

Documentation for VAT zero rating (3/10/20)

On 10 December 2019, we informed our MindLink.lv subscribers that effective from 2020, Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 prescribes a set of documents that must be available when it comes to zero-rating a supply of goods to a taxable person established in another member state. This article answers certain questions about how to apply the Regulation in practice.

Explanatory notes from the European Commission (EC)

The EC has issued some legally non-binding notes describing how the Regulation should be applied in practice. The notes explain that obtaining the set of documents prescribed by the Regulation allows the parties to presume that a supply of goods to a taxable person established in another member state has occurred, however the absence of such documents does not necessarily mean that the supply has not occurred. If the required documents are absent, the burden of proof lies with the supplier.

If the supplier holds the set of documents prescribed by the Regulation, the tax authority may challenge this presumption by presenting appropriate evidence, for example, if it is found that the goods have not left the member state of dispatch.

If any of the Regulation documents held by the supplier are found to contain false information or even to be forged, the presumption is no longer valid, but the supplier should be given an opportunity to present another qualifying document that validates the presumption. The supplier may also present some other evidence that is not prescribed by the Regulation to prove that the requirements for an exemption are met.

Since these documents must be ones that are not mutually conflicting and that have been issued by two mutually independent parties that are also independent of the supplier or the customer, the EC analysed under what conditions the parties are treated as dependent. The EC found that the parties are dependent if they are one and the same legal entity (e.g. a company sending goods to its permanent establishment in another member state) or if the parties meet the related-party definition under national law. In Latvia, related parties are defined by section 1(18) of the Taxes and Duties Act.

The EC recognises that if the customer uses their own transport for carrying the goods, it will be difficult to obtain the set of documents prescribed by the Regulation and so the presumption is not valid.

The EC finds that electronic means of obtaining the evidence prescribed by the Regulation should not be restricted. The EC also finds that if the supplier has missed the deadline prescribed by the Regulation for filing the customer's written statement, the presumption should be valid despite the missed deadline.

The EC accepts that member states might pass some more relaxed requirements into their national laws for proving that a supply of goods to a taxable person established in another member state has occurred. Estonian and Lithuanian taxable persons are permitted to choose between using the current set of documents or obtaining the documents prescribed by the Regulation to support a VAT zero-rating. Denmark has also chosen to give taxable persons an option to derogate from the Regulation.