

PETERKA PARTNERS

THE CEE LAW FIRM

SIMPLIFIED CONDITIONS FOR VAT INTRA COMMUNITY EXEMPTION AS OF JANUARY 2020 IN ROMANIA

Starting on 1 January 2020, according to the provisions of Council Directive (EU) 2018/1910 amending Directive 2006/112/EC as Regards the Harmonisation and Simplification of Certain Rules in the Value Added Tax System for the Taxation of Trade Between Member States (hereinafter referred to as "Directive 1910") and according to the provisions of Council implementing regulation (EU) no. 2018/1912 amending Implementing Regulation (EU) No 282/2011 as Regards Certain Exemptions for Intra-Community Transactions (hereinafter referred to as "Regulation 1912"), important amendments as regards intra-community transactions from the point of view of value-added tax ("VAT") will be introduced.

In brief, the following quick fixes will be introduced:

- (i) Simplification of the rules regarding call-off stocks;
- (ii) Simplification of the rules regarding successive transactions;
- (iii) The amendment/simplification of the conditions for the application of VAT exemption for intra-community supplies of goods.

1. Call-off stocks

- According to Directive 1910, among the changes regarding the application of the simplified VAT regime for call-off stock arrangements/consignment agreements, will be the following:
 - (i) The necessity of the existence of a prior agreement between the taxable person that transfers the goods from a member state and the taxable person from another member state that is entitled to take possession of the goods;
 - (ii) The supplier has the possibility of neither establishing its business nor register a fixed establishment in the member state to which the goods are dispatched or transported;
 - (iii) The customer has the obligation to be a taxable person registered for VAT purposes in the member state of destination;
 - (iv) The supplier is under the obligation to register the transfer of goods in a register whose content will be regulated, and, in addition, to include in the recapitulative statement the identity of the taxable person acquiring the goods, as well as the VAT registration number of the latter from the member state to which the goods were transferred.
- In addition, a 12-month term has been introduced, within which the goods dispatched from another member state should be supplied to the customer. In case such term is not observed, the simplification measures are no longer applicable, and the supplier is bound to register itself for VAT purposes in the state to which the goods were dispatched.

2. Successive supplies

- Measures regarding the allocation of transport for successive supplies will be regulated, in case the transportation is performed by an intermediary operator (purchaser-further vendor), directly from the first supplier in the chain to the last acquirer.
- Thus, according to the general rule, the transportation will be allocated every time on the first supply performed by the supplier to the intermediary operator. Moreover, this provision will be

PETERKA PARTNERS

THE CEE LAW FIRM

correlated with Regulation 2018/1912 regarding the documents necessary for justifying the performance of the transportation by the intermediary operator, so that the supplier may apply the exemption for the intra-community supply.

- As an exception from the general rule, the transportation will be allocated to the second supply, performed by the intermediary operator, if the latter communicates to the supplier a VAT code in the member state to which the goods are dispatched.

3. VAT exemption for intra-community supplies

- Some of the substantial conditions for the application of the exemption of the intra-community supply of goods provided for by Directive 1910 are the following: (i) the goods are supplied to a taxable person or a legal entity that is not taxable, acting as such in a member state other than the one in which the dispatching or the transportation begins; (ii) the taxable person or the non-taxable legal entity for which the delivery is performed are identified for VAT purposes in a member state other than the one in which the dispatch or transportation of goods begin and they have indicated to the supplier this VAT identification number; (iii) the supplier is under the obligation to declare the intra-community supply in the recapitulative statement. In addition, it is important to notice that, in case of absence of declaration or in case of erroneous declaration in the recapitulative statement, the exemption will no longer be applicable.
- Starting with 2020, the proof of the performance of the transport shall be made on the basis of the set of documents provided under Regulation 1912, among which we mention:
 - (i) Documents specific to the type of transport performed (such as a signed CMR document or note, an airfreight invoice or an invoice from the carrier of the goods) issued by two entities that are independent from one another, the vendor or the purchaser, or
 - (ii) A document from the ones listed above, together with one of the following documents: insurance policy with regard to the dispatch or transport of the goods, or bank documents proving payment for the dispatch or transport of the goods, a receipt issued by a warehouse keeper in the Member State of destination, official documents issued by a public authority, confirming the arrival of the goods in the Member State of destination, so that there will be two distinct elements issued by two entities independent from one another, vendor or purchaser.

The provisions of Directive 1910 shall be transposed into the national legislation by the Romanian authorities by 31 December 2019, so that starting on 1 January 2020, such provisions should be applicable.

As regards Regulation 1912, its provisions will be directly applicable on 1 January 2020.

Sources:

1. Council Directive (EU) 2018/1910 amending Directive 2006/112/EC as Regards the Harmonisation and Simplification of Certain Rules in the Value Added Tax System for the Taxation of Trade Between Member States;
2. Council implementing regulation (EU) no. 2018/1912 amending Implementing Regulation (EU) No 282/2011 as Regards Certain Exemptions for Intra-Community Transactions;
3. Explanatory notes on the “2020 Quick Fixes” – VAT Expert Group.