

29 July 2020

Fiscal Bulletin



Summary:

1. **Order No. 2148/2020 amending and supplementing the Instructions for applying the value added tax exemption for the operations provided in Art. 294, para. (1), letters a) - i), Art. 294, para. (2) and Art. 296 of Law No. 227/2015 regarding the Fiscal Code, approved by Order of the Minister of Public Finance No. 103/2016 (“Order 2148/2020”)**

Application of VAT exemption with deduction right for certain VAT exempted transactions

In the context of the adoption at EU level of the package containing the so-called “quick fixes” and in order to clarify certain aspects which raised questions among the business community, Order 2148/2020 issued by the Minister of Public Finances was published in the Official Gazette No. 628/17.07.2020.

Thus, Order 2148/2020 has entered into force starting with 17 July 2020 and provides, among others, the following aspects:

1. Change of definition of exporter

It is specified that the exporter from a VAT point of view is the provider who performs supplies of goods which are transported outside the EU territory, both as part of as well as in the absence of a transaction.

2. VAT exemption for exports of goods

It is introduced the obligation of presenting the export report as a justifying document, in case of excise goods moving under and excise duties suspension regime through the EMCS system.

It is specified that in case of exports performed from Romania by a company residing outside the EU which cannot be considered as exporter from a Customs point of view, the VAT exemption can be applied by the latter provided the export declaration contains specific information at box 44.

Last but not least, it is specified that, in the absence of the mandatory documentation, the VAT exemption related to exports of goods can also be applied if the exporter can prove by other means of evidence that the goods left the EU territory.

3. VAT exemption for services directly connected to an export of goods

It is clarified that, in order for the services to be considered as directly connected to an export of goods, the said services must contribute to the performance of the export and to be provided directly either to the exporter, or to the recipient of the exported goods.

4. VAT exemption for intracommunity supplies of goods

It is clarified that the Member State of destination can be different from the Member State who attributed the VAT code communicated by the client to the seller.

In addition, the condition to present as justifying document for the VAT exemption the agreement/order or the insurance documentation is removed.

It is provided the concept of presumption of performance of the intracommunity supply, based on a distinct documentation, and it is clarified that, in cases which do not fall within the concept of presumption previously mentioned (e.g. transport of goods is performed with own resources, the persons involved in the transport of goods are not independent parties between them, as well as between them and the seller and buyer, etc.), the intracommunity transport of goods is justified only with the invoice and the documents attesting the transport of goods to other Member State.

Among the documents attesting the transport of goods, mentioned above, can be the signed CMR and an insurance policy corresponding to the shipment or transport of goods and bank documents attesting the payment for the shipment or transport of the goods.

It is also mentioned the condition which has already been introduced into the Fiscal Code related to the submission of a recapitulative statement (i.e. D390) filled in correctly, in order to benefit from the VAT exemption related to the intracommunity supplies of goods.

5. Other aspects

Presenting the documentation for justifying the VAT exemptions shall be performed in maximum 150 calendar days from the date the taxable event for the respective transaction took place.

vlad.tanase@tuca.ro

Editors

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Alexandru Cristea
Tax Partner
+4 037 413 61 15
alexandru.cristea@tuca.ro

**TZ/A CONSULTANȚĂ
FISCALĂ**

TAX ENTITY OF ȚUCA ZBÂRCEA & ASOCIAȚII

Șos. Nicolae Titulescu nr. 4-8
America House, Aripa de Vest, et. 8
Sector 1, 011141, București, România
T + 4 021 204 88 90
F + 4 021 204 88 99
E office@tuca.ro
www.tuca.ro/tax

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