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VAT WAREHOUSES THE CHANGES INTRODUCED BY D.L. N. 193/2016

Prepared by the Italian Tax Department

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Preamble

VAT warehouses were introduced by art. 50 bis of D.L. n. 331/1993 for the purpose of postponing payment of VAT.

These fiscal deposits allow national or EU goods to be stored and processed without the need for payment of VAT, upon condition that the goods are not commercialised within these warehouses and are therefore not put on sale.

VAT will be paid exclusively by the end purchaser at the time the goods are released for consumption in Italy (following removal of the goods from the respective warehouses) and through the reverse charge mechanism (reversal of the obligation to pay the VAT that will be borne by the purchaser as opposed to the vendor) pursuant to art. 17 paragraph 3 of D.P.R. 633/73.

With regard to goods from outside the EU, these can be entered into the VAT warehouses only after they have been released for free circulation and customs duties have been paid.

D.L. n. 193 of 22.10.2016, converted with amendments by Law n 225 of 01.12.2016, introduced some important changes for VAT warehouses.

The changes introduced by D.L. 193/2016

Art. 7 of D.L. n. 193 **repeals the 4th paragraph of article 50 bis letter d of D.L. 331/1993.**

This eliminates any limitations to specific categories of goods for the removal of goods from VAT warehouses by taxable persons who use or commercialise these goods in the national territory.

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Limitations of an objective (with regard to the types of goods introduced into VAT warehouses) and subjective nature (with regard to recipients of the goods removed from the warehouse) are therefore eliminated.

In short, as of 01.04.2017, all transfers of goods can be made without applying VAT by entering goods into VAT warehouses regardless of where said goods were manufactured or irrespectively of the identity of the transferee (national of Italy, another EU Country or a Non-EU Country) and the type of goods involved in the transaction pursuant to art. 50 bis paragraph 4 of D.L. 331/1993.

Until such date the possibility to not apply VAT will be reserved exclusively to transfers to taxable EU persons and to the transfer of goods listed in Table “A bis” to both Italian/EU and non-EU persons.

Reform of paragraph 6 of art. 50 bis of D.L. 331/1993.

As of 01.04.2017, for the purposes of the removal of the goods from VAT warehouses, it will be no longer be necessary for persons to have been registered with the Chamber of Commerce for at least one year nor will there be a requirement for demonstrating actual trading or regularity in VAT payments.

As of 01.04.2017, the removal of goods from VAT warehouses can be made only by taxable persons for VAT purposes who are identified in Italy directly or through fiscal representatives, or persons who have a permanent establishment in Italy.

Objective of the changes

The objective of the change introduced by art. 4 of D.L. n. 193/2016 is that of contrasting certain fraudulent conducts.

Changes relating to the payment of the tax

A further change introduced by D.L. n. 193/2016 in terms of VAT warehouses, relates to the means of applying the tax that is payable upon removal of goods from VAT warehouses.

The tax is applied as follows, based upon the means with which the goods were entered into the warehouses:

Goods previously entered into warehouses	Application of tax
As intra-EU purchases	VAT paid by the owner of the goods who removes these from the warehouse pursuant to art. 17 paragraph 2 of D.P.R. 633/72 – reverse charge.
In virtue of an internal contract	VAT to be borne by the person who removes the goods, to be paid for and on behalf of the latter by the manager of the VAT warehouse, no later than the 16 th day of the month following the one in which the removal occurs, without the possibility for horizontally offsetting of VAT (VAT from VAT) as per art. 17 of Legislative Decree n. 241/1997.



<p>As a non-EU purchase</p>	<p>VAT paid with the reverse charge mechanism following presentation of a suitable guarantee to the tax authorities. Pending confirmation of the contents of the guarantee through a Decree of the Ministry of Economics and Finance, the tax must be paid by the managers of VAT warehouses, for and on behalf of debtors.</p> <p>Even in this case, it will not be possible to horizontally offset VAT as per Legislative Decree n. 241/1997.</p>
<p>Made by an habitual exporter</p>	<p>The removal can be made in a regime of tax exemption as per art. 8 paragraph 1 letter c) of D.P.R. 633/72 up to the limits of the respective ceiling.</p>

As a result of the changes introduced with regard to VAT warehouses by D.L. 193/2016, as of 01.04.2017, for goods coming from Non-EU Countries removed from VAT warehouses, the tax must no longer be paid by the person who removes the goods through the reverse charge mechanism, but must be paid for and on behalf of the latter by the manager of the VAT warehouse, with the F24 form, without prejudice to the joint and several liability for both parties, no later than the 16th day of the month after the one on which the goods are removed and without the possibility of horizontally offsetting the tax (VAT from VAT).

Therefore, in virtue of the new regulations, as of 01.4.2017, the debtor will be required to enter in the purchases register a self-invoice with the respective payment details, in order to exercise any right to make deductions: the manager of the warehouse will be bound by specific reporting obligations, with regard to the goods removed, which will be defined through an Order from the Director of the Italian Revenue Agency.

There will be no change for the removal of goods entered into the VAT warehouse on the basis of an intra-EU purchase: as explained above, in said cases the reverse charge mechanism will continue to be applicable.

The new penalties

With regard to the changes introduced by D.L. n. 193/2016 in art. 50 bis paragraph 6 of D.L. n. 331/1993, please note that the penalties applicable to the manager of the VAT warehouses in the event of breaches have also been revised and can be summarised as follows:

- ✚ fine of 30% with joint and several liabilities by the manager of the VAT warehouse;
- ✚ fine of 100% to 200% of the tax for the person making the removal if the latter is an habitual exporter that has presented a declaration of intent without satisfying the required criteria.





Conclusions

As of 01.04.2017, for persons who remove goods from VAT warehouses, it will no longer be necessary:

- ✚ to be registered with the chamber of commerce for at least one year;
- ✚ demonstrate actual trading;
- ✚ certify the regularity of VAT payments;
- ✚ the tax that is due at the time the goods are removed from the warehouse must be paid by the manager of the VAT warehouse without the possibility for horizontally offsetting the tax.

Please contact Clarkson Hyde - Studio Associato should you require any additional information or clarifications on the above.

Yours sincerely,

Clarkson Hyde

