

AS PricewaterhouseCoopers in Estonia helps clients in finding tax efficient business solutions and managing tax risks.

We work together with our colleagues in other PricewaterhouseCoopers' offices world-wide and use our access to international know-how and long-term experience to quickly and efficiently solve tax issues that arise both locally and in foreign jurisdictions. For more information, please see our contact details below.

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The VAT system in the EU is finally evolving!

The European Commission has published a proposal¹ for council directive amending Directive 2006/112/EC with the aim of transforming the VAT system. In Estonia, not enough attention has been paid to this proposal. The proposal marks down the initial part of the first legislative phase in order to move from the transitional system to a definitive VAT system with the underlying principle of taxation in the country of destination.

Since the transition to a definitive system is to be carried out in stages and will take years, then the proposal of the European Commission suggests several short-term improvements to the current system of VAT (so called “quick solutions”). In addition, the legal basis of the definitive system is defined.

The amendments enter into force on the twentieth day following their publication in the Official Journal of the European Union. Estonia must adopt and publish the laws, regulations and administrative provisions necessary for the implementation of the amendments by January 1, 2019 at the latest.

A new concept of a certified taxable person is introduced

Taxable persons are identified through a VAT identification number issued by a Member State, but currently no distinction is made between a reliable and a less reliable taxable person. A certified taxable person can in principle be deemed to be a reliable taxpayer and simplification rules could be applied on transactions where such certified taxable persons are involved.

Pursuant to Article 13a of the directive, obtaining a status of a certified taxable person will be based on unified criteria which will be valid throughout the European Union. The criteria for being considered a certified taxable person will automatically be fulfilled in case of persons who have been granted the status of an authorized economic operator for customs simplifications. The local tax authority, in Estonia the Tax and Customs Board, is to manage the certification of taxable persons.

Simplifying and harmonizing the taxation of call-off stock schemes

Under existing rules, the transfer of goods to another Member State without the transfer of ownership and with the aim of constituting a stock for an already known customer (call-off stock) from which the latter can acquire goods at a chosen time, is equivalent to an intra-Community supply giving rise to an intra-Community acquisition of goods by the supplier. When the stock is used by the client (goods are taken out of the stock) a second supply takes place, where the place of supply is in the Member State in which the stock is located. Therefore, a single cross-border sale transaction brings about two supplies for VAT purposes.

As a rule, the supplier is obliged to be registered for VAT purposes in the Member State of arrival in order to be able to declare intra-Community acquisition under its VAT number. As the registration in the Member State of destination is troublesome and expensive for both the supplier and the tax administrator, certain Member States, including Estonia, apply simplification measures while others do not. This in turn leads to a situation where rules are not applied in a uniform manner within the single market.

In order to solve this issue, the new rules propose that transporting goods from an EU Member State of departure

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to an EU warehouse of a certified client will no longer be considered an intra-Community supply. As a result, the zero-rated intra-Community supply and the taxable intra-Community acquisition will only take place when the client takes goods out of the stock, on condition that the transaction takes place between two certified taxable persons. In this event, it will no longer be necessary for the seller to register for VAT purposes in every Member State where it has placed goods under the call-off stock arrangement.

The tax administrators will track the transactions through a register of call-off stock goods, which both the supplier as well as the acquirer will be required to keep. In addition, the supplier is to declare the acquirers to whom goods dispatched under call-off stock arrangements are supplied at a later stage in its EC sales list.

Only one supply in a chain transaction can be zero-rated, but which one?

A new special provision is introduced to the directive (Art. 138a) in order to establish which supply in a chain transaction can be considered as a zero rated intra-Community supply, where the participants are vendor-intermediary-customer. A chain transaction is defined and should be understood as successive supplies of the same good which result in a single intra-Community transport of those goods. It should be noted that both the vendor and the intermediary must be certified taxable persons to make use of this provision.

The transport is ascribed to the supply between the vendor and intermediary if the intermediary notifies the supplier about the Member State of arrival of the goods and the intermediary operator is identified for VAT purposes in a Member State other than that in which the dispatch or transport of the goods begins. Such a situation is a zero-rated intra-Community supply for the vendor. Where any of the conditions are not met, the intra-Community transport shall be ascribed to the supply made by the intermediary

operator to the customer and that supply is subject to zero rate.

Application of zero rate for intra-Community turnover

Article 138(1) of the directive is amended to enforce the requirement for a valid VAT identification number of the acquirer in a Member State other than that in which transport of the goods begins as a substantive condition in order for the vendor to be allowed to apply the zero rate. Now, it is a formal requirement that works in practice as a substantive condition, since EC sales lists cannot be submitted without a valid number.

Transitional system is replaced by a definitive system

The current taxation of trade between Member States is based on a so-called transitional system which was intended to be merely a temporary solution before moving on to the definitive system, but has nevertheless been in force for more than 25 years already. Under the current wording of Article 402 of the Directive, the definitive system is based on the taxation of goods in the state of dispatch (i.e. the state of origin), so that intra-Community trade would be subject to the same conditions as domestic trade.

Discussions with Member States, however, have demonstrated that the principle of taxation in the Member State of origin is politically unacceptable. The taxation at destination (VAT is paid in the Member State where the goods and services are consumed) was deemed a more favorable solution and Article 402 of the Directive will be replaced in order to lay down the cornerstones of the definitive system for the taxation of goods and services for trade between Member States.

It is established that the definitive system will be based

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on the taxation of goods and services in a Member State of destination. The supplier will be liable for the payment of the VAT unless the acquirer is a certified taxable person (in which case the certified taxable person will account for the VAT in its VAT return under the reverse charge mechanism). Where the person liable for VAT is not established in the Member State where the tax is due, he will be able to file his return and settle payment obligations via a so-called

One-Stop Shop system.

The transition to the definite system would take place in a step-by-step manner. The second part of the first legislative phase begins in 2018, in which the Commission will present a proposal for a directive providing the technical and other implementing provisions necessary for the operation of the definitive VAT system.

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