

Tax & Legal Weekly Alert

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New rules redefine concept of exporter

The Union Customs Code, which entered into force on 1st of May 2016, has amended the definition of exporter in that an exporter has to be established in the EU and has to have the power to determine that the goods will be transported to a destination outside the Union's customs territory. This might have an impact on the VAT exemption for exports as in order to justify the exemption it is necessary to mention the supplier of goods as being the exporter in the export declaration.

The Methodological Norms for the application of the new laws on public procurement and on procurement in the water, energy, transport and postal services sectors (sectorial procurement) were enacted

The Methodological Norms establish the details for the application of the legal provisions on the award of public procurement and sectorial procurement contracts, regulated by the new procurement laws enacted on 26 May 2016: Law no. 98/2016 on public procurement and Law no. 99/2016 on sectorial procurement.



New rules redefine concept of exporter

The exporter from customs and VAT perspective

The new Union Customs Code ("UCC") has amended the definition of exporter. From a customs perspective, the definition of exporter has been restricted to persons established in the EU who have the power to determine that the goods are to be sent to a destination outside the customs territory of the Union.

As per the new UCC, a legal entity is considered established if it has the following on EU territory:

- registered office,
- central headquarters or
- "permanent business establishment" meaning a fixed place of business, where both the necessary human and technical resources are permanently present and through which a person's customs-related operations are wholly or partly carried out.

The new definition has raised questions for non-EU established economic operators that, under the previous Customs Code, were allowed to act as exporter of record (e.g. a Swiss company owning a stock in Romania and exporting these goods when required).

The European Commission recently published guidelines on the definition of 'exporter' in the UCC to clarify whether it is still possible for non-EU established companies to export goods from the European Union.

The guidelines state that when a person who disposes of the export goods does not qualify as an 'exporter', they can still export goods from the Union if they:

- appoint an indirect customs representative established in the EU to perform export operations;
- designate a third person to be responsible for export operations through contractual arrangements.

VAT implications

From a VAT perspective, the exporter is the taxable person that performs the supply (the manufacturer, the owner of the goods) or the one who acts in his own name, but on behalf of another person (buyer-reseller). The VAT exemption for exports applies if the goods are dispatched/shipped outside the EU by the supplier, by the buyer (not established in Romania), or by other persons acting on their behalf.

In order to justify the VAT exemption for exports the required documents are the invoice/documents requested by the customs authority for drafting the export declaration together with one of the following documents: i) certification of completion of the export issued by the customs export office/ export notification certified by the customs export office in the case of electronic export declaration or ii) the third copy of the single administrative document used as paper export declaration, certified on verso by the customs office of exit.

Considering past opinions issued by the tax authorities, the VAT exemption is applicable insofar as the supplier is mentioned as exporter in the export declaration. The example on chain transactions included in the Order no. 103/2016 concerning the justification for the VAT exemption for exports confirms this approach. Thus, this example states that in the case of chain transactions (A-B-C) when the buyer B is in charge of the transport of goods outside the EU:

- if B is mentioned as exporter in the export declaration, A will apply Romanian VAT for the supply carried out by B;
- B will apply the VAT exemption for export and will register for VAT purposes in Romania.

What does this mean for you?

These developments affect transactions performed with partners outside the EU, where typically they were in charge of performing exports.

What should be done?

To assess whether your business could be influenced, it is essential to verify if you perform exports that could be affected by the new changes and, if so, determine what actions would be required.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)

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The Methodological Norms for application of the new laws on the award of public procurement and sectorial procurement agreements were enacted

The Methodological Norms, which are part of the new legal framework on public procurement and sectorial procurement, were published in the Official Gazette no. 422 and 423 on 6 June 2016, being approved through:

- Government Decision no. 394/2016 for the approval of the Methodological *norms of application of the legal provisions regarding the attribution of the sectorial agreement/ framework agreement of Law no. 99/2016 on sectorial agreement*;
- Government Decision no. 395/2016 for the approval of the Methodological *norms of application of the legal provisions regarding the attribution of the public procurement agreements/ framework agreement of Law no. 98/2016 on public procurement*.

Through the approval of the Methodological Norms, the laws on public procurement and sectorial procurement become fully applicable, as the norms establish the necessary details regarding the organization and performance of the awarding procedures, as well as for the performance of the contracts.

Briefly, the Methodological Norms:

- Provide details on the organisation and performance of the procedures applicable for the award of public procurement and sectorial procurement agreements, including the simplified procedures, completing thus the legal provisions of the main laws;
- Provide details for the application of the awarding criteria, establishing clearly the differences between “*the lowest price*” and “*the lowest cost*”, “*the best quality-price ratio*” and “*the best quality-cost ratio*” criteria;
- Offer information on the modality of performing the preliminary market consultations, prior to the start of an awarding procedure;
- Complete the framework laws by providing supplementary information on the verification and evaluation process, as well as on the candidates’ qualification and selection criteria;
- Present the notification procedure of the regulatory authority, EU Commission or Competition Council, in particular cases in which the contracting entity has an exclusive or special right or when the activity is directly exposed to competition on a market that does not have restricted access;
- Establish the subcontracting conditions within the agreements/ framework agreements.

The legal framework on public procurement and concession of works and services shall be fully completed by the approval of the Methodological Norms of application of *Law no. 101/2016 on the concession of works and services*, which shall be adopted by the Government in the near future.

For further questions regarding the aspects mentioned in this alert, please contact us.

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