Intra-Community transactions

VAT quick fixes

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What changed in 2020 in VAT on intra-Community transactions

Since 1 January 2020 new rules on EU trade have become effective, some of them immediately implemented since that date, others transposed later by Law no. 49/2020, of 24 August, but with retroactive effects.

Council Directive (EU) 2018/1910, of 4 December 2018, which amended the VAT Directive (Directive 2006/112/EEC), proposed the adoption by Member States of measures improving the rules applicable to cross-border transactions which should have been transposed by 31 December 2019.

These measures, so-called the VAT “quick fixes” legislative package, include the following matters:

1. Attribution of a new role to the VAT identification number of the acquirer in the context of exempt intra-Community supplies;

2. Approval of a legal provision outlining the supporting transport documentation eligible to presume the intra-Community transport of goods for the purposes of the application of the VAT exemption on intra-Community supplies by Council Implementing Regulation (EU) 2018/1912, of 4 December 2018, which amended the VAT Implementing Regulation (EU) no. 282/2011 - "Regulation"). This rule entered into force on 1 January 2020;

3. Adoption of a simplification scheme applicable to call-off stock arrangements;

4. Implementation of a common rule determining of which transmission in chain transactions should be qualified as the EU supply exempt from VAT.

1. New role of the VAT identification number of the acquirer

The inclusion in the VAT number validation system (VIES System) of the acquirer identification number issued by a Member State other than that from which the goods are dispatched, combined with their communication to the seller of the goods, become substantive conditions necessary for the application of the exemption on the transfer of goods provided for in Article 14(1)(a) of the VAT Regime for Intra-Community Transactions (RITI), in addition to proof of intra-Community transport of the goods. Until now, registration in the VIES was only a formal condition for such exemption.

This exemption also ceases to apply if the seller fails to submit the corresponding recapitulative statement, except in duly justified situations where the taxable person corrects the failure by submitting the missing statement.

Recommendations

Even though many taxable persons already comply with this procedure, the entry into force of this rule, adjusted in Article 14(1)(a) of the RITI, reinforces the importance of the confirmation of the registration of the purchaser in the VIES system, as failure to comply with this requirement may result in the obligation to charge VAT in the corresponding intra-Community supply of goods, as well as to submit the respective recapitulative statement.

2. Proof of transport in intra-Community supplies of goods

Proof of intra-Community transport is the main substantive condition for applying the VAT exemption to intra-Community supplies of goods set out in Article 14(1)(a) of the RITI.

These rules had no legal provision in our legislation, and the Tax Authority ("AT") issued *ad hoc* administrative instructions to clarify the documents considered suitable for this purpose.

However, in order to deal with the fraud affecting these transactions, Article 45-A of the abovementioned Regulation now provides for specific rules of intra-Community transport presumption, whether the responsibility lies with the seller or with the purchaser of the goods. Circular Letter no. 30218/2020, of 3 February, replicates these rules.

These new rules impose a demanding control of the supporting transport documentation. When the seller is in charge of the transport, only two documents are required. On the other hand, when the acquirer is responsible for such transport, three documents are necessary to achieve said presumption. This situation makes the task of taxable persons even more difficult, since the majority of the documents are in the control of the acquirer in the latter case, whereas the seller of the goods is the one who has to determine the application of the VAT exemption.

In this respect, we stress that the AT has clarified in its instructions that in order to be considered as valid supporting documents, CMRs must be signed by the respective acquirer. In addition, the AT also states that the corresponding proof documents must be issued by independent entities, which reduces the means of proof available.

Recommendations

Considering these new rules, we recommend a review of the procedures adopted in order to confirm these new requirements applicable to intra-Community supplies of goods are complied.

Where the acquirer is responsible for the transport, we recommend attaching to the invoice, for the supply of the goods, a draft of a declaration, to be returned by the acquirer with the supporting documents necessary to proof the receipt of the goods. At the same time, the acquirer of the goods should be alerted that if said statement is not returned until the tenth day of the month following the delivery of the goods, VAT will have to be assessed and corresponding financial compensation will be offset against any existing credits.

3. Call-off stock arrangements

The simplification scheme established in Article 7-A of the RITI by Law no. 49/2020, of 24 August, allows non-resident taxable persons who do not have a permanent establishment in Portugal to waive VAT registration when transferring goods from another Member State to the Portuguese territory within a period of one year, to another taxable person, provided that they know their identification at that time and other conditions are also met.

In this case, only one intra-Community transfer of goods is deemed to exist when the ownership of the goods is transferred to the recipient within that one-year period.

According to Circular Letter no. 30225/2020, of 2 October, this one-year period is counted from the date of arrival of the goods in the Member State of destination.

In the event of replacement of the taxable person to whom the goods are addressed, the situation is maintained under certain conditions, as well as if the goods return to the Member State of origin before the end of the one-year period.

If after one year the power to dispose of the goods is not transferred as agreed, or if within that one-year period the goods (i) are transferred to a person other than the one listed in the register indicated below, (ii) are dispatched out of the European Union or to a Member State other than the one of origin, (iii) are destroyed or stolen, or (iv) if other conditions are no longer met, the non-resident taxable person is deemed to carry out an intra-Community acquisition of goods in the Portuguese territory for which VAT is due and to which the respective reporting and payment obligations apply.

Actions

The application of these arrangements requires the fulfilment of certain control formalities by both the seller and the acquirer of the goods.

As regards the seller, in addition to report the transfer in the recapitulative statement of the period in which the transport of the goods begins, the seller must also keep a separate accounting record of the goods transferred to another Member State under this arrangement, supplementing it with the information listed in paragraph 10 of Circular Letter no. 30218/2020, of 3 February

(reproducing Article 54-A of the Regulation). If the seller is supported by a depositary or storekeeper, they should also control part of this information.

In respect to the submission of the recapitulative statement, and given that this arrangement entered into force on 1 January 2020 and that the new model of the recapitulative statement adjusted to these new rules was only approved on 10 September, the respective statements which have not been submitted or which must be replaced for this purpose, must be submitted by 31 December 2020, as indicated in Circular Letter no. 30226/2020, of 2 October.

In regards to the acquirer of the goods, he must also register in his own sub-accounts the goods he receives in the context of this arrangement in order to enable monitoring of its application, also supplemented by the items listed in point 10 of Circular no 30218/2020, of 3 February.

Recommendations

Taking into account that many VAT numbers of non-resident entities have been requested to deal with these situations in the absence of a simplification rule in the domestic law, we suggest re-evaluating these VAT numbers in order to confirm the possibility of their cancellation if the necessary conditions for the application of present scheme are met.

4. Chain transactions

These new rules aim to determine in which Member State the intra-Community transfer of goods exempt from VAT is deemed to take place when there are successive transfers of goods involving at least three parties and the goods are dispatched from one Member State to another Member State, *i.e.*, when there is only one intra-Community transport.

The intra-Community supply is attributed to the "intermediary taxable person" (or "intermediary operator" within the meaning of the mentioned Directive) and the remaining transactions in the chain qualify as internal transfers. This taxable person must have the VAT number of the Member State to which the intra-Community transport of the goods is assigned and, consequently, the transfer of the same nature. Therefore, the "intermediary taxable person" cannot be the first supplier in the chain.

This measure results from the adoption of a rule common to all the Member States, which reflects the case law of the Court of Justice of the European Union in this respect, transposed in our domestic law in Article 14(3) to (5) of the RITI.

Recommendations

We highlight that these chain transactions must also comply with the rules referring to the VAT identification of the person acquiring the goods and the proof of transport set out above.

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