

Rulebook on manner of logging and completing customs declarations and application of VAT rules

Tax Alert

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Amendments to the Rulebook on the Form, Content, Manner of Lodging and Completing the Declaration and Other Documents in Customs Procedures (Off. Gazette of RS no. 42/19, 51/19, 58/19, 65/19, 74/19, 96/19, 11/20 and 43/20) were published at the end of 2020 and beginning of 2021 and relate to how single administrative documents are to be completed (hereinafter: **Rulebook**).

The amendments were published in the Official Gazette of the Republic of Serbia no. 126/2020 for amendments in effect from 31 October 2020, and no. 6/2021 for ones in effect from 6 February 2021.

We wish to draw attention to amendments to this Rulebook, given that certain amendments are closely related to the application of VAT regulations: exercising the right to VAT exemption for export of goods by a foreign entity and exercising the right to deduction of VAT paid for imports in certain cases.

1. SAD for exports

In accordance with the provisions of the Customs Law, which is effective from 17 June 2019, a foreign entity cannot be an exporter of goods. As a result, the issue has been raised about how to complete the SAD when a foreign entity removes goods outside the territory of the Republic of Serbia.

Amendments to the Rulebook from October 2020 and February 2021 specify the following:

In the SAD for exports, in box 2 (Sender/Exporter) information is entered about the entity:

- which has established business on the customs territory of the Republic of Serbia, and which is authorized to make decisions about removing goods from that customs territory (owner of goods), or
- which has established business on the customs territory of the Republic of Serbia and which is a party to a contract based on which goods are removed from that customs territory.
- Exceptionally, information will be entered for an entity with established business on the customs territory of the Republic of Serbia to which appropriate documents for goods have been issued by the competent authority, in accordance with regulations, which must be submitted together with the declaration.

Box 44 of the SAD for exports will be used to enter information about the foreign entity, owner of the goods who authorized the domestic entity to remove the goods from the customs territory of Serbia.

We emphasize that authorization for representation in customs procedure is not considered to be authorization for removing goods from a customs territory, such that separate authorization must be issued for removal of goods.

If information is entered in box 2 about the holder of appropriate authorization documents for goods that are exported, who is not the owner of the goods at the time of export, in that case information about the entity who is the owner of the goods at the time of export is entered in this box, i.e. enter code "KO1" for the name of consignor/owner.

The Rulebook on the Method and Procedure for Realizing Tax Exemptions for VAT With Right to Deduct Input Tax specifies that the taxpayer can exercise the right to exemption for export of goods if they hold an export declaration that includes the confirmation that the goods have left the territory of the Republic of Serbia, or a certified copy of the export declaration.

Ministry of Finance opinions issued before the Customs Law went into effect and before the amendments to the Rulebook, associated the right to VAT exemption for export of goods with the entity which is declared in the SAD as the consignor/exporter.

After the Customs Law went into effect the Ministry of Finance did not offer any opinions on the issue of exercising the right to a VAT exemption. The previously stated position that an entity which is declared in the SAD as the consignor/exporter is entitled to a VAT exemption is no longer adequate when goods are exported by a foreign entity.

In order to prevent different application in practice, and especially in case of tax audits by the Tax Authorities, it would be required for the Ministry of Finance to amend the Rulebook on the Method and Procedure for Realizing Tax Exemptions for VAT With Right to Deduct Input Tax, or to issue a new opinion that would take into account the new rules prescribed by customs regulations.

2. SAD for free circulation

In box 1 (Declaration) the third section will not be filled out even in case of import of express consignments, thus harmonizing the completion of this part of the box for all goods, irrespective of the specific characteristics of certain types of traffic. Identification of the procedure for free circulation of express deliveries in the future will be made by entering the designation "DE" in the fourth section of box 1, while supplementary declaration in the case of simplified declaration by entering data in the record of the declarant will be identified by entering the designation "DZ".

In box 8 (Consignee) it is permitted to enter information about an entity that is not the recipient or owner of the goods, but is the holder of the documents for the import of goods issued by a competent authority (permits, consents, decision, etc.).

Information about the owner of goods is to be entered **in box 44**, with indication of code "K01".

This change is included because of harmonization in the application of customs and tax regulations, on the one hand, and, on the other, the Law on Donations and Humanitarian Aid and other regulations (above all the Law on Medicines and Medical Devices) which require for the importer of certain goods to be exclusively an entity holding a license for wholesale circulation.

The same method for declaring the importer and owner of goods will apply in cases of import of goods by agents in foreign trade transactions who purchase goods in their own name, but on behalf of the actual purchaser or owner of the goods. If in certain cases the application of a customs exemption is possible, the right to such exemption is determined with respect to the entity whose information is entered in box 44 of the SAD for free circulation of goods (e.g. for import of goods for entities engaged in scientific, educational, cultural or artistic activities, nature and environmental protection).

We believe this amendment to be closely linked to the application of the right to deduct input VAT. Namely, according to opinions issued by the Ministry of Finance prior to the amendments to the Rulebook, the right to a deduction is associated exclusively with the entity entered in box 8 of the SAD. However, in view of the described amendments to the Rulebook, we believe that this approach does not apply to cases when the entity entered in box 8 only holds the documents for import, but is not the recipient or owner of the goods. In this case it is also recommended that the Ministry of Finance should issue a new opinion, taking into account the described changes in customs regulations.

3. SAD for reexport of goods imported for inward processing

When goods are delivered directly to their owner, the amount on the invoice is entered in box 22 (Invoice currency and total amount invoiced), where by contrast with the resolution that was effective thus far, it is not specified that such amount should consist of the value of domestic materials and the value of services provided.

When goods are delivered to a third party at the instructions of the owner of the goods, just as up to now, information about the invoice amount or proforma invoice amount provided by the owner of goods to the third party is entered in box 22.

Box 44 (Additional information/documents produced/certificates and authorizations), just as for the import declaration, is to be used for entering information about a foreign entity, the owner of goods who engaged a domestic entity for removing goods from the customs territory of Serbia.

4. Besides the aforementioned, the amendments also include **amendments to the Codes list for Completing Customs Procedure Documents**.

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