

TAX HOT TOPICS

21 July 2020

Order no. 2148/2020 regarding the amendment and completion of the Instructions for applying the value added tax exemption for the operations provided by Art. 294 para. (1) letters a)-i), Art. 294 para. (2) and Art. 296 of Law no. 227/2015 on the Fiscal Code, approved by Order of the Minister of Public Finance no. 103/2016 (*Official Gazette no. 628 of July 17, 2020*)

Amendments with respect to export operations

- ❖ From a VAT perspective, a person transporting goods outside the European Union in lack of a commercial transaction is also deemed an exporter.
- ❖ If the supplier is not established in the European Union and cannot be an exporter from a customs perspective, as well as if the supplier, being established in the European Union, is not an exporter from a customs perspective, he will be able to justify the VAT exemption if his identification data and that of the export invoice are mentioned in box 44 of the export declaration.
- ❖ In the absence of an export declaration, the export can also be documented by other means of proof confirming the goods actually left the EU territory (in accordance with the conclusions set out in case C-275/18 Milan Vins).
- ❖ The VAT exemption is granted for supplies of services, including transport and ancillary transport services, directly related to the export of goods which contribute to the actual export and which are rendered directly to the exporter or recipient of the exported goods in accordance with the conclusions set out in case C -288/16 LC.

Amendments with respect to intra-Community supplies of goods

- ❖ As regards the documents necessary for justifying the intra-Community transport of goods, the following should be analysed:
 - Regulation 2018/1912 amending the Implementing Regulation (EU) no. 282/2011 as regards certain exemptions for intra-Community transactions (the "Regulation"); [aC](#)
 - Order no. 103/2016 regarding the justification of the VAT exemption for intra-Community supplies of goods and exports, in situations not covered by the Regulation.
- ❖ In the case of taxable persons who meet the conditions provided by Art. 45a of the Regulation, it is presumed that the goods were transported intra-Community and the intra-Community transport of the goods is justified based on the documents mentioned by the Regulation.

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- ⌘ In the case of taxable persons who do not meet the conditions provided by Art. 45a of the Regulation, the intra-Community transport of goods is justified according to the provisions of the Instructions for applying the VAT exemption approved by Order no. 103/2016, respectively:
 - A document directly related to transport: a signed CMR document or a signed consignment note, a bill of lading, the specific air waybill document; and
 - An additional document of the following: an insurance policy corresponding to the dispatch or transport of the goods; bank documents proving payment for the dispatch or transport of goods; official documents issued by a public authority, such as a notary, certifying the arrival of the goods in the Member State of destination; a document certifying receipt of the goods, issued by a depositary in the Member State of destination, other than the buyer of the goods; a written declaration from the buyer stating that the goods have been dispatched or transported to the Member State of destination and including: date of issue, name and address of the buyer, as well as the quantity and nature of the goods, date and place of arrival of the goods, identification of the person who accepts the goods on behalf of the buyer.
- ⌘ Several situations that do not fall within the presumption provided by Art. 45a of the Regulation are exemplified, case in which the intra-Community transport of goods is justified according to Order no. 103/2016. Such situations may be, but are not limited to, those in which:
 - the supplier or the buyer carry out the transport of the goods with their own means of transportation;
 - the supplied goods are means of transportation that move on their own by wheels, by sea, river or air;
 - the persons involved in the transport of the goods are not independent of each other, as well as of the seller and the buyer or their independence cannot be proved.
- ⌘ It is expressly mentioned that the VAT exemption does not apply if the supplier has not complied with the obligation to submit a recapitulative statement or the recapitulative statement submitted does not contain the correct information regarding this supply, unless the supplier can properly justify the deficiency in a manner considered satisfactory by the competent tax authorities.

Other amendments

- ⌘ The period within which the taxable persons can obtain the relevant documents for justifying the VAT exemption as regards the operations provided by Art. 294 and Art. 296 of the Fiscal Code is extended from 90 days to 150 days as of the date when the chargeable event occurred.
- ⌘ Additional clarifications related to vessels and aircraft are provided:
 - in accordance with the decision in case C-291/18 GSP, the platforms used mainly in an immovable position for the exploration/ exploitation of hydrocarbon deposits are not vessels attributed to navigation on the high seas, and hence do not benefit from the VAT exemption;
 - the VAT exemption is also applied for the loading/ unloading services on/ from a vessel attributed to navigation on the high seas.

For additional details regarding the above, you can contact any member of the Taxhouse team or you can send us an e-mail at office@taxhouse.ro.