

Movements of goods in EU: how to correct an invoice when the VAT number of the buyer is issued late?

If the VAT ID is issued retroactively: the supplier may correct the initial invoice and apply the exemption. If the number is NOT issued retroactively: the supplier may also correct the initial invoice provided that certain conditions are met.

Background

Until 1 January 2020, the movements of goods between EU Member States (MSs) were exempt if the buyer was a business / taxable person (subject to all other conditions for applying that exemption being fulfilled). The VAT identification (ID) number of the acquirer in an EU Member State (MS) other than that in which transport of the goods begins was not considered a substantive but merely a formal requirement based on the case law by the CJEU, see e.g. *VSTR*, C-587/10, *Mecsek-Gabona*, C-273/11, *Plöckl*, C-24/15, and *Euro-Tyre II*, C-21/16.

On 4 December 2018, Directive (EU) 2018/1910 amending the EU VAT Directive was adopted. With regard to the VAT ID number and the exemption for certain intra-EU transactions, an amended Article 138(1) was adopted. The requirement for a valid VAT ID number of the acquirer in a MS other than that in which transport of the goods begins was included in the EU VAT Directive as a substantive condition for application of an exemption in respect of an intra-EU supply of goods.

Consequently, from 1 January 2020, a VAT ID number of a customer in an EU MS other than that of dispatch became a mandatory requirement to apply an exemption on the intra-EU supply of goods. In addition, reporting intra-EU sales in the EU Sales Listing became a mandatory requirement to apply a zero rate VAT for those sales.

This means that where the person acquiring the goods does not indicate his VAT ID to the supplier or where the VAT ID indicated has been issued by the MS from which the goods are dispatched or transported, the supplier shall have no other option but to charge VAT.

VAT Committee decision in Working Paper 989

The VAT Committee suggest following in cases where the acquirer has not indicated a VAT ID to the supplier at the moment of the chargeability of VAT on the supply, but indicates such number afterwards.

- if the VAT ID is issued retroactively: the supplier may correct the initial invoice and apply the exemption;
- if the number is NOT issued retroactively: if the supplier has no reasons to doubt the good faith of the acquirer and his status of a taxable person at the moment of the supply, the supplier may also correct the initial invoice and apply the exemption;
- if a supplier stopped its activity - MSs must have a mechanism in place that ensures direct refund to the acquirer of the unduly paid VAT, where reimbursement from the supplier becomes "impossible or excessively difficult" (reference is made to CJEU case C-35/05).

Please note that although guidelines issued by the VAT Committee do not bind the MSs who are free not to follow them, they offer useful guidance in the interpretation of the EU law.

Impact on your business

A valid VAT identification number, with the correct prefix, is now a substantive condition in order to apply the exemption in Article 138 of the VAT Directive to so-called 'intra-Community supplies' of goods. business. This may

influence your VAT position and compliance in various EU countries.

If the VAT ID is issued retroactively: the supplier may correct the initial invoice and apply the exemption. If the number is NOT issued retroactively: the supplier may also correct the initial invoice provided that certain conditions are met.

We advise to include those new rules in your accounting systems and business processes.



Contact

Grant Thornton's international indirect tax team and digital advisory team can assist you in your VAT / customs matters, compliance and update of your systems and processes. Please contact us if you would like to discuss.



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