

# DECEMBER TAX NEWS

## Cross-border VAT Exemption Regime - Implementing Provision of the Revenue Agency

### 1. INTRODUCTION

Through Legislative Decree No. 180 of November 13, 2024, published in the Official Gazette No. 281 on November 30, 2024, and effective from January 1, 2025, the EU Directive No. 285 of February 18, 2020, regarding the special scheme for small enterprises, was implemented.

This decree introduced the new Title V-ter in Presidential Decree No. 633 of October 26, 1972, comprising Articles 70-terdecies to 70-duovicies.

The implementation of the regime is entrusted, pursuant to the new Article 70-terdecies of Presidential Decree 633/72, to a specific provision by the Director of the Revenue Agency.

With the Revenue Agency Provision No. 460166 of December 30, 2024, the methods and deadlines for submitting the preliminary communication, which taxable persons established in the State must submit to access the regime, as well as the information to be included in the application, have been defined.

### 2. CROSS-BORDER VAT EXEMPTION REGIME

EU Directive No. 285 of February 18, 2020, made several amendments to the provisions of EU Directive No. 112 of November 28, 2006, concerning special schemes for small enterprises.

To prevent small taxable persons from applying the exemption schemes exclusively in their Member State of establishment, they are allowed, from January 1, 2025, to benefit from such schemes in other EU Member States where VAT is due.

Legislative Decree No. 180 of November 13, 2024, implemented the provisions of EU Directive No. 285 of February 18, 2020, introducing the new Title V-ter in Presidential Decree 633/72, composed of:

- **Section I** (containing only Article 70-terdecies), which provides definitions and general provisions;
- **Section II** (Articles 70-quaterdecies to 70-septiesdecies), defining the rules of the exemption regime applied in Italy by subjects established in other Member States;
- **Section III** (Articles 70-octiesdecies to 70-duovicies), governing the exemption regime applied in other EU Member States by subjects established in Italy.

#### Effective Date

The provisions related to the cross-border exemption regime apply from January 1, 2025.

### 3. EXEMPTION REGIME APPLIED IN THE STATE BY SUBJECTS ESTABLISHED IN OTHER EU MEMBER STATES

#### 3.1 ELIGIBILITY CONDITIONS

Admission to the cross-border VAT exemption regime in the State's territory by taxable persons from other EU Member States is subject to certain requirements.

The domestic law imposes stricter conditions for the application of the regime in our territory compared to those required for the adoption of the exemption in other EU countries, imposing eligibility conditions not found in EU Directive No. 285 of February 18, 2020.

A natural person taxable subject established in another Member State may join the EU VAT exemption regime in the State's territory if they:

- Achieved an annual turnover in the European Union not exceeding €100,000 in the previous calendar year;
- Achieved an annual turnover in the State's territory not exceeding €85,000 in the previous calendar year;
- Achieved a turnover in the European Union not exceeding €100,000 in the current calendar year period preceding the communication to avail of the regime;
- Have previously communicated to their State of establishment the intention to benefit from the exemption regime in the State's territory;
- Are identified, for the application of the exemption regime, by the identification number "EX" exclusively in the Member State of establishment.

Similar to the internal "flat-rate" regime, a taxable person cannot access the regime if they:

- Exclusively or predominantly carry out sales of buildings or parts of buildings, building land, or new means of transport;
- Participate in partnerships, associations, or family businesses or directly or indirectly control limited liability companies or partnerships engaged in economic activities directly or indirectly attributable to those carried out by the same taxable person;
- Incurred total expenses exceeding €20,000 gross for employees and collaborators in the previous calendar year, including amounts paid as profit shares to associates or for other work performances not attributable to independent work contracts;
- Predominantly perform operations for employers with whom there are current or previous employment relationships in the past two tax periods, or for subjects directly or indirectly related to said employers (except for subjects starting a new activity after completing the mandatory practice period for the exercise of arts or professions);
- Earned employment income and income similar to employment exceeding €30,000 in the previous year; this threshold is irrelevant if the employment relationship has ceased.

### **3.2 COMMUNICATION FOR ACCESS REQUEST TO THE REGIME**

To apply the EU VAT exemption regime, the taxable person must register by submitting a preliminary communication to the Financial Administration of their Member State of establishment.

### **3.3 OBLIGATIONS**

Accessing the cross-border exemption regime allows non-established taxable persons to be exempted from all VAT obligations, except for the certification of payments and the preservation of related documents.

If invoice issuance is required, the taxable person may issue a simplified invoice, even if the amount exceeds the limit specified in Article 21-bis of Presidential Decree 633/72, currently €400 (Ministerial Decree of May 10, 2019).

Operators adopting the EU exemption regime are required to submit a quarterly communication to their Financial Administration regarding operations carried out during the period.

### 3.3 OBLIGATIONS

Access to the cross-border exemption regime allows non-established taxable persons to be exempt from all VAT obligations, except for the certification of receipts and the retention of related documents.

If the issuance of an invoice is required, the taxable person may issue it in a simplified form, even if the amount exceeds the limit indicated in Article 21-bis of Presidential Decree 633/72, currently set at €400.00 (Ministerial Decree of May 10, 2019).

The economic operator adopting the EU exemption regime will still be required to submit a quarterly communication to their tax administration regarding the transactions carried out during the period.

### 3.4 TERMINATION OF THE REGIME - EFFECTIVE DATE

The cross-border VAT exemption regime ceases to apply upon the occurrence of specific circumstances, summarized in the following table.

#### **.Reason for Termination .Effective Date**

.The taxable person has informed the State of establishment of their intention to no longer benefit from the exemption regime within the State's territory.

.The regime ceases starting from the first day of the calendar quarter following the one in which the State of establishment received such communication, or if the communication was received during the last month of the calendar quarter, starting from the first day of the second month of the following calendar quarter.

.The eligibility conditions have ceased to exist (quantitative thresholds and qualitative limits as per Art. 70-quaterdecies, paragraph 1, letter b) and paragraph 2 of Presidential Decree 633/72)

.The regime ceases starting from the calendar year following the year in which the conditions ceased to exist."

.The threshold of 100,000 euros in business turnover within the State has been exceeded.

.The regime ceases starting from the calendar year during which the threshold was surpassed. In this case, the tax is due from the execution of the transaction that results in exceeding this threshold, and from the same date, the taxable person is required to register for VAT in the State and fulfill the obligations provided for the tax.

.The tax administration has deactivated the identification number 'EX.'

.The regime ceases from the moment the identification is no longer valid.

## 4. EXEMPTION REGIME APPLIED IN OTHER MEMBER STATES OF THE EUROPEAN UNION BY SUBJECTS ESTABLISHED IN THE STATE

### 4.1 ELIGIBILITY CONDITIONS

It should be noted that admission to the regime is allowed for "taxable persons" established in the territory of the State; therefore, the subjective scope is not limited to natural persons only (Article 70-octiesdecies of DPR 633/72). According to the definitions contained in Article 70-terdecies of DPR 633/72, any permanent establishments are not relevant for the purposes of the concept of "established subject."

Economic operators who are not eligible for the national flat-rate regime can also benefit from the exemption. For example, those who have achieved revenues exceeding €85,000.00 in Italy, even though they cannot access the flat-rate regime in Italy, will still have the option to join the exemption regime in another Member State, provided they have not exceeded the other thresholds set by the regulation.

### **Conditions for Eligibility for the Cross-Border VAT Scheme in Other Member States** (entities established in the State's territory)

- In the calendar year preceding the notification, the annual turnover within the European Union did not exceed €100,000.
- In the period of the current calendar year preceding the notification, the annual turnover within the European Union did not exceed €100,000.
- The annual turnover generated in the exemption state's territory does not exceed the threshold established by that state for the application of the exemption scheme.
- The taxable person has previously notified the Revenue Agency of their intention to apply the exemption scheme in the territory of other exemption states.
- The taxable person is identified for the purposes of applying the exemption only in the State's territory.

#### **4.2 COMMUNICATION FOR THE REQUEST TO ACCESS THE REGIME**

In order to access the VAT exemption regime in other Member States of the European Union, the taxable person established in the territory of the State, who meets the requirements, must submit a specific communication to the Revenue Agency, which must include the following information (provision no. 460166 of 30.12.2024).

#### **Content of the Communication for the Request to Access the Scheme**

(Provision of the Italian Revenue Agency 30.12.2024 No. 460166)

- Tax Code
- Name or Surname and First Name
- Legal Form
- Tax Residence
- Main Activity
- Secondary Activities
- Any Contacts or Website Addresses of the Business
- Declaration of Not Being Registered in the Cross-Border Exemption Scheme in Another State of Establishment
- States of Exemption (Member State or Member States in which the taxable person intends to avail of the exemption scheme)
- Any Other VAT Identifiers Already Assigned to the Established Subject, i.e., tax identification numbers for VAT purposes issued by an exemption state
- Turnover in the State's Territory and in the Individual States of the European Union's Territory in the Two Calendar Years Preceding the Communication and in the Period of the Current Calendar Year Preceding the Preliminary Communication (where exemption states have set differentiated exemption thresholds for sectors of activity, the turnover must be indicated separately for each sector of activity carried out)

The compilation and submission of the communication is carried out through the dedicated web procedure available in the reserved area of the Italian Revenue Agency's website.

Submission is allowed starting from January 1, 2025. Authorized intermediaries, as per Article 3, paragraph 3 of Presidential Decree 322/98, with a delegation for the consultation of the tax drawer, can submit the communication on behalf of the delegating party (subject established within the State's territory) from the date that will be announced by the Italian Revenue Agency on its website.

The taxable person is required to notify the Italian Revenue Agency in advance of any changes to the information previously provided, indicating their VAT number with the suffix "EX."

The communication update is also required if the taxable person intends to notify (Italian Revenue Agency provision no. 460166 of December 30, 2024):

- the intention to apply the exemption scheme in different Member States than those previously indicated;
- the decision to cease the application of the exemption scheme in one or more exempted States.

The web procedure for submitting the initial communication and its updates allows users to:

- review submitted communications;
- correct communications;

- access receipts related to the outcomes of the communications (including feedback from the exempted States).

Additionally, the procedure allows verification of the position of the established subject concerning the exempted States (provision no. 460166/2024).

#### 4.3 ACCESS TO THE REGIME

For the assignment of the suffix "EX," which is added to the VAT number of the applicant concerning the Member States that have admitted the operator to the exemption regime, the Revenue Agency conducts certain checks before forwarding the application for access to the regime to the exemption States indicated in the prior communication. Specifically, during the application process, the tax authority performs formal checks on the "accuracy and consistency" of the information (Prov. 460166/2024).

Following the submission, checks are carried out on the data contained in the prior communication (Prov. 460166/2024).

Once the checks are passed, the Agency forwards the prior communication (or its update) to the exemption States indicated in the application.

Once a positive response from at least one exemption State is received or if the deadline for response from these States has passed, the Revenue Agency assigns the "EX" identification number to the established taxable person. The assignment of this suffix must occur no later than 35 working days from the receipt of the communication to avail of the benefit or its update, "unless the exemption State has requested a longer period to conduct any checks to prevent tax evasion or fraud" (Art. 70-noviesdecies, para. 1 of Presidential Decree 633/72).

Within the same period, the Revenue Agency notifies the applicant of the rejection of the request for admission to the cross-border regime, as communicated by the exemption State, and the reasons for the rejection.

It should be noted that in Prov. 30.12.2024 No. 460166 (point 7.4), the Revenue Agency stated that the 35-day period begins from the date the prior communication is sent to the exemption States.

#### 4.4 OBLIGATIONS

A taxable person who joins the cross-border exemption regime in an exemption State is required to report the following information to the Revenue Agency by the last day of the month following each calendar quarter (Art. 70-unicies of Presidential Decree 633/72):

- The total value of supplies and services rendered during the calendar quarter within the territory of the State, or the absence of operations if none were conducted;
- The total value expressed in euros of supplies and services rendered during the calendar quarter in each other Member State, including States other than the exemption States, or the absence of operations if none were conducted.

#### Reference Quarter | Submission Deadline for Quarterly Report

January, February, and March | April 30

April, May, and June | July 31

July, August, and September | October 31

October, November, and December | January 31 of the following year

For exempt Member States that have set differentiated exemption thresholds for sectors of activity, the amounts must be entered separately for each sector of activity carried out.

The taxable person who adopts the exemption regime in one or more exempt Member States must notify the Revenue Agency of exceeding the threshold of €100,000.00 in annual turnover within the European Union, as well as the date on which this event occurred. The notification must be sent within 15 working days of exceeding the threshold; at the same time, the "value of the supplies and services provided from the beginning of the current civil quarter until the date of exceeding the threshold" must also be reported (Article 70-unicies, paragraph 3 of Presidential Decree 633/72).

#### 4.5 TERMINATION OF THE REGIME - EFFECTIVE DATE

The application of the cross-border VAT exemption regime in an exempt Member State ceases upon the occurrence of

the circumstances referred to in Article 70-duovicies, paragraph 1, letters a) and b) of Presidential Decree 633/72, summarized in the following table.

**Cause of Termination | Effective Date**

Notification of the decision to no longer make use of the exemption regime in an exempt Member State submitted within the first 2 months of the quarter | Termination in the Member State from the first day of the following quarter

Notification of the decision to no longer make use of the exemption regime in a Member State submitted in the third month of the quarter | Termination in the Member State from the first day of the second following quarter

Exceeding the annual turnover threshold set for the exempt Member State | Termination in the Member State from the date of exclusion communicated by the exempt Member State

Notification of the lack of requirements by the exempt Member State | Termination in the Member State from the date of exclusion communicated by the exempt Member State

Exceeding the €100,000 turnover threshold in the European Union | Termination in all Member States from the date the threshold is exceeded

The Revenue Agency promptly deactivates the "EX" suffix:

- when the exemption regime ceases to apply;
- when the taxable person has ceased their activity;
- when the cessation of activity can otherwise be inferred.

The Revenue Agency also promptly updates the information received through the communication referred to in Article 70-octiesdecies of Presidential Decree 633/72, sent by the taxable person who continues to apply the exemption in certain States.

In Prov. 30.12.2024 No. 460166, the Revenue Agency specifies that when the conditions for exclusion from the VAT exemption regime occur, the "EX" identification number is automatically deactivated.

**5 NON-DEDUCTIBILITY OF VAT**

As an exception to the provisions under which VAT related to transactions carried out outside the State territory is considered deductible if they allow deduction when carried out in Italy, it is established that purchases made under the cross-border exemption regime cannot benefit from deductibility. Article 3, paragraph 1, letter b), number 1 of Legislative Decree 180/2024 has amended Article 19, paragraph 3, letter b) of Presidential Decree 633/72, introducing this exception.

Article 3, paragraph 1, letter b), number 2 of Legislative Decree 180/2024, amending Article 19, paragraph 4 of Presidential Decree 633/72, provides that objective criteria consistent with the nature of the goods and services purchased must be applied to determine the non-deductible VAT portion for goods and services partially used for transactions under the cross-border exemption regime.