

An Analysis  
of the VAT Implications  
of Chain Transactions: An EU Perspective

By

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the Master in Accountancy degree in the Department of Accountancy at the  
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## Abstract

### An Analysis of the VAT Implications of Chain Transactions: An EU Perspective

**Purpose:** The primary purpose of this study is to analyse the VAT implications of chain transactions. This research examines the reasonableness and shortcomings of the current system on chain transactions as per EU VAT Directive, as well as according to laws of different member states, while evaluating the impact on the interpretation of practitioners arising from CJEU cases on chain transactions. This research further analyses the effect of the Quick Fixes and the proposed Definitive Regime on chain transactions. Lastly, this research assesses recommendations for beneficial improvement, while identifying growth potential for chain transactions.

**Design:** As a preliminary means of gathering information, an analysis of relevant literature was carried out. Subsequently, 15 semi-structured interviews were conducted with 12 local tax practitioners, 1 tax practitioner from Cyprus, and 2 high-ranking officials from the Office of the Commissioner for Revenue.

**Findings:** The findings indicate that there are shortfalls in the current system for chain transactions; however, with respect to the triangulation mechanism, the objective of avoiding unnecessary registrations is achieved. Differing interpretations were a recurring issue on chain transactions, although improvements have been made with the new Quick Fixes. CJEU case law is evidently fundamental to practitioners, and its codification into the Quick Fix was viewed positively, providing further clarity to chain transactions. Despite the Definitive Regime being viewed as a shift towards the ideal scenario, shortcomings with proposals related to chain transactions were identified. Implementation of the Definitive Regime is not believed to be attainable by 2022. Although VAT is not viewed as an element which would hinder business, the changes bring about an added compliance cost for EU businesses.

**Conclusion:** Although the Quick Fixes are perceived as beneficial, the entire VAT system will soon be revamped with the introduction of the Definitive Regime. Changes are resulting in increasing compliance costs which may be unsustainable for SMEs. In order to enhance growth of the single market, chain transactions should be facilitated. Recommendations given in this respect include improving harmonisation, alongside providing a central depository of guidelines.

**Value:** This study sheds light on the shortfalls of the system applicable to chain transactions, emerging from the Directive, together with the applicable changes in the Quick Fixes. This research provides valuable insights on the proposals of the Definitive Regime impacting chain transactions, as well as on areas for improvement to ensure proper and efficient application of the rules.

**Keywords:** VAT, Chain transactions, Quick Fixes, Definitive Regime

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## List of Abbreviations and Acronyms

Art.	Article
B2B	Business-to-Business
B2C	Business-to-Customer
CBT	Cross-Border Trade
CfR	Commissioner for Revenue
CJEU	Court of Justice of the European Union
CPE	Continuing Professional Education
CTP	Certified Taxable Person
EC	European Commission
EU	European Union
EU Directive	6 <sup>th</sup> European Council Directive 2006/112/EC
FAQ	Frequently Asked Questions
Fig.	Figure
GDP	Gross Domestic Product
G-20	Group of Twenty
IC	Intra-Community
ICA	Intra-Community Acquisition
ICS	Intra-Community Supply
ICT	Intra-Community Transport
IO	Intermediary Operator
MS	Member State
MTIC	Missing Trader Intra-Community
OECD	Organisation for Economic Co-Operation and Development
OSS	One-Stop-Shop
PoS	Place of Supply
RCM	Reverse Charge Mechanism
Recap	Recapitulative Statement

SMEs	Small and Medium-Sized Enterprises
TFA	Trade Facilitation Agreement
TP	Taxable Person
VAT	Value Added Tax
VAT Directive	6 <sup>th</sup> European Council Directive 2006/112/EC
WTO	World Trade Organisation

# Chapter 1

---

## *Introduction*

*“...But in this world, nothing can be said to be certain, except death and taxes.”*  
*Benjamin Franklin*

## 1.1. Introduction

Cross-border trade (CBT) has been around for a number of years. Countries began trading with their neighbours, and soon after, due to advancements in shipping methods, trading with countries all over the globe increased significantly, resulting in \$19,670,000,000,000 (19.67 trillion) worth of world merchandise trade in 2018 (WTO 2019). For a number of years, international trade has been supported by the formation of different alliances, such as, the European Union (EU) and G-20, which have given rise to the connected world we live in today.

## 1.2. Background

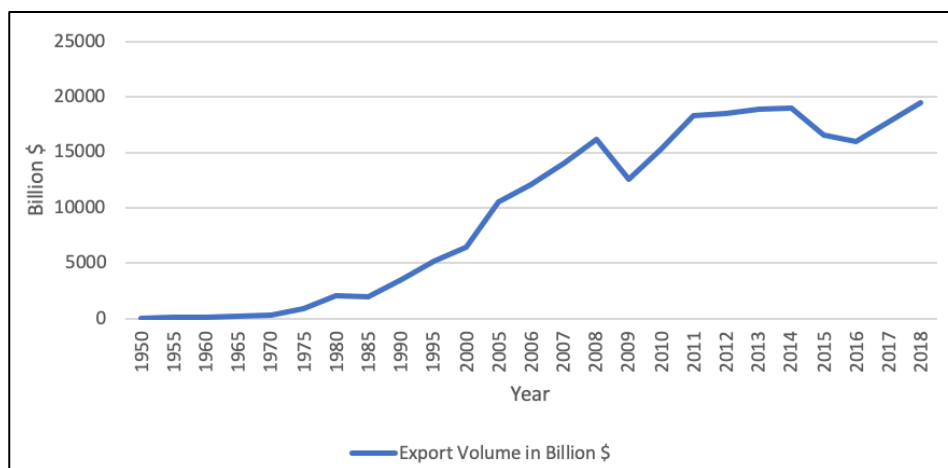
### 1.2.1. History of Cross-Border Trade

CBT has become essential in today's world in order for economies to exploit opportunities which are available across borders. In simple terms, CBT occurs when goods or services are bought or sold and the seller is located in a different country to the buyer; hence, the products are traded across borders. Due to the increased importance of this method of trade, focus has been placed on facilitating CBT to harmonise and simplify procedures, thus leading to a more globalised world. In 2013, the World Trade Organisation (WTO) finalised negotiations on the Trade Facilitation Agreement (TFA) to improve CBT and allow different economies to reap the benefits from other jurisdictions and make trading more efficient (OECD 2018).

### 1.2.2. The Rise of Global Trade

Globalisation has been on the rise for a number of decades, whereby countries all over the globe are putting in efforts to eliminate physical boundaries between nations, allowing for a variety of opportunities in relation to trade. The effect of globalisation increases the possibility of trade as countries rely on each other more and are given the chance to take advantage of different prospects which arise in various countries. This is visualised in Fig. 1.1 below, demonstrating the growth in global export volume of trade in goods from 1950-2018, showing a steady increase throughout the decades.

*Figure 1.1: Trends in Global Export Volume of Trade in Goods from 1950-2018*



*Adapted from: UNCTAD – Survey on Value of Shares of Merchandise Exports and Imports (2019)*

The ever-growing global village that we live in has led to a more networked world, which has had both positive and negative effects on sustainable development. Therefore, the benefits have grown at an exponential rate, but one of the major challenges faced is the rapid growth of competition. Such threats posed by globalisation have to be turned into opportunities to exploit the benefits of this world economic integration (OECD Secretary-General 2008).

### 1.2.3. The European Single Market

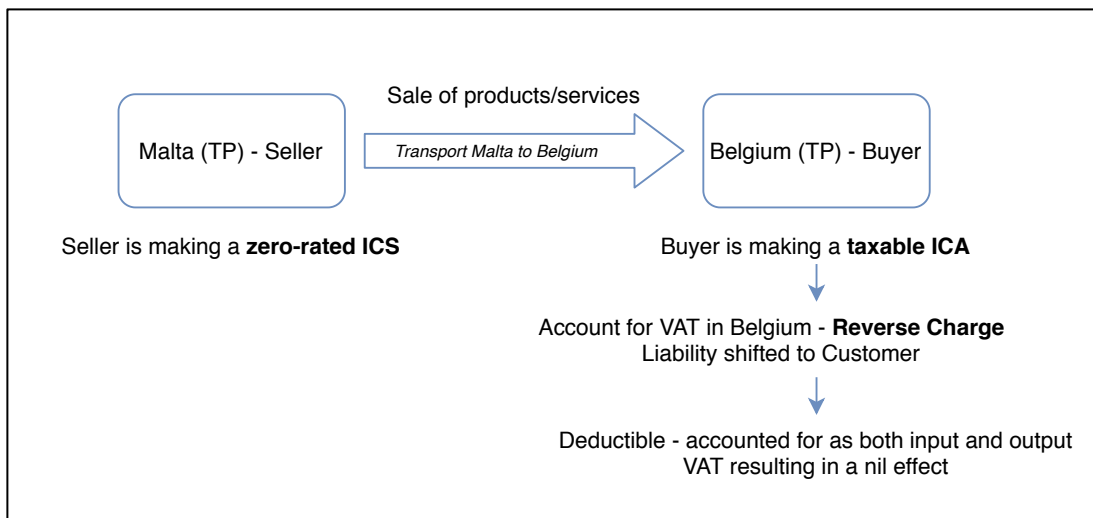
The EU Single Market is one of the largest economies, with a Gross Domestic Product (GDP) of €15 trillion. It accounts for 500 million consumers and 21 million Small and Medium-Sized Entities (SMEs) (European Commission 2019). The Single Market is treated as one territory thereby allowing for free movement of goods, services, capital, and persons without the need for harmonised national legislation (European Added Value in Action 2017). Trade barriers are removed, allowing goods to move freely between different member states (MSs), thus facilitating and encouraging chain transactions within the EU.

### 1.2.4. Place of Supply Rules for Cross-Border Transactions in the EU

Place of supply (PoS) rules allow MSs to retain their sovereignty to tax amidst the free movement allowed within the Community. The rules also ensure proper recording of tax, thus avoiding any double-taxation or non-taxation, while providing the necessary tools to MSs to fight cross-border fraud (Ecker 2013).

The general rule is that the supplier is the person liable to pay the tax due. Nonetheless, there are exceptions to this rule, one of which is in the case of an intra-EU acquisition. According to Art. 40 of the EU VAT Directive, which is transposed into the national laws of each MS, where goods are acquired by a taxable person or a non-taxable legal person identified for Value Added Tax (VAT) and the goods are supplied cross-border by a taxable person identified for VAT purposes in the MS where the transport of goods started, VAT is liable where the dispatch or transport to the acquirer ends, as demonstrated in Fig. 1.2.

Figure 1.2: Intra-Community Supply and Acquisition



Therefore, as shown in the above figure, this works vis-à-vis the Reverse Charge Mechanism (RCM), whereby the supplier provides a zero-rated supply, being an Intra-Community Supply (ICS), while the customer will be making a taxable purchase, known as an Intra-Community Acquisition (ICA), accounting for VAT in their own MS (Van de Leur 2010).

#### 1.2.5. Chain Transactions

A chain transaction from a VAT perspective is a successive supply of the same goods, which pass through a distribution channel of 3 or more parties, who are identified for VAT purposes in different MSs until the goods reach the final consumer. The simplest form of a chain transaction and that which is most recognised for VAT purposes encompasses three parties, and is made up of 2 sales, but only 1 transport as the goods travel directly from supplier to customer, by-passing the intermediary (Commissioner for Revenue 2013). However, the transaction is still recognised at each stage of the supply chain. This mechanism



is more commonly known as triangulation. This will be further developed in Chapter 2.

#### 1.2.6. The Definitive Regime of VAT

The European Commission proposed the Definitive Regime of VAT on the 4<sup>th</sup> of October 2017 to establish a single EU VAT area, whose scope is to enhance and revamp the current system, moving towards a harmonised approach, while also assisting to eliminate VAT fraud and simplifying processes for businesses operating in the single market. This regime presents a shift towards the destination principle, where all cross-border supplies should be taxed in the MS of destination (European Commission 2017). This has implications for chain transactions, which will be discussed in Chapter 2.

#### 1.3. Rationale for the Study

VAT serves as a fiscal policy, having a crucial role in economic growth, and being one of the greatest tax revenues for governments worldwide thereby contributing generously to a jurisdiction's GDP, amounting to 7.5% in the case of Malta in 2018 (Eurostat 2019). Currently, there has been no previous research done locally on the VAT implications of chain transactions and the different interpretations of this by MSs, despite being a mechanism used widely in the community. The relevant legislation is narrow in scope, in that it offers guidance relating to standard, triangular transactions. In practice however, the nature of this mechanism is usually more complex since there are several factors influencing the tax implications of these transactions. Some of these issues have

been addressed with the newly introduced Quick Fixes; however, there are still some uncertainties about the matter. Upon adoption of the EU VAT Directive, certain rules from the Directive must be adopted, while other rules provide options to MSs. In addition to this, due to some translation differences and wording of the legislation, differences in interpretation also arise.

Cross-border chain transactions are one of the contributing factors to the €50 billion revenue loss recorded each year in the EU due to cross-border fraud (Lamensche, Ceci 2015). This study will thus provide a valuable analysis of the different instances where chain transactions arise, as well as the distinctive interpretations by professionals in order to form a more holistic view of the matter. The intention is to fill this gap in guidance by providing an understanding of chain transactions through an exploration of the position of different EU countries on chain transactions, including the applicability in different states, forming a comparative study. In addition, it would also be interesting to evaluate the impact on chain transactions from moving towards a Definitive Regime of VAT, with specific focus on the Quick Fixes which have been effective since 1<sup>st</sup> January 2020.

#### 1.4. Aims & Objectives

The aim of this study is to examine the reasonableness and possible downfalls of the current system on chain transactions, while evaluating the impact on the interpretation of practitioners arising from Court of Justice of the European Union (CJEU) cases on the topic. The scope of this research extends to ascertain the

effect on chain transactions due to the Quick Fixes and from moving towards a Definitive Regime of VAT, while considering recommendations from professionals for improvements of this mechanism. Therefore, the study will aim to address the following research objectives:

1. To analyse the reasonableness and possible shortcomings of the current applicable system on chain transactions as per EU VAT Directive, as well as according to the laws of various Member States.
2. To evaluate the impact on the interpretation taken by tax practitioners arising from CJEU cases.
3. To ascertain the effect that the Quick Fixes and the proposed Definitive Regime will have on chain transactions.
4. To assess recommendations for beneficial improvement of the shortfalls of the current system, while identifying growth potential for chain transactions.

#### 1.5. Scope and Limitations of the Research

This study focuses on the VAT implications of chain transactions as per EU VAT Directive 2006/112/EC and the VAT Act 1994 as amended. Additionally, this study will consider supporting legislation and proposals issued by the European Commission (EC). This study will not look into the effects of income tax on chain transactions. The research comprises material available up until April 2020, and thus, any information released after this date is not reflected in this study.

Nevertheless, in interpreting the concepts in CJEU cases, one must keep in mind that CJEU jurisprudence is based on the facts present for each specific case.

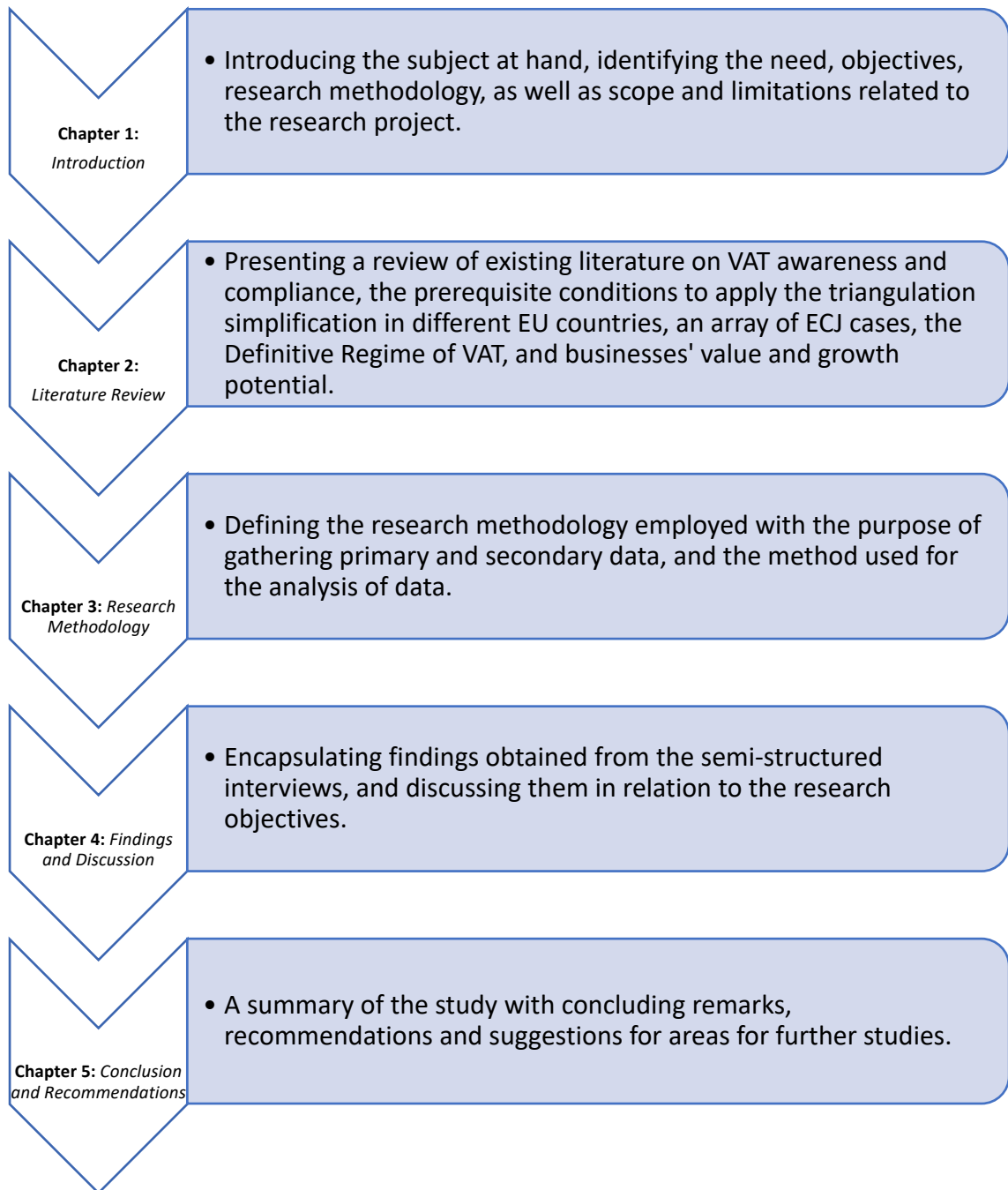
Therefore, it should be ensured that the facts of the case at hand are similar to the facts presented to CJEU.

### 1.6. Research Methodology

Qualitative research was deemed to be the most suitable approach to gather data, given the above-mentioned objectives. A thorough understanding of the field will be obtained through secondary data and a series of semi-structured interviews with stakeholders, including VAT practitioners and the Office of the Commissioner for Revenue (CfR). An overview of the methodology used to conduct this study can be found in Chapter 3.

## 1.7. Dissertation Overview

Figure 1.3: Dissertation Overview



## Chapter 2

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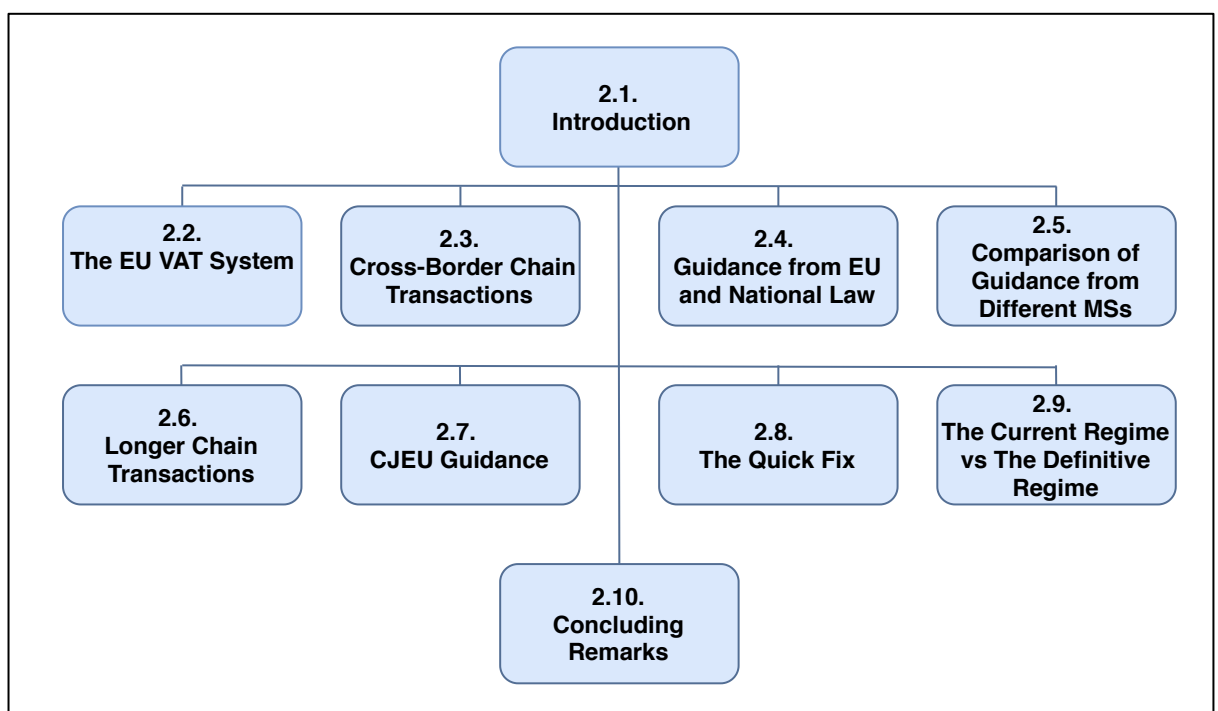
# *Literature Review*

*“Literature adds to reality, it does not simply describe it. It enriches the necessary competencies that daily life requires and provides.” C.S. Lewis*

## 2.1. Introduction

As presented in Fig. 2.1, this chapter will begin by presenting a brief overview of the EU VAT system in Section 2.2, followed by an outline of the mechanism for chain transactions in the EU in Section 2.3. Subsequently, guidance provided by EU and national law with respect to chain transactions will be discussed in Section 2.4, followed by an overview of the differences in applicability between MSs in Section 2.5. Thereafter, different examples of longer chain transactions will be discussed in Section 2.6, followed by a presentation of key CJEU cases on the matter in Section 2.7. Section 2.8 presents an analysis of the Quick Fix on chain transactions, while Section 2.9 serves as a discussion of the proposals of the Definitive Regime which is due to be introduced in 2021.

*Figure 2.1. Chapter Outline*



## 2.2. The EU VAT System: A Basic Introduction

VAT may be defined as an indirect tax on turnover. The tax is levied on most goods and services, and is paid as part of the market price, making this a tax on consumption which is imposed whenever products are transferred through the distribution channel, up until the final consumer, who incurs this tax (Schenk, Thuronyi et al. 2015).

The way this VAT system differs from other tax systems is explained in Art. 2 of the First Council Directive on VAT (67/227/EEC) as follows:

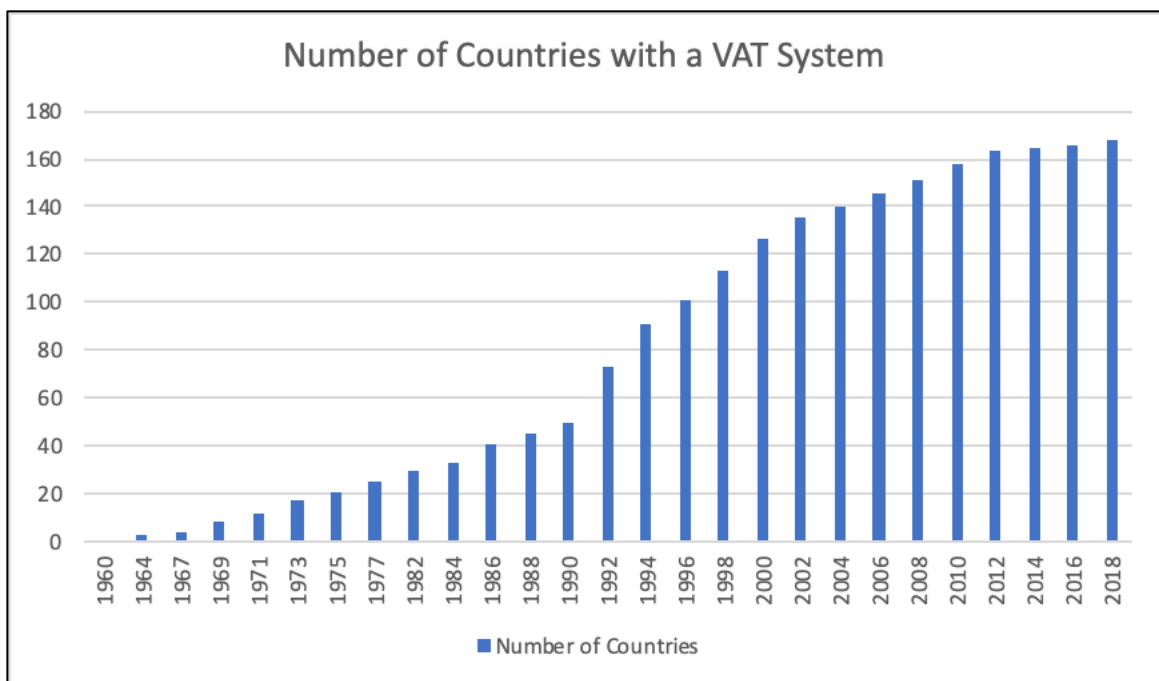
*The principle of the common system of value added tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the productions and distribution process before the stage at which tax is charged.*

Therefore, at each stage along the distribution channel, intermediaries are charged an input tax for commodities bought for the purpose of further production of goods or services, but this tax may be recovered in the price of the good or service sold to the following intermediary in the chain. This implies that the total tax levied at each further sale in the channel is a constant portion of the value added to the commodity. The final amount of tax collected should thus be equivalent to the VAT paid by the final consumer (Owens, Battiau et al. 2011). Due to this mechanism, VAT incurred by intermediaries generally creates a nil effect, making all their transactions VAT neutral since the VAT incurred is claimed back from the tax authorities.



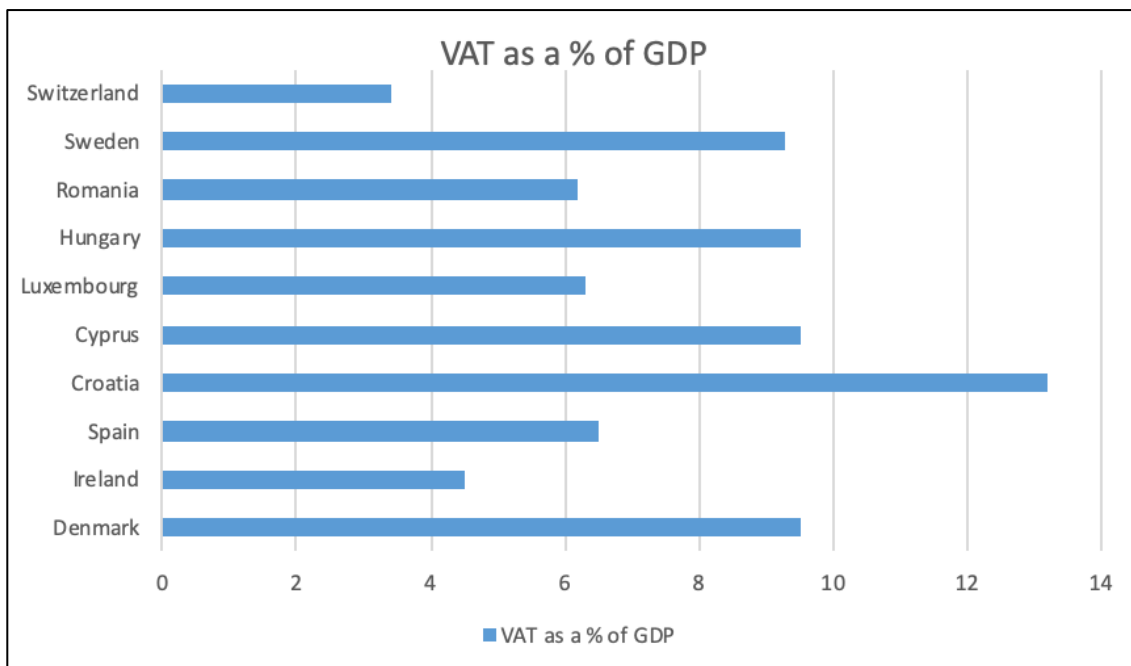
The number of countries which have implemented VAT as a tax mechanism is growing each year, and had increased at an impressive rate from 1960 until around the turn of the century. It may be noted from Fig. 2.2 below that in recent years, these numbers have slowed down and seem to have saturated at just above 160 countries. This consumption tax has also proved to be beneficial to many economies, as can be seen in Fig. 2.3 below, demonstrating the percentage which VAT contributes to different EU countries' GDPs. The top 5 highest and lowest contributions were selected in Fig. 2.3 to act as a benchmark.

Figure 2.2: Number of Countries with a VAT System from 1960-2018



Adapted from: OECD, Fig. 1.5 (2018)

Figure 2.3: VAT as a % of GDP – by country



Adapted from: Eurostat News Release 182/2018

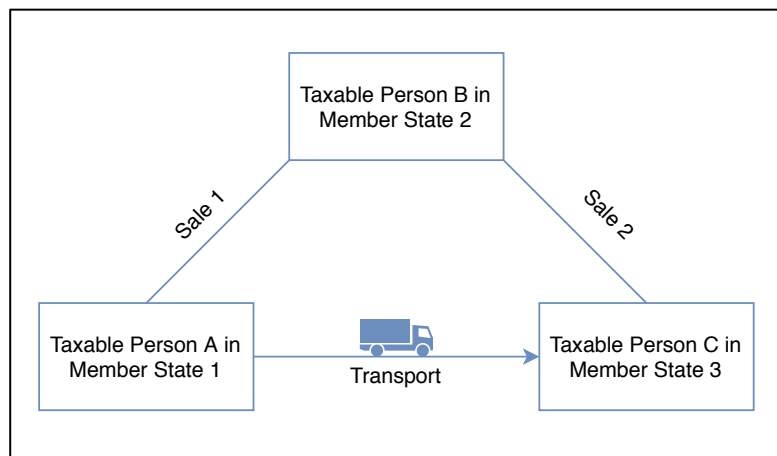
### 2.3. Cross-Border Chain Transactions in the EU

Chain transactions may be defined as a sequence of supplies and acquisitions to bring a product to its final customer, whereby the end customer in these chains is often situated in a different country to the supplier. VAT is always chargeable in the PoS, as explained in Section 1.2.4. However, VAT legislation differs from one country to the next; therefore, this has implications for the determination of the PoS for chain transactions, presenting a challenge due to the different countries and hence the different interpretations involved.

As explained in Chapter 1, triangulation involves 3 parties, hence 2 sales and 1 transport. Therefore, Taxable Person (TP) A, who is identified for VAT purposes in MS1, sells goods to TP B, identified in MS2, who in turn resells the same goods

to TP C, identified in MS3. The goods are delivered directly from MS1 to MS3; thus, here we observe 2 successive contracts for the sale of the same goods and only one dispatch or transport, which must be assigned to one of the two supplies (Ainsworth 2012). The above explanation is demonstrated in Fig. 2.4 below.

*Figure 2.4: Triangulation Simplification*



The general rule of the VAT law according to Art. 31 and 32 of the EU Directive is that the PoS of goods without transport is the place where the goods are put at the disposal of the customer, being the location at the time of supply, while the PoS of goods with transport is the place where the transport begins. Nonetheless, according to Art. 40 of the Directive, the PoS of an ICA is the place where the transport ends. Therefore, if the first supply is considered to be including transport, then the supply from A-B would be treated as an ICS by A in MS1 and an ICA by B, which would be the zero-rated supply. The second supply, being one without transport, would be a taxable supply by B in MS3. Since C is a TP in MS3, then with the applicability of RCM, B would not have to register in MS3 (Commissioner for Revenue 2013).

#### 2.4. Guidance from EU and National Law on Chain Transactions

The EU offers limited guidance on chain transactions as the Directive simply states that one of the exemptions of an ICS is one that is made for the purpose of a subsequent supply. In order to benefit from triangulation under EU law, a number of criteria must be met, namely:

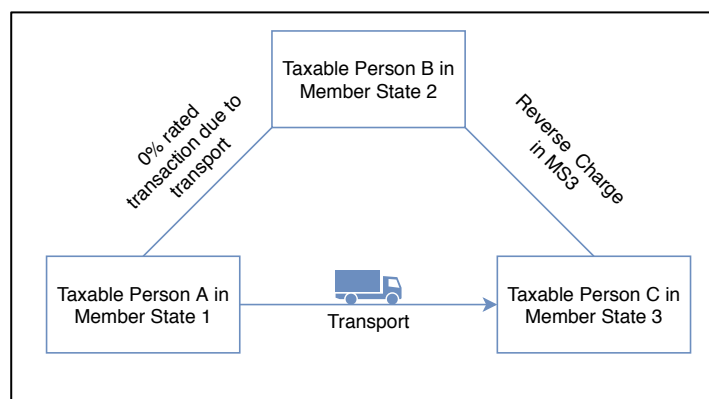
- i. “The acquisition of goods is made by a taxable person who is not established in the Member State concerned but is identified for VAT purposes in another Member State;
- ii. The acquisition of goods is made for the purpose of a subsequent supply of those goods, in the Member State concerned by the taxable person referred to in point (i);
- iii. The goods thus acquired by the taxable person referred to in point (i) are directly dispatched or transported, from a Member State other than that in which he is identified for VAT purposes, to the person for whom he is to carry out the subsequent supply;
- iv. The person to whom the subsequent supply is to be made is another taxable person, or a non-taxable person legal person, who is identified for VAT purposes in the Member State concerned.
- v. The person referred to in point (iv) has been designated in accordance with Article 197 as liable for payment of the VAT due on the supply carried out by the taxable person who is not

established in the Member State in which the tax is due”  
(Council Directive 2006/112/EC, Art. 141).

This Directive is transposed into the law of every MS, and with respect to Malta, these identical conditions are found in the Maltese VAT Act, Fifth Schedule, Art. 8, Part 3.

With this simplification, following on the explanation of PoS rules given in Section 1.2.4 and the example given in Section 2.3, TP B need not register for VAT purposes in MS3, or account for acquisition VAT in this MS, thus relieving the middleman of his responsibility. What happens under the simplification is that the responsibility for reporting for VAT under the RCM is shifted to TP C who would need to charge VAT on himself in MS3 (Ainsworth 2012). The above is demonstrated in Fig. 2.5 below.

*Figure 2.5: Basic Chain Transaction - Explained*



## 2.5. Comparison of Guidance from Different Member States

Table 2.1 below analyses the varying conditions under which different MSs may apply triangulation. The reason for the discrepancy is due to the different interpretations of the conditions leading MSs to apply different rules on a national

level. The information below is derived from the European VAT Handbook (2017/2018).

*Table 2.1: Member State Comparison on Applicability of Triangulation*

<b>Member State</b>	<b>Middleman allowed to be VAT registered in the country of arrival</b>	<b>Middleman allowed to be VAT registered in the country of dispatch</b>
<i>Austria</i>	×	✓
<i>Belgium</i>	✓	✓
<i>Bulgaria</i>	×	×
<i>Croatia</i>	×	×
<i>Cyprus</i>	×	×
<i>Czech Republic</i>	×	✓
<i>Denmark</i>	×	×
<i>Estonia</i>	×	✓
<i>Finland</i>	✓	✓
<i>France</i>	×	✓
<i>Germany</i>	✓	✓
<i>Greece</i>	×	×
<i>Hungary</i>	✓	×
<i>Ireland</i>	✓	✓
<i>Italy</i>	✓	✓
<i>Latvia</i>	×	×
<i>Lithuania</i>	×	✓
<i>Luxembourg</i>	×	×
<i>Malta</i>	×	✓
<i>The Netherlands</i>	✓	×
<i>Poland</i>	✓	✓
<i>Portugal</i>	×	✓
<i>Romania</i>	✓	×
<i>Slovakia</i>	×	×
<i>Slovenia</i>	✓	✓
<i>Spain</i>	×	×
<i>Sweden</i>	✓	✓
<i>The United Kingdom<sup>1</sup></i>	×	✓

<sup>1</sup> Part of the EU VAT Regime until 31.12.2020

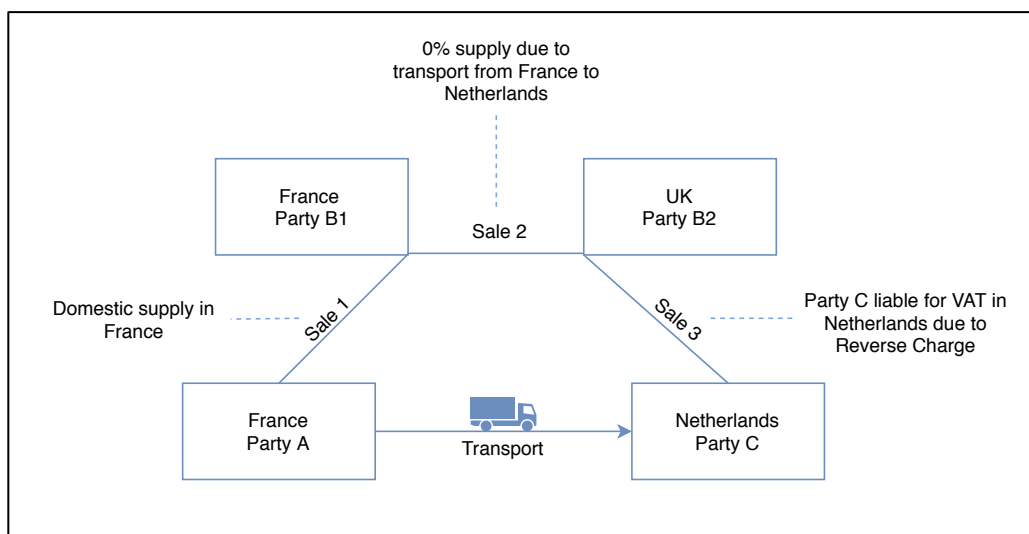
## 2.6. Longer Chain Transactions

When it comes to longer chains, there is no adequate simplification which may be derived from the law as may be done when there are only 3 parties. The information below, adapted from the article published by Hughes (2012) titled 'EU VAT Aspects of Longer Chain Transactions', provides examples on chain transactions involving more than 3 parties. This section will look at instances where 4 parties are registered in 3 or 4 MSs, while considering instances where a dual registration is present.

### 2.6.1. 4 Parties registered in 3 Member States

In the case of 4 parties, namely, A, B1, B2, and C, as displayed in Fig. 2.5 below, who are registered in 3 MSs and not 4, simplification may then be applied to 3 out of the 4 parties, hence to 2 out of the 3 transactions. In this case, simplification will be applied to the last 3 parties, as explained in Fig. 2.6.

*Figure 2.6: 4 Parties in 3 Member States*



## 2.6.2. 4 Parties Registered in 4 Member States

Figure 2.7: 4 Parties in 4 Member States

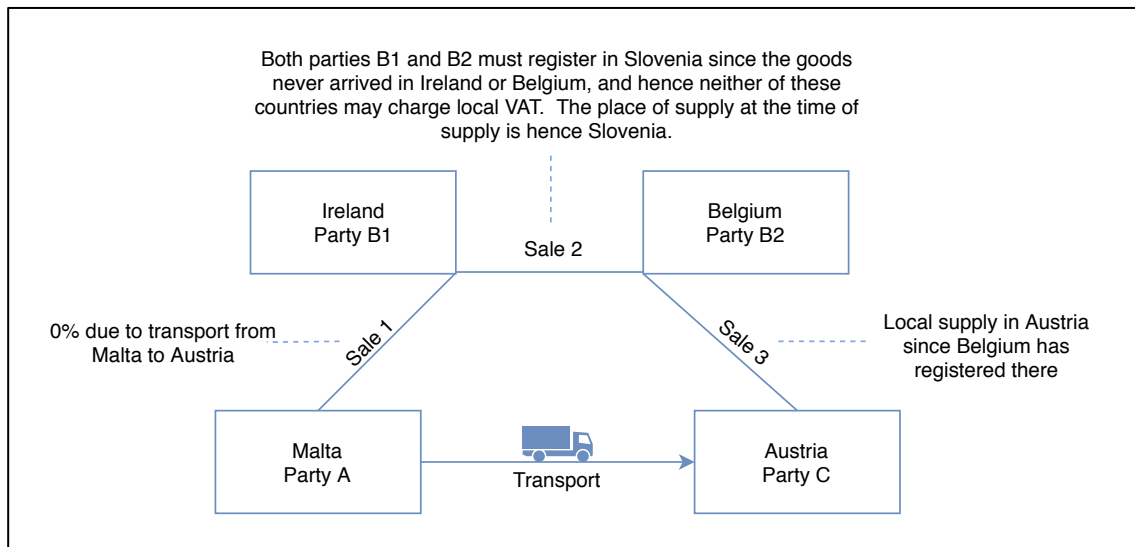


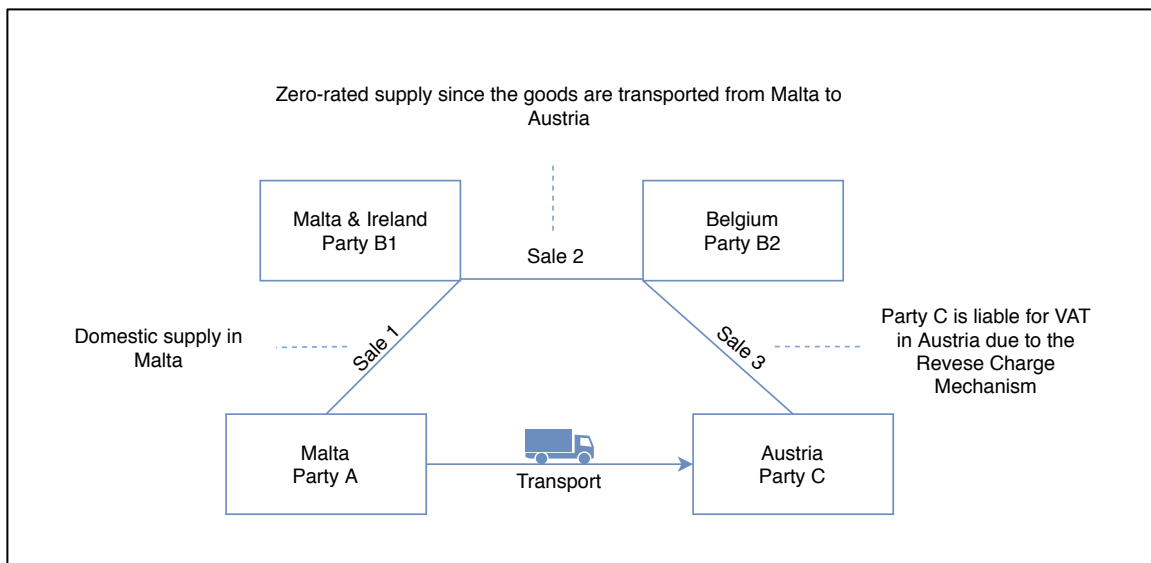
Fig. 2.7 portrays a method of dealing with chain transaction whereby both middlemen need to register in the country of destination of the goods. Another possible method would be for the Irish supplier (B1) to register for VAT purposes in Malta, and hence, due to the dual registration, the first supply would be a local supply in Malta, and then, simplification would be applicable to the last 2 out of the 3 transactions in a scenario identical to that explained in Fig. 2.8.

## 2.6.3. 4 Parties Registered in 4 Member States with 1 Dual Registration

The following example exhibited in Fig. 2.8 demonstrates how simplification may be applied when four parties are registered in four MSs, but when one party holds a dual registration.



Figure 2.8: 4 Parties in 4 Member States with 1 Dual Registration



## 2.6.4. Application vs Omission of Article 194

Differences arise when the same transaction takes place with a party established in the Netherlands (implementing Art. 194) and a country established in Ireland (not implementing Art. 194).

Figure 2.9: Chain Transactions with Article 194 being Applied

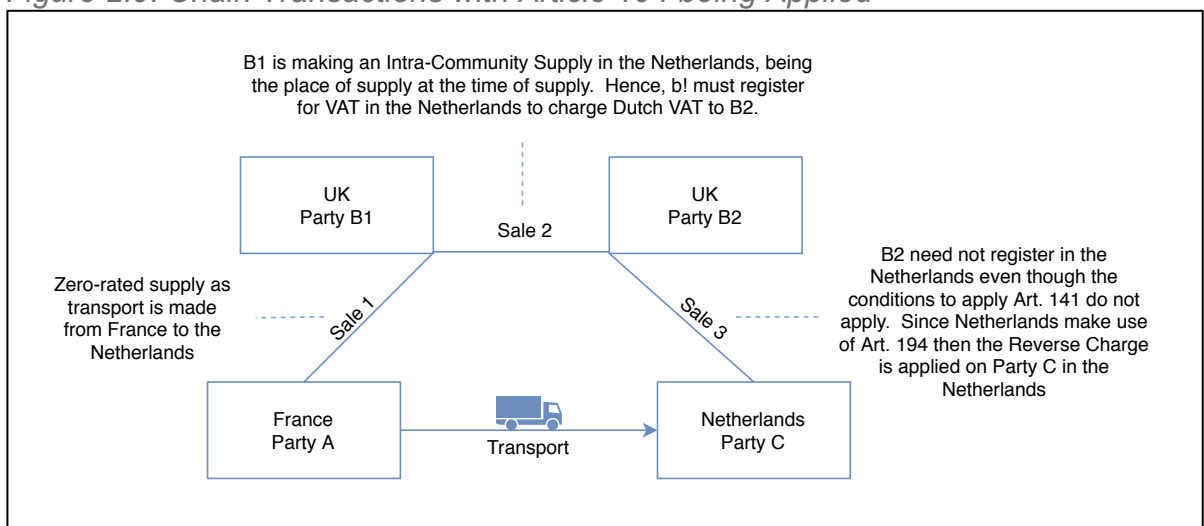


Fig. 2.9 shows a situation involving 4 parties, with the Netherlands being Party C, hence applying Art. 194.

Figure 2.10: Chain Transactions without Article 194 being Applied

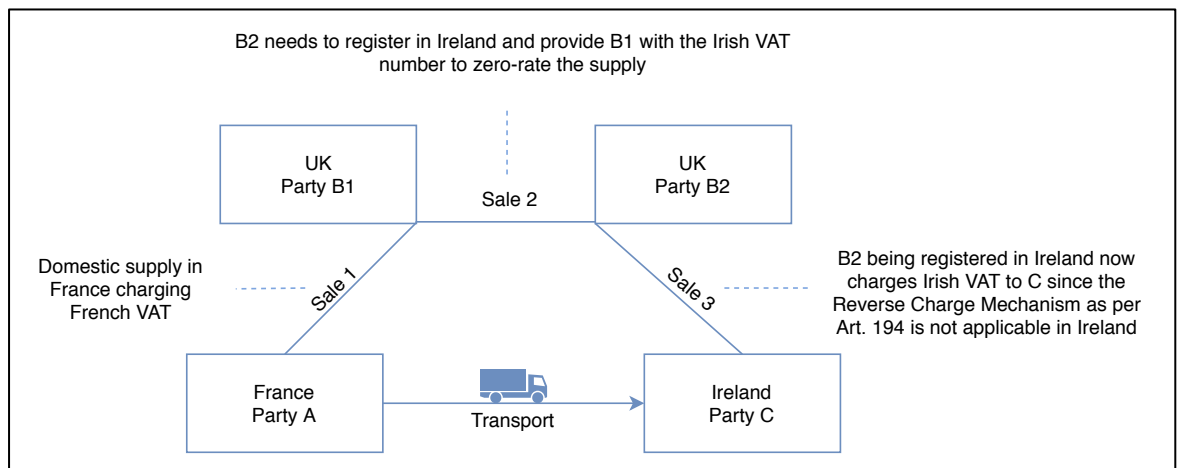


Fig. 2.10 above shows a similar situation, this time involving Ireland which does not apply Art. 194. Therefore, with the registration of Party B2, the simplification of Art. 141 may apply (Hughes 2012).

It may thus be noted how the different laws applied by different MSs may change a transaction entirely. Although the general idea of the simplification mechanism was to avoid the compliance burden of companies having to register in different MSs, simplification may also be used if the additional intermediaries over and above the standard 3 parties in a triangular transaction register in another MS.

## 2.7. CJEU Guidance

As was noted in Sections 1.3 and 2.3, the legislation applicable to chain transactions is limited in its applicability. Consequently, a number of uncertainties arise, and hence, a number of cases are brought before CJEU. Through the results of these cases, CJEU provided further guidance in an attempt to fill the gap between the law and the reality of chain transactions. A number of cases solved by CJEU will be discussed below in chronological order to provide a better

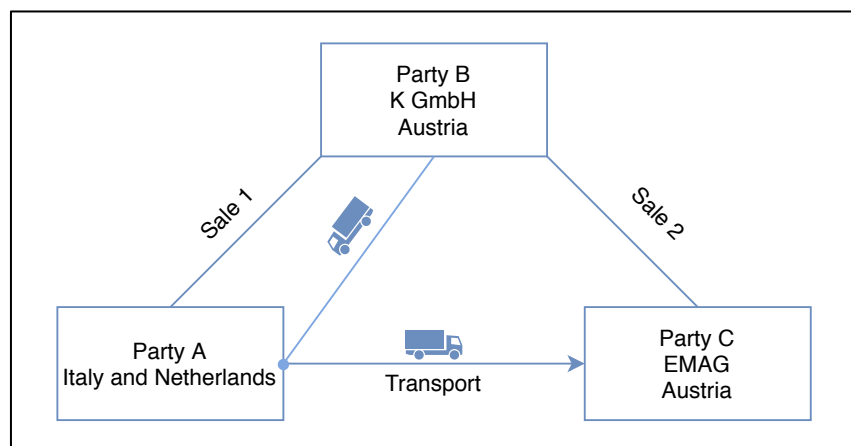
understanding of the VAT treatment of chain transactions and what led to the introduction of the Quick Fixes to be discussed in the following section.

### 2.7.1. EMAG, Case 245/04

In the case of EMAG, A (Italy and NL) sold goods to B (Austria), who further supplied the same goods to C (Austria), who was not aware that B was purchasing from A. B instructed A to pass on the supplies of each transaction to a forwarding agent who had been commissioned by B to transport the goods to C (Court of Justice of the European Union 2006).

The first supply was zero-rated, while the second supply was supposed to be subject to Austrian VAT at 20%, which was not remitted to the tax authorities, thus constituting a fraudulent transaction as both transactions were zero-rated according to the authorities. The above is demonstrated in Fig. 2.11 below.

Figure 2.11: EMAG



This was deemed to be Missing Trader Intra-Community (MTIC) fraud case (Swinkels 2012). CJEU deemed that the second supply should not be a zero-

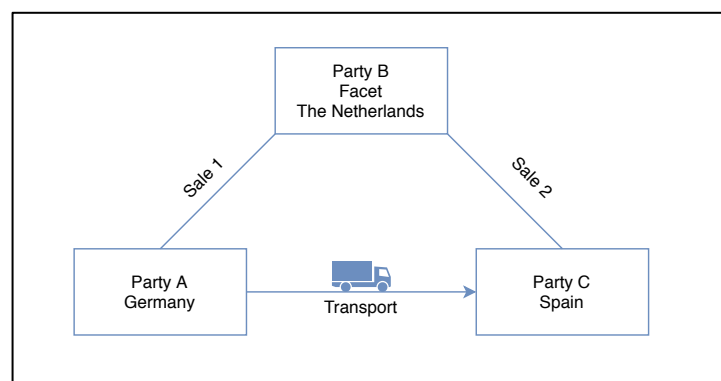
rated supply, reasoning that the transport should be ascribed to whoever has the right to dispose of goods during dispatch or transport (Court of Justice of the European Union 2006).

From this case, it was derived that the supplies preceding the zero-rated transactions should be taxable in the MS of origin, while any supplies subsequent to the zero-rated transaction should be taxed in the MS of destination (Swinkels 2012). In accordance with PoS rules explained in Section 1.2.4, in a triangular transaction, the supply with transport is the zero-rated supply, while the supply without transport is taxable at the place where the goods are located at the time of supply. Therefore, only one supply should have been zero-rated in this case. EMAG was the pioneer case regarding chain transactions, with all further judgements on cases stemming from it.

#### 2.7.2. Facet BV, Case 539/08

In the Facet BV Case, a Dutch business purchased supplies from a company established in Germany. These goods were delivered directly to the Dutch's customer in Spain (Mazars 2010), as displayed in Fig. 2.12.

*Figure 2.12: Facet BV*



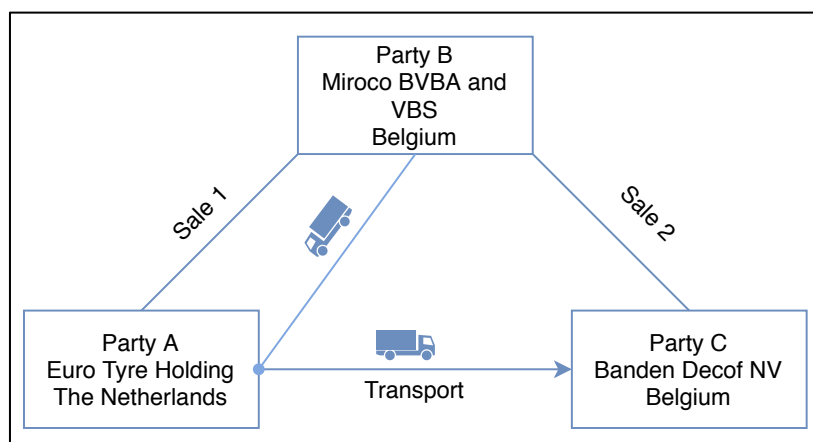
In a standard triangular situation, B (Dutch) would provide A (German) with their VAT number and declare this in their tax return as both an acquisition and a supply, resulting in nil VAT. B would then declare an ICS to C (Spain), who would in turn incur VAT as an ICA upon receipt of the goods. This right to deduct immediately is a basic feature of the VAT system. The deduction is subject to the condition that supplies which are subject to input VAT are used for the purposes of further taxable transactions. Since the supplies of a triangular transaction do not physically enter MS2, then this cannot be considered to constitute a right to deduct according to CJEU (Van de Leur 2010). The ruling however does not appear to be in line with a 'simplified system' as, in order to deduct the supply, intermediaries would need information from Party C confirming that VAT is charged upon final ICA.

This case, and other similar cases, led to the decision taken by HMRC, providing that no acquisition VAT deductions may be applied on goods that are further supplied to a third party. Therefore, when Party B provides their supplier with a VAT number from MS2, for goods which will subsequently go to a third MS, the intermediary's acquisition is subject to tax (Deloitte 2011). It was assumed that once proof of the VAT paid in MS3 is available, then the VAT paid by Party B would be refundable. This system makes sense in order to avoid fraud and ensure that C is actually applying RCM on himself; however, this led to some uncertainties since the general practice was for B to deduct this immediately.

## 2.7.3. Euro Tyre Holding, Case 430/09

Euro Tyre Holding (A), a supplier established in The Netherlands, sold goods to Miroco BVBA and VBS (B), established in Belgium, which then sold to Banden Decof NV (C), established in Belgium. B collected the goods themselves and delivered to C (ex-warehouse), as demonstrated in Fig. 2.13 below (Court of Justice of the European Union 2010).

Figure 2.13: Euro-Tyre Holding



The Directive does not give any clear-cut instructions on which transaction to ascribe the transport to, but in order to zero-rate a transaction, the following 3 conditions must be present:

1. The right to dispose of goods as the owner; thus, the transfer to the person acquiring the goods;
2. The supplier establishes that the goods have been dispatched or transported to another MS; and
3. The goods have physically left the territory of the supplier's MS (Maunz, Marchal 2012).

The first condition was satisfied when B collected the goods at A's premises. However, B had already supplied the goods to C upon collection; therefore, transport cannot be ascribed to the first supply unless A was aware of B's subsequent supply before the goods left A's premises. The second requirement was met when A submitted relevant information to the tax authorities based on information given by the customer. The party with the right to dispose of goods was found to be irrelevant in this case (Maunz, Marchal 2012).

CJEU reached a conclusion based on an "overall assessment of all specific circumstances" (Court of Justice of the European Union 2010). If B had expressed their intent for a subsequent supply and presented a valid VAT number, then the IC transport would be ascribed to the first supply, with the specification that the first condition, that is, the right to disposal, had been transferred to C in the MS of destination. If the right to disposal had been transferred in the MS of departure, then the transport would be ascribed to the second supply (Maunz, Marchal 2012). Therefore, this case was deemed to be a situation of MTIC fraud.

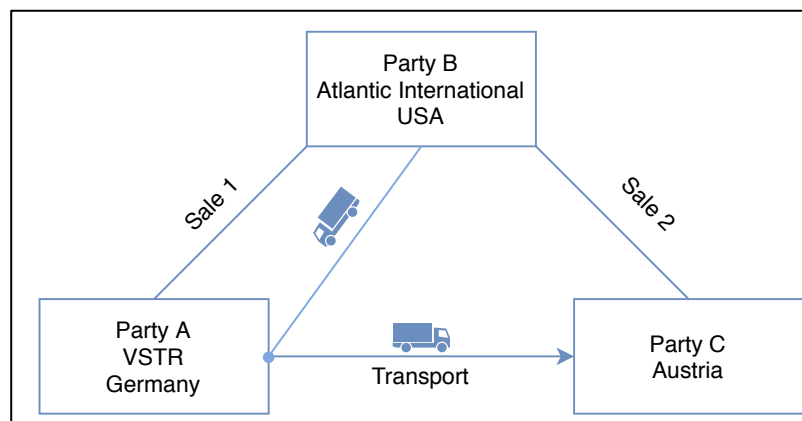
This has implications for further cases where transport of the triangular transaction is arranged by B or provided on behalf of B. Here, the main factor which must be considered is the intentions of B, and whether or not these have been expressed to the initial supplier. This case had an impact on the VAT laws of both Germany and Austria. Germany's general rule for cases where the transport is organised by B is that the transport should be ascribed to the first supply, unless exceptional circumstances arise, leading to the transport being ascribed to the second supply. In Austria, the same general rule with exceptional circumstances is applicable. Such exceptional

circumstances do not include the purchase of supplies made under the VAT number of the MS where transport begins, but if this is the case, and Party A is informed of the subsequent supply, then the transport should be ascribed to the second supply due to the findings from Euro Tyre Holding (Maunz, Marchal 2012).

#### 2.7.4. VSTR, Case 587/10

VSTR is a German company (A) which supplied goods to Atlantic International (B) located in the USA, which further supplied these goods to C located in Finland. B collected the goods from the premises of A via a contractor in order to transport the goods directly to C by informing A of the subsequent supply, and thus, providing A with the Finnish VAT number of C (Deloitte 2012). VSTR provided the USA company with an invoice nil of VAT, citing C's VAT number (Court of Justice of the European Union 2012). This is visualised in Fig. 2.14 below.

Figure 2.14: VSTR



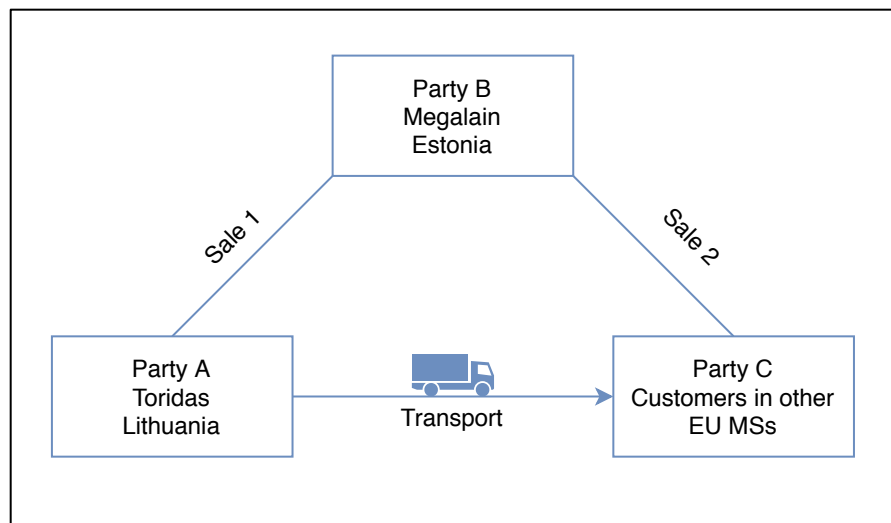
CJEU used a similar reasoning to that adopted in the cases of EMAG and Euro Tyre Holding in their preliminary judgements, indicating that, in fact, the first



supply should not have been zero-rated (Swinkels 2012). This was found to be insufficient evidence of the right to dispose of goods as the owner. Due to the information provided by B to A, it should have in fact been the second supply which was zero-rated. Therefore, since B made the ICS in Germany, being the place where the transport began, then the US company should have registered for VAT purposes in Germany. Following this judgement, CJEU also stated that, despite the present facts, the possibility of the first supply being zero-rated should not be ruled out entirely (Court of Justice of the European Union 2012). This case was considered to provide further clarity on the fact that the transport allocation depends on the point in time when the right to dispose of goods is transferred to the final customer (International Tax Review 2014). Since this case involved a party from outside the Community, the middleman should have registered in one of the MSs to fulfil their VAT obligations.

#### 2.7.5. Toridas, Case 386/16

Toridas is a Lithuanian company, identified for VAT in the same MS which, after importing frozen fish from Kazakhstan, sold the same fish to Megalain, established in Estonia. The day following the supply to Megalain, the Estonian company resold them to purchasers established and identified in Denmark, Germany, the Netherlands, and Poland. Some supplies were dispatched immediately after resale from Lithuania to other MSs without passing via Estonia, while others were transported to a warehouse in Lithuania to be graded, glazed, and packaged before being transported directly to the other MSs (Voica 2017). This scenario is depicted in Fig. 2.15.

*Figure 2.15: Toridas*

Supplies from Toridas to Megalain were treated as ICS, and the invoices stated that the places of loading and delivery at issue were the warehouses in Lithuania. As for the subsequent supplies, these invoices were drawn up exclusive of VAT, pursuant to the provision relating to the exemption of an ICA. These invoices also stated that the place of loading at issue was Lithuania, while the places of delivery were different addresses for each MS.

The questions below were addressed to CJEU:

- a. Is a supply of goods by a TP established in MS1 exempt in the case where, before that supply is entered into, the purchaser being a TP in MS2 expresses an intention to resell the goods immediately prior transporting them from MS1 to a TP in MS3?
- b. Is the above answer affected by the fact that a portion of goods was processed on the instruction of the TP established in MS2 prior to the transportation to MS3?

In relation to the first question, the Court ruled that this supply is not exempt, provided that the second supply has in fact been carried out and the goods have been transported from MS1 to MS3. The fact that the first acquirer is identified in neither MS1 nor MS3 does not deem for classification of an IC transaction, nor does it constitute sufficient evidence to demonstrate such (Court of Justice of the European Union 2017).

In response to the second question, the processing of goods, as instructed by the middleman in a chain transaction, and being carried out prior to the transportation to the final customer, has no effect on the conditions for an exemption of the first supply, in so far as this is done following the first supply (Court of Justice of the European Union 2017).

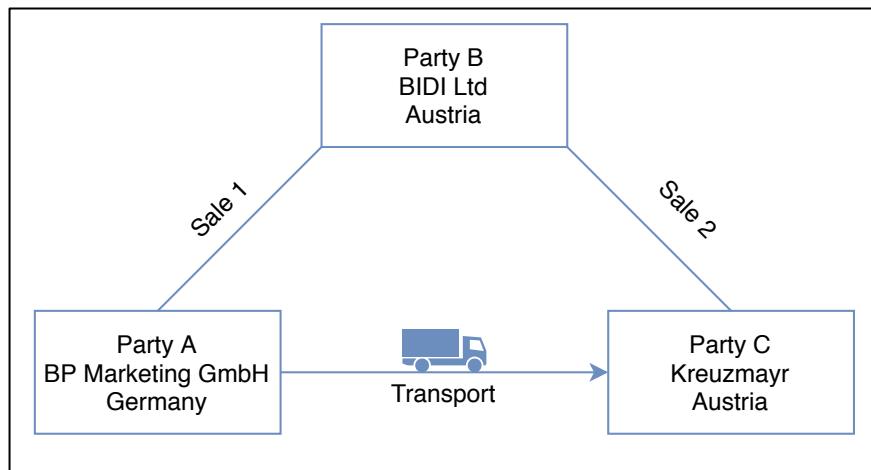
Therefore, it resulted that the first supply should have been treated as a local supply, while the second supply should have been treated as ICS. This case highlighted how practitioners should determine which supply is the one with transport, whereby the timing of the right to dispose of goods as owner to the final customer is crucial (Ernst & Young 2017).

#### 2.7.6. Kreuzmayr, Case 628/16

In the case of Kreuzmayr, BP Marketing GmbH in Germany sold petroleum to BIDI Ltd in Austria, whereby it was agreed that BIDI would handle the transport. BIDI resold the goods to Kreuzmayr without informing BP Marketing, and agreed that Kreuzmayr would

arrange for the transport from Germany to Austria. This situation is visualised in Fig. 2.16.

Figure 2.16: Kreuzmayr



BP Marketing treated the supply to BIDI as an ICS, while BIDI charged Austrian VAT to Kreuzmayer. Kreuzmayer had a right to deduction on the supply from BIDI since the petroleum was used for taxable supplies. Once BP discovered that there was a second supply and informed the German tax authorities, they requested payment of the VAT due on the supply of those goods. In Austria, where they initially allowed for the deduction, through a tax audit they realised that BIDI never declared nor paid the VAT charged to Kreuzmayr. The reason given by BIDI was that the supplies had been invoiced in Germany, making them exempt and not taxable in Austria. BIDI subsequently amended the invoices to Kreuzmayr to exclude VAT, but did not repay the amounts wrongly received, stating this as mistake. BIDI became insolvent, and thus, Kreuzmayr never received these amounts (Court of Justice of the European Union 2018).

The questions below were addressed to the Courts:

- a. In the above-mentioned circumstances, prior to BP discovering that the goods were subsequently supplied to Kreuzmayr, is the first supply the ICS?
- b. If not, then may TP3 nonetheless deduct the input VAT of MSB invoiced to it by TP2 if used on taxable supplies?
- c. If yes, and if TP1 learns that TP3 arranged transport and was entitled to dispose of the goods as owner in MSA, does that make the first supply lose its status as ICS? (Court of Justice of the European Union 2018)

With regards the first question, the reply given was that, as we already know, the transport must be ascribed to one of two supplies which, as mentioned in the *Toridas* case, will be determined by assessing when the second transfer of the right to dispose of the goods as owner takes place. If this has taken place before the Intra-Community Transaction (ICT) occurs, then the transport cannot be ascribed to the first supply. Additionally, it is important to consider the purchaser's intention at the time of acquisition of the goods, which should be supported by objective evidence. Since Kreuzmayr was the owner before ICT took place, then the ICT must be ascribed to the second supply. BIDI and Kreuzmayr were aware that the right to dispose of the goods as owner had been transferred before the ICT; therefore, PoS of the second supply cannot be determined without taking account of the evidence of which the intermediary and the person finally acquiring the goods are aware, and cannot depend solely on the classification made by the first supplier on the sole basis of the information incorrectly provided to him by the intermediary. This cannot be undermined by the fact that the first supplier had not been informed that the goods were to be resold by the

intermediary to the final customer before any ICT (Court of Justice of the European Union 2018).

With respect to the second question, the right to deduct VAT can only be exercised in respect of taxes actually due, and cannot be applied to overpaid input VAT. If the second supply is an ICS due to the ICT, the final customer cannot deduct the amount of VAT wrongly paid on an incorrect invoice. Additionally, an operator cannot rely on the principle of the protection of legitimate expectations against his supplier in order to claim a right to deduct input VAT; however, he may request repayment of the tax unduly paid due to an incorrect invoice. The third question was not answered due to the answer of the first question (Court of Justice of the European Union 2018).

This case re-confirmed what was already clarified in prior cases on how to determine which supply to ascribe the transport to. This also highlights the importance of keeping track of the location of supplies in a chain and maintaining a sceptical mind, thus double-checking that VAT has been correctly charged (Grant Thornton 2018).

## 2.8. The Quick Fix

The 4 Quick Fixes are the first move towards a Definitive Regime, bringing changes to cross-border supplies of goods among all EU countries as of 1<sup>st</sup> January 2020. These were brought about to simplify processes and reduce uncertainties due to the lack of harmonisation (KPMG 2020).

These comprise the following:

- a. Harmonisation of EU cross-border call-off stock rules by presenting a simplified treatment, whereby stock is transferred to a warehouse by a vendor at the disposal of a known purchaser in another MS;
- b. Harmonisation of chain transaction rules, thus providing legal certainty;
- c. Uniformity and simplification of rules for documenting intra-EU supplies;  
and
- d. Mandatory VAT ID number verification for EU cross-border supplies to apply the zero VAT rate (European Commission 2017).

In this regard, it is worthwhile to note that, although the implementation date was 1<sup>st</sup> January 2020, as at 30<sup>th</sup> April 2020, there were 6 MSs which had yet to incorporate the Quick Fixes in their national legislation (EUR-LEX 2020).

#### 2.8.1. Changes to Chain Transactions

As discussed in Section 2.4 above, the relevant legislation on chain transactions was limited, and thus, CJEU's guidance gives legal uncertainty. CJEU stated that an "overall assessment of all specific circumstances" (CJEU 2010) is necessary to determine which supply to ascribe transport to. Statements such as this are very abstract in nature and do not provide any concrete advice on how to address chain transactions. Indeed, this is the reason why these cases were codified into a Quick Fix.

##### 2.8.1.1. Article 36A

As a 'quick fix' to this issue, the EU introduced Art. 36A which addresses transport allocation. This new Article states that if the intermediary operator (IO) transports

goods himself, or commissions a third party to transport goods for him, then the transport should be the supply made to IO, being the A-B supply in a typical ABC transaction. The derogation of this Article states that if IO gives the supplier his VAT number of the MS of departure, then the transport should be allocated to the supply made by IO, being the B-C supply (Council Directive (EU) 2018/1910 2018).

Despite making reference to parties A, B and C, this new Article is not limited to 3 parties, but may be applied to transactions involving more parties (Horsthuis, Nellen 2019). For the purposes of this Article, IO is the supplier within the chain, other than the first supplier who dispatches or transports the goods himself, or through a third party acting on his behalf (Council Directive (EU) 2018/1910 2018).

According to the Implementing Regulations, the person responsible for the transport of the goods should be identified by referring to 2 items of non-contradictory evidence from the list below:

- Bank statements to trace payments, or
- Insurance documents, or
- Transport invoices, or
- Other related documents such as an authorisation (Council Implementing Regulation (EU) 2018/1912 2018).

Apart from the above, the economic reality of the overall facts and circumstances is to be considered.



### 2.8.1.2. Article 138 as Amended

On this note, Art. 138 is meant to exempt the supply of goods transported to another MS out of their territory by or on behalf of a person acquiring the goods under the following conditions:

1. The goods are supplied to another TP or non-taxable legal person in MS other than that where the transport begins; and
2. TP for whom the supply is made is identified in MS other than that in which the transport begins, and has communicated this VAT number to the supplier.

With the amended Art. 138, the exemption would not apply in the case where the supplier has not complied with the obligation to submit a Recapitulative Statement (Recap), or has submitted an incorrect Recap (Council Directive (EU) 2018/1910 2018).

This therefore creates a consistent rule regarding transport throughout the EU, making the nature of such supplies much simpler, thus encouraging more suppliers and customers to make use of the triangulation simplification.

### 2.9. The Current Regime vs the Definitive Regime

There are several shortfalls with the current EU B2B VAT system with respect to supplies of goods, including MTIC fraud, the zero-rate applied to cross-border supplies, which does not instigate any consumption tax on intra-EU supplies, and lastly, the administrative complexity and compliance costs which complement this system (European Commission 2016).

These shortfalls contributed to the decision to implement the Single EU VAT Area to be implemented by 2022. This proposal will have one of the greatest impacts on EU VAT as it is today since we have been moving towards this definitive system since 2016.

With the current transitional system in the case of B2B CBT, VAT is charged upon ICA and is VAT-exempt upon ICS; therefore, it is effectively the customer who is liable to apply the RCM and account for VAT in the MS of ICA (Council Directive 2006/112/EC, Art. 40). This zero-rated supply disrupts the chain of fractional payments, which is one of the key features of the VAT system, as explained in Section 2.2. This new system will make the supplier liable to pay the VAT in the state of residence according to the laws of the place of consumption, which will then be transferred between MSs directly (KPMG 2018). The concepts below are scheduled to be introduced with the Definitive Regime in 2022.

#### 2.9.1. B2B Intra-Union Supply

With the definitive regime, B2B intra-EU supplies will be treated as one supply taxable in the MS of destination. ICS and ICA will be abolished and replaced with one intra-union supply, for which the supplier will be liable for the VAT, which will then be transferred to the authorities of the MS of destination (EESC 2019). The administrative burden of this mechanism will be avoided through the introduction of the One-Stop Shop (OSS). Instead of registering in each country with whom a supplier conducts their trade, through OSS, the supplier will only need to register once through this portal for all EU B2B transactions. Subsequently, the national

tax authorities will transfer the tax balances which fall due to each other accordingly (European Parliament 2019). This mechanism will simplify cross-border B2B supplies, while acting as an efficient measure to address VAT fraud.

#### 2.9.2. Certified Taxable Person

Another aspect of the Single VAT Area is the introduction of the Certified Taxable Person (CTP). CTP is a highly reliable taxable person who has proven compliance with regular tax payments, has efficient internal controls, and can provide proof of solvency (European Commission 2018). CTP will be mutually recognised by all MSs, and will be reviewed bi-annually (European Parliament 2019). The main implication of this new phenomenon is that, in the case of a B2B supply to CTPs, due to their trusted status, CTPs will be liable for VAT in the MS of destination of the supply.

#### 2.10. Concluding Remarks

This chapter presented the literature on the objectives laid out in Chapter 1 and the findings and discussion which will be portrayed in Chapters 4 and 5, respectively. The need for the study is reinforced through the lack of local literature in the research area, as will be presented in Chapter 3.

## Chapter 3

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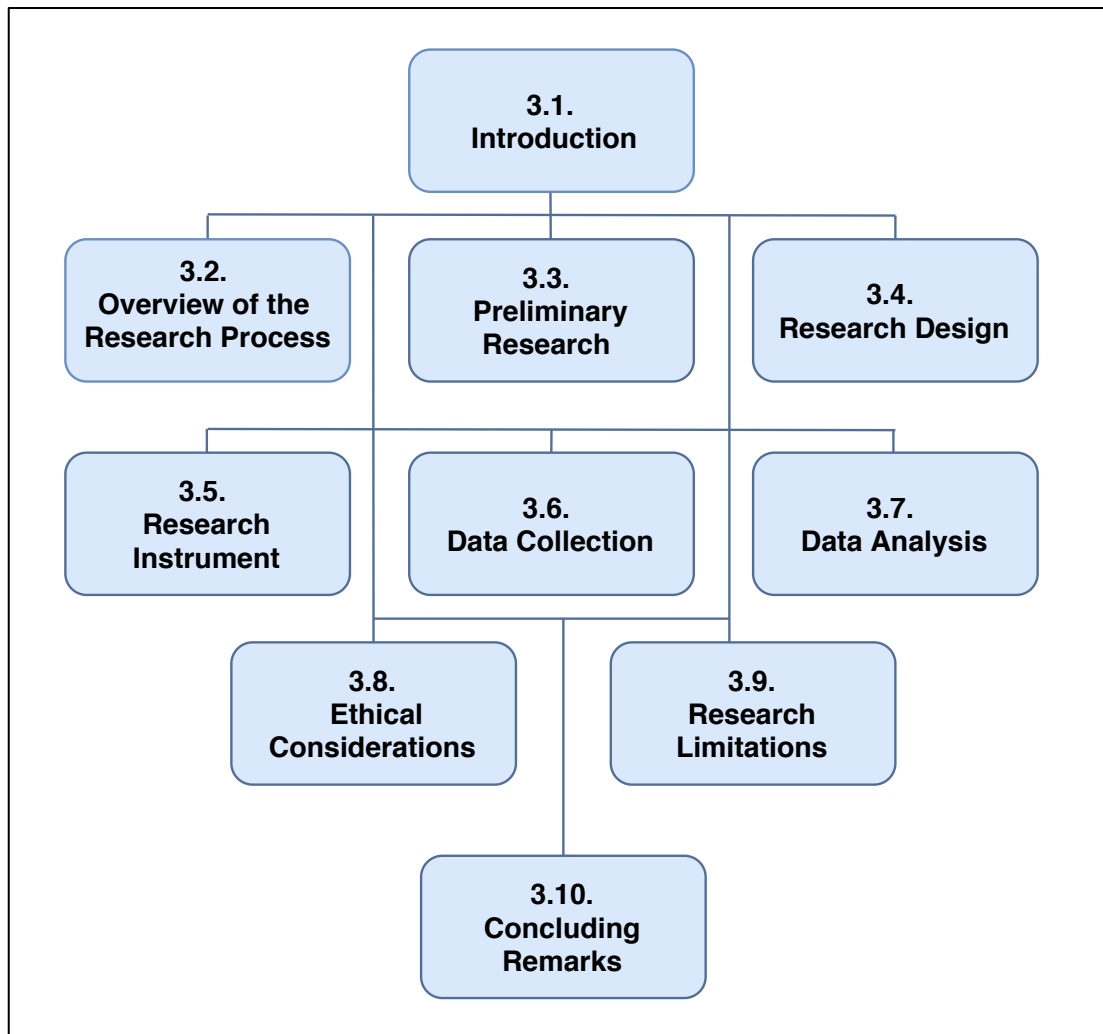
# *Research Methodology*

*“Research is an organised method for keeping you reasonably dissatisfied with what you have.” Charles F. Kettering*

### 3.1. Introduction

This chapter seeks to describe the research methodology utilised for the purpose of this study, together with justification for decisions taken in order to satisfy the research objectives. This is clearly depicted in Fig. 3.1 below.

Figure 3.1: Chapter 3 Outline

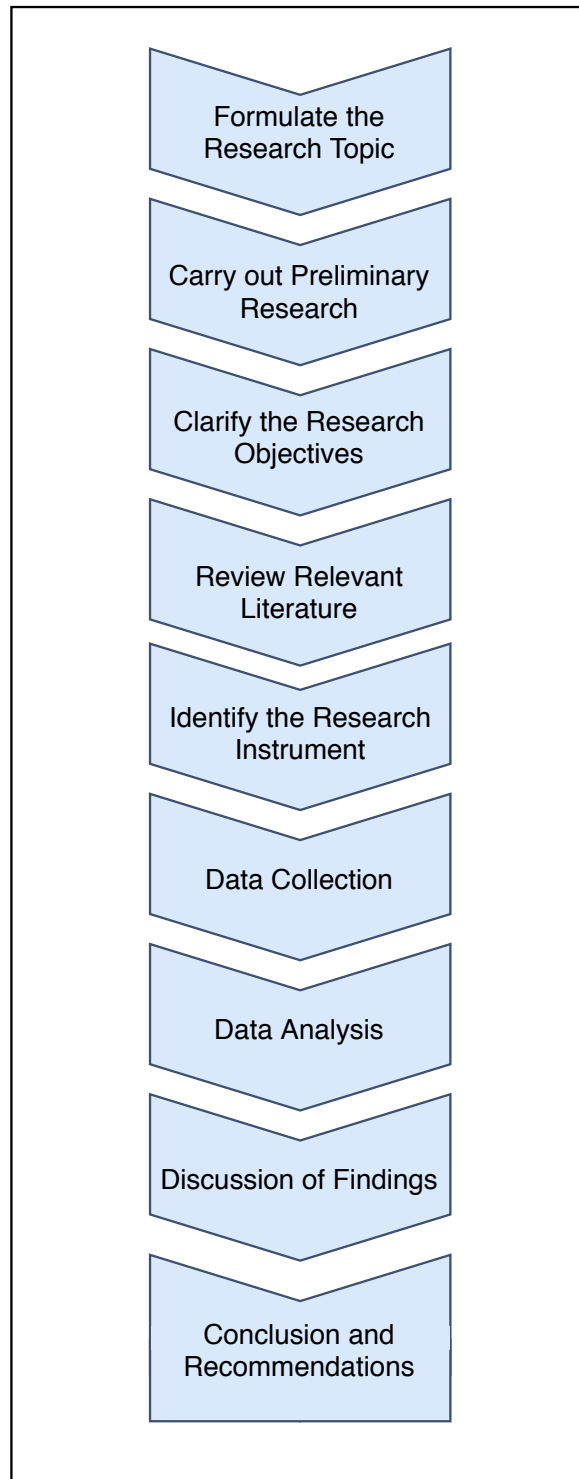


### 3.2. Overview of the Research Process

According to Saunders et al. (2009, p. 2), “[t]here is no one best way for undertaking all research”. Therefore, in order to conduct good research, it is

important to evaluate different viable and fruitful options to formulate a plan in order to fulfil the objectives of the study. The plan for this study is illustrated in Fig. 3.2, demonstrating the process followed by the researcher for the study.

*Figure 3.2: Overview of the Research Process*



### 3.3. Preliminary Research

Preliminary research was carried out in the initial stages of this research project to derive a thorough understanding of the topic at hand and identify the rationale for the study. The research topic was established following discussions with a local VAT specialist and a lecturer in the field of taxation at the University of Malta to determine the viability of this study. Following this, in-depth desk research and analysis of the relevant literature was carried out to gain deeper insight into the topic.

Subsequently, the researcher sought to affirm the feasibility of the study by requesting confirmation from potential participants for this study. At this preliminary proposal stage, 10 local VAT practitioners, 2 EU VAT practitioners, and 1 representative from the VAT Department of the Commissioner for Revenue (CfR) agreed to take part in the study. This helped verify the plausibility of the chosen research area, and hence, the author was able to formulate the research objectives, the research instrument, and methodology which would be required in order to achieve the objectives.

### 3.4. Research Design

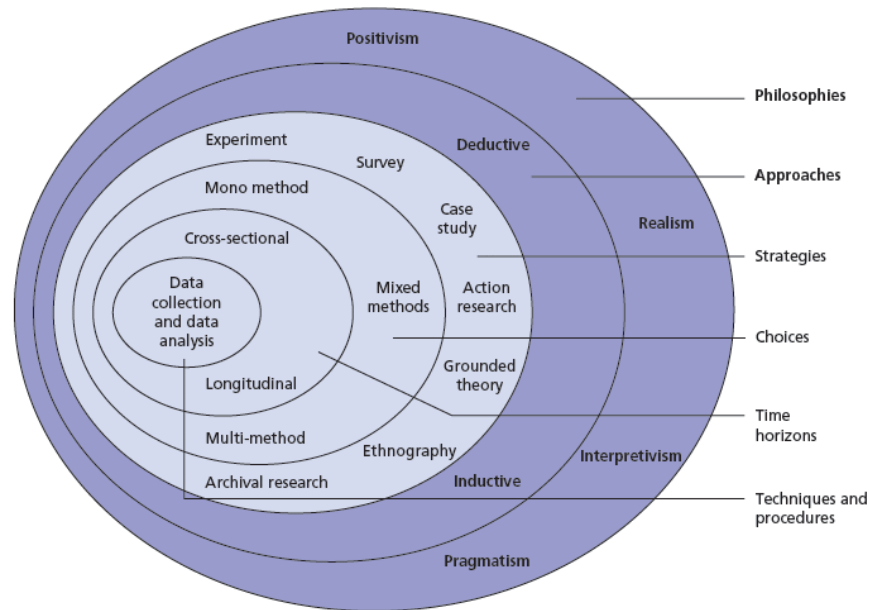
It was important for the researcher to consider different research philosophies which would influence the way the study is conducted, the data collection methods used, and the interpretation of findings (Saunders, Lewis et al. 2016). With reference to the Research Onion, demonstrated in Fig. 3.3, an interpretive philosophy was determined to be the most suitable philosophy to gain value-

adding information through the research process. A mono-qualitative research method with semi-structured questions was deemed most appropriate to achieve the research objectives, thus answering ‘how’ and ‘why’ questions (Azungah 2018). The researcher wanted to obtain in-depth information from participants in the study, which would have been overlooked with a quantitative approach. The latter approach would have been appropriate had the researcher been searching for objective responses from a large sample, but given the specified nature of the research subject, this option was not deemed suitable. As Albert Einstein affirms, *“[n]ot everything that counts can be counted, and not everything that can be counted counts”*.

A qualitative method was selected following an analysis of the research objectives in Chapter 1.4, which indicated that an inductive approach would be the most appropriate strategy. This explorative approach correlates with a qualitative method, enabling the researcher to gain insights on the research question, and derive a more holistic view of the subject, which requires a theoretical explanation and is hence data-driven (Saunders, Lewis et al. 2016).



Figure 3.3: The 'Research Onion'



Source: Saunders, Lewis and Thornhill, Fig. 4.1 (2016, p. 124)

### 3.5. Research Instrument

It was determined that semi-structured interviews would be the most appropriate research tool for this study thereby allowing for flexibility, probing, and personal interaction with interviewees (Carruthers 1990).

#### 3.5.1. Choice of Interviewees and Initial Correspondence

Due to the technical nature of the study, interviewees with a proficient knowledge of VAT were selected through a non-probabilistic sampling technique of self-selection sampling; hence, subjective judgement was present in order to ensure the right interviewees were selected (Saunders, Lewis et al. 2016). Potential

interviewees were contacted by email to explain the research project and request their approval to participate in the study. Where no response was received within 2 weeks, the researcher sent a follow-up email which served as a gentle reminder.

### 3.5.2. Respondents and Response Rate

In total, 26 local VAT practitioners were contacted. Following several reminders via email and phone calls, the researcher received positive responses, and eventually interviewed 12 local VAT practitioners, consisting of 12 qualified accountants, and 1 lawyer. The low number of interviewed VAT lawyers was due to the very limited number of lawyers focusing on VAT in Malta, given the strong practical, accounting nature of VAT. Due to the acute size of the population of VAT practitioners in Malta, and the availability of these persons, the response rate was considered suitable, and thus, saturation was achieved. In accordance with Boyce and Neale (2006, p. 4), *“when the same stories, themes, issues, and topics are emerging from the interviewees, then a sufficient sample size has been reached”*.

The researcher wished to identify MSs with similar jurisdictions to Malta for VAT purposes, and managed to successfully communicate and conduct an interview with a practitioner from Cyprus. Unfortunately, the other EU practitioner who was contacted during the preliminary stage was not available during the period of data collection. The aim of this interview with a representative of Cyprus was to discuss and highlight the similarities and differences of the two VAT systems, as

will be discussed further in Chapter 4. The EU practitioner was contacted through the use of snowball sampling, where a local practitioner recommended this respondent as a suitable candidate, and subsequently, the researcher managed to set up a virtual meeting.

Furthermore, a semi-structured interview was carried out with two representatives of the VAT Technical department of the Commissioner for Revenue to gain a better understanding of the research topic from a regulatory perspective. The roles of the respondents as explained in this section are depicted in Table 3.1.

*Table 3.1: Role of Respondents*

<b>ROLE OF RESPONDENTS</b>	<b>NUMBER OF RESPONDENTS</b>
VAT Practitioners from Big-Four Firms	5
VAT Practitioners from Mid-Tier Firms	6
VAT Practitioners from Cyprus	1
Freelance VAT Consultant Lawyer	1
Representatives of the Office of the Commissioner for Revenue	2

### 3.5.3. Format of the Interviews

The semi-structured interviews found in Appendices A and B were divided into 6 themes, as outlined in Table 3.2, in order to facilitate the analysis process, since the sections represent the different objectives outlined in Section 1.4. Once the interview schedules were prepared, these were discussed with the dissertation supervisor, where the questions were fine-tuned, and any errors or areas for

improvement were addressed prior to conducting the pilot study and subsequent interviews. Following the pilot study, minor amendments were made to the interview schedules to allow for a more thorough discussion during the interviews. An explanation of how the pilot study was carried out may be found in Section 3.5.4.

As aforementioned in the previous section, despite interviewing both practitioners and a representative of the relevant authority, the questions were only slightly different, and thus, the same 6 themes were used for both interview schedules. The researcher tweaked the interview schedule for the authorities by eliminating questions which would have been inappropriate, such as, asking whether the firm they work for services any clients applying chain transactions. Instead of such questions, the researcher asked questions specifically aimed at these respondents regarding any frequently-asked questions (FAQs) which they receive as an office on chain transactions, and what work they have conducted regarding the topic at hand. These themes are displayed in Table 3.2 below.

Table 3.2: Interview Schedule – Categories and Scopes

SECTION	CATEGORY	SCOPE
1	<b>General</b>	Serves as an introduction to the subject to focus the interviewees' attention on the research topic
2	<b>The Current Situation</b>	Aims to explore the interpretation of the interviewee of the applicable treatment of chain transactions, while seeking any shortfalls and changes which are required to the system.
3	<b>Differences in Applicability between Different Member States</b>	Seeks to understand the feasibility of a harmonised system between all Member States, while exploring the effects of the lack of uniformity present in certain provisions of the law.
4	<b>Court of Justice of the European Union Position</b>	Intends to understand the impact of the Court of Justice of the European Union on current legislation, and gain an understanding of those cases with the largest impact on chain transactions.
5	<b>Definitive Regime</b>	Gain an understanding of the changes which will impact chain transactions the most, focusing on the Quick Fixes which came into force on 1 <sup>st</sup> January 2020 in order to compare these changes with the prior system.
6	<b>Recommendations for Beneficial Improvement and Growth Potential</b>	Explore the effect of this mechanism on businesses, while assessing any recommendations on different aspects of chain transactions.

Participants were given a very brief introduction to each theme, such as: “*The next section will deal with the CJEU’s position on chain transactions*”, in order to focus their attention on a specific area of the research study. The legislation extract from Art. 141, being the Article in the EU Directive which deals with triangulation, was also provided to interviewees since it outlines the 5 conditions which must be present in order to apply triangulation, and most participants did not know the exact terms offhand. Upon interviewees’ request, the interview questions were provided to 5 interviewees beforehand via email.

#### 3.5.4. The Pilot Study

A pilot study aids the researcher in identifying potential areas of difficulty and shortfalls in the research instrument prior to carrying out the research (Hassan, Schattner et al. 2006). Therefore, the researcher found the pilot study to be a vital part of the research process in order to verify that the interview schedule was easily understood, and that the questions were sufficient to provide adequate responses to the research objectives. Following this, the necessary amendments were carried out, based on suggestions by the interviewee, as well as an overview of the responses, thus helping to improve some questions. Additionally, the pilot study allowed the researcher to identify probing questions which were then used to improve the discussion of subsequent interviews.

#### 3.5.5. Administration of the Semi-Structured Interviews

The local semi-structured interviews were carried out at the respondents' workplaces between November 2019 and March 2020. Ten out of the 14 participants gave consent for the interview to be recorded, and hence, analysed and coded at a later stage in the research. Where consent was not given, the researcher was given appropriate time to take notes on the areas discussed during the interview. The interview with the EU practitioner was carried out over a phone call, where the participant gave suitable time for the researcher to take notes. The consent form distributed for signature also required respondents to give authorisation for the use of their responses for research purposes, which was granted by all interviewees. The duration of the interviews ranged from 35 to 75 minutes.

### 3.6. Data Collection

The researcher utilised both primary and desk research collection methods for the purpose of this study. This ensured a balanced approach to data collection.

#### 3.6.1. Collection of Secondary Data

The data gathered through the preliminary research was used as a starting point for the desk research. This process consisted of gathering pre-existing literature from an array of sources, such as, research papers, academic journals, websites, books, reports, CJEU case law, and EC publications. Most literature was obtained from sources in other EU countries as local literature was found to be very limited. However, this was not considered a limitation given that the research focuses primarily on an EU perspective of chain transactions and not a local perspective.

Since the Quick Fixes were introduced on 1<sup>st</sup> January 2020, desk research on the matter was limited, and thus, to mitigate this, while gaining a more in-depth understanding of the new changes, the researcher attended a local continuing professional education (CPE) event on the VAT developments occurring between 2019 and 2021. Certification of this course is found in Appendix D.

Desk research was deemed necessary to form a theoretical background to the research topic, and served as a starting point for the analysis and discussion of findings which were gathered through the interview process. The interview

questions were designed to enhance and further explore the desk research which was previously obtained and may be found in the Literature Review (Chapter 2).

### 3.6.2. Collection of Primary Data

Primary data is “collected for the specific research problem at hand, using procedures that fit the research problem best” (Hox, Boeiji 2005, p. 593). Primary data was gathered through semi-structured interviews, as described in Section 3.4, whose objective was to gain a deeper understanding of the shortcomings of the current system, and how the move towards a Definitive Regime will impact this, as explained in Sections 2.6 and 2.8, respectively. The research instrument comprising 2 interview schedules (Appendices A and B), one for practitioners and one for the representatives of the Office of the CfR allowed the researcher to adapt to different perspectives of different classes of respondents. As already explained in Section 3.5.3, the main difference between the two is that some questions were specific for practitioners, and others specific for the authority.

### 3.7. Data Analysis

Upon completion of the interview process, the collected data was transcribed and thoroughly analysed through the use of open coding whereby the information was broken down into themes, and hence, common and contrasting elements between different interviews were found (Kaiser, Presmeg 2019). Salient arguments, unique opinions, and recommendations were also identified using this method, hence allowing the researcher to gain rich insight into the subject.



The findings of the collected data are presented in Chapter 4 which, along with the Literature Review (Chapter 2), served as a solid ground for the discussion, recommendations, and conclusions found in Chapter 5.

For ease of reference, the different classes of interviewees mentioned in Table 3.1 were given reference numbers in order to correlate the findings in Chapter 4 with the class of respondent. These reference numbers are depicted in Table 3.3 below.

*Table 3.3: Reference Numbers*

<b>ROLE OF RESPONDENTS</b>	<b>NUMBER OF RESPONDENTS</b>	<b>REFERENCE NUMBER</b>
VAT Practitioners from Big-Four Firms	5	R1 – R5
VAT Practitioners from Mid-Tier Firms	6	R6 – R11
VAT Practitioners from Cyprus	1	R12
Freelance VAT Consultant Lawyer	1	R13
Representatives of the Office of the Commissioner for Revenue	2	R14 – R15

### 3.8. Ethical Considerations

Following approval from the Research Ethics Department to conduct interviews, participants who gave their consent to be interviewed during the preliminary research were contacted to set up a meeting. During the data collection process, it was guaranteed that no information on the identity of respondents would be collected or determinable through the findings, and hence, the responses were linked to an interview reference number instead of the identity of the interviewee. During the preliminary research phase, through the Letter of Introduction signed

by the Head of the Accountancy Department, participants were informed that all responses would be solely used for research purposes and treated with the strictest of confidentiality. Moreover, signed permission was requested from respondents for the interview to be recorded and for notes to be taken when needed. This was done through a Consent Form whereby respondents confirmed their willingness to participate in the study. Where consent to record the interview was granted, respondents were assured that the recordings would be kept in a password-protected folder, which would then be deleted 1 year from the completion of the study, and that the recordings would not be distributed to any third parties.

### 3.9. Research Limitations

A limitation to the research is the systematic bias which the research could or did not control during the research process (Price, Murnan 2004). Additionally, interviewee bias is another limitation, since interviewees may have not been completely accurate in their responses given the nature of the subject at hand, and thus, the researcher needed to rely on their responses.

Another limitation of the study was that many practitioners were not familiar with CJEU cases on chain transactions. However, this was expected due to the fact that chain transactions are not a very common occurrence; therefore, case law would only be utilised when necessary. In addition to this, given that the Quick Fixes are in their infancy, only being introduced in January 2020, practical applicability was

limited; therefore, opinions and recommendations by respondents were primarily given from a theoretical perspective.

The fact that only a sample of practitioners were interviewed also poses a limitation as other practitioners who did not accept to participate, or were not contacted, may have enriched the research further. Nonetheless, as mentioned in Section 3.5.2, the response rate was considered suitable as saturation had been reached.

Additionally, different respondents held different levels of knowledge of certain areas discussed. The reason for the lower level of detail given by certain respondents was due to their work in VAT being focused on services and not goods, or due to the fact that the firms they worked for did not have any clients conducting chain transactions. However, it was expected that not all interviewees would be experts in the subject, and this, in fact, helped the researcher to obtain a perspective from the population of VAT practitioners as a whole and not simply from those practitioners who work on such cases on a day-to-day basis, hence allowing for a balance in responses.

Four respondents did not consent to audio-recording, while the interview with a practitioner from another MS was held over a phone call, which was also not recorded. Therefore, these scenarios did not allow the researcher to analyse further the interviews through the recordings once all information was provided, as was done for the recorded interviews. This was mitigated by asking further probing questions to ensure that the detail derived from these interviews was not impaired.

The researcher made it a point to maintain an objective stance during the interview process, but the human element of the research instrument should be taken into consideration.

### 3.10. Concluding Remarks

The aim of this chapter was to provide an understanding of the rationale behind the researcher's choice of research methodology, selected with the purpose of fulfilling the aims and objectives of the study. The following chapters provide the findings, analysis, and discussion derived from the collected data.

## Chapter 4

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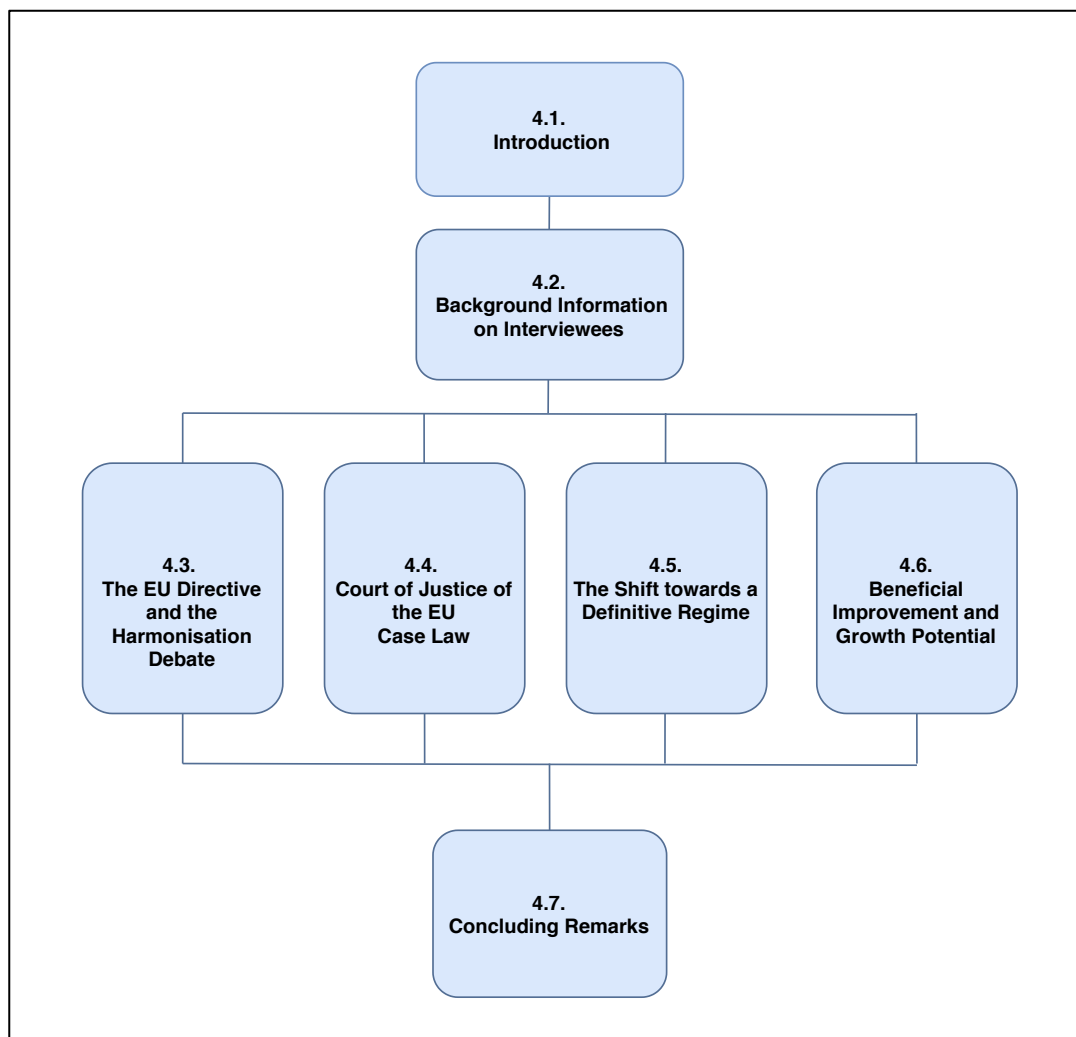
# *Research Findings and Discussion*

*"A good discussion increases the dimensions of everyone who takes part."  
Randolph Bourne*

#### 4.1. Introduction

The primary focus of this chapter is to present and analyse the results obtained from the interviews conducted with respondents, with respect to the various aspects of the VAT implications of chain transactions in the EU. Therefore, this chapter documents the main themes that were found in the interviews with practitioners (R1-R13) and the high-ranking officials from the VAT Department (R14-R15) with respect to the objectives laid out in Section 1.4. These findings will be discussed and supported by the literature found in Chapter 2.

*Figure 4.1: Chapter 4 Outline*



With reference to Fig. 4.1, following a brief overview of the respondents' background in relation to the topic, Section 4.3 will discuss the reasonableness of the current applicable system on chain transactions, as well as harmonisation issues on this area. Section 4.4 will address the second objective by discussing the impact of CJEU on the work performed by practitioners, while Section 4.5 will focus on the effect of the move towards a Definitive Regime on chain transactions in connection with the third objective. Subsequently, Chapter 4.6 will address the fourth objective by focusing on recommendations for beneficial improvement and growth potential of businesses conducting chain transactions. Lastly, Chapter 4.7 will offer some concluding remarks on the chapter as a whole.

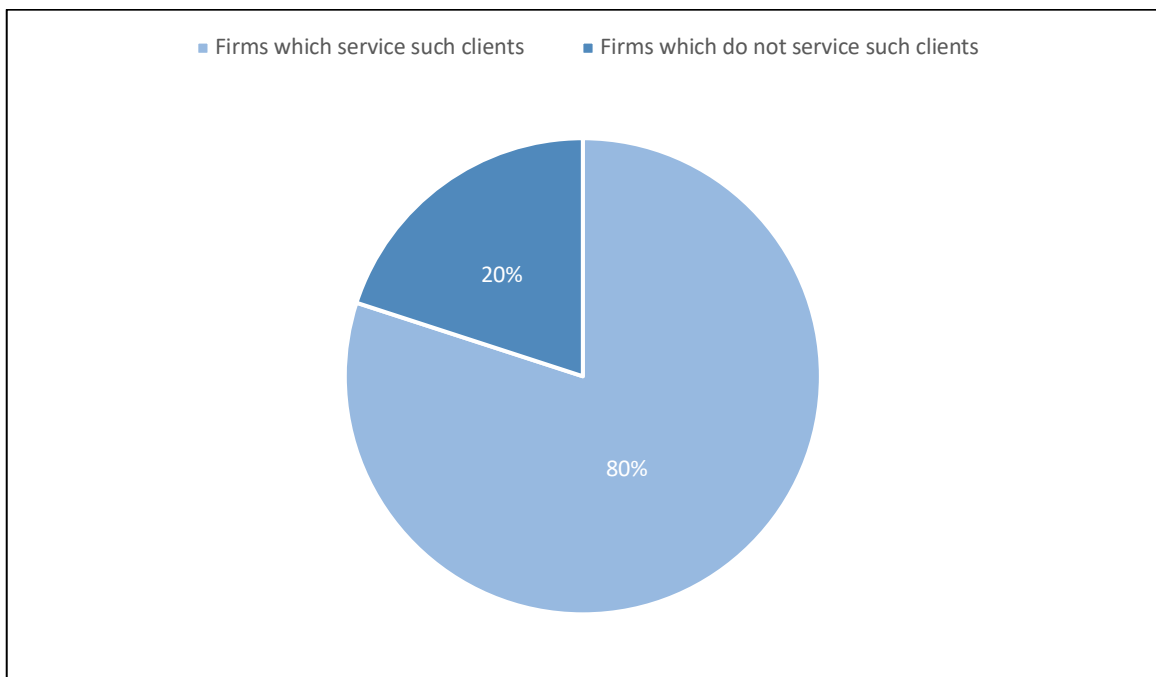
#### 4.2. Background Information on Interviewees

As a preliminary question to begin the interviews, the researcher asked practitioners whether the firm which they are representing services clients conducting chain transactions. Fig. 4.2 illustrates that the majority of firms interviewed do in fact service clients with chain transactions. Where the researcher interviewed more than one person from the same firm, these have been grouped as one in this Figure. For the purpose of reference with Table 3.3, Respondents R9 and R11 are the only practitioners whose firms do not service clients with chain transactions, while R13, R14, and R15 have been excluded from this summary since they do not work for Maltese firms providing these services to clients. Some respondents went on to explain that the clients they deal with typically represent Party B in a typical ABC transaction, while adding

that they provide a range of services to such clients, including compliance and advisory.

It should be noted that no discrepancy in the findings could be attributed to the fact that some respondents work in Big Four firms, while others work in medium-sized firms.

*Figure 4.2: Firms with clients conducting chain transactions*



#### 4.2.1. The Office of the Commissioner for Revenue's work on Chain Transactions

The researcher asked the representatives of CfR to give a brief description of the work which has been carried out in relation to chain transactions. The response was that nothing of a practical nature has been done. To date, they have only performed the transposition of the law and staff training. Regarding frequently asked questions on chain transactions, it transpired that practitioners do not tend



to turn to the Commissioner for any queries. However, the representatives highlighted that, at the time of the interview, the Quick Fixes were not at reporting stage yet, and so they would expect to receive some questions once this stage was reached. These responses implied that CfR have limited practical experience in this area so far, and thus, the effect of chain transactions on the perspective of the authority is yet to be seen. It is concerning that practitioners and businesses do not address their queries on chain transactions to CfR; however, no reasons for this were identified by CfR, probably because this question would be better answered by businesses.

#### 4.3. Chain Transactions as per EU VAT Directive and the Harmonisation Debate

With reference to Table 3.2, this section of the interviews dealt with the perception of respondents of how chain transactions are treated for VAT purposes according to the EU VAT Directive. Subsequently, the researcher sought to understand the harmonisation issues surrounding this topic. These 2 sub-topics will be discussed in Sections 4.3.1 and 4.3.2, respectively.

##### 4.3.1. Chain Transactions as per EU VAT Directive

###### 4.3.1.1. The Triangulation Interpretation

Respondents were asked to describe their interpretation of the triangulation simplification. The interpretations given were in line with the conditions set out in

the Directive, as explained in Section 2.4, stating that it involves 3 parties in 3 different MSs, and is made up of 2 transactions, but only 1 transport. This allows for an exempt acquisition in the MS where the transport ends. Respondents added that the use of the simplification is to avoid B having to register in another MS, which is done by way of the RCM placed on C, as demonstrated in Fig. 2.5. This was noted as a positive aspect since all respondents described the simplification in the same way, and in accordance with the Directive, demonstrating that they all possess sound knowledge of the simplification and its applicability.

Some respondents highlighted that, although it is intended as a simplification, it may end up complicating scenarios further due to its narrow scope, a view which was supported by the representatives of CfR. Contrastively, it was clarified that, where applicable, the intended aim of avoiding VAT registration and compliance obligations overseas are still achieved, as Respondent R5 commented that *“I’d rather have it in its current state than nothing at all”*.

#### 4.3.1.2. Problems and Shortfalls of Chain Transactions

When respondents were asked to identify problems or shortfalls with the current system, one of the most persistent shortfalls of the mechanism was found to be the lack of consistency in the applicability between different MSs, with interviewees citing the wide interpretation of the Directive and the lack of clarity given by regulators as their reasons. Some respondents found the simplification to be a cumbersome process, with R10 highlighting that it is particularly becoming

more prominent with the rise in online shopping, further increasing the use of CBT. This was perceived as an odd and confusing point to be mentioned since online shopping typically represents B2C supplies, while chain transactions deal with B2B supplies. As discussed in Section 1.2.2, we are now living in a global village; therefore, traders expect these processes to be simplified and pose lower burdens than they did years ago to further facilitate CBT.

However, according to Respondent R14, *“[t]he VAT system was always burdensome and will remain burdensome”*. This excerpt demonstrates that it is not just chain transactions or any other specific aspect of the Directive which may be burdensome, but rather, it is the VAT system in general which makes these processes burdensome due to how this works.

On another note, some respondents mentioned that further problems arise in cases of longer chains due to the narrow scope of the legislation, therefore posing administrative difficulties. The researcher was not surprised at this since it is evident that the legislation only covers specific chains, and hence, presents challenges when practitioners attempt to extend this to longer, more complex chains. In fact, this is the reason why this issue has been addressed with the Quick Fixes, with the aim of establishing uniformity, to some degree, in the treatment of longer chains. Examples of different scenarios of longer chains are discussed in Section 2.6 to further demonstrate this narrow scope, while displaying how the application of the VAT rules varies with differing conditions.

Difficulty to obtain proof of transport from clients was also raised as an issue with chain transactions. In this regard, it should be noted that proof of transport has now become a formal requirement with the Quick Fixes, as explained in Section 2.8., and should therefore no longer be an issue. Following on the aspect of transport, some respondents explained that they encountered great difficulty in determining which transaction to ascribe transport to. However, through the newly introduced Art. 36A, the ascription of transport when made by B has been made crystal clear. It would be worthwhile to acknowledge that, since the interviews took place between November 2019 and March 2020, the Quick Fixes had not been introduced yet for some of the interviews, and had just been introduced for others. Therefore, some respondents cited issues with the system before the Quick Fixes, such as, the above. However, as aforementioned, since January 2020, the above issues are difficulties of the past which have now supposedly been overcome. Respondents recognised that the Quick Fixes are acting as a codification of pronouncements of CJEU cases, addressing past difficulties, as mentioned above, and therefore, it has to be seen how these turn out in practice. Few respondents do not see problems with the mechanism; on the other hand, Respondent R4 highlighted that, *“[i]f there weren’t any shortfalls, then I don’t think chain transactions would have been chosen for the Quick Fixes”*.

#### 4.3.1.3. The Reasonableness of the Conditions Required to Apply the Simplification Mechanism as per Article 141

When participants were asked whether they believe the 5 conditions required to apply the simplification were fair, most commented that this is a bonus to avoid

compliance obligations, and thus, they are fair. Given that the simplification is an exception of the general rule, businesses and practitioners cannot be greedy in its applicability as it does fit its purpose. Therefore, the fact that practitioners acknowledged this was viewed as a positive remark.

It was also highlighted that trade in goods has not been subject to drastic changes, when compared to the changes encountered in the trade in services. Despite being perceived as fair, some respondents observed that the Quick Fixes were needed to address the now globalised world in order to provide greater clarity and harmonisation thereby reducing fraud.

One interviewee gave an example of a French company registered as a TP in France and owning a warehouse in Italy which they use to store goods to be sold in Italy, without opening a company or registering for VAT purposes in Italy. If the French TP is Party C in an ABC transaction and would like the goods to be delivered directly to the warehouse owned by the same TP in Italy, rather than to the TP in France, which could be a common reality, the triangulation simplification would simply collapse, and it is not really clear why this should happen. The researcher was surprised with this statement, but when analysed in line with the conditions set out by the Directive as explained in Section 2.4, it was understood why this would collapse since the supply is to be made *“to the person for whom he is to carry out the subsequent supply...who is identified for VAT purposes in the Member State concerned”* (Council Directive 2006/112/EC, Art. 141).

Nonetheless, although the researcher comprehends why this is inapplicable in accordance with the wording of the law, the point raised by the interviewee that this is a shortfall is justified in today's world.

Rather than an unfair condition, one respondent remarked that there is lack of clarity with the term '*established*' used in the simplification, which features in the first condition of Art. 141, whereby the acquisition of the goods is made by a TP who is not established in the MS concerned, but is identified for VAT purposes in another MS. The researcher noted that this statement is supported by the wide interpretation of this condition, as depicted in Section 2.5, and more specifically in Table 2.1, where it is demonstrated that some MSs allow for B to be registered in MS A, while others allow B to register in MS C, and others allow for both or neither of these scenarios. This has primarily occurred due to the different interpretations of the term '*established*'.

Although, overall, most respondents found the conditions to be fair, Respondent R7 stated that "*if I were a businessman, I would definitely want less conditions*", implying that businesses actually involved in chain transactions may not perceive the conditions as positively as tax practitioners since they are the ones suffering the burden.

#### 4.3.1.4. Proposed Fixes

When respondents were asked what they would amend in the current legislation on chain transactions to combat the shortfalls, responses were primarily limited

to suggestions about items to support the law more, rather than to actually change the law. Although some respondents did suggest changes to the legislation, greater emphasis was placed on measures to support the legislation. The majority of interviewees suggested clearer guidelines, practical scenarios, guidance notes, and a working paper to be issued by the Commissioner. These suggestions were perceived as fair by the researcher as they would provide practitioners and businesses alike with the necessary direction to ensure proper application of the mechanism thereby reducing the different interpretations. Therefore, respondents do not feel there are issues with the actual legislation, but would appreciate further guidance.

Few respondents believe that it would be ideal to have an expansion of the scope in order to allow for wider application to 4 or more parties. Furthermore, respondents highlighted that it may be more effective to focus on the transaction itself, instead of the status of intermediaries, to allow for VAT to be neutral across the chain, and hence, be applicable to longer chains. It should be noted that this point on longer chains has been addressed in some way by the Quick Fixes, and although the triangulation simplification is not applicable to 4 or more parties, there have now been measures put in place to address longer chains.

Other respondents did not feel any changes would be necessary, with many stating that we should wait to see the Quick Fixes in practice and what the Definitive Regime has to offer. Interestingly, one respondent highlighted that there is no more time to fix triangulation as they believe that it would cease to

exist under the Definitive Regime due to the Intra-Union supply whereby the supply will always be taxed in the MS of destination, hence making all intermediary supplies domestic supplies. This point raised a few questions in the researcher's mind because, although it is clear that transactions will now be taxed in the MS of destination, the current system of the simplest form of a chain transaction, being a triangular transaction, is also currently taxed in the MS of destination. It is not yet known whether the simplification will remain applicable with the new Definitive Regime, or whether this would be amended, but it would be best to await any notices from the Commission before making any assumptions.

On another note, the CfR representatives explained that their hands are tied with respect to any improvements as MS because of the Directive and case law.

#### 4.3.1.5. Transport Handled by the End Customer

Respondents were asked whether, in their professional opinion, the triangulation simplification would be applicable if the transport was handled by the end customer. The majority of respondents noted that the simplification would collapse in this case; however, some respondents believe that it should still apply, adding that, simply because the person handling the transport is the end customer, it should not mean that the simplification should not apply. To support this, a respondent used the concept of enjoyment to support their argument, meaning that VAT will be due where the good is enjoyed either way, which is in



line with the applicable treatment, where the end customer is liable for VAT due to RCM.

However, there were a number of respondents, including R14 and R15, who commented that, in this case, the simplification would collapse since B would be performing an ICS in MS of A. Respondents who answered negatively gave reasons for their responses, with Respondent R6 stating that:

*The right to dispose of goods has already been transferred between A and B and B and C in the MS of departure. Given that the triangulation simplification applies in the context of an acquisition only, then I believe that triangulation simplification should not apply when C is handling the transport.*

Another respondent stated that a situation where C was handling the transport was encountered with a client and the simplification could not be applied. Other respondents who replied in the negative further elaborated that, as a simplification mechanism, they do not believe this should be treated differently than if transport were handled by the first or second party. Nevertheless, it cannot be applied, considering how the VAT rules and the simplification are written. This suggestion was counteracted by some respondents who believe that, if this were done, then there would be the risk of fraud by C which other parties would not be aware of. However, one respondent suggested that if C could argue that this was organised on behalf of B, then the simplification may still be applied.

The above findings were interesting due to the range of opinions given by respondents. It seems that there is some congruence in the fact that this should not be applicable due to the wording of the Directive, with respondents citing

different areas of the legislation to support their arguments. The fact that R14 and R15 stated that this is not applicable also strengthened this area and gave it more credibility in the researcher's eyes. On the other hand, although some respondents stated that, in principle, they do not see why this should not be applicable, the fact that other respondents raised such issues as fraud shows that there are reasons why this is not applicable.

#### 4.3.2. The Harmonisation Debate

##### 4.3.2.1. Harmonised Law between MSs on Chain Transactions

When asked about the attainability of harmonisation between all MSs, respondents highlighted that harmonisation has always been the aim of the VAT Department since it is in the interest of MSs and the Commission. However, most VAT practitioners and the high-ranking official from the VAT Department strongly opined that a complete harmonisation of laws across different MSs is not attainable. This is primarily due to the fact that different interpretations are inevitable to some extent. Indeed, Respondent R14 observed that, *"[w]hat we have is 1 Directive and 28 different interpretations"*.

Supporting this is the fact that the Directive gives several derogations and options to MSs, where Respondent R12 stated that *"[w]e have 414 articles in the Directive, and the word 'may' appears more than 100 times"*. Therefore, the researcher noted that, although VAT is considered the most harmonised law in the EU, these aspects of misinterpretation, derogations, and options may lead

one to believe that the law is not harmonised. Furthermore, respondents highlighted that harmonisation is required, in theory, to eliminate ambiguity which is currently eroding potential benefits of the Directive.

With regards to chain transactions, respondents replied positively, stating that the EU has made big steps, and that the new Quick Fixes should not leave room for misinterpretations, and hence, there should be more uniformity. Therefore, this is harmonisation, to a certain extent, in the EU Directive, just not in all aspects due to the previously mentioned points.

However, in early February 2020, one interviewee observed that there were still 14 MSs which had not incorporated the Quick Fixes into their national legislation. In fact, in line with the literature presented in Section 2.8, as of 31<sup>st</sup> March 2020, there were still 6 countries which had not yet implemented the Quick Fixes into their national legislation, despite the 1<sup>st</sup> January 2020 implementation date given by the Commission. Therefore, the researcher noted that, although two months later, another 8 MSs incorporated the Quick Fixes into their legislation, as at end of March, there were 6 countries that had yet to implement them. The reasons why this had not been done on time are unknown to the researcher; however, this demonstrates that, although the EC tries to implement measures in a uniform manner across the EU, cooperation by all MSs is required to fulfil this.

#### 4.3.2.2. Article 194 of the VAT Directive

The researcher asked respondents to highlight the effects of the lack of harmonisation of Art. 194 on chain transactions. As mentioned in Section 2.6.4, Art. 194 presents options on the applicability of RCM to MSs thereby leading to differing laws between MSs. According to the respondents, the lack of harmonisation causes uncertainty for businesses carrying out multiple similar transactions with different MSs as the treatment of the transaction could differ, depending on how a particular MS applies this Article. Therefore, the researcher noted that businesses would require an understanding of the application of this Article in every MS where they conduct business, thus resulting in extensive research which may create difficulties and an added cost for users, not to mention the risk of potential errors.

As aforementioned in Section 4.3.1, misinterpretation seems to be a prominent, recurring issue encountered by tax practitioners, where the risk of not understanding an aspect of legislation properly may lead to problems for practitioners and businesses alike. If businesses are unaware of the treatment of a transaction in other MSs, interviewees also mentioned the fines and penalties that would be incurred due to non-submission and non-payment. Other respondents emphasised that the lack of uniformity could lead to double-taxation or non-taxation, which are both intrinsically unfair on the taxpayer and the authorities, respectively. It was also suggested that this absence of uniformity could even promote carousel fraud, and therefore, uniformity would be required

to diminish this possibility, as Respondent R11 suggested that *“[i]f businesses could trade without complexities, then there would be less scope for fraudsters”*. Fraud seems to be a problem, and it is interesting that respondents highlighted this since, as mentioned in Section 1.3, €50 billion worth of revenue is lost every year due to CBT, demonstrating that fraud is very costly to the EU. Therefore, awareness among participants is important, and the fact that this issue has been raised throughout the research process demonstrates that practitioners are vigilant.

#### 4.3.2.3. Challenges due to Lack of Harmonisation

Respondents were asked to describe any scenarios where they have encountered challenges due to lack of harmonisation on chain transactions rules between different MSs. While more than half of the respondents did not encounter any challenges, it should be noted that some of them do not work often with clients who make use of chain transactions. Nevertheless, these respondents possessed a sound knowledge of the applicable rules, new changes, and possible shortfalls of chain transactions. Those interviewees who did encounter difficulties mentioned areas, such as, differing interpretations, and differences in the Right of Deductions rules by different MSs. Other challenges were found in the advisory aspect as this would require sufficient knowledge of VAT rules in different MSs, which may lead to the issue of misinterpretation, as already mentioned above. Once again, this issue of interpretation may be observed as a recurring problem among all respondents, which needs to be

addressed to ensure easier adoption of the mechanism and a more profound understanding of the situation across all MSs.

#### 4.4. Court of Justice of the European Union Case Law

##### 4.4.1. The Impact of CJEU Cases on the Profession

All tax practitioners find CJEU cases fundamental and of great impact on their work since these represent the most recent interpretations, thus providing further clarity in grey areas or areas which are not catered for in the legislation.

Respondents mentioned that case law is immediately binding on all MSs, and therefore, it is essential to remain up to date. Respondents also outlined that CJEU cases are useful as a strengthening argument during VAT advisory, or when addressing issues to the VAT Department. Respondent R7 described CJEU cases as “[t]he unwritten VAT legislation”.

On the other hand, Respondent R12 highlighted that CJEU answers solely questions which are sent to it, and thus, if the question is not worthy, then the answers would be of the same standard. The same respondent added that translations of cases into different languages may lead to wrong conclusions since the meaning would be lost in translation.

However, the representatives of CfR divulged that they follow EU guidelines rather than the case law since these comprise consultations with several parties,

including experts, committees, and several groups; therefore, these are deemed to be more appropriate by CfR. During the interview, it became apparent through unrelated questions that the representatives are aware of ongoing VAT case law, but from a reliance point of view, they explained that they use the guidelines more. It was thus determined that practitioners use a different reference point to the authorities. Practitioners did not mention anything about EU guidelines, while CfR referred only to the guidelines. Nonetheless, practitioners were not asked whether they use any additional material to CJEU cases since the focus of this area was on the impact of CJEU cases specifically; therefore, it may be that guidelines, explanatory notes, and other supporting material are also used by practitioners. The different reliance points could give rise to potential conflict, especially in instances where practitioners address issues to the Office of the CfR, since the two parties would be basing their conclusions on different material, which may not provide identical guidance.

#### 4.4.2. CJEU Cases and the Directive on Chain Transactions

Respondents were asked to explain how CJEU cases impact the scope of the law locally. Most tax practitioners were of the understanding that the authorities would have to rely on the decision taken by CJEU, given that it is immediately binding, even though it would not change the law directly. However, this contradicts the information given by the CfR representatives that they rely on the guidelines rather than case law, given that this is an all-encompassing package, and therefore, should include all information required by the authorities.

Therefore, the reality of the reliance placed by the Office of the CfR is not in line with practitioners' perceptions. As already highlighted in Section 4.4.1, if practitioners are following solely case law in their work, and not taking note of the guidelines, which are being used as the reference point by the representatives of CfR, this may lead to a discrepancy in opinions. Perhaps the reason for this is that the audit firms which VAT practitioners work for are more highly staffed than the Office of the CfR, which is under-resourced. This may lead to a lack of specialist and applied knowledge at the Office of the CfR, making it easier for them to follow the all-inclusive guidelines, rather than following case law and other supporting material.

On the other hand, a few tax practitioners mentioned that the national legislation may need to be tweaked, or new national guidelines issued with the results of new case law. It was highlighted that these cases should be used to further interpret the law, although it was noted that, in Malta, cases are not given much importance as they are given in other MSs. For example, according to Respondent R12, in Cyprus, when a case conflicts with the law or the general practice, they issue a circular to try and fix this. However, to the researcher's knowledge, this is not done in Malta, and could be considered for improvement in order to improve national awareness of influential cases in a timely manner.

#### 4.4.3. Influential Cases on Chain Transactions

When asked to highlight cases which were found to be influential to the treatment of chain transactions, many respondents had no case which came to mind. The



few respondents who did know of cases off-hand mentioned EMAG, Eurotyre, Toridas, Krusmayer, and Facet, stating that these cases are the basis of the Quick Fix on chain transactions. These cases are explained in detail in Section 2.7, where one may acknowledge the correlation between them and the Quick Fixes. It appears that there is agreement among respondents with regards to the influential cases, and although there are not many cases, these few were considered to be game changers to the chain transactions industry, leading to where we are today.

On another note, Respondent R13 mentioned that cases used to apply the exemption on ICS in a B2B supply which are not specific to chain transactions may also provide insights on rules which may be used to determine the supplies in longer chain transactions.

#### 4.5. The Shift Towards a Definitive Regime

It should be noted that 2 respondents did not have a sound knowledge of the Quick Fixes. These are the 2 respondents highlighted in Fig. 4.2 who do not service clients on chain transactions; however, these practitioners deal with many VAT clients, albeit not on this particular area of chain transactions. These 2 respondents, and a few others, were not so familiar with the proposals of Definitive Regime, and hence, their responses were rather limited.

Therefore, more informative and efficient mechanisms are necessary to inform the concerned practitioners of any updates and developments in specific areas

of VAT. The lack of understanding by some is surprising, given that the Quick Fixes and Definitive Regime have been discussed for some time now. Although the practitioners who were not familiar with the Quick Fixes were those who do not service any clients on chain transactions, it is worrying that if a client had to approach these firms, they would not be aware of the new rules which have been in force since 1<sup>st</sup> January 2020.

#### 4.5.1. The Effect of the Move towards a Definitive Regime

In the semi-structured interviews, respondents were asked to envisage the effect of the current proposals of the Definitive Regime on chain transactions. While most interviewees acknowledged that it is difficult to predict the future, they also emphasised that the treatment should be facilitated and have less scope for diversion. It was further suggested that it should give rise to a lower administrative burden than the current treatment. Respondents acknowledged that it would be difficult to implement the Definitive Regime, and would probably be a form of compromise, while one respondent highlighted that they are unsure whether this new regime is adequate to combat fraud.

The findings indicate that there is uncertainty about the current proposals of the Definitive Regime, which is rather expected since there is no final version of this regime yet. However, seeing as the planned implementation date is 2022, the prevailing uncertainty and lack of confidence in the Definitive Regime is rather perturbing, making the implementation date appear unrealistic.

Respondents noted that the main benefits to chain transactions from this shift from the Transitional Regime to the Definitive Regime would derive from the fact that tax would be paid at the place of consumption, which is ideal with VAT. Improved harmonisation between different MSs, as well as the removal of current uncertainties and inconsistencies were noted as positive effects of the Definitive Regime. These would allow all MSs to be on a level playing field, in the sense that the standardised rules would allow for fair opportunities for each country, and would allow practitioners to evaluate scenarios in different MSs with greater ease.

As was already mentioned in Section 4.3.2, respondents highlighted that the application of chain transaction rules to longer and more complex chains would also be useful, but Respondent R10 felt that this would create a burden since longer chains would still only have one ICS and ICA; thus, all other transactions would be domestic supplies. It is meant to reduce scope of abuse, but the main problem mentioned is that the VAT authorities of different MSs would have to chase each other to collect their VAT since OSS would be addressing the compliance obligation of having multiple registrations. This system of OSS to be introduced with the Definitive Regime is discussed in Section 2.9. On another note, some respondents underlined that there would be no scope for Art. 141 as the transaction would be charged solely in the MS of destination.

As explained in Section 1.2.6, the Definitive Regime would tax all cross-border supplies in the MS of destination thereby clarifying further the law, reducing many difficulties in interpretation, while ensuring more harmonisation. Respondents

additionally find the widened scope of application useful, showing their support for the new measures being implemented. The removal of scope for Art. 141 was brought up again, but the same reasoning as in Section 4.3.1.4 applies, and thus, this is not so clear yet, and one should wait for further guidance from the Commission.

#### 4.5.2. The Intra-Union Supply and the Certified Taxable Person

Interviewees were asked to give their opinion on the proposed Intra-Union Supply and CTP, which were discussed in Section 2.9.

The proposal for the Intra-Union Supply is to change ICS and ICA into one transaction, namely, an Intra-Union Supply. Most respondents believe that this proposal would simplify the current system since there would only be one transaction; thus, determining PoS would be much more straightforward. According to Respondent R7, *“[i]t is crystal clear where the transaction will be taxed and who will tax who”*.

Respondents noted that, although this should reduce the current VAT gap, fraudsters would still find new areas to exploit. Shortfalls mentioned with respect to this concept include the uncertainty about documentary evidence, and cashflow implications for businesses since RCM would no longer remain applicable. The researcher noted that the cashflow implications would differ from business to business, depending on their liquidity and size, which may create an unnecessary burden on SMEs, which make up the majority of EU businesses.

The burden arises since, with the current regime, the VAT implication of cross-border B2B supplies is nil due to RCM, whereas now it would be taxed in the MS of consumption, with no application for RCM.

Another highlighted issue was the lack of trust between different authorities where, as already mentioned in Section 4.5.1, MSs would need to rely on each other to collect their own VAT. With reference to the literature presented in Chapter 2, the scope of the EC is to avoid multiple registrations. However, one respondent mentioned the following scenario which may present issues, where Greece would have to collect German VAT on behalf of them, which the Germans would not be comfortable with. This would give rise to political issues, where countries with close ties would place more trust in each other than those who may have possible underlying conflicts. This is an issue which could cause the Definitive Regime to collapse, and would, therefore require careful consideration by the EC beforehand.

These cited shortfalls demonstrate that practitioners seem uncomfortable with this proposal. Indeed, Respondent R13 wondered, *“I don’t know if the burdens that are going to be imposed on traders will be more significant than the success of VAT Fraud saved”*,

thus demonstrating the uncertainty about these elements.

It transpired that the EC is proposing new laws to combat past problems; however, it is possible that different problems would arise, or the same problems would be encountered, but this time, by a different party in the transaction. As

mentioned by Respondent R13, the EC must ensure that the new system is effective, in that it does not enforce mechanisms which would be detrimental to businesses, especially small businesses. An optimum level between VAT fraud saved and imposed compliance burdens needs to be established in order to ensure a smooth transition which would benefit all parties involved.

As for the proposed introduction of CTP, respondents stated that this would be an additional burden on both the supplier and the customer. Respondent R6 mentioned that, *"[a]lbeit that this is aimed to reduce fraud and effectively reduce the VAT gap, I believe it will not be an easy task"*. These findings seem to coincide with the findings on the Intra-Union Supply, where the measures aimed to reduce VAT fraud end up creating compliance burdens for the businesses actually involved in this type of trade. Other problems found by respondents include doubts on whether the tax administrators would be able to cater for all the data that needs to be collected to carry out the process of registering CTP. As mentioned in Section 2.9.1, in order for TP to become CTP, they must demonstrate compliance with regular tax payments, have well-organised internal controls, and may exhibit proof of solvency. Therefore, it may be noted that authorities would need to gather data from current TPs and monitor them constantly to ensure that they satisfy continuously the requirements for CTP. It is still too early to assess how each MS would have the necessary resources to conduct this ongoing exercise, but it is essential that this is done effectively to avoid discrediting the notion of CTP.

However, another respondent acknowledged the burden which CTP would entail, favourably highlighting that this would, however, enhance control mechanisms and counter the pitfalls of the Intra-Union Supply. Since CTP would allow for the application of RCM, thus maintaining the current system, in a way, this would eliminate some of the shortfalls of the Intra-Union Supply mentioned earlier, including the VAT burden and trust issue between MSs.

On the other hand, some respondents highlighted a shortfall of this mechanism in the case of SMEs which, according to Respondent R4, are the *“backbone of the EU economy”*

and may have to miss out on being CTPs if they cannot afford to keep up with the requirements due to compliance costs. This is in line with the literature presented in Section 1.2.3 that the EU is home to 21 million SMEs, and correlates with the issue mentioned in terms of the compliance costs for the Intra-Union Supply.

Respondents also showed concerns over uniformity where, it was again mentioned that, although these concepts are there to solve a problem, they end up creating another problem elsewhere. The issue of fraud was again mentioned in this respect, and appears to be a recurring theme, since respondents worry that by fixing the VAT gap in one area, it would just reappear in another area.

Therefore, respondents worry that since this may not be applied uniformly in each MS, different problems and eligibility thresholds might arise across the EU. This was found to be in contrast with existing literature since, according to the EC,

CTP would be mutually recognised in all MSs and would also be reviewed bi-annually. Therefore, it appears that respondents do not believe the EC will maintain uniformity between MSs or ensure continuous checks on CTPs.

According to the CfR representatives, this concept has been placed on the shelf for the time being. However, Respondent R15 raised the question that, since we would be creating a list of all who are compliant, would the other TP be considered non-compliant? Respondent R12 proposed an alternative to combat this issue, suggesting that all TPs would have the benefits of CTP, and instead, the authorities are stricter on TPs where they find fraud, therefore creating a blacklist. This would also be more cost effective as most companies are compliant with VAT obligations, while few are non-compliant or fraudsters. Such a mechanism would be a win-win situation, where the authorities would be able to monitor those who are non-compliant and put them at a disadvantage to other TPs, encouraging them to be compliant, while companies which are compliant would not undergo unnecessary compliance costs and would benefit from RCM.

It was highlighted many a time that, although these concepts appear in one way on paper, we need to wait and see how they will be implemented, as this may differ substantially. This is supported by the element of uncertainty about such concepts since they were meant to be introduced with the 2020 Quick Fixes, but have been delayed due to certain problems, some of which have been highlighted by the interviewees.



#### 4.5.3. The Quick Fix on Chain Transactions

Respondents were asked to give their opinion on the effect which the Quick Fix on chain transactions has on the prior treatment of such transactions. In this respect, the term 'prior' refers to the system up until 31<sup>st</sup> December 2019. The new Quick Fix was deemed to facilitate chain transactions by providing more clarity and harmonisation to the conditions which must be present on application, particularly matters related to transport when this is handled by IO. As discussed in Section 2.8, these simplifications are conveyed through Art. 36A, which gives a clear picture of how to ascribe transport in situations where it is handled by IO. It transpired that respondents were positive about the Quick Fixes, and expect them to serve for a number of years since they do not envisage that the Definitive Regime would come into force at the planned implementation date. Respondents believe that, since the Quick Fixes are a codification of past CJEU cases, the scope should be to do away with the difficulties which led to the cases in the first place.

However, another respondent views the Quick Fixes as an added complication for businesses engaged in chain transactions, stating that their primary purpose is to reduce VAT fraud for authorities and not to make life simpler for businesses. This issue seems to be a recurring one concerned with the Quick Fixes and the Definitive Regime. It has become apparent that respondents believe that these new and proposed measures are solely aimed to reduce VAT fraud and narrow the VAT gap, hence focusing solely on the authorities' interests. It is evident that respondents feel that this is being done at the expense of businesses which will

have to comply with new regulations, thus increasing their administrative costs. This is an understandable concern given the size of most EU businesses, thus making some measures unsustainable.

However, the researcher appreciates that, from prior findings, it is evident that these measures have advantages for businesses as well as the authorities. Although some benefits may result in an added cost for businesses, the intention of the EU is to improve the situation for all players in the industry, as has been made clear through its publications. Understandably, for this to be done, different advantages and disadvantages will be encountered by businesses and the authorities in order to allow for both sides to benefit from these new measures.

#### 4.6. Beneficial Improvement and Growth Potential of Businesses

##### 4.6.1. Effect of Current VAT Treatment on Businesses involved in Chain Transactions

According to the respondents, the current VAT treatment of chain transactions lacks clarity, and poses issues of uncertainty for businesses involved in such situations, thus, possibly, leading to an increase in administrative costs required to combat the complexity. Interviewees added that, instances where not all conditions of the simplification are met discourage CBT, again due to the complexity of these arrangements. However, this has already been mentioned earlier in Section 4.3.1.3, and it is important to keep in mind that, being an

exception, this is an added bonus, and it is therefore expected that the conditions would not be fulfilled by all.

Supporting the previous statement, another respondent mentioned that, in the VSTR case, the Courts interpreted the law in a way to allow for the triangulation simplification in a scenario where Party B was not registered in an EU MS, hence not meeting one of the conditions. This case is discussed in further detail in Section 2.7.4. Indeed, this case gave rise to much confusion since it went against the principles of the simplification. Despite this, the middleman still should have registered in an EU MS to fulfil their VAT obligations.

Nonetheless, the Quick Fixes are said to be beneficial in the scope to reduce stringent compliance obligations thereby improving clarity in the VAT treatment of such chain transactions by providing further details on the rules, while reducing divergences.

One respondent highlighted that, many EU countries today import from Asian countries, primarily China, and thus, less chain transactions within the scope of the Directive are being used today. This may be one reason why some interviewees suggested an expansion in scope, and although understandable, one must keep in mind that the idea is to facilitate CBT within the Community.

#### 4.6.2. Recommendations for Improvement and Simplification of the Mechanism

When asked for recommendations to improve the system of chain transactions, the main point highlighted by respondents was to improve harmonisation between MSs, where possible, by giving less options to MSs. The researcher is of the understanding that giving less options may not be a feasible option given the politics involved in the matter. The options are available to allow MSs to strengthen their systems in different ways based on their society, and thus, removing this may not be suitable.

Other respondents recommended additional guidelines, or more specifically, a central depository of guidelines for practitioners to understand how the same concept is treated in all MSs. Although the Commission has guidelines available, respondents seem to want more guidelines on specific areas to be presented in a comparative manner in order to provide a more holistic view of the situation in different MSs.

On another note, some respondents feel that the administrative burden on these businesses needs to be reduced, while others believe that we should see how the Quick Fixes and Definitive Regime turn out in practice. It was highlighted by one respondent that, since Malta specialises in financial services and not in goods, there is limited experience in this aspect, and maybe, if the island dealt with more trade in goods, it would encounter more issues. Therefore, this finding should be kept in mind since the practical knowledge of Maltese practitioners may

not be thorough enough to identify every shortfall. However, Respondent R6 believes that

*...the definitions are there, the ICS is defined, the ICA is defined, the PoS is defined, where to exempt the supply is defined, where to exempt the acquisition is defined. I don't think it can be easier in my opinion.*

The above seems to demonstrate that maybe there are not as many issues as some practitioners seem to think, and that possibly, obtaining a more profound interpretation may eliminate several issues encountered by practitioners.

#### 4.6.3. Recommendations for Improving the Proposed Aspects of the Definitive Regime

The researcher asked respondents to suggest any recommendations to the current proposals for the Definitive Regime. Interviewees mentioned that further clarity to the new rules to limit misinterpretations would be of use, while other respondents highlighted the fact that, since further details and clarifications are still to be released by the EC, then it would be beneficial to wait and see the final version of the Definitive Regime. For their part, Respondents R14 and R15 do not want the Definitive Regime to be introduced in its proposed format as they feel that fraud would just shift sides. Therefore, they proposed an alternative mechanism, namely, the 'Split-Payment Method', which was explained as an alternative solution to combat fraud, whereby the net amount of the invoice will be paid to the supplier whilst the VAT portion will be deposited into the suppliers' dedicated VAT account, which is then transferred to the respective authorities.

The researcher noted that this seems like an attractive option, since the authorities would be able to receive the VAT due in real time. However, it would need to be assessed for cost effectiveness and reliability.

#### 4.6.4. Impact of the Definitive Regime on the Improvement and Growth Potential of Businesses involved in Chain Transactions

Respondents were asked how they envisage the impact of the Definitive Regime on the improvement and growth potential of businesses involved in chain transactions. Respondents believe that this should have a positive effect since the aim is to exploit the single market and ease those situations which are currently burdensome, thus making businesses more competitive. Respondents also suggested that, if this works, then they predict a higher percentage of SMEs entering the market, which is perceived as an important aspect given that the EU economy is based on SMEs.

Therefore, respondents feel that business would not be stifled with the Definitive Regime, but noted that it is essential to ensure a delicate balance between compliance and administrative burdens.

However, according to Respondent R10, “[w]ell, if it becomes more cumbersome to maintain as a system, it will be an impediment for growth”, citing that the new rules seem to be safeguarding the VAT authorities more than traders, as has been previously mentioned by other respondents in Section 4.5.3. Similarly,

another respondent highlighted the cashflow issues since now, instead of RC, VAT is going to be payable. On the other hand, Respondent R3 does not “...*think VAT is a showstopper for businesses engaged in chain transactions*”.

#### 4.6.5. Updating of Software

Respondents were asked whether they believe existing software would need to be replaced upon adoption of the Definitive Regime. Different responses were provided in this respect as most interviewees believe software would need to be updated with significant adjustments, but not necessarily replaced, while others believe there would be no need for a replacement. Some also noted that it would be worthwhile to wait for the implementation in practice, while others believe that systems should already be revisited due to the Quick Fixes. Similarly, Respondent R4 highlighted that “[*t*]here is a big digital revolution, and this seems to be the direction of travel”.

The researcher understands that it only makes sense that software would need to be updated to correlate with any new laws. The issue here is that some businesses have a small number of transactions, but would still need to maintain updated systems to be in line with any changes to the VAT treatment of certain transactions. This leads to disproportional costs for some businesses. Indeed, the reason for including this question in the research study is because this seems to be an area which is not enforced enough upon the introduction of new rules. In line with Respondent R4’s comment, software is an area which needs to be

given greater importance in this day and age since all business transactions are recorded digitally.

#### 4.6.6. Attainability of the Unanimous Consent for Application of the Definitive Regime

As a final question to conclude the interviews and obtain a forward-looking perspective, given that the Definitive Regime requires unanimous consent, respondents were asked whether they feel this will be implemented shortly. The majority of respondents, including R14 and R15, replied in the negative, with Respondent R1 observing that *“the concept is high in the sky”*.

Respondents do not believe that all MSs could agree on the same conditions and VAT treatments, therefore implying that the EC may be overoptimistic. Reasons cited for this include the fact that MSs have their own agenda, and therefore, this is an element of politics between different MSs. Moreover, as stated by Respondent R4, *“fiscal policy is the last bastion of sovereignty”*, and thus, MSs are not comfortable relying on other MSs to collect their taxes.

Nevertheless, most respondents admitted that they see the Definitive Regime as a move in the right direction. Despite acknowledging that this would not be an easy task, however, since the EU has got this far, and the Quick Fixes have been implemented, then they see no reason why the Definitive Regime would not be implemented too. These respondents acknowledged that it may not be introduced at the proposed date, and that, possibly, not all areas would advance.



Respondents also admitted that this has been so long overdue that, even though it would probably be in the form of a compromise since now qualified majority voting is being suggested, it will be achieved in some form, albeit the politics of the matter are not to be taken lightly.

However, given the diverse responses of participants, one has yet to see how the EU will go ahead with these implementations as the future of this aspect does not seem to be as clear as it may appear on paper.

#### 4.7. Concluding Remarks

This chapter presented the findings and the respective discussion derived from the research process thereby setting the stage for the concluding remarks and recommendations to be put forth in the next chapter.

## Chapter 5

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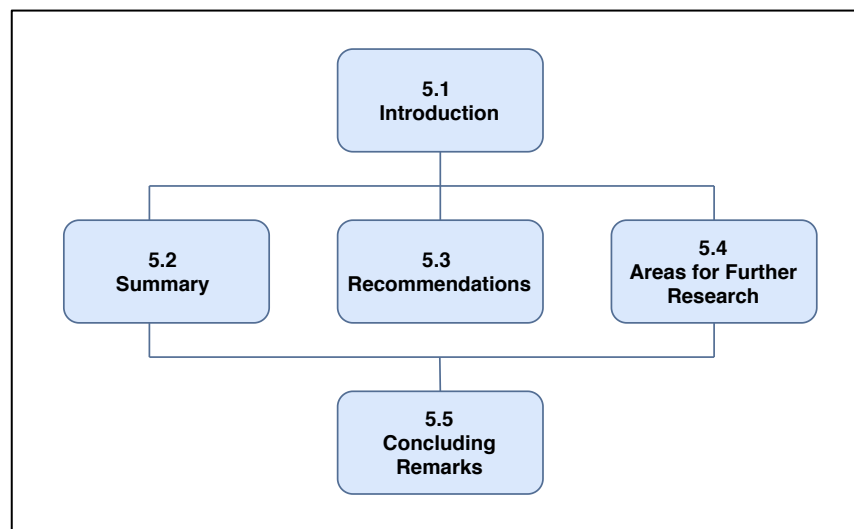
# *Summary, Conclusions & Recommendations*

*“Learn from yesterday, live for today, hope for tomorrow.  
The important thing is not to stop questioning”  
Albert Einstein*

### 5.1. Introduction

As depicted in Fig. 5.1, this chapter summarises the research findings and discussion presented in Chapter 4, while also providing some concluding remarks on the research study. Subsequently, salient recommendations on the research topic are provided, as well as possible areas for further research.

*Figure 5.1: Chapter 5 Outline*



### 5.2. Summary

The aim of this research was to assess the VAT implications of chain transactions from an EU perspective. In line with the four objectives set out in Section 1.4, this was achieved by obtaining an in-depth understanding of the research topic, as well as through the semi-structured interviews conducted with VAT practitioners and the representatives of CfR.

### 5.2.1. The Reasonableness and Possible Shortcomings of the Current Applicable System

Through the first objective, the study ascertains that practitioners do find some shortcomings in the conditions required to apply the triangulation simplification; however, the system appears to meet its purpose of avoiding unnecessary registrations. On the other hand, when it comes to longer and more complex chain transactions, it is evident that further guidance from the legislating bodies is required, although it has been acknowledged that the situation has improved substantially with the Quick Fixes. With regards to the differences in treatment between MSs, a positive finding was that not many respondents encountered problems in this respect; however, further harmonisation would be appreciated by practitioners to facilitate their work.

Overall, the shortcomings may be addressed through greater coordination between MSs. The issues may be potentially addressed with further EU-wide guidance to follow on the Quick Fixes, which provide a certain degree of uniformity.

### 5.2.2. The Impact on the Interpretation of CJEU Case Law

With respect to the second objective, CJEU is noticeably a fundamental body when dealing with scenarios of chain transactions since the Courts provide further guidance on matters not explicitly explained through the Directive. The codification of the crucial cases discussed in Chapter 2 through the Quick Fixes was perceived as a step in the right direction by respondents.

It is important that locals keep abreast of emerging case law, and that the procedures are in line with any new rulings. Given that case law represents the most recent pronouncements by the Courts, any further clarifications of chain transactions would be primarily exhibited in such cases.

### 5.2.3. The Effect of the Quick Fixes and the Definitive Regime

When looking at the third objective, the Quick Fix on chain transactions was perceived as a positive move by the EU, portraying a clearer picture of the applicable treatment for chain transactions in different scenarios. On another note, when it came to the Definitive Regime, although it was highlighted that this will provide the ideal situation of taxing in the place of consumption, the system appears to present a number of shortfalls due to how this has been proposed to date.

Given that its aim is to reduce VAT fraud, it seems that further administrative burdens would fall on businesses making use of such measures in order to keep fraud at bay. The emphasis placed on this issue by participants reflects not only their awareness of compliance, but also of the costs involved in order to administer the law properly. It is important that the authorities assist practitioners as much as possible to remain compliant with any new rules, without incurring unnecessary costs.

#### 5.2.4. Recommendations for Beneficial Improvement and Growth Potential

With respect to the fourth objective, it appears that although VAT is not seen as an element which may hinder business, it is important to note that these changes may have adverse effects on the businesses carrying out such transactions due to compliance costs. This is reflected in terms of additional costs to keep practitioners abreast of the latest knowledge of the topic as well as the costs of updating any systems used. A key finding was that the majority of respondents do not believe unanimous consent for the Definitive Regime will be achieved and that this will be introduced in the near future, even though the planned implementation date is set for 2022.

VAT is part and parcel of doing business, and is an unavoidable cost. Therefore, in order to remain sustainable, some measures need to be taken to ensure that the system is not too burdensome. With respect to the unanimous consent required for the Definitive Regime, the negative responses instil a sense of uncertainty about the feasibility of the actual implementation.

### 5.3. Recommendations

The following recommendations for improvement of chain transactions may be considered:

#### 5.3.1. EU Level

1. Clarification of the Impact of Future Changes

The findings demonstrate that respondents are unsure how chain transactions would function under the new Definitive Regime. While some respondents simply

expressed uncertainty, others were under the impression that triangulation would become obsolete, and that there would be no need for specific considerations for chain transactions. Therefore, it would be ideal to have further clarification of how these changes will impact chain transactions as we know them today. This would allow businesses involved in such transactions to be prudent and plan in advance for any effect these changes may have on their systems, operations, and cashflow, giving them time to make any necessary arrangements.

## 2. Practical Explanations for Longer Chains

Given the complexity of some longer chains, it would be helpful to have some practical examples and fictitious scenarios of different types of chains issued by the EC, in addition to guidelines which have already been issued. This would give businesses a solid ground to base their reasoning and hence VAT charging on, thus avoiding complications in later stages of their work.

## 3. Practicalities of the OSS Scheme

The technicalities on OSS are not clear, and thus, they would ideally be clarified as soon as possible. MOSS requires a separate VAT return which is considered burdensome by users (Montebello 2015). If OSS would also require a separate return, this would be an added compliance cost for businesses and should be addressed early on.

## 4. Improved Harmonisation between MSs

It transpired that, as a single market, more harmonisation is necessary between different MSs. Although VAT is meant to be harmonised, the different interpretations of the Directive give rise to different applications of the rules. If full harmonisation cannot be achieved, one could potentially reach a middle ground

by producing a central depository of guidelines for users to compare the treatment of specific aspects of the Directive between different MSs. Assuming harmonisation is not attainable, these would help to address the issue of different interpretations which may confuse practitioners who need to refer to the laws of different MSs.

#### 5. Focus on SMEs

Some current measures, as well as new rules which were recently introduced, and those which are at proposal phase seem to be targeting the large players in the market rather than SMEs. Given that SMEs represent 99% of businesses in the Single Market, the Commission needs to be aware of the added cost this is imposing on SMEs to consider the possibility of simplified submissions and compliance procedures to reduce the burden this causes them.

##### 5.3.2. Local Level

#### 1. Training for VAT Practitioners

Some practitioners' knowledge of CBT in terms of chain transactions was limited, or not up to date. Providing training on the matter would help drive the economy since CBT will always be popular for a small island state such as Malta; therefore, having knowledgeable personnel would help boost this sector. Furthermore, it would be valuable if the Maltese CfR provided further guidance as mentioned above to fill the gap in areas where there is a lack of guidance provided by the EU.



## 2. Training for the General Public

A more alarming concern is that, if practitioners lack knowledge, then general businesses which could make use of such mechanism lack even greater knowledge and may be missing out on certain opportunities. Locally, we should take the opportunity to educate the population, which would then help business to expand overseas.

## 3. Improved Communication with the Office of the CfR

It was found that the authorities do not receive many questions on chain transactions from the public. This could be due to a lack of awareness of the issues that could potentially arise, or possibly due to a lack of availability of contact persons. The authorities could be more proactive, and follow in the footsteps of Cyprus by providing circulars and information sheets. Especially with the introduction of the Quick Fixes and all other changes to VAT which are expected in the coming years, it would help to have a contact point at the Office of the CfR.

## 4. Addressing the Compliance Costs

It transpired that software will need to be updated with the changes that will be brought about to the VAT system in the next few years. Given that software is an essential but costly element of business, it would be useful if the government offered some form of grant, subsidy, or tax credit in this respect to help ease the burden. Malta Enterprise has an important role to play in this regard, and should therefore be more proactive.

## 5.4. Areas for Further Research

The findings of this study have provided valuable insight into the VAT implications of chain transactions. Therefore, Table 5.1 presents related topics that may be potentially considered for further academic research.

*Table 5.1. Areas for Further Research*

	<b>Description</b>
<b>Follow-up Study on the Quick Fixes and Definitive Regime</b>	Given that the Quick Fixes have only been in force for a few months, it would be interesting to assess the situation on chain transactions when practitioners have had more practical experience with the new rules. Additionally, an insightful study would be possible once the Definitive Regime is in place to assess its changes on chain transactions.
<b>Study on the Fraud Gap caused by Cross-Border Trade</b>	The fraud gap caused by CBT is worrying. With a €50 billion revenue loss experienced each year, it would be interesting to understand its contributing factors. This would be helpful to the Maltese economy to understand ways to mitigate this loss.

<p><b>Different Focus</b></p>	<p>This study focused on the viewpoint of VAT practitioners; however, this could be extended to analyse whether the businesses actually conducting these chain transactions share the same stance as practitioners and the authorities. It would be interesting to understand the practical business side of the matter, and assess the varying viewpoints, based on which party in the chain these businesses represent. The scope could be extended to the actual business transactions and how VAT affects them. Although there are not many local businesses carrying out such transactions, an EU perspective on the matter would be valuable.</p>
<p><b>Research Study on the Other Quick Fixes</b></p>	<p>This study assessed the impact of the Quick Fix on chain transactions, which is only one of the four components implemented in January 2020. Therefore, it would be interesting to assess the impact of the other three Quick Fixes on the VAT system.</p>
<p><b>Comparative Study</b></p>	<p>As part of the research process, an interview with a practitioner from Cyprus was carried out to highlight any differences between the two countries. This interview proved to be value-adding, and therefore, a comparative study on the matter with other MSs could bring out some key differences and ideas which may be beneficial to the Maltese system.</p>

### 5.5. Concluding Remarks

Although the changes being implemented to chain transactions are aiding the current situation by providing further clarity, the EC seems to be making minor changes to aid an outdated VAT system which will be completely revamped in the coming years. This is giving rise to additional costs for businesses to remain compliant and competitive in an ever-changing industry. Given that the EU is primarily comprised of SMEs, these burdens may be unsustainable on some, and may even discourage CBT if businesses determine that the cost of compliance is overly burdensome. The EC needs to ensure that in implementing new measures, the businesses in the industry are considered as much as the VAT fraud for the respective authorities.

The single market is constantly growing, and is one of the greatest economies worldwide. In order to further this growth, CBT within the community should be facilitated as much as possible. Chain transactions are a widely used mechanism for CBT in the EU, and it is therefore essential that this mechanism is given a solid ground to encourage further the number of users. As entrepreneur Kevin O’Leary rightly affirms:

*“Whatever you pay attention to, grows.”*

# *Appendices*

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## Appendix A: Interview Schedule with Tax Practitioners

### Section 1: General

1. Does the firm have clients conducting chain transactions and if so, do they apply the triangulation simplification as per Article 141 of the EU VAT Directive?

### Section 2: The Current Situation

2. Give a brief description on your interpretation of the triangulation simplification and the problems which may be present on application.
3. Would you make any changes to the way chain transactions are treated for VAT purposes, according to the national law?
4. What do you believe are the major shortfalls from the current applicable system on chain transactions?
5. If you could amend the current legislation on triangulation, what do you believe would be the most important changes to be made?
6. In your opinion, should the triangulation simplification be applicable if the transport is handled by the end customer (Being C in an ABC transaction)? What are the reasons behind your conclusion?
7. What is your stance on the 5 criteria given in the EU Directive in order to apply Article 141 (Simplification for Chain Transactions). Do you believe these are fair in today's trading environment?

*Listed for ease of reference:*

- vi. “The acquisition of goods is made by a taxable person who is not established in the Member State concerned but is identified for VAT purposes in another Member State;
- vii. The acquisition of goods is made for the purpose of a subsequent supply of those goods, in the Member State concerned by the taxable person referred to in point (i);
- viii. The goods thus acquired by the taxable person referred to in point (i) are directly dispatched or transported, from a Member State other than that in which he is identified for VAT purposes, to the person for whom he is to carry out the subsequent supply;
- ix. The person to whom the subsequent supply is to be made is another taxable person, or a non-taxable person legal person, who is identified for VAT purposes in the Member State concerned.
- x. The person referred to in point (iv) has been designated in accordance with Article 197 as liable for payment of the VAT due on the supply carried out by the taxable person who is not established in the Member State in which the tax is due.”

(Council Directive, 2006/112/EC, Article 141)

### *Section 3: Differences in Applicability between Different Member States*

8. What effect do you believe a harmonized system between all EU countries would have on chain transactions? Do you believe that harmonizing the laws between all 28 states is attainable?
9. What effects do you envisage as a result of the lack of uniformity in the application of Article 194 of the VAT Directive?
10. In your professional work, what were the biggest challenges that you have faced, due to conflicting VAT laws on chain transactions between Member States?

*Section 4: European Court of Justice Position*

11. In what way do ECJ cases effect your work?
12. In what way do you believe that ECJ judgments of different cases impact the scope of the law locally?
13. Are there any ECJ cases in particular which you believe provided a great amount of clarity to the current legislation on chain transactions?  
Towards which areas of chain transactions did you find these cases to be beneficial?
14. Do you have any additional views you would like to share regarding the ECJ's position on chain transactions?

*Section 5: Definitive Regime*

15. What do you think will be the effect of moving towards a Definitive Regime, on chain transactions?
16. In your opinion, how will the Quick Fixes impact B2B supplies of goods?
17. In what way do you feel the Definitive Regime will benefit the current treatment of chain transactions the most?
18. What are your views on the below new concepts? What effect do you think they will have on businesses engaging in chain transactions today?  
Do you believe there are any shortfalls in the below concepts proposed as part of the Definitive VAT System?
  - a. The Intra-Union Supply
  - b. The Certified Taxable Person



Section 6: Recommendations for Beneficial Improvement and Growth Potential

19. In what way do you believe the current VAT treatment of chain transactions has an effect on businesses involved in cross border trade?
20. Do you have any recommendations to improve the current system on chain transactions?
21. Are there any aspects you can think of which would make the system on chain transactions easier?
22. Do you have any recommendations to improve the Definitive Regime which is due to be introduced in the next few years?
23. How do you envisage that the introduction of the Definitive Regime will impact the improvement and growth potential for businesses engaging in chain transactions?
24. Do you think that the existing software used by businesses will remain relevant or will need to be replaced to adopt the Definitive Regime?  
Why?
25. The Definitive Regime requires unanimous consent by all Member States. Do you think this is attainable in the near future, and hence that the Definitive Regime will be implemented shortly?

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Appendix B: Interview Schedule with Representatives from CfR

Section 1: General

1. Could you please provide an overview of the work that you have performed in your capacity on behalf of the VAT Department in relation to chain transactions?

Section 2: The Current Situation

2. Could you give a brief description on your interpretation of the triangulation simplification and the problems which may be present on application.
3. Would the VAT Department make any changes to the way chain transactions are treated for VAT purposes, according to the Directive?
4. What do you believe are the major shortfalls from the current applicable system on chain transactions?
5. What are the most frequently asked questions on the VAT treatment of chain transactions?
6. In your opinion, should the triangulation simplification be applicable if the transport is handled by the end customer (Being C in an ABC transaction)? What are the reasons behind your conclusion?
7. What is your stance on the 5 criteria given in the EU Directive in order to apply Article 141 (Simplification for Chain Transactions). Do you believe these are fair in today's trading environment?

*Listed for ease of reference:*

- xi. “The acquisition of goods is made by a taxable person who is not established in the Member State concerned but is identified for VAT purposes in another Member State;
- xii. The acquisition of goods is made for the purpose of a subsequent supply of those goods, in the Member State concerned by the taxable person referred to in point (i);
- xiii. The goods thus acquired by the taxable person referred to in point (i) are directly dispatched or transported, from a Member State other than that in which he is identified for VAT purposes, to the person for whom he is to carry out the subsequent supply;
- xiv. The person to whom the subsequent supply is to be made is another taxable person, or a non-taxable person legal person, who is identified for VAT purposes in the Member State concerned.
- xv. The person referred to in point (iv) has been designated in accordance with Article 197 as liable for payment of the VAT due on the supply carried out by the taxable person who is not established in the Member State in which the tax is due.”

(Council Directive, 2006/112/EC, Article 141)

### Section 3: Differences in Applicability between Different Member States

- 8. What effect do you believe a harmonized system between all EU countries would have on chain transactions? Do you believe that harmonizing the laws between all 28 states is attainable?
- 9. What effects do you envisage as a result of the lack of uniformity in the application of Article 194 of the VAT Directive?

### Section 4: European Court of Justice Position

- 10. In what way do ECJ cases effect the work of the VAT Department?

11. In what way do you believe that ECJ judgments of different cases impact the scope of the law locally?
12. Are there any ECJ cases in particular which you believe provided a great amount of clarity to the current legislation on chain transactions?  
Towards which areas of chain transactions did you find these cases to be beneficial?

### Section 5: Definitive Regime

13. What do you think will be the effect of moving towards a Definitive Regime, on chain transactions?
14. In your opinion, how will the Quick Fixes impact B2B supplies of goods?
15. In what way do you feel the Definitive Regime will benefit the current treatment of chain transactions the most?
16. What are your views on the below new concepts? What effect do you think they will have on businesses engaging in chain transactions today?  
Do you believe there are any shortfalls in the below concepts proposed as part of the Definitive VAT System?
  - c. The Intra-Union Supply
  - d. The Certified Taxable Person

### Section 6: Recommendations for Beneficial Improvement and Growth Potential

17. In what way do you believe the current VAT treatment of chain transactions has an effect on businesses involved in cross border trade?
18. Do you have any recommendations to improve the current system on chain transactions?

19. Do you have any recommendations to improve the proposals of the Definitive Regime which is due to be introduced in the next few years?
20. How do you envisage that the introduction of the Definitive Regime will impact the improvement and growth potential for businesses engaging in chain transactions?
21. Do you think that the existing software used by businesses will remain relevant or will need to be replaced to adopt the Definitive Regime? Why?
22. The Definitive Regime requires unanimous consent by all Member States. Do you think this is attainable in the near future, and hence that the Definitive Regime will be implemented shortly?

## Appendix C: Letter of Introduction



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**LETTER OF INTRODUCTION AND INVITATION TO PARTICIPATE IN RESEARCH**

Monday 18<sup>th</sup> February 2019

Dear Sir / Madam,

This is to introduce Lisa Apap, a Master in Accountancy student at the Faculty of Economics, Management and Accountancy at the University of Malta.

The student is undertaking research within the Department of Accountancy regarding 'An Analysis of the VAT Implications of Chain Transactions: An EU Perspective'. This research aims to explore the conditions which need to be satisfied in order to make use of triangulation, the impact which the Definitive Regime of VAT will have on triangulation, the position of different EU countries on the triangulation mechanism and the applicability of this mechanism in different member states.

In this regard, the said student would like to invite you to contribute on this research project by participating in an interview covering aspects of this topic, as well as providing relevant information, and also providing access to employees within your organization if necessary at your convenience.

This research is important and valuable in enhancing understanding of the subject area and helping practicing professionals and practitioners like yourself, as well as informing policy and support initiatives. The student would be happy to share with you general findings ensuing from this research.

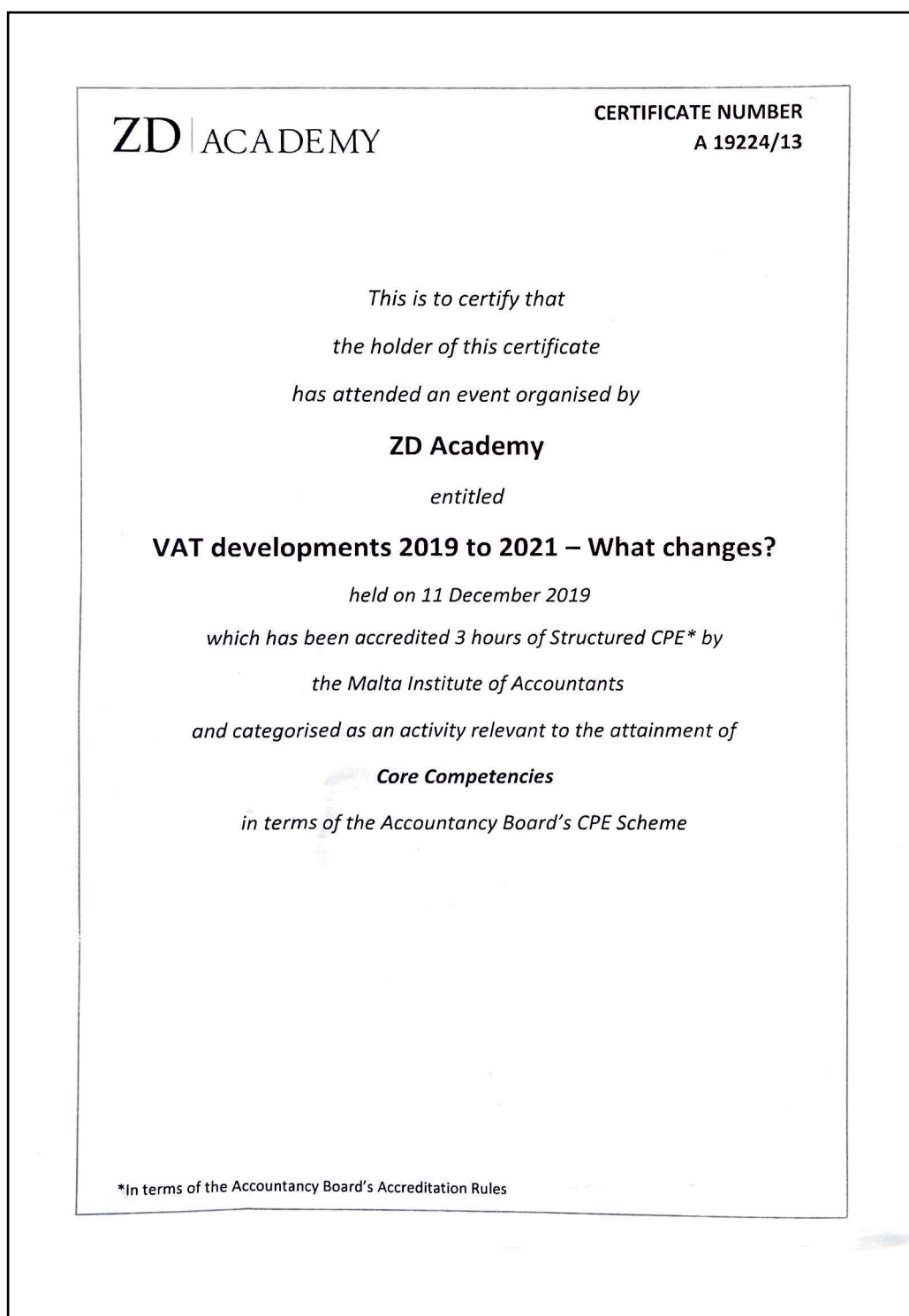
The student is to ensure that any information provided will be treated in confidence, also in line with general Faculty research requirements and ethical obligations. A consent form will be separately provided. You are, of course, entirely free to discontinue your participation at any time or to decline to answer particular questions.

While I thank you beforehand for your consideration as well as your possible kind support and involvement in this important research, should you have any queries on this research please feel free to contact me via email at: [accountancy.fema@um.edu.mt](mailto:accountancy.fema@um.edu.mt).

Yours sincerely,

  
Dr Peter J Baldaachino  
Head, Department of Accountancy  
Faculty of Economics, Management and Accountancy

Appendix D: Certificate of Attendance



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