

Taxable transactions and acts

SUBJECT TO VAT

The following is subject to VAT (subsection 1 of § 1 of VAT Act):

1. supply created in Estonia, except supply which is exempt from tax;
2. import of goods into Estonia (§ 6 of the VAT Act), except imports exempt from tax (§ 17);
3. provision of service the place of supply of which is not Estonia (subsections 4 and 5 of § 10 and subsection 4 of § 10¹) except supply exempt from tax;
4. supply of goods or services specified in subsection 3 of § 16 of the VAT Act if the person liable to VAT has added VAT to the taxable value of such goods or services;
A taxable person may add VAT to certain supplies exempt from tax on the basis of his or her choice if he has previously informed the tax authority of his wish (e.g. the supply from immovables (except dwelling); financial services, except where the service is provided to a taxable person (limited) in another Member State, etc.).
5. intra-Community acquisitions of goods (§ 8 of the VAT Act), except intra-Community acquisitions of goods which are exempt from tax (§ 18).

A person liable to VAT must calculate VAT on all the transactions and acts above and, in the case of the supply specified in clause 1 of subsection 1 of § 1 of the VAT Act, the person must calculate VAT on (section 4 of § 3 of the VAT Act):

1. supply subject to taxation;
2. the services received from a foreign person engaged in business who is not registered as a taxable person in Estonia and who has no permanent business establishment in Estonia through which the person engages in business in Estonia;
3. the acquisition of goods to be installed or assembled in Estonia from a person of another Member State engaged in business who is not registered as a taxable person in Estonia and who has no permanent business establishment in Estonia through which the person engages in business in Estonia;
4. the acquisition of goods as the acquirer in a triangular transaction;
5. the acquisition of goods not listed in clauses 3 and 4 of this list from a foreign person engaged in business who is not registered as a taxable person in Estonia and who has no permanent business establishment in Estonia through which the person engages in business in Estonia;
6. the acquisition of goods listed in subsection 2 of § 41¹ of the VAT Act from another taxable person.
- Clauses 2 and 5 set out the so-called general reverse VAT liability, according to which a taxable person is also required to pay VAT on the acquisition of goods and services not specified separately from a foreign person engaged in business who is not registered as a taxable person in Estonia and who does not have a permanent establishment in Estonia but who generates taxable supply in Estonia with regard to the transaction. A foreign country means both another Member

State of the EU and a non-EU country. The reverse VAT liability arises for a taxable person only when he receives goods or services from a foreign person engaged in business (including a self-employed person), but not, for example, a foreign private person who is not a trader.

- Due to this general reverse VAT liability, a foreign taxable person is released from the obligation to register as a taxable person in Estonia if he or she transfers goods or provides services to a person registered as a taxable person in Estonia. This provision applies, for example, in the case of the receipt of services related to immovable property located in Estonia from a foreign taxable person.
- The purpose of the provision is to promote the free movement of goods and the provision of services and to facilitate business between Member States by reducing transactions in which a foreign taxable person would be subject to registration in Estonia and at the same time ensuring that VAT is still paid in Estonia if taxable supply arises here.

A foreign taxable person is not deemed to be an Estonian taxable person due to its permanent business establishment located in Estonia and engaged in business if the foreign person does not participate in a transaction or act subject to taxation through its permanent business establishment located in Estonia (subsection 3¹ of § 3 of the VAT Act).

Example

A French company has a branch registered in Estonia but it is not engaged in business. Therefore, the French company does not have a permanent establishment in Estonia. Consequently, if an Estonian taxable person transfers goods to that company or supplies taxable services according to the general rule, he has the right to issue an invoice directly to the company with a fixed establishment in France at a rate of 0% and does not issue an invoice to the branch located in Estonia because it does not participate in the supply of goods or the provision of services.

A taxable person with limited liability must pay VAT on the acts specified in clauses 2 and 5 of subsection 1 of § 1 of the VAT Act (import of goods into Estonia and intra-Community acquisition of goods, except for tax-exempt import and tax-exempt intra-Community acquisition) and on the acts specified in clauses 2–5 of the list set out in subsection 4 of § 3 of the VAT Act (section 5 of § 3 of the VAT Act).

A taxable person with limited liability who is registered on the basis of section 1 of § 21 of the VAT Act upon receiving services specified in subsection 5 of § 10 of the Act from a foreign person engaged in business is not required to pay VAT on the intra-Community acquisition of goods, except for the intra-Community acquisition of excise goods or new means of transport, if the taxable value of the goods acquired during the calendar year does not exceed 10 000 euros.

In addition to the above, under subsection 6 of § 3 of the VAT Act, VAT must also be paid by:

1. a debtor within the meaning of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code;

2. a person not registered as a taxable person, on transactions concerning which the person has issued an invoice or other sales document in which the amount of value added tax is indicated; VAT must also be paid by a person who is not registered as a taxable person and who has incorrectly entered the VAT on the sales invoice issued. This means that if in addition to the price of the goods a person has demanded VAT from a purchaser on the basis of an invoice even though he or she is not subject to VAT, the VAT must be paid to the state.
3. a person not registered as a taxable person or taxable person with limited liability, except the persons specified in subsections 1 and 2 of § 39 of the VAT Act who acquires a new means of transport from another Member State;
Similarly to other VAT exemptions and refunds applicable to representations, bodies and institutions provided for in § 39 of the VAT Act, the natural persons specified in these provisions (diplomats, consular officers, representatives of a special mission or international organisation and persons belonging to the armed forces of NATO) are also exempt from payment of VAT upon the acquisition of a new means of transport from another Member State. In other words, they have the right to purchase a new means of transport tax-free.
4. a person not registered as a taxable person or taxable person with limited liability who acquires alcohol, tobacco product or fuel, except for natural gas, within the meaning of the Alcohol, Tobacco, Fuel and Electricity Excise Duty Act (excise goods) from another Member State, except for a natural person who acquires excise goods for personal use;
5. the owner of the goods upon the termination thereby of the tax warehousing (§ 44¹) of the goods without transfer of the goods. This provision does not apply in cases where a person was the owner of the goods already at the time the goods were placed in the tax warehouse, except if the goods were stored at a tax warehouse following the domestic supply, import or intra-Community acquisition of the goods, and the goods were not transferred during the time they were stored at the tax warehouse;
The owner of the goods will not be liable to tax on the removal of his goods from the tax warehouse if he himself also placed those goods in a tax warehouse and the goods were not transferred in the tax warehouse, unless the person was able to benefit from exemption when the goods were placed in a tax warehouse immediately following the import, domestic supply or intra-Community acquisition of the goods. For example, such tax liability does not arise if a person places a certain quantity of grain in a tax warehouse, sells it at a zero rate in a tax warehouse, but withdraws the untransferred part of the grain from the tax warehouse.
6. the owner of excise goods under excise duty suspension arrangement upon taking thereby the excise goods out of the excise warehouse without transfer of the excise goods, except upon transporting the excise goods from one excise warehouse to another. This provision does not apply in cases where a person was the owner of the excise goods already at the time the excise goods were placed in the excise warehouse and the excise goods were not transferred in the excise warehouse. If the excise goods under excise duty suspension arrangement taken out of the excise warehouse have also been placed in a tax warehouse, clause 5 of this list will apply.

Similarly to tax warehouses, intra-excise warehouse transactions with goods under excise duty suspension arrangement are taxed at the rate of 0%. A tax liability arises when goods under excise suspension arrangement are taken out of an excise warehouse, unless the person was also the owner of the goods when the goods were placed in the excise warehouse and the goods have not been

transferred in the excise warehouse. Therefore, when excise goods under excise suspension arrangement are taken out of an excise warehouse without transferring them, the owner of the goods will only become liable to VAT if he has acquired the goods in an excise warehouse subject to a 0% VAT rate. In other cases, excise goods under excise suspension arrangement are already subject to VAT in an excise warehouse because VAT must be calculated and paid according to the general rules when goods are placed in an excise warehouse. Thus, the removal of goods under excise suspension arrangement from an excise warehouse by the owner is not subject to VAT if the person was also the owner of the excise goods when the goods were placed in the excise warehouse and the goods have not been transferred while in the excise warehouse. Similarly, when excise goods under excise suspension arrangement are taken out of an excise warehouse without a transfer, the obligation to calculate and pay VAT does not arise if the owner of the excise goods takes the excise goods out of the excise warehouse without transferring them, but takes them immediately to another excise warehouse. In the above cases, taking the goods out of the excise warehouse is not supply for the purposes of the VAT Act.

Since VAT is calculated differently when goods are taken to an excise warehouse or a tax warehouse, the provisions on tax warehousing must be taken as a basis in a situation where goods under excise suspension arrangement taken out of an excise warehouse have also been placed in a tax warehouse.

Upon termination of storage in the cases specified in points 5 and 6 of this list, the taxable person declares VAT in the VAT return (subsection 1 and 2 of § 29 of the VAT Act). In this case, VAT is calculated and paid in accordance with the reverse charge procedure in lines 1 and 4 of form KMD and, in the case of goods used for taxable supply, the VAT due is also deducted as input tax in line 5 of form KMD, which means that no real tax liability arises from that transaction.

If storage is terminated by a person who is not registered as a taxable person, the person submits information on the goods and pays the VAT at the latest on the day of the termination of the tax warehousing of the goods or the day of taking the goods out of the excise warehouse in accordance with **Regulation No 26 of the Minister of Finance of 15 June 2022** (subsections 5¹ and 8 of § 38 of the VAT Act).

Upon termination of storage, in the cases referred to in points 5 and 6 of this list, the taxable supply amount is the acquisition cost or cost price of the goods or the usual value of the goods if it is lower than the acquisition cost or cost price. Only in justified cases, the taxable value of goods may be lower than the value of the goods entered in the warehouse stock records at the time of placing such goods in the tax warehouse or excise warehouse (subsection 13 of § 12 of the VAT Act).

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