportation to destination outside the respective territory				
Country		Slovenia		UK (Great Britain)
Need of proof?		x		x
Notice				<u>set of documents</u> ²⁾
via	Transport documents		x	x ³⁾
	Notice			
	required evidences		- CMR - any other suitable document	- CMR ⁴⁾ - any other suitable transport document - receipted copy of the consignment note - receipt of posting ⁵⁾
	Additional information in the case of			
	Dispatch (use of e.g. transport agent, freight forwarder, post, courier)	on behalf of vendor	- certificate of the freight forwarder (also without signature of the recipient but better with)	- consignment note
		on behalf of purchaser	- written statement signed by customer ¹⁾	
	Transport carried out by <u>customer</u>			- written order completed by customer ^{6/7)}
	Transport carried out by <u>vendor</u>			- delivery note ⁸⁾
	Other commercial evidence		x	x
	Notice			
			- invoice	- invoice - inter-company correspondence - the customer's order ⁹⁾ - advice note - packing list - details of insurance or freight charges - bank statements as evidence of payment - copy of carrier's invoice - travel ticket - any other relevant document to the removal of good

¹⁾ including name, surname supplier; invoice number, invoice date; name, address and VAT ID customer; means of transport by which the goods were transported together with registration certificate, place of destination and statement that the customer is willing to provide to the Slovene tax authorities any information with respect to the place of destination of goods

²⁾ documents proving removal must clearly identify supplier, consignor (where different from supplier), customer, goods, accurate value, mode of transport and route of movement of the goods, EU destination (vague descriptions of goods, quantities or values are not acceptable)

³⁾ photocopy certificates are only accepted when authenticately with stamp and date by issuing office

⁴⁾ fully completed by the consignor, the haulier and signed by receiving consignee

⁵⁾ completely filled and stamped by post office

⁶⁾ showing name, address, VAT ID number, name of authorized person collecting the goods, delivery address, vehicle registration number of the transport used, signature of the customer or the authorized person confirming receipt of goods

⁷⁾ deposit equivalent to amount of VAT that is refunded after receipt of adequate evidence

⁸⁾ showing your customer's name, address, VAT ID number and acutal delivery address (including signature of customer or an authorized person confirming receipt of goods)

⁹⁾ including customer's name, VAT number and delivery address for the goods

Source : Survey; HRMC, 2011

Source: Survey; HRMC, 2011

Table 12 Transfer of goods (Slovenia, UK)

Next to the transport documents there is also the possibility or need of presenting other commercial documents that may support the transport documents. Except for Czech Republic and Hungary all countries require at least one document belonging to this group of documents (Hungary only if a CMR is not available). In case of doubts that the transport documents are sufficient (Bulgaria, Hungary and Poland) or when a set of evidences is required (Belgium, Great Britain) several documents are requested.

One important document is the invoice as it is required by 10 countries (Austria, Bulgaria, Italy, the Netherlands, Poland, Romania, Slovenia, Slovakia and the Great Britain). Thus the entrepreneurs are not only obliged to issue this document within the scope of the company's business activities but actually as a proof in the exemption process. Thereby, only Bulgaria requires it to be issued in the national language.

Other commercial documents are e.g. sales contracts, order documents, transport agreements with the freight forwarder but also payment documents that show the entrepreneur received money for the goods from abroad (Belgium, France, Italy, the Netherlands, Poland, Slovakia and Great Britain). An evidence that differs significantly from the usual commercial documents is the request for a customer's accounting proof (acknowledge by Belgium and required by Hungary).

Concerning the **connected obligations** (see Table 13) almost all countries require a reference to the reason for VAT-exemption on the invoice. This is reasonable as it is stated in Article 226 (11) VAT Directive. While only Greece and Italy require the reference to the national law, the other countries allow also the reference to the European VAT Directive. Poland, in contrary, does not require a sentence like this at all. It can be assumed that the zero-rating of IC supplies in Poland is not seen as a VAT-exemption and therefore no reference is needed. The only country that requires the sentence in the national language (either to the national or the European law) is Bulgaria. A request for any other connected obligations is not very popular. Austria and Germany require an accounting evidence of the IC supply, Italian tax authorities want to

see the issued ECSL and/or INTRASTAT declaration, and Greece and the Great Britain emphasized the need to collect the evidences promptly.

4) Connected obligations in the context of proofing intra-Community supplies								
Country	Austria	Belgium	Bulgaria	Czech Republik	France	Germany (untill 2011)	Germany (2012)	Greece
Need of proof?	x	x	x	x	x	x	x	x
Reference invoice*)	x	x ²⁾	(x) ³⁾	x ⁴⁾	x	x	x	(x) ⁶⁾
Accounting records	x ¹⁾					x ⁵⁾	x ⁵⁾	
ECSL								
Further requirements								x ⁷⁾
Country	Hungary	Italy	Netherlands	Poland	Romania	Slovakia	Slovenia	UK (Great Britain)
Need of proof?	x	x	x	-	x	x	x	x
Reference invoice*)	x	(x) ⁸⁾	x	- ¹¹⁾	x ¹²⁾	x ¹³⁾	x	x
Accounting records								
ECSL		x ⁹⁾						
Further requirements		x ¹⁰⁾						x ¹⁴⁾
<p>*) "Tax-exempt intra-community supply based on Article 138 (1) of the Council Directive 2006/112/EC"</p> <p>¹⁾ accounting evidence must show connection between accounting/records and evidences</p> <p>²⁾ alternatively reference to Article 39 bis Belgian VAT code possible</p> <p>³⁾ only in national language either specific statement issued by tax authorities or no reference to any legislative text; alternatively reference to Art. 53, para.1 of the Bulgairan VATA in relation to Art. 7, para.1 - ICS</p> <p>⁴⁾ alternatively reference to Section 64 Czech VAT Act</p> <p>⁵⁾ the conditions of the tax-exemption and the VAT ID number of the customer must be recorded in the books (for explicit record requirements see § 17c German VATO)</p> <p>⁶⁾ only reference to Greek VAT Act</p> <p>⁷⁾ evidence have to be kept without unnecessary delays</p> <p>⁸⁾ only reference to Italian VAT law (acricle 41 Law Decree 331/1993)</p> <p>⁹⁾ if issued</p> <p>¹⁰⁾ INTRASTAT declaration (if issued)</p> <p>¹¹⁾ not required but ok; however then use of 'zero-rated' instead of 'tax-exempt')</p> <p>¹²⁾ alternatively reference to Romanian law</p> <p>¹³⁾ alternatively reference to Art. 43 Slovak VAT Act</p> <p>¹⁴⁾ time for collection: 3-6 month</p> <p style="text-align: right;">Source: Survey; VATO, 2011; VATO, 2012; HMRC, 2011; HMRC, 2012a</p>								

Table 13 Connected obligations of proof

5.2 Analysis based on findings

The findings presented above, already allude to the first answer of a research question. No analysis is needed to see that yes, there are differences in the national requirements (sub-question 1 a)). In how far they influence the potential of unified European requirements can be answered after analyzing the results in the forthcoming paragraphs.

Therefore, the possibility of assigning the required documents to the catalogue of criteria derived in Sub-Chapter 3.3 is assessed.

Country		Austria	Belgium	Bulgaria	Czech Republik	France	Germany (2011)	Germany (2012)	Greece
EU	Need to check taxable status of customer?	+	+	+	+	-	-	-	-
	Need to check transfer to another EU State?	+	+	+	+	+	+	+	+
	Legal certainty given?	+	+	- ¹⁾	+	- ²⁾	+	O ³⁾	+
Country		Hungary	Italy	Netherlands	Poland	Romania	Slovakia	Slovenia	UK (Great Britain)
EU	Need to check taxable status of customer?	-	+	+	+	-	O ⁶⁾	-	+
	Need to check transfer to another EU State?	+	+	+	+	+	+	+	+
	Legal certainty given?	+	O ⁴⁾	O ⁵⁾	+	+	+	+	+
<div> <div>+</div> criterion fulfilled by country <div>O</div> questionable <div>-</div> criterion not fulfilled by country </div> <div> ¹⁾ even completely filled CMRs are challenged by tax authorities ²⁾ no official list at all ³⁾ differences in VAT Ordinance and the Fiscal Code Application Decree ⁴⁾ "grey area" ⁵⁾ documents not conclusive and only CMR mentioned in as sole transport document ⁶⁾ no information how to proof </div>		Sources: Survey; VATO, 2011; VATO, 2012; HMRC, 2011							

Table 14 Analysis of requirements by the EU

Focusing on the level of the *EU*, the three basic criteria were the fulfillment of the status of the taxable person, the transport to another EU Member State and meeting the principle of legal certainty. Concerning the first requirement, it is obvious from Table 14 and the findings presented above that only 8 countries require a special check for the **status of the taxable person** as a basic legal criteria of an intra-Community supply. Important is that the statement of the customer's VAT ID number on the invoice is not a proof for its validity and cannot be used as proof in case the customer is involved with VAT fraud. As described in Section 3.1.3, it is a sign that the customer is honest by giving his VAT ID number to the vendor but the proof is more important especially in order to show the own accuracy.

When implementing this basic requirement in the national legislation – and the examination above shows that it is important, mainly to avoid suspicion in case the customer is involved in fraudulent transactions – three factors need to be taken into account. First, the time of the business relationship with a customer, second the number

of IC transactions that the entrepreneur executes and third the number of customers in terms of IC supply. The check of validity for every acquirer for every transaction is a lot of effort that stands in no relation if the entrepreneur is very active in IC supplies. Therefore, a differentiation like that of Austria and the Great Britain to carefully and regularly check the validity of the VAT ID number depending on the intensity of the business relationship is useful. In general, it can be said that a unification of documentary evidence concerning this aspect would be possible and reasonable.

The condition of proving the **transport of goods to another EU Member State** is fulfilled by every country. This shows that the focus of the countries is laid on proving this objective requirement of an IC supply. Even though, the specific requirements concerning documentary evidence may be different, it is important that all EU countries indeed focus on this specific condition. It is not only the most important criterion for proofing the intra-Community supply, it is also the one on that the ECJ laid the focus in his decisions.

Based on the ECJ, the transport can be divided into two requirements presented above. Though, no country explicitly requires the transfer of ownership in its provisions. However, the request for a confirmation by the customer or his signature on certain documents (e.g. on the CMR) but also the request of a carrier's certificate (as the carrier has no intention to lie about the delivery of goods) shows the implicit focus of the tax authorities to have evidence for the transfer of ownership. Based on the survey, this implication especially applies in case the customer is responsible for the transport of goods as most of the countries require a confirmation of receipt. Only the answers of the Netherlands and Italy (if the four required criteria are solely met) leave doubt if the transfer of ownership is adequately proven in case of transport by the customer or the vendor as only the CMR is mentioned as documentary evidence. This might lead to problems in a VAT audit.

Concerning the second requirement by the ECJ, it is visible from the answers of the countries that the evidences of the dispatch or transport to another EU Member State's

territory takes center stage in terms of proofing documents (importance of place of destination, the statement of the delivery address and the signature by the customer proof this point). This is reasonable as it is the condition that the literature and the ECJ lay the focus on.

However, as the taxable status comes along with it by means of definition, it is questionable why the validity of the VAT ID number is not paid the same attention to. For instance, when having a look at Austria and the UK, it is visible that the more importance is laid on the differentiation of documents in terms of responsible carrier, the more specific the procedure on checking the validity of VAT ID numbers is. However, this comparison cannot be generalized as can be seen in the cases of Belgium and Slovakia. Summing up, one can say that unification in this case would be possible as all countries lay their focus on proofing that the IC supply indeed took place. Even though the requirements are sometimes very different, they are overlapping, especially in the context of transport documents (e.g. CMR), which would facilitate a European unification is based on recent designs.

The last requirement of the EU is the one concerning **legal certainty**. It can be said that not all Member States respected this Community principle; even though none of them explicitly requires *conclusive proof* (rather “cumulatively fulfilled” (see Romania)). In this study the principle of legal certainty was mainly connected to the request of an official list or rather official regulations or provisions (see first aspect of comparison in Sub-Chapter 5.2). Only France seems to have no official list at all. But the fact of challenging completely filled CMR’s by the Bulgarian tax authorities, Italy’s not further specified “grey area” and Germany’s differences in the VAT Ordinance and the Fiscal Code Application Decree leave doubt if the countries really obey the principles of legal certainty.

This shows that the analysis of this aspect does not concern the completeness of the requirements. It is the insecurity for the entrepreneur that the national required documents do not eventually lead to VAT-exemption. Especially Bulgaria’s case

indicates the potential threat tax authorities' disposal pose to entrepreneurs. Therefore, especially in this case an official list by the EU would provide legal certainty and help to ensure the Community's principles.

Country		Austria	Belgium	Bulgaria	Czech Republik	France	Germany (2011)	Germany (2012)	Greece
Entrepreneur	Only basic documents? ¹⁾	-	-	-	-	-	-	-	-
	Availability ²⁾	-	-	-	-	-	-	-	-
	No further requirements?	-	-	-	O ³⁾	O ³⁾	O ³⁾	- ⁴⁾	-
Country		Hungary	Italy	Netherlands	Poland	Romania	Slovakia	Slovenia	UK (Great Britain)
Entrepreneur	Only basic documents?	-	-	-	-	-	-	-	-
	Availability	-	O ⁵⁾	-	-	-	+	-	-
	No further requirements?	-	-	- ⁶⁾	O ³⁾	O ³⁾	+	O ³⁾	-
<div> <div>+</div> criterion fulfilled by country <div>O</div> questionable <div>-</div> criterion not fulfilled by country </div> <div> ¹⁾ all countries (except for Czech Republic) require at least one commercial document ²⁾ in most of the cases the requirement of the customer's signature on documents in connection with the use of a transport agent restricts the availability ³⁾ dependent on the fact if a signature needs to be collected from the customer ⁴⁾ use of 'entry certificate' ⁵⁾ the availability depends on the internal ⁶⁾ obtain copy of invoice retained signed by purchaser </div>		Sources: Survey; VATO, 2011; VATO, 2012; HMRC, 2011							

Table 15 Analysis of requirements by the entrepreneur

Concerning the side of the *entrepreneur*, the three requirements 'no presentation of additional documents', 'the availability of the documents' and 'no further additional requirements' were deducted as important. In this context, Table 15 summarizes the information from the answers of the survey based on these three criteria. Concerning the first criterion, additional documents are documents in addition to the 'basic evidences', which are derived from the examinations in Chapter 3. Thus, in case of checking the VAT ID number the basic requirements are a copy from the VIES homepage or a certificate from the tax authorities. In case of a supply to another EU territory documents as CMR, bill of lading or other waybills are seen as basic. Also, certificates from third parties (without confirmation of the customer) and written statements of the customer (in case either the customer or the supplier themselves transport the goods) are not interpreted as 'additional documents' (see Sub-Section 3.1.2.2).

The second criterion examines the availability of all documents. However, mainly the additional ones were subject to the examination. The last criterion concerns with all documentary evidence. Due to page restrictions only the most significant aspects will be focused on in the following.

Concerning the first criterion, the most important fact is that all countries require **additional documents** compared to the basic request. This is already visible when having a look at the commercial documents that are not concluded in the basic requirements. Except for Czech Republic all countries require at least one commercial document, which is mainly the invoice. But also Czech Republic requires a written statement of the customer that needs to be collected via freight forwarder if the same one is not able to provide an acceptable confirmation of dispatch.

Other additional documents are among others the proxy of the collector in case of transport by the customer (Austria), the commercial documents needed in the case Belgium wants to prove the taxable status of the customer, the entry certificate required by Germany (2012), a warehouse receipt from the other Member State (Hungary), an extract from the customer's books (Belgium and Hungary) or a specimen of the purchaser's signature (see Hungary). They all represent additional collecting efforts for the customer. Especially, in case a set of documents is required the number of additional documents can be very high (e.g. Belgium and France). Concerning the connected obligations, the most striking additional documents are the accounting evidences required by Austria and Germany (2011, 2012), which aim at showing the "connection between the accounting records and evidence" (PwC Austria, 2012) and the ECSL and INTRASTAT declaration requested by Italy. As no country fulfills the 'basic requirements', a unification seems advantageous from the point of view of the entrepreneur.

The **availability** of documentary evidence is not always given and depends on the respective proof. For instance, the proof of the customer's VAT ID via VIES homepage is relatively easy as the website is in general accessible all the time. However, the

collection of an official certificate depends on the opening hours of the tax authorities and respective employee's workload.

Also, in case of proving if the transport to another Member State indeed took place the involvement of the freight forwarder and the customer in the collection process often restricts the availability. Thus, it might be difficult to convince the customer who is not further involved with the proofing process, to provide a specimen of his signature (Hungary) or an extract from his bookkeeping (Belgium and Hungary). Also the freight forwarders' will to collect the signature of the customer on certain documents is questionable. Sub-Section 3.2.2 already depicted the difficulty in this case. Therefore several countries do not fulfill this second criterion. Based on the answers to the survey questions, Slovakia appears to be the only country that fulfills this second requirement of the entrepreneur. Thus, also in this case the design of unified documents could help in this case to improve or ensure the availability of the evidences.

The criterion of no **additional requirements** focuses on the avoidance of certain duties that are connected with the collection and presentation of documents. Bulgaria, for instance, requires the invoice to be issued in Bulgarian. That means that even though almost all countries accept the reference to the European VAT Directive, the establishment of a common invoice is hindered by this language criterion¹⁵. Furthermore, the process of getting into contact with the respective persons in order to obtain the proxy of the collector (Austria) or an extract from the customer's accounting system (Belgium, Hungary) increases the efforts for the entrepreneur. But also the use of the new 'entry certificate' in Germany (2012) or the time limits by Greece and the UK illustrate further requirements. Thus also here it can be said that a unified list of documents could help to avoid additional efforts for the entrepreneur by collecting unified documents.

¹⁵ There are several more differences in the invoice requirements, which are not subject to this thesis.

5.3 Critical summary

This chapter aimed at providing an overview of the differences in the European VAT legislations, their accordance with EU requirements and their impact on European entrepreneurs. Therefore, a comparison of the documentary evidences in 16 (Germany twice, though) of the 27 Member States was given wherefore the answers of the survey were first assigned to four conditions derived in Section 3.1.2. Afterwards these answers were analyzed based on a catalogue of criteria established in Sub-Chapter 3.3. It was shown that none of the countries does meet all criteria; the legal requirements of the EU as well as the economic requirements of the entrepreneur. Though, the failure to comply with the entrepreneurial criteria is more striking. However, no country provides a ‘best solution’ for the EU and the entrepreneurs that could be further analyzed as a potential unification basis. Hence, with this conclusion, all research sub-questions are answered.

This chapter has definitely shown that there are sometimes significant differences in the national requirements on documentary evidence (1a). Furthermore, there is no country that fulfills the requirements of both, the EU and the entrepreneur (1 b) and therefore no ‘best solution’ on design and arrangement of documentary evidences (1c) could be identified. While the main research question will be answered in the following chapter, it can already be said that countries that do not request the proof of the validity of the customer’s VAT ID number or whose design of documentary evidence led to doubts concerning the legal certainty, should definitely update their legal requirements. Their implementation is important in the context of VAT-exempting IC supplies.

Also, the practical implications that come along with collecting specific documents required by the national tax authorities should be assessed in order to give entrepreneurs the chance to successfully implement the along coming organizational procedures in their business activities. Thereby not only the explicit efforts, partly assessed in this thesis, should be taken into account but also the implicit efforts that come along with the collection of the documents and influence mainly the supply structure, human resource decisions but also the overall expansion strategy of the entrepreneur’s company.

6 Conclusion

This final chapter is divided into three sub-chapters in order to provide a better overview of the eventual findings, the unification potential and the outlook. Therefore, Sub-Chapter 6.1 presents the final summary and the answers to the research questions while Sub-Chapter 6.2 deals with a potential harmonization proposal before the last sub-chapter (6.3) provides the final conclusion and the potential for further research.

6.1 Final summary and answers to the research questions

This Master Thesis aimed at comparing and analyzing the documentary evidences required by the different EU Member States. This was important as until now the manifold literature concerning VAT and documentary evidence focused mainly on the national level and language. This was restricting, not only from a researching point of view but especially from the entrepreneurs' perspective as they are the ones that have to deal with differences in national requirements. Documentary evidences do not only influence normal business activities in the context of intra-Community trade but also the entrepreneurs' expanding decisions. Especially, the latter one is important at times of fast growing markets that require the entrepreneurs to focus on internationalizing. Thus, this thesis fills the research gap of a missing comparison concerning required evidences in the EU Member States as well as an analysis on an international level.

In order to reach the research objective four research questions were developed. The main question was (1) *“Is it advantageous to assess the same requirements for all Member States instead of giving the responsibility to the Member States?”*. As this question is not able to be answered directly, three further sub-questions were established that aim at supporting the answering process. With the results of the review of literature, directives and decisions of the ECJ in Chapter 2 and 3 as well as the results of the comparison and analysis in Chapter 5 it is possible to answer these questions.

Thus, concerning the first sub-question (1a) what the differences in the national documentary evidences are, it is possible to state that the differences of documentary

evidences reach from the basic establishment of a list of potential proofs, over the fulfillment of two requirements based on the definition of intra-Community supply to additional requests and obligations connected with this matter of fact. The former chapter showed that the theoretical examination, which led to the conclusion that differences might exist, differs significantly from the reality and the extent of striking differences. However, as can be seen on the tables that present the results of the comparison and analysis, a potential unification seems possible so that a common evidence basis might be established to a certain extent.

Concerning the second sub-question (1b) that aimed on saying in how far the national requirements of the different Member States fulfill the premises of the EU and the requirements of the entrepreneurs it can be said that none of the states does contiguously fulfill the European or the entrepreneurial requirements. This is interesting as the European requirements were exclusively deducted from the European VAT Directive and the decisions of the ECJ. The fact that only five countries fulfilled the requirements of proofing the taxable status of the customer, proofing the supply to another Member State and meeting the principle of legal certainty shows the insecurity of national tax authorities in the context of establishing appropriate conditions in order to VAT-exempt IC supplies. On the entrepreneurial level even no country's requirements were able to fulfill the criteria of 'basic documents', 'availability of evidence' and 'no additional requirements'. This shows that all Member States seemed to not have focused on the entrepreneur's requirements when designing the documentary evidence, even though the entrepreneur is the most important partner for them in terms of collecting evidences.

The answer to the former question already indicated that a potential 'best solution' (sub-question (1c)) from one of the Member States could not be found as none of the countries fulfills all requirements of the catalogue of criteria. As said before, the premises by the EU and also the entrepreneur can be seen as basic criteria that every Member State has to fulfill as they are deducted from legal and reasonable sources.

After having answers to the sub-questions it is now possible to focus on the main question of this study: if it is advantageous to give the EU instead of the Member States the responsibility of establishing documentary evidences. It was already mentioned in the summaries of Chapter 2 and 3 that taking the responsibility from the Member States means cutting their fiscal sovereignty. This is especially important as the states still have and want to keep a maximum degree of autonomy in terms of VAT rate and VAT audits. Unifying the required evidences would therefore reduce their autonomy in terms of the arrangement of VAT audits. That the Member States do not appreciate this was already visible from the fact that the request of autonomy and sovereignty hindered the establishment of a final VAT system in 1993.

Though, in the context of documentary evidence a unification seems advantageous as the respective tax authorities seem to face certain problems and insecurities in assessing requirements that ensure the *correct* and *straightforward* execution of the VAT exemption and the prevention of tax fraud and evasion. Furthermore, from the point of view of the entrepreneur, common requirements seem to be very advantageous in order to give him certainty about the application of the VAT-exemption in case of IC supplies, to reduce external and internal efforts and eventually reduce costs that come along with the differences in the national designs of documentary evidences.

6.2 Harmonization proposal

This thesis showed that the EU aims at harmonizing the VAT system. And as harmonization does not mean unification, the adjustment of the requirements of documentary evidences on the European level seems to be more purposeful. Therefore, one possibility to combine the wish for sovereignty from the Member States and the wish of the entrepreneurs to have common evidences is the arrangement of a common basis of documentary evidence. This basis should be regulated by the EU and focuses on the fulfillment of the most important requirements in terms of intra-Community supplies while the Member States have the option to add certain evidences that they see as important to ensure the correct and straightforward execution of the VAT exemption and prevention of tax fraud and evasion. That an adjustment on the European level is

possible shows the comparison and analysis in the former chapter, which indicate that enough similarities in the national requirements exist.

Concerning the EU level, the conditions for proving the VAT-exemption should be the taxable status of the customer and the supply of goods to another Member State. Thereby, the first condition should be proven by checking the validity of the VAT ID number. An entrepreneur should ask the national authorities for an official affirmation at the beginning of every new business relationships and check the taxable status afterwards isochronous, e.g. every year with the help of the VIES webpage. An improvement that would reduce bureaucracy for both entrepreneurs and national bureaucracy would be the establishment of a European database including all information about the validity of VAT ID numbers of certain entrepreneurs as well as their official address. Thereby, the responsibility of keeping the system up to date should lie by the national authorities that also issue the VAT ID numbers. Though, this database would not absolve the entrepreneur from checking the validity of VAT ID numbers of his business partners.

As evidence for the second condition, based on the comparison and analysis above, the usual transport documents as e.g. CMR, waybills and bill of lading seem appropriate. Furthermore, a customer's certificate of transporting the goods to another EU Member State in case he is responsible for the transfer or of reception in case the vendor executes the supply as well as a freight forwarder's certificate (without the customer's signature) should be basic requirements to proof the transport or dispatch. Furthermore, the presentation of an invoice is also a useful document in combination with the transport evidences as the former examination showed. Depending on these evidences the Member States have the possibility to add certain requirements as e.g. the presentation of accounting or declaration evidences as well as certain commercial documents. Though, too demanding requirements as e.g. an excerpt from the customer's bookkeeping system should be avoided.

Even if a harmonization of documentary evidences, similar to the one of invoice requirements, will not be conducted, also other options as e.g. a software or sources similar to the VIES homepage may be established in order to give entrepreneurs a better overview of the different national requirements and advices for the practice. However, there is still the possibility of relying on professionals, such as tax consultancies, that can provide them with the respective requirements and practical experiences. The last option, to collect as many proofs as possible is at the same time the least option for the entrepreneur as the result of a “harmonization” process should not aim at distorting conditions of competition or hindering the free movement of goods and services within the internal market.

6.3 Final conclusion and potential future research

Concluding, it can be said that this study indeed gave an overview of the national differences in documentary evidences in the context of intra-Community supply by critically analyzing them. Furthermore, this analysis on the basis of European and entrepreneurial aspects showed the extent of these differences but also the potential harmonization of documentary evidence to a certain, basic degree. Moreover, it supported the theory that efforts and costs for entrepreneurs, especially when thinking about internationalizing, are very high. Thus, entrepreneurs may partly be limited in terms of exploring internationalizing advantages in case intra-Community supplies should be executed from a certain country. However, to determine the real influence of documentary evidences on European businesses further research is required.

The examinations, findings and conclusions of this study can build the basis for further investigation. The integration of factors that were excluded from this study and restricted it therefore in a certain way, as e.g. deemed intra-Community supply or chain transactions, could lead to further findings. Also, the analysis of more than three requirements in case of the EU and the entrepreneur would be less restricting. Moreover, gathering national requirements concerning documentary evidences from the Member States that did not reply to the survey or the selection of just two or three countries in order to get more detailed information are possible further research steps.

Also a second survey step could be implemented in the context of further investigations. Thereby, the establishment of a list of documentary evidences proving certain conditions that would lead to the VAT-exemption of intra-Community supplies could be established in a first step. This list would be based on former examinations concerning the different national conditions and would take requirements of the EU and the entrepreneurs into account. VAT experts as those from PwC but also different European companies could be asked in the second step, to evaluate the list concerning certain criteria as e.g. practical feasibility, accordance with the European harmonization aims or impact on internationalizing decisions.

References

- Ainsworth, R.T. (2006), 'Carousel fraud in the EU: a digital VAT solution', *Tax Notes International*, Vol. 42, No. 5, pp.443-448.
- Albrecht W.S, Albrecht, C.C, Albrecht C.O., Zimbelman, M. (2008), '*Fraud examination*', South Western, Mason.
- Anon. (2011), 'Wirtschaft läuft Sturm gegen eine neue Bescheinigung', *Frankfurter Allgemeine Zeitung (FAZ)* vom 19.12.2011, Nr. 295, p.11.
- Aronowitz, A.A., Laagland, D.C.G, Paulides G. (1996), '*Value-added tax fraud in the European Union*', Kugler Publications, Amsterdam.
- Baruch, Y. (1999), 'Response rate in academic studies – a comparative analysis', *Human relations*, Vol. 52, No. 4, p.421-438.
- Behrendt, J. (1993), '*Steuerharmonisierung im EG-Binnenmarkt – eine wohlfahrtstheoretische Analyse unter besonderer Berücksichtigung der Umsatzsteuer*', Series von Böventer, E., Kuhbier, P. (eds.), 'Volkswirtschaftliche Forschung und Entwicklung', Vol. 81, VVF, München.
- Bell, J. (2010), '*Doing your research project*', 5th Edition, McGraw-Hill, Berkshire.
- Bethlehem, J. (2009), '*Applied Survey Methods: A Statistical Perspective*', John Wiley & Sons, New Jersey.
- Bornhofen, M. (2010), '*Steuerlehre I – Allgemeines Steuerrecht, Abgabenordnung, Umsatzsteuer*', 31st Edition, Gabler, Wiesbaden.
- Bornhofen, M., Bornhofen, M.C., Meyer, L. (2008), '*Buchführung I DATEV-Kontenrahmen 2008*', 20th Edition, Springer, Wiesbaden.
- Buchan, A. (2009), '*How to Sail on a Budget*', Adlard Coles Nautical, London.
- Bundesministerium für Finanzen (BMF) (2011), 'Referentenentwurf des Bundesministeriums der Finanzen - Zweite Verordnung zur Änderung steuerlicher Verordnungen', Bearbeitungsstand: 05.08.2011 11:37 Uhr, [online], Available at: <http://www2.nwb.de/portal/content/ir/downloads/224902/Referentenentwurf.pdf?referrer=www.google.de>, (Retrieved: 22.08.2012).

- Bundessteuerberaterkammer (BStBK) (2012), 'Stellungnahme der Bundessteuerberaterkammer zum Entwurf eines BMF-Schreibens zu den Beleg- und Buchnachweispflichten bei der Steuerbefreiung für innergemeinschaftliche Lieferungen', Attachment to E-Mail from the BStBK to the Federal Ministry of Finance from April 17, 2012, [online], Available at: http://www.bstbk.de/export/sites/standard/de/ressourcen/Dokumente/04_presse/stellungnahmen/2012/Stell15_17.04.2012.pdf, (Retrieved: 21.08.2012).
- Case, D. O. (2012), *Looking for Information: A Survey of Research on Information Seeking, Needs, and Behavior*, Series on library and information science, Vol. 1, 3rd Edition., Emerald Group Publishing, Bingley.
- Cockfield, F.A. (1994), *The European Union – Creating the Single Market*, Wiley Chancery Law, Chichester.
- Cohen, L., Manion, L., Morrison, K. (2007), *Research methods in education*, Routledge, Abingdon.
- Council of Europe (CoE) (2012), 'Who we are', [online], Available at: <http://www.coe.int/aboutCoe/index.asp?l=en&page=quisommesnous>.
- Curtin, P. D. (1984), *Cross-Cultural Trade in World History*, Cambridge University Press, Cambridge.
- Czinkota, M.R., Ronkainen, I.A., Moffettm, M.H. (2009), *Fundamentals of International Business*, 2nd Edition, Wessex, Bronxville.
- Dathe, A. (2009), *Umsatzsteuerhinterziehung*, 2nd Edition, Europäischer Hochschulverlag, Bremen.
- Davies, N. (1996), *Europe – a history*, Oxford University Press, New York.
- De Béthune, Maximilian (1778), *Memoirs of Maximilian de Bethune, duke of Sully, prime minister to Henry the Great -Containing the history of the life and reign of that monarch, and his own administration under him*, Translated by J.Rivington & Sons, London.
- De Vaus, D. (2002), *Surveys in Social Research*, 5th Edition, Allen & Unwin, Caows Nest.
- Deliman, E., Herbai, M., Bene, G.-F., Dumiter, F.C. (2011), 'The value added tax and the evasion chain of intracommunitarian VAT', *Annals of the University of Oradea, Economic Science Series*, Vol. 20, No. 2, pp.347-353.
- Denzin, N. K. & Lincoln, Y. S. (2011), *Handbook of qualitative research*, Sage, Thousand Oaks.

- Driftmann, H.H. (2012), 'No Title', *Letter* from April 11, 2012 from Prof. Dr. Driftmann, President of the Association of German Chambers of Industry and Commerce to the Minister of Finance.
- Dubois, P. (1891), '*De Recuperatione terre sancte – traite de politique générale*', Alphonse Picard, Paris.
- Dunning, J.H. (2009), 'The key literature on IB activities' in Rugman, A.M., (ed.), '*The Oxford handbook of International Business*', 2nd Edition, Oxford University Press, New York.
- Ebrill, L.P., Keen, M., Bodin, J.-P., Summers, V. (2001), '*The Modern VAT*', International Monetary Fund, Washington.
- Edmund Robert Daniell (1846), '*A treatise on the practice of the High Court of Chancery: with some practical observations on the pleadings in that court*', Vol. 2, I.G. M'Kinley & J.M.G. Lescure, Harrisburg.
- Eriksson, P. & Kovalainen, A. (2008), '*Qualitative methods in business research*', Sage, London.
- Europäisches Parlament (EP) (2010), 'Mitgliedstaaten der Europäische Union 2010', [online], Available at: http://www.europarl.europa.eu/brussels/website/content/modul_01/abb_EUBeitritt2010.html (Retrieved: 09.03.2012)
- European Commission (EC) – Taxation and Customs Union (2012), 'VIES – FAQ', [online], Available at: http://ec.europa.eu/taxation_customs/vies/faq.html?locale=de#item_15, (Retrieved: 10.08.2012).
- European Union (EU) (2012a), 'Who decides how much tax you pay...? – Overview', [online], Available at: http://europa.eu/pol/tax/index_en.htm (Retrieved: 11.06.2012).
- European Union (EU) (2012b), 'History – The history of the European Union' [online], Available at: http://europa.eu/about-eu/eu-history/index_en.htm (Retrieved: 19.03.2012).
- European Union (EU) (2012c), 'History –The Founding Fathers of the EU', [online], Available at: http://europa.eu/about-eu/eu-history/founding-fathers/index_en.htm (Retrieved: 11.06.2012).
- European Union (EU) (2012d), "History – Europe without frontiers", [online], Available at: http://europa.eu/about-eu/eu-history/1990-1999/index_en.htm (Retrieved: 11.06.2012).

- European Union (EU) (2012e), 'History – Further expansion', [online], Available at: http://europa.eu/about-eu/eu-history/2000-2009/index_en.htm (Retrieved: 11.06.2012).
- European Union (EU) (2012f), 'History– A peaceful Europe – the beginnings of cooperation', [online], Available at: http://europa.eu/about-eu/eu-history/1945-1959/index_en.htm (Retrieved: 19.03.2012).
- European Union (EU) (2012g), 'History– A period of economic growth', [online], Available at: http://europa.eu/about-eu/eu-history/1960-1969/index_en.htm (Retrieved: 19.03.2012).
- European Union (EU) (2012h), 'History– The changing face of Europe – the fall of the Berlin Wall', [online], Available at: http://europa.eu/about-eu/eu-history/1980-1989/index_en.htm (Retrieved: 19.03.2012).
- European Union (EU) (2012i), 'History – A growing community', [online], Available at: http://europa.eu/about-eu/eu-history/1970-1979/index_en.htm (Retrieved: 19.03.2012).
- Eurostat, the statistical office of the European Union (Eurostat) (2012), 'Main national accounts tax aggregates', [online], Available at: <http://appsso.eurostat.ec.europa.eu/nui/setupModifyTableLayout.do>, (Retrieved: 03.09.2012).
- Evans, V., Pucik, V., Björkman, I. (2011), *'The global challenge: international human resource management'*, 2nd Edition, McGraw Hill, New York.
- Fardon, M. (2011) *'Value Added Tax – Tutorial'*, 2nd Edition, Osborne Books, Worcester.
- Fedeli, S. & Forte, F. (2011), 'International VAT Fraud: The Carousel Game', *Journal of Modern Accounting and Auditing*, Vol. 7, No. 3, pp.211–226.
- Feld, M. (1927), *'Die Entwicklung der Umsatzsteuer in Deutschland'*, Universitätsverlag von Robert Noske in Borna-Leipzig, Gießen.
- Fischer, P. & Köck, H.F. (1995), *'Europarecht – einschließlich des Rechtessupranationaler Organisationen'*, 2nd Edition, Linde Verlag, Wien.
- Fletcher, M. & Plakoyiannaki, E. (2011), 'Case selection in international business: key issues and common misconceptions' in Piekkari, R. & Welch, C. (ed.), *'Rethinking the case study in international business and management research'*, Edward Elgar, Cheltenham, pp.171-191.

- Franke, H. (1941), *‘Die Geschichte der Reichs-Umsatzsteuer’*, Dissertations-Druckerei Heinr. & J. Lechte, Emsdetten.
- Gesamtverband der Deutschen Versicherungswirtschaft e.V. (GDV) (2012), *‘Transportdokumente und Begleitpapiere’*, [online], Available at: <http://www.tis-gdv.de/tis/bedingungen/trpdoku/inhalt.htm>, (Retrieved: 09.08.12).
- Gliner, J.A. & Morgan, G.A. (2000), *‘Research methods in applied settings: an integrated Approach to Design and Analysis’*, Lawrence Erlbaum Associates, Mahwah.
- Grabower R., Herting, D., Schwarz, G. (1962), *‘Die Umsatzsteuer – ihre Geschichte und gegenwärtige Gestaltung im In- und Ausland’*, Carl Heymanns, Köln.
- Groels, J. (2001), *‘Umsatzsteuer: System der Umsatzsteuer, EU-Binnenmarkt, Vorsteuerberichtigung, Gesellschaft und Gesellschafter’*, Gabler, Wiesbaden.
- Herzig, N., Breckheimer, I., Gellrich, K., Gocksch, S., Götsch, A., Joisten, C., Philippen, J., Teschke, M. (2011), *‘Skript zur Vorlesung Verkehr- und Substanzsteuern - Grunderwerbsteuer, Umsatzsteuer, Erbschaftssteuer’*, *Lecture Notes*, Summer Semester 2011, University of Cologne, Copystar, Köln.
- Hinkelman, E.G. (2005), *‘Importers manual U.S.A – The single source reference encyclopedia for importing to the United States.’*, 4th Edition, World Trade Press, Novato.
- HM Revenue & Customs (HMRC, (2012a), *‘VAT invoices: what they must show’*, [online], Available at: <http://www.hmrc.gov.uk/vat/managing/charging/vat-invoices.htm#2>, (Retrieved: 08.09.2012).
- Höink, C. & Krebs, E. (2011), *‘Neue Nachweispflichten im grenzüberschreitenden Warenverkehr – Handlungsbedarf zum 1.1.2012’*, *Der Betrieb*, No. 51/52, pp.9-10.
- Höink, C. & Krebs, E. (2012), *‘Update zu den neuen Nachweispflichten im grenzüberschreitenden Warenverkehr’*, *Der Betrieb*, No. 9, p.9.
- Hömberg, R. (2008), *‘Betriebswirtschaftliche Steuerlehre I: Ertragsteuern’*, *Lecture Notes*, Fall Semester 2008/2009, RWTH Aachen University.
- Hübschmann, W. (1967), *‘Einleitung’*, Lfg. 1 [Okt. 1955] in Grabower, R., Beck, E., von Wallis, H., Schwarz, O., Schmidt, G. (eds), *‘Kommentar zum Umsatzsteuergesetz’*, Series 'Kommentar zum Umsatzsteuergesetz', Vol. 1, 1st – 2nd Edition, Verlag Dr. Otto Schmidt, Köln.

- Hugo, Victor (1871), 'Discours à l'Assemblée nationale (1848-1871) - Séance du 1er mars 1871', [online], Available at: http://www.assemblee-nationale.fr/histoire/victor_hugo/discours_fichiers/seance_1ermars1871.asp (Retrieved: 05.06.2012).
- Hüllmann, K.D. (1805), 'Deutsche Finanz-Geschichte des Mittelalters', Heinrich Frölich, Berlin.
- Hummel, T.R. (2011), 'Unternehmensführung im internationalen Kontext', Oldenbourg, München.
- Hunter, A. & Brewer J. (2006), 'Foundations of Multimethod Research: Synthesizing Styles, Sage, Thousand Oaks.
- IHK Koblenz, 2012, 'Gelangsbestätigung', [online], Available at: <http://www.ihk-koblenz.de/international/export/1691140/Gelangsbestaetigung.html>, (Retrieved: 26.06.2012).
- Insch, G. S., Moore, J. E., Murphy, L. D. (1997), 'Content analysis in leadership research: Examples, procedures, and suggestions for future use', *The Leadership Quarterly*, Vol. 8, No. 1, pp.1-25.
- Institut der Wirtschaftsprüfer (IDW) (1997), 'Probleme des Umsatzsteuerbinnenmarktes: EU-Recht, nationale Regelungen, länderspezifische Besonderheiten', IDW-Verlag, Düsseldorf.
- Institut der Wirtschaftsprüfer (IDW) (2012a), 'Änderung des UStAE betreffend Beleg- und Buchnachweispflichten bei der Steuerbefreiung für Ausfuhrlieferungen und für innergemeinschaftliche Lieferungen (§ 4 Nr. 1, § 6, § 6a UStG); Änderungen der §§ 9 bis 11, 13, 17, 17a, 17b und 17c UStDV durch die Zweite Verordnung zur Änderung steuerlicher Verordnungen', Opinion of January 13, 2012, [online], Available at: www.idw.de/idw/download/Belgenachweispflichten_USt.pdf?id=614756&property=Datei (Retrieved: 21.08.2012).
- Institut der Wirtschaftsprüfer (IDW) (2012b), 'Entwurf eines BMF_Schreibens betreffend Beleg- und Buchnachweispflichten bei der Steuerbefreiung für innergemeinschaftliche Lieferungen (§ 4 Nr. 1 Buchst. b, § 6a UStG) – Änderungen der §§ 17a, 17b und 17c UStDV durch die Zweite Verordnung zur Änderung steuerlicher Verordnungen', Opinion of April 20, 2012, [online], Available at: www.idw.de/idw/download/BMF_Gelangsbestaetigung_IDWStell.pdf?id=619502&property=Datei, (Retrieved: 21.08.2012).

- Internal Revenue Service (IRS) (2012), *'Your Federal Income Tax for Individuals 2011'*, U.S. Government Printing Office, Washington.
- James, M. (2009), *'The UK Tax System: An Introduction'*, 2nd Edition, Spiramus Press, London.
- Juristischer Informationsdienst dejure.org (JID) (2012a), 'Rechtsprechung zu § 17a UStDV', [online], Available at: <http://dejure.org/dienste/lex/UStDV/17a/1.html>, (Retrieved: 16.07.2012).
- Juristischer Informationsdienst dejure.org (JID) (2012b), 'Rechtsprechung zu § 17c UStDV', [online], Available at: <http://dejure.org/dienste/lex/UStDV/17c/1.html>, (Retrieved: 16.07.2012).
- Keane, A. (2008), *'The Modern Law of Evidence'*, Oxford University Press, New York.
- Keen, M. & Smith, S. (1996), 'The future of Value added tax in the European Union', *Economic Policy*, Vol. 11, No.23, pp.373–420.
- Keen, M. & Smith, S. (2007), 'VAT Fraud and Evasion: What do we know, and what can be done?', International Monetary Fund, *Working Paper*, WP/07/31.
- Kempf, E. (1968), *'Europäische Mehrwertsteuer'*, Eurobuch-Verlag Lutzeyer, Freudenstadt.
- Kent, R. (2001), *'Data construction and data analysis for survey research'*, Palgrave, New York.
- Klenke, K. (2008), *'Qualitative research in the study of leadership'*, Emerald Group Publishing, Bingley.
- Kofler, G. (2009), 'Internationales und EU-Steuerrecht – Teil III: Indirektes Steuerrecht', *Lecture slides*, Summer Semester 2009, Johannes Käppler University Linz, [online], Available at: http://www.steuerrecht.jku.at/gwk/de/elemente_site/lehre/SS09/Kofler_IntStR_Teil%20III.pdf (Retrieved: 28.05.2012).
- Kurzenberger, J.F. (2009), *'Nachweisproblematik und Gutgläubensschutz bei innergemeinschaftlichen Lieferungen'*, GRIN, Norderstedt.
- Laanti, R., Gabrielsson, M., Gabrielsson, P. (2007), 'The globalization strategies of business-to-business born global firms in the wireless technology industry', *Industrial Marketing Management*, Vol. 38, No. 8, pp.1104-1117.
- Langer, M. (1992), *'Umsatzsteuer im Binnenmarkt: praxisnahe Darstellung des neuen deutschen Umsatzsteuerrechts 1993'*, NWB, Herne.

- Laubert, T. (2009), *‘Die Umsatzsteuer im grenzüberschreitenden Versandhandel’*, Logos Verlag, Berlin.
- Lenz, C.O. & Erhard, R. (1994) in Lenz, C.O., Birk, R. (eds.), *‘EG-Handbuch Recht im Binnenmarkt’*, 2nd Edition, NWB, Herne.
- Lincoln, Y.S. & Guba, E.E. (1986), ‘Research, Evaluation and policy analysis: Heuristics for disciplined inquiry’, *Policy Studies Review*, Vol. 5, No. 3, pp.546 – 565.
- Lindgens, B. (2011), ‘Inneregemeinschaftlicher Warenverkehr’, *Creditreform*, No. 12, p.33.
- Lüdemann, P. (1992), ‘EG-Recht und nationales Steuerrecht’, *Betriebs-Berater*, Vol. 23, pp.1606–1613.
- McKechnie, L.E.F., Pettigrew, K.E. (2002), ‘Surveying the use of theory in library and information science research: a disciplinary perspective’, *Library Trends*, Vol. 50, No. 3, pp.406-417.
- Messere, K. (1994), ‘Consumption Tax Rules’, *Bulletin for international fiscal documentation*, december 1994, pp.665-681.
- Mick, M. (1995), ‘§ 24 Steuerharmonisierung und Gemeinsamer Markt’ in Birk (ed.), *‘Handbuch des Europäischen Steuer- und Abgabenrechts’*, NWB, Herne/Berlin.
- Miles, M.B. & Huberman A.M. (1994), *‘Qualitative data analysis: an expanded sourcebook’*, 2nd Edition, Sage, Thousand Oaks.
- Nationaler Normenkontrollrat (NKR) (2012), ‘Stellungnahme des Nationalen Normenkontrollrates gem. § 6 Abs. 1 NKR-Gesetz: NKR-Nr. 1858: Zweite Verordnung zur Änderung steuerlicher Verordnungen’, Attachmenet, Drucksache 628/11, [online], Available at: <http://www2.nwb.de/portal/content/ir/downloads/224902/628-11.pdf?referrer=www2.nwb.de>, (Retrieved: 20.08.2012).
- Neumark-Report: EWG – Kommission Bericht des Steuer und Finanzausschusses o.O.: o.Verlag 1962
- Nightingale, K. (2002), ‘Taxation: Theory and Practice’, 4th Edition, Pearson Education, Harlow.
- OECD (2011), ‘Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: France 2011: Combined, Phase 1 + Phase 2’, OECD Publishing.

- Patton, M.Q. (2002), *'Qualitative research & evaluation methods'*, 3rd Edition, Sage, Thousand Oaks.
- Pestana De Silva, P. & Platteeuw, C. (2011), *'Quick Reference to European Vat Compliance: 2011'*, Kluwer Law International, Alphen aan den Rijn.
- Philipp, C. & R  th, H.H. (2008), *'Umsatzsteuer - Grenzüberschreitende Leistungen in der Praxis'*, Gabler, Wiesbaden.
- Pieper, S.U. (1995), *'   1 Die Europ  ische Union und die Europ  ischen Gemeinschaften als Kern des Europarechts'* in Birk (ed.), *'Handbuch des Europ  ischen Steuer- und Abgabenrechts'*, NWB, Herne/Berlin.
- Pope, A. & Audra,   . (1961), *'Pastoral poetry and An essay on criticism'*, Series 'The Twickenham edition of the poems of Alexander Pope'; Vol. 1, Methuen, London.
- Popitz, J. (1921), *'Kommentare zum Umsatzsteuergesetze vom 24. Dezember 1919 und zu den Ausf  hrungsbestimmungen vom 12. Juni 1920'*, 2nd Edition, Series 'Kommentar zum Umsatzsteuergesetze', Vol. 1, Verlag Otto von Liebmann, Berlin.
- Pozgar, G.D. (2012), *'Legal and Ethical Issues for Health Professionals'*, Jones & Bartlett Publishers, Burlington.
- PricewaterhouseCoopers (PwC) (2012a), *'Breaking News: New draft of German Federal Ministry of Finance Guidelines for evidence of intra-Community supplies of goods'*, *E-Mail Newsletter Indirect Tax* from April 03, 2012.
- PricewaterhouseCoopers (PwC) (2012b), *'Breaking News: German MoF extends the application of the former evidence for intra-Community supplies of goods'*, *E-Mail Newsletter Indirect Tax* from June 04, 2012.
- PricewaterhouseCoopers (PwC) (2012c), *'Partner im weltweiten Verbund'*, [online], Available at: <http://www.pwc.de/de/unternehmensinformationen/profil.jhtml>, (Retrieved: 28.08.2012).
- Proudhon, P.-J. (1863), *'Du principe federative & de la n  cessit   de reconstituer le parti de la revolution'*, Dentu, Paris.
- Riffe, D., Lacy, S., Fico, F.G. (2005), *'Analyzing Media Messages: Using Quantitative Content Analysis in Research'*, Lawrence Erlbaum Associates, New Jersey.
- Rose, G. (1992), *'Betriebswirtschaftliche Steuerlehre – eine Einf  hrung f  r Fortgeschrittene'*, 3rd Edition, Gabler, Wiesbaden.

- Rothstein, J. H. (1968), 'Die Mehrwertsteuer in Frankreich (I. Teil) – Entwicklung, Erfahrungen und Perspektiven', *Umsatzsteuer-Rundschau (UR)*, Vol. 17, No. 10, pp.145–149.
- Sarrazin, V. (1974), 'Stand der Beratungen des Vorschlags einer 6. Umsatzsteuer – Richtlinie der EG – Kommission', *UStR*, Vol. 23, pp.281–287.
- Schäfer, A. (2001), '*Die Verfassungsentwürfe zur Gründung einer Europäischen Union: Herausragende Dokumente von 1930 bis 2000*', BSA-Verlag, Dornbirn.
- Schaps, G. & Abraham, H.J. (1977), '*Das Seerecht in der Bundesrepublik Deutschland: Kommentar und Materialsammlung*', Walter de Gruyter, Berlin.
- Scheffler, W. (2011), '*Internationale Betriebswirtschaftliche Steuerlehre*', Vahlen, München.
- Scheffler, W. (2012), '*Besteuerung von Unternehmen: Ertrag-, Substanz- und Verkehrsteuern*', Series: 'Besteuerung von Unternehmen', Vol. 1, C.F. Müller, Heidelberg.
- Schrader, H. & Gohlke, H. (1993), 'Umsatzsteuer im EG-Binnenmarkt – Praxisnahe Darstellung der neuen Mehrwertsteuer-Regelung im Binnenmarkt', in Wirtschaftsforschung gGmbH Berlin (Ed.), '*Die neuen Bundesländer in der europäischen Wirtschaft – Analysen, Vorschläge, Kommentare*', Vol. 8, Manuscript, Berlin.
- Seigel, G. (2002), '*Betriebliche Steuerlehre*', Oldenbourg Verlag, München.
- Senate Bremen (1886), 'Bremisches Gesetz, betreffend die Aufhebung der Umsatzsteuer. Vom 27.Mai 1884', *FinanzArchiv/Public Finance Analysis*, Vol. 3, No.1, pp.256-261.
- Shapiro, G., & Markoff, J. (1997), 'A Matter of Definition' in C.W. Roberts (Ed.), '*Text Analysis for the Social Sciences: Methods for Drawing Statistical Inferences from Texts and Transcripts*', Lawrence Erlbaum Associates, New Jersey.
- Siemens, C.F. (1921), '*Veredelte Umsatzsteuer*', Siemensstadt.
- Sikorski, R. (1998), '*Umsatzsteuer im Binnenmarkt*', 2nd Edition, NWB, Herne.
- Sopp, K. (2010), 'Umsatzbesteuerung beim Handel in der EU – Nachweispflichten und Vertrauensschutz', E.Schmidt, Berlin.
- Spetzler, E. (1993), 'Wirkung und Einfluß des Rechts der Europäischen Gemeinschaft auf das nationale Steuerrecht', *DB*, No. 11, pp.553-558.

- Spitzenverbände der deutschen Wirtschaft (SdW) (2012a), 'Entwurf eines BMF-Schreibens: Neuregelungen der Nachweispflichten bei Ausfuhrlieferungen und innergemeinschaftlichen Lieferungen in der UStDV', *E-Mail* from January 13, 2012 IV D 3 – S 7141/11/10003 (2011/0994306).
- Spitzenverbände der deutschen Wirtschaft (SdW) (2012b), 'Stellungnahme vom 13. Januar 2012 zum Entwurf eines BMF-Schreibens zu den neuen Nachweispflichten bei Ausfuhrlieferungen und innergemeinschaftlichen Lieferungen', *Attachment to e-mail* from January 13, 2012, IV D 3 – S 7141/11/10003 (2011/0994306).
- Spitzenverbände der deutschen Wirtschaft (SdW) (2012c), 'Entwurf eines BMF-Schreibens zur Neuregelungen der Nachweispflichten bei innergemeinschaftlichen Lieferungen in der UStDV', *E-Mail* from April, 24, IV D 3 – S 7141/11/10003-02.
- Spitzenverbände der deutschen Wirtschaft (SdW) (2012d), 'Stellungnahme zum zweiten Entwurf eines BMF-Schreibens vom 21. März 2012 zu den Nachweispflichten bei innergemeinschaftlichen Lieferungen', *Attachment to e-mail* from January 13, 2012, IV D 3 – S 7141/11/10003-02.
- Squeaker (2012), 'Pro & Contra: Karriere bei den Big Four', [online], Available at: <http://www.squeaker.net/de/Karriere/Wirtschaftspruefung/Karriere/Pro-Contra-Big-Four> (Retrieved: 03.09.2012).
- Stevens, R.E., Wrenn, B., Sherwood, P.K., Ruddick, M.E. (2006), '*The Marketing Research Guide*', 2nd Edition, Best Business Books, Binghampton.
- Stumpf, C. (2009), 'Artikel 90 [Steuer ausgleich bei Einfuhren]' in: Schwarze [Hrsg.], '*EU-Kommentar*', 2nd Edition, Nomos, Baden-Baden.
- Suder, Gabriele (2007), '*Doing Business in Europe*', Sage, London.
- Sullivan, C.K. (1965), '*The tax on value added*', Columbia University Press, New York.
- Tait, A. A. (1988), '*Value-added tax: international practice and problems*', International Monetary Fund, Washington D.C.
- Tait, A.A. (1991), 'VAT Policy Issue: Structure, regressivity, inflation, and exports' in Tait, A.A. (eds.), '*Value-Added Tax: Administrative and Policy Issues*', Series 'Occasional paper', Vol. 88, *International Monetary Fund*, Washington D.C., pp.1-16.
- Terra, B.J.M. & Kajus, J. (2011), '*A Guide to the European VAT Directives Volume I*', IBFD.

- Tetley, W. (1994), 'Bills of lading and the conflict of laws' in Berlingierie, F., Delwaide, L., Gaskell, N., Herber, R., Hill, C.J.S., Huybrechts, M., Japikse, R.E., Ramberg, J., Rémond-Gouilloud, M., Roland, R., Tassel, Y., Tetley, W. (eds.), 'Bills of Lading and the Conflict of Laws' in: European Institute of maritime and transport law (Hrsg.) *'The Hamburg Rules: A Choice for the EEC?'*, Maklu, Antwerpen – Apeldoorn.
- Theile, C. (1995), *'Wettbewerbsneutralität der harmonisierten Umsatzsteuer – Theoretischer Anspruch und praktische Umsetzung'*, Series 'Schriften zum Umsatzsteuerrecht', Vol. 7, Verlag Dr. Otto Schmidt, Köln.
- Thomas, J.R, Nelson, J.K., Silverman, S.J. (2011), 'Research methods in physical activity', 6th Edition, Human Kinetics, Champaign.
- Treiber, A. (2008), '§ 6a Innergemeinschaftliche Lieferung' in Wagner, W. (ed.) *'Sölch/Ringleg Umsatzsteuergesetz Kommentar'*, Loose-leaf-collection, 67th Supplemental Set Beck, München.
- Tumpel, M., 1997, *'Mehrwertsteuer im innergemeinschaftlichen Warenverkehr'*, Linde Verlag, Wien.
- Urbach, A.E. (2011), *'Verwaltungskooperation und Wettbewerbsneutralität im Bereich der Umsatzsteuererhebung'*, Kova-c, Hamburg.
- Urban, B. (2012), *'Debitoren- und Kreditorenbuchhaltung'*, Haufe-Lexware, Freiburg.
- Van Maanen, J. (1983), 'Reclaiming qualitative methods for organizational research: a preface, Van Maanen, J. (ed.), , *Qualitative methodology'*, Sage, Beverly Hills, pp.9-18.
- Vanistendael, F. (2011), 'Global law and the search for constitutional pluralism' in Kofler, G., Poiares Maduro, M, Pistone, P. (2011), *'Human Rights and Taxation in Europe and the World'*, IBFD, Amsterdam, pp.185-198.
- Völkel, D. & Karg, H. (2009), *'Umsatzsteuer'*, Series 'Finanz und Steuern', Vol. 2, 15th Edition, Schäffer-Poeschel, Stuttgart.
- Völker, D. & Karg, H. (2009), *'Umsatzsteuer'*, 15th Edition, Schäffer-Poeschel, Stuttgart.
- Von Bogdandy, A. & Arndt, F. (2000), 'Die Zusammenarbeit der Finanzverwaltungen in der Europäischen Union', EWS, Vol. 11, No.1, pp.1-6.
- von Stein, L. (1871), *'Lehrbuch der Finanzwissenschaft: als Grundlage für Vorlesungen und zum Selbststudium mit Vergleichung der Finanzsysteme und Finanzgesetze von England, Frankreich und Deutschland'*, Brockhaus, Leipzig.

- Voß, R. (2009), 'Art. 93 [Harmonisierung der indirekten Steuern]' in Grabitz, E., Hilf, M., Nettesheim, M. (eds.), 'Das Recht der Europäischen Union', Vol. I EUV/AEUV, Loose-leaf-collection, 40th Supplemental Set, Beck, München
- Wachweger, D. (1974), 'Der Vorschlag der Kommission der Europäischen Gemeinschaften für eine 6. Richtlinie zur Harmonisierung der Umsatzsteuern', *DStZ-Aktuell*, Vol. 62, pp.115–123.
- Wachweger, D. (1977), '6. Richtlinie zur Harmonisierung der Umsatzsteuern in den Europäischen Gemeinschaften', Stollfuß, Bonn.
- Wackerle, P. (1930), 'Die deutsche Umsatzsteuer', Heidelberg.
- Waldhoff, C. (2007), 'Art. 90 (ex-Art. 95) [Keine höheren Abgaben für Waren aus Mitgliedsstaaten]' in: Calliess, C. & Ruffert, M. (eds.), 'EUV/EGV – Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta', 3rd Edition, Kommentar, Beck, München.
- Watrin, C. & Rose, G. (2011), 'Umsatzsteuer - mit Grunderwerbsteuer und kleineren Verkehrsteuern', Vol. 17, Schmidt, Berlin.
- Welch, L.S., Benito & G.R.G., Petersen, B. (2007), 'Foreign operation methods - theory, analysis, strategy', Edward Elgar, Cheltenham.
- Welch, L.S. & Luostarinen R.K. (1993), 'Inward-Outward Connections in Internationalization', *Journal of International Marketing*, Vol. 1, No. 1, pp.44-56.
- Widmann, W. (1996), 'Die Entwicklung der Umsatzsteuer im Europäischen Binnenmarkt – Fehlentwicklung und Perspektiven' in Lehner, M. (ed.), 'Steuerrecht im Europäischen Binnenmarkt – Einfluß des EG-Rechts auf die nationalen Steuerrechtsordnungen', Verlag Dr. Otto Schmidt, Köln.
- Widmann, W. (2012), 'Primärrechtliche Defizite der Binnenmarktübergangsregelung', *Umsatzsteuer-Rundschau*, Vol. 1, pp.32 – 34.
- Wobbermin, M. (2008), 'Grundlagen der Buchhaltung und Bilanzierung: Mit Fallstudie', Oldenbourg Verlag, München.
- World Ocean Review (WOR) (2010), 'Maritime highways of global trade', Booklet, Bruckhasu, Berlin-Mitte, [online], Available at: <http://worldoceanreview.com/en/transport/>, (Retrieved: 09.08.2012).
- Wright, J.D. & Marsden P.V. (2010), 'Surveys research and social science: history, current practice, and future prospects' in Marsden, P.V. & Wright, J.D. (Eds.), 'Handbook of survey research', Emerald Group Publishing, Bingley, pp.3-26.

Yin, R.K. (2011), '*Qualitative research from start to finish*', Guildford Press, New York.

Zerres, M.P. (1978), '*Die Entwicklung der Mehrwertsteuer – Ein Beitrag zur Geschichte des Steuerwesens*', Verlag Harri Deutschland, Frankfurt am Main.

List of Sources of Law

I. Law

Treaty on European Union, signed at Maastricht on 7 February 1992”, *Official Journal of the European Communities*, Vol. 35, C 191, pp.1–112.

Treaty of Rome, Treaty on founding European Economic Community from 25.03.1957, BGBl II 1957, pp.766–1223.

II. Council Directives

First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, *Official Journal of the European Communities*, L26, pp.1301–1303.

Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes - Structure and procedures for application of the common system of value added tax, *Official Journal of the European Communities*, L26, pp.1303–1312.

Third Council Directive 69/463/EEC of 9 December 1969 on the harmonisation of legislation of Member States concerning turnover taxes - introduction of value added tax in Member States, *Official Journal of the European Communities*, L 320, pp.34–35.

Fourth Council Directive 71/401/EEC of 20 December 1971 on the harmonization of the laws of the Member States relating to turnover taxes - Introduction of value added tax in Italy, *Official Journal of the European Communities*, L 283, pp.41-42.

Fifth Council Directive 72/250/EEC of 4 July 1972 on the harmonisation of legislation of Member States concerning turnover taxes – introduction of value added tax in Italy, *Official Journal of the European Communities*, L 162 pp.18-19.

Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment”, *Official Journal of the European Communities*, L 145, pp.1–40.

Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in the territory of the country’ *Official Journal of the European Communities*, L 331, pp.11–19.

Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes - Arrangements for the refund of value added tax to taxable persons not established in Community territory', *Official Journal of the European Communities*, L 326, pp.40–41.

Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers, *Official Journal of the European Communities*, L 376, pp.1-19.

Council Directive 2006/112/EC (VAT Directive) of 28 November 2006 on the common system of value added tax, *Official Journal of the European Communities*, L 347, p.1.

III. Legislative Material

70/243/EGKS, EWG, Euratom: Beschluß vom 21. April 1970 über die Ersetzung der Finanzbeträge der Mitgliedstaaten durch eigene Mittel der Gemeinschaften", *Official Journal of the European Communities*, L 94, pp.19–22.

Beleg- und Buchnachweispflichten bei der Steuerbefreiung für Ausfuhrlieferungen und für innergemeinschaftliche Lieferungen (§ 4 Nr. 1, § 6, § 6a UStG); Änderungen der §§ 9 bis 11, 13, 17, 17a, 17b und 17c UStDV durch die Zweite Verordnung zur Änderung steuerlicher Verordnungen from 09.12.2011, BStBl. 2012 I 2011 p. 1287.

Beleg- und Buchnachweispflichten bei der Steuerbefreiung für innergemeinschaftliche Lieferungen (§ 4 Nr. 1 Buchst. b, § 6a UStG) - Änderungen der §§ 17a, 17b und 17c UStDV durch die Zweite Verordnung zur Änderung steuerlicher Verordnungen from 06.02.2012, BStBl. 2012 I p. 211.

Beleg- und Buchnachweispflichten bei der Steuerbefreiung für innergemeinschaftliche Lieferungen (§ 4 Nr. 1 Buchst. b, § 6a UStG) - Änderungen der §§ 17a, 17b und 17c UStDV durch die Zweite Verordnung zur Änderung steuerlicher Verordnungen, Draft from 21.03.2012, IV D3 - S7141/11/1003-02 (not published)

Beleg- und Buchnachweispflichten bei der Steuerbefreiung für innergemeinschaftliche Lieferungen (§ 4 Nr. 1 Buchst. b, § 6a UStG) - Änderungen der §§ 17a, 17b und 17c UStDV durch die Zweite Verordnung zur Änderung steuerlicher Verordnungen from 01.06.2012, BStBl. 2012 I p. 619.

COM(85) 310final, 'Completing the internal market', White paper from the Commission to the European Council, Brussels, 14.06.1985.

COM(96) 328final, ‘A common system of VAT - A programme for the Single Market’ (presented by the Commission), Brussels, 22.07.1996.

COM(2003) 397final, ‘Proposal for a Council Directive amending Directive 77/388/EEC as regards reduced rates of value added tax’(presented by the Commission),,2003/0169 (CNS), Brussels, 23.7.2003.

COM(2004) 260final, ‘Report from the Commission to the Council and the European Parliament on the use of administrative cooperation arrangements in the fight against VAT fraud’, Brussels, 16.4.2004.

Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and repealing Regulation (EEC) No 218/92, *Official Journal of the European Union*, L 264, pp.1-11.

Opinion of the Court of 14 December 1991. - Opinion delivered pursuant to the second subparagraph of Article 228 (1) of the Treaty. - Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area. - Opinion 1/91, *European Court reports 1991* pp.I-06079ff.

Single European Act, *Official Journal of the European Communities*, L 169, pp.1-28.

Special report No 9/98 concerning the protection of the financial interests of the European Union in the field of VAT on intra-Community trade together with the Commission’s replies, (Submitted pursuant to Article 188c(4)(2) of the EC Treaty), 98/C 356/01,*Official Journal of the European Union*, C-356, pp.1–17.

The single market, HM Revenue & Customs (HMRC) (2011), Notice 725, February 2011.

Zweite Verordnung zur Änderung steuerlicher Verordnungen from 02.12.2011, BGBl. 2011 I p.2416.

Zweite Verordnung zur Änderung steuerlicher Verordnungen, Bundesrat-Bundesdrucksache (BR-Drs.) 628/11 vom 13.10.2011.

VAT Ordinance (VATO) (2012): Umsatzsteuer-Durchführungsverordnung 2012 (USt-DV) in der Fassung der Bekanntmachung vom 21.02.2005 (BGBl. I S. 434) zuletzt geändert durch Zweite Verordnung zur Änderung steuerlicher Verordnungen vom 02.12.2011 (BGBl. I S. 2416) m.W.v. 01.01.2012.

VAT Ordinance (VATO) (2011): Umsatzsteuer-Durchführungsverordnung 2011
(USt-DV) in der Fassung der Bekanntmachung vom 21.02.2005 (BGBl. I S. 434)
zuletzt geändert durch Verordnung der Änderung steuerlicher Verordnungen vom
17.11.2010 (BGBl. I S.1544) m.W.v. 01.01.2011.

List of Jurisdiction

European Court of Justice (ECJ)

Date	Case	Source of information
05.02.1963	C-26/62 NV Algemene Transport – en Expeditie Onderneming van Gend & Loos ./. Netherlands Inland Revenue Administration	European Court Reports 1963, pp.2-16.
15.07.1964	C-6/64 Flaminio Costa ./. E.N.E.L.	European Court Reports 1964, pp.587 - 600
01.02.1977	C-51/76 Verbond van Nederlandse Ondernemingen ./. Inspecteur der Invoerrechten en Accijnzen.	European Court Reports 1977, pp.114-129.
19.01.1982	C-8/81 Ursula Becker ./. Finanzamt Münster-Innenstadt	European Court Reports 1982, pp.53ff..
15.12.1987	C-326/85 Netherlands ./. Commission	European Court Reports 1987, pp.5109-5117.
06.04.1995	C-4/94 BLP Group plc. ./. Commissioners of Customs & Excise	European Court Reports 1995, pp.I-1001-1013.
17.09.1996	C-246/94 Cooperativa Agricola Zootechnica S. Antonio ./. Amministrazione delle finanze dello Stato	European Court Reports 1996, pp.I-04373 ff.
18.12.1997	C-286/94 Garage Molenheide BVBA ./. Belgische Staat	European Court Reports 1997, pp.I-07281ff.

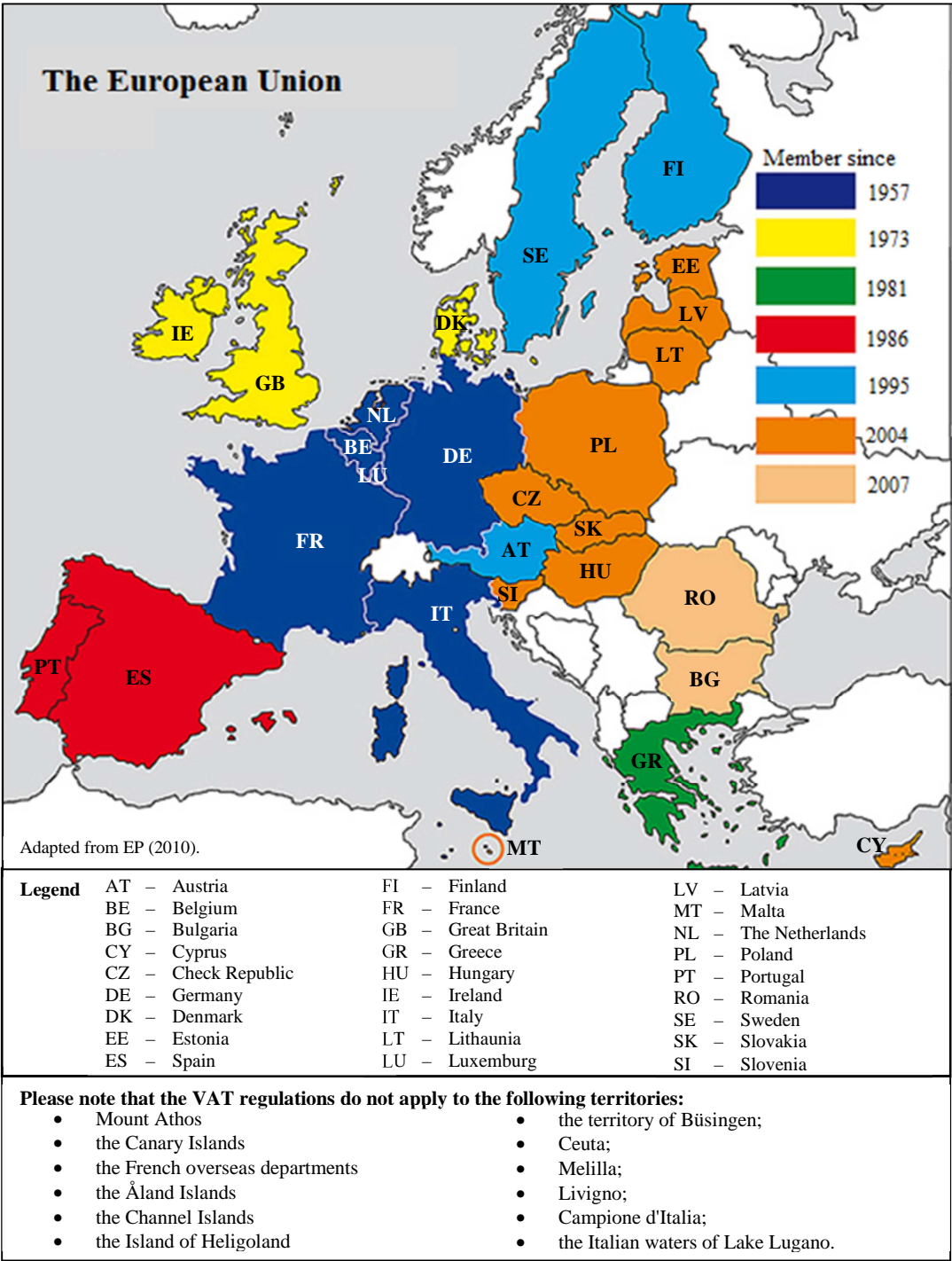
21.03.2000	C-110/98 Gabalfriša SL ./. Agencia Estatal de Administración Tributaria (AEAT)	European Court Reports 2000, pp.I-01577ff.
19.09.2000	C-454/98 Schmeink & Cofreth AG & Co. KG ./. Finanzamt Borken	European Court Reports 2000, pp.I-6990-7011.
06.04.2006	C-245/04 EMAG Handel Eder OHG v Finanzlandesdirektion für Kärnten	European Court Reports 2006, pp.I-03247-3268.
11.05.2006	C-384/04 Commissioners of Customs & Excise and Attorney General ./. Federation of Technological Industries and Others	European Court Reports 2006, pp.I-04201-4236.
27.09.2007	C-409/04 The Queen, on the application of Teleos plc and Others ./. Commissioners of Customs & Excise.	European Court Reports 2007, pp.I-07827-7860.
27.09.2007	C-146/05. Albert Collée ./. Finanzamt Limburg an der Lahn.	European Court Reports 2007, pp.I-07880-7896.
27.09.2007	C-184/05 Twöh International BV ./. Staatssecretaris van Financiën.	European Court Reports 2007, pp.I-07910-7928.
22.04.2010	C-536/08 Staatssecretaris van Financiën ./. X	European Court Reports 2010, pp.I-03851.
07.12.2010	C-285/09 Criminal proceedings ./. R.	European Court Reports 2010, pp.I-12605 ff.

Appendices

Appendix 1 VAT in relation to total tax revenue in the EU (2008-2010)

Short Description	Short Description is not available						Source of Data		
UNIT	Millions of euro (from 1.1.1999)/Millions of ECU (up to 31.12.1998)						Eurostat, 2012		
SECTOR	General government; institutions of the EU						Last update		
INDIC_NA	Value added type taxes (VAT)						Extracted on		
GEO/TIME	2008			2009			2010		
	Total tax receipts	VAT	Relation	Total tax receipts	VAT	Relation	Total tax receipts	VAT	Relation
European Union (27 countries)	3.348.890,4	862.585,3	25,76%	3.014.853,1	783.609,3	25,99%	3.164.515,1	860.670,5	27,20%
Belgium	104.784,9	24.126,1	23,02%	98.266,0	23.600,1	24,02%	105.131,9	25.229,5	24,00%
Bulgaria	8.673,3	3.862,2	44,53%	7.437,6	3.156,0	42,43%	7.320,0	3.322,2	45,39%
Czech Republic	29.139,2	10.437,2	35,82%	26.366,2	9.783,5	37,11%	27.682,1	10.419,9	37,64%
Denmark	110.346,6	23.635,5	21,42%	104.944,7	22.701,6	21,63%	110.086,2	23.245,2	21,12%
Germany	585.460,0	175.870,0	30,04%	556.510,0	177.680,0	31,93%	559.020,0	180.220,0	32,24%
Estonia	3.280,4	1.287,7	39,25%	3.118,9	1.224,0	39,24%	3.008,1	1.257,2	41,79%
Ireland	43.705,5	13.102,1	29,98%	35.879,5	10.337,7	28,81%	34.821,0	10.056,0	28,88%
Greece	48.975,0	17.020,0	34,75%	46.410,0	14.914,0	32,14%	45.691,0	16.308,0	35,69%
Spain	231.325,0	55.506,0	23,99%	200.694,0	43.406,0	21,63%	214.770,0	57.845,0	26,93%
France	525.132,0	137.736,0	26,23%	482.978,0	130.079,0	26,93%	503.583,0	135.498,0	26,91%
Italy	461.092,0	93.698,0	20,32%	445.067,0	86.280,0	19,39%	449.862,0	96.834,0	21,53%
Cyprus	5.291,2	1.816,2	34,32%	4.490,6	1.545,6	34,42%	4.639,4	1.597,4	34,43%
Latvia	4.801,5	1.538,1	32,03%	3.357,8	1.109,2	33,03%	3.403,0	1.192,2	35,03%
Lithuania	6.863,4	2.593,0	37,78%	4.737,1	1.960,8	41,39%	4.629,3	2.180,5	47,10%
Luxembourg	10.031,9	2.344,9	23,37%	9.851,0	2.367,7	24,04%	10.574,6	2.454,6	23,21%
Hungary	28.093,9	8.224,1	29,27%	24.592,6	7.820,2	31,80%	24.941,1	8.442,0	33,85%
Malta	1.615,6	458,4	28,37%	1.642,5	456,8	27,81%	1.678,1	477,1	28,43%
Netherlands	146.796,0	43.221,0	29,44%	139.681,0	40.086,0	28,70%	145.279,0	42.654,0	29,36%
Austria	80.352,0	21.934,7	27,30%	76.260,6	22.158,0	29,06%	78.473,7	22.735,3	28,97%
Poland	83.774,4	29.103,4	34,74%	63.814,4	23.056,2	36,13%	73.670,2	27.535,7	37,38%
Portugal	41.298,6	14.424,0	34,93%	36.951,4	11.971,2	32,40%	38.886,3	13.517,3	34,76%
Romania	26.133,2	11.036,3	42,23%	20.682,6	7.852,3	37,97%	22.524,5	9.493,9	42,15%
Slovenia	8.692,2	3.165,2	36,41%	8.035,1	2.984,5	37,14%	8.104,3	3.012,0	37,17%
Slovakia	11.116,4	4.453,5	40,06%	10.164,9	4.221,3	41,53%	10.404,7	4.182,0	40,19%
Finland	57.308,0	15.511,0	27,07%	51.790,0	14.951,0	28,87%	53.355,0	15.261,0	28,60%
Sweden	126.527,3	30.941,0	24,45%	112.507,6	28.225,8	25,09%	130.186,5	33.833,8	25,99%
United Kingdom	558.281,0	115.539,8	20,70%	438.622,1	89.680,6	20,45%	492.788,9	111.866,5	22,70%

Appendix 2 EU entries and corresponding years



Appendix 3 Europe and the origin of VAT

Even though the origin of VAT in Europe is seen at the beginning of the 20th century (Zerres, 1978, p.19ff.), the date of origin can be set centuries ago (Grabower et al., 1962, p.7 f.). Also, Non-European ages with no VAT similar taxes but highly developed economies are important for its development as they did not only set the basis for the VAT systems that we know today but they also affected and influenced – not only through trade – the development in European countries. Thus, it is surprising that the idea of VAT did not occur previous to the first chiliar B.C., especially as several highly developed economies complied with the requirements for such a system.¹⁶ For instance, the Sumerian (3.500 – 3.200 A.D.), Old-Babylonian (2.400 – 1926 A.D.), Ptolemaic and Jewish (1000 A.D.) ages were highly developed and the trade was manifold. Presents, spoils of war, tributes or disposals to temples as give-away in the context of transactions cannot be seen as transaction taxes and were rather expressions of superstition (for more information see e.g. Grabower et al., 1962). However, in general, the cultures would have fulfilled the premises necessary for a VAT system. Thus, non-European ages laid the basis for the evolution of that special tax by affecting and influencing European economies (Grabower et al., 1962, p.7f.) but “VAT is after all a European creature” (Keen & Smith, 1996, p.377).

In his conceptions, GRABOWER ET AL. (1962, p.8ff) assumes that the origin of VAT can be set around the 8th or 7th century B.C. in Greece where it was introduced due to practical reasons in connection with the trade of precious metals. POPITZ (1921, p.3) on the other hand rather sees the beginning around 6 A.D. in the Roman Empire when Augustus introduced a disposal on turnovers. In other European countries the ‘history of

¹⁶ E.g. the Sumerian (3.500 – 3.200 A.D.), Old-Babylonian (2.400 – 1926 A.D.), Ptolemaic and Jewish (1000 A.D.) ages were highly developed and the trade was manifold. Presents, spoils of war, tributes or disposals to temples cannot be seen as transaction taxes and were rather expressions of superstition (for more information see e.g. Grabower et al., 1962).

VAT' started a few centuries later. The kingdom of the Franks and Germany, both known as cultures of absorption, copied the Roman system in the Middle Age (Scheller in Grabower et al., 1962, p.99). Spain introduced the so-called Alcabala in the 14th century (Terra & Kajus, 2011, p.272), which is seen as an important milestone in the development of VAT (Franke, 1941, p.7) due to its influence on other countries, e.g. the Netherlands (Schoenmaker in Aronowitz et al., 1996, p.5). Furthermore, England, Austria (Feld, 1927, p.2ff.) and Italy as well as many areas around the Mediterranean Sea had certain turnover taxes (Grabower et al. 1962, p.170 ff.).

The VAT forms described in the paragraph above are ancestors of the contemporary VAT (Feld, 1927, p.1). The first VAT forms taxed real estates, turnover on goods in general and on market places in particular (Grabower et al., 1962, p.16 ff.). The later introduced *excise* was a consumption disposal that has its origin in the taxation of the income from property (Hüllmann, 1805, p.140ff.) while the quittance taxes from the 19th century focused on the taxation based on quittances (von Stein, 1871, p.473). Especially, these two kinds of taxes are often named as the precursors of 'modern' value-added tax (see e.g. Hübschmann, 1967, p.3; Feld, 1927, p.1), which is actually accredited to a German businessman called von Siemens (Zerres, 1978, p.20; Ebrill et al., 2001, p.4). He developed the *refined VAT*, which does not tax every single transaction but only the value added to a good since the rest was already taxed at the last turnover (Siemens, 1921, p.3f.). Furthermore, Thomas S. Adams (Terra & Kajus, 2011, p.271), German minister of Finance Popitz (Bornhofen, 2010, p.120) and French general director of tax Maurice Lauré (Vanistendael, 2011, p.186) influenced this development of modern VAT so that the general idea of net taxation is still the basis for the actual VAT system.

Appendix 4 The rise and fall of VAT

Discussions and changes in the European VAT landscape are not a problem of the present. From its beginnings until the 20th century value-added tax was subject to several recessions and revivals. For instance, after the Middle Age the turnover tax vanished in several countries but reappeared in the 19th century in order to be abolished for another time (Grabower et al. 1962, p.99ff.) before it became a constant factor in the European tax systems.

An explanation for this inconsistent appearance can be found when having a closer look at the establishment of *tax systems* in general. Basically, tax systems needed the *interaction of times of poverty and times of relief*. In the first period – mostly times of war und financial difficulties (Popitz, 1921, p.7; Wäckerle, 1930, p.7) – fiscal questions arose and people dealt with different kinds of tax arrangements. Then, in the second period, people had to deal with the fiscal experiences from the first period in order to establish a working tax constitution. However, these interactions were very seldom (Grabower et al., 1926, p.99f.).

Another factor for the slow and uneven development of VAT systems was *the combination and variety of emerging unfairness and new ideas* that were supposed to make systems fairer. One example is Bremen where the VAT law was abolished in 1884 after 21 years of usage due to inconsistent and discriminating treatment of residents compared to foreigners (Senate Bremen, 1886, p.260).

After the First World War there was a change in the dealing with VAT. First of all, the interaction of times of poverty and times of relief took indeed place when different states started to examine VAT experiences. Second, in contrast to 1884, the interaction of public critique and new ideas supported the search for a working VAT system, especially in France and Germany. There, VAT was criticized as complicated and labile

due to instability of currency (Wäckerle, 1930, p.8f.) as well as unsocial and anti-business due to its lack of fair competition (Rothstein, 1968, p.146; Sullivan, 1965, p.13). Furthermore, the inflation in the 1920s and the governments' exploitation of VAT for enrichment reasons showed the advantages and disadvantages of different VAT designs (Franke, 1941, p.4). Even though most VAT systems had to undergo certain changes – the Dutch VAT system changed three times within 30 years (Aronowitz et al., 1996, p.5) – some system, e.g. in Germany, outlasted almost 50 years (Bornhofen, 2010, p.120; Dathe, 2009, p.1).

Another reason for not abolishing VAT another time was not only the intense dealing with this kind of tax but also a change in the states demands. The financial distress caused by the First World War was very high, especially for Germany (Wäckerle, 1930, p.7.). Therefore the governments kept VAT 'at the expenses of the individual, on the behalf of collectivity', which can be interpreted as a sign for growing demands of the state (Franke, 1941, p.3).

Appendix 5 Article 3 of the Treaty of Rome

For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein

- (a) the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
- (b) the establishment of a common customs tariff and of a common commercial policy towards third countries;
- (c) the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital;
- (d) the adoption of a common policy in the sphere of agriculture;

- (e) the adoption of a common policy in the sphere of transport;
- (f) the institution of a system ensuring that competition in the common market is not distorted;
- (g) the application of procedures by which the economic policies of Member States can be co-ordinated and disequilibria in their balances of payments remedied;
- (h) the approximation of the laws of Member States to the extent required for the proper functioning of the common market;
- (i) the creation of a European Social Fund in order to improve employment opportunities for workers and to contribute to the raising of their standard of living;
- (j) the establishment of a European Investment Bank to facilitate the economic expansion of the Community by opening up fresh resources;
- (k) the association of the overseas countries and territories in order to increase trade and to promote jointly economic and social development (Art. 3 Treaty of Rome)

Appendix 6 Council Directives on the harmonization of the laws of the Member States relating to turnover

No	Date	Content	No	Page	Date	Repealed by / valid until	
1	67/227/EEC	11.04.1967	Harmonization of legislation of Member States concerning turnover taxes				L 71 1301 14.04.1967 Appendix XI Part A VAT Directive
2	67/228/EEC	11.04.1967	Structure and procedures for application of the common system of value added tax				L 71 1303 14.04.1967 Art. 37 Sixth Directive
3	69/463/EEC	09.12.1969	Introduction of value added tax in Member States				L 320 34 20.12.1969 Extension of application deadline until 01.01.1972
4	71/401/EEC	20.12.1971	Introduction of value added tax in Italy				L283 41 24.12.1971 Extension of application deadline until 01.01.1972
5	72/250/EEC	04.07.1972	Introduction of value added tax in Italy				L 162 18 18.07.1972 Extension of application deadline until 01.01.1972
6	77/388/EEC	17.05.1977	Common system of value added tax: uniform basis of assessment				L 145 1 13.06.1977 Appendix XI Part A VAT Directive
7	94/5/EC	14.02.1994	Supplementing the common system of value added tax and amending Directive 77/388/EEC - Special arrangements applicable to second-hand goods, works of art, collectors' items and antiques for the refund of value added tax to taxable persons not established in the territory of the country				L 60 16 03.03.1994 Appendix XI Part A VAT Directive
8	79/1072/EEC	06.12.1979	Arrangements for the refund of value added tax to taxable persons not established in the territory of the country				L 331 11 27.12.1979 Directive 2008/9/EEC of 12.02. 2008
9	78/583/EEC	26.06.1978					L 194 16 19.07.1978 Appendix XI Part A VAT Directive
10	84/386/EEC	31.07.1984	Amending Directive 77/388/EEC - Application of value added tax to the hiring out of movable tangible property				L 208 58 03.08.1984 Appendix XI Part A VAT Directive
11	80/368/EEC	26.03.1980	Exclusion of the French overseas departments from the scope of Directive 77/388/EEC				L 90 41 03.04.1980 Appendix XI Part A VAT Directive
12	Proposal	-	COM(1982)870 COM(1984)84				-
13	86/560/EEC	17.11.1986	Arrangements for the refund of value added tax to taxable persons not established in Community territory				L 326 40 21.11.1986
14	Proposal	-	COM(1982)402				-
15	83/648/EEC	19.12.1983	Deferment of the introduction of the common system of value added tax in the Hellenic Republic				L 360 49 23.12.1983 Extension of application deadline until 01.01.1986
16	Proposal	-	COM(1984)318				-
17	85/362/EEC	16.07.1985	Exemption from value added tax on the temporary importation of goods other than means of transport				L 192 20 24.07.1985 12.12.1992 (Art. 2 (1) Council Directive 91/680/EEC of December 16, 1991)
18	89/465/EEC	18.07.1989	Abolition of certain derogations provided for in Article 28 (3) of the Sixth Directive, 77/388/EEC				L 226 21 03.08.1989 Appendix XI Part A VAT Directive
19	Proposal	-	COM(1987)315				-
20	85/361/EEC	16.07.1985	Common system of value added tax: derogations in connection with the special aids granted to certain farmers to compensate for the dismantlement of monetary compensatory amounts applying to certain agricultural products				L192 18 24.07.1985 December 31, 1991
21	86/247/EEC	16.06.1986	Deferment of the introduction of the common system of value-added tax in the Hellenic Republic				L 164 27 20.06.1986 Extension of application deadline until 01.01.1987

Table established based on overview of Kofler (2009, slides 28ff.).

Appendix 7 Changes of the VATO since 1993

The table below shows the amendments and changes of the VATO from 1993 until today. Three changes apply to the Articles 17a to 17c concerning documentary evidence. While the first two ones from 1995 and 2008 are minor amendments, only the latest change is the one that restructured the whole evidence process.

Date	BGBI. I S.	Article	Change
27.04.1993	600	-	Amendment
27.12.1993	2378	6 (58)	§ 34 (1) S.2
11.10.1995	1250	21	§§ 1, 4, 6, 7, 9, 13, 17, 17a, 17b, 17c , 19, 20, 21, 46, 48, 51, 54, 61, 69
04.06.1996	789	-	§1
12.12.1996	1851	2	§§ 1, 38, 41, 41a, 50, 59
19.12.1997	3121	6	§§ 36, 37, attachment §§69, 70
09.06.1999	1308	-	Amendment
22.12.1999	2604	10	§§ 1, 12, 44, 52, 53, 57, 65
19.12.2000	1790	15	§§ 25, 33, 44, 53, 61, 69
20.12.20014	3794	19	Content, §§30a, 31, 33, 39a, 41, 44, 59, 62 (1)
16.05.2003	660	7	§§ 1, 59
15.12.2003	2645	6	Content, § 31
21.02.2005	434	-	Amendment
22.09.2005	2809	4 (32)	§ 61 (1)
22.08.2006	1970	9	§33 S.1
13.12.2006	2878	8	§48 (4)
20.12.2007	3150	9	§23
19.12.2008	2794	8	Content, §1, §17c (2) Nr. 4, 5 , §§ 20, 21, 59, 61, 61a, 74a
20.12.2008	2850	9	§48
17.03.2009	550	7	§68 (1)
08.04.2010	386	7	§30a S.1
17.11.2010	1544	7	§§ 59 S.2
02.12.2011	2416	-	§§, 9, 10, 11, 13, 17, 17a, 17b, 17c , 43, 44, 74a

Notice: Changes concerning the articles for documentary evidence are highlighted black.

Appendix 8 Answers to the survey questions

This appendix contains the answers to the E-Mail survey concerning documentary evidences. They are listed in alphabetical order and the text is the original answer text.

Country 1 Austria (only available in German)

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

Grundsätzlich muss der liefernde Unternehmer, der eine innergemeinschaftliche Lieferung ausführt, eine Rechnung ausstellen, die alle unter 3. genannten Rechnungsmerkmale enthält. Weiters muss auch mittels Belegnachweis nachgewiesen werden können, dass der Gegenstand der Lieferung ins übrige Gemeinschaftsgebiet befördert oder versendet wurde.

Beförderung

Insbesondere wenn der Gegenstand der Lieferung befördert wird, gelten sehr strenge Vorschriften. Zusätzlich zu einer Kopie der ordnungsgemäßen Rechnung müssen noch folgende Dokumente vorliegen:

- ein handelsüblicher Beleg, aus dem sich der Bestimmungsort ergibt, insbesondere z.B. Lieferschein;
- eine original unterschriebene Empfangsbestätigung des Abnehmers oder seines Beauftragten bzw. wenn der Empfänger befördert (Abholfall) durch eine original unterschriebene Erklärung des Empfängers, dass er den Gegenstand in das übrige Gemeinschaftsgebiet befördert.

Darüber hinaus hat in Abholfällen der liefernde Unternehmer die Identität des Abholenden festzuhalten (durch eine Kopie des Reisepasses bzw. Führerscheines) und sich die Vollmacht des Beauftragten zur Abholung nachweisen zu lassen (Kopie der Vollmacht/des Auftrags des Abholenden).

Versendung

Werden die Gegenstände versendet reichen als Belegnachweis neben einer ordnungsgemäßen Rechnung ein Versendungsbeleg wie Frachtbrief oder

Postaufgabeschein bzw. eine Spediteursbescheinigung eines in der EU ansässigen Spediteurs.

Durch einen Buchnachweis muss weiters sichergestellt sein, dass eine Verbindung zwischen Buchhaltung bzw. Aufzeichnung einerseits und den Belegen, welche die Versendung oder Beförderung hergestellt ist.

Anbei übermitteln wir euch noch eine Checkliste aus der ersichtlich ist, welche Punkte für die österreichische Finanzverwaltung bei Belegnachweisen relevant sind. Im Rahmen einer Betriebsprüfung könnten die Belegnachweise beispielweise anhand dieser Checkliste überprüft werden.

Hinweis: Das Merkblatt innergemeinschaftliche Lieferungen finden Sie Ihrer E-Mail beigelegt.

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

Im Zusammenhang mit einer ordnungsgemäßen Rechnung, ja.

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

Der Hinweis auf die steuerfreie innergemeinschaftliche Lieferung kann in englischer Sprache erfolgen.

Zusätzlich müssen auf der Rechnungen noch folgende Angaben enthalten sein:

- Name und Anschrift des liefernden Unternehmers;
- Name und Anschrift des Abnehmers;

- Menge und handelsübliche Bezeichnung der gelieferten Ware;
- Tag der Lieferung;
- Entgelt;
- Rechnungsausstellungsdatum;
- fortlaufende Nummer;
- Umsatzsteueridentifikationsnummer des Unternehmers und Empfängers.

Country 2 Belgium

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

In accordance with the Belgian VAT legislation (see article 39bis, 1st, 1° of the Belgian VAT Code and R.D. n° 52 dated 29 December 1992), the Intra-Community supply of goods will be exempt from VAT if two conditions are met:

1) A proof that the supply of goods has been performed for a person VAT registered in another Member State and;

Belgian VAT law does not provide for a specific procedure to verify the validity of the EU VAT number, but in practice, besides the normal commercial documentation and evidence (such as purchase order, copy of ID card, proxy that person using the VAT number acts on behalf of the company/taxable person, sales agreement, bank statements, etc.), also a qualified certificate from the VIES-website confirming that the EU VAT number of the customer was valid at the time of supply can be used as evidence.

2) A proof that goods have been dispatched from Belgium to an EU-country.

Belgian VAT law does not provide for an exhaustive list of evidential documents required to prove the IC transport. The supplier must hold *a set of documentary evidence of the transport* to another EU Member State. He must produce this upon request by the Belgian VAT authorities. Suitable evidence includes amongst others:

- signed contracts;

- purchase orders mentioning the delivery address;
- transport documents (CMR, waybill, airway bill, bill of lading);
- transport invoices;
- receipts;
- payment documents.

Effective proof of the reporting of the intra-Community acquisition in the EU Member State of arrival is not required but can support the evidencing process in case other evidence would be insufficient.

Please note that none of these documents have absolute power of evidence when presented separately.

Remark:

In case the IC transport of the goods is performed by the customer itself (ex-works supplies), the supplier should pay extra attention to the evidential process, e.g. by implementing a strict client acceptance, documentation and payment procedure.

Please note in such case, two situations have to be distinguished :

i) transport can be carried out on behalf of the customer, by a carrier:

The aforementioned documents inclusive a copy of the CMR (to be obtained from the buyer) can be used to prove the transportation. Furthermore, a written order from the buyer stating that the goods will be transported to another EU Member State as well a formal receipt confirmation of the goods on which the name, address, VAT number of the buyer, a description of the goods, as well as place of arrival are mentioned, can also be used as proof of transport. However once again the transport is to be proven by a set of documents.

ii) transport can be carried out by the customer itself:

In such case, the absence of a carrier could make the proof of the transport more difficult. However, payment documents, a written order and an acknowledgement of receipt can be useful to complete the proof of the transport.

In case sufficient evidence is available, on the sales invoice, reference should be made to the EU VAT ID number of the customer and the reason for zero-rating (Article 39bis Belgian VAT code / Article 138 Directive 2006/112/EC).

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

Based on our experience, some VAT inspectors accept the application of the VAT exemption to the extent that a valid and complete CMR can be provided. Do note however that as stated above a CMR has no absolute power of evidence when presented separately, although, it is clear that it is the most essential element of proof. In this respect, a VAT inspector can always ask for additional documents to proof the intra-Community supply if he opines that the provided CMR is not a sufficient proof.

The certificate issued by a freight forwarder could be part of the set documents required to prove the intra-Community supply. Please note however that as stated above, such certificate could not have any power of evidence when presented separately.

Question (3) a reference to the VAT exemption like "tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

The invoice issued by the supplier should contain a reference to the EU VAT ID number of the customer and the reason for the VAT exemption. Such reference "Tax-exempt intra-Community supply based on Article 138 of the Directive 2006/112/EC" will be indeed required.

Country 3 Bulgaria

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

The supplier should have the following documents to evidence an intra-Community supply:

- i) a valid invoice with a valid VAT number of the customer in another Member State; it is highly recommendable to keep a print out from the online VIES portal to prove that the recipient had a valid VAT number in another Member State on the date of the tax event; the invoice should be prepared in Bulgarian language;
- ii) a valid protocol in case of movement of own goods; the protocol should be prepared in Bulgarian language;
- iii) documents evidencing the dispatch or the transport of the goods from Bulgaria to the territory of another EU Member State (the tax authorities may require these documents to be translated into Bulgarian if the originals are in another language):
 - transport document certifying that the goods have arrived in the territory of the other EU Member State if the transportation is performed by the recipient or the supplier or a third party on behalf of one of the preceding;

From a practical perspective, depending on the means of transportation, a valid transport document may be a CMR, a bill of lading, or any other internationally approved transport document. It is highly advisable that the supplier is stated as the dispatcher in the documents; if the transport is performed by a freight forwarder and the supplier is not indicated as the dispatcher on the transportation document, the tax authorities would investigate the other documents (e.g. forwarding agreement, payment documents, etc.) relevant to the dispatch of the goods in order to identify the authenticity of the transport;

- if the transportation is performed by the recipient or a third party on behalf of the recipient, instead of a transport document alternatively a written confirmation signed by the recipient (or an authorised person) may be provided. The written confirmation should include the date and place of receipt; type and quantity of the goods; type, brand and registration number of the vehicle on which the goods have been transported; name of the person who delivered the goods.

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

A completely filled CMR document should be a sufficient transportation document to prove that the goods have been transported from Bulgaria to another EU Member State. Please note that the Bulgarian tax administration often challenges CMR documents which do not have the necessary requisites and especially a confirmation of the date and place of arrival of the goods. In this regard, our experience shows that if, for instance, the recipient does not confirm the receipt with a signature and a stamp applied on the CMR document, the tax authorities would claim that the goods have not left the territory of Bulgaria and based on this they would charge Bulgarian VAT on the supply. The tax authorities may challenge the authenticity of the CMR document even if the recipient confirms the arrival of the goods by another means of confirmation (e.g. codification, electronic signature, etc.). Please note that even if the supplier has a valid CMR document, during a tax audit the tax authorities may still further investigate the supplies and may crosscheck the transportation company to confirm that the transportation has been realised (including whether the transportation company has the necessary resources to perform the transport).

Based on the above, our view is that a certificate issued by a freight forwarder would be considered as an evidence for proving intra-Community supply only where it is an internationally approved transportation document. In addition to that, the recipient

should have signed and stamped the document upon arrival of the goods. If the certificate does not comply with these requirements, the tax authorities may require other documents to prove that the goods have been transported to another EU Member State. If the provided additional documents are not considered as valid proofs as well, the tax authorities may charge Bulgarian VAT on the supplies.

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

The following should be generally completed in the invoice to be considered valid for the intra-Community supply of goods:

- VAT Identification Number of the taxable person effecting the supply;
- VAT Identification Number in another Member State of the person to whom the supply is effected;
- a statement that the supply is exempted from VAT as an intra- Community supply of goods to another EU Member State : "Основание за начисляване/начисляване на ДДС: Чл. 53, ал. 1 от ЗДДС, във връзка с чл.7, ал. 1 - БОД / Grounds for charging/non-charging VAT: Art. 53, para.1 of the VATA in relation to Art. 7, para.1 - ICS"; please note that there is a statement of the tax authorities according to which instead of the Bulgarian VATA a reference to the respective articles from the Council Directive 2006/112/EC may be made, or alternatively the grounds may be stated descriptively without a reference to a legislative text (e.g. "Вътреобщностна доставка/Intra-Community supply");

In addition to the above requisites, the invoice should include the following:

- name "invoice" and 10-digit serial number of the tax document (in Arabic digits only); the numbering of the invoices should start from 0000000001 and should increase sequentially without omissions or repetitions;

- date of issue;
- name and address of the supplier;
- name and address of the person to whom the supply is effected;
- quantity and type of the supplied goods;
- date on which the chargeable event occurred or date when the payment has been received;
- unit price excluding VAT, taxable base of the supply, and any discount, unless included in the unit price;
- the VAT rate;
- the VAT amount;
- the payable amount if it is different from the sum of the taxable amount and the tax;

Upon request, we may prepare an invoice template that is in compliance with the Bulgarian invoicing requirements.

Country 4 Czech Republic

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

According to the Czech Value Added Tax Act (“Czech VAT Act“) a supply of goods to another Member state must be supported by the following:

- A valid VAT number of the recipient of goods; and
- A written statement of the recipient of the goods or an authorized third party confirming that the goods were transported to another Member State, or any other evidence (e.g. CMR confirm by the transporter or by the recipient of the goods).

Moreover, please note that based on our recent experience with the current practice of the tax office we recommend that a proof of validity of the customer VAT number at the moment of supplying the goods is kept for the purpose of a tax inspection. For example

a print screen of the internet page VIES VAT number Validation should be kept for the purpose of a potential future tax audit.

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

Both above mentioned possibilities are sufficient as documentary evidence.

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

Yes, according to the Czech VAT Act a tax documents must include a notice that a supply is exempt from VAT together with relevant reference to the article according to which it is exempt. The reference can be made either to Section 64 of the Czech VAT Act or to Article 138 of the EU VAT Directive.

Further to the above, please see below a sample of the invoice for intra-Community supply of goods that includes also the additional requirements given by the Czech VAT Act.

Country 5 France

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

Any relevant documents. The difficulty comes from the fact that the tax authorities have never provided an official list of documents which by themselves would definitely convince the tax inspector of the despatch of the goods out of France. This being said, transport document/agreement, receipt certificate from the customer are key in the pieces of evidence.

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

These documents are key to prove the despatch of the goods to the other EU country. However, we recommend to keep additional pieces of evidence from other sources (proof of payment, receipt from the client, etc).

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

That statement is OK.

Country 6 Greece

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

The documentary evidence required by Greek tax authorities in order to ensure tax exemption in case of intra-Community supplies are:

A) If the seller or the customer is transporting the goods, the intra- Community supply of goods has to be proved in general by:

- i) The valid invoice issued,
- ii) The Bill of Lading /CMR as well as a valid delivery note issued by the person effecting the supply,
- iii) Confirmation on the receipt of the goods (when the seller is transporting the goods), or confirmation on the dispatch of the goods into another EU Member State (when the customer is transporting the goods).

B) If a third person appointed by the seller or by the customer is transporting the goods the intra- Community supply of goods has to be proved (in addition to the above) by dispatch documents (CMR, Bill of Lading,)

The required proofs have to be kept by the company and provided without any unnecessary delays once the supply is rendered.

Digital copies (reprinted) of documents, such as CMR etc are NOT acceptable as proof of delivery for tax authorities and only original copies should be submitted to the tax authorities.

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

- a) Yes, it is sufficient as documentary evidence
- b) No, a certificate issued by a freight forwarder without confirmation of receipt issued by the recipient of the goods is not sufficient as documentary evidence.

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

A valid VAT invoice for the intra-Community supply of goods has to include, further to the invoice requirements provided by the Greek Code of Books and Records, the following:

- VAT Identification of the person to whom the supply is effected;
- Reference to the specific VAT provision of the Greek Code of VAT that the supply is exempt from VAT as an intra- Community supply of goods into another EU Member State.

Country 7 Hungary

First of all we would like to emphasize that the justification of the VAT exemption in case of intra-Community supplies is actually a crucial issue in Hungary (and we assume also all over EU). There are a Hungarian case before the EU Court related to this question as well as there are many tax audit focusing on this topic.

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

Further to the first question, we note that the Hungarian VAT Act only declares that the intra-Community supply of goods is a VAT exempt transaction, if the goods are transported to a destination outside the domestic territory but within the Community **(and it is also proven)**, where the goods are transported by or on behalf of the supplier or by the purchaser (Article 89 (1) of the Hungarian VAT Act). This rule is implemented from the VAT Directive.

According to the official guideline of the Hungarian Tax Authority (16 02 2007) the VAT exemption should be proved by a fully completed CMR. The CMR should be signed and stamped by the supplier, by the freight forwarder (if any) and also by the purchaser. Please note that only the CMR signed and stamped by the purchaser can fully prove the fact that the goods left the territory of Hungary.

Based on our experiences, in the course of a tax audit the taxpayer should also prove the methodology how the CMR's can be linked to the invoices (e.g. the invoice number is printed on the CMR, the quantity of the goods are the same on the invoice and the CMR etc.).

If CMR is not available, or the Hungarian Tax Authority does not find it appropriate from VAT point of view, there are alternative documents which can prove the fact of the transportation, as following (the alternative documents are also listed in the above mentioned official guideline of the Hungarian Tax Authority):

- declaration issued by the purchaser about the fact that the goods are delivered to the place of purchaser; the declaration should be signed and stamped by the purchaser (based on our recent experience additional to this declaration it is required to gather specimen of signature of the purchaser's representative, company extract of the purchaser);
- certification issued by the warehouse provider located in the country of destination about the fact that the goods are stocked in the warehouse.
- extract from the company accounting system, which proves that the goods were booked in the purchaser's book;
- any other declaration, certification, contracts, purchase orders issued by the parties or by other independent entities, which can support the above fact.

Please note the without a completely filled CMR the tax payer should collect as much documents from the above list as it possible in order to minimise the VAT risk. In this respect the tax payer can reduce the risk that the Tax Authority will re-qualify the VAT exempt transaction to VATable domestic transaction, and so the tax penalty.

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

As mentioned above, in the course of a tax audit the completely filled CMR document (including the confirmation of the receipt) may be enough to the Tax Authority to prove the fact that the goods were delivered to an EU country other than Hungary. Furthermore see our comments above.

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

A Hungarian established or registered taxpayer is only obliged to issue a simplified VAT invoice to an EU (other than Hungary) established tax payer.

The simplified invoice should be consisted of the following information at least:

- date of issue of the simplified invoice;
- invoice number;
- VAT ID of the supplier;
- VAT ID of the purchaser;
- name and address of the supplier and the purchaser;
- description of the supplied goods or services;
- the price of the supplied goods or services;
- reference to the fact, that the transaction is outside of the scope of the Hungarian VAT Act. The reference given by you is correct and fulfil the requirements prescribed the the Hungarian law.

Country 8 Italy

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

There are no concrete provisions in the Italian tax law which describe in detail the documents needed for a sufficient proof of intra-EU supplies.

However, the Italian tax authorities provided a guidance in this respect with the ruling no. 345/E dated 28 November 2007.

In particular, the Italian tax authorities, in line with the ECJ decisions in the cases C-409/04, C-146/05 and C-184/05, stated that 4 criteria must be fulfilled in order to apply the VAT exemption:

- A proper invoice quoting the right reference to the Italian or European law must be issued
- EC Sales Listing / Intrastat form must have been filed

- Bank statements to demonstrate that the payment has been carried out
- Transport documents

If one of the four criteria is not met, there is a grey area how an alternative proof can be done.

Regarding the CMR there is no official requirement that box 24 (signature of the customer who confirms that he has actually received the goods in a country outside Italy) is filled in, i.e., even an incomplete CMR might be accepted as sufficient proof.

Finally, it is worth pointing out that the Italian VAT number of the supplier must be included in the VIES system in order to carry out the intra-EU supply. Moreover, the supplier has to check that the customer VAT number is valid and included in the VIES system in order to exempt the supply. In this respect, it is advisable that the supplier save a copy of the webpage which confirm the customer's VAT number validity.

Please refer to this link: http://ec.europa.eu/taxation_customs/vies/?locale=en

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

As mentioned above, a completely filled CMR document (including box 24) can be considered a good evidence, however in the lack of other above mentioned documentation we can not exclude challenges in case of tax audit. Such an issue could increase in case no confirmation of the receipt is reported.

Question (3) a reference to the VAT exemption like "tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

We confirm you that the invoice related to intra-community supplies needs to report the applicable Italian VAT exemption provision, in particular "Non Imponibile ai sensi

dell'art. 41 DL 331/1993" (eg VAT exempt with the right to deduct according to article 41 Law Decree 331/1993).

Country 9 The Netherlands

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

Your client should act as a "responsible taxable person" in order to be eligible to apply the Dutch VAT zero rate. In practice this means that your client should be able to proof the VAT taxable status of the purchaser and the EU cross border transport of the relevant goods. There is no clear summary of evidence in the Dutch VAT code that will in every case be sufficient to support the application of the Dutch VAT zero rate. To our understanding of Dutch supreme court case law, taxable persons who can provide below mentioned evidence should have sufficient proof to apply the Dutch zero rate in case of an intra-Community supply:

- CMR indicating the cross border transport of the relevant goods to a destination outside The Netherlands;
- an invoice addressed to the purchaser (in the other member state) that meets the invoicing requirements as indicated in the attachment to this note);
- a copy of before mentioned invoice which is signed by the purchaser (indicating that purchaser received the relevant goods at the designated location);
- bank payment originating from abroad;
- proof that the foreign VAT identification number in the name of the purchaser / purchasing company has been checked and is valid (written confirmation of the Tax authorities).

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

A completely filled CMR could also be sufficient in combination with a correct invoice.

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

Regarding the invoicing requirements in the Netherlands we refer to the attachment to this mail. If you desire a quick check of the (draft)invoice regarding the invoice requirements, please send us a copy of the invoice so we could take a look at it.

Country 10 Poland

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

According to Polish VAT provisions intra-Community supplies are subject to 0% VAT rate generally provided that:

- 1) the taxpayer effected the supply for the acquirer registered for intra-Community transactions in another EU country, and included the EU VAT number (with ISO country code) of the acquirer as well as his Polish EU VAT number on the invoice documenting the supply of goods;
- 2) the taxpayer, before the lapse of the time limit for filing the tax return for a given settlement period, has in his documentation evidence that the sold goods left territory of Poland and were delivered to the acquirer in another EU country.

The main documentary evidence in this respect listed in Polish VAT Act are:

- sale invoice,
- specification of sold goods (it can be a part of sale invoice as well),
- transport documents received from the carrier from which it explicitly results that goods were delivered to their place of destination in another EU country. In practice, in the case of road transportation it is CMR document signed by the acquirer of the goods.

Please note, that in the case when from the documentation collected by the taxpayer does not explicitly result that the goods were delivered to the purchaser, it should support it with other documents, such as business correspondence with the customer including his orders, and documents confirming the insurance and costs of freight, documents confirming the payment for goods, the proof for receiving of goods by the purchaser (eg. in the form of written statement from the customer specifying purchased goods and date of their receipt), etc.

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

Please be informed that in the light of Polish VAT provisions, completely filled CMR document (including confirmation of receipt issued by the recipient of the goods), i.e. explicitly confirming that goods subject to intra-Community transaction have been delivered to their place of destination on the territory of another EU country, supplemented with sale invoice (including EU VAT numbers of the seller and the purchaser) and specification of sold goods are sufficient as documentary evidence of intra-Community supply.

Regarding certificate issued by the carrier, as mentioned previously, from the documents concerning intra-Community supply transaction should clearly result that goods have been delivered to their place of destination in another EU country. As practice shows it is preferable that such proof of receipt of goods comes from the customer directly. Therefore, even if from the certificate issued by a freight forwarder would result that goods were delivered to the purchaser, we recommend to gather additional documents from the customer confirming that the goods were delivered to him, eg. business correspondence stating that he received ordered goods.

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

According to Polish VAT regulations, there are no requirements with regard to “exemption reference” in the case of invoices documenting intra-Community supply of goods.

Naturally, the Client may add such a reference. Please only bear in mind that in Poland intra-Community supplies are subject to 0% VAT rate not VAT-exempt. Thus, we would suggest to replace "tax-exempt" with "0% VAT rate" in the reference.

Country 11 Romania

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

Under Romanian VAT legislation, when registered for VAT purposes in Romania, with some exceptions, the Company will be able to exempt the intra-community supplies of goods, provided that the following conditions are cumulatively fulfilled:

- The invoice issued by the Company has to contain all the mandatory information specified by the Romanian VAT law, as well as, the valid VAT registration number from another Member State of the client and
- The Company has available the transport documents of the goods supplied within EU stating that the goods were shipped from Romania to another Member State;
- And, where appropriate, any other documents, such as contract/ order of sale/ purchase, insurance papers.

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

As regards the transport document, indeed, a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by a freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as ***transport proving document***.

However, it is important to pay attention to the fact that, as regards the second document you mentioned, even though the local VAT law and the European VAT Directive does not request it, according to our practical experience, in order to apply the VAT exemption, the local tax authorities are usually asking for the confirmation of receipt issued by the recipient of the goods, as a solid proof that the goods arrived in the other Member State.

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

Indeed, as no VAT is due, a reference to the appropriate provision of the Romanian Fiscal Code or of the European VAT Directive, or any other wording indicating that the delivery of goods is the subject of a VAT exemption has to be made. Thus, a reference to art. 143 para. (2) letter a) of the Romanian Fiscal Code or to the relevant article of the EU VAT Directive may be used.

Country 12 Slovakia

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

According to the Slovak VAT Act, supply of goods that are dispatched or transported from Slovakia to another EU Member State by the supplier, or the customer, or another person (such as freight forwarder) on their account, is exempt from Slovak VAT if the customer (acquirer of goods) is registered for VAT purposes in another EU Member State. The supplier (Slovak VAT payer) must have available the following documents to apply the VAT exemption:

- (i) Copy of invoice issued to the customer; and
- (ii) A document confirming dispatch or transport of the goods from Slovakia to a destination in another EU Member State.

For the purposes of point (ii) above, the Slovak VAT Act accepts the following documents, depending on who arranges for the transportation:

- a) where the transport of goods is performed by the supplier or the customer through another person, a transport document or another document on the dispatch giving the place of destination is required,
- b) where the transport is effected by the supplier himself, he needs to possess a written confirmation of the acceptance of goods by the customer or a person entrusted thereby,
- c) where the transport is effected by the customer himself, the supplier needs a written notice of the customer or a person entrusted thereby saying that the goods have been transported to another EU Member State,
- d) by other documents, such as a contract on supply of goods, a delivery note, a document attesting to the acceptance of a payment for goods.

Based on the above, if the supplier performs an intra-community supply of goods from Slovakia where the goods are transported from Slovakia to another EU Member State by a freight forwarder nominated by supplier or the EU customer, supplier needs to have available a copy of the invoice and transport document as per a) above (such as CMR).

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

CMR is required for Slovak VAT purposes. Please see our comments on question 1.

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

Yes, the quoted reference satisfies the Slovak VAT requirements. We state below the invoice requirements for an invoice for intra-community supplies of goods from Slovakia to another EU Member State:

- the business name and address of the registered seat, place of business, or establishment of the supplier, and its VAT number;
- the business name and address of the registered seat, place of business, or establishment of the customer, and its VAT number customer under which he ordered the goods;
- the sequential number of an invoice;
- the date of supply of goods, or the date of receiving a payment, where this date can be determined and it is different from the invoice issue date;
- the invoice issue date;
- the quantity and type of the goods supplied;
- the price for the goods, the unit price without VAT, and reductions and discounts, if these are not included in the unit price; and
- reference to Article 43 of the Slovak VAT Act, reference to the article 138 of the directive of the Council 2006/112/ES from 28 November 2006 on united system of VAT according to the directive of the Council 2006/138/ES from 19 December 2006, or reference to the information that supply of goods is exempt from VAT.

Country 13 Slovenia

Question 1) What are the documentary evidences required by your national tax authorities in order to ensure tax exemption in case of intra-Community supplies?

In accordance with the Slovene VAT legislation, an invoice together with the relevant transport document (e.g. CMR) or any other suitable document evidencing that the

goods stated on the invoice have been supplied or transported to another EU Member State are required. In case the customer or another person on his behalf dispatch or transport the goods from Slovenia, along with the invoice a written statement signed by the customer would also be constituted as an adequate evidence. Following the Slovene VAT Regulation, the statement should include at least the following information: name and surname of the supplier; invoice number and invoice date; name, address and VAT identification number of the customer; the means of transport by which the goods are transported together with the registration certificate; place of destination and the statement that the customer is willing to provide to the Slovene tax authorities any information with respect to the place of destination of the goods. The proof that goods have left Slovenia should be provided to the Slovene tax authorities upon their request.

Question (2) Please comment in particular on the question whether a completely filled CMR document (including confirmation of receipt issued by the recipient of the goods) or a certificate issued by the freight forwarder (without confirmation of receipt issued by the recipient of the goods) are sufficient as documentary evidence?

Generally yes, provided that the conditions listed under point 1 are fulfilled.

Question (3) a reference to the VAT exemption like “tax-exempt intra-Community supply based on Article 138 (1) of the Council Directive 2006/112/EC fulfills the invoicing requirements based on the local VAT law.

Yes, given reference fulfils the Slovene VAT legislation's requirements.