

News Alert

Tax Department

2020 VAT DRAFT NEWS: Draft adaptation of Law 37/1992, on VAT and its implementing regulation to Directive (EU) 2018/1910, of 4 December, amending Council Directive 2006/112/EC (VAT Directive), which introduces changes, applicable as of 1 January 2020, to harmonise and simplify the provisions for the application of the exemption in intra-Community transactions in general, as well as the regulation of chain transactions and the sale of goods on consignment.

On 1 January 2020, a series of new measures came into force at the Community level, the origin of which is to be found in the European Commission's VAT Action Plan of 7 April 2016, the purpose of which was to establish a definitive system of VAT in intra-Community trade. Since the approval of this definitive regime must be unanimous among the Member States, the Commission decided to adopt, for the time being, a series of measures which were incorporated into Council Directive (EU) 2018/1910 of 4 December 2018, with entry into force, as we said, on 1 January.

Spain has not yet transposed the provisions of Directive 2018/1910 into its domestic legislation. At this moment we only have the Draft to modify the VAT Law that was published last October 1st by the Ministry of Finance, as well as the Draft to modify the Tax Regulations. From both drafts, the following measures will be introduced in Spain:

- Harmonised rules for VAT taxation of sale agreements of goods on consignment or deposit.
- Simplification of chain transactions.
- Conversion of the obligation to include the VAT ID in the VIES into a material obligation and not merely a formal one as has been the case up to now. In addition, there is an unavoidable obligation to prove that the goods have been transported within the Community.

The Directive requires Member States to adapt their national legislation before 31 December 2019 and the entry into force of that adaptation on 1 January 2020. The aim of the internal process of legislative approximation must be to achieve a correct transposition of the rule that will help to materialise the principle of legal certainty and avoid confusing, obscure and incomplete legislation, or legislation that is illegal because it infringes the European Union's laws. Failure to transpose, delay or incorrect or partial transposition, is a breach of Community law.

Together with the previous regulations, we highlight in this Alert the approval by the Council of Implementing Regulation 2018/1912, which will be directly applicable (without the need for transposition to internal regulations) from 1 January 2020. This provision determines which documents must be used to prove intra-Community supplies, establishing, as in the above-mentioned Directive, the obligation to hold the recipient's VAT number as a *sine qua non* requirement for intra-community supplies to be VAT exempted.

Let's look at each of the new measures mentioned above.

Sale of goods on consignment (art. 9 LIVA [Ley del Impuesto al Valor Agregado (Value Added Tax Law)])

Sale of goods on consignment comprises those transactions resulting from agreements between entrepreneurs or professionals for the cross-border sale of goods, where the supplier sends goods from one Member State to another, within the European Union, to be stored in the destination Member State to the benefit of the customer. The goods remain in deposit or consignment, to the benefit of the customer, who will acquire them at a later date as needed.

Currently, this transaction results in a transfer of goods or an intra-Community supply of goods in the Member State of departure of the goods, and an intra-Community acquisition of goods in the Member State of arrival of the goods, in both cases by the supplier. Subsequently, when the customer acquires the goods, the supplier will make a domestic supply in the Member State of arrival where the reverse charge rule will apply and the customer will be responsible for this. This treatment requires, of course, that the supplier be identified for VAT purposes in the destination Member State of the goods.

The new rules provide that supplies of goods under an agreement for the sale of goods on consignment will give rise to an exempt intra-Community supply of goods in the Member State of departure by the supplier and an exempt intra-Community acquisition of goods in the Member State of arrival of the goods by the customer, subject to certain conditions.

As hitherto, self-consumption in the case of an intra-Community supply of goods is deemed to have occurred only if the customer has not acquired the goods after twelve months from the time they were placed at his disposal.

Chain transactions (art 68 LIVA)

Chain transactions are those in which there are three or more purchases of the same goods which are sent or transported to another Member State directly from the first supplier to the final purchaser in the chain, with only one intra-Community transport. The most typical case is that of triangular transactions. Directive (EU) 2018/1910 harmonises and simplifies the taxation thereof.

In order to avoid the different interpretations made to date by the various Member States, to prevent cases of double taxation or non-taxation and to increase legal certainty for the various operators, the Directive provides that dispatch shall be regarded as being linked solely to the supply of goods carried for the benefit of the first intermediary, which will thus constitute an intra-Community supply of VAT-exempt goods. If there are more than two chain supplies, the third and next treatment will need to be analysed.

The shipment will only be considered linked to the supply made by the first intermediary when this intermediary has communicated a Spanish VAT ID to its supplier. In this case, the sale of the Spanish supplier to the first Spanish intermediary (Spanish VAT ID), where the goods are sent to the customer of the first intermediary in another Member State, will constitute a domestic supply subject to and not exempt [from VAT]. The subsequent sale by the first intermediary to their customer established in another Member State shall be exempt as an intra-Community supply of goods.

Tax ID/VAT and Model 349 (Arts 25 & 164 LIVA)

As all Member States are aware that combating fraud in intra-Community transactions of goods requires coordinated and diligent action to ensure that VAT identification numbers (VAT-IDN) are properly assigned to the traders carrying out these transactions, the requirements for applying the exemption to intra-Community supplies of goods have been amended.

For the purposes of applying the exemption to intra-Community supplies of goods, the recipient must have a VAT number issued by a Member State other than the State of origin of the goods and must have communicated it to the vendor. The seller must also include these transactions in the summary declaration of intra-Community transactions (349). Both elements, having the customer's VAT number and properly recording the transaction in form 349, become material, and not merely formal, requirements (as was the case until now) for applying the exemption to intra-Community supplies of goods.

Accreditation of the intra-community transport of goods (art. 13 RIVA):

In order to increase legal certainty, the conditions for considering that an intra-Community dispatch or transport of goods has taken place are harmonised. In this regard, Council Implementing Regulation (EU) 2018/1912 of 4 December 2018, which entered into force on 1 January, amended Implementing Regulation (EU) No 282/2011 in relation to the application of certain exemptions for intra-Community transactions.

The new regulatory text requires, for the application of the tax exemption, that the seller, in the event that the goods are transported by him or by a third party on his behalf, he must be in possession of at least two of the following evidence elements issued by parties independent of each other and of the seller and buyer:

- Signed letter or CMR document.
- Bill of lading.
- Air freight invoice.
- Carrier invoice.

Or be in possession of one of the above items of evidence together with one of the following items of evidence, also issued by independent parties

- Transport insurance policy or bank documents proving the payment of the transport
- Official documents issued by a public authority (e.g. notary public) attesting to the arrival of the goods in the destination Member State
- Receipt issued by a warehouse keeper in the destination Member State confirming the storage of the goods in that Member State

When goods are transported by the buyer or a third party on their behalf, the seller must be in possession of a written declaration from the purchaser (to be delivered within 10 days of the month following delivery) certifying that the goods have been transported by him or by a third party on his behalf, mentioning the destination Member State of the goods and must also be in possession of at least two of the following items of evidence

- Signed letter or CMR document.
- Bill of lading.
- Air freight invoice.
- Carrier invoice.

Or it is in possession of one of the above items of evidence together with one of the following items of evidence, also issued by independent parties:

- Transport insurance policy or bank documents proving the payment of the transport.
- Official documents issued by a public authority (e.g. notary public) attesting to the arrival of the goods in the destination Member State.
- Receipt issued by a warehouse keeper in the destination Member State confirming the storage of the goods in that Member State.