



Item: Watch out for intra-Community transactions: do you have the VAT number of your buyer?

February 18, 2020

The VAT rules for intra-Community transactions have been changed with effect from 1 January 2020. One of the changes concerns the conditions for applying the zero rate for intra-Community deliveries.

New conditions and consequences for applying the zero rate

From 1 January 2020, the following conditions apply for applying the zero rate:

1. The buyer of the delivery is an entrepreneur or another party who is obliged to declare an intra-Community acquisition in the country of arrival of the goods.
2. There is transport from one EU Member State to another in the context of the delivery. This transport must also be able to be proven by the supplier.
3. The supplier has a valid VAT identification number of his buyer. This number can be checked via the VIES system.
4. The supplier has correctly processed the delivery in its Declaration of Intra-Community Performance.

Although there is no practical difference with the rules before 1 January 2020, the consequences after 1 January 2020 can be very different. From January 1, 2020, the application of the zero rate will be rejected if the supplier does not have the VAT number of his buyer. The VAT number of the buyer has therefore become even more important as of January 1, 2020. In our opinion, every VAT number of the buyer from an EU Member State other than the Member State of departure of the goods is sufficient and does not necessarily have to be a VAT number from the EU Member State of arrival of the goods. An ongoing procedure with the Supreme Court shows that the State Secretary may think otherwise.

Recent developments

Advocate General (hereinafter: AG) Ettema recently reached a conclusion in a case about whether a supplier must have a VAT number of his buyer from the country of arrival of the goods in order to be able to apply the zero rate for intra-Community supplies. In this perspective we would like to inform you about this conclusion and its importance for practice.

The stakeholder in this case is an entrepreneur who trades in mobile phones. In 2013, he sold mobile phones to an entrepreneur based in the United Kingdom. The mobile phones are transported from the Netherlands to Germany and Poland. The supplier therefore applies the zero rate to his deliveries due to intra-Community deliveries. He receives a UK VAT number from his customer, because the customer is not (yet) registered for VAT purposes in Germany and Poland. Shortly after the deliveries, the UK tax authorities remove the UK VAT number of the customer from the VIES, due to indications that the customer is a cover for a rogue company. When checking in the VIES, the inspection of the customer's UK VAT number is found by the inspector and after international data exchange with Poland it appears

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have a German and Polish VAT number of his buyer. The State Secretary appealed in cassation against this decision. AG Ettema recently

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reached a conclusion on this dispute. The AG concludes that the aforementioned condition for applying the zero rate does not mean that an entrepreneur must have the VAT number of the customer assigned by the Member State of arrival of dispatch or transport of the goods. The British VAT number of this buyer is therefore also good.

Importance for practice

As a result of the entry into force of the new rules for international trade, it becomes even more important for entrepreneurs to check the VAT numbers of customers before they apply the zero rate and record this in the administration. VAT numbers are withdrawn from the register retroactively by some Member States. The Declaration ICP must also be filled in carefully. The opinion of the State Secretary that it must be a VAT number assigned to the buyer by the Member State of arrival of the delivered goods is, in our opinion, incorrect. We therefore fully agree with the AG's conclusion. Of course, the last word is still up to the Supreme Court.

What to think about ...

It is in the interest of the buyer that use is made of a VAT number of the country of arrival. The buyer must otherwise declare an intra-Community acquisition in both the Member State of arrival and the Member State whose VAT number he used. He cannot deduct the VAT that the customer owes on account of the acquisition in the Member State whose VAT number he used. He can only reclaim the VAT if he proves that he has declared VAT in the country of arrival. It is also important for the supplier to have a VAT number of his buyer from the EU Member State of destination of the goods. It is of course possible that the buyer is not yet registered in the EU Member State of arrival of the goods, for example because he acquires goods there for the first time. However, if the supplier later delivers goods to this customer again and still no VAT number of the country of arrival is provided, in our opinion the supplier would do well to consult with the customer. After the first acquisition, the buyer would have to have a VAT number (on request) in the EU Member State of arrival of the goods. If he does not have that, it may indicate VAT fraud. In the case of VAT fraud, the tax authorities can refuse the deduction of VAT or the zero rate if the supplier knew or should have known that there was fraud. After the first acquisition, the buyer would have to have a VAT number (on request) in the EU Member State of arrival of the goods. If he does not have that, it may indicate VAT fraud. In the case of VAT fraud, the tax authorities can refuse the deduction of VAT or the zero rate if the supplier knew or should have known that there was fraud. After the first acquisition, the buyer would have to have a VAT number (on request) in the EU Member State of arrival of the goods. If he does not have that, it may indicate VAT fraud. In the case of VAT fraud, the tax authorities can refuse the deduction of VAT or the zero rate if the supplier knew or should have known that there was fraud.

Finally

If you have any questions about this subject or want to have the consequences assessed for your situation, you can of course contact one of our advisers.

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Dr., Mr.



MARCO BEERENS ▶

Partner Tax Advice - VAT specialist
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