0111-KDIB3-3.4012.197.2020.1.MAZ - Przesłanki 0% stawki VAT dla WDT.

Official letters

Status: Underestimated

Writing

of 9 July 2020

Director of the National Tax Information

0111-KDIB3-3.4012.197.2020.1.MAZ

Premises of 0% VAT rate for intra-Community supplies.

INDIVIDUAL INTERPRETATION

On the basis of art. 13 § 2a and art. 14b § 1 of the Act of August 29, 1997 - Tax Ordinance (Journal of Laws of 2019, item 900, as amended), the Director of the National Tax Information states that the Applicant's position presented in the application of April 6, 2020 (date of receipt - April 16, 2020) for an interpretation of tax law regarding value added tax, in the scope of recognizing that the deliveries of Goods from Poland to Germany to the recipient in Germany will constitute an intra-Community supply, taxed at the rate tax of 0% - **is correct.**

SUBSTANTIATION

On April 16, 2020, the Authority received the above-mentioned application for an interpretation of tax law provisions regarding value added tax, in the scope of recognizing that the deliveries of Goods from Poland to Germany to the recipient in Germany will constitute an intra-Community supply, taxed with a tax rate of 0%.

The application presents the following future event :

The Applicant -... sp. Z oo (hereinafter referred to as: "the Applicant" or "the Company"), a company under Polish law with its registered office in M., is an active VAT taxpayer in Poland, also registered for intra-community transactions.

The company is part of the Y capital group (hereinafter referred to as the "Group"). The Applicant's 100% shareholder is XXX (hereinafter referred to as: "XXX"), a company governed by German law, the owner of the ABC business line and consequently ... passenger cars and vans. XXX is wholly owned by YY (hereinafter: "YY"), a company established in Germany. XXX is a company under German law, registered for VAT purposes in Germany. XXX is registered for VAT in Poland. XXX has no permanent place of business in Poland within the meaning of VAT regulations.

Due to the Group's decision to establish a new production plant on the territory of Poland, the Company is the entity responsible for the production of A1A - eg A2A - for vehicles from the Y brand group (hereinafter collectively as: "Goods"). Production started in ... year, while full production capacity should be reached in ... year.

Due to the commencement of production, the Applicant has commenced the execution of orders. The goods that are produced at the plant are sold exclusively to XXX. Consequently, as part of each one-off sale transaction to XXX, the Goods will be transported outside Poland to another country of destination.

The Applicant considered several possible scenarios for the planned flow of Goods.

The scenario that was planned to be implemented in the first years from the start of production (hereinafter: the "Transitional Scenario") concerned transactions with goods whose final destination are countries outside the EU, i.e. ..... The tax effects of the Transitional Scenario have already been confirmed in the individual interpretation of sign: 0114-KDIP1-2. 4012.618.2017.1. PC issued by the Director of the National Tax Information on November 30, 2017.

The scenario that was planned to be implemented further (hereinafter: the "Target Scenario") also concerned transactions with goods whose end-uses are countries outside the EU, i.e. ..... Tax effects related to the introduction of the Target Scenario have also already been confirmed in an individual interpretation, reference number: 0111-KDIB3-3.4012.336.2019.1. MAZ, issued by the Director of the National Tax Information on November 4, 2019.

However, the current financial and economic structures have changed in such a way that the logistics costs of the Target Scenario have increased significantly. Thus, the implementation of the Target Scenario is associated with a significant increase in running costs, and therefore it is no longer economically justified for the Group. Thus, in line with the present situation, the previously planned Target Scenario is postponed until further notice.

Thus, with regard to the planned flow of Goods, the following alternative scenario has been developed, in which the final recipients of the Goods will be contractors from outside the EU, e.g. from ... (hereinafter: "Alternative Scenario").

I. Movement of Goods under the Alternative Scenario:

* Goods after the production stage in Poland will be transported directly to Germany, and more precisely directly to the Logistics Center in Germany, operated by a third party. The final exact location of this Center in Germany has not yet been selected.

* The Applicant and XXX have agreed that the INCOTERMS FCA (Free Carrier) delivery terms will apply to the transaction.

* XXX will search for and ultimately decide on the choice of a carrier with whom cooperation in the field of transport will be undertaken.

* XXX will bear the costs of transporting the Goods from Poland to Germany, under the contract for the transport of the Goods concluded with the carrier.

* Regardless of the adopted INCOTERMS FCA delivery terms, the Applicant will be significantly involved in the transport organization process. He will employ a Polish logistics service provider who, acting on his behalf, will deal with the preparation of transport, including in particular labeling, reloading, specialized packaging, sealing and securing the Goods, if (will) be required, as well as creating orders and entering the Goods in question in XXX systems.

* Goods will be transported from Poland to Germany by trucks or train.

* The right to dispose of the Goods as the owner, including the risk of their loss or damage, will be transferred to XXX in the territory of Poland when the Goods are loaded onto a truck or train, respectively.

* Documentation accompanying the transport of the Goods from Poland to Germany will include on:

* The Company as the sender of the transport of the Goods,

* Address of the Company's factory as the place of loading the Goods,

*

Logistics Center in Germany as the destination of the Goods.

* The applicant will have evidence that the Goods were exported from the territory of Poland and were delivered to the Logistics Center in Germany.

II. Invoicing scheme for the Alternative Scenario:

* The applicant will issue an invoice for XXX.

* The invoice will contain the Polish VAT number of the Applicant and the German VAT number XXX (for intra-community transactions, with the DE prefix).

III. Onward delivery of the Goods:

* After the Goods are delivered to their destination at the Logistics Center in Germany, the logistics service of the Goods will be taken care of by a German logistics service provider, acting for XXX directly or indirectly (i.e. when another entity from Groups based in Germany and the same entity would respectively engage an external German logistics provider on the basis of subcontracting):

* acceptance of the Goods into the system and their verification, i.e. counting in terms of checking the completeness of the order;

* unloading of Goods from a truck or train, as appropriate;

* storage and sorting (if required) for further container preparation;

* maintenance for onward foreign transport;

* repacking the Goods for other load carriers (if required);

* initiation of the customs procedure for the export of the goods, preparation of the relevant export documents on behalf of XXX (XXX indicated as the exporter), submission of the documents to the German customs authorities and - if necessary - presentation of the goods to customs in case of inspection. Importantly, customs clearance will only begin after the goods are delivered to the Logistics Center in Germany;

* sealing and loading the container into a suitable means of transport (securing the loading);

* goods issue posting in the XXX system;

* transport technical service, i.e. printing and attaching shipping documents, issuing the container and documents to the carrier.

* The above activities to which the Goods in Germany will be subjected, according to the assumptions, will normally last up to 3 days, or even longer if required, counting from the date on which the Goods reach the Logistics Center in Germany.

* Then the Goods will be transported from Germany to contractors outside the EU, e.g. ..., as part of a sale transaction between XXX and his contractor.

* The invoice from XXX to the final recipient outside the EU will be settled as export taxed at 0% in Germany, under the German tax identification number XXX. This invoice will only be issued by XXX once the Goods are physically located in Germany.

* The applicant will not be involved in any way in the transaction between XXX and its non-EU counterparty, in particular the Company will not be involved in the customs clearance of the Goods in Germany.

* As a rule, at the moment of commencing the transport of the Goods from Poland to Germany, the Applicant will know which country the goods will be shipped to, as they will be secured (if required for quality reasons) and packed based on the individual conditions and needs of the end customer. Regardless, however, throughout the entire transport process, and especially when the Goods are physically located at the Logistics Center in Germany, XXX will have the right to change the terms of delivery, including changing the end customer, and thus the physical flow of the Goods - for which the Company will not have no longer impact.

* The above is due to the fact that in the first place XXX will receive orders from various countries outside the EU and only on their basis XXX will prepare and submit to the Applicant one collective order, which will contain cumulative values on the basis of previously submitted orders directly to XXX. XXX will indicate on the order the Logistics Center in Germany as the destination of

the Goods that the Applicant will be required to produce. Further distribution and transport of the Goods to target recipients from Germany outside the EU will be performed by XXX, without the Applicant's involvement.

* Importantly, XXX will have constant access to goods handled by a German logistics service provider acting on its behalf. Ownership of the Goods does not transfer to any third party at any time. XXX has the right to inspect both the services provided to it and the goods stored themselves.

* As a rule, two independent entities will be responsible for transport from Poland to Germany and transport from Germany to non-EU countries, whose role and functions for each transport will be specified in two separate contracts and separate orders. At the same time, however, the Applicant does not exclude that both transports may also be handled by the same entity.

* As a rule, logistics service providers (both Polish - acting on behalf of the Applicant and German - acting on behalf of XXX) will not be involved as carriers in transports neither between M. and the Logistics Center in Germany, nor at a later stage between the said Center and the final customer from a country outside the EU. However, if such a situation occurred, the provided transport services and its handling will be based on separate agreements.

* Basically, there will be two separate transport orders under the Alternative Scenario, i.e .:

* transport order I for the transport section M. (Poland) - Logistics Center (Germany) i

* transport order II for the transport section of Logistics Center (Germany) - final recipient (country outside the EU),

and two separate transport documents / evidence, i.e .:

* transport document / proof I for the transport section M. (Poland) - Logistics Center (Germany) i

* transport document / proof II for the transport section of Logistics Center (Germany) - end customer (country outside the EU).

To sum up - the Alternative Scenario will differ from the Target Scenario (the last one for which the Applicant has already obtained the cited individual interpretation) due to the following events:

* extension of the range of manufactured components ... in M. - The applicant will now produce ...;

* extension of activities undertaken by the logistics service provider in the Logistics Center in Germany;

* possible increase of the time between the arrival of the Goods at the Logistics Center in Germany and their shipment to countries outside the EU;

* involvement of two independent entities dealing with transport from Poland to Germany and from Germany to countries outside the EU;

* the possibility of engaging a logistics service provider operating a Logistics Center in Germany through XXX, directly or indirectly.

In connection with the above description, the following questions were asked :

1. Will the actions taken by the Applicant in the presented future event, including the delivery of Goods to XXX, which Goods under the delivery will be transported from Poland to Germany, will constitute an intra-Community supply of goods in accordance with the provisions of the Act on tax on goods and services (Journal of Laws of 2020, item 106; hereinafter: "the VAT Act")?

2.If the answer to question No. 1 is positive - will the future deliveries of Goods to XXX be subject to 0% VAT tax in the presented event, assuming that the conditions provided for in the VAT Act are met to apply the 0% VAT rate as part of the intra-Community supply transaction, in particular, assuming that the Applicant will have evidence that the Goods have been exported from the territory of Poland and delivered to Germany before the deadline for submitting the tax return for a given tax period?

According to the Applicant:

Ad 1.

According to the Applicant, in the presented future event, his deliveries of Goods to XXX, which within the scope of the delivery will be transported from Poland to Germany, will constitute an intra-Community supply of goods in accordance with the provisions of the VAT Act.

According to Art. 5 sec. 1 of the VAT Act, the following are subject to VAT:

1. delivery of goods against payment and provision of services against payment within 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 consideration within the territory of the country;
5. intra-Community supply of goods.

Delivery of goods referred to in Art. 5 sec. 1 point 1 of the VAT Act, in principle, should be understood as the transfer of the right to dispose of goods as the owner (Article 7 (1) of the VAT Act). According to Art. 13 sec. 1 of the VAT Act, by the WDT, referred to in Art. 5 sec. 1 point 5 of the VAT Act, should be understood as the export of goods from the territory of Poland in the performance of the activities specified in art. 7 of the VAT Act, on the territory of a Member State other than the territory of Poland.

Taking into account the above, we are dealing with WDT when the following conditions are met jointly:

* the goods are delivered,

* as part of the delivery of the goods, the right to dispose of the goods is transferred as the owner,

* as part of the delivery in question, the goods are moved from the territory of Poland to the territory of an EU country other than the territory of Poland.

Apart from the conditions as to the essence of the transaction itself, there are also conditions necessary to be met by the entities involved in the transaction. And so, additionally, WDT takes place when:

* the delivery is made by a taxpayer who independently conducts business activity, regardless of its purpose or result, i.e. within the meaning of art. 15 of the VAT Act, the sale of which is not exempt from VAT, assuming the sales value threshold not exceeding PLN 200,000 in the previous tax year, in accordance with Art. 113 paragraph. 1 and 9 of the VAT Act (Article 13 (6) of the VAT Act);

* the buyer is a legal person registered for value added tax and identified for the purposes of intra-Community transactions in the territory of an EU country other than the territory of Poland (Article 13 (1) and (2) of the VAT Act).

Taking into account the above provisions of the VAT Act and the description of the future event, both the conditions relating to the essence of the transaction itself and to the entities participating in the transaction, regarding the recognition of the transaction as intra-Community supply, will be met jointly. This conclusion is based on the following statements:

* the goods, after their production in Poland, will be delivered to XXX as part of the goods delivery transaction, specifically to the Logistics Center in Germany, where the German logistics service provider will collect the imported Goods on behalf of XXX;

* The applicant will issue an invoice for XXX;

* the right to dispose of the Goods as the owner, including the risk of their loss or damage, will be transferred to XXX on the territory of Poland at the time of loading on the means of transport;

* goods will be transported from the territory of Poland directly to Germany, to the Logistics Center;

* the delivery will be made by the Applicant who carries out his own business activity, regardless of its purpose or result, in accordance with art. 15 of the VAT Act;

* the Applicant's sale is not exempt from VAT pursuant to Art. 113 paragraph. 1 and 9 of the VAT Act;

* XXX is a legal person and a taxpayer identified for intra-Community transactions in Germany, and the invoices issued by the Applicant will include the German VAT number XXX (with the DE prefix).

No chain transaction

Additionally, the provisions of Art. 22 sec. 2 , in connection with Art. 7 sec. 8 of the VAT Act, dealing with the place of taxation and the rules of assigning transport in the case of the so-called "chain delivery", i.e. a situation where several entities (understood as more than two) deliver the same goods in such a way that the first of them issues the goods directly to the last party in the chain, and the goods are dispatched or transported.

The above results from the fact that in the future event there will be no circumstances characterizing the chain delivery, understood as such in which more than two entities participate. First of all, it should be pointed out that there will be no chain transaction involving a German logistics service provider that will collect the Goods at the Logistics Center in Germany. The right to dispose of the Goods as the owner, along with the risk of their loss or damage, will be transferred to XXX already at the time of loading them onto a means of transport in M. and until delivery to the Logistics Center in Germany at no time will it be transferred to any other entity (in including, in particular, a German logistics service provider).

The classification of the transaction in question is also unaffected by the fact that the Goods will subsequently be delivered from Germany to counterparties outside the EU, e.g. ...

The delivery made by the Applicant concerns only two entities, ie the Company and XXX. The applicant issues the Goods to the second and last entity, ie XXX. The transaction between the Applicant and XXX will be treated as separate and in essence independent of any other transactions, including those made later in Germany by XXX, who is the new owner of the Goods after their purchase from the Applicant. There will be no link to any subsequent transactions that XXX will conduct in Germany as the new owner of the Goods. The applicant will have no influence on the independent decisions taken by XXX regarding the activities performed on / with the Goods at the Logistics Center in Germany (for example checking the Goods for quantity, repackaging, sealing and loading truck containers). The aforementioned activities to which the Goods in Germany may be subject, may take up to 3 days or, if required, even longer, counting from the date on which the Goods reach the Logistics Center in Germany, however, the Applicant has no and will not have influence on the period of for which the Goods will be in Germany or when they are exported outside the EU. The applicant will not be in any way involved in these subsequent transactions, which is also confirmed by the fact that the customs clearance of goods delivered outside the EU territory (e.g. to ...) will only be carried out in Germany, on behalf of and for XXX, named as the exporter. however, the Applicant has no control over the period during which the Goods will be in Germany or when they are exported outside the EU. The applicant will not be in any way involved in these subsequent transactions, which is also confirmed by the fact that the customs clearance of goods delivered outside the EU (e.g. to ...) will only be carried out in Germany, on behalf of and for XXX, named as the exporter. however, the Applicant has no control over the period during which the Goods will be in Germany or when they are exported outside the EU. The applicant will not be in any way involved in these subsequent transactions, which is also confirmed by the fact that the customs clearance of goods delivered outside the EU territory (e.g. to ...) will only be carried out in Germany, on behalf of and for XXX, named as the exporter.

As indicated by the resolution of the Supreme Administrative Court of 25 June 2012, file ref. I FPS 3/12 , we are not dealing with a chain delivery, and each transaction is treated as separate and in essence independent of the others "in the event that the goods are transported (sent, moved) from Poland to another Member State without the export procedure and there, unloaded and stored (stored outside the customs warehouse), and then only transported (dispatched) from that country - after the goods have been declared there for export outside the European Union - there are no grounds to conclude that the export of this goods outside the territory of the Community took place from the territory of Poland ".

In addition, any changes with regard to transport from Germany outside the EU, including changes to the final buyer or the time and terms of delivery, will take place regardless of the Company's knowledge. Even less so, we cannot talk about one real transport, but two separate transports and, in fact, two separate transactions. This is also due to the fact that XXX, although it will

receive orders from various countries outside the EU, on their basis will prepare and submit to the Company one collective order, which will contain cumulative values based on previously submitted orders directly to XXX. XXX will indicate on the order the Logistics Center in Germany as the destination of the Goods that the Applicant will be required to produce.

Additionally, as emphasized by the Supreme Administrative Court in its judgment of 28 June 2018, file ref. I FSK 1581/16, "the condition of the direct delivery of the goods to the last buyer by the first entity applies to each" chain delivery ". In the cited judgment, the Supreme Administrative Court noted that the essence of a chain transaction is that indirect buyers do not physically include the possession of the delivery item. - even if the organizers of the transport are intermediaries, the goods are issued only to the last buyer. Therefore, in the opinion of the court, the physical release of the goods to another entity along with the transhipment in the freight forwarder's warehouse means that the chain is interrupted and, in fact, two independent transactions arise - between the supplier and broker and between the broker and the final buyer.

Following this path, even if it is assumed that XXX will act as an intermediary (which, however, in the Applicant's opinion, is not the case), the physical release of the Goods to him de facto breaks the supply chain.

It is also worth pointing out that the Director of the National Tax Information in the individual interpretation issued for the benefit of the Company of November 4, 2019, reference number: 0111-KDIB3-3.4012. 336.2019.1.MAZ, concerning the "Target Scenario", confirmed that there is no chain transaction in the presented description of the case due to the fact that: "having regard to the content of Art. 7 (8) and Art. 22 (2) of the Act for several consecutive deliveries to be considered chain transaction, all of the following conditions must be met:

1) the transaction involves at least 3 entities;
2) all transactions in the chain constitute a supply of goods;
3) the subject of each of the consecutive deliveries is the same goods;
4) the goods are issued directly by the first party in the chain to the last party involved in the transaction, and consequently only one shipment of goods takes place.

However, in the case presented in the application, the first and last conditions are not met, because the Applicant does not participate in the delivery of the Engines to contractors outside the EU and the goods are not handed over directly by the Applicant to the final buyer outside the EU, e.g. in ... ". the conditions themselves are not met also in the case of the Alternative

Scenario - analogically, therefore, this transaction will not constitute the so-called chain transaction referred to in Article 7 (8) and Article 22 (2) of the VAT Act.

Summarizing the above, in the presented future event, in the opinion of the Applicant, the activities undertaken by the Applicant, including the delivery of Goods to XXX, which Goods as part of the delivery will be transported from Poland to Germany, will constitute an intra-Community supply of goods in accordance with the provisions of the VAT Act.

Ad 2.

Taking into account the described future event, as well as the provisions of the VAT Act, answering question no.2, the Applicant is of the opinion that he will be entitled to apply the 0% VAT rate in connection with intra-Community supplies, made for XXX from Poland to Germany.

According to Art. 41 paragraph. 3 of the VAT Act, intra-Community supply of goods is taxable at 0% VAT, subject to Art. 42 of the VAT Act.

According to Art. 42 sec. 1 of the VAT Act, intra-Community supply of goods is taxable at the rate of 0%, provided that:

* the taxpayer has made a supply to a buyer who has a valid and valid identification number for intra-Community transactions, assigned by the Member State of the buyer, containing the two-letter code used for value added tax;

* the taxpayer, before the deadline for submitting a tax return for a given tax period, has evidence in his documentation that the goods being the subject of the intra-Community supply were 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;

* the taxpayer, when submitting the tax return showing this supply of goods, is registered as an EU VAT payer.

The evidence mentioned above are the following documents:

* 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 have been delivered to their destination in the territory of a Member State other than the territory of the country - if the transport of goods is commissioned to the carrier (forwarder) ,

* specification of individual pieces of cargo (Article 42 (3) of the VAT Act).

Additionally, pursuant to Art. 42 sec. 11 of the VAT Act, if the documents referred to in Art. 42 sec. 3 of the VAT Act, do not clearly confirm the delivery to the buyer located in the territory of a Member State other than the territory of the country of goods, with the evidence referred to in paragraph 1, point 2, there may also be other documents indicating that an intra-Community delivery took place, in particular:

* commercial correspondence with the buyer, including his order;

* documents relating to insurance or freight costs;

* a document confirming the payment for the goods, except when the delivery is free of charge or the obligation is performed in a different form, in which case another - a document confirming the expiry of the obligation;

* proof of acceptance by the buyer of the goods in the territory of a Member State other than the territory of the country.

In the presented future event:

* XXX will be registered for intra-community transactions in Germany and will have a valid and valid German intra-community transaction number containing the two-letter code used for value added tax (ie "DE");

* The applicant will have, before the deadline for submitting a tax return for a given tax period, evidence that will jointly clearly confirm that the Goods being the subject of the intra-Community supply of goods were exported from Poland and were delivered to XXX, to the Logistics Center in Germany.

* The applicant will be registered for the purposes of intra-Community transactions in Poland as an active VAT-EU taxpayer at the moment of submitting the VAT declaration, in which the above-mentioned intra-Community supplies transactions will be reported.

In the opinion of the Applicant, therefore, the conditions for applying the 0% VAT rate in the light of the provisions of the VAT Act will be met.

In this context, it is also worth mentioning the EU regulations of Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending Implementing Regulation (EU) No 282/2011 with regard to certain exemptions related to intra-Community transactions, according to which On January 2020, new EU regulations were introduced to apply the 0% VAT rate to intra-Community supply. Implementing Regulation 2018/1912 in Art. 45a introduces presumptions relating to the evidence required to apply the exemption with the right to deduct (0% rate) for intra-Community supplies of goods.

However, what is important - as confirmed in the release of the Ministry of Finance of December 23, 2019 on the implementation of Directive 2018/1910, the so-called Quick Fixes package: "failure to meet the conditions introduced by the above-mentioned regulation does not mean that the 0% rate will not apply. In such a case, the supplier will have to prove otherwise, in accordance with the current provisions of the VAT Act, that the conditions for applying the 0% rate have been met This situation will not change after the entry into force of the act implementing EU law. "

A similar position was expressed in the explanatory notes to the above-mentioned document issued by the expert group of the European Commission in December 2019. of the regulation, where it was indicated that the fact that the conditions for the use of the presumption of the regulation were not met does not automatically mean that the exemption from art. 138 of the Directive will not apply. In this case, the supplier will have to prove that the conditions for applying the exemption (including transport) are met.

Importantly, the possibility of applying the 0% rate in intra-Community supply on the basis of the applicable provisions of the VAT Act is also confirmed by the tax interpretations issued so far, which analyzed the relationship between the provisions of the regulation and the content of the current provisions of the Act. As indicated, inter alia, in the interpretation issued by the Director of KIS on February 10, 2020, reference number: 0112-KDIL4.4012.523.2019.2.TKU, "it should be indicated that failure to meet the conditions introduced by the above-mentioned regulation does not mean that the 0% rate will not apply. 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 ". The same position was also expressed in the individual interpretation, reference number: 0112-KDIL1-3.4012.533.2019.2.TK, dated February 11, 2020.

Summing up the above, if the activities undertaken by the Applicant, including the delivery of Goods to XXX, which Goods as part of the delivery will be transported from the territory of Poland to the territory of Germany, will constitute an intra-Community supply of goods, in the opinion of the Applicant, they will be taxed at the rate of 0% VAT, assuming that the conditions provided for in the VAT Act are met to apply the 0% VAT rate as part of the intra-Community supply of goods transactions, in particular assuming that the Applicant has evidence that the Goods have been exported from the territory of Poland before the deadline for submitting the tax return for the given settlement period and were delivered to Germany.

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

According to Art. 5 sec. 1 point 5 of the Act of March 11, 2004 on tax on goods and services (Journal of Laws of 2020, item 106, as amended; hereinafter: "the Act" or "the VAT Act"), taxable goods and services tax, hereinafter referred to as "tax", are subject to:

1. delivery of goods against payment and provision of services against payment within 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 consideration within the territory of the country;
5. intra-Community supply of goods.

The above provision results in the so-called the principle of territoriality, according to which certain activities are subject to taxation with tax on goods and services, but only if the place of their provision (determined on the basis of the provisions of the Act) is the territory of the country through which - according to the definition contained in Art. 2 point 1 of the Act - shall mean the territory of the Republic of Poland (subject to Article 2a). The territory of the European Union means the territories of the Member States of the European Union (...) (Article 2 (3) of the Act). On the other hand, the territory of a third country is understood as the territory of a country that is not part of the territory of the European Union, subject to Art. 2a sec. 1 and 3 (Article 2 (5) of the Act).

Pursuant to Art. 7 sec. 1 of the Act, by the delivery of goods referred to in Art. 5 sec. 1 point 1 shall be understood as the transfer of the right to dispose of the goods as the owner (...).

Goods are understood as things and their parts, as well as all forms of energy - art. 2 point 6 of the Act.

Pursuant to Art. 2 point 22 of the Act, sale is understood as the paid delivery of goods and the paid provision of services within the territory of the country, the export of goods and the intra-Community supply of goods.

In accordance with Art. 13 sec. 1 of the Act, by the intra-Community supply of goods referred to in Art. 5 sec. 1 point 5 shall be understood as 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 the provisions of paragraph 2. 2-8.

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

1. a taxpayer of value added tax identified for the purposes of intra-Community transactions in the territory of a Member State other than the territory of the country;
2. a legal person not being a taxable person for value added tax, which is identified for the purposes of intra-Community transactions within the territory of a Member State other than the territory of the country;
3. a taxpayer of value added tax or a legal person that is not a taxpayer of value added tax, operating 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 the delivery are excise goods which, in accordance with the provisions on excise duty , are placed under the excise duty suspension arrangement or the excise goods movement with excise duty paid;
4. an entity other than those mentioned 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.

The intra-Community supply of goods occurs if the supplying entity is a taxpayer referred to in art. 15, the sale of which is not tax-exempt pursuant to art. 113 paragraph. 1 and 9 , subject to the provisions of paragraph 2. 7 - Art. 13 sec. 6 of the Act.

Pursuant to Art. 15 sec. 1 of the Act, taxpayers are legal persons, organizational units without legal personality and natural persons who independently conduct business activities referred to in para. 2, regardless of the purpose or result of such activity.

It should be noted here that as regards the documentation entitling to the application of the 0% tax rate for intra-Community supplies of goods from 1 January 2020, the provisions of Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending Implementing Regulation (EU) No 282/2011 in relation to certain exemptions related to intra-Community transactions (Official Journal of the European Union No. 311 of 7.12.2018, p. 10; hereinafter: " Regulation 2018/1912"), hereinafter referred to as regulation 2018/1912. Regulation 2018/1912 is general, binding in its entirety and directly applicable in all Member States. Ordinance2018/1912 introduces, among others Recalculable presumptions relating to the evidence required to apply the exemption with the right to deduct (0% rate) for the intra-Community supply of goods.

Pursuant to Art. 45a introduced by regulation 2018/1912:

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

and. the seller indicates that the goods have been shipped or transported by him or 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 that are independent of each other, the seller and the buyer, or the seller is in possession of any single evidence referred to in paragraph 3 lit. a, together with any single non-contradictory evidence referred to in paragraph 3 lit. b, confirming shipment or transport, issued by two different parties, which are independent of each other, the seller and the buyer;

b. the seller is in possession of the following documents:

(i) a written declaration from the buyer certifying 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; such written declaration shall specify: the date of issue; the name or full name and address of the buyer; the quantity and type of goods; the date and place of arrival of the goods; in the case of delivery of means of transport, the identification number of the 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) that were issued by two different parties that 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, issued by two different parties that are independent of each other, the seller and the buyer.

(iii) The buyer provides the seller with the written statement referred to in point (a). (b) (i), by the tenth day of the month following that 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 shipment or transportation:

and. documents relating to the shipment or transport of goods, such as a signed CMR consignment note, bill of lading, air freight invoice or freight carrier invoice;

b. The following documents:

(i) an insurance policy for the shipment or transport of the goods or bank documents proving payment for the shipment or transport of the goods;

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

(iii) a receipt issued by the warehouse keeper in the Member State of destination confirming that the goods are stored in that Member State.

In accordance with Art. 41 paragraph. 3 of the Act, in the intra-Community supply of goods the tax rate is 0%, subject to Art. 42.

Pursuant to Art. 42 sec. 1 of the Act, in the wording in force from 1 July 2020, intra-Community supply of goods is subject to taxation at the 0% tax rate, provided that:

1. the taxpayer has made a supply to a buyer who has a valid and valid identification number for intra-Community transactions, assigned by the buyer's Member State, containing the two-letter code used for value added tax that the buyer has provided to the taxpayer;
2. the taxpayer, before the deadline for submitting a tax return for a given tax period, has evidence in his documentation that the goods being the subject of the intra-Community supply were 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;
3. the taxpayer, when submitting a tax return showing this supply of goods, is registered as an EU VAT payer.

These conditions must be met cumulatively. The fulfillment of the first of them is to guarantee that the activity will be treated as an intra-Community acquisition in the recipient country and will be actually taxed there, and the second indicates that goods were actually exported from one Member State (from the country) and transported (moved) 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 transferred). The delivery that takes place in the territory of the supplier's country is taxed at 0%, and in the buyer's country the delivery is taxed according to the tax rate applicable there. The transaction taxed in this way is designed to avoid distortion of competition, caused by double or non-taxation. However, the application of the 0% rate for the intra-Community supply of goods also depends on the registration of the taxpayer as an EU VAT taxpayer, at the latest at the time of submitting the declaration for the given supply.

In addition, it should be noted that from July 1, 2020 to the VAT Act - pursuant to Art. 2 point 10 lit. b of the Act of May 28, 2020 amending the Corporate Income Tax Act, the Goods and Services Tax Act, the Act on the Exchange of Tax Information with Other Countries and Certain Other Acts (Journal of Laws 2020.1106) - Art. . 42 sec. 1a, according to which the tax rate referred to in para. 1, does not apply if:

1. the taxpayer has failed to fulfill the obligation referred to in Art. 100 sec. 1 point 1 or sec. 3 point 1, or

2. the submitted summary information does not contain correct data on intra-Community supplies of goods in accordance with the requirements referred to in Art. 100 sec. 8 - unless the taxpayer duly explained the failure to the head of the tax office.

The cited provision of Art. 42 sec. 1a of the Act, as a rule, makes the application of the 0% tax rate conditional on the taxpayer's fulfillment of the obligation to submit summary information - indicated in art. 100 sec. 1 point 1 or sec. 3 point 1 of the Act - and to show in the summary information correct data on intra-Community supplies of goods - in accordance with the requirements referred to in Art. 100 sec. 8 of the Act.

In accordance with Art. 42 sec. 3 of the Act, with the evidence referred to in sec. 1, point 2, are the following documents, if they jointly confirm the delivery of goods which are the subject of intra-Community supply of goods to the buyer located in 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 have been delivered to their destination in the territory of a Member State other than the territory of the country - in the event that the transport of goods is commissioned to the carrier (forwarder),
2. (repealed)
3. specification of individual items of cargo

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

According to Art. 42 sec. 11 of the Act, where the documents referred to in para. 3-5, do not unequivocally confirm the delivery to the buyer located in the territory of a Member State other than the territory of the country of goods, the evidence referred to in paragraph 1. 1, point 2, there may also be other documents indicating that an intra-Community delivery took place, in particular:

1. business correspondence with the buyer, including his order;
2. insurance or freight costs;
3. a document confirming payment for the goods, except in cases where the delivery is free of charge or the obligation is performed in a different form, in this case another - a document confirming the expiry of the obligation;
4. proof of acceptance by the buyer of the goods in the territory of a Member State other than the territory of the country.

Bearing the above in mind, it should first be pointed out that the analysis of domestic regulations - the VAT Act - allows for the identification of two basic conditions on the fulfillment of which the treatment of a given activity as an intra-Community supply of goods depends. The first of these conditions concerns the legal aspect of the transaction - its fulfillment is to guarantee that this activity will be treated as an intra-Community acquisition in the destination country and will be actually taxed there. The second of the conditions concerns the actual aspect of the transaction, i.e. documenting the fact that the goods were exported and delivered to the buyer as part of delivery in the country of destination. It is crucial that the documents in the possession of the taxpayer contain information that shows that that the specified good has been exported from the territory of the country and has actually been delivered to another Member State. The essence of the above-mentioned provisions on the intra-Community supply of goods is the taxpayer's obligation to prove, due to the tax consequences more favorable than in relation to domestic supplies, that the goods being the subject of the delivery actually left the territory of the country.

Pursuant to the above-mentioned provisions of the VAT Act, the possibility of applying the 0% rate to the intra-Community supply of goods exists when the conditions for the status of the supplier and the buyer are jointly met, as well as the supplier has the appropriate documentation. At the same time, it is important that the documents relating to the transaction contain information that clearly shows that the specific goods have actually been exported from the territory of the country and delivered to the buyer to another EU Member State. The documents referred to in Art. 42 sec. 3 of the Act, possibly supplemented with the evidence listed in Art. 42 sec. 11the acts, gathered together, are therefore to confirm the information required by the regulation. This does not mean, however, that in order to confirm this circumstance, it is required to possess all types of documents listed in the above-mentioned regulations, as long as the documents in possession clearly confirm that the goods were delivered to the buyer in the territory of another Member State.

To document such a delivery, the taxpayer may also have other evidence in the form of documents referred to in art. 180 § 1 of the Act - Tax Ordinance, according to which, as evidence, anything that may contribute to the clarification of the case, but not contrary to the law, should be admitted.

It should be emphasized that effective from 1 January 2020. Regulation implementing 2018/1912, Article. 45a introduced a rebuttable presumption relating to the evidence required to apply the exemption with the right to deduct (0% rate) for the intra-Community supply of goods. Pursuant to Regulation 2018/1912, from January 1, 2020, this presumption stipulates that the goods being the subject of intra-Community supply of goods have been moved from Poland to another EU country (the delivery may benefit from the 0% rate), if the taxpayer making the intra-Community supply of goods has at least two non-contradictory evidence that was issued by two different parties that are independent of each other and independent of the seller and the buyer.

However, failure to meet the conditions introduced by the above-mentioned the regulation does not automatically 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 VAT Act, that the conditions for applying the 0% rate have been met.

The description of the future event shows that the Applicant is an active VAT payer in Poland, registered for the purposes of intra-Community transactions. The company manufactures goods that are components for vehicles. The goods will be delivered to XXX, a company registered in Germany for value added tax. XXX is registered in Poland for VAT purposes, but does not have a permanent place of business in Poland within the meaning of VAT regulations.

Goods manufactured in Poland will be delivered by truck or train to the Logistics Center in Germany, operated by a third party. The applicant has agreed with XXX that the FCA Incoterms will apply to delivery. The right to dispose of the Goods as the owner will be transferred to XXX in Poland when the Goods are loaded onto a truck or train. The applicant will employ a Polish logistics service provider who will be responsible for the preparation of transport for the Company (specialist packaging, reloading, marking, sealing, securing the Goods; creating orders and entering data of the Goods in XXX systems). The decision on the choice of carrier will remain with XXX. The costs of transporting the Goods from Poland will be borne by XXX. The applicant will have evidence of the export of the Goods from Poland and their delivery to the Logistics Center in Germany. The presented invoicing scheme for deliveries shows that the invoice issued by the Applicant will include the Polish VAT number of the Company and the German VAT number of the company XXX (for the purposes of intra-Community transactions it will be the number preceded by the prefix "DE").

At a later stage, the Goods will be prepared for shipment, and then delivered by XXX to contractors outside the European Union. After the Goods are delivered to the Logistics Center in Germany, they will be handled by the German logistics service provider acting for XXX. The applicant will not be involved in any way in the transaction between XXX and its non-EU counterparty. In particular, the Applicant - although he will know which country the goods will be shipped to - will not be involved in further

transport and distribution of the Goods from Germany to target recipients outside the EU. Two independent entities will deal with transport from Poland to Germany and from Germany to countries outside the EU. However, the Applicant does not exclude that both transports may be operated by the same entity,

The Applicant's doubts concern the recognition that the deliveries of Goods to XXX made from Poland to Germany will constitute an intra-Community supply of goods, taxed at the rate of 0%, assuming that the conditions provided for in the VAT Act to apply the 0% rate to the transaction are met. WDT, and at the same time, the Applicant will have - before the deadline for submitting the tax declaration for a given tax period - evidence confirming the export of Goods from Poland to Germany.

The presented description of the future event indicates that the Applicant will deliver the Goods to the Logistics Center in Germany, the recipient of which will be XXX, registered in Germany as a VAT payer. Deliveries will be made on the terms of Incoterms FCA, and thus the right to dispose of the Goods as the owner will be transferred to XXX in Poland. The Applicant is an active VAT taxpayer, and XXX is identified for the purposes of intra-Community transactions in the territory of a Member State (Germany), other than the territory of the country. The above means that in the presented future event, the activities of delivery of the Goods to XXX will constitute an intra-Community supply of goods.

In addition to the above, referring to the presented position of the Applicant beyond the content of the questions asked, the Authority would like to note that the transaction presented in the description of the future event does not constitute the so-called chain transaction referred to in art. 7 sec. 8 and art. 22 sec. 2 of the Act. According to Art. 7 sec. 8 of the Act, if several entities deliver the same goods in such a way that the first of them delivers the goods directly to the last buyer, it is considered that the goods were delivered by each of the entities participating in these activities. In turn, according to Art. 22 sec. 2of the Act, if several entities deliver the same goods in such a way that the first of them releases the goods directly to the last buyer in the order, and the goods are shipped or transported, the shipment or transport of the goods is assigned to only one delivery; if the goods are shipped or transported by a buyer who also delivers his goods, it is assumed that the shipment or transport is assigned to the delivery made for that buyer, unless the terms of delivery indicate that the shipment or transport of the goods should be assigned to his delivery.

Therefore, having regard to the content of Art. 7 sec. 8 and art. 22 sec. 2 of the Act, in order for several consecutive deliveries to be considered as made as part of a chain transaction, all of the following conditions must be met:

1. the transaction involves at least 3 entities;

2. all transactions in the chain constitute a supply of goods;
3. the subject of each of the consecutive deliveries is the same goods;
4. the goods are issued directly by the first party in the chain to the last party involved in the transaction, and consequently only one shipment of goods takes place.

It should be pointed out that in the description of the future event presented in the application, the first and last of the above-mentioned conditions are not met. The Applicant does not participate in the delivery of the Goods to contractors outside the EU and the Goods are not released directly by the Applicant to the final buyer outside the EU, e.g. in ...

Thus, the position of the Applicant with regard to question no. 1 should be considered correct.

Referring to the above-mentioned provisions, it should be noted that the taxpayer's right to apply a tax rate of 0% to the intra-Community supply of goods depends on the possession of documents clearly confirming that the goods were exported outside Poland and delivered to the buyer in another EU country. . The essence of the above-mentioned provisions is, first of all, the obligation of the taxpayer to prove that the goods to be delivered actually left the territory of the country and were delivered to their buyer, in the territory of another Member State. Therefore, it is essential that the documents held by the Applicant clearly confirm that these goods were the subject of intra-Community supplies.

The authority would like to point out that when making an intra-Community supply of goods from January 1, 2020, for the application of the 0% VAT rate, the Company should first seek to collect such evidence documenting this delivery, as referred to in Art. 45a of Regulation 2018/1912.

In the event that the Applicant does not have the documents referred to in Art. 45a of Regulation 2018/1912, taxation of intra-Community transactions for the supply of goods with a 0% tax rate requires meeting the conditions set out in art. 42 sec. 1the law. According to the description of the future event, the intra-community delivery of the Goods will be made to XXX, ie the buyer who will have a German VAT number for intra-community transactions, containing the two-letter code "DE". The company is an active VAT payer in Poland, registered for the purposes of an intra-community transaction. Moreover, in the formulated question no. 2, the Applicant indicated that the conditions provided for in the Act to apply the 0% tax rate would be met, assuming in particular that the Company - before the deadline for submitting a tax declaration for a given tax period - will have evidence that the Goods have been exported from the territory of Poland and delivered to Germany. It should be pointed out that in Art. 42 sec. 3of the Act, documents are listed that should jointly confirm the delivery of the Goods being the subject of intra-Community delivery to the

buyer located in the territory of a Member State other than the territory of the country. In turn, in art. 42 sec. 11the documents that may be the evidence referred to in sec. 1 point 2, indicating that there was an intra-Community delivery, which may take place when the documents referred to in sec. 3-5, do not unequivocally confirm the delivery of the goods to the buyer located in the territory of a Member State other than the territory of the country. By meeting the above conditions, as assumed by the Applicant, the intra-Community supply of Goods to XXX will be taxed at 0%. At the same time, it should be remembered that from July 1, 2020, Art. 42 sec. 1a of the Act, according to which 0% taxation requires additional fulfillment of the conditions resulting from this provision.

Thus, the position of the Applicant in the scope covered by question no.2 that the deliveries of Goods to XXX will be subject to taxation at the 0% rate - assuming that the conditions provided for in the VAT Act are met to apply the 0% rate under the intra-Community supply transaction, in particular assuming that the Applicant before after the deadline for submitting a tax declaration for a given tax period, it will have evidence that the Goods have been exported from the territory of Poland and delivered to Germany - should be considered correct.

The authority stipulates that the decision whether the documents at the disposal of the taxpayer actually confirm the intra-Community supply of goods and whether all the conditions authorizing the application of the 0% rate for the intra-Community supply of goods have been met, may be finally determined only in the course of tax proceedings, tax inspection or inspection. customs and tax, carried out by the competent tax authority, and not in the proceedings regarding the issuance of an individual interpretation.

Moreover, the Authority informs that the issued interpretation concerns only the matter which is the subject of the application (asked questions) of the Applicant. It should be noted that it is only the Applicant who, in the content of the submitted application, shapes its material scope. Therefore, issues that were not covered by the questions indicated in the application cannot be considered - pursuant to Art. 14b § 1 of the Tax Code.

Referring to the fact that the Applicant referred to individual interpretations operating in legal transactions, the Authority would like to note that it refers only to the circumstances presented in the application initiating this case. It should be emphasized at this point that interpretations of tax law provisions are issued in individual cases of taxpayers and undoubtedly shape the legal situation of these entities as a result of decisions regarding specific facts / future events. Individual interpretations do not have the force of generally applicable law, which means that they should be treated individually (see the final judgment of the Provincial Administrative Court in Łódź of March 27, 2015, file reference number III SA / Łd 109/15).

While referring to the judgments of administrative courts referred to in the Applicant's position, it should be noted that they relate to individual cases of taxpayers and in this sense shape their legal and tax situation. It should also be pointed out that the rulings of administrative courts cited in the application may not affect the assessment of the correctness of the issue in question. As stated by the Supreme Administrative Court, "... the jurisprudence of administrative courts is of significant importance as it contains guidelines as to the interpretation of tax law provisions and their application. does not deprive the authority issuing the interpretation of the right to independently assess events and interpret provisions in matters other than this, in which a specific judgment was issued. The authority issuing the interpretation is even required to independently assess the issue presented in the application "(judgment of the Supreme Administrative Court of 31 August 2017, file ref.II FSK 2211/15).

According to Art. 14b § 3Of the Tax Ordinance, the person submitting the application for an individual interpretation is obliged to fully present the actual state of affairs or a future event. The tax authority is closely related to the facts presented in the application (description of the future event). The interested party bears the risk related to possible incorrect or imprecise presentation of the case description in the application. An individual interpretation produces tax and legal effects only if the actual state of the matter being the subject of the interpretation coincides with the state provided by the Applicant in the submitted application. Therefore, if any element of the description of the case presented in the application changes or the legal status changes, the provided answer becomes invalid.

According to Art. 14 on § 1 of the Tax Code, the provisions of art. 14k-14n shall not apply if the facts or a future event that is the subject of the individual interpretation is part of the activities that are 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 sec. 5 of the Act of March 11, 2004 on tax on goods and services;
3. with the use of measures limiting the contractual benefits.

The provisions of art. 14k-14n shall not apply if the tax benefit stated in the decisions referred to in § 1 is the result of compliance with the established interpretative practice, general interpretation or tax explanations - art. 14 on § 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 Personal Income Tax Act, the Corporate Income Tax Act, the Tax Ordinance Act and some other acts (Journal of Laws, item 2193, as amended) introducing intertemporal regulations.

The interpretation concerns the future event presented by the Applicant and the legal status in force on the date of issuing the interpretation.

The party has the right to lodge a complaint against this interpretation of tax law due to its inconsistency with the law. The complaint is lodged with the Provincial Administrative Court through the body whose action, inaction or excessive length of proceedings is the subject of the complaint (Article 54 § 1 of the above-mentioned Act of 30 August 2002 - Law on proceedings before administrative courts - Journal of Laws of 2019, item 2325, as amended). The complaint should be submitted in two copies (Article 47 § 1 of the above-mentioned act) to the following address: Krajowa Information Skarbowa, ul. Teodora Sixta 17, 43-300 Bielsko-Biała or by e-mail to the address of the Electronic Inbox of the National Tax Information on the ePUAP platform: / KIS / SkrytkaESP (Article 54 § 1aabove of the Act), within thirty days from the date of delivery to the complainant of the decision on the case or the act referred to in Art. 3 § 2 point 4a (art. 53 § 1 of the above-mentioned act). In the case of letters and attachments submitted in the form of an electronic document, copies are not attached (art. 47 § 3 of the above-mentioned act). In the event of submitting a complaint during the period of the epidemic threat and epidemic state, the most appropriate contact is proposed using the ePUAP ICT system.

At the same time, pursuant to Art. 57a above. of the Act, a complaint against a written interpretation of the provisions of tax law issued in an individual case may be based solely on the allegation of infringement of the provisions of the procedure, committing an error of interpretation or incorrect assessment of the application of a provision of substantive law. The administrative court is bound by the allegations of the complaint and the legal basis invoked.

Published: http://sip.mf.gov.pl