

Order no. of

amending and supplementing the Instructions for applying the exemption from VAT added operations referred to in art. 294 par. (1) a) - i), art. 294 par. (2) and art. 296 Law no. 227/2015 regarding the Fiscal Code, approved by Ministry of Public Finance no. 103/2016

Pursuant to Art. 10 para. (4) of Government Decision no. 34/2009 on organization and functioning of the Ministry of Finance, with amendments further and art. 5 para. (4) of Law no. 227/2015 on the Fiscal Code, amended and supplemented,

according to Art. 294 par. (1) a) - i), art. 294 par. (2) and (3) and Art. 296 Law no. 227/2015 regarding the Fiscal Code, as amended and supplemented,

Finance Minister issues the following order:

Art. I.

Instructions for applying the exemption from VAT for operations referred to in art. 294 par. (1) a) - i), art. 294 par. (2) and art. 296 of Law no. 227/2015 on Fiscal Code, approved by Ministry of Public Finance no. 103/2016 published in Official Gazette of Romania, Part I, no. 106 of February 11, 2016 is modified and supplemented as follows:

1. In Article 1 (3), point f) is amended to read as follows:

"F) export for VAT purposes is considered supplier referred to in subparagraph d) performing supplies referred to in subparagraph e) and the person transporting goods outside the European Union, in the absence of a commercial transaction. "

2. In Article 1 (4) is amended to read as follows:

"(4) For those operations that do not allow their operators to be possession of documents justifying the exemption at the time of the chargeable event, presentation documents to justify tax exemption will be made within 150 days calendar date on which intervened that the chargeable for the operation. "

3. In Article 2 (2) is amended to read as follows:

"(2) Exemption from tax under art. 294 par. (1) a) of the Fiscal Code is justified by the exporter with the following documents:

a) bill, which must contain the information set out in art. 319 par. (20) the Code fiscal;

b) one of the following:

1. termination of the operation of export certification by the customs office of export or, case export notification certified by the office of export, if the customs declaration export electronically; or

2. Copy 3 of the single administrative document used as a declaration of export support paper certificate on the back of the office of exit; or

3. excise goods moving under suspension of excise duty use EMCS export report submitted to the sender stating that goods have leave the EU. "

4. In Article 2, paragraph (2) the following two new paragraphs (3) and (4) as follows:

"(3) If the supplier is not established in the EU and can not be export quality in terms of customs to justify the VAT exemption is necessary him to hold the customs export declaration, where its identification data and series and / or invoice number issued by him to deliver the goods shipped outside the European Union be entered in box 44.

(4) Where goods leave the European Union can not be documents referred to in paragraph justified. (2) b) the exporter can prove out of the goods from the European Union by other evidence, as pronounced Court of Justice of the European Union in Case C-275/18 'Milan Vins'."

5. Article 3 (2) is amended to read as follows:

"(2) Exemption from VAT under par. (1) is justified provider that made delivery according to art. 2 para. (2) - (4). "

6. Article 4 (1) is amended to read as follows:

"(1) are exempt, according to Art. 294 par. (1) c) of the Fiscal Code provision of services, including transport and ancillary services to transport other than

exempted under Art. 292 of the Tax Code, directly related to the export of goods. They are considered directly linked to exports of goods services that contribute to accomplishing an operation Export and provided directly to the exporter or consignee of the goods exported, so As pronounced Court of Justice of the European Union in Case C-288/16 "L. C." IK. "

7. Article 4 (2), point b) is amended to read as follows:

"B) the contract with the customer, which can be exporter or recipient property; "

8. Article 4 (6) (a) is amended to read as follows:

"A) the contract with the customer, which can be exporter or recipient property; "

9. Article 4 (8) (a) is amended to read as follows:

"A) the contract with the customer, which can be exporter or recipient property; "

10. Article 6 is amended to read as follows:

"(1) are exempt, according to Art. 294 par. (1) e) of the Fiscal Code services made in Romania on movable property acquired or imported for processing in Romania and subsequently transported outside the European Union the service provider or the customer, if it is not established in Romania or the other person on behalf of any of them. Exemption from VAT under art. 294 par. (1) e) of the Fiscal Code apply to supplies of services for processing and if service provider with these services under a contract with a customer not established in Romania purchasing or importing goods to be incorporated in the product processed or to be used directly related to processed products. Exemption from tax referred to in art. 294 par. (1) e) of the Fiscal Code apply to the provision of services the place of supply is considered in Romania, according to art. 278 of the Tax Code, and justified under par. (3). Any good incorporated into the processed product, the packaging or other goods used in direct connection with the processed product are incidental services provided and they will not be treated as supplies of goods, but as part of the service provided.

(2) For goods imported into Romania for processing, quality of importer may have under Title VII of the rules for the application of Law no. 227/2015

regarding the Fiscal Code, approved by Government Decision no. 1/2016 or owner of the goods, is the taxable person registered according to art. 316 of the Tax Code, which imports goods Romania for processing, provided that the goods arising from these operations be transported outside the European Union or be acquired by the taxpayer concerned. In case the goods resulting from the processing are not carried out European Union, the service which imported goods Romania to processing lose the right to deduct VAT relating to importation, with unless the purchaser from processing or invoicing` value of goods imported for processing and value added tax related to property owner, in which case charging a full amount of goods is considered only in order VAT not involve the existence of a commercial transaction. when the place of supply is considered to be in Romania according to art. 278 of the Code tax if the goods resulting from the processing are not carried outside the European Union, provision of processing services are not exempt from VAT. If services They are provided to a beneficiary taxable person established in another Member State, the place of supply It is considered in the Member State where the recipient is established according to art. 278 par. (2) Code fiscal and conditions laid down by the application of this Article, the services being taxable in Romania. However, the provider is not obliged to submit the declaration summary provided for in art. 325 of the Tax Code if services is exempt from VAT the beneficiary State.

(3) Exemption from tax under par. (1) processing tangible personal purchased in Romania or in other Member States or imported for processing Romania is justified by the service provider with the following documents:

- a) customer contract is not established in Romania;
- b) processing the invoice for services performed;
- c) documents showing that processed goods were transported outside the

By European service provider or by the customer if not established Romania, or another person on behalf of any of them, according to Art. 2 para.

(2) - (4).

Example 1: A charge to B services making textile products, raw materials They are purchased from France by client or B. A is a taxable person established in Romania, and B is a taxable person established in Switzerland. The provision of services is in Romania according to art. 278 par. (6) of the Tax Code, because the recipient is not

taxable established outside the European Union, it must justify exemption from VAT, as it have the obligation to pay tax if the operation would not have been exempt from tax.

Example 2: A charge to B services making textile products, raw materials They are purchased from France by client or B. A is a taxable person established in Romania, and B is a taxable person established in Italy. The provision of services is considered to be in Italy, according to Art. 278 par. (2) of the Tax Code and under the conditions set by implementing rules of this Article, services are taxable in Romania. Although operation intra-Community supply is a service provider is not obliged to submit summary statement referred to in art. 325 of the Tax Code if services is exempt from VAT in the recipient or in Italy. "

11. Article (8), after paragraph (1) insert a new paragraph (1¹) as follows:

"(1¹) For the purposes of art. 294 par. (1) h) of the Tax Code, ships used mainly in immobile position to explore / exploit deposits of hydrocarbons at sea are not considered Ships assigned to navigation on the high seas, as the Court and the Court of Justice of the European Case C-291/18 "Oil Grup Servicii SA". "

12. Article (8) (4) - (7) shall be amended to read as follows:

"(4) The justification of exemption from VAT is made by either the supplier / provider, be the beneficiary on the basis of documents showing that the supply of goods and services They intended for lawful purposes. Where vessels are not new or ships who sailed used for passenger / goods for remuneration or activities commercial, industrial or fishing activities that are assigned navigation on the high seas, exemptions VAT under art. 294 par. (1) h) of the Fiscal Code apply if the ship is effectively and mainly used for navigation on the high seas. To determine whether a vessel is effectively and mainly used on the high seas can not be taken into account only objective criteria, such as length or tonnage of the vessel, but they could be used to exclude from the application of exemptions ships in any case do not meet the requirements of Art. 294 par. (1) h) the Fiscal Code, that would not be able to navigation on the high seas. Requirement concerning navigation on the high seas is not applicable VAT exemptions provided for by art. 294 par. (1) lit. h) of the Fiscal Code for vessels used for rescue or assistance at sea, or coastal fishing. To determine whether a vessel that meets the objective conditions to be able to sail at sea and due to the length and tonnage has actually been mainly

used for navigation on the high seas, they can be used provided evidence of Law no. 207/2015 regarding the Fiscal Procedure Code, as amended and supplemented, or any Other evidence provided by the law. Where vessels are not new or ships who sailed, provided that the vessel was effective and mostly used for navigation offshore are considered satisfied if the ship was thus used in the last five years or the entire period of use if it is less than five years. The concept of navigation "in high seas "as defined in Directive 2006/112 / EC of 28 November 2006 on common system of value added tax and art. 294 par. (1) h) covering the Fiscal Code any part of the sea outside the territorial waters of any country that is beyond the limit of 12 miles marine, measured from the base line set in accordance with the international law of the sea (United Nations Convention on the Law of the Sea, signed in Montego Bay 10 December 1982).

(5) The relief provided in the art. 294 par. (1) h) the Fiscal Code apply to both the supply of goods / services performed for the direct benefit of the owners / operators ship and where between suppliers / providers and owner / operator is interposed agent of the vessel. Tax exemption provided for in art. 294 par. (1) h) pt. 2 of the Fiscal Code delivering fuel and supplies to be used on ships assigned to navigation on the high seas and used passenger / goods with payment or commercial, industrial or fishing also applies where the delivery interpose intermediaries acting on their behalf if the time of delivery final recipient is known and if the transfer of ownership of the assets concerned by these intermediaries intervened most early at the same time when the ship operators were entitled to have in fact these goods as if they had their ownership, as the Court Court EU Justice in Case C-526/13 "Fast Bunkering Klaipeda" UAB. Exemption from tax services loading / unloading on / from a vessel assigned to navigation on the high seas applies both services provided by the owner / operator of the ship or the ship agent and services provided in a previous stage, such as a service provided by a subcontractor operator that invoicing` a house note or a carrier, and services that nature provided cargo holder that can be exporter or its importer. In this sense ruled and the Court of Justice of the European Union in Case C-33/16 "A Oy". Exemption from tax on services provided in art. 294 par. (1) lit. h) pt. 1 and 3 of the Fiscal Code is justified by the service provider, insofar place service delivery is considered to be in Romania according to art. 278 of Fiscal Code and whether it should be the person liable to pay tax according to art. 307 par. (1)

Fiscal Code, if not apply a tax exemption. If the place of supply of services referred to in art. 294 par. (1) h) pt. 1 and 3 of the Fiscal Code is in Romania, the tax exemption is justified by the customer, whether it should be the person liable to pay tax according to art. 307 of the Tax Code, where the operation would not be exempt.

(6) If the provision of services and / or deliveries of goods for needs direct vessels and / or their cargo for which exemption under art. 294 par. (1) h) of the Fiscal Code, both the provider / supplier, and others taxable under paragraph. (5) involved in delivery / performance must justify application an exemption affidavit of the owner / operator of the ship or, where appropriate, with a copy of this statement, showing that the vessel was effective and mostly used in the open sea.

(7) In the case of new vessels or vessels not used the exemption under art. 294 par. (1) h) of the Fiscal Code apply based on objective criteria such as length or tonnage of the vessel, which makes them able to be used offshore.

Example 1: A charge by B repair of a ship for transport offshore services being made in Romania. He is a taxable person established in Romania, and B is a taxable person established in Norway. The place of supply service is in Romania according to art. 278 par. (6) of the Tax Code, because the beneficiary is a taxable person not established in the European Union, the provider must justify exemption tax, as would have been liable for the tax if the operation was not exempt.

Example 2: A charge by B repair of a ship for transport the sea. It is a taxable person established in Dubai and B is a taxable person established in Romania. The place of supply is in Romania according to art. 278 par. (2) Tax Code, because the recipient is a taxable person established in Romania. provider not established in Romania, the beneficiary must justify the tax exemption, as it had been person liable to pay tax if the operation was not exempt.

Example 3: deliver a ship that is already used, the vessel meets the criteria B. objectives, such as length or tonnage of the vessel, which enable it to be used off sea. Supplier exemption from VAT if the ship was actually used, mainly in offshore. Provided that the ship was actually and mainly used for navigation on the high sea is considered fulfilled if the ship was thus used in the last five years or lifetime period of use if it is less than five years. "

13. In Article 9, after paragraph (5) insert a new paragraph (5¹), with follows:

"(5¹) Exemption from VAT provided for in art. 294 par. (1) i) of the Code Tax applies to the delivery of aircraft to an operator who is not himself Airline performing mainly international carriage of passengers and / or goods Pay but acquiring its aircraft is for use only by a such company, for example in a leasing. In this sense ruled and Court of Justice of the European Union in Case C-33/11 'A Oy'. "

14. Article 9 (7) is amended to read as follows:

"(7) Justification exemption from value added tax is based on documents stating that supplies of goods and services are intended for lawful purposes and the certificate required by paragraph. (5) airlines established in Romania. If delivery under par. (5¹), to justify the VAT exemption certificate is required provided par. (5) free airline will use the aircraft if an airline established in Romania. Exemption from tax on services provided in art. 294 par. (1) i) pt. 1 and 3 of the Fiscal Code is justified by the service provider, insofar place service delivery is considered to be in Romania, according to art. 278 of Fiscal Code and whether it would have been liable for payment of tax, according to art. 307 par. (1) Fiscal Code, if not apply a tax exemption. If the place of supply of services referred to in art. 294 par. (1) i) pt. 1 and 3 of the Fiscal Code is in Romania, the tax exemption is justified by the customer, whether it should be the person liable to pay tax according to art. 307 of the Tax Code, where the operation would not be exempt. "

15. Article 10 is amended to read as follows:

"(1) The tax exemption for intra-Community supplies of goods referred to in art. 294 par. (2) a) of the Fiscal Code, with the exceptions in section. 1 and 2 the same letters a), is justified on following documents:

a) bill to be referred to the registration code for VAT purposes assigned buyer in another Member State;

b) documents showing that the goods were transported from Romania in another Member State ;.

(2) In the case of intra-Community supplies of new means of transport by a buyer provider does not communicate a valid VAT registration under Art. 294 par. (2) b) of the Fiscal Code, the tax exemption is justified by:

- a) the invoice or, if the vendor is a taxable person, the contract of sale;
- b) documents showing that the goods were transported from Romania to another Member State, where applicable, proof of registration new means of transport in the Member State of destination.

(3) In the case of intra-Community supplies of excise goods under art. 294 par. (2) lit. c) of the Fiscal Code, with the exceptions in section. 1 and 2 of the same letter c), a person taxable or non-taxable legal by a person who does not communicate the supplier code valid registration for VAT purposes, where the transport of goods is carried according to art. 34 para. (1) and (2) times the art. 19 of Directive 2008/118 / EC of 16 December 2008 on the general arrangements for excise duty and repealing Directive 92/12 / EEC, the tax exemption is justified by:

- a) invoice shall contain the registration code for VAT purposes of buyer in another Member State;
- b) documents showing that the goods were transported from Romania in another Member State.

(4) In the case of intra-Community supplies of goods referred to in Article assimilated. 270 par. (10) the Fiscal Code or transfers of goods, the tax exemption provided for in art. 294 par. (2) lit. d) of the Fiscal Code is justified, except as provided in that paragraph on the basis of the following documents:

- a) self invoice provided in art. 319 par. (9) of the Fiscal Code to be mentioned code VAT registration issued in another Member State of the person making the transfer from Romania;
- b) documents showing that the goods were transported from Romania in another Member State.

(5) If intra-Community supplies of goods under par. (1), if the inspection Tax notes that the invoice is entered incorrectly VAT number of the customer for grant VAT exemption will be allowed during the control correcting invoice by the supplier and will check the validity of VAT code of the recipient by tax inspectors. This one invoice will be attached to the original supplier invoice, without generating records in return for charge the tax period in which it operates correctly.

(6) Exemption of an intra-Community supply under Article 294 para. (2) of the Tax Code seller may not be refused merely because the tax authority of another State Member conducted a retroactive cancellation of the registration code for VAT purposes of the person acquiring the property, at an earlier date that supply, although the removal code occurred after delivery of the goods, as the Court Court of Justice of the European Union in Case C-273/11 - Mecsek Gabon.

(7) Art. 45a of the implementing Regulation (EU) No. 282/2011 of the Council of March 15, 2011 laying down measures implementing Directive 2006/112 / EC common system of value added tax, as amended by Regulation Implementing Regulation (EU) 2018/1912 of the Council of 4 December 2018 amending Implementing Regulation (EU) No. 282/2011 regarding certain exemptions **intra, hereinafter Regulation 282/2011, states that if** that they meet the conditions of par. (1) a) and b) of this Article shall be presumed that the goods They have been dispatched or transported from a Member State to a destination outside his, but within the Community. In this case the documents proving that the goods were shipped from Romania to another Member State are under par. (1) and (3) of the article. 45a of Regulation 282/2011.

(8) independent parties, according to art. 45a of Regulation 282/2011 means parts not considered related according to art. 7 pt. 26 of the Tax Code.

(9) If the buyer does not provide seller written declaration provided Art. 45a para. (1) (B) sections. (l) of Regulation 282/2011, until the tenth day of the following month delivery, supplier benefits from the presumption established in this article if you receive this statement later, but no later than the completion of the audit.

(10) In cases not falling under the presumption laid down in Art. 45a of Regulation 282/2011, transport of goods from Romania to another Member State is justified according to the this Article. Such situations may be, but are not limited to, those in which: transport goods is done with own means of transport by the supplier or buyer, goods covered delivery vehicles are traveling alone on wheels, about maritime, river or air, people involved in transporting goods are not parties both independent of each other and the seller and the buyer or can not prove their independence. By own transport means transport owned by the supplier or purchaser of the goods, or which are made available through its leases, lease or other contracts of this type.

(11) For purposes of par. (10), it is presumed that the goods were shipped from Romania to another state member, if it holds documents justifying transportation, such as:

a) the supply of excisable goods moving under suspension of excise duty: electronic administrative document and report of receipt;

b) to the delivery transport means moving one wheel, by maritime, river or air: the contract of sale showing that the goods will

be transported to another Member State, proof of registration of the vehicle in the Member State destination;

c) in the case of delivery of other goods than those referred to in a) and b):

1. transport documents, such as a signed document CMR or waybill signed a bill of lading, an air freight bill, and

2. One of the following documents: an insurance policy appropriate dispatch or transport goods, bank documents proving payment for dispatch or transport property; official documents issued by a public authority such as a notary attesting arrival of the goods in the Member State of destination, a document certifying receipt of the goods delivered the depository of the receiving Member State other than the purchaser of the goods, and

3. a written declaration from the purchaser certifying that the goods concerned were dispatched or transported to the Member State of destination; this written statement include: date issue, the name and address of the buyer and the amount and nature of the goods, time and place arrival of goods, to identify the person accepting the goods on behalf of the purchaser;

(12) Fiscal bodies may reject an assumption that was made in accordance with paragraph. (11), where they have sufficient evidence to show that the goods were not shipped from Romania to another Member State.

(13) The exemption from VAT provided for in art. 294 par. (2) a) of the Tax Code does not apply if the provider has not complied with the requirement in art. 325 par. (1) of the Tax Code of submit a declaration statement summary or the summary submitted by it contains correct information on this delivery, unless the supplier can duly justify deficiency in satisfaction of tax authorities competent.

(13) For the purposes of art. 294 par. (2) 1) of the Fiscal Code shall be considered justified supplier corresponding deficiency, if this is corrected later, but no later than completion audit. It can be considered that the deficiency was remedied in situations such as:

a) the supplier did not include intra-Community supply corresponding summary declaration period in which the tax chargeability occurred, but included a summary declaration related a subsequent term or a statement Amending period;

b) the intra-Community supplier included in recapitulative statement for the period the tax chargeability occurred, but wrong unintentionally one or more information on the supply in question, such as value, type of operation, customer name and performed correction in a statement amending the period. "

Art. II

This order is published in the Official Gazette of Romania, Part I.

Bucharest,

Nr.

Finance Minister

Vasile-Florin CITU