

Kalendarz najważniejszych zmian w podatkach w 2020 r.

Czytaj w LEX →

Taxpayers do not know how to document EU sales with zero VAT

Krzysztof Koślicki

VAT NEWS Date added: 03.02.2020



Source: iStock

In January, the provisions of the EU regulation concerning the documentation of intra-Community supply of goods and the right to use 0% came into force. VAT. They are more restrictive than national ones – especially since Polish regulations have been interpreted quite liberally to date. However, EU law takes precedence over national law.

From January 1, 2020, it is best to implement the provisions of the EU regulation, which are subject to direct application and also provide for strengthening the taxpayer's right to use 0% VAT. It is necessary to ensure compliance with them, as well as the need to v

Conditions difficult to meet?

VAT 2020

Przewodnik po zmianach!

Pobierz bezpłatnie ↓

Justyna Zajęc-Wysocka, tax advisor, legal advisor, vice-chairman of the Malopolska Branch of the National Chamber of Tax Advisers explains that the situation is changed by the newly introduced provisions of EU Implementing Regulation 2018/1912 of 4 December 2018 amending EU Implementing Regulation No 282/2011 establish Art. 45a. It indicates the requirements that must be met so that a 0% rate can be applied to intra-Community supply of goods (WDT). **It is a presumption that the goods have been shipped or transported from a Member State to a destination outside its territory but within the EU.** Justyna Zajęc-Wysocka explains, however, that failure to meet the conditions of art. 45a does not deprive the taxpayer of the right to apply a 0% rate. VAT. The fact that a given entity will not meet the requirements described in this provision results only in the absence of a presumption which, as a rebuttable presumption, could be rebutted by the authority.

Read in LEX: Changes in VAT in intra-Community goods transactions from January 1, 2020>

An important question of presumption

The expert points out that the provisions in force since January 1, 2020 relating to WDT do not create new requirements for covering the transaction with a rate of 0 percent. and only to make use of the presumption referred to in art. 45a. This presumption is a kind of privilege for an entity that strengthens its position and increases tax security in the event of an audit by tax authorities. However, it should be remembered that in accordance with art. 288 TFEU, the regulation has general scope, is binding in its entirety and directly applicable in all Member States. At the same time, national provisions, in particular art. 42 of the VAT Act, they do not have to, and in some cases they cannot even transpose EU legislation.

Read in LEX: Chain supply of goods in VAT>

– Therefore, from January 1, 2020, it is best to implement the requirements referred to in the Regulation. They are subject to direct application and also give a presumption that strengthens the taxpayer's right to a zero VAT rate – notes Justyna Zajęc-Wysocka. The expert also emphasizes that in the event of the inability to meet the conditions arising from EU law, resulting, inter alia, economic circumstances in which the entity may not receive all the required documents, national rules should be applied. However, this is connected with very strict compliance with them, as well as carrying out verification of contractors with due diligence.

See also: The

Ministry of Finance did not manage to implement the January changes in VAT >> The tax authorities instead of settlements want to assess the rationality of doing business >> / receipt with a tax identification number will not be required >> / Favorable sentences for taxpayers involved in

When will the presumption apply?

Pursuant to the regulation, the presumption will be based on two non-contradictory evidence that has been independent of each other and independent of each other as indicated by art. 45a section 1 item a. Pursuant



VAT 2020

Przewodnik po zmianach!

Pobierz bezpłatnie ↓

- the seller indicates that the goods have been sent or transported by him or by a third party acting on his behalf,
and
- the seller has at least two non-contradictory evidence referred to in paragraph 3 lit. a (i.e. documents relating to the dispatch or transport of goods, such as a signed CMR waybill, a bill of lading, an invoice for air freight or an invoice from a carrier of goods), which were issued by two different parties which are independent of each other, from the seller and the buyer, or the seller is in possession of any individual evidence referred to in paragraph 3 lit. a, together with any individual non-contradictory evidence referred to in para. 3 lit. b.

Check in LEX: Do a copy of the CMR, a copy of the delivery document, invoices and payment proofs authorize the use of the 0% rate? >

To the documents referred to in paragraph 3 lit. b , **in turn, includes evidence such as** : shipping insurance policy, official documents issued by a public authority, for example a notary public, confirming the arrival of goods in the Member State of destination, confirmation of receipt issued by the warehousekeeper in the Member State of destination, confirming the storage of goods in that country State.

Read in LEX: Intra-Community supply of goods (WDT) - conditions for applying the 0% rate on examples>

- **Taxpayers should strive to meet the requirements of art. 45a of the Regulation.** First, they should verify that they are able to obtain the required documents from the appropriate entities. The regulation does not provide for due diligence in applying for the indicated documents, therefore only their actual possession will give legal effect in the light of EU regulations - emphasizes Justyna Zajęc-Wysocka.

In turn, as pointed out by Arkadiusz Łagowski, tax advisor and partner at Martini & Partners, new provisions of the EU Regulation introduce a documentary standard regarding the 0-percent rate. for WDT, which is much less liberal than Polish law and jurisprudence. **The expert points out that many entrepreneurs claim that it would be very difficult for them to obtain such documentation as required by the provisions of the Regulation, and in many cases it would be impossible.** - As a result, the Ministry of Finance's assurances that the collection of WDT documentation required by the provisions of the Polish VAT Act were sufficiently accepted. The provisions of the Polish VAT Act, not only that in this case much more liberal than the new EU provisions, have so far been fairly gently interpreted. Let's hope that the tax authorities and courts will maintain the current interpretative p
interpretation of the regulations - sums up Łag

Check in LEX: At what point do you adjust revenue
WDT? >



VAT 2020

Przewodnik po zmianach!

Pobierz bezpłatnie ↓