

VAT eLearning module 9

EXEMPTIONS

Course takeaways

This is a handy summary of the most relevant course information.

This eLearning course is based on EU VAT Legislation as it stands on 01.01.2020 (valid for the EU VAT Directive, the EU VAT Refund Directive and the EU VAT Implementing Regulation).

This module is a part of a VAT broader course which is made up of the following units:

- Introduction
- Territory
- Taxable person
- Transactions
- Place of taxable transactions
- Digital Services and Mini One-Stop Shop (MOSS)
- Chargeable Event & Taxable Amount
- Rates
- **Exemptions**
- Right to deduct
- Refund
- Obligations

This course addresses the questions “What not to tax and why?”.

1. Learning objectives

At the end of the training you will:

- Identify the **position of the exemption in the VAT Directive**: once you have answered to the questions “who? where? when and on what?” you will have to inquiry “what to not tax and why?”
- Understand what an **exemption** is: VAT must always be charged whenever transactions fall within the scope of the VAT, unless a transaction is exempt.
- State what an exemption may mean for the principle of **tax neutrality** in the supply chain: if transactions are exempt, in general **the supplier cannot deduct the VAT paid** on purchases.
- Describe the role of Member States concerning the options given to them in the VAT Directive as they can impose **additional conditions** for transactions to be exempt.

- Describe the importance of studying your own **national law** according to the principles of harmonisation and tax neutrality. Community provisions and the need to prevent any possible evasion, avoidance or abuse.
- Identify the **different types of exemption**: Inside Member State, Intra-Community, International, with particular regard to the right of deduction.
- VAT exemption does not necessarily imply an advantage as **exemptions** will in most cases have an **impact on the right to deduct**.

2. What to be exempt

For transactions falling within the scope of the tax, VAT must be charged in all cases except where the transaction is exempt from tax.

The VAT Directive gives a common list of exemptions that can be divided into **3 categories**:

- transactions inside Member States,
- intra-Community transactions,
- international transactions.

For those exemptions to apply specific conditions must be met. However, it is for Member States to impose **additional conditions** for transactions to be exempt.

2. 1 Transactions inside Member States

Exemptions on transactions inside Member States include:

- 1) **Exemption for activities in the public interest** such as medical, postal services, admission to a museum etc (art. 132-134);
- 2) **Exemption for activities** such as: **insurances, financial services, stamps, gambling, services relating to immovable property** (art. 135). Linked to the exemption for other activities there is the right of option to tax certain transactions): the MS may allow a taxable person to charge VAT instead of exempting his supplies (i.e .supply of buildings, of lands, leasing of immovable property...)(art. 137
- 3) **Operational exemptions**. For example, to cover the situation where a doctor sells a clinical machine, for which the input VAT was not deductible at the time of its acquisition (art. 136).

2. 2 Intra-Community transactions

The Intra-Community transactions can be divided into three categories:

- 1) **Intra-Community supply of goods (art. 138).**
- 2) **Intra-Community acquisitions of goods (art. 140)**
- 3) **Intra-Community transport (art. 142).**

The general rule of the intra-community is as follows: when goods are supplied between Member States, **the supply will be exempt in the Member State of departure** while **the acquisition will be taxed in the Member State of arrival.**

To be exempt, goods need to **be supplied to a taxable person or a non-taxable legal person** and **they must be sent out of the Member State of the supplier.**

Example: An hospital in MS A acquires the blood from the hospital in MS B. Since the supply of blood in MS A. would be exempt from VAT, the intra-community acquisition will be exempt as well.

2. 3 International transactions

International transactions include:

- 1) **Exportation:** this transaction is aimed at final consumption outside the VAT territory and is therefore exempted.
- 2) **Importation:** whenever the goods enter the EU import VAT is due. However, not all the importation are taxed. Example: importation of their sea catches by fishing undertaking
- 3) **Treated as exports:** certain supplies of goods and services to some specific bodies which are exempt under the same circumstances and the same reasons as importations by those same bodies exempted under art. 143 (international organisation, diplomatic arrangements). Example: Irish supplier sells laptops to the US embassy in Paris
- 4) **International transport:** an exemption is granted for transactions that take place in the VAT territory but are linked to certain vessels used on the high seas or aircrafts used by airlines that operate chiefly on international routes.
- 5) **Intermediaries:** when linked to an exempt transaction, the services of an intermediary are also exempted.
- 6) **International trade:** in order to facilitate this trade, exemptions are applied in circumstances to allow for taxation to be postponed.

3 Why to exempt

Member States need **to ensure** the correct and straightforward **application of exemption.** They also have to **prevent any possible evasion**, avoidance or abuse.

To do so they must impose conditions on how the exemption apply (art. 131).

Exemptions seem to imply an advantage for taxable persons whose transactions are exempt. However, it can have **impact on the right to deduct.**

Example: a bank is a taxable person but many of the services it supplies are exempt, this means it cannot deduct the VAT. It will need to integrate the VAT which it incurs in the price, instead of charging it on to its customers. This means that the VAT included in the price of the services supplied by the bank cannot be deducted.

This is a less of a problem if the customer is a private person but for **business customers** it means that they will be faced with the burden of **VAT without being able to deduct**, just as if they were final consumers.

Another reason why you must know which transactions are exempt, is that this will have an **impact on the right of the suppliers to deduct the VAT incurred**.

There are some exemption where a right to deduct is nevertheless granted. You therefore have to **distinguish** between the **different types of exemptions**. Follow the course "Right to deduct" for more information on this topic.

If transactions are exempt, the supplier cannot deduct the VAT paid on purchases. With **some exempt transactions**, the supplier will however be **entitled to deduction** (art. 169).

These are:

- 1) Transactions inside Member States:** insurance and financial transactions but only under certain specific conditions.
- 2) Intra-Community transactions:** Intra-Community supply of goods and Intra-Community transport of goods involving the islands of Azores and Madeira.
- 3) International transactions:** supply of services linked to importation when the value is included in the customs value, supply of goods for exportation, transactions treated as export, international transport, the supply of services provided by intermediaries and international trade transactions.

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