

# VAT: intra-Community distance sales or supplies? 2/47/21



Manager, Tax, PwC Latvia  
Matiss Auzins

When goods are supplied to a person in another member state, one might wonder how VAT should be properly applied if the customer has not presented his VAT registration number, yet he is known to be a trader. Is this an intra-Community distance sale or an intra-Community supply of goods? Since the VAT treatment varies, it is important to understand the features of each transaction.

## Distance sales

An intra-Community distance sale is a supply of goods in which the supplier, or a third party on his behalf, dispatches or transports goods from a member state other than the one in which the dispatch or transport to the customer ends. Intra-Community distance sales include transactions such as sales made by mail, by telephone or over the internet, including sales in which the supplier indirectly participates in the dispatch or transport. What matters is that under **the VAT directive** a distance sale involves goods being supplied to customers in the following categories:

- Consumers (non-taxable persons);
- Taxable persons or non-taxable entities whose intra-Community acquisitions are outside the scope of VAT because supplies of goods involve the provisioning of vessels or aircraft, are made according to diplomatic or consular protocols, made to international bodies etc;
- Persons covered by the special scheme for farmers, foresters and fishermen;
- Businesses making only exempt supplies that do not give the right to deduct input tax;
- Taxable persons using the margin scheme for second-hand goods;
- Non-taxable entities (e.g. government agencies that do not carry on a business).

Under no circumstances are the distance selling rules applicable to supplies of new means of transport or of goods that are assembled (installed).

So, only in rare exceptional cases are the distance selling rules applicable if goods are supplied to a taxable person that is not registered for VAT in another member state.

It is important to distinguish between an intra-Community distance sale and an intra-Community supply of goods.

## An intra-Community distance sale

Unless the supplier can use the simplified VAT scheme for small businesses, an intra-Community distance sale is treated as made in the member state in which the goods are when the dispatch or transport to the customer ends. So if a Latvian taxable person uses its e-shop for supplying goods to a Finnish individual, the supply is liable to 24% Finnish VAT.

Under the simplified VAT scheme for small businesses, a distance sale is treated as made where the goods

are when the dispatch or transport to the customer begins. The simplified scheme applies if the total ex-VAT value of goods supplied in distance sales in the previous or current calendar year does not exceed EUR 10,000. If a taxable person supplies telecommunication, broadcasting or electronic services (e.g. offers purchases of e-books or downloads of films or music in its e-shop) in addition to distance sales, the value of those services will count towards the threshold of EUR 10,000. It is also important to remember that the simplified scheme is not applicable if supplies are made from various member states (or if business is done in multiple member states) or if excise goods are supplied. In our example, if a Latvian-registered taxable person makes a distance sale to the Finnish individual and the simplified VAT scheme for small businesses is applicable, the supply will be liable to 21% Latvian VAT.

Interestingly, the VAT Act (unlike the VAT directive) prescribes a much wider category of customers for intra-Community distance sales. Under the VAT Act, the distance selling rules apply also if the customer is a non-established taxable person. This is likely to create a difference of opinion on what constitutes a distance sale in Latvia and other member states.

## An intra-Community supply of goods

The VAT Act's rules for an intra-Community supply are essentially similar: it is an intra-Community supply if goods are dispatched or transported from one member state to another and the dispatch or transport is done by the supplier or the customer, or by a third party on their behalf. The key difference, as mentioned above, is that an intra-Community distance sale requires the customer to fall into a specified category.

An intra-Community supply is treated as made where the goods are when the dispatch or transport to the customer begins. An intra-Community supply may be zero-rated if the customer presents a valid VAT registration number in another member state to the supplier at the time of supply. So if the Latvian company in our example makes an intra-Community supply from Latvia to a customer in another member state who has not presented a valid VAT registration number, and this does not qualify as an intra-Community distance sale, then it is an intra-Community supply liable to 21% Latvian VAT.

An intra-Community distance sale substantially differs from an intra-Community supply in terms of VAT treatment, and it is important to find out who the customer is. If the customer ordering goods in the e-shop is able to indicate his VAT registration number in another member state, then this will again be a zero-rated intra-Community supply rather than a distance sale. In that case it is crucial to adopt VAT number validation and customer identification procedures and to hold other documents that support the zero-rating (a set of documents adopted across the EU under the so-called Quick Fixes from 1 January 2020).

One might wonder about the supplier's responsibility to find out whether the customer is a taxable person. The EU Regulation<sup>1</sup> provides that a deemed supplier (the platform through which actual suppliers make supplies to customers) unless he has information to the contrary, may believe that the person buying goods is not a taxable person. So, in any case the supplier or the platform is liable to adopt customer identification procedures and apply an appropriate VAT liability when an intra-Community supply is made.

We also note that intra-Community distance sales can be made under the OSS scheme, which allows the supplier not to register for VAT in the country of destination.

---

<sup>1</sup>Council Implementing Regulation (EU) 2019/2026 of 21 November 2019 amending Implementing Regulation (EU) No 282/2011 as regards supplies of goods or services facilitated by electronic interfaces and the special schemes for taxable persons supplying services to non-taxable persons, making distance sales of goods and certain domestic supplies of goods, article 5.d