

**TAX**

# Recent changes to Value Added Tax

**E-commerce: New VAT rules**

Law 47/2020 was published on 24 August to implement articles 2 and 3 of Council Directive (EU) 2017/2455 of 5 December 2017, and Council Directive (EU) 2019/1995 of 21 November 2019, modifying the operation of the Value Added Tax ("VAT") system in intra-EU and international e-commerce. This legislation enters into force on 1 January 2021.

The aim of these Directives is to modernise the VAT applicable to e-commerce by essentially ensuring the neutrality of the system and the proper functioning of the internal market. The Directives are also intended to guarantee the effectiveness of taxation of the digital economy, while striving for consistency in applying of the VAT principle of taxation at destination.

These objectives are increasingly important as we are witnessing a boom in distance sales of goods to end consumers supplied by operators established in other Member States and by operators in third countries. They are also important because, until now, there has been no effective taxation in the Member State of consumption.

In addition to these specific objectives, efforts have also been made to introduce mechanisms to simplify processes and cut red tape in meeting the VAT obligations that arise from these transactions. However, the degree of simplification has varied according to way the rules have been implemented by each Member State.

**New e-commerce rules**

One important change to the localisation of intra-EU distance sales and distance sales of imported goods is the switch to taxation in the Member State of destination of the goods.

**"These objectives are increasingly important as we are witnessing a boom in distance sales of goods to end consumers supplied by operators established in other Member States and by operators in third countries."**

To simplify the way VAT works for traders who make marginal intra-EU sales of goods, the new rules also provide that the supplier or transferor of telecommunications, radio and television broadcasting services, electronic services and intra-EU distance sales of goods that is established in only one Member State, is subject to taxation in that Member State. Failing that, the trader is taxed in the Member State from which the services are supplied or the goods are dispatched, if:

- the service is supplied to an end consumer, and
- the amount of the services together with the cross-border sales does not exceed EUR 10,000 for the current or the previous calendar year.

These providers or transferors can always choose to locate their operations in the Member State of destination of the goods and they are bound by this choice for a minimum of two calendar years.

**"Electronic interfaces will have to keep records of transactions carried out through them for a period of ten years and make them available to the Portuguese Tax and Customs Authority ("PTA") when requested."**

Where transactions are carried out using an electronic interface, meaning a market, platform, website or similar, between a supplier in a third country or established in a Member State and an end consumer, whoever provides the interface will be deemed to be the one that personally transfers and acquires the goods. In these cases, VAT is due and payable on the date the payment has been accepted by the end consumer.

Electronic interfaces will have to keep records of transactions carried out through them for a period of ten years and make them available to the Portuguese Tax and Customs Authority ("PTA") when requested, even if they may not be considered as taxable persons for the transfer of the goods or services in question.

If the interfaces do not make these records available, they will be jointly and severally liable for the payment of VAT together with the transferor and the service provider. However, the electronic interface will not be liable for any additional VAT claims if these result from erroneous information provided by the suppliers of the goods. In these situations, the supplier itself will be liable for the tax.

### **Amendment of the exemption applicable to imports of certain goods**

Law 47/2020 provides for an amendment to Decree-Law 31/89 of 25 January 1989, which exempted imports of certain goods from VAT. These include personal goods belonging to individuals from third countries, small consignments of negligible value, capital goods and other equipment imported on the occasion of a transfer of activities and goods imported for general purposes.

This amendment, which is intended to eliminate double taxation, exempts the importation of goods when VAT is declared under the special arrangements for distance sales of imported goods, subject to certain formal requirements.

**"This bureaucratic and administrative simplification exempts sellers from having to register for VAT purposes in each country in which they sell goods or provide services."**

### Approval of special arrangements in cross-border transactions

The special arrangements that have been created apply to taxable persons who: (i) provide services to non-taxable persons, (ii) make distance sales and (iii) make certain internal transfers of goods.

These arrangements are in line with the above-mentioned objective of simplification and they make it possible to comply with VAT obligations at a single point of contact within the European Union. These schemes are, therefore, an extension to the existing one-stop VAT scheme and they enable taxable persons to register, submit declarations and make the payment due in a single country.

To take advantage of these schemes, taxable persons need to register with the PTA. Once they have registered and met the requirements, taxable persons will only be able to benefit from the right to the deduction and to the refund in Portugal if they are not registered for VAT purposes in the Member State where the service is deemed to be provided.

The approval of these special arrangements repeals the previous special VAT arrangements for taxable persons not established in the Member State of consumption or not established in the European Union that supplied telecommunications, broadcasting and electronic services to non-taxable persons established or domiciled in the European Union.

***Scheme I** – Applies to intra-EU distance sales of goods, transfers of goods within a Member State via electronic interfaces and services provided by taxable persons established in the European Union but not in the Member State of consumption*

This scheme allows sellers or service providers using electronic interfaces to take advantage of the “one-stop VAT shop”, an existing website. The scheme now applies by allowing sellers or service providers to register only in Portugal.

This bureaucratic and administrative simplification exempts sellers from having to register for VAT purposes in each country in which they sell goods or provide services.

***System II** – Applicable to services supplied by taxable persons not established in the European Union*

This scheme now makes it possible to meet all the obligations that arise from the provision of services by distance sales from third countries by registering in Portugal.

For these purposes, the PTA will issue a VAT identification number to them. Taxable persons established in a third country must declare that they wish to take advantage of this special scheme and, to do this, they simply need to provide certain identification details.

#### *Scheme III – Applicable to distance sales of imported goods*

The scheme applies to sales of imported goods for less than EUR 150 and to taxable persons having their registered office, permanent establishment or domicile in Portugal, an EU Member State or a third country. In these cases, VAT becomes chargeable at the time the payment is accepted.

#### **Guarantees for taxable persons**

The taxable person may lodge an appeal if they are refused or excluded access to these special VAT schemes. All notifications addressed to the taxable person are made by electronic means.

#### **Possible future issues**

The extension of the one-stop shop will, in fact, make it easier for taxable persons to comply with their VAT obligations. However, it could represent a greater burden in terms of information to be processed by PTA. Therefore, an effective and easy-to-read system will have to be created.

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#### **Law 49/2020 of 24 August: VAT - Harmonisation and simplification of the rules applicable to intra-EU Transactions of Goods**

Law 49/2020 of 24 August implemented Council Directives 2018/1910 of 4 December 2018 and 2019/475 of 18 February 2019. In doing so, it has amended the VAT Code, the VAT Framework for Intra-EU Transactions (*Regime do IVA nas Transações Intracomunitárias* or "RITI") and the Excise Duty Code (*Código dos Impostos Especiais de Consumo* or "IEC").

The measures implemented by this Law are short-term (quick fix) solutions intended to address the challenges posed by the current VAT system. They are designed to be transitional and apply to intra-EU trade between taxable persons subject to VAT relating to:

- Intra-EU chain transaction of goods;
- Intra-EU sales of goods under call-off stock arrangements;
- The amendment to the requirements for the application of the VAT exemption on intra-EU transfers of goods.

### Intra-EU transfers of goods

The amendments introduced by this Law concerning the intra-EU movement goods in chain transactions are essentially intended to standardise their tax treatment by eliminating potential cases of non-application of exemption or application of a VAT exemption to more than one transaction.

Chain transfers concern successive supplies of goods between three or more taxable persons for VAT purposes which are the subject of a single intra-EU transport from one Member State to another Member State, directly from the first supplier to the last recipient.

Therefore, as a matter of principle, the dispatch or transport of the goods is attributed to the supply made to the intermediate taxable person. Then, the exemption from VAT provided for intra-EU transfers is applied to the transfer between the first supplier and the intermediary.

This rule includes an exception under which the dispatch or transport may be imputed to the supply of goods made by the intermediary taxable person, provided the latter communicates to the supplier their VAT identification number, issued by the Member State where the goods are dispatched or transported. In this situation, the VAT exemption applies to this transaction.

For the purposes of the application of the law, the “intermediary taxable person” is defined as a taxable person that is not the first supplier in the chain transaction and that dispatches or transports the goods itself or on its own account.

**"This law is intended to provide a practical solution as regards sales of goods under call-off stock arrangements between VAT-taxable persons situated in different Member States."**

### Intra-EU sales of goods under call-off stock arrangements

This law is intended to provide a practical solution as regards sales of goods under call-off stock arrangements between VAT-taxable persons situated in different Member States. It is no longer compulsory for the taxable supplier to register for VAT in the Member State in which the goods arrive.

In light of the legislative framework prior to this Law, the sale of goods under intra-EU call-off stock arrangements was, successively, (a) an intra-EU transfer of goods by the taxable supplier in the Member State of origin of the goods; (b) an intra-EU acquisition of goods by the same taxable person in the Member State of arrival of the goods; and (c) at the time the goods were sold by the purchaser or made available to it, an internal transfer of goods between VAT-taxable persons (i.e., supplier and purchaser).

As a consequence, even though, under the previous wording of RITI, the transactions described under (a) and (b) were exempt from tax, the taxable supplier was obliged to register for VAT in the Member State of arrival of the goods and to comply with all ancillary obligations. In particular, it had to comply with the those of a declaratory nature, like other taxable persons with their residence or a permanent establishment in that State.



This Law introduced specific arrangements to the RITI for intra-EU sales under call-off stock arrangements, which apply when the following conditions are met:

- The goods are dispatched or transported to another Member State for their subsequent transfer, within a maximum period of one year, to another taxable person that has undertaken to acquire ownership of those goods under an agreement between the two taxable persons;
- The taxable person who dispatches or transports the goods has neither its registered office nor a permanent establishment in the Member State in which the goods arrive;
- The taxable person to whom the goods are transferred is identified for value added tax purposes in the Member State in which the goods arrive and its identity and identification number are known to the taxable person dispatching the goods at the time when the dispatch or transport begins;
- The taxable person dispatching the goods records the transfer in its accounts and includes its details in the recapitulative statement.

As a result, under this new framework (as a rule and with certain exceptions listed in the Law) for VAT purposes, there will only be successively an intra-EU transfer of goods under call-off stock arrangements and an intra-EU acquisition of goods between the supplier and the purchaser. Furthermore, the consignee is not required to be registered for VAT purposes in the Member State where the goods arrive. The exceptions to this rule listed in the Law include (i) goods that are dispatched or transported outside the European Union; (ii) the destruction, loss, or theft of the goods; and (iii) if any of the conditions listed above are no longer met.

#### **Amendment to the requirements for the application of the VAT exemption in intra-EU transfers of goods**

As a result of the entry into force of this new Law, the communication by the acquiring taxable person of the VAT identification number allocated by a Member State other than the one in which the dispatch or transport of the goods takes place becomes a substantive requirement for the exemption to apply.

Therefore, the taxable person dispatching the goods is responsible for ensuring that the VAT identification number communicated by the taxable person acquiring the goods is valid. The VAT number must be checked using the VIES platform and, if it is not checked, the VAT exemption will not apply.

**"The taxable person dispatching the goods is responsible for ensuring that the VAT identification number communicated by the taxable person acquiring the goods is valid."**

The law also introduces a new condition for the application of the exemption: the submission of the recapitulative statement for intra-EU transfers of exempt goods by the transferor of the goods destined for another Member State, unless the taxable person rectifies the statement in properly justified cases.

**"The amendments made by this Law also reflect the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the European Union."**

### **Inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the European Union and in the territorial application of Excise Duty Code.**

Lastly, the amendments made by this Law also reflect the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the European Union. This change was made because the historical reasons for excluding those territories, in particular their isolation and economic disadvantages, no longer exist. For the same reasons, those territories are now included in the territorial scope of the Excise Duty Code (IEC).

However, these territories remain excluded from the territorial scope of the VAT Code, as this is essential to ensure a level playing field between economic operators established in Switzerland and in these territories. They are now considered to be "third territories" rather than "third countries".

### **Entry into force**

The changes introduced by this Law take effect from 1 January 2020. VAT taxable persons can comply with the tax obligations arising from these changes, including the filing or substitution of a recapitulative statement, up to 31 December 2020. ■