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Interruption in the transport of goods undermines the right to 0% VAT rate

Tax Alert

Dear Readers,

According to a recent judgement of the Supreme Administrative Court (NSA) of 10 February 2017 (file ref. I FSK 628/15), an interruption in transport prevents the application of 0% rate of VAT.

More and more companies exporting outside the European Union decide to interrupt the transport of goods in another member state. This is usually due to technical reasons, and sometimes improvements in the product. An example might be waiting for the arrival of another part of the structure and temporary storage of goods in the warehouse in another member state. Moreover, goods must be often stored on the territory of another EU country due to a need to change the means of transport, for instance from road to rail or from sea to air transport.

Unfortunately, the above-mentioned interruption is associated with a risk of charging VAT. The tax authorities believe that an interruption in transport results in losing the preferential 0% VAT rate. Earlier, the above-mentioned judgement of the Supreme Administrative Court concerned a company which was commissioned by a Norwegian entrepreneur to supply rods to Norway. The supply first reached Lithuania, where the rods were processed, i.e. joined. The problem here is whether delivery started on Polish territory can be treated as export.

The definition of export is contained in Art. 2(8) of the VAT Act. According to this provision, the export of goods is understood as the supply of goods dispatched or transported from the territory of a country outside the European Union by: a) the supplier or on its behalf, or b) the purchaser established outside the territory of the country or on its behalf, with the exception of certain categories of goods. The condition is that the export of goods outside the European Union must be confirmed by the competent authority specified in the customs rules.

Citing among other things the above provisions, the Head of the Tax Chamber in Katowice issued an individual interpretation unfavourable to the taxpayer. The authority found that transport from Poland outside the European Union was interrupted in Lithuania. In confirmation the authority quoted the resolution of the NSA of 25 June 2012 (File ref. I FPS 3/12). The conclusions were that the export of goods from Poland outside the European Union should take place in the framework of transport (shipping) of a continuous nature. In a situation where the transport of goods from Poland is interrupted on the territory of another member state and resumed in this country, such export cannot be considered export and the 0% VAT rate does not apply.

The Supreme Administrative Court in its judgement also referred to the interpretation of the regulations included in its resolution and dismissed the company's complaint.

Certainly this case law is not favourable to taxpayers. The latest judgement of the NSA confirms it. The fact of interruption of transport for reasons independent of taxpayers exporting their goods (e.g. a failure of means of transport) may raise substantial doubt. The practice of the tax authorities, which is the basis for the unfavourable judgements of administrative courts, can cause that in cases of doubt, the tax authorities will effectively challenge the preferential 0% VAT rate.

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Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

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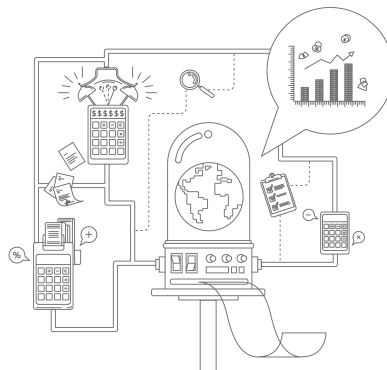
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19.04.2017



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