Movement of goods to another member state not treated as intra-community supply of goods

In certain cases, the transfer of goods to another Member State is not considered to be an intra-Community supply of goods. Subsection 2 of § 7 of the VAT Act sets out a list of transactions which are not regarded as intra-Community supply of goods. Regardless of the fact that no supply is generated from such transactions, separate records must be kept in respect of those transactions in accordance with § 36 of the VAT Act, titled “Obligations of taxable persons and taxable persons with limited liability upon keeping records”.

The following are not deemed to be intra-Community supply of goods (subsection 2 of § 7 of the VAT Act):

1. temporary transport of goods from Estonia to another Member State for the provision of services there, including the transport of a movable to another Member State for hiring or leasing of the movable or establishment of a usufruct on the movable;
   Example
   A taxable person may temporarily transfer his work equipment to another Member State in order to provide a service there, without their transfer to another Member State being treated as an intra-Community supply of goods.
2. temporary transport of goods from Estonia to another Member State for up to twenty-four months for purposes which comply with the purposes of implementing the temporary importation procedure with total relief from import duties;
   Goods may be moved temporarily to another Member State for a period not exceeding 24 months. The import of goods on the basis of that clause is justified where the import of goods from third countries for those purposes is exempt from VAT and the goods are under the control of customs authorities. Such temporary transportation of goods is used, inter alia, for the introduction of specific tools, exhibition exhibits, fairs, educational equipment, surgical and laboratory equipment, equipment used to eliminate the consequences of major accidents, etc.
3. the transport of movables from Estonia to another Member State for the purposes of them to be used in work, including for repair, evaluation, processing or installation (hereinafter work with movable) if, after the provision of the service, the movable is returned to the taxable person in Estonia who delivered the movable to the other Member State;
   A taxable person may send his business property to another Member State for repair works. The movement is not regarded as intra-Community supply where the goods are returned to the country of departure. When the goods are not returned but remain in the country in which the work was carried out, that transaction must be regarded as intra-Community supply of goods and as intra-Community acquisitions of goods. Work related to the repair of movables include, inter alia, repair, servicing, maintenance, processing, painting, etc.
4. the transfer of goods to be installed or assembled in another Member State;
   The rules on intra-Community supply of goods do not apply to sales where under the VAT Act of the country of sale of the goods, the goods are taxed in the country of destination. This also

concerns the transfer of goods to be installed or assembled in another Member State. **Clause 2 of subsection 3 of § 2 of the VAT Act** provides that "goods installed or assembled" are goods which are transferred and installed or assembled by or on behalf of the transferor in another Member State and in the case of which the cost of installation or assembly exceeds 5 per cent of the taxable value of the transaction. For the purposes of taxation of the transaction, the decisive factor is how the goods to be installed are defined by the country of destination of those goods. Therefore, the percentage referred to in the above definition is relevant only for goods to be installed or assembled in Estonia.

If an Estonian economic operator sells goods to another Member State and the goods are shipped there before they are assembled and are installed in another Member State, such supply will not be deemed to have occurred in Estonia and must not be declared in Estonia. On the other hand, in the case of the transfer of goods to be installed or assembled in another Member State, the taxable person must know whether, in that other Member State, there is a general system of taxation imposed under which the seller of the goods is liable to pay the tax, or a reverse charge mechanism is implemented, under which VAT is payable by the purchaser of the goods to be installed or assembled. The supply of goods, which includes assembly and installation, may be taxed in another Member State both as goods and services, depending on the legislation of that Member State. It is also important to know whether the rules of another Member State on goods to be installed or assembled have been complied with.

Example

An Estonian taxable person established in Estonia sells equipment that is assembled at a Swedish company in Sweden. The Estonian company is responsible for the assembly. In such a case, it is determined according to the Swedish VAT Act whether the supply and assembly of goods in Sweden are declared separately or whether the total supply may be declared either as a supply of goods or services. The taxable person must also know whether the person acquiring the goods will pay VAT on the goods to be installed or assembled or whether the Estonian company will be obliged to register as a VAT payer in Sweden and to tax the supply with Swedish VAT. In Estonia, the supply is declared only in line 9 (informative) of the VAT return.

5. intra-Community distance selling of goods from Estonia to another Member State;
   Intra-Community distance sales of goods means the transfer and transport of goods (other than a new means of transport or goods to be installed/assembled) by or on behalf of the transferor to another Member State to a person who is not registered as a taxable person or taxable person with limited liability in that Member State. It is also considered intra-Community distance sales if the transferor of the goods intervenes indirectly in the transport of such goods to another Member State to a person who is not registered as a taxable person or taxable person with limited liability there.
6. delivery of goods, including goods consumed and sold on board, to a vessel or aircraft specified in clauses 3 or 4 of subsection 3 of § 15 of the VAT Act;
   In the case of goods carried on board a vessel or aircraft, the supply is generated from the transfer of the goods (not just from the delivery on board), which is taxed at the standard rate of the country of departure for goods sold and the zero rate for goods consumed on board (see also subsection 3 of § 15 of the VAT Act). Taxable supply also arises from the sale of goods carried on board to a shipping company.
7. the transport of goods from Estonia to another Member State for the purpose of taking them out of the Community if the goods are placed under the customs procedure of export in Estonia and the goods are taken out of the Community within two months after the goods were conveyed to

the other Member State;
In a situation where a taxable person transports goods to another Member State for the sole purpose of their subsequent export, the taxable person will declare the export of goods subject to a zero rate instead of the intra-Community supply of the goods. The requirement is that the customs procedure for the export of goods is started from Estonia, thus the export takes place from Estonia and the time of supply is the date on which one of the operations specified in subsection 1 of § 11 of the VAT Act was first performed.

8. the transfer of goods to the acquirer in a triangular transaction;
   This is a special provision for triangular transactions as defined in § 2 of the VAT Act, according to which the sale by a reseller of goods to the acquirer is not to be regarded as intra-Community supply of goods. In a triangular transaction, the acquirer pays VAT on the goods acquired by a triangular transaction on the basis of subsection 4 of § 3 of the VAT Act.
9. the transport of natural gas or electricity, heating or cooling energy transmitted via network from Estonia to another Member State;
   This amendment follows from Council Directive 2009/162/EU, which extends the special procedure provided for in the VAT Directive for determining the place of supply of natural gas and electricity transferred through the network also to heating and cooling energy transmitted through the network. The aim is to tax the supply of natural gas and electricity, heating or cooling energy in the country of final consumption or dealership. Special provisions apply to the generation and taxation of the supply of natural gas and electricity, heating or cooling energy (see subsections 1, 2 and 3 of § 9 of the VAT Act). Tax is imposed in the same way as on the goods to be installed or assembled - in the country where the customer is established.
10. the transport of goods from Estonia to another Member State if the goods are delivered to Estonia temporarily for up to twenty four months for a purpose which complies with the purposes of implementing the temporary importation procedure with total relief from import duties;
    Since pursuant to § 8 of the VAT Act the temporary movement of goods from another Member State to Estonia for a period of up to 24 months is not deemed to be intra-Community acquisitions, according to the same principle, intra-Community supply of goods does not arise on the basis of the relevant provision if the goods delivered to Estonia are returned to another Member State.
11. the transport of movables from Estonia to another Member State if the movables are delivered to Estonia temporarily for the purpose of work with the movables;
    In the case of temporary transport of movable property to another Member State for the purpose of its repair (work on movable property), only the supply of the service is taxed. On the basis of this principle, the temporary transport of the movable to Estonia does not result in intra-Community acquisition of goods in Estonia and the return of the movable to another Member State does not generate intra-Community supply.
12. the transport of call-off stock from Estonia to another Member State;
    The transport of goods which meet the requirements for call-off stock (subsection 3^1 of § 2 of the VAT Act) to another Member State is not deemed to be intra-Community supply of goods (intra-Community supply arises upon the transfer of goods transported as call-off stocks to another Member State).
13. the transport of call-off stock from Estonia to another Member State if it has not been disposed of within 12 months as of the arrival of the call-off stock in another Member State and if it has been returned to Estonia within the specified period;
    If goods delivered as call-off stock to another Member State are not disposed of in another Member State within 12 months of their arrival and the goods are returned to Estonia during that

period, the goods are not to be considered as intra-Community supply of the goods.

14. the transport of the call-off stock from Estonia to another Member State if its acquirer is replaced by another taxable person within 12 months as of the arrival of the call-off stock in another Member State;
    The transfer of call-off stock to another Member State is also not to be regarded as intra-Community supply of goods if, within 12 months of the arrival of the call-off stock in another Member State, the acquirer of call-off stock is replaced by another taxable person than originally agreed.

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