



# Stricter rules for transport documentation for VAT exemption when exporting to the EU

Danske Speditører has received several inquiries regarding the new stricter requirements for VAT exemption for sales to EU member states, which will come into force on 1 January 2020. The rules follow from Regulation 2018/1912 of 4 December 2018 and are immediately applicable in all Member States. In Denmark, the regulation is implemented by bill L 27, which includes an amendment to the VAT Act. L 27 is scheduled for third reading in the Folketing on 28 November 2019.

The stricter requirements are divided into two areas – documentation for carrying out the transport and new substantive requirements for VAT-free EU sales. In the following we look at the transport documentation.

## Transport documentation

The rules do not include stricter requirements for the freight forwarder. The stricter requirements are aimed at the transport operator (ordering party in relation to the freight forwarder), who must document that the transport has been completed. This is, for example, the seller who exports to another EU member state. It is the seller who registers the VAT-registered acquirer (Buyer), to which the goods are delivered, so that the seller can obtain VAT exemption for the sale.

In order to apply the rules on VAT exemption in Article 138 of Directive 2006/112/EC, goods are presumed to have been transported from one Member State to another, if the transport can be documented. It is (so to speak) the rules surrounding the presumption, which are now being tightened.

The evidence is divided into two groups:

1. documents relating to the transport of the goods, such as
  - a signed CMR document or accompanying document.
  - a bill of lading
  - an air waybill
  - an invoice from the carrier of the goods
2.
  - an insurance policy regarding the transport of the goods
  - bank receipt for the payment of the shipment or transport of the goods
  - official documents issued by a public authority, such as a notary, and which confirms the arrival of the goods in the Member State of destination.
  - a receipt issued by a warehouse keeper in the Member State of destination, and which confirms the storage of the goods in this Member State

The seller can document presumption about the export of the goods and VAT exemption by having two separate proofs that are not mutually contradictory and are issued by two independent parties. This can be two different documents from group A or one document from each group A and B.

If the buyer is the transport organizer, e.g., with Incoterms® EXW, the buyer must also provide a third proof - a written declaration.



This declaration must contain the following:

- it must be stated that the goods have been transported by the buyer himself or by a third party on behalf of the buyer.
- the destination Member State of the goods must be stated, as well as
- the date of issue,
- buyer's name and address,
- the quantity and nature of the goods,
- the date and place of arrival of the goods,
- in the case of delivery of means of transport, the registration number of the means of transport, and
- identification of the person who received the goods on behalf of the acquirer.

The buyer submits the written statement to the seller no later than the tenth day of the month following delivery.

## Can the freight forwarder expect new obligations?

Danske Speditører does not expect the forwarders to be obliged as an industry. The new rules include no obligation to the freight forwarder to provide more documentation, neither in the regulation nor in the proposal for the amendment of The VAT Act. But the rules can trigger a demand for these documents from the ordering party, as they are necessary to document the VAT exemption. The needs of the ordering party will be expected to trigger requirements in future tenders/RFQs, which Danske Speditører hereby wishes to draw your attention to.

A transport invoice is one of the documents that must be available as proof. You are already sending this to the client. Together with a signed bill of lading (POD) it is sufficient. The bill of lading therefore becomes very relevant for ordering party, and you must expect that many will seek to have this as documentation. The demand for bank vouchers from the seller's bank and official documents from the authorities or notary in destination member state must be expected to be low, as the costs of issuance will be high. Finally, there is documentation issued by the custodian. This documentation must be expected provided by the freight forwarder if it is the freight forwarder who arranges storage for the customer or transport to the storage.

## Transport invoice and cargo insurance – the ideal choice?

The freight forwarder can solve a lot by selling cargo insurance together with the transport. The insurance policy can replace the signed waybill as documentation. The insurance policy will be issued by an independent party, the insurance company, and it is mentioned directly in the regulation as applicable documentation. Together with the transport invoice, the insurance policy can constitute the necessary documentation, where it is the Seller who arranges the transport. With this, all waybills, official documents, and receipts from storage are taken out of the equation.



## Conditions for VAT-free EU goods sales

In order to achieve a VAT-free EU goods sale, it applies today;

- that the right to dispose of the goods as owner is transferred,
- that the Buyer is a taxable "person" or a non-taxable company, and
- that the goods are dispatched or transported to another EU member state.

Per on 1 January 2020, two substantive requirements will be added, so that, in addition to the above three requirements, it also applies.

- that the buyer must have a valid VAT number in another EU member state, and
- that there is correct reporting for EU sales without VAT - list entry for VIES - unless the seller can explain the error in a manner satisfactory to the tax authorities.

The Danish Tax Agency will only decide on the new requirements, and thus how they should be treated in the legal guidance, when the rules come into force. Danske Speditører therefore cannot come up with further guidelines before the legal guidance will be published in the new year.

## The Quick Fix directive

Regulation 2018/1912 is linked to the so-called Quick Fix directive. The Quick Fix Directive deals with, besides transport documentation and conditions for VAT exemption, also chain transactions and consignment warehouses.

Danske Speditører follow the area and continuously assesses the need for further information on this.

If you have any questions or comments about the above, you are very welcome to contact us.

With best regards

**ALPI**

