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RESTRICTIONS TO THE VAT EXEMPTION REGIME FOR INTRA-EU SUPPLIES

With reference to the conditions for the exemption of intra-EU supplies, Directive 2018/1910/EU amended Article 138 of Directive 2006/112/EC by introducing more stringent conditions for a transaction to qualify for the **VAT exemption** regime in the Member State of departure of the goods, in order to curb VAT frauds and evasion.

In fact, from 01.01.2020, in addition to the material requirements already provided for by EU legislation, intra-EU supplies may be exempted if:

a) the purchaser is in possession of a valid VAT identification number assigned by a Member State other than the one of departure of the goods and has communicated it to the supplier; as well as

b) the supplier complies with the obligation to correctly fill in and send the recapitulative statements (i.e. INTRASTAT forms).

Consequently, the requirements referred to in the aforementioned letters a) and b), previously considered only as **formal requirements**, become **material requirements**.

With reference to the requirement referred to in letter a) above, the Explanatory Notes of the European Commission highlight how, according to the new wording of art. 138 of Directive 2006/112/EC, it is not necessary that the **VAT identification number** is issued to the purchaser by the Member State of destination of the goods.

It will therefore be sufficient that the purchaser provides the supplier with a VAT identification number assigned by a Member State other than that of departure of the goods.

In view of the new conditions set out above, intra-EU supplies of goods will therefore not be eligible for the VAT exemption regime if, upon request from the supplier:

c) the purchaser provides the supplier with a VAT identification number assigned by the Member State of departure of the goods;

d) the purchaser does not communicate any VAT identification number to the supplier or the VAT identification number communicated is not valid following the verification carried out by the supplier within the VIES archive;

e) the supplier does not submit the INTRASTAT recapitulative statement or submit it with incorrect data.

If even one of the above-mentioned circumstances occurs, the supply must be qualified as a national supply, with the consequent application of the VAT of the Member State of departure of the goods.

It therefore emerges from the above that also the registration of the purchaser's VAT identification number in the VIES archive acquires the nature of a material condition in order to benefit from the VAT exemption of the intra-EU supply, with the consequence that the supplier must always ensure to check in advance through the aforementioned archive the existence and validity of the VAT identification number communicated by the purchaser.