

Intra-European Community operations: ¿Are they VAT exempt?

New conditions for intra-community deliveries to be exempt from VAT

As of March 1, 2020, Spanish legislation has incorporated new EU regulations in relation to intra-community operations.

Deliveries of goods between EU countries (intra-community deliveries) are exempt from VAT, and therefore, the invoice issued by the seller will not include the VAT; but the conditions for VAT exemption have changed.

From the indicated date, the following conditions must be met:

- 1) Spanish companies that sell goods to foreign customers must ensure that they are in possession of a Tax Identification Number (NIF) for VAT purposes.
- 2) The selling company must declare the sale made in form 349 (summary declaration of intra-community operations), which must also be filed quarterly or monthly (there is no longer the possibility to file this form annually).
- 3) The seller must justify that the goods have been transported to another EU country, and for this, he must provide specific documents that justify the transport.
 - a) If the selling company is the one who transports the merchandise by itself, or by a contracted third party, it must provide:
 - i) At least two documents related to transportation, issued by independent parties (CMR or carrier invoice).
 - ii) Or alternatively, one of the above documents and at least one of the following documents: the transport insurance policy, the proof of payment, an official document issued by a public authority, or a receipt for the goods issued by a warehouse of the destination country.
 - b) If it is the acquirer, or someone on his own who carries out the transport, in addition to the previous evidence, the seller must obtain a written declaration from said acquirer certifying that the goods have been transported to their country of destination.
- 4) If either of the two aforementioned conditions is breached, the Treasury will consider that the delivery of the goods is subject to Spanish VAT. Therefore, even if the Spanish seller has not charged VAT on the sale, he must pay the respective VAT liability.

New conditions for the "Transfer of goods" between different countries.

Likewise, as of March 1, 2020, modifications have also been introduced in relation to the so-called "transfers of goods".



The so-called "consignment sales" are characterized by being shipments of merchandise whose destination, prior to sale, are warehouses. Additionally, they require compliance with the following requirements:

- 1) That between the shipment of the goods and the subsequent sale less than twelve months elapse.
- 2) That the seller does not have the headquarters of his activity or a permanent establishment in the destination country (therefore he may have a warehouse abroad but the sale must be contracted from Spain).
- 3) That there is a prior agreement of sale in consignment between the seller and the client, prior to the shipment of the merchandise. The new regulation implies for these "sales in consignment" that:
 - a. The shipment to the warehouse or warehouse located abroad will not entail the obligation to issue an invoice, nor include any data in the VAT declaration.
 - b. When the sale is subsequently made to an intra-community customer, making the delivery from the warehouse located abroad, the selling company must declare an intra-community delivery and the purchaser must declare an intra-community acquisition.

These shipments must be included in the declaration of intra-community operations (model 349) and in the registry book of intra-community operations.

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