Tax clarifications [1] of December 17, 2020.

on documenting the intra-community delivery of goods for purposes tax on goods and services

1. What are the tax explanations about

Tax explanations concern the rules of documenting intra-Community supplies of goods for the purposes of applying the 0% VAT rate.

2. Purpose of the published explanations

Pursuant to Art. 138 sec. 1 of Directive 2006/112 / EC of the Council of 28 November 2006 on common system of value added tax [2] Member States exempt delivery goods dispatched or transported to a destination outside of territory of the country concerned, but within the territory of the Community, by the seller or the buyer goods or on their behalf if the following conditions are met:

a) the goods are delivered to another taxable person or to a non-taxable legal person,

acting as such in a Member State other than that of commencement
shipping or transportation of goods;

(b) the taxpayer or non-taxable legal person for whom it is made
the supply are identified for VAT purposes in a Member State other than that
commencement of the shipment or transportation of the goods and have provided the supplier with this identification number
VAT.

The above provision has been implemented into the Polish legal system in Art. 42 sec. 1
the Act of March 11, 2004 on tax on goods and services [3] , according to which
intra-Community supply of goods is taxed at the 0% tax rate,
only if:

1) the taxpayer has made a delivery to a buyer with a valid and valid number
identification for intra-Community transactions, assigned by the Member State
appropriate for the buyer, containing the two-letter code used for value tax
added, which the buyer provided to the taxpayer;

2) the taxpayer before the deadline for submitting a tax return for a given period
billing agent, has in its documentation evidence that the goods being the subject

[1] General explanations of tax law provisions regarding the application of these provisions (explanations
tax) issued on the basis of art. 14a § 1 point 2 of the Act of August 29, 1997 - Tax Ordinance
(ie Journal of Laws of 2020, item 1325, as amended) (hereinafter: "Tax Ordinance"). According to Art. 14n § 4 point 1
Tax Ordinance, if the taxpayer complies with
tax explanations, the provisions of art. 14k-14m of this act.
[2] Journal Of UE L 347 of 11.12.2006, p. 1, as amended d. (hereinafter: "VAT Directive")
[3] Journal Of Laws of 2020, item 106, as amended d. (hereinafter: "the VAT Act")

intra-community supplies have been exported from the territory of the country and delivered to buyers in the territory of a Member State other than the territory of the country;

3) the taxpayer by submitting a tax declaration in which he shows this supply of goods is registered as an EU VAT payer.

One of the conditions for benefiting from the exemption (with the right to deduct VAT) and, respectively, the right to apply the 0% rate (pursuant to the provisions of the VAT Act) for the delivery of goods made as part of an intra-Community transaction is to ensure, that goods are dispatched or transported from one Member State to another Member State and supplied to another taxable person or legal person which is not a taxable person, operating as such in another Member State than the country where the dispatch or transport of the goods begins.

From January 1, 2020, they are in force in all Member States, including Poland the provisions of the Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending Implementing Regulation (EU) No 282/2011 with regard to certain waivers related to intra-Community transactions, [4] being one of the elements of the so-called "Quick Fixes" package.

As indicated in the preamble to Regulation 2018/1912, different approaches of states States as regards the conditions for applying exemptions to transactions cross-border has led to difficulties and legal uncertainty for enterprises. This was found to be contrary to the objective of enhancing trade intra-community and the abolition of fiscal borders. Therefore it has become necessary clarify and harmonize the conditions under which exemptions can be applied.

Due to the fact that cross-border VAT fraud is primarily due to

exemptions for intra-Community supplies, the need to specify was noticed certain circumstances in which the goods are deemed to have been dispatched or transported from the territory of a Member State to another Member State.

Bearing in mind the above, Regulation 2018/1912 introduced a catalog of documents, the possession of which is the basis for the taxpayer to use the shifting the presumption that the goods subject to the intra-Community supply have been dispatched or transported from a Member State to a destination outside its territory, but within the territory of the European Union.

Regardless of the amended provisions of the Council Implementing Regulation (EU) No. 282/2011 of 15 March 2011 laying down implementing measures for the Directive 2006/112 / EC on the common system of value added tax [5] , still remain in national regulations in the field of documenting intra-Community supplies

[4] Journal Of EU L of 2018 No. 311/10 (hereinafter: "Regulation 2018/1912")
[5] Journal Of UE L from 2019. No. 313/14 (hereinafter: "Regulation 282/2011")

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goods, i.e. art. 42 sec. 3-5 of the VAT Act specifying the so-called basic directory of documents and art. 42 sec. 11 of the VAT Act containing an open catalog of the so-called documents complementary.

In connection with the simultaneously applicable amended provisions of the Regulation 282/2011 and the provisions of the VAT Act, the purpose of these explanations is to explain:

- ➢ mutual relation between the provisions of Regulation 282/2011 and the provisions of the VAT Act in terms of how to document the intra-Community supply of goods for goods and services tax purposes;
- ➢ the principles of documenting the intra-Community supply of goods on the basis of provisions of Regulation 282/2011;
- ➢ the issue of rebutting the presumption referred to in art. 45a paragraph. 1 of the Regulation 282/2011 by the tax authorities;
- ➢ the principles of documenting the intra-Community supply of goods on the basis of provisions of the VAT Act.

However, the purpose of these tax explanations is not specifically to clarify specific conditions of taxation of intra-Community supplies of goods at the rate 0% tax, specified in art. 42 sec. 1-2 of the VAT Act.

3. Provisions governing the documenting of intra-Community supplies goods

Rules for documenting the export of goods from the territory of the country and their delivery to the buyer in the territory of a Member State other than the territory of the country within intra-Community supply of goods (hereinafter also: WDT) are regulated in Art. 42 paragraph 3-5 and 11 of the VAT Act.

From January 1, 2020, the rules for documenting the shipment or transport of goods from the country member state to a destination in another member state have also been regulated in the provisions of EU law, i.e. in art. 45a of Regulation 282/2011, added Regulation 2018/1912.

According to Art. 288 of the Treaty on the Functioning of the European Union, the regulation has scope general, it is binding in its entirety and is directly applicable in all countries states. The above means that the amended provisions of Regulation 282/2011 do not they required separate implementation into the Polish legal order in order to make them directly applicable from January 1, 2020

4. Mutual relation between the provisions of Regulation 282/2011 and the provisions of the VAT Act in the field of documenting WDT

Article 45a (2) 1 of Regulation 282/2011 introduced the presumption that one of the conditions exemptions (0% rates) for intra-Community supplies of goods in accordance with Art. 138 The VAT Directive which requires goods to be dispatched or transported

from a Member State to a destination outside its territory, but on the territory of the EU - considered to be fulfilled in the situations specified in Art. 45a paragraph. 1 lit. a) or b) of Regulation 282/2011 (i.e. in cases where the taxpayer has relevant documents indicated in these regulations).

The use by the taxpayer of the presumption provided for in art. 45a paragraph. 1 of the Regulation 282/2011 does not automatically mean that his delivery of goods will be benefited from the exemption (0% rate) for the intra-Community supply of goods. To the taxpayer could take advantage of the exemption (0% rates), others must also be met the conditions set out in Art. 138 of the VAT Directive (Article 42 (1) and (1a) of the VAT Act, respectively).

As already indicated, the taxpayer's fulfillment of the conditions specified in Art. 45a paragraph. 1 lit. a) or b) of Regulation 282/2011 means that he will use the presumption, which allows the goods to be considered to have been dispatched or transported out of a country member state to a destination located outside the country, but on territory of the EU. In this context, however, it should be emphasized that it is not possible to apply

presumptions in the opposite way, which boils down to considering that in case of not having the data indicated in art. 45a paragraph. 1 lit. a) or b) in connection with with art. 45a paragraph. 3 of the Regulation 282/2011 documents, goods being the subject of intra-Community supply of goods were not shipped or transported.

Failure by the taxpayer to meet the conditions of the presumption introduced in Art. 45a paragraph. 1 Regulation 282/2011 does not mean that it will be deprived of the possibility applying the 0% rate for the intra-Community supply of goods. In such a situation, the taxpayer will have to prove in accordance with the applicable provisions of the VAT Act (Article 42 (3-5 and 11)) that the condition for the application of the 0% rate that the goods have been delivered to buyer in another Member State, he has met. In other words, if the taxpayer fails to meet the conditions set out in Art. 45a paragraph. 1 lit. a) or b) of the Regulations 282/2011 and the presumption will not apply, the taxpayer's situation remains the same as before the entry into force of Art. 45a of Regulation 282/2011.

The above is also supported by the notes issued by the European Commission explanatory to the above-mentioned provisions [6] , which emphasize, inter alia, that failure to meet the conditions specified in Regulation 282/2011, does not mean that the exemption referred to in Art. 138 The VAT Directive (0% rate of intra-Community supply) will not apply. In this in the event that the supplier is required to prove, as required by the tax authorities, that the conditions of the exemption specified in Art. 138 of the VAT Directive are complied with.

To sum up, from January 1, 2020, due to the unification of the rules for documenting WDT throughout the European Union, the taxpayer may use the specified documents in art. 45a of Regulation 282/2011 and in this respect use the presumption

[6] Explanatory notes on changes to EU VAT related to warehouse procedures call-off stock, chain transactions and intra-community exemptions for deliveries of goods ("quick solutions for 2020 " - (hereinafter: "explanatory notes") https://ec.europa.eu/taxation_customs/sites/taxation/files/explanatory_notes_2020_quick_fixes_en.pdf

provided for in that provision. However, the above is not the taxpayer's responsibility, which means that in order to take advantage of the exemption (0% rate) for ICS, the taxpayer is not absolutely obliged to collect all documents in accordance with the conditions indicated in art. 45a paragraph. 1 of Regulation 282/2011.

In order to apply the exemption (0% rate) for ICS, the taxpayer can still prove in accordance with Art. 42 sec. 1 point 2 in connection with with art. 42 sec. 3-5 and 11 of the VAT Act that the goods are the subject of the 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, on rules and on the basis of evidence indicated in these regulations.

5. Documenting WDT according to the principles introduced in Art. 45a of the Regulation 282/2011

Pursuant to Art. 45a paragraph. 1 of Regulation 282/2011, it is presumed that the goods have been shipped or transported from a Member State to a destination in another a Member State, but within the territory of the Community, in any of the following cases:

(a) the seller indicates that the goods were shipped 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 para. 3 lit. a (so-called evidence from group A), which were issued by two different parties that are independent of each other each other, from the seller and the buyer, or the seller is in possession of any single evidence referred to in para. 3 lit. a (the so-called group A evidence), along with

any single and non-contradictory evidence in question
in paragraph 3 lit. b (the so-called group B evidence) confirming the shipment or transport that have been
issued by two different sites that are independent of each other, the seller and the
buyers;

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

(i) a written representation from the purchaser that the goods have been shipped; or
transported by the buyer or by a third party acting for the buyer,
and indicating the Member State of destination of the goods; so written
the declaration specifies: the date of issue; the name or first name and surname and address of the buyer;
quantity and type of goods; the date and place of arrival of the goods; in the case of delivery of funds
transport, the identification number of the means of transport and the identification of the person
accepting the goods for the buyer and

(ii) at least two non-contradictory pieces of evidence in question
in paragraph 3 lit. a (the so-called group A evidence), which were issued by two different parties,
which are independent of each other, seller and buyer, or whatever
single evidence referred to in para. 3 lit. a (the so-called group A evidence), along with
any single, non-contradictory evidence about which
referred to in paragraph 3 lit. b (the so-called evidence from group B) confirming transport or shipment,

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which were issued by two different sites that are independent of each other, from
sellers and buyers.

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

For the purposes of the presumption in question, the following documents are accepted as evidence shipping or transportation:

Group A: documents relating to the dispatch or transport of the goods, such as signed CMR consignment note, bill of lading, invoice for air freight or an invoice from the carrier of the goods;

Group B:

a) an insurance policy for the shipment or transport of goods or bank documents confirming payment for the shipment or transportation of goods;

b) official documents issued by a public authority, e.g. a notary, confirming the arrival of the goods in the Member State of destination;

c) a receipt issued by a warehouse operator in the country destination, confirming that the goods are stored in that country states.

(Article 45a (3) of Regulation 282/2011)

The above-cited provisions of Regulation 282/2011 therefore introduce a presumption that the conditions of which depend on which party - the seller or the buyer is responsible for the transport or shipment of goods.

5.1. Rules for documenting intra-Community supplies in the event that the goods have been shipped or transported by the seller or by a third party acting on his behalf

Where the goods have been dispatched or transported by the seller or by a third party acting on his behalf, the seller uses the presumption, if he has it with the following documents:

1) at least two documents from group A, where these documents:

- ➢ not contradict each other and
- ➢ they must be published by two separate parties that are independent of each other each other, from the seller and the buyer,

or

2) any single item of evidence from group A and any single item evidence from group B, where these documents:

- ➢ not contradict each other and
- ➢ they must be published by two separate parties that are independent of each other each other, from the seller and the buyer.

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Example 1

The seller, being a Polish VAT payer, delivered the goods to the buyer
with a valid and valid transaction identification number
intra-Community, assigned by another Member State, competent for the buyer.
The goods were transported by a shipping company operating for the seller
from Poland to France. The seller is in possession of the following documents:

1.Signed CMR consignment note - evidence from group A
2. invoices for the transport of goods received from the carrier - evidence from group A

To document WDT, the seller has two evidence from group A, which are not contradict each other and were issued by two different parties that are independent from each other, from the seller and the buyer. In this case, due to the fulfillment of by the seller of the conditions referred to in art. 45a paragraph. 1 lit. a) Regulation 282/2011 it is presumed that the goods which are the subject of the intra-Community supply of goods have been transported from the territory of one Member State to the territory of another Member State.

Example 2

The seller, being a Polish VAT payer, delivered the goods to the buyer with a valid and valid transaction identification number intra-community service assigned by another Member State competent for the buyer. The goods were transported by a shipping company operating for the seller from Poland to France. The seller is in possession of the following documents:

1. Signed CMR consignment note - proof of group A
2. confirmation of payment for transport generated from the banking system - proof from group B

For the purpose of documenting WDT, the seller has a single evidence from group A and a single proof of the B group , which are not in conflict with each other and have been issued by two different parties that are independent of each other, the seller and the buyer. In this case, due to the fulfillment by the seller of the conditions referred to in Art. 45a paragraph. 1 lit. a) of Regulation 282/2011, it is presumed that the goods being the subject of WDT have been transported from the territory of one Member State to the territory another Member State.

5.2 Rules for documenting intra-Community supplies in the event that the goods have been shipped or transported by the buyer or by a third party acting on his behalf

Where the goods have been dispatched or transported by or by the buyer a third party acting on his behalf, the seller uses the presumption, if he has it

with the following documents:

1) a written declaration of the buyer confirming that the goods have been shipped 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 the written statement specifies:

- ➢ date of issue;
- ➢ name or full name and address of the buyer;
- ➢ 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 transportation;
- ➢ identification of the person receiving the goods for the buyer - and for such a person should also be considered a person who confirms the arrival of goods on behalf of the buyer.

2) at least two documents from group A, where these documents:

- ➢ not contradict each other and
- ➢ they must be published by two separate parties that are independent of each other each other, from the seller and the buyer,

or

any single item of group A evidence and any single item

evidence from group B, where these documents:

- ➢ not contradict each other and
- ➢ they must be published by two separate parties that are independent of each other each other, from the seller and the buyer.

Example 3

The seller, being a Polish VAT payer, delivered the goods to the buyer with a valid and valid transaction identification number intra-community service assigned by another Member State competent for the buyer. The goods have been transported by a shipping company acting for the buyer from Poland to France. The seller is in possession of the following documents:

1. a written statement from the buyer confirming that the goods have been transported by a third party acting for the buyer to the state the state of destination of the goods, i.e. France
2. Signed CMR consignment note - proof of group A
3. confirmation of payment for transport generated from the buyer's banking system - evidence from group B

In order to document WDT, the seller has the buyer's declaration, single evidence from group A and single evidence from group B, which do not remain contradict each other and were issued by two different parties that are independent of each other each other, from the seller and the buyer. In this case, due to the fulfillment by

the seller of the conditions referred to in art. 45a paragraph. 1 lit. b) Regulation 282/2011 it is presumed that the goods have been transported from the territory of one country Member State on the territory of another Member State.

Example 4

The seller, being a Polish VAT payer, delivered the goods to the buyer with a valid and valid transaction identification number intra-community service assigned by another Member State competent for the buyer. The goods have been transported by a shipping company acting for the buyer from Poland to France. The seller is in possession of the following documents:

1. a written statement from the buyer confirming that the goods have been transported by a third party acting for the buyer to the state the state of destination of the goods, i.e. France
2. Signed CMR consignment note - proof of group A

The seller does not have two pieces of evidence from group A or additionally a single piece of evidence from group B, and thus it should be assumed that not all of them have been met the conditions referred to in Art. 45a paragraph. 1 lit. b) Regulation 282/2011. In this case, the presumption will not apply. In order to apply the 0% rate for intra-Community supplies, the seller should prove, in accordance with Art. 42 sec. 3 and 11 of the VAT Act that the goods are the subject of the 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.

Example 5

Company B with a proper and valid identification number for the transaction intra-Community certificates granted by a Member State other than Poland, orders

goods in Company A - which is a Polish VAT payer. Goods are transported by
a transport company operating for Company B from Poland to France - directly to the customer
Company B - Company C (which results from formal arrangements concluded between Company A and the Company
B). Company A is in possession of the following documents:

1. a written statement by the buyer (Company B) confirming that the goods have been left
transported by a third party acting for the buyer to the state
the state of destination of the goods, i.e. to France
2.CMR consignment note signed (by Company C) - proof from group A
3. confirmation of payment for transport generated from the buyer's banking system
(Companies B) - evidence from group B

The seller (Company A) has a declaration to document WDT
received from its buyer (Company B), a single evidence from group A
and a single evidence from group B, which do not contradict each other and have been

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issued by two different sites that are independent of each other, the seller and the
the buyer. In this case, due to the fulfillment by the seller of the conditions referred to in
referred to in Art. 45a paragraph. 1 lit. b) of Regulation 282/2011, it is presumed that the goods have remained
transported from the territory of one Member State to the territory of another
Member State.

Example 6

The seller, who is a Polish VAT payer, performs under the concluded contract cyclical deliveries of goods to the buyer with the correct and valid number identification for intra-community transactions given by another country states appropriate for the buyer. Deliveries are made several times a week and goods are transported from Poland to France by a transport company acting for the buyer. The seller is in possession of the following documents:

1. a written statement from the buyer confirming collectively that the goods to be delivered was made in a given billing period (month) have been transported by a third party acting on behalf of the buyer
2. Signed CMR consignment notes - evidence from group A
3. confirmations or confirmations of payment for transport generated from the system bank buyer - evidence from group B

In the light of the provisions of Regulation 282/2011, it should be allowed to use the buyer's declaration, which in a collective manner confirms that in a given period, the goods have been transported by a third party acting on behalf of the buyer, provided that that the declaration contains all the necessary data (separately for each of the deliveries, but without the need to duplicate common data on one document all deliveries), referred to in Art. 45a paragraph. 1 lit. b) i). In this case due to the fulfillment by the seller of the conditions referred to in Art. 45a paragraph. 1 lit. b) Of Regulation 282/2011 it is presumed that the goods have been transported from the territory one Member State within the territory of another Member State.

5.3. The deadline for delivering to the seller the statement referred to in Art. 45a paragraph. 1 lit. b point (i) Regulation 282/2011

Pursuant to Art. 45a paragraph. 1 of Regulation 282/2011, the buyer provides the seller in writing the declaration referred to in point b (i), by the tenth day of the month following the month in which the delivery took place.

As indicated in the explanatory notes, the 10-day deadline is intended to define the exact framework

time, in which the buyer is to provide the seller with a written statement, not
punishing the seller and depriving him of the possibility of exercising the presumption, in the event of
when the buyer has not submitted a written statement on time. Therefore, even if
the buyer will provide the seller with a written statement after the deadline (but with regard to
time limits under Art. 42 sec. 1 point 2 and art. 42 sec. 12 of the VAT Act) the seller

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will also be able to benefit from the presumption, provided that all the others
the conditions set out in Art. 45a of Regulation 282/2011 will be met.

In the light of the above, it should be assumed that the time limit referred to in Art. 45a paragraph. 1
Regulation 282/2011 is of an instructional nature and, as a rule, does not affect
the applicable provisions of the VAT Act regarding the deadline before the expiry of which the taxpayer (int
in order to apply the 0% rate for intra-Community supply) should have evidence that the goods
being the subject of an 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 - i.e.
respectively Art. 42 sec. 1 point 2 and art. 42 sec. 12 of the VAT Act.

For example, if the taxpayer receives a declaration from the buyer after the tenth day
the month following the month in which the delivery took place, but before the deadline
to submit a tax declaration (JPK_VAT) for this period, will be able to use
with the presumption referred to in art. 45a paragraph. 1 of Regulation 282/2011 and provided
fulfillment of the other conditions referred to in Art. 42 sec. 1 and 1a of the VAT Act,
apply the 0% rate for the intra-Community supply of goods.

5.4 The method of identifying two "independent" parties within the meaning of Art. 45a paragraph. 1 lit. a) and lit. b) point (ii) of Regulation 282/2011

As indicated in the explanatory notes, when determining, for the purposes of Art. 45a paragraph. 1 lit. a) and lit. b) (ii) of Regulation 282/2011 whether two parties are "independent" it should be assumed that:

(a) two parties are not considered "independent" if they have the same legal personality; and

(b) the criteria set out in Art. 80 of the VAT Directive, which means that it cannot be recognized as independent parties between which there are “family ties or other close personal ties, organizational and ownership ties, regarding membership, financial or legal. '

Example 7

Company A, a Polish VAT taxpayer, made a delivery to the buyer - Company B with a valid identification number for intra-community transactions issued by another Member State competent for the buyer. The goods have been transported by a transport company - Company C acting on behalf of the buyer - Company B from Poland to France. Company B holds 50% of shares - in the share capital of Company C. Company A is owned the following documents:

1. a written statement by the buyer (Company B) confirming that the goods have been left transported by a third party acting for the buyer to the state the state of destination of the goods, i.e. to France
2. Signed CMR consignment note - proof of group A
3. invoices for the transport of goods received from the carrier (Company C) - evidence from group B

The documents held by Company A were not issued by two independent of each other pages. There are ownership links between Companies B and C. In this

case, the presumption referred to in art. 45 a sec. 1 of Regulation 282/2011 no
will find applications.

The above example shows that in order to benefit from the presumption, the seller stayed
imposed additional obligation to examine whether the evidence in his possession has been issued
by parties independent of each other, of the seller and of the buyer, and therefore whether in between
issuing the documents - the carrier in the analyzed example, and the buyer - do not exist
any connections (of a personal, organizational, proprietary nature,
regarding membership, financial or legal).

Where the documents held by the taxpayer were not issued by two
parties independent of each other and the taxpayer is not entitled to benefit from the presumption,
referred to in art. 45a paragraph. 1 of Regulation 282/2011, in order to apply the 0% rate
for WDT, the seller should prove according to the rules and on the basis of documents
specified in art. 42 sec. 3 and 11 of the VAT Act that the goods being the subject of
intra-community supplies have been exported from the territory of the country and delivered to
buyers in the territory of a Member State other than the territory of the country,

5.5. Rules for documenting intra-Community supplies in the event that the goods have been shipped or transported by the seller or buyer by their own means of transport

The presumption will not apply also in the case of a supplier or buyer
uses its own means of transport for transport.

Example 8

The seller has his own car fleet and intends to transport the goods to
buyers to different EU Member States only with these cars.

In this case, the presumption does not apply as it will not be met
the requirement specified in Art. 45a paragraph. 1 lit. a) Regulation 282/2011, pursuant to which
the seller must have evidence from two different parties that are
independent of each other, of the seller and the buyer.

Export of goods that are the subject of an intra-Community supply of goods
directly by the taxpayer making such a supply or by their buyer, using
own means of transport of the taxpayer or buyer should be documented in accordance with
with the content of art. 42 sec. 4 of the VAT Act.

5.6. The form of the documents referred to in Art. 45a paragraph. 1 lit. b (i) and Art. 45a paragraph. 3 Regulation 282/2011

The provisions of Regulation 282/2011 do not regulate the form in which it belongs
collect documents accepted as proof of shipment or transportation.

As indicated in the explanatory notes, one would expect that Member States
they will be flexible in this matter and will not impose stringent restrictions, such as

documents only in paper form, but will also accept such documents in form
electronic.

It should therefore be assumed that an electronic document or a document made available by the way

electronic (e.g. e-mail, scan or fax of a document), including those generated with
via an electronic system, e.g. EDI or ERP system, may constitute evidence for
for the purposes of applying the presumption referred to in art. 45a paragraph. 1 of Regulation 282/2011.

6. The rebuttal of the presumption referred to in Art. 45a paragraph. 1 of Regulation 282/2011 by tax authorities

Article 45a (2) 2 of Regulation 282/2011 provides that the tax authority may overthrow
presumption adopted on the basis of paragraph 1 that the goods have been dispatched or transported
from a Member State to a destination outside its territory,
but within the EU.

The presumption referred to in art. 45a paragraph. 1 of Regulation 282/2011 is therefore of a nature
rebuttable, the burden of proving (proving) that the conditions have been met
specified in Art. 45a paragraph. 1 of Regulation 282/2011, in fact, the goods have not been left
dispatched or transported rests with the tax authority.

The rebuttal of the presumption takes place when, with the necessary prerequisites, the authorities
Tax authorities are able to show that the goods were not actually shipped or
transported from a Member State to a destination outside of
its territory, but within the territory of the EU. This may be the case, for example, when
the tax authorities find during the inspection that the goods are still in stock
suppliers or tax authorities become aware of an incident that occurred during the
transport and as a result of which the goods were damaged before leaving the territory of the country.

The tax authority may rebut the presumption by presenting evidence
that the goods have not in fact been dispatched or transported.

In the event of the rebuttal of the presumption referred to in Art. 45a paragraph. 1 of the Regulation
282/2011 by the tax authority, the exemption (0% rate) referred to in article 1. 138 of the Directive
VAT will not apply. However, in order to successfully rebut the presumption, it is not
there is sufficient evidence that it is suspected that the goods have not been dispatched or
transported from a Member State to a destination outside of

its territory, but within the territory of the EU. The rebuttal of the presumption may occur when the authorities tax holders have evidence that shows that the shipment or transport of goods is not took place.

The "rebuttal of presumptions" should be distinguished from the situation in which the tax authority can show that the document mentioned in art. 45a paragraph. 3 of Regulation 282/2011, which was submitted as evidence, contains incorrect information or is genuine raises doubts. Such a situation would result in the seller not meeting the conditions

specified in art. 45a paragraph. 1 lit. a) or b) of Regulation 282/2011, and consequently, no the possibility of using the presumption.

In this case, the Seller in order to take advantage of the exemption (0% rate) for WDT he could still:

- ➢ provide other documents specified in Art. 45a of Regulation 282/2011, co would allow him to benefit from the presumption (unless the tax authorities again would find that the documents are incorrect or e.g. inauthentic), or
- ➢ provide the relevant documents pursuant to Art. 42 sec. 3 and 11 of the VAT Act.

7. Documenting WDT pursuant to the provisions of the VAT Act

7.1. Basic catalog of evidence documenting the export of goods

The intra-community supply of goods is taxed at the rate of 0%, under
provided that the taxpayer before the deadline for submitting the tax return for the given
accounting period, has evidence in its documentation that the goods being the subject
intra-community supplies have been exported from the territory of the country and delivered to
purchasers within the territory of a Member State other than the territory of the country (Article 42 (1) (2)
the VAT Act).

The basic catalog of documents necessary to document the export of goods
as part of an intra-Community supply of goods carried out with the participation of a carrier or
a freight forwarder responsible for the export of goods from the territory of the country, has been defined in art. 42
paragraph 3 of the VAT Act.

Pursuant to Art. 42 sec. 3 of the VAT Act, for the evidence referred to in Art. 42 sec. 1 point 2 of the Act
o VAT, the following documents can be considered if they jointly confirm delivery
goods that are the subject of an 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 (freight forwarder) responsible for
   the export of goods from the territory of the country, which clearly shows 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 case when the carriage of goods is commissioned to the carrier
   (to the forwarder)
2. specification of individual cargo items.

A transport document within the meaning of Art. 42 sec. 3 point 1 of the VAT Act is in principle
a bill of lading, which specifies the terms of the contract for the carriage of goods shipments.
Depending on the type of transport, it may be in particular: International Railway
Bill of Lading (CIM) or International Rail Waybill (SMGS) that are
documents confirming the conclusion of a contract for rail freight transport, bill of lading
constituting the bill of lading for the transport of goods by sea, International

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Vehicle Waybill (CMR) confirming the conclusion of the contract of carriage
Road International Air Waybill (AWB), which states the conclusion
contracts for carriage in air transport.

Specification of individual items of cargo referred to in Art. 42 sec. 3 point 3 of the VAT Act
it is a kind of calculation that the taxpayer can prepare both in form
a separate document, and which can be used as part of the issued invoice, with
which in any case is the key to achieving the goal of opportunity
the identification of the goods being the subject of the intra-Community supply.

Art. 42 sec. 3 of the VAT Act provides that documents constituting evidence of exportation of goods,
referred to in art. 42 sec. 1 point 2 of the VAT Act must jointly and unambiguously confirm
delivery of goods that are the subject of an intra-Community supply of goods to
a buyer located on the territory of another Member State. The above means
that the documents held by the taxpayer collected together should clearly confirm
the fact that the goods were delivered to a buyer in another territory
Member State.

Moreover, when exporting goods that are intra-community goods
the supply of goods directly by or by the taxable person making such a supply
the purchaser, using the taxpayer's or purchaser's own means of transport, pursuant to art. 42
paragraph 4 of the VAT Act, the taxpayer, apart from specifying individual items of goods, should

have a document containing at least:

1. name and surname or name and address of the registered office or place of business residence of the taxpayer making the intra-Community supply of goods, and buyers of these goods;
2. the address to which the goods are transported, if different from the registered office business activity or place of residence of the buyer;
3. identification of the goods and their quantity;
4. confirmation of receipt of the goods by the buyer to the place referred to in point 1 or 2, located in the territory of a Member State other than that country;
5. type and registration number of the means of transport on which the goods are exported or flight number - in case the goods are transported by means of air transport.

It should be assumed that this document may be issued by the making taxpayer himself intra-Community supply of goods.

The VAT Act also specifies an additional catalog of documents for new deliveries means of transport by the buyer, without using another means of transport (transport). In this case, the taxpayer should additionally have a document containing the data enabling the correct identification of the taxpayer making the supplies and the buyer, and a new means of transport, referred to in art. 42 sec. 5 of the VAT Act.

7.2 Complementary catalog of evidence documenting the exportation of goods

Pursuant to Art. 42 sec. 11 of the VAT Act, where the documents referred to in sec. 3-5, do not clearly confirm the delivery of the goods to the buyer located at the territory of a Member State other than the territory of the country, with the evidence in question in paragraph 1 point 2, there may also be other documents indicating that the delivery took place intra-community, in particular:

1. commercial correspondence with the buyer, including his order;
2. documents relating to insurance or freight costs;
3. a document confirming payment for the goods, except for delivery is free of charge or the obligation is performed in a different form, such as other case - a document confirming the expiry of the obligation;
4. proof that the buyer has accepted the goods in the territory of the country other than the territory of the country.

In art. 42 sec. 11 of the VAT Act, only sample documents are mentioned supplementary, which means that the taxpayer may also use the documents of another type, it is important that the above-mentioned the documents contained information which showed that the specified good was actually delivered to a buyer in another Member State.

Proof of acceptance by the buyer of the goods on the territory of the state Member State other than the territory of the country referred to in art. 42 sec. 11 point 4 of the Act o VAT, which in practice may take the form of, for example, a buyer's declaration - for fulfillment purposes the condition referred to in Art. 42 sec. 1 point 2 of the VAT Act does not have to include all of them data provided for the buyer's declaration referred to in Art. 45a paragraph. 1 lit. b point i) Regulation 282/2011.

7.3. Application of Art. 42 sec. 3-5 and art. 42 sec. 11 of the VAT Act

Referring to the mutual relationship of the provisions of Art. 42 sec. 3 and art. 42 sec. 11 of the VAT Act it should be noted that Art. 42 sec. 3 of the VAT Act introduces a basic catalog of documents,

confirming the exportation of goods and their delivery to the buyer on the territory another Member State, which, however - in the circumstances indicated in Art. 42 sec. 11 may be supplemented with other, additional documents specified in Art. 42 sec. 11, as well as other documents - not mentioned in this provision.

Although the taxpayer should generally have the evidence referred to in Art. 42 sec. 3 of the Act o VAT and this evidence should collectively confirm that the goods have been exported and delivered buyers on the territory of another Member State, if:

- ➢ the evidence does not clearly confirm that the goods were delivered to the buyer located in the territory of another Member State (which may be

caused e.g. by incorrect or missing content of these documents certain data);

- ➢ the taxpayer is not able to collect all the evidence referred to in Art. 42 paragraph 3 of the VAT Act

for the application of the 0% rate for intra-community delivery of goods on land provisions of the VAT Act, it is possible for the taxpayer to have only some of the evidence referred to in Art. 42 sec. 3 of the VAT Act, supplemented with evidence, referred to in Art. 42 sec. 11 of the VAT Act.

Due to the complementary nature of the evidence referred to in Art. 42 sec. 11 of the VAT Act, the documents indicated in this provision should not replace the documents referred to in art. 42 sec. 3 of the VAT Act. In this context, however, it should be pointed out that in the case of no the taxpayer's disposal of the transport document referred to in art. 42 sec. 3 point 1 of the VAT Act, other documents may also turn out to be important for evidence purposes from the carrier, for example an invoice for the transport of goods or another document confirming that the carrier has completed the transport of goods. Likewise, regardless the understanding of the concept of "transport document" should not be deprived of probative value for the purposes of applying the 0% rate, documents generated under the serving system for tracking shipments when shipping goods using a courier company.

To prove that the goods were exported and delivered to the buyer in another territory of the Member State, however, the content of the 42 paragraph 3 and art. 42 sec. 11 of the VAT Act of documents, not their number.

The above is confirmed by resolution of the Supreme Administrative Court of 11 October 2010, file ref. act I FPS 1/10, which emphasized that the very wording of Art. 42 sec. 3 and 4 of the VAT Act indicates the basic catalog of supporting documents the export of goods and their delivery to the territory of another Member State, which may be supplemented with additional documents specified in Art. 42 sec. 11 of the Act about VAT.

Consequently, as pointed out by the Supreme Administrative Court, in the light of Art. 42 sec. 1, 3 and 11 of the VAT Act for the application of the 0% rate for intra-Community delivery of goods is sufficient, that the taxpayer has only some of the evidence referred to in Art. 42 sec. 3 of the Act, supplemented by the documents indicated in Art. 42 sec. 11 of the Act or other evidence in the form of documents referred to in art. 180 § 1 of the Tax Ordinance, if jointly confirm the exportation and delivery of the goods being the subject intra-Community supply to a buyer located in the territory of the country other than the territory of the country.

In this context, it should be noted that the provisions of the Tax Code (as well as the Act o VAT) do not contain a legal definition of "document". The definition of "document" (meaning material), corresponding to the systemic needs of tax law, should therefore be

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look for other branches of law in the regulations. In this respect, you can be helpful refer to art. 77 3 of the Civil Code 7 , according to which the document is an information carrier that allows you to read its content.

The provisions of the VAT Act do not make the application of the 0% rate for WDT conditional on having original documents in paper form. Since the regulations only constitute about the document, it should be assumed that any form of the document is acceptable.

Bearing in mind the above, if the taxpayer has an electronic document or a document made available in electronic form (e.g. e-mail, scan or fax of a document), including generated via an electronic system, e.g. EDI or ERP it may constitute the evidence referred to in the analyzed provisions of the VAT Act.

It should also be remembered that in each case the competent tax authority, in the course of, inter alia, tax proceedings, tax inspection, customs and tax inspection or activities the auditors may assess the correctness, including the authenticity of the individual evidence in the possession of the taxpayer, as well as assess whether it has evidence actually confirm the implementation of the WDT.

On behalf of the Minister of Finance,

Funds and Regional Policy

Undersecretary of State

Jan Sarnowski

/ signed with a qualified electronic signature /

7 Act of 23 April 1964 Civil Code (Journal of Laws of 2020, item 1740, as amended)