New 0114-KDIP1-2.4012.122.2020.1.PC - Determining the possibility of applying a 0% tax rate for intra-Community supplies of goods on the basis of the documents held.

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Determining the possibility of applying a 0% tax rate for intra-Community supplies of goods on the basis of the documents held.
Director of the National Treasury Information
0114-KDIP1-2.4012.122.2020.1.PC

INDIVIDUAL INTERPRETATION

On the basis of art. 13 § 2a , art. 14b § 1of the Act of August 29, 1997 - Tax Code (Journal of Laws of 2019, item 900, as amended), the Director of the National Tax Information Office states that the position of the Applicant presented in the application of March 13, 2020 (date of receipt March 17, 2020) completed on May 11, 2020 (date of receipt May 14, 2020), completed on May 22, 2020 (date of receipt via ePUAP May 22, 2020), completed on June 8, 2020 (date of receipt via ePUAP June 8, 2020) and supplemented on June 9, 2020 (date of receipt via ePUAP, June 9, 2020) for issuing an interpretation regarding VAT the possibility of applying a 0% tax rate for intra-Community supplies of goods based on your documents - **is correct.**

SUBSTANTIATION

On March 17, 2020, the above-mentioned authority received the application for an individual interpretation regarding tax on goods and services in the scope of the possibility of applying a 0% tax rate for intra-Community supplies of goods on the basis of documents held.

The application was completed on May 11, 2020 (date of receipt May 14, 2020), on May 22, 2020 (date of receipt via ePUAP May 22, 2020), on June 8, 2020 (date of receipt via ePUAP June 8, 2020) and on June 9, 2020 (date of receipt via ePUAP June 9, 2020).

The application presents the following state of facts and events in the future:

The applicant is a capital company under German law, belonging to a capital group (...), it is also a German tax resident and conducts production activities in Germany. The applicant is registered in Poland for the purposes of VAT, including for the purposes of intra-Community transactions. As part of its business operations, the Company delivers ordered goods to contractors based in other European Union countries, including entities belonging to the Group (...). The transport of goods is most often commissioned to specialized carriers.

At present, in order to document the right to apply the 0% value-added tax rate (hereinafter: VAT) provided for the WDT transaction, the Company, before submitting the tax declaration for a given accounting period, collects evidence from which it appears that the goods being the subject of WDT were exported from the territory of Poland and delivered to the buyer on the territory of a Member State other than the territory of the country. This evidence is in particular: invoice, cargo specification, transport documents.

If these documents do not explicitly confirm the performance of WDT, the Company collects additional documents confirming receipt of the goods by the buyer from another EU country.

Due to contracts with electronic data interchange (EDI) concluded with contractors, the Applicant is considering the possibility of modifying the WDT transaction documentation rules, the application of which would simplify the WDT documenting process, allow for the collection of delivery notes in a short time, and would significantly reduce the current administrative work related to collecting, completing and archiving documentation.

The applicant as a supplier together with buyers are connected to the EDI operator's network enabling efficient handling of electronic documents. Messages are exchanged according to global EDI standards using an encrypted connection. The conversion module translates the messages sent from the format of the Company's IT system and a given buyer to the common EDI format common to the entire network. The frequency of file exchange depends on the contract with the Applicant's contractor.

Based on the files sent from the system, the applicant receives files from the contractor, which shows:

* the recipient's address,

* recipient unloading point,

* the number of the last delivery received,

* last delivered quantity from the schedule line, order,

* date of acceptance of the shipped goods at the recipient's warehouse,

* date of last delivery posted to the recipient,

where the number of the delivery document may be the WZ number or the transport number.

Simply put, data on a given WDT transaction is automatically sent through the EDI network from the Applicant to the buyer. Then the document is translated from EDI to a format accepted by the buyer's IT system. After the delivery of the ordered goods, the buyer confirms the receipt of the ordered quantity of goods in the form of a standard EDI message. The EDI message shall contain, in particular, information about the place of delivery and the date of receipt. It is also possible to convert an EDI message into a readable, printable format containing data confirming that the goods have been delivered to the buyer on the territory of a Member State other than the territory of the country.

The content of each of the above documents confirms that the goods have been delivered to the buyer on the territory of a Member State other than the territory of the country.

The functionality adopted by the Applicant is a standard of communication in the automotive industry, required by the majority of key manufacturers of passenger, commercial and offroad cars.

At this point, it should also be emphasized that EDI is a system widely used in business practice, enabling secure transfer of business transaction information between contractors. The exchange of information using EDI uses security and authorization methods applicable inter alia in banking systems, which guarantees the security and confidentiality of transmitted data and excludes the possibility of interference by third parties. In addition, from the content of art. 106m section 5 of the VAT Act shows that EDI has been recognized as a system that guarantees the authenticity and integrity of the transmitted data.

In addition to the application, it was indicated that if the Applicant's goods are shipped or transported by the buyer or by a third party acting on behalf of the buyer, the Company has at least two non-contradictory evidence referred to in para. 3 lit. a (COUNCIL Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending the RegulationImplementing Regulation (EU) No 282/2011), which were issued by two different parties, which are independent of each other, the seller and the buyer, or any individual evidence referred to in paragraph 1. 3 lit. a), together with any single non-contradictory evidence referred to in para. 3 lit. b) above Regulations confirming transport or shipment, which have been issued by two different parties which are independent of each other, the seller and the buyer.

In connection with the above description, the following questions were asked , ultimately formulated in addition to the application:

1. Do the documents owned by the Company, i.e. the specification of individual pieces of cargo, included in the VAT invoice documenting the given WDT transaction together with confirmation of receipt of goods which are the subject of WDT by a buyer from another EU country, via the electronic EDI system (with the possibility of making, if necessary, conversion into another readable format), entitles the Company to apply a 0% VAT rate - in accordance with art. 42 section 1-3 , paragraph 11 of the Act on tax on goods and services?

2. If the goods were sent or transported by the buyer or by a third party acting on behalf of the buyer, will the Company receive a document via the electronic EDI system containing elements as to: date of issue; name or first and last name, address of the buyer, quantity and type of goods, date and place of arrival of the goods, at the same time fulfilling the form of the buyer's written statement confirming that the goods have been sent or transported by the buyer or by a third party acting on behalf of the buyer referred to in paragraph . 1 lit. b point (i) of the COUNCIL Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending the regulationImplementing Regulation (EU) No 282/2011 - for certain exemptions related to intra-Community transactions (hereinafter: the Regulation) and at least two non-contradictory evidence referred to in para. 3 lit. a) which were issued by two different parties, which are independent of each other, the seller and the buyer, or any individual evidence referred to in paragraph 1. 3 lit. a), together with any single non-contradictory evidence referred to in para. 3 lit. b) above Regulations

confirming transport or shipment, which have been issued by two different parties, which are independent of each other, the seller and the buyer, allow presumption of shipment of goods and thus the possibility for the Company to apply a 0% rate in accordance with art. 42 section 1-3, paragraph 11 of the Act on tax on goods and services (respectively Article 138 of Directive 2006/112 / EC)?

The Applicant's position ultimately presented in the supplement to the application:

Ad 1

According to the Applicant, the documents presented in the actual state of the application confirm the delivery of goods subject to WDT to the buyer located on the territory of an EU country other than Poland. These are documents ensuring that the Applicant meets the condition referred to in art. 42 section 1 point 2 of the VAT Act, i.e. documents jointly confirming the fact that the goods subject to WDT are exported and delivered to the buyer who is on the territory of a Member State other than the territory of the country. Thus, on their basis, the Company may indicate the said deliveries (WDT) in the declaration for a given accounting period as taxed with a 0% VAT rate.

According to the content of art. 42 section 1 of the VAT Act, WDT is subject to tax at the 0% tax rate, provided that:

1. the taxable person has delivered to the buyer with the correct and valid identification number for intra-Community transactions, issued by the Member State appropriate for the buyer, containing the two-letter code used for value added tax;
2. the taxpayer before the expiry of the deadline for submitting the tax declaration for a given tax period, has - in his documentation evidence that the goods being the subject of intra-Community supply were exported from the territory of the country and delivered to the buyer on the territory of a Member State other than the territory of the country;
3. the taxpayer submitting a tax declaration in which he indicates this supply of goods is registered as a VAT taxpayer.

The evidence referred to in paragraph 1 point 2 are the following documents, if together they confirm the delivery of goods subject to WDT to a buyer located in the territory of a Member State other than the territory of the country (Article 42 (3) of the VAT Act): transport documents received from the carrier (freight forwarder) responsible for the export of goods from the territory of the country, which clearly show that the goods have been delivered to their destination on the territory of another EU country - in the case where the carriage of goods is outsourced to the carrier (freight forwarder), and the specification of individual pieces of cargo.

At the same time, pursuant to the content of art. 42 section 11 of the VAT Act, if the above documents do not explicitly confirm delivery of the goods to the buyer in another EU country, evidence of WDT performance may also be other documents, such as:

1. commercial correspondence with the buyer, including his order,
2. documents regarding insurance or freight costs,
3. document confirming payment for the goods,

4. proof that the purchaser has accepted the goods in the territory of another EU country.

The wording of the provisions of the VAT Act indicated that the taxpayer's right to apply a reduced tax rate of 0% when implementing WDT depends, inter alia, on from having documents confirming that the goods have been exported from the territory of the country and delivered to the territory of another EU country.

In the above scope, it should first be noted that the Supreme Administrative Court in a resolution adopted by 7 judges (decision of 11 October 2010, reference number I FPS 1/10), interpreting the provision of art. 42 section 1of the VAT Act, he indicated that "(...) although the provisions of Article 42 (3) and (4) have statutory definition of documents proving that the goods subject to intra-Community supply have been exported from the territory of the country and delivered to the buyer in the territory of a Member State, other than the territory of the country, but due to the content of Article 42 paragraph 11, allowing to prove this circumstance also with other - not only mentioned in this provision - evidence, the statutory catalog of evidence referred to in paragraphs 3 and 4, cannot be considered closed , and thus does not exclude in this respect the application of Article 180 § 1Op, especially in the situation when there is no explicit regulation of the form and procedure of obtaining on the documents referred to in art. 42 section 3 point 1 and par. 4 of the Act, confirmation of delivery of the goods to their destination on the territory of a Member State other than the territory of the country (Poland). In such a case, we are dealing with statutory proofs of a given circumstance, but only to the extent that the provisions of the Act specify these proofs and the data that they should contain. However, due to the fact that these provisions do not clearly specify (...) the manner and form of obtaining on these documents confirmation of delivery of goods to their destination on the territory of a Member State other than the territory of the country (Article 42 (3) point 1) or to a buyer in a Member State other than Poland (Article 42 (4) (4)),

Consequently, the Supreme Administrative Court assessed in a resolution that for the application of the 0% rate for intra-Community supply of goods it is sufficient for the taxpayer to have only some of the evidence referred to in art. 42 section 3 of the Act, supplemented with documents indicated in art. 42 section 11 of the Act or other evidence in the form of documents referred to in art. 180 § 1 of the Act of August 29, 1997 - Tax Code (consolidated text: Journal of Laws of May 14, 2019, item 900, as amended), provided that they jointly confirm the fact of removal and delivery of goods which are the subject of intra-Community delivery to a purchaser situated in the territory of a Member State other than that of the country. "

In the resolution presented, the Supreme Administrative Court presented the position that the taxpayer has some freedom in the selection of documents with which he can prove the implementation of the WDT transaction. However, such documents must jointly confirm the fact that the goods subject to WDT are exported and delivered to the buyer who is in the territory of a Member State other than that of the country.

The position presented by the Supreme Administrative Court in the above resolution is confirmed in subsequent judgments issued by administrative courts (including the judgment of the Provincial Administrative Court in Gdańsk of 9 October 2012, reference number I SA / Gd 893/12 , the judgment of the Supreme Administrative Court in Warsaw of 28 October 2011, reference number 1 FSK 1538/10, judgment of the Supreme Administrative Court in Warsaw of October 21, 2011, reference number I FSK 1549/10 , judgment of the Supreme Administrative Court in Warsaw of December 6, 2012, reference number I FSK 163/12 , judgment of the Supreme Administrative Court in Warsaw of December 20, 2012, reference number I FSK 133/12 , judgment of the Provincial Administrative Court in Szczecin of December 1, 2016, reference number I SA / Sz 1031/16).

According to the interpretation of the provisions of the VAT Act regarding WDT documentation, to prove the taxpayer's right to apply the 0% VAT rate it is sufficient to have documents together confirming that intra-Community supply actually took place. Such documents may, in particular, be documents (including electronic confirmations) presented in the description of the event confirming the fact that goods being the subject of the WDT have been exported and delivered to another EU country.

It should be noted that the taxpayer's right to apply a preferential tax rate of 0% for intra-Community supply of goods depends on the possession of documents confirming clearly that the goods have been exported outside of Poland and delivered to the buyer in another EU country. The essence of the provisions cited is above all the taxpayer's obligation to prove that the goods being the subject of delivery have actually left the territory of the country.

The solution used by the Applicant in the scope of exchanging EDI files allows to have evidence confirming intra-Community delivery of goods in electronic form with an EDI message (together with the possibility of converting, if necessary, to another readable format). In addition, the abovementioned provisions do not make the application of the 0% rate conditional on the possession of original paper documents. Since the regulations do not determine their form, it can be concluded that any form is admissible, provided that the authenticity of these documents has been proved. As it has already been indicated in the description of the actual and future state, the exchange of information using EDI uses security and authorization methods applicable inter alia in banking systems, which guarantees the security and confidentiality of transmitted data and excludes the possibility of interference by third parties. And according to the contentArt. 106m section 5 of the VAT Act shows that EDI has been recognized as a system that guarantees the authenticity and integrity of the transmitted data. Thus, in the era of widely developed communication techniques, there is no reason to deny the evidential value of a document prepared and sent in electronic form. Therefore, if it is a document made available in electronic form, which does not raise doubts as to its authenticity, it may constitute the evidence referred to in the cited provisions of the Act.

Ad 2

In accordance with the provisions of the Council Implementing Regulation (EU) 2018/1912 of December 4, 2018 amending Implementing Regulation (EU) No 282/2011 for the purposes of applying the exemptions laid down in art. 138 of Directive 2006/112 / EC, goods shall be presumed to have been dispatched or transported from a Member State to a destination outside its territory but within the Community in any of the following cases:

and. 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 is in possession of at least two non-contradictory evidence referred to in paragraph 3 lit. a, which were issued by two different parties, which are independent of each other, 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 single non-contradictory evidence referred to in para. 3 lit. b, confirming the dispatch or transport, which have been issued by two different parties which are independent of each other, the seller and the buyer;

b. the seller has the following documents:

and. a written declaration by the buyer confirming that the goods have been sent 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; such a written declaration specifies: the date of issue; name or address and address of the buyer; quantity and type of goods; date and place of arrival of goods; in the case of delivery of means of transport, identification number of means of transport; and identification of the person receiving the goods for the buyer; and

ii. at least two non-contradictory evidence referred to in para. 3 lit. a, which were issued by two different parties, which are independent of each other, the seller and the buyer, or any individual evidence referred to in paragraph 3 lit. a, together with any single non-contradictory evidence referred to in para. 3 lit. b, confirming transport or shipment, which have been issued by two different parties which are independent of each other, the seller and the buyer.

The buyer shall provide the seller with a written statement referred to in point b point (i), by the tenth day of the month following the month in which the delivery took place.

Therefore, as it results from the said Regulation, if the buyer transports the goods, the buyer is obliged to provide the seller with a written statement. However, it is not specified in what exactly written form such declaration is to be provided.

In the Applicant's assessment, therefore, the statement meeting all of the above-mentioned is effective. elements sent by the buyer also in the form of an EDI message. Therefore, in the Applicant's view, there is no requirement that the seller have the buyer's statement in paper form and its original.

In addition, in the Applicant's assessment, the current positions of tax authorities indicate that in the era of widely developed communication techniques there are no grounds to deny the probative value of documents provided in electronic EDI.

It should be noted that the provisions of the Regulation do not determine the form of documents, hence it can be concluded that any form that the taxpayer will use is acceptable, provided that the authenticity of these documents has been proved.

Thus, in the Applicant's opinion, the information he possesses in the form of EDI messages can be in the form of the abovementioned statements.

On this basis, according to the Applicant, the Applicant's possession of the required document (buyer's statement) together with other documents mentioned in the abovementioned The ordinance and the Act on VAT documents confirm the delivery of goods subject to WDT to a buyer located on the territory of an EU country other than Poland. Thus, on their basis, the Company may indicate the deliveries (WDT) in the declaration for a given accounting period as taxed with a 0% VAT rate.

In light of the current state of the legal position of the Applicant in the assessment of the legal presented the state of facts and events of the future is correct.

Pursuant to the provision of art. 5 paragraph 1 of the Act of 11 March 2004 on tax on goods and services (Journal of Laws of 2020, item 106, as amended), hereinafter referred to as the Act, taxation of the above tax subject to:

1. paid delivery of goods and paid services in the territory of the country;
2. export of goods;
3. import of goods into the territory of the country;
4. intra-Community acquisition of goods for remuneration on the national territory;
5. intra-Community supply of goods.

By the delivery of goods referred to in art. 5 paragraph 1 point 1, is understood as transferring the right to dispose of goods as the owner (...) - art. 7 item 1 of the Act.

As stated in art. 2 item 6 of the Act, goods are understood to mean things and their parts, as well as all forms of energy.

According to art. 13 section 1 of the Act, through intra-Community delivery of goods, referred to in Art. 5 paragraph 1 point 5, shall mean the export of goods from the territory of the country in the performance of the activities specified in art. 7 on the territory of a Member State other than the territory of the country, subject to paragraph 2- 8.

Therefore, for a given operation to be considered as intra-Community supply of goods, there must be an export of goods from the territory of the country to the territory of another Member State as a result of the delivery of those goods (transfer of the right to dispose of the goods as owner).

According to art. 13 section 2 of the Act, the provision of para. 1 shall apply on condition that the buyer of the goods is:

1. a value added tax taxpayer identified for intra-Community transactions in a Member State other than that of the country;
2. a legal person who is not a taxpayer of value added tax, who is identified for intra-Community transactions in a Member State other than that of the country;
3. a taxpayer of value added tax or a legal person other than a taxpayer of value added tax, acting as such in the territory of a Member State other than the territory of the country, not listed in points 1 and 2, if the subject of delivery are excise goods which, in accordance with the provisions on excise duty , are placed under the excise duty suspension arrangement or the procedure for moving excise goods with excise duty paid;
4. an entity other than those listed in points 1 and 2, operating (residing) in a Member State other than the Republic of Poland, if the subject of delivery are new means of transport.

On the basis of art. 13 section 6 of the Act, intra-Community supply of goods occurs if the taxpayer referred to in Art. 15, in which the sale is not exempt from tax pursuant to art. 113 section 1 and 9, subject to the provisions of para. 7.

The description of the case shows that the Applicant is registered in Poland for VAT purposes, including for the purposes of intra-Community transactions. As part of its business operations, the Company delivers ordered goods to contractors based in other European Union countries, including entities belonging to the Group (...). The transport of goods is most often commissioned to specialized carriers.

Due to contracts with electronic data interchange (EDI) concluded with contractors, the Applicant is considering the possibility of modifying the WDT transaction documentation rules, the application of which would simplify the WDT documenting process, allow for the collection of delivery notes in a short time, and would significantly reduce the current administrative work related to collecting, completing and archiving documentation.

The applicant as a supplier together with buyers are connected to the EDI operator's network enabling efficient handling of electronic documents. Messages are exchanged according to global EDI standards using an encrypted connection. The conversion module translates the messages sent from the format of the Company's IT system and a given buyer to the common EDI format common to the entire network. On the basis of files sent from his system, the applicant receives

files from the contractor, which shows the recipient's address, the recipient's unloading point, the number of the last delivery received, the last quantity delivered from the schedule line, the order, the date of receipt of the sent goods at the recipient's warehouse, the date of the last delivery booked at recipient. The delivery document number may be the WZ number or the transport number. Data regarding a given WDT transaction is automatically sent via the EDI network from (...) to the buyer. Then the document is translated from EDI to a format accepted by the buyer's IT system. After the delivery of the ordered goods, the buyer confirms the receipt of the ordered quantity of goods in the form of a standard EDI message. The EDI message shall contain, in particular, information about the place of delivery and the date of receipt. It is also possible to convert an EDI message into a readable, printable format containing data confirming that the goods have been delivered to the buyer on the territory of a Member State other than the territory of the country. The content of each of the documents listed above confirms

If the Applicant's goods are sent or transported by the buyer or by a third party acting on behalf of the buyer, the Company has at least two non-contradictory evidence referred to in paragraph 3 lit. a (COUNCIL Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending the RegulationImplementing Regulation (EU) No 282/2011), which were issued by two different parties, which are independent of each other, the seller and the buyer, or any individual evidence referred to in paragraph 1. 3 lit. a), together with any single non-contradictory evidence referred to in para. 3 lit. b) above Regulations confirming transport or shipment, which have been issued by two different parties which are independent of each other, the seller and the buyer.

In the context of the description of the case presented in this way, doubts arose whether the documents held entitle the Company to apply a 0% VAT rate for intra-Community supplies of goods.

As regards the documentation entitling to apply the 0% tax rate for intra-Community supply of goods from 1 January 2020, the provisions of Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending Implementing Regulation (EU) No 282 shall apply. / 2011 with respect to certain exemptions related to intra-Community transactions (Journal of Laws EU No. 311 of 7.12.2018, p. 10), hereinafter referred to as Regulation 2018/1912. Regulation 2018/1912 is of general scope, binding in its entirety and directly applicable in all Member States. Ordinance2018/1912 introduces, among others rebuttable presumptions relating to the evidence required to apply the exemption with deduction (0% rate) for intra-Community supply of goods.

And so, in accordance with art. 45a introduced by Regulation 2018/1912:

1. For the purposes of applying the exemptions laid down in Article 138 of Directive 2006/112 / EC, goods shall be presumed to have been dispatched or transported from a Member State to a destination outside its territory but within the Community in any of the following cases:

and. 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 is in possession of at least two non-contradictory evidence referred to in paragraph 3 lit. a, which were issued by two different parties, which are independent of each other, 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 single non-contradictory evidence referred to in para. 3 lit. b, confirming the dispatch or transport, which have been issued by two different parties which are independent of each other, the seller and the buyer;

b. the seller has the following documents:

c. a written declaration by the buyer confirming that the goods have been sent 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; such a written declaration specifies: the date of issue; name or address and address of the buyer; quantity and type of goods; date and place of arrival of goods; in the case of delivery of means of transport, identification number of means of transport; and identification of the person receiving the goods for the buyer; and

d. at least two non-contradictory evidence referred to in para. 3 lit. a, which were issued by two different parties, which are independent of each other, the seller and the buyer, or any individual evidence referred to in paragraph 3 lit. a, together with any single non-contradictory evidence referred to in para. 3 lit. b, confirming transport or shipment, which have been issued by two different parties which are independent of each other, the seller and the buyer.

The buyer shall provide the seller with a written statement referred to in point b point (i), up to the tenth day of the month following the month in which the delivery took place.

2. The tax authority may rebut the presumption adopted pursuant to para. 1.

3. For the purposes of para. 1 the following documents are accepted as proof of shipping or transport:

and. 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 goods carrier;

b. The following documents:

c. an insurance policy with regard to the shipment or transport of goods or bank documents confirming payment for the shipment or transport of goods;

d. official documents issued by a public authority, such as a notary, confirming the arrival of goods in the Member State of destination;

e. an acknowledgment of receipt issued by the warehousekeeper in the Member State of destination confirming the storage of the goods in that Member State.

However, it should be noted that failure to meet the conditions introduced in the regulation does not mean that the 0% rate will not apply. In such a situation, the supplier will have to prove otherwise, in accordance with the existing provisions of the Act, that the conditions for applying the 0% rate have been met.

Pursuant to the content of art. 41 section 1 of the Act, the tax rate on goods and services is 22%, subject to paragraph 2-12c, art. 83, art. 119 section 7, art. 120 paragraph 2 and 3, art. 122 and art. 129 section 1.

However, pursuant to art. 146aa section 1 point 1 of the Act, in the period from January 1, 2019 to the end of the year following the year for which the value of the relationship referred to in Art. 38a point 4 of the Act of 27 August 2009 on public finance, is not more than 43% and the value referred to in art. 112aa section 5 of this Act, is not less than -6%, the tax rate referred to in art. 41 section 1 and 13, art. 109 section 2 and art. 110 is 23%.

In the intra-Community supply of goods, the tax rate is 0%, subject to Art. 42 (Article 41 paragraph 3 of the Act).

It should be noted that pursuant to art. 42 section 1 of the Act, intra-Community supply of goods is taxed at a 0% tax rate, provided that:

1. the taxable person has delivered to the buyer with the correct and valid identification number for intra-Community transactions, issued by the Member State appropriate for the buyer, containing the two-letter code used for value added tax;
2. a taxpayer before the expiry of the deadline for submitting a tax declaration for a given tax period, has in his documentation evidence that the goods being the subject of intra-Community supply were exported from the territory of the country and delivered to the buyer on the territory of a Member State other than the territory of the country;
3. the taxpayer submitting a tax declaration in which he indicates this supply of goods is registered as an EU VAT taxpayer.

These conditions must be met cumulatively. Fulfillment of the first of these is to ensure that the operation will be treated as an intra-Community acquisition in the recipient country and will actually be taxed there, and the second indicates that the goods have actually been exported from one Member State (from the country) and its transport (movement) to another Member State . The essence of intra-Community transactions is the actual taxation of the delivery of goods in the country of destination (to which the goods are ultimately moved). A delivery that takes place in the territory of the country of the supplier of goods is taxed at a rate of 0%, and in the country of the buyer the taxation of this delivery is at the rate of the applicable tax. A transaction taxed in this way is intended to avoid any distortion of competition, caused by double taxation or non-taxation. However, the application of the 0% rate for intra-Community supply of goods also depends on the taxpayer's registration as an EU VAT taxpayer, at the latest at the time the declaration for the supply is submitted.

The documents listed in art. Are of fundamental importance for documenting the export of goods under the intra-Community delivery of goods, carried out with the participation of the carrier or freight forwarder responsible for exporting goods from the territory of the country . 42 section 3 of the Act.

The evidence referred to in paragraph 1 point 2 - in accordance with art. 42 section 3 of the Act - the following documents, if together they confirm the delivery of goods being the subject of intra-Community delivery of goods to a buyer located on the territory of a Member State other than the territory of the country:

1. transport documents received from the carrier (forwarder) responsible for the export of goods from the territory of the country, which clearly show that the goods were delivered to their destination on the territory of a Member State other than the territory of the country - in the case where the transport of goods is commissioned to the carrier (forwarder),
2. (Deleted)
3. specification of individual pieces of cargo

4. (repealed) - subject to para. 4 and 5.

However, according to art. 42 section 11 of the Act, if the documents referred to in para. 3-5, do not explicitly confirm delivery to the buyer located in the territory of a Member State other than the territory of the country of goods, by the evidence referred to in paragraph 1. 1 point 2, there may also be other documents indicating that an intra-Community delivery has taken place, in particular:

1. commercial correspondence with the buyer, including his order;
2. documents regarding insurance or freight costs;
3. a document confirming the payment for the goods, except for cases where the delivery is free of charge or the obligation is carried out in another form, in which case another - a document confirming the expiry of the obligation;
4. proof that the purchaser has accepted the goods in a Member State other than that of the country.

It should be noted that if the export of goods takes place as a result of a transaction with a specified buyer, for the purpose of delivery, i.e. transfer to a specific entity the right to dispose of the exported goods as the owner, then there is intra-Community supply of goods, to which the buyer is responsible for the intra-Community acquisition of goods in purchase . It should be emphasized that the classification of a given transaction as intra-Community delivery, pursuant to art. 13 section 1 of the Act, requires a temporary and material relationship between the delivery of a given product and its transport.

Therefore, it is important that the abovementioned the documents contained information showing that the specific good was actually delivered to the buyer in another Member State. In addition, the documents referred to in art. 42 section 3 of the Act, are to jointly confirm a specific fact, which means that together they are to give unequivocal information that this provision requires.

The wording of Art. 42 section 3 of the Act indicates the basic catalog of documents confirming the export of goods and their delivery to the buyer on the territory of another Member State, which may be supplemented by additional documents specified in art. 42 section 11 of the Act. This does not mean, however, that to confirm this circumstance, "combined" possession of all types of documents listed in the above provisions is required, provided that the documents positively confirm delivery of the goods to the buyer on the territory of another Member State. These provisions specify the types of documents the possession of which guarantees taxpayers the safe application of the preferential rate in intra-Community supplies.

The above considerations are confirmed by the resolution of the Supreme Administrative Court of October 11, 2010, reference number Act I FPS 1/10 , in which the Court emphasized that intra-Community supply of goods is primarily one of the transactions subject to value added tax, as stipulated in Art. 5 paragraph 1 point 5Act. As a rule, it consists in exporting goods from the territory of the country (Poland), in the performance of the activities specified in art. 7, i.e. the delivery of goods, to the territory of another Member State, under the conditions specified in the Act. Intra-Community supply of goods, subject to meeting the conditions specified in the Act, is subject to tax at the rate of 0% (the so-called Community exemption with the right to deduct), which on the one hand causes that the transaction of exporting goods from Poland to another member state is not subject to tax, and at the same time, the supplier allows for the recovery of tax paid on the purchase of this good, which ensures the implementation of the principle of neutrality of the value added tax. However, this rule only applies if when as a result of this transaction (export), the obligation to charge tax is imposed on the buyer of the goods (in another Member State) as a result of intra-Community acquisition of goods (WNT) in his country (principle of taxation in the country of destination, consumption). The NSA said the wording itselfArt. 42 section 3 and 4 of the Act indicates the basic catalog of documents confirming the export of goods and their delivery to the territory of another Member State, which may be supplemented by additional documents specified in Art. 42 section 11 of the Act. Thus, according to the Court, in the light of art. 42 section 1 , 3 and 11 of the Act, for the application

of the 0% rate for intra-Community supply of goods, it is sufficient for the taxpayer to possess only some of the evidence referred to in art. 42 section 3 of the Act, supplemented with documents indicated in art. 42 section 11 of the Act or other evidence in the form of documents referred to in art. 180 § 1Tax Code, as long as they confirm the fact of delivery to a buyer located on the territory of a Member State other than the territory of the country.

Therefore, having regard to the provisions cited above and the resolution of the Supreme Administrative Court, it should be stated that for the application of the 0% rate for intra-Community supply of goods it is sufficient under Polish provisions that the taxpayer should have only some of the evidence referred to in art. 42 section 3 of the Act, supplemented with documents indicated in art. 42 section 11 of the Act. To document such a supply, the taxpayer may also have other evidence in the form of documents referred to in art. 180 § 1 of the Act of August 29, 1997 - Tax Ordinance (Journal of Laws of 2019, item 900, as amended), according to which all evidence that may contribute to the clarification of the case should be allowed and it is not against the law.

In summary, for the application of the 0% tax rate, the taxpayer must have in his documentation evidence that jointly confirms the fact of being removed from the territory of the country and the delivery of goods being the subject of intra-Community delivery to a buyer located in a Member State other than the territory of the country.

It should be noted that the provisions of the Act do not make the application of the 0% rate conditional on the possession of original paper documents. Since the regulations do not determine their form, it can be concluded that any form is admissible, provided that the authenticity of these documents has been proved. In the era of widely developed communication techniques, there is no reason to deny evidentiary power of a document prepared and sent in electronic form. Therefore, if it is a document made available in electronic form, e-mail, photocopier, scan or fax of the document, which does not raise doubts as to its authenticity, it may constitute the evidence referred to in the cited provisions of the Act.

Therefore, the supplier's possession of the documents referred to in art. 42 section 3 and 11 of the Act entitles - also from 1 January 2020 - to apply a 0% tax rate for intra-Community supplies of goods.

Considering the legal provisions referred to above and the circumstances of the case, it should be stated that the documents held by the Company

* in the form of specifications of individual pieces of cargo included in the VAT invoice documenting a given WDT transaction together with confirmation of receipt of goods being the subject of WDT by a buyer from another EU country, via the electronic EDI system, where the EDI message contains information about the place of delivery and the date of receipt of the confirmation and exists the ability to convert an EDI message into a readable, printable format containing data confirming that the goods have been delivered to the buyer in a Member State other than the territory of the country

* or in the form of a document received via the electronic EDI system (containing elements as to the date of issue, name or first and last name, address of the buyer, quantity and type of goods, date and place of arrival of the goods), simultaneously fulfilling the form of a written declaration of the buyer confirming that the goods have been sent or transported by the buyer or by a third party acting on behalf of the buyer referred to in art. 45a paragraph 1 lit. b) point (i) introduced by the regulation2018/1912 and at least two non-contradictory evidence referred to in art. 45a paragraph 3 lit. a) which were issued by two different parties, which are independent of each other, the seller and the buyer, or any individual evidence referred to in art. 45a paragraph 3 lit. a), together with any individual non-contradictory evidence referred to in art. 45a paragraph 3 lit. b) confirming transport or shipment, which have been issued by two different parties which are independent of each other, the seller and the buyer

- whose content - as pointed out by the Applicant - confirms that the goods have been delivered to the buyer on the territory of a Member State other than the territory of the country, constitute / will constitute evidence of intra-Community delivery which, pursuant to art. 42 section 3 and paragraph 11 of the Act, jointly confirm / will confirm the delivery of goods subject to intra-Community delivery of goods to the buyer on the territory of a Member State other than the territory of the country and thus (subject to meeting the other conditions of Article 42 (1) of the Act) authorize / will authorize the Applicant to apply the rate a tax of 0% on those intra-Community supplies of goods.

As a consequence, the Applicant making intra-Community delivery of goods referred to in art. 13 section 1 of the Act, having the indicated evidence (subject to compliance with the other conditions of Article 42 paragraph 1 of the Act) is / will be entitled to apply a tax rate of 0%.

Therefore, the Applicant's position should be considered correct.

The authority stipulates that the decision whether the documents that the taxpayer will have at their disposal actually confirms the intra-Community supply of goods can be finally determined only in the course of tax proceedings, tax control or customs and tax control carried out by the competent tax authority, and not in the proceedings regarding the issue of interpretation individual.

At the same time, the Authority indicates that as an obvious mistake the Applicant indicated in question 2 "(...) the form of the buyer's written statement confirming that the goods were sent or transported by the buyer or by a third party acting on behalf of the buyer referred to in paragraph 3 (b) (i) of the Regulation (...) "and decided that it should be" (...) referred to in paragraph 1 (b) (i) of the Regulation (...) ".

The interpretation applies to the actual state of affairs presented by the Applicant and the legal status prevailing on the date of the event and the future event presented by the Applicant and the legal status prevailing on the date of the interpretation.

According to art. 14 § 1 of the Tax Code provisions of art. 14k-14n shall not apply if the actual state or future event being the subject of individual interpretation is part of the activities being the subject of the decision issued:

1. with the application of art. 119a;
2. in connection with the abuse of the right referred to in art. 5 paragraph 5 of the Act of 11 March 2004 on tax on goods and services;
3. with measures restricting contractual benefits.

The provisions of art. 14k-14n shall not apply if the tax benefit found in the decisions listed in § 1 is the result of compliance with established interpretive practice, general interpretation or tax explanations (Article 14na § 2 of the Tax Code).

The above regulations should be read together with the provisions of art. 33 of the Act of 23 October 2018 amending the Act on personal income tax, the Act on corporate income tax, the Act - Tax Code and some other acts (Journal of Laws item 2193), introducing intertemporal regulations.

Individual interpretation has legal and tax effects only if the actual state of the case being the subject of the interpretation coincides with the description provided by the Applicant in the submitted application. Therefore, if any element of the description of the case is changed, the answer given loses its validity.

The party has the right to lodge a complaint against this interpretation of tax law because of its unlawfulness. The complaint is lodged with the Provincial Administrative Court through the body whose operation, inaction or protracted conduct of the proceedings is the subject of the complaint (Article 54 § 1 of the abovementioned Act of 30 August 2002 - Law on proceedings before administrative courts - Journal of Laws of 2019, item 2325, as amended). The complaint shall be lodged in duplicate (Article 47 § 1 of the above Act) to the following address: Krajowa Information Treasury, ul. Teodora Sixta 17, 43-300 Bielsko-Biała or by e-mail to the address of the Electronic Inbox of the National Treasury Information on the ePUAP platform: / KIS / SkrytkaESP (art. 54 § 1aabove. of the Act), within thirty days of the date of delivery to the applicant of the decision in the case or act referred to in art. 3 § 2 point 4a (Article 53 § 1 of the above-mentioned Act). In the case of letters and attachments submitted in the form of an electronic document, copies shall not be attached (Article 47 § 3 of the above-mentioned Act). In the event of a complaint being lodged during the period of epidemic emergency and epidemic status, the most appropriate contact is to use the ePUAP ICT system.

At the same time, in accordance with art. 57a above of the Act, a complaint about a written interpretation of tax law provisions issued in an individual case, a hedging opinion and a refusal to issue a hedging opinion may be based solely on the allegation of violation of the provisions of the procedure, the error of interpretation or wrong assessment as to the application of the substantive law. The administrative court is bound by the charges of the complaint and the legal basis invoked.

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