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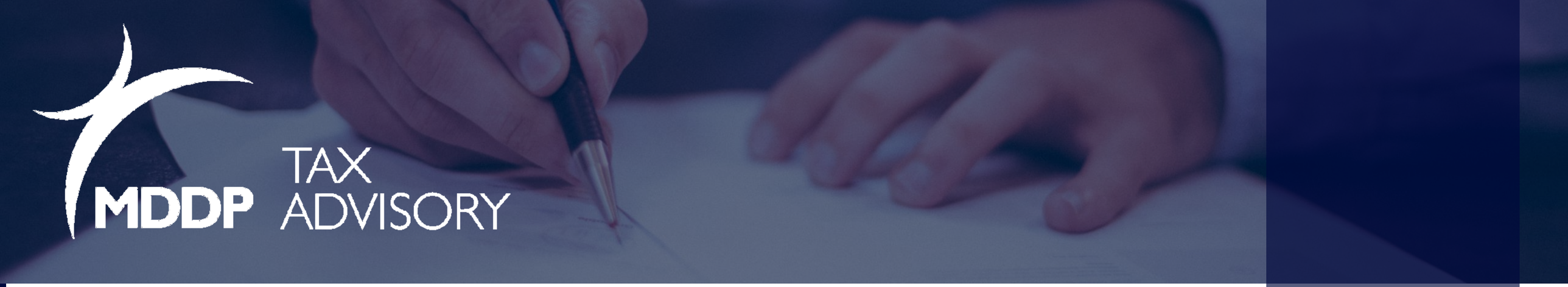
TAX
ADVISORY
VAT: Intra-Community transactions - what has changed in 2020?



MDDP TAX ADVISORY

Dear Sirs,

on 1 July 2020, finally **Quick Fixes** package was implemented in Poland. This is a set of quick, spot amendments to the VAT regulations, the assumption of which was to harmonize and to simplify the rules applicable to intra-EU trade in goods.

The amendments, in terms of processing, can actually be called 'quick'. However, from the taxpayer's perspective, their implementation requires **particular vigilance and diligence**. In this report, we are going to describe the most important changes and what to pay particular attention to in business practice **given that the first settlements under the new rules are behind us and the next ones ahead of us.**

We would like to encourage you to read our study. We hope that it will bring you closer to the tax security thread in the new realities of intra-EU trade in goods **(Intra-Community supply of goods and Intra-Community acquisition of goods).**

Yours sincerely,

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Tomasz Michalik and MDDP VAT Team

The Quick Fixes package

What changes does the Quick Fixes package provide for?

- New material requirements for the application of the 0% rate for Intra-Community supplies of goods.
- New rules for the assignment of a movable supply (preferentially taxed) in the case of Intra-Community chain transactions.
- Simplification in the operation of call-off stock.

What is the time range for the changes to apply?

- The Quick Fixes package implementing the EU directive is, in principle, of a transitional nature, and was introduced until a uniform target system is developed within the EU VAT framework.
- In Poland the package was introduced on 1 July 2020. However, since 1 January 2020, taxpayers have already had the opportunity to apply new provisions resulting from the EU directive.
- According to the transitional provisions introducing the Quick Fixes package, taxpayers applying the existing rules regarding the consignment warehouse after 1 January 2020 may continue to apply them to goods which were introduced into the warehouse before 1 July, but no longer than 24 months after the date of introduction of the goods into the consignment warehouse.
- On the other hand, taxpayers who have already been applying the EU regulations since 1 January 2020, and could not show the movement of goods in the special EU Sales List (because it has not yet been introduced in Poland), might have submitted, by 25 July, the summary information or a correction to the EU Sales List for the month in which they transported the goods.

New conditions for applying the 0% rate for Intra-Community supplies of goods

Introduction

The Quick Fixes package introduced **two additional material conditions** for applying the 0% rate to Intra-Community supplies of goods:

- to have the correct and valid purchaser identification number for Intra-Community transactions (allocated by the Member State of the purchaser, containing the two-letter code used for value added tax which the purchaser has given to the taxable person),
- showing the Intra-Community supply of goods in the recapitulative statement submitted on time and including the correct details of the Intra-Community supply of goods (unless the taxable person has duly explained the failure to do so in writing to the head of the tax office).

What changes have been made?

At first glance, it seems that the requirements were already known to Polish taxpayers before the introduction of the Quick Fixes package. However, from a practical point of view, this change is of **great importance**, because:

- the nature of the indicated prerequisites is changed from formal to material (failure to meet the conditions). The Commission's decision to apply the 0% rate and the obligation to tax shall not automatically result in the loss of the right to the 0% rate and the obligation to tax transactions at the national rate; failure to meet material conditions prevents the application of 0% rates - that is the essence of this change),
- the conditions for applying the 0% rate for an Intra-Community supply of goods have been clarified, e.g. before the introduction of the Quick Fixes package it was important for the recipient of goods to have a valid VAT-EU number (there was no obligation to show that this number was to be given to the taxable person making supplies.).

The indication of the Intra-Community supply of goods at 0% in the VAT return and the recapitulative statement from July 2020 onwards (the deadline for submitting the declaration and recapitulative statement is 25 August 2020 for the first settlement period under Quick Fixes package) is conditional on meeting the new requirements.

New templates for recapitulative statements have been in force since 1 July and apply to accounts from June 2020.

New conditions for applying the 0% rate for Intra-Community supplies of goods

The "New version" of the buyer's EU VAT number

- A new requirement under the VAT Act is for the purchaser to provide the supplier with an EU VAT number. Unfortunately, so far, the Ministry of Finance has not officially expressed its opinion on how to fulfil this obligation. In its Explanatory Notes, the European Commission, on the other hand, presents quite a liberal approach, even assuming that merely showing a number on the invoice means that it has been given to the supplier by the purchaser.

What should we look at?

Therefore, a number of doubts arise in relation to the buyer's VAT number:

- Will it be sufficient for the supplier to **indicate the buyer number on the invoice**? Such an approach results from the explanation of the European Commission, however, the Polish regulation indicates that 'the customer gives his number', which would indicate the need for the buyer of the goods to remain active in this respect.
- **When should the EU VAT number be given**? Before the event giving rise to the tax obligation, is it sufficient for it to be communicated when the invoice is issued? The situation in which the buyer gives the EU VAT number after the invoice has been issued and the transaction settled, may also become problematic (and the tax authorities consider that giving the buyer's number on the invoice does not meet a condition in question). The application of the 0% rate in such a case may result in tax arrears.
- **In what form** should the EU VAT number be given? In this respect, is it sufficient to include, in the framework contract (e.g. for ongoing supplies), the information on which the number is used by the purchaser? However, should the number be included each time, e.g. in the order or in the correspondence concerning each delivery?

It is worth taking care of proper communication with the purchaser about his EU VAT number

New conditions for applying the 0% rate for Intra-Community supplies of goods

NEW - increased importance of recapitulative statements

The requirement to submit EU Sales Lists has existed in the Polish legal system for many years. However, in connection with the introduction of the Quick Fixes package, it has taken on a new meaning, since the submission of recapitulative statements and the correctness of data concerning Intra-Community supplies of goods **will make an impact on the right of the taxpayer to apply the 0% rate.**

What should we look at?

The provision indicates the obligation to show in the recapitulative statement the correct data for a transaction in a cross-border delivery.

For this reason, on issues such as **correctness**:

- **of the VAT number of the buyer**,
- to identify the **date on which the tax obligation arose**,
- **exchange rate conversions** (where the tax base is expressed in a foreign currency),
- the presentation of **correction invoices for the Intra-Community supply of goods.**

the right of the taxpayer to apply the 0% rate may depend on it. These areas, due to the application (as a rule) of the 0% rate for Intra-Community supplies of goods (and the absence of risk of tax arrears), have sometimes received less attention from taxpayers. Now that the rules have been amended, in order to maintain the right to apply the 0% rate for Intra-Community supplies of goods, they should be subject to particular scrutiny.

Due diligence must be exercised in the scope for completing the recapitulative statement

New conditions for applying the 0% rate for Intra-Community supplies of goods

Error in the recapitulative statement / late submission

The VAT Act provides that the right to apply the 0% rate will be retained if the taxpayer 'duly explains in writing to the head of the tax office'. The question of which categories of errors will be considered by the authorities as duly explained is particularly relevant here.

An important issue may, therefore, be the form, timing or process of explaining the failure of the head of the tax office itself, which is not regulated by law. There are fundamental doubts here, on which the right of the taxpayer to apply the 0% rate, for example, may depend:

- will it be sufficient to justify the failure to do so in writing when submitting the EU Sales List, or will it be necessary to send a separate document in order to retain the right to apply the 0% rate?
- will it be necessary to wait for the tax authority to accept the explanations provided?
- by what date should these explanations be submitted?

The approach of the tax authorities will therefore be determined by current practice and the degree of formalism adopted - it is therefore important to limit any formal errors which may result in the right to apply the 0% rate being called into question.

Impact of changes on Intra-Community acquisitions of goods

Purchasers of goods should also be vigilant

- At first glance, it may seem that the changes in question do not apply to taxpayers who purchase goods as part of Intra-Community acquisitions from other EU countries. However, the new regulations, although not explicitly, modify the method of settlement in this respect, and may also affect the tax position of buyers of goods from the European Union.
- It should be remembered that preferential taxation of ICA of goods recognized in Poland is possible provided that the Polish taxpayer will communicate the correct and valid EU VAT number to his supplier accordingly.
- Otherwise, the supplier (depending on the tax practice in his country) may tax the supply at the national rate.
- In the case of taxation of the transaction by the supplier at his national rate (also as a secondary consequence of the adjustment for reclassification of the transaction to the local supply), there is a real problem with passing this cost on to the purchaser. Otherwise this will also mean effective double taxation of transactions (theoretically this is the case anyway, but the application of the 0% rate effectively makes the tax appear only once, on the buyer's side.)

Therefore, it is worth taking care of proper communication with suppliers with regard to the EU VAT number and securing it through appropriate contractual provisions (e.g. in terms of setting the gross price).

Documentation of movements of goods from 1 January 2020

Obligations introduced by the Implementing Regulation

Council Regulation (EU) 282/2011 introduced, as of 1 January 2020, a new provision in the Article 45a, setting out a set of presumptions to confirm that goods have been transferred to another Member State as a result of a transaction. Proper documentation of the movement of goods is necessary for the purpose of applying the 0% rate to an Intra-Community supply of goods.

According to the Regulation, the taxable person should have the following evidence:

- two documents related to the transport (such as a signed CMR consignment note, bill of lading, air freight invoice or invoice from the carrier of goods), or
- one document related to transport and one other type of policy transport insurance; official documents confirming the arrival of goods at the Member State of destination or a certificate of receipt by the operator the warehouse to which the goods were delivered.

It is important that the documents are issued by two different parties that are independent of each other and do not conflict with each other.

Where goods are dispatched or transported by the buyer, the supplier must also be in possession of a written statement from the buyer confirming that the goods have been dispatched or transported by the buyer or by a third party acting on behalf of the buyer and indicating the Member State of destination of the goods.

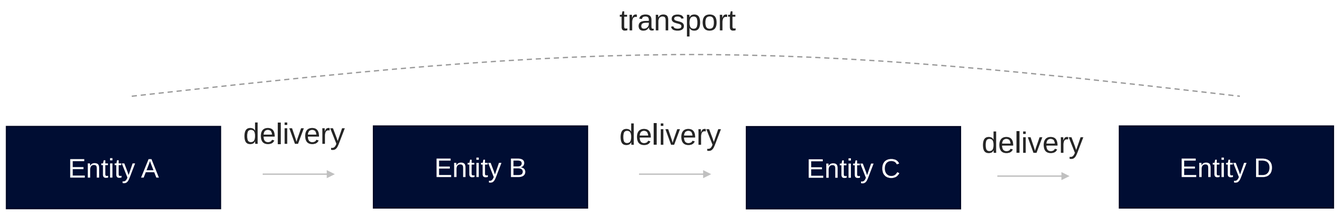
The regulation or the existing legislation?

- The taxpayer has a choice between applying the rules set out in the Council Regulation and the rules resulting from the Article 42 of the VAT Act.
- The possibility to choose is a consequence of the fact that the provisions of the Article 42 of the VAT Act concerning the method of proving the transfer of goods have not been changed.
- According to the VAT Act, transport documents (when the goods are transported by a carrier) and specification of cargo units will be sufficient to confirm the movement. **Therefore, it is possible to continue to apply the provisions on documentation of movement of goods specified in the VAT Act, provided that it is optimal from the perspective of a given taxpayer.** And most often this is the case - which results from the procedures implemented so far and effectively applied. So if the model works, there is no need to change it.

Chain transactions

Definition

A chain transaction is a type of transaction in which several entities deliver the same goods in such a way that the first entity delivers the goods directly to the last purchaser in order. A chain transaction involves at least three entities.



What should we look at?

- Chain transactions can be national and international (EU and non-EU).
- For cross-border (EU and non-EU) supplies, only one supply in the chain can benefit from the 0% preferential rate (an exemption).
- The taxpayer's lack of knowledge of the entire supply chain and the fact that he is involved in a chain transaction is not an argument to protect against the negative effects of reclassifying a transaction from 0% to the national rate.

Due diligence is also important for chain transactions

Chain transactions

The idea of change

The VAT Directive, in its earlier wording, did not lay down specific rules for assigning a movable supply to one of the supplies in the chain. In Poland, there were rules in this area, but their interpretation was not uniform - which meant a great deal of uncertainty in the settlement of this type of transaction.

The introduced provisions are intended to solve some problems related to the need to analyse which supply in the chain will constitute an Intra-Community transaction (preferentially taxed).

To this end, the Quick Fixes package, to a certain extent, introduces **certain simplifications and uniform** rules for taxation of chain transactions within the European Union.

The changes do not apply to import/export transactions within the chain

What are the rules now?

In accordance with the rules in force where the transport organiser in the case of chain transactions is:

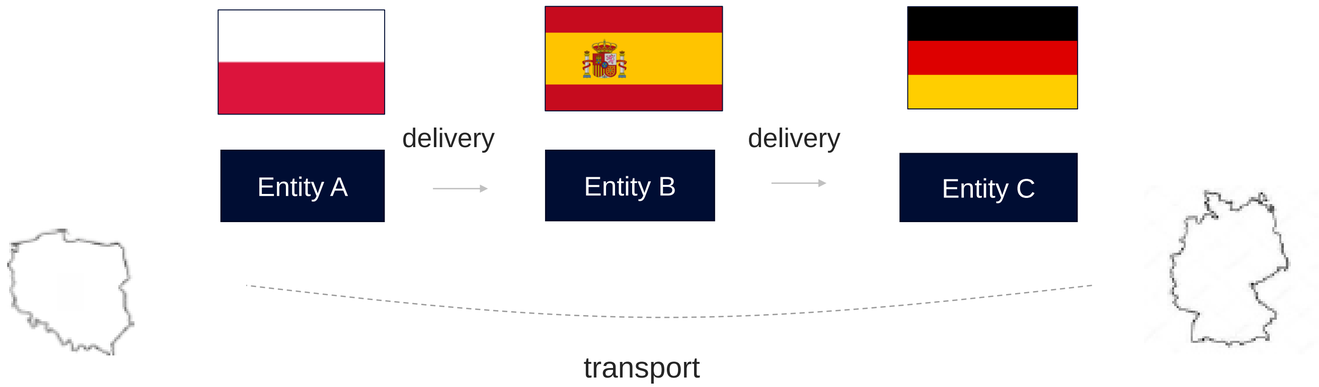
- the first of the entities involved in such a supply (A), the movable supply is a supply made by that entity (transaction between A-B),
- the last of the entities participating in such a delivery (C), a movable delivery is a delivery made to that entity (transaction between B-C),
- **other than those referred to above (B) - a movable supply is a supply made between entities A and B, unless the intermediary has provided his supplier with an Intra-Community transaction identification number assigned to him by the Member State from which the goods are dispatched or transported, the dispatch or transport being attributed solely to the supply made by that entity (B-C).**

Chain transactions

Example - general principle

In the case of chain transactions, the shipment or transport shall be attributed to only one delivery.

Basic rule: the dispatch or transport of goods is assigned to a delivery made to the intermediary (i.e. A-B transaction in the following example).



Supply between A and B - movable (Intra-Community) supply: A shows an Intra-Community supply of goods in Poland, B – an Intra-Community acquisition of goods

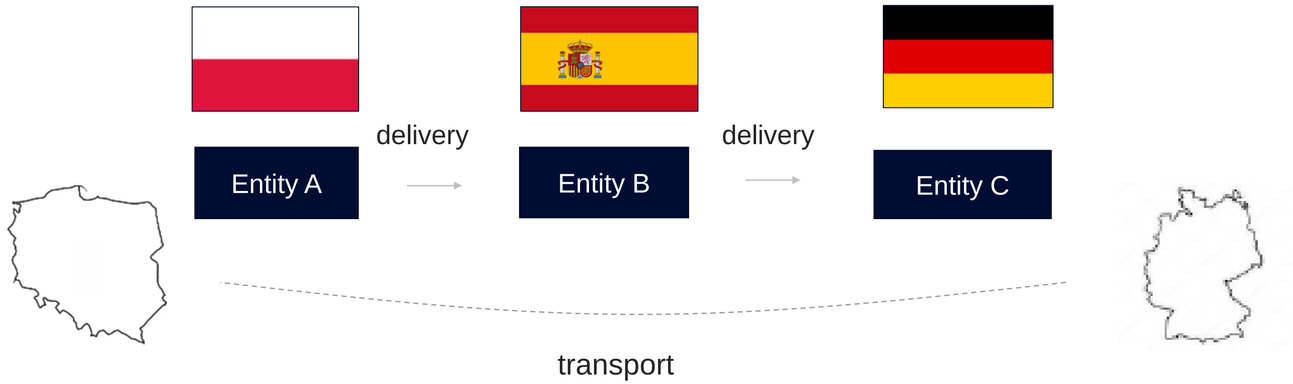
Supply between B and C - immovable supply: taxed as local supply in Germany

The taxpayer will be entitled to tax Intra-Community supply of goods with the application of the 0% rate provided that the conditions set out in the VAT Act, i.e. are met, showing correct data in a recapitulative statement

Chain transactions

Example - exception

Exception: transfer by an intermediary to its supplier of the EU VAT number allocated to it by the Member State from which the goods are dispatched or transported, in which case the dispatch or transport shall be attributed solely to the supply by that entity.



Supply between A and B – immovable supply (local): A shows local supply taxed in Poland

Supply between B and C - movable (Intra-Community) supply: B shows Intra-Community supply of goods in Poland, C - Intra-Community acquisition of goods in Germany

The need to identify who is the intermediary in a chain transaction

Chain transactions

Intermediary operator

An intermediary is a supplier of goods other than the first supplier of goods who sends or transports the goods himself or through a third party acting on his behalf. The third party need not be an entity outside the chain or a transport company. Any other supplier in the supply chain may act as a third party acting on behalf of the intermediary, including the final buyer.

The intermediary cannot be the first or last entity in the chain, i.e. the first supplier and the final buyer (the first supplier is expressly excluded by the wording of the provision and the last entity is not the supplier in the chain)

Criteria for analysis

In order to meet the definition of an intermediary, the operator must send or transport the goods himself or through a third party acting on his behalf. It is therefore crucial to establish what is meant by 'sending or transporting goods'. In practice, it is therefore important to identify, among other things:

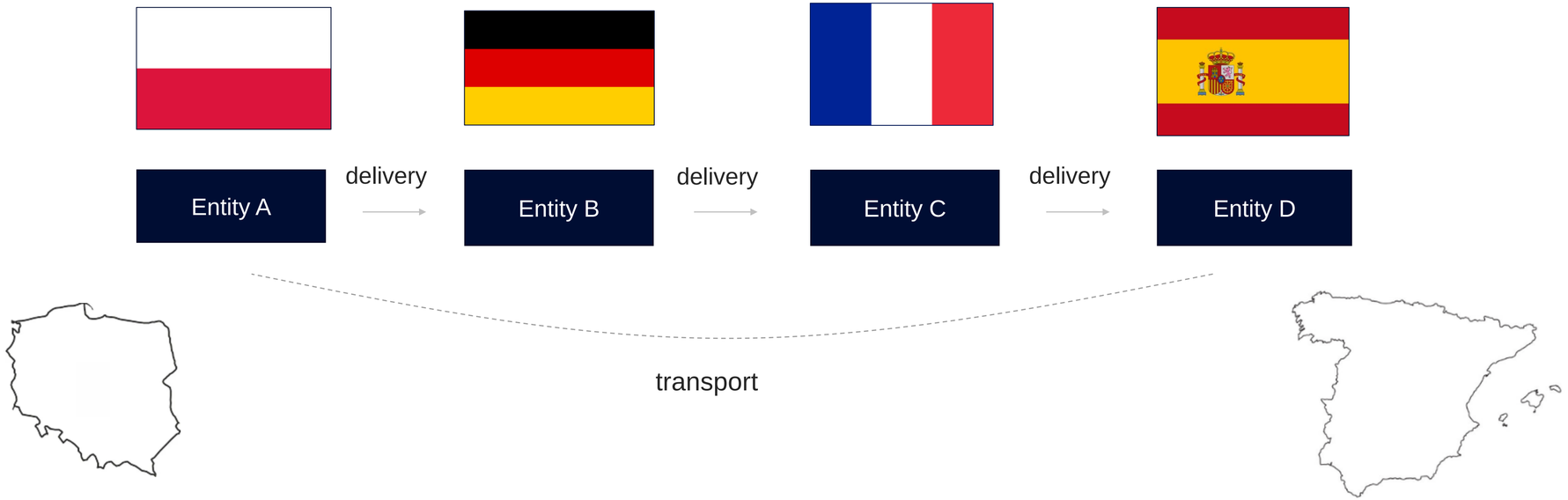
- the operator who bears the risk for the goods during dispatch and transport,
- the moment when the right to dispose of the goods passes,
- the entity insuring the goods and actually bearing the cost of the insurance,
- the entity ordering the transport, which has an impact on transport conditions (time, place, etc.),
- the contracting entity of the carrier.

Note: Incoterms rules may still be crucial from VAT point of view

To prove the status of an intermediary, transport documents (CMRs, waybills, contracts) must be kept

Chain transactions

More than 3 entities in the chain



If there are more than three entities in a chain, where both A and D are not transport organisers, the identification of the intermediary (whether it will be B or C) will be crucial for proper taxation of the transaction (depending on which transaction - between A and B or B and C or C and D will be a movable transaction). The key will therefore be to identify the entity (B or C) that transports the goods itself or through a third party acting on its behalf.

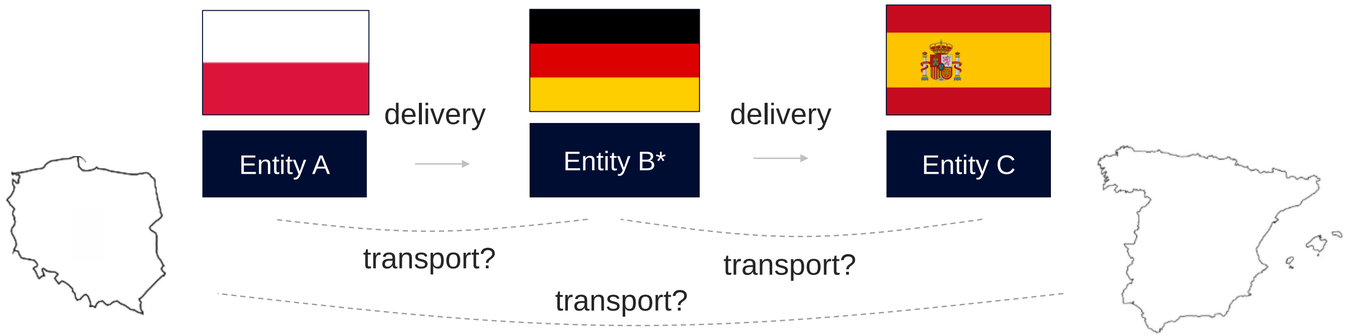
Chain transactions

Break in transportation

- As a rule, in order to speak of a chain transaction within the meaning of VAT, transport from the first to the last operator in the chain must be continuous (uninterrupted) - direct supply must take place. In the practice of chain supplies, however, there are situations where:
  - there is a change of shipper on the way, a new transporter is handed over to a new carrier,
  - temporary storage for logistical reasons, transhipment,
  - the transport is interrupted due to repackaging of the goods, the execution of activities packaging, refining, etc.

Unfortunately, it is often difficult for taxpayers to assess which situation causes a disruption in the supply chain. Many scenarios can be imagined in this respect. For example, what if, after B has purchased the goods, the goods are temporarily stored by A in Poland, but it is known that the supply will take place to entity C directly from Poland. Assuming that B is the organiser of the transport and has used the German VAT number, should we assume that the transaction is a chain supply and consequently:

- the supply between A and B is a movable (Intra-Community) supply, and between B and C an immovable supply, or
- there is a break in transport and thus a supply between A and B is a local supply, taxed in Poland, and B and C is an Intra-Community supply?



An analysis of the judgments of the CJEU and Polish courts, as well as individual interpretations, shows that, with the facts too generally described, arguments can be found for each of the above options. Therefore, a detailed examination of the factual situation will be so important in each case.

Call-off stock simplification

The idea of call-off stock simplification

Activity	Call of stock procedure not applied	Application of the call of stock procedure
Movement of goods from Poland to Germany	obligation to prove the Intra-Community supply of goods in Poland and the Intra-Community acquisition of goods in the country of storage (movement of own goods)	obligation to prove the Intra-Community supply of goods by the Polish taxpayer and the Intra-Community acquisition of goods by the contracting party at the moment of taking the goods from the call-off srock
Goods taken from storage by a German taxpayer	the obligation to prove local delivery in the country of storage	
	Lack of application of the call-off stock simplification results, among others, in the necessity to register the Polish taxpayer for VAT purposes in the country of the call-off stock, issue invoices containing local VAT, submit tax returns	

Advantages:

- **Simpler VAT settlements and no need to register for VAT in other EU countries**
- **Optimal management of the supply process by ensuring the smooth acquisition of the necessary goods**
- **Increasing liquidity by purchasing goods only when they are needed and not having to pay VAT**

Call-off stock simplification

Legal status before amendments	Legal status as amended
Lack of uniform rules applicable throughout the EU in the scope of settlement of shipments to the call-off stock	Unification of rules applicable throughout the EU, which makes it possible, for example, to move goods to call-off stock in other EU countries using registration simplifications
The call-off stock may only be operated by the ultimate purchaser of the goods, who takes the goods	The stock does not have to be operated by the final purchaser (it may be an external entity)
The goods stored are intended only for production or service activities (no commercial use)	Use of goods for any kind of activity: manufacturing, service and commercial activities
Obligation to submit a notification to the head of the tax office about the intention to operate a call-off stock	Obligation to notify the head of the tax office of the intention to operate a call-off stocke within 14 days from the date of the first entry of goods into that warehouse, by means of electronic communication
The operator of a consignment warehouse shall keep records of goods entering this warehouse	The warehouse keeper and the person entering the goods into the warehouse shall keep records. The seller should also include information about this transaction in the submitted EU Sales List (at the moment the movement starts).
Maximum period of storage of goods without tax liability: 24 months	Maximum period of storage of goods without tax liability: 12 months
Elapse of 24 months, destruction, loss of goods treated as collection of goods by the call-off stock operator	Elapsed 12 months, destruction, loss of goods treated as movement of own goods
No possibility of substitution	Possibility of substitution by another buyer in respect of goods already in call-off stock without losing simplification

Introduction of a new type of offence in the Penal Fiscal Code, consisting in failure to submit a notice of call-off operation or submission after the deadline or providing data in it inconsistent with the actual state of affairs

The Quick Fixes package - what next?

How to prepare?

- review of export rules, supply chains in order to identify shipments outside Poland in order to verify whether the settlement rules established are correct,
- adapting systems in businesses to new requirements, maximising automation of the obligations relating to the correct accounting of VAT, including the submission of recapitulative statements,
- considering the involvement of support from external companies such as logistics companies in the appropriate collection / completion of transport documents,
- renegotiation of trade agreements in the context of establishing additional obligations related to the transmission of the VAT number, responsibility for providing correct data on the actual supply chain of goods, potential calculation of additional costs related to the risk of reclassification of transactions from 0% (exemption) to domestic supply.

It is worth reviewing the individual interpretations held in order to preserve their protective value in connection with the change of regulations

The Quick Fixes package - what next?

How can we help?

- analysis of the correctness of applying the 0% rate for Intra-Community supplies of goods in connection with the new material requirements introduced,
- assistance in developing procedures to safeguard the right to apply a 0% rate for Intra-Community supply of goods/Intra-Community acquisition of goods,
- review of the correctness of declaring an Intra-Community supply of goods (the moment when the tax obligation arises, the conversion of exchange rates, the presentation of correction invoices, etc.) for the correct fulfilment of the obligations to submit recapitulative statements,
- assistance in the identification of chain transactions and the development/modification of procedures for the correct identification of such transactions,
- analysis of the correctness of VAT settlements in chain transactions in order to identify optimisation opportunities (e.g. with regard to the possibility of using a simplified triangular transaction, or using the relevant Incoterms rules, method of transferring the VAT number, etc.),
- identification of potential registration obligations in other EU countries and assistance in 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 delivering internal training (including online) on the new rules for the taxation of international transactions for both tax/accounting and logistical/sales/purchasing departments,
- verification of individual tax interpretations in terms of 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 tax interpretations concerning the correctness of the adopted settlement method,
- representation before tax authorities and development of a defense strategy/files in case of a dispute with a tax authority.

MDDP Tax Advisory

Who we are

MDDP Michalik Dłuska Dziedzic i Partnerzy is the largest and most successful independent Polish tax consultancy company, operating on the market since 2004. Our team consists of over 100 experts in the field of VAT, customs and excise duties, income taxes, transfer pricing, international taxes, local taxes and tax and court proceedings, leading some of the most complicated and pioneering tax cases and projects in Poland.

The MDDP VAT team is one of the largest and most successful specialist tax teams in Poland. MDDP is the only Polish entity invited to the VAT Expert Group established by the European Commission. The team comprehensively deals with Polish and European tax, its members are experts from the government, experts from business organisations and industry organisations and associations, as well as authors of many publications on VAT, including a commentary on the VAT Act (which already has 15 updated editions).

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

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LET'S STAY IN TOUCH

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