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Important amendments brought to Order 103/2016 on justifying the application of VAT exemptions

The amendments brought to the Order 103/2016 on July 17, 2020 aim to align the national legislation with the European rules applicable since January 1 for the intra-community transactions with goods, to correlate the VAT rules for exports with the customs provisions, as well as implementing certain CJEU rulings on VAT exemptions.

In brief, the amendments are addressing the following issues:

- 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).

Ammendments and supplements to 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

According to the Order amending and supplementing Order 103/2020 and largely consistent with the amendments previously proposed by the draft order published on the website of the Ministry of Public Finance on February 20, 2020, the justification of the intra-Community transport in view of 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 an affiliated carrier or own means of transportation, the justification of intra-Community transport in order to apply the VAT exemption, will be realized, based on the national rules, as follows:
 1. A document directly linked to the transport: signed CMR or a consignment note, Air Waybill;
 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, the buyer's statement that the goods have been transported to the Member State of destination.

Compared to the initial draft, the published text of the Order eliminates the obligation of holding three distinct documents for justifying the transport of goods, allowing the justification of the transport with *two different documents*, out of which one can be the buyer's statement.

Thus, the priority of European regulations for justifying the VAT exemption is clarified by the Romanian tax authorities, and for the cases not covered at European level, national rules have been implemented.

Definition of the exporter from a VAT perspective

The definition of the exporter from a VAT perspective will also include the person that 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 justify the VAT exemption if his identification data and the export invoice are mentioned under box 44 of the customs export declaration;
- if the supplier is established within the European Union and does not act as an exporter of record from a customs perspective, he will be able to justify the VAT exemption if his identification data and the export invoice issued by him 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 proven by other means (in line with the CJEU decision in case C-275/18 Milan Vins).

Clarifications on the applicability of other VAT exemptions

In addition, the Order amending and supplementing Order no. 103/2016 also provides certain clarifications regarding the application of other VAT exemptions meant to align with CJEU decisions on similar cases. Hence:

- In order to justify the exemption for the processing of tangible movable goods purchased from Romania or other Member States or imported for processing in Romania, **the obligation to have the document showing that the processed goods were transported outside the EU is introduced** (in addition to the other necessary documents, the contract concluded with the customer and the invoice for the processing services);
- The supplies of 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 CJEU decision 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 CJEU decision in Case C-291/18 GSP);
- The VAT exemption applicable to the loading / unloading services on / from a vessel used for navigation on the high seas is applied throughout the supply chain (in line with the CJEU decision in Case C-33/16 A Oy).
- The method for determining the period analyzed in order to determine if a vessel is actually and predominantly used for navigation on the high seas is also amended, by referencing 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 was 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).

For more details, we invite you to our online seminar on July 29, 2020, from **15:00 to 16:30**. During the seminar, Deloitte experts will share conclusions and ideas on the implementation of these changes, together with special guest **Daniela Tănase** - Vice President of the Chamber of Tax Advisers and Deputy Director General of the Ministry of Finance, Tax Legislation and Customs and Accounting Regulations. For registration, please click [here](#).



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