



by XAVIER BREMS

xb@vatdesk.be

Flash n ° 124

The new version of the proof for intra-

An intra-Community delivery of goods is exempt from VAT in the country of departure of transport if it meets the conditions laid down in Article 138 (1) of the VAT Directive. In particular, the seller must provide proof that his goods have actually left the territory for another Member State.

A European regulation taking effect on 01/01/2020 was adopted to try to put an end to the cacophony between the member states concerning the evidence likely to be brought to this effect. Since the beginning of this year, two new presumptions can be used by Belgian companies to demonstrate the effective transport of goods outside the Kingdom.

EBOOK

Intra-community trade in goods



Order

The trap ? An erroneous reading of the new European regulation

Many commentators have concluded a little too quickly to a complete reversal of the VAT rules on proof of transport. The erroneously conveyed idea is that from now on scrupulously respect the new VAT rules decreed by the European regulation under penalty of losing the benefit of the VAT exemption for intra-EU delivery. The result is the panic of many companies active on the European market.

However, those who know the history of the European regulation know very well that it is the simple fruit of a compromise at least between the member states. The evidence that is listed there can also be very difficult to provide by companies (see our article on the subject).

Reason well in VAT

Does this mean that all Belgian companies doing business in Europe now bear increased risk when they invoice their European partners without VAT? **No, of course.**

And to understand this, we must as often recall the basis of reasoning in terms of VAT: it is the supplier who claims exemption from VAT in terms of intra-Community delivery (the famous art. 39bis of the VAT Code) which normally has the burden of proof and thus must be able to demonstrate to the satisfaction of the administration that the goods have effectively left Belgian territory. **The general rule thus fixed for proofs regarding intra-EU delivery is that the supplier claiming the exemption must at all times be in possession of all the documents justifying the reality of the transport outside Belgium.** These documents include, among others, transport documents, carrier invoices, insurance documents and payment documents relating to transport.

This general rule has not been changed and is still in effect.

Companies wishing to set up a new internal procedure allowing them to meet the conditions set by the new European regulation can contact Xavier Brems by phone on 02 / 210.17.72 or by email at the following address:

xb@vatdesk.be

Two new additional European presumptions


However, the above list of documents is not exhaustive and proof of transport can be provided by other means . It is at this stage that the two new European presumptions must be interpreted. One of the **additional** specific means of proof now consists of the company using these two new presumptions.

To put it another way, these presumptions constitute new modes of proof of transport and do not replace the general rule . The basic philosophy of these presumptions is that the contracting parties are considered to have fulfilled their obligation to provide evidence in this regard when specific evidence is provided. **The possession of this evidence allows the reversal of the burden of proof.**

A new national additional presumption

Belgium even took the opportunity to introduce a third additional national rebuttable presumption by virtue of which proof of transport can be provided by the supplier by means of a "**destination document**" relating to these goods in combination with the invoice relating to transport goods, when it is carried out on behalf of the supplier. The possession of these two documents also allows the reversal of the burden of proof.

The addition of this presumption provides a stable regulatory framework to the existing administrative practice provided for by decision ET 129.460 of 07/01/2016.

 Flash 106: the destination document

Your VAT Expert



Xavier Brems

associate

as@vatdesk.be

tel: 02 / 210.17.71

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Contact Us

 BELGIAN VAT DESK SC.SPRL

 Place Constantin Meunier 20/6
Bruxelles - Brussels 1190

 32-2-210-17-70

 info@vatdesk.be

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