

VAT Alert: How to justify VAT exemptions?

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Proposal for amending Order 103/ 2016 on justifying the application of VAT exemptions

On February 20, on the Ministry of Public Finance's website, a proposal of the Romanian tax authorities for amending and updating Order 103/2016 regarding the methods for justifying the VAT exemptions applicable for intra-Community supplies of goods and exports was published. Briefly, the draft order provides:

- implementation of new rules in order to justify the european transport in case of intra-EU supplies of goods;
- alignment of rules for applying the VAT exemption for exports with the customs rules;
- extension of the period during which the documents necessary justifying VAT exemption can be obtained → from 90 to 150 days;
- clarifying certain VAT exemptions as a result of recent cases judged at the Court of Justice of the European Union (CJEU).



Proposal for amending Order 103/ 2016 on the application of VAT exemptions

Proof for intra-EU transport, aligned with EU rule or even more restrictive than European rules

The draft order provides that proof of intra-Community transport for applying the VAT exemption for intra-EU supplies will be realized by:

- ➔ Fulfilling the European provisions from art. 45a of EU Regulation 282/2011, meaning by means of two non-contradictory documents, issued by two parties, independent of each other, of the vendor and of the acquirer. In case transports organized by the buyer, a written statement attesting that the goods have arrived in the Member State of destination is also necessary.
- ➔ For cases not covered by the EU Regulation, such as when using and affiliated carrier or own means of transportation, by means of:
 1. **A document directly linked to the transport:** signed CMR or a consignment note, a bill of lading, an air freight invoice, or an invoice from the carrier of the goods;
 2. **An additional document such as:** an insurance policy, bank documents attesting the payment for shipment or transport, official documents issued by a public authority (notary) or by a warehouse keeper, other than the buyer, attesting the arrival of the goods in the Member State of destination, and
 3. **The written statement of the beneficiary,** attesting that the goods were transported to the Member State of destination, regardless of the Incoterms used.

Thus, the Romanian tax authorities clarify the fact that the European regulations have priority in terms of justifying the VAT exemption, and for the cases not covered at European level, they implement more restrictive national rules.

We recommend to all companies performing intra-Community supplies of goods to check their transactions in order to ensure the VAT exemption applicability.

Definition of the exporter from a VAT perspective

The definition of the exporter from a VAT perspective will also include the person who transports goods outside the European Union, in the absence of a commercial transaction (e.g. situations of transfer of own goods outside the EU).

Alignment of rules for justifying the export VAT exemption with the customs provisions

The documents required for proving the VAT exemption for exports, more precisely the invoice and the customs export declaration, are consolidated / replaced by:

- ➔ in the case of excise goods transported under an excise duty suspension regime using EMCS, by the export report attesting that the goods have left the EU territory (instead of the customs export declaration);
- ➔ if the supplier is not established within the European Union and cannot act as an exporter of record from a customs perspective, he will be able to prove the VAT exemption if his identification data and the export invoice are mentioned under box 44 of the customs export declaration;
- ➔ in the absence of the customs export declaration, the actual exit of the goods from the EU territory can be proved by other means (in line with the CJEU decision in case C-275/18 Milan Vins).

Clarifications on the applicability of other VAT exemptions

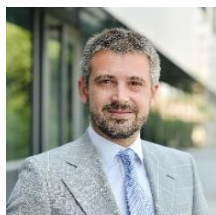
The draft amending Order 103/2016 also provides certain clarifications regarding the application of other VAT exemptions meant to align with CJEU decisions on similar cases. Hence:

- ➔ The services, including transport and ancillary services, directly linked to the export of goods and which can benefit from VAT exemption are only those that contribute to the actual performance of the export and which are provided directly to the exporter or the recipient of the exported goods (in line with the decision CJEU in Case C-288/16 LC IK).
- ➔ It is also mentioned that the drilling rigs used mainly in an immovable position for the exploration / exploitation of resources are not considered vessels used for navigation on the high seas and cannot benefit from VAT exemption (in line with the ECJ decision in Case C-291/18 GSP).
- ➔ The VAT exemption applicable to loading / unloading services on / from a vessel used for navigation on the high seas is applied throughout the supply chain (in line with the ECJ decision in Case C-33/16 A Oy).
- ➔ It is also proposed an amendment regarding the analysis method for determining the period when a vessel is actually and predominantly used for navigation on the high seas by reference to the last 5 years at most, regardless of the owner of the vessel.
- ➔ It is mentioned that the VAT exemption for aircraft supplies is also applicable when the supply is performed to an economic operator, which is not an airline company, but which makes this acquisition for the exclusive use by such an airline company, for example within a leasing operation.

The deadline for presenting the documents required to justify the VAT exemptions is extended

The deadline for presenting the documents justifying the applied VAT exemptions is proposed to be extended from 90 to 150 calendar days from the date when the chargeable event occurs (in principle, the date when goods or services are supplied).

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