

Contradictory rules for documenting intra-EU supplies will not facilitate VAT settlements

Krzysztof Kościłcki

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The changes in force since Wednesday regarding the zero VAT rate for intra-Community supply of goods (WDT) are imprecise. Taxpayers do not know how to document such transactions, because the EU regulation in force since January provides slightly different rules than the latest regulations of the VAT Act. In addition, the treasury allows for significant simplifications, but this path – in the case of control – can be a trap.

On Wednesday, July 1, changes related to the use of the 0-percent rate came into force. VAT at WDT. For the most part, the legislator has not changed the conditions or the rules for its disclosure. However, two important issues have arisen that can be a source of problems and effectively prevent the application of a zero tax rate.

The first concerns the obligation to have a VAT-EU number. The domestic supplier should receive it from the buyer, who must be registered in another EU country for the purposes of intra-Community transactions. This condition in Poland has been rather respected so far, but from July 1, any doubts in this regard may justify the loss of the right to a 0-percent rate. In practice, this should mean that the **domestic supplier should not make the delivery unless he has received a valid VAT-EU number from the buyer.**

The second change concerns summary information. If the supplier does not submit this document or completes it incorrectly, the tax authority will be able to question the right to use 0% VAT rates.

See also: Big changes in taxes from July 1 >>

Documenting transactions the old way

As explained by Zdzisław Modzelewski, an expert on VAT, a tax advisor and a partner at GWW, in terms of documentation conditions that entitle to apply the 0-percent rate. VAT, it turns out that the **legislator has not modified art. 42 section 3 of the VAT Act.**

See procedure in LEX: Rate 0% at WDT>

However, the expert reminds that from January 2020 Council Implementing Regulation (EU) No 282/2011 has been in force, in which Art. 45a requiring the supplier to have at least two non-contradictory evidence that has been issued by two different parties which are independent of each other, the seller and the buyer. These pieces of evidence are enumerated depending on the situation, but regardless of the case, this is a requirement that goes further than that required by the VAT Act.

Polish tax authority milder than EU law?

However, the interpretation of the director of the National Tax Information No. 0114-KDIP1-2.4012.122.2020.1.PC issued a few days ago shows that the condition for applying a zero VAT rate may be evidence provided for by national regulations (as before). Whether they will be received in paper or electronic form should not matter.

How does this interpretation translate into the application of new provisions in practice?

- If the supplier delivers WDT in July and immediately issues an invoice, if on August 25 he does not have any document (except VAT-EU number, which he got in July), then he has no right to apply a zero VAT rate. If he obtains the documents, then according to the current rules he should make an appropriate demonstration of the 0-percent rate. in the declaration and WDT in the summary information. **Of course, there will be a problem of not submitting the summary information on time.** Its absence means no right to a 0-percent rate, unless the taxpayer "duly explains the deficiency in writing to the head of the tax office" - explains Zdzisław Modzelewski.

Wiktoria Szpinieta, a consultant at the TLA law office, referring to the interpretation mentioned above, points out that the Polish tax authority has a broad view on the possibilities of documenting WDT according to the provisions of the VAT Act. First of all, it's about the form of the documentation being collected. The director of the KIS emphasizes that the evidence does not have to be paper-based originals, since in the age of digitization, such documents may be in electronic form, but they should not raise doubts as to their authenticity.

Main doubt: Which recipes should be used?

According to Arkadiusz Łagowski, tax advisor, partner at Martini & Partners, documenting deliveries according to Polish regulations is not only easier to fulfill, tax authorities interpret regulations quite liberally, accepting documentation in electronic form, e-mail, photocopier, scan or fax document. **However, if taxpayers have the opportunity to obtain the documentation required by the provisions of the Council Implementing Regulation, it is worth collecting such documentation to use the presumption of delivery.**

This can help in the event of a dispute with the tax office. It will certainly also be an argument confirming the attempt to exercise due diligence.