



tax  
news



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Via Birmania 81  
00144 Roma  
Tel. +39 06 591.74.69  
Fax +39 06 591.35.82

Via Bernardino Telesio 2  
20145 Milano  
Tel. +39 02 480.12.534  
Fax +39 02 481.81.43

Viale Giuseppe Mazzini 10  
50132 Firenze  
Tel. +39 055 234.79.02  
Fax +39 055 234.79.09

[www.uhyitaly.com](http://www.uhyitaly.com)  
[info@uhyitaly.com](mailto:info@uhyitaly.com)

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*We have taken the greatest care in preparing the information contained herein, considering the need to make it as concise and timely as possible. However if you intend to use the information in making business decisions or in applying the relevant legal regulations, you are welcome to contact us for a more thorough examination of any specific matters.*

## Subject: The new VAT rules in force as of January 1, 2020

In this issue of our Taxnews, we shall describe the EU's new VAT rules which change the rules for intra-Community transactions (solely as regards the supply of goods) as of January 1, 2020, by effect of the acceptance of European Council Directive 2018/1910/EU and the application of Regulation 2018/1912/EU.

### 1. Conditions for the exemption of intra-Community transactions from VAT

Directive 2018/1910/EU has amended Article 138 of Directive 2006/112/EC, which sets out the conditions for intra-Community transactions to be exempt from VAT.

Prior to its aforementioned amendment, this article specified that "Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, for another taxable person, or for a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods began."

The amended article, in force as of January 1, 2020, provides instead that "Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, where the following conditions are met: (a) the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods begins; (b) the taxable person or non-taxable legal person for whom the supply is made is identified for VAT purposes in a Member State other than that in which the dispatch or transport of the goods

begins and has indicated this VAT identification number to the supplier." Moreover, "The exemption provided for ... shall not apply where the supplier has not complied with the obligation ... to submit a recapitulative statement [i.e., the *Intrastat*] or the recapitulative statement submitted by him does not set out the correct information concerning this supply ... unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities."

The following table lists the different conditions for VAT exemption for intra-Community transactions before and after the directive was amended:

#### Conditions before Jan. 1, 2020

Taxability of the supplier
Taxability of the acquirer
Physical transfer of the goods from one EU Member State to another
Transaction subject to payment

#### Conditions after Jan. 1, 2020

Taxability of the supplier
Taxability of the acquirer
Physical transfer of the goods from one EU Member State to another
Transaction subject to payment
Inclusion of the supplier's VAT identification number in the VAT Information Exchange System (VIES)
Inclusion of the acquirer's VAT identification number in the VIES, assigned by a Member State other than that in which the transport of the goods begins
The supplier must submit a recapitulative statement (i.e., <i>Intrastat</i> )

As regards taxable persons established in Italy, the procedures currently in force essentially remain unchanged. Both in the Italian and in the new Community rules, in order for a transaction to be considered non subject to VAT the supplier must:

- verify the buyer's status by checking the VIES listing before issuing an invoice;
- fill out the Intrastat form relative to the supply of goods.

What changes significantly are the consequences of failure to comply with these two obligations, because from formal obligations they have become substantive conditions for intra-Community transactions. Failure to meet the above conditions will lead to being applied VAT to the supply of goods in question.

## 2. Proof of intra-Community supplies of goods

Council Implementing Regulation 2018/1912/EU has amended Article 45-bis of Council Implementing Regulation (EU) no. 282/2011, by establishing the specific items of evidence that prove that the dispatch or transport of the goods from one Member State to the other actually took place.

The new article introduces two "sets" of items of non-contradictory evidence that for the sake of clarity is divided into two lists (a and b).

### a) Documents relating to the dispatch or transport of the goods,

such as:

- a CMR note signed by the vendor, the acquirer and the carrier of the goods;
- a bill of lading;
- an airfreight invoice;
- an invoice issued by the carrier of the goods.

### b) Specific documents:

- an insurance policy regarding the dispatch or transport of the goods, or bank documents attesting to the payment for the dispatch or transport of the goods;
- official documents issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination;
- a receipt issued by a warehouse keeper in the Member State of destination, confirming the storage of the goods in that Member State.

The Regulation also differentiates the items of evidence based on the party that transports the goods. Therefore, as of January 1, 2020, in order for the transaction to be considered intra-Community and to be able to issue an invoice entitled to VAT exemption, the vendor must obtain and keep the following documents:

### If the goods were transported by the supplier/vendor or by a third party on its behalf:

- at least two items of non-contradictory evidence referred to in list a), issued by two different parties that are independent of each other, of the vendor and of the acquirer, or at least one item referred to in list a) together with at least one item referred to in list b) confirming the dispatch or transport issued by two different parties that are independent of each other, of the vendor and of the buyer.

### If the goods have been dispatched or transported by the acquirer/buyer or by a third party on its behalf:

- at least two items of non-contradictory evidence referred to in list a), issued by two different parties that are independent of each other, of the vendor and of the acquirer, or at least one item referred to in list a) together

- with any at least one item referred to in list b) confirming the dispatch or transport issued by two different parties that are independent of each other, of the vendor and of the buyer; and
- a written statement from the acquirer, certifying that the goods have been dispatched or transported by the acquirer, or by a third party on behalf of the acquirer, and identifying the Member State of destination of the goods. The statement, which the acquirer must provide to the vendor by the tenth day of the month following the supply, must include:
  - the date of issue;
  - the name and address of the acquirer;
  - the quantity and nature of the goods;
  - the date and place of the arrival of the goods;
  - in the case of the supply of means of transport, the identification number of the means of transport; and
  - the identification of the individual accepting the goods on behalf of the acquirer;

According to the new rules, the vendor has to obtain the aforesaid documents within a limited period of time after the conclusion of the transaction, hence proof that the intra-Community transfer took place cannot be produced after the deadline or in any case after the relevant invoice has been issued.

## 3. Rules concerning chain transactions

Chain transactions are one or more successive supplies of goods between three or more economic operators (first supplier, intermediary operator(s), last customer), as opposed to a single intra-Community transport of goods (directly from the first supplier to the last customer).

For example, a chain transaction occurs when B (the intermediary operator) buys goods from A (the first supplier) and delivers them directly to C (the last customer).<sup>1</sup>

Article 36.a, which was inserted in Directive 2006/112/EC by Directive 2018/1910/EU, went into force on January 1, 2020. It establishes to which supply within the chain of transactions shall the transport from the Member State of departure to the Member State of destination be ascribed when it is carried out by intermediary operator B, whether directly or through a third party acting on its behalf.

In particular, it is assumed that the supply of goods with transport, i.e., the supply entitled to the VAT exemption, coincides with the one made to the intermediary operator, whereas the subsequent supply of the goods to the last customer will be subject to VAT.

Nevertheless, in derogation from the general rule, if the intermediary operator has a VAT identification number in the same Member State as the first supplier and has communicated it to his supplier, the supply of goods to the intermediary operator shall be considered internal to the Member State, while the dispatch or transport will be ascribed to the supply of goods by the intermediary operator to the last customer.

Let's describe two different situations:

1. In the case of a FR→IT→GE chain of transactions, where IT is the intermediary operator, the supply which benefits

from the VAT exemption is the one made by FR to IT (the purchase by IT is therefore an intra-Community purchase), while the sale by IT to GE is made in Germany. To avoid having to identify itself for VAT purposes in Germany, IT has to expressly indicate GE as the person liable for VAT in Germany. However, if IT holds a VAT identification number in France and communicates it to FR, the intra-Community transport is ascribed to the sale made to GE by IT using its VAT position in France, while the first sale, i.e., by FR to IT, is a internal supply made within France.

2. In a similar chain of transactions, IT→FR→GE, the intermediary operator is FR, and the VAT-exempt supply is the one made by IT to FR (the purchase by FR is therefore an intra-Community purchase), while the sale by FR to GE is made in Germany (FR may indicate GE as the person liable for VAT). But if FR holds a VAT identification number in Italy and communicates it to IT, the intra-Community transport is ascribed to the sale made to GE by FR using its VAT position in Italy, while the first sale, i.e., by IT to FR, is an internal supply made within Italy.

It should be noted that the rule does not apply to importations from or exportations to destinations outside the Community or if the whole chain of transactions takes place within the same Member State. The new rule also seems not affect chain transactions in which transport is made by the first supplier or the last customer or by third parties on their behalf.

As regards the operational aspects resulting from the application of the new rules, official clarifications are expected from the European Commission and the Italian tax authority.

Aside from the above examples, it is worth clarifying that in the case of chain transactions, in order to apply VAT correctly it is not enough to identify only the taxable person that transports the goods but it is also necessary to evaluate the transaction as a whole, taking into account the

elements identified by the jurisprudence of the EU Court of Justice, such as the conditions relating to right to dispose of the goods as their owner, the conditions regarding intra-Community transport and the VAT identification number of the operators.

#### **4. Harmonization of call-off stock (consignment stock)**

Call-off stock (or consignment stock) is an arrangement whereby a taxable person dispatches goods to another Member State at the warehouse of another taxable person who acquires ownership of the goods upon their being handed over to him.

Up to December 31, 2019, some Member States (including Italy) regarded an intra-Community transfer of goods under a call-off stock agreement to have taken place only at the time that the sale was made, which coincided with the moment in which the acquirer collected the goods from the warehouse. The effects of the intra-Community supply of goods were therefore deferred and the vendor was not required to identify himself for VAT purposes in the Member State of arrival. This rule was allowed provided that the Italian vendor complied with the following obligations:

- to record the dispatch of the goods in the appropriate register as established by Article 50 of Law-Decree 331/1993;
- to issue a bill of lading to accompany the consignment of goods;
- at the time when the goods were handed over to the acquirer, to issue a VAT-exempt invoice as per article 41.1.a) of Law-Decree 331/1993, to fill out the Intrastat form and to record the discharge of the consignment from the above register.

Other Member States deemed the simple transfer of the goods sufficient to treat the call-off stock transaction as an intra-Community supply of goods, and therefore the supplier had the obligation to identify himself for VAT purposes in the Member State in which the goods were transported.

<sup>1</sup> Please note that as regards intra-Community chain transactions with three operators, which of them transports the goods is irrelevant for the purposes of Italian law.



Now, Directive 2018/1910/EU has harmonized the European Union's procedure for call-off stock; the rule currently applicable in the EU is essentially the same as the one previously followed by Italy.

Accordingly, without prejudice to the conditions required by the Directive, the operators in the chain of transactions will not have to ascertain whether they are obliged to identify themselves for VAT purposes in the Member State where the transferred goods are warehoused.

The delayed efficacy operates within 12 months from the arrival of the goods in the warehouse in the Member State to which the goods were dispatched. If within that time limit any of the conditions set out in the new Article 17.a of the Directive 2018/1910/EU ceases to be met, the transaction will be treated as an intra-Community supply of goods.

For example, the suspensive effect will cease to exist (and the transaction will therefore be considered an intra-Community supply of goods) if:

- the acquirer does not collect the goods within 12 months from their arrival;
- the goods are transferred to a taxable person other than the one indicated in the call-off stock agreement;
- the goods are dispatched or transported to a country other than the Member State indicated in the call-off stock agreement;
- the goods have been destroyed, lost or stolen.

Our firm will be happy to provide any assistance that you may need on the above matters.

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**Visit our website:**

**<http://www.uhyitaly.com>**

**For further information:**

**[info@uhyitaly.com](mailto:info@uhyitaly.com)**