

Dear Sirs,

we would like to inform you about the cross-border changes in the value added tax.

On 01/01/2020, the European changes to the VAT law came into force (so-called **Quick Fixes**). These changes result from two European acts:

- Council Implementing Regulation (EU) 2018/1912 of 4 December 2018 amending Implementing Regulation (EU) No 282/2011 as regards certain exemptions for intra-Community transactions, hereinafter **“Implementing Regulation”**;
- Council Directive (EU) 2018/1910 of 4 December 2018 amending Directive 2006/112/EC as regards the harmonisation and simplification of certain rules in the value added tax system for the taxation of trade between Member States, hereinafter **“Directive”**.

Please note that the Polish legislator has not managed to introduce the changes resulting from the above-mentioned legal acts into Polish regulations on time. The Polish Ministry of Finance has notified that until the introduction of the changes to the Polish regulations (hereinafter **“transition phase”**), Polish taxpayers will have a choice between applying the previous provisions of Polish law or the new provisions of the Directive (Implementing Regulation is directly applicable). However, this choice shall be consistent. You will find more detailed information regarding the transition phase below.

The new rules concern the following areas:

**1. New requirement regarding the EU registration for VAT purposes when carrying out intra-Community supply**

The underlying principle:

- 1) Supplier A from one Member State sells goods to purchaser B in another Member State (intra-Community supply);
- 2) The goods are transported from A to B (cross-border transport);
- 3) The supply is tax-free (0% rate in Poland) if B is registered as an EU VAT payer in a country of destination. The supplier must notify the delivery to the domestic tax office.

<b>Obligations</b>	<b>Actions</b>	<b>Our support</b>
<p>Under the new rules, the purchaser B must be registered as an EU VAT payer in the country of destination. The supplier must declare the delivery in a so-called summary information.</p> <p>This registration was already mandatory before 2020, but the neglecting of this obligation did not lead to the refusal of the tax exemption.</p>	<ul style="list-style-type: none"> <li>- As a supplier, please note that you need the valid EU VAT number of your purchaser and that you shall also fulfil the documentation requirements;</li> <li>- As a purchaser, please provide your valid EU VAT number to your supplier on time.</li> </ul>	<ul style="list-style-type: none"> <li>- At your request we will check the validity of the EU VAT number of your purchasers;</li> <li>- In the case of conducting the VAT settlements by us, we will notify the tax office of the deliveries on time after providing necessary information, or we may prepare the explanations regarding the failure to notify this information on time (which may release</li> </ul>

<p>The purchaser shall give the EU VAT number to his supplier when issuing the invoice or making the supply (the inclusion of this number on an invoice or in an e-mail is sufficient).</p>		<p>from liability).</p>
---	--	-------------------------

**Transition phase:** In Polish regulations the above obligations already exist, but they are of the formal nature (failure to comply does not automatically lead to refusal of the 0% rate). However, the Polish Ministry of Finance has recognized that taxpayers shall already now comply with the new rules, because only the consequences are different. We may assess the possible consequences of neglecting the obligations in the transition phase at your request.

## 2. New documentation requirements to prove intra-Community supplies

### The underlying principle:

- 1) It is possible to exempt the intra-Community supply from VAT (0% rate in Poland) if, among others, the goods are transported from one Member State to another Member State;
- 2) It is presumed that the goods are transported from one Member State to another Member State if:
  - the goods have been dispatched or transported by the seller or a third party acting on his behalf, and
    - the seller is in possession at least two non-contradictory evidences referred to in category A that were issued by two different parties which are independent of each other, of the seller and the buyer, or;
    - the seller is in possession of any single evidence referred to in category A, together with any single non-contradictory evidence referred to in category B confirming the dispatch or transport that has been issued by two different parties which are independent of each other, of the seller and the purchaser;
  - transport is organized by the purchaser and:
    - the seller in in possession of a written statement from the purchaser confirming that the goods have been dispatched or transported by the purchaser or by a third party acting on behalf of the purchaser, and indicating the Member State of destination of goods, and;
    - at least two non-contradictory evidence referred to in category A which has been issued by two different parties which are independent of each other, of the seller and the purchaser, or;
    - any single evidence referred to in category A, together with any single non-contradictory evidence referred to in category B confirming the dispatch or transport which were issued by two different parties that are independent of each other, of the seller and the purchaser.

Category A	Category B
Documents relating to the dispatch or transport of goods, such as <ul style="list-style-type: none"> <li>– signed CMR document or note (Consignment Note);</li> <li>– bill of lading;</li> <li>– invoice for the air freight;</li> <li>– invoice from the goods carrier.</li> </ul>	The following documents: <ul style="list-style-type: none"> <li>– insurance policy with regard to the dispatch or transport of goods, or bank documents proving payment for the dispatch or transport of goods;</li> <li>– official documents issued by a public authority, such as a notary, confirming the arrival of goods in the Member State of destination;</li> <li>– a receipt issued by the warehouse-keeper in the Member State of destination confirming the storage of the goods in that Member State.</li> </ul>

According to the new regulations a written statement from the purchaser must contain the following elements: date of issue, name and address of the purchaser, quantity and type of goods, date and place of arrival of goods, in the case of delivery of means of transport, identification number of means of transport, identification of the person accepting the goods on behalf of the purchaser. The purchaser shall provide the seller with a written statement by the tenth day of the month following the month in which delivery took place.

Obligations	Actions	Our support
The regulations of Implementing Regulation concern new documentation requirements. These regulations are directly applicable in Member States (they do not require transposition into national legislation). However, please see our comments below on the transition phase.	Please check the current circulation of documents in international transactions.	<ul style="list-style-type: none"> <li>– Evaluation of the documentation on the application of an exemption (0% rate in Poland);</li> <li>– Mediation in correspondence with business partners regarding the necessary documents.</li> </ul>

**Transition phase:** The new provisions of the Implementing Regulation shall be directly applicable in Poland. However, in view of the fact that they foresee a presumption, they do not necessarily have to be taken into account. At the present time, if the relevant conditions are not met, a taxpayer can prove under the previous rules that the application of 0% rate is possible.

### 3. Call-off-Stock warehouse

The underlying principle:

- 1) Supplier A transports the goods to the designated (known in advance) purchaser B in another Member State, but without yet transferring the right to dispose of the goods;
- 2) A and B are registered as VAT payers in their Member States; A has neither a registered office nor a VAT fixed establishment in the country of destination;
- 3) A does not have to register in the country of destination, provided that the goods are delivered to B within 12 months from the date of transport. Only at the time of taking of the goods from the warehouse (delivery, i.e. transferring of the right to dispose of them) A notifies an intra-Community supply in the country of dispatch and B notifies an intra-Community acquisition in the country of destination (the change of purchaser is possible under certain conditions);
- 4) The application of the new rules will be possible provided that formal obligations are fulfilled (keeping of records).

Opportunities	Actions	Our support
<p>Until now, A would in principle have to register in country B in order to notify there first an intra-Community acquisition of his own goods and then a domestic taxed sale. The simplification is that the transaction is only considered as one delivery and A does not have to register in the country of destination under certain circumstances. Until now not all EU countries had such a possibility (in Poland it was not possible for the purpose of trading the goods). The new regulations unify these rules throughout the EU.</p>	<ul style="list-style-type: none"> <li>– Please check your supply chains for the possible application of the simplifications;</li> <li>– Please check if your contracts require registration and if there is a possibility to change them;</li> <li>– Please prepare yourself to fulfil the formal obligations.</li> </ul>	<ul style="list-style-type: none"> <li>– We may assist you in reviewing supply chains and the contracts concluded to determine whether it is possible to apply the simplifications;</li> <li>– We will provide you with the information regarding the formal obligations (especially keeping of statutory records).</li> </ul>

**Transition phase:** The Polish regulations on consignment stocks (simplifications previously applicable in Poland) continue to apply. The maintenance of this warehouse cannot be used for trading activities. If a taxpayer is to apply the new rules now, the certain conditions must be met.

#### 4. Chain transactions

The underlying principle:

- 1) Supplier A sells the goods to purchaser B, who then sells the goods to end customer C. This good is transported directly through A to C. The transport is cross-border and uninterrupted;
- 2) In the above case, only one supply can be exempt from taxation (0% rate in Poland). The other supply is to be taxed with domestic VAT. This determination may influence the obligation to register in another country;
- 3) Under the new rules, the first supply is exempt from tax, unless B will provide A with the VAT number assigned in country A (country of dispatch). In the second case, the supply between B and C is exempt from taxation;
- 4) The new principles only apply if the transport is not organized by A or C (first or last in order) and takes place within the EU.

Opportunities	Actions	Our support
Until 2020, the determination of a tax-free delivery would depend on several circumstances, particularly the trading conditions applied. The new regulations simplify this procedure by making taxation dependent on the submitted VAT number.	Please check your EU supply chains for the possible application of the simplifications.	We may assist you in reviewing the supply chains and contracts that have been concluded to determine whether it is possible to apply the simplifications. Whether the simplifications can be applied depends on who sends the goods (organization of transport), what can be agreed in a contract.

**Transition phase:** The previous Polish regulations on the settlement of chain transactions continue to apply. However, in view of the fact that chain transactions are cross-border, a Polish taxpayer should take into account the practice in another EU country. For this reason, it is recommended to apply new rules. The principles of chain transactions with third countries remain unchanged.

We will be happy to answer any questions you may have.