



### Quick fixes from 1 July 2020 - it is worth keeping an eye on Intra-Community transactions

This 1 July, after a long wait, the Polish VAT Act was amended as part of a package of so-called quick amendments. The motto was to simplify and unify VAT settlements in trade in goods within the EU. At first glance, it can be said that the amendment involves several changes that simplify VAT settlements in international trade (e.g. as regards deliveries to foreign warehouses).

However, particular vigilance is required from taxpayers regarding changes in supplies and acquisitions within the EU in the scope of:

- the conditions for the application of the 0% rate for exports of Intra-Community supplies,
- chain transactions.

### Chain transactions

In general, changes in chain transactions should be assessed as a step in the right direction. Simplification of chain transactions is associated with the introduction of one general principle of settlement by assigning a VAT-exempt supply (in Poland taxed at 0%) to a transaction made for an intermediary (transport organizer). An exception is to be made for a transaction performed by an intermediary entity (taxed at the 0% VAT rate) to be regarded as a movable transaction (taxed at the 0% VAT rate), provided that the intermediary entity gives its VAT number assigned in the exporting country. And indeed this is where simplification in chain transactions ends...

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## In practice, taxpayers still have a number of doubts as to:

1. which entity in the chain **acts as an intermediary** within the meaning of the definition - although it is indicated that it is the entity which sends or transports goods, a thorough analysis and determination still needs to be made of the circumstances related, among others, to identification of:

- a) the operator bearing the risk for the goods,
- b) the moment of the transfer of the right to dispose of the goods,
- c) the entity insuring the goods and incurring the cost of insurance,
- d) the entity ordering the transport, affecting the conditions of transport (time, place, etc.).

If the functions related to the transport of goods are not concentrated in a single entity, the question arises as to which criteria should be given priority in determining the entity organizing the transport. **Simple recourse to INCOTERMS rules will therefore not always be possible and safe.**

2. circumstances that lead to disruption of the supply chain - unfortunately, there are no guidelines in the Act in this respect, so taxpayers must rely on the developed jurisprudence, which unfortunately is not uniform in this respect

3. **due diligence** in terms of protecting the taxpayer from the negative effects of reclassification of the transaction (from 0% to 23%) and the scope of administrative and corporate obligations to demonstrate it concerning international transactions (in particular where the taxpayer does not know whether the goods supplied are the subject of further supply within the chain).

This package of doubts can be supplemented by the question of **the protective power of the advance tax rulings** issued so far for chain transactions and the lack of clear criteria on how to approach supplies involving third countries (with regard to exports and imports of goods).

## Right to apply 0% VAT rate on the intra- community supply of goods

The new regulations also introduce significant changes in the requirements for the application of the 0% rate. The amendment introduced **a new material condition for the application of the 0% rate - providing the purchaser with the EU VAT number, submitting the EC Sales List** and providing correct data in it (previously their failure to do so, in contrast to the rules currently in force, did not mean the loss of the right to apply the 0% rate and the obligation to tax transactions at the national rate - now it is different; this is the essence of the change in the nature of the condition from formal to material).

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## What should you pay particular attention to?

In particular, the issue related to the new EU VAT number requirements of the contractor requires taxpayers to be vigilant and to arrange their internal processes in such a way as to **ensure security of communication with the recipient in obtaining the VAT number** and the correct preparation of summary information.

The regulations state that the EU VAT number is to be provided to the taxpayer who wants to take advantage of the preferential 0% rate in export. However, the regulation does not specify how, in what form and how often such number is to be provided.

Moreover, the 0% rate does not apply when **the submitted EC Sales List turns out to contain incorrect data** concerning Intra-Community supplies of goods under the requirements specified in the Act (the correct **recognition of the moment when the tax obligation arises, correct conversion of the exchange rate, if the tax base has been expressed in a foreign currency**, and thus the issues which have so far been frequently committed by taxpayers due to the lack of risk of tax arrears arising from the 0% taxation of the Intra-Community supply of goods at the rate, may be material in this case). This is a completely new obligation for Polish taxpayers, on which the zero rate depends, and therefore it is worth taking special precautionary steps in this respect.

## It is also worth taking care of Intra-Community acquisitions of goods

Finally, we would like to point out that the issues highlighted above do not only concern taxpayers who supply goods to other EU countries. **Negative consequences may also apply to taxpayers who purchase goods within the framework of Intra-Community transactions.**

If the supplier fails to meet the conditions for VAT exemption, the purchasers (instead of the transaction which does not involve a VAT charge) may receive an invoice with the VAT calculated according to the supplier's country. Thus, the purchase of goods within the framework of Intra-Community acquisition of goods will cease to be a cash flow neutral transaction for Polish taxpayers.

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## How can we help?

- assistance in the identification of chain transactions and the development/modification of procedures enabling the correct identification of such transactions;
- analysis of the correctness of VAT settlements in chain transactions, including the indication of possible tax risks or the possibility of optimisation (e.g. in terms of the possibility of using a simplified triangular transaction, or using the relevant Incoterms rules, the method of transferring the VAT number, etc.);
- identification of potential registration obligations in other EU countries and assistance with registration;
- preparation of internal materials/procedures/guidelines, presenting the principles of VAT settlements on international transactions, including for logistics/purchase/sales departments participating in foreign transactions;
- assistance in implementing and conducting internal trainings (including online) on new rules of taxation of international transactions for both tax/accounting and logistic/sales/purchasing departments;
- verification of individual advance tax rulings as to whether they sufficiently secure the adopted method of settlement in the light of current tax changes, the controlling approach and the way the company operates in practice;
- preparation of requests for advance tax rulings concerning the correctness of the adopted method of settlement;
- preparation of the so-called "defense file" aimed at collecting arguments confirming the correctness of the approach used in settlements;
- review of the correctness of declaring the intra-community supply of goods (the moment when the tax obligation arises, exchange rate conversions, presentation of correction invoices, etc.) in terms of the risk of losing the possibility of applying the 0% rate;
- support and representation before tax authorities and administrative courts, developing an optimal line of defence;
- providing authorial tools offered by MDDP (e.g. NIPcheck - application for automatic collective verification of NIP and VAT-EU numbers).

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The MDDP VAT team is one of the largest and most successful specialist tax teams in Poland. MDDP is the only entity from Poland invited to the Group of VAT Experts established by the European Commission. The team comprehensively deals with Polish and European tax, its members are parliamentary experts, experts of business organizations as well as industry organizations and associations.

In case of any questions, interest in the offer or obtaining other details, we are at your disposal.

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