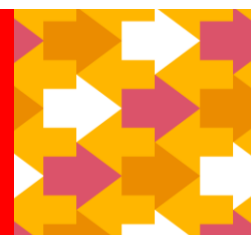


## Amendments to the VAT and excise duty legislation from 1 January 2020



### In brief

On 6 December 2019 amendments to the Value Added Tax Act and the Excise Duties and Tax Warehouses Act were published in issue 96 of the State Gazette regarding intra-Community supplies of goods, VAT registrations of foreign entities, the control over excise tax warehouses and other amendments, which may have impact on your business.

### Amendments to the Value Added Tax Act (VATA)

#### New rules for proving zero VAT rate on intra-Community supplies of goods

Under the new rules, to prove the zero VAT rate on intra-Community supplies of goods, in addition to a document for the supply (generally an invoice), the supplier should also have documents for the transport or dispatch of the goods from Bulgaria to the territory of another EU Member State as listed in Article 45a of Regulation (EU) 282/2011, in force also from 1 January 2020. These documents are:

In case the transport is organised/paid by the supplier, the following documents will be required:

- a) at least two documents for the transport or dispatch of the goods, such as a signed CMR, bill of lading, an airfreight invoice or an invoice from the carrier of the goods;

or alternatively

- b) one document under point a) above, plus one of the following:

- an insurance policy for the transport or dispatch of the goods, or bank documents proving payment of the dispatch or transport of the goods; or
- an official document issued by a public authority, such as a notary, confirming the arrival of the goods in the Member State of destination; or
- a receipt from a warehouse keeper in the Member State of destination confirming the storage of the goods in that Member State.

The two documents under item a) and b) should:

- not contradict one another; and
- be issued by persons independent from the supplier and the customer; and
- be issued by two different parties (again independent from one another).

In case the transport is organised/paid by the customer, apart from the documents mentioned above, the supplier should also have a written statement from the customer that the goods were received.

According to the rules applied until now, the supplier had to have only one document for the transport:

- a document for the dispatch or transport of the goods, such as a CMR, bill of lading, etc.; or alternatively
- a written confirmation from the customer that the goods were received (allowed only when the transport was paid by the customer).

In principle, the intention behind the rules in Art. 45a of the Regulation was to provide the supplier with more certainty when applying the zero VAT rate if the above documents are collected. The idea was not for these documents to become mandatory. However, the VAT amendments make them mandatory. This may lead to practical difficulties and risks for entities performing intra-Community supplies.

In view of these changes, these businesses should review their processes for collection of transport documents and adapt them to the new requirements.

Furthermore, the zero VAT rate on intra-Community supplies would apply only if:

- the intra-Community supply has been reported in the VIES return of the supplier; and
- the customer has provided his valid VAT number to the supplier.

Until now these requirements on reporting intra-Community supplies in the VIES return and provision of the VAT number by the customer were not explicitly included in the legislation (although the tax authorities applied them in practice).

### **Chain transactions of goods with transport between two Member States**

According to the new rules, in case of chain transactions where the transport was organised/ paid by an intermediary operator (i.e. by a supplier in a chain of successive transactions of goods, different from the first supplier in the chain), the supply to the intermediary operator should be considered as the intra-Community supply of goods. Nevertheless, if the intermediary operator has provided to his supplier VAT identification number issued by the Member State of dispatch of the goods, then the supply from the intermediary operator should be treated as the intra-Community supply of goods.

Chain transactions are supplies of one and the same good in a chain of several taxable persons, whereby the good is transported from one Member State to another Member State directly from the first supplier to the final customer and the transport is organised/ paid by one of the intermediary operators in the chain. Until now, there were no explicit rules how to assign the dispatch/ transport of the good to a supply (i.e. which one is the intra-Community supply of goods).

In view of the above, businesses that perform successive supplies

of goods should review their chains of supplies and adapt them to the new rules, if needed (e.g. to restructure the chain transactions or to register for VAT purposes in other Member States).

### **Call-off stock mechanism in case of supplies to other Member States**

The call-off stock mechanism can be applied to a transaction where a taxable person transfers own goods from Bulgaria to another Member State with a view to these goods being supplied to a customer in that Member State (and the customer is known in the moment of dispatch of the goods from Bulgaria). If the supply of the goods is performed within 12 months as from the arrival of the goods, it will not be required for the Bulgarian supplier to register for VAT purposes in that Member State.

The same rules will apply in the mirror situation (goods dispatched from another Member State to Bulgaria). The call-off stock mechanism cannot be applied to local transactions (i.e. transactions where the goods are not transported outside Bulgaria).

There are detailed reporting and documentation requirements, which should be met, to apply the call-off stock mechanism.

### **Mandatory VAT registration of foreign entities in Bulgaria, irrespective of their taxable turnover**

Every foreign taxable person, which is not established in Bulgaria and plans to perform taxable supplies in the country for which VAT is due by the supplier, should submit an application for VAT registration not later than 7 days before the date on which the VAT for the first supply becomes due. This rule does not apply to entities for which the special VAT

registration obligations apply in relation to distance sales, supplies of goods with installation/ assembly by or on behalf of the supplier established in another Member State, as well as supplies of electronic, telecommunications and broadcasting services.

Until now, the above foreign entities were subject to the general VAT registration rules and were obliged to submit application for VAT registration only when they reach taxable turnover of BGN 50 thousand.

Furthermore, foreign entities would be required to submit an application for VAT registration, irrespective of their taxable turnover, at the latest 7 days before any of the following:

- an intra-Community acquisition of goods when the requirements for the call-off stock mechanism are no longer met; or
- an intra-Community acquisition of goods in accordance with the rules for chain transactions of the same goods.

### **No supply in case of free-of-charge construction, improvement or repair of public state-owned or public municipal infrastructure**

According to the amendments, there is no supply for VAT purposes in case of free-of-charge construction, improvement or repair of infrastructure, which is public state-owned or public municipal property and is used in the independent economic activity of the taxable person, including when the infrastructure is accessible to other entities. In addition, the taxable person will have the right to input VAT credit when the costs incurred are part of his general costs and/or are included as an element in the price of his

taxable supplies. The above provisions do not apply if remuneration is agreed for the construction, improvement or repair of the respective infrastructure.

Until now, such type of free-of-charge supplies were not regulated in the legislation and their VAT taxation (accordingly the input VAT credit for the associated costs) were subject to different interpretations by the tax authorities.

### **Other significant VAT changes**

The following changes are also introduced:

- In case of online payment by credit or debit card, the supplier can issue and provide the customer with a document for the sale via electronic means, which is not issued through a fiscal device or an integrated automatic system for the management of the commercial activity. This rule enters into force from 10 December 2019 and the detailed conditions for its application will be regulated with amendments to Ordinance N-18.
- In case of successive performance of homogenous activity in one and the same commercial premise by two or more related parties or parties acting in concert, the taxable turnover of each taxable person should encompass the turnover of the previous taxable persons for the preceding 12 months, including the current month. The term homogenous activity is defined as any activity where there is considerable uniformity in two or more of the following elements: the goods or services offered, the assets used, the trade brand or

name, the premises, the suppliers or customers.

- There will be explicit rules for the VAT taxation of goods intended for activities within the continental shelf and the exclusive economic zone of Bulgaria.

### **Amendments to the Excise Duties and Tax Warehouses Act (EDTWA)**

#### **Mandatory video-recording in tax warehouses for production and storing of certain energy products**

In the tax warehouses for production and storing of energy products with CN code 2710 12 to 2710 20 (generally petroleum oils, such as petrol, kerosene, gasoline) it is mandatory to install and use a video-recording system. The system should comply with certain requirements and allow:

- visual control in real time;
- uninterrupted recording of video on a server;
- identification of the license plate numbers of vehicles;
- remote access in real time by the customs authorities and remote reviewing of the information stored in the system.

#### **Additional requirements for obtaining an end-user licence in relation to energy products**

With the amendments in EDTWA the following additional requirements for obtaining an end-user licence are introduced:

- The applicant is required to use automatic reporting systems, which allow real-time control over the quantities of energy products received and used in the respective premises, as well as over the raw materials,

products and goods produced or stored, as listed in the application for the end-user licence;

- The applicant should provide internet access to the automatic reporting systems for its own account, insofar the applicant will receive energy products with CN code 2710 12 to 2710 20;
- The applicant uses devices for measurement and control, which comply with the applicable legal requirements.

#### **Other significant excise duty changes**

The following amendments are also introduced:

- In case of re-export of excisable goods to the continental shelf and the exclusive economic zone, in which Bulgaria maintains its sovereign rights, the excisable goods will be subject to the same rules as for excise goods released for consumption in another EU Member State (i.e. the movement should be performed with a simplified accompanying document), by considering the specifics of the case.
- In several administrative procedures under the EDTWA there is a possibility not to provide copies of certain documents, but to provide only information about the identification of the respective document and the issuing authority, so that the document can be collected by the competent authorities ex officio.

## Let's talk!

For a deeper discussion of how these issues might affect your business, please contact:

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