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## España introduce cambios en el IVA del comercio intracomunitario

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# Spain introduces changes in the VAT of intra-community trade

Spain Tax Commentary

**Spain has updated its Value Added Tax (VAT) regulations to adapt it to European legislation that seeks to simplify and harmonize trade in goods within the European Union (EU).**

Through Royal Decree-Law 3/2020, of February 4, the Council Directive (EU) 2018/1910, of the Council, of December 4, 2018, and Directive (EU) 2019 have been transposed to the Spanish VAT regulations / 475 of the Council, of February 18, 2019. These norms are complemented with the provisions of the Regulation of Execution (EU) 2018/1912, of the Council, of December 4, 2018.

This transposition involves the introduction of some technical adjustments in Spanish regulations (commonly known as *quick fixes*), which simplify and harmonize certain VAT rules applicable to intra-Community traffic; specifically, those affecting the

exemption of deliveries of goods to another Member State, sales of consigned goods and so-called "chain sales".

We refer to each of them below:

## 1. Exemption on deliveries to another Member State

**a) Requirements for the exemption:** For the application of the exemption to those commonly known as "intra-Community deliveries", it was required until now that the VAT identification number attributed to the acquirer by another Member State be available. This requirement was included in the Spanish standard, but was not included in the directive. In addition, the reality of transport was required to be proven.

Now, it is a condition of the exemption that the operation is correctly reported in the recapitulative state of intra-community operations.

This is about converting these formal requirements into material requirements for the application of the exemption.

**b) Means of proof of transport to another Member State:** On the other hand, they try to harmonize the evidence with which transport to another Member State can be accredited by a system of assumptions, refutable by the Administration, based in documents assessed in the standard; and in any case without restricting the possibility of having other evidence.

That is, the mention of the justification of transport is maintained by any means of proof admitted by law, but the regulations add assumptions that can be used by the employer who applies the exemption on the basis of specific proof documents. These assumptions are contained in Implementing Regulation (EU) 282/2011 and are directly applicable since January 1, 2020.

Specifically, transport will be deemed proven when the following documents are available:

- **When the transport is carried out by the seller:**

- Transport will be deemed accredited when it indicates that the goods have been dispatched or transported by him or by a third party on his behalf and have at least two non-contradictory evidence related to the shipment or transport of the goods, such such as (i) a signed CMR letter or document, (ii) a bill of lading, (iii) an air freight invoice or (iv) an invoice from the carrier of the goods, which has been extended by two separate parties that are independent

each other, the seller and the acquirer.

- The presumption is also applicable if you have only one of the indicated evidence and, in addition, one of the following documents that do not contradict the transport one:

- An insurance policy regarding the shipment or transport of the goods, or bank documents that prove the payment of the shipment or the transport of the goods.
- Official documents issued by a public authority, such as a notary, proving the arrival of the goods to the Member State of destination.
- A receipt issued by a depositary in the Member State of destination confirming the storage of the goods in that Member State.

In the same way as with the first group of supporting documents, these must be extended by two different parts that are independent of each other, the seller and the acquirer.

- **When the transport is carried out by the buyer:**

In these cases, the seller must have a written declaration from the purchaser certifying that the goods have been issued or transported by him or by a third party in his name and in which the Member State of destination of the goods is mentioned.

This declaration must have, as a mandatory minimum content: (i) the date of issue, (ii) the name and address of the acquirer, (iii) the quantity and nature of the goods, (iv) the date and place of delivery of the goods, (v) the identification number of the means of transport (in case of delivery of means of transport) and (vi) the identification of the person who accepts the goods on behalf of the acquirer.

This statement must be sent to the seller no later than the tenth day of the month following delivery.

In addition to this statement, the buyer must have the test documents referred to above and under the same conditions and priority described.

## 2. Sales of consigned goods

Certain rules are modified in relation to the so-called “consignment sales”. Specifically, the modifications affect the sales of goods that are sent to another Member State by a seller not established in that Member State, destined for a warehouse that can be the

customer's own, so that he acquires his property in a Later, depending on your needs. These sales must in any case refer to goods destined for a client that is perfectly identified (tax identification number, name and surname, reason or full company name) from the beginning.

With the previous wording of the standard, these operations involved the realization of an intra-community transfer of the seller in Spain (as the country of destination of the goods), with the consequent obligations of identification and fulfillment of formal obligations, followed by an internal delivery once The client acquired ownership of the goods.

Some Member States, however, had adopted measures to simplify these operations, so that there were differences in treatment that were sometimes the source of numerous practical problems.

In order to give a uniform treatment throughout the European Union, this mode of supply has become specifically regulated. Specifically, these operations will be treated as intra-community deliveries from the country of origin and intra-community acquisitions in the destination country (Spain); and the taxable events will take place at the moment in which the client acquires the property over the goods.

On the other hand, it is obliged to inform in the register book of certain intra-community operations and in the recapitulative state (model 349) of the movement of the goods, the estimation of their value and the identifying data of the customer.

Si, transcurridos doce meses desde la llegada de los bienes (al día siguiente del cumplimiento de dicho plazo de doce meses), la transmisión de la propiedad al cliente no ha tenido lugar o si se incumple cualquier condición establecida en la norma para que se aplique la simplificación de medidas, será preciso declarar la transferencia intracomunitaria, con las implicaciones que ello lleva aparejado.

No existirá, sin embargo, esta obligación si, antes del plazo de doce meses, (i) los bienes se transportan de vuelta al Estado de origen o (ii) si se identifica a un nuevo cliente. En ambos casos se deberá dar adecuado cumplimiento a las obligaciones de registro y declaración específicas.

### **3. Ventas en cadena**

Estas modificaciones se refieren a las ventas sucesivas de un mismo bien cuando se produce un único transporte desde España al cliente último, en otro Estado miembro.

A modo de ejemplo, nos referimos a una venta de bienes de una empresa (A) a otra empresa (B) y sucesivamente de B a una tercera (C) en la que los bienes son transportados desde España a C en Francia.

Este tipo de operaciones ha dado lugar en los últimos años a diversos pronunciamientos del Tribunal de Justicia de la Unión Europea sobre el modo de determinar a qué entrega se debe adscribir el transporte y, en consecuencia, quedar exenta. La adopción de los criterios del Tribunal no ha resultado sencilla en determinados Estados miembros, por lo que se ha considerado conveniente regularlas de forma específica.

The new rules try to simplify the analysis and introduce clarity in the analysis of the location of the two taxable events.

In the example we take as a reference, transport will be charged to the delivery between A and B (which, therefore, will be exempt from VAT). B will make an intra-community acquisition in France, so that the delivery between B and C will thus be located in France.

However, if B provides A with a Spanish identification number for tax purposes, the transport must be attributed to the second delivery, so that the delivery between A and B will be treated as an "internal" sale in Spain - without exemption - and the sale between B and C will result in an "intra-community delivery" in Spain and an intra-community acquisition by C in France.

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