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E-COMMERCE CHALLENGE WITHIN B2C TRANSACTIONS INSIDE EU COUNTRIES

WYZWANIA DLA BRANŻY E-COMMERCE W RAMACH TRANSAKCJI B2C W KRAJACH UE

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Summary: Following the technology development, consumer habits change. Traders of goods seek new channels to reach the end customer, and online trading becomes more and more attractive. The European Union has already realised that harmonisation of VAT tax law is the key issue to reduce fraud on intra-community transactions, and simplifying the regulations for traders dealing on the internal market, would bring positive impact for the whole economy. Nevertheless, existing regulations, based on traditional commercial transaction models, make administrative taxation related to them very expensive and may provide the traders with a large tax risk in every country in which the trader handles the transaction. In the paper the authoress describes the common problems with covering sales margin due to changes in the reported revenue due to VAT regulations, as well as the obligation to provide to the end customer the gross price including VAT.

Keywords: VAT, VAT compliance, online trading, e-commerce, B2C.

Streszczenie: Wraz z rozwojem technologii zmieniają się nawyki konsumenckie. Sprzedawcy towarów poszukują nowych kanałów, aby dotrzeć do klienta końcowego, a handel online staje się coraz bardziej atrakcyjny. Unia Europejska zdała sobie już sprawę, że harmonizacja prawa podatkowego w zakresie podatku VAT jest kluczową kwestią w ograniczaniu nadużyć finansowych w transakcjach wewnątrzspółnotowych, a upraszczanie przepisów dotyczących podmiotów handlowych zajmujących się rynkiem wewnętrznym przyniosłoby pozytywne skutki dla całej gospodarki. Niemniej jednak obowiązujące przepisy, oparte na tradycyjnych modelach transakcyjnych, sprawiają, że opodatkowanie związane z administracją jest bardzo drogie i może zapewnić inwestorom wysokie ryzyko podatkowe w każdym kraju, w którym przedsiębiorca dokonuje transakcji. Jednocześnie różne stawki VAT mogą mieć wpływ na wartość przychodów ze sprzedaży, które w najgorszym przypadku nie mogą pokryć kosztów sprzedaży. Wyzwaniem przede wszystkim jest konieczność oferowania klientowi końcowemu ceny brutto.

Słowa kluczowe: VAT, rozliczenia VAT, handel online, e-commerce, B2C.

1. Introduction

e-Commerce business is continuously growing from year to year. Following reports about e-Commerce, online trading has grown from year to year over 20%, in the year 2017 it was 24% [Chaber 2017]. At the same time, the number of Polish customers has increased, and they purchase goods not only from online shops based in Poland, but also from other EU Member States and from other countries. Selling on the biggest online platform, like Amazon, e-bay or Alibaba, also gives traders from other countries the possibility to have customers from different EU Member States. Selling within EU Member States is much easier than selling from a third country. Nonetheless, the law and taxes regulations do not make it easy at all.

Free trading possibilities given by the European Union, gave all customers, not only companies, but private customers as well, the possibility to make their purchases from another European country. This gave a simple way of purchasing goods, no additional paperwork, custom clearance, etc. As such, purchases seem to be easy for the customer, but also meant not easy for the traders.

There are a lot of complicated regulations regarding purchasing and dispatching goods within the EU. As long as a trader, when sending goods, ensures that they are below the given threshold and from a warehouse located in his country of residence, then it will be simple. However, this situation nearly never happens, as long as the trader is using for example Amazon platform for trading.

Dispatching within the European Union (EU) between VAT-registered businesses are subject to VAT with “zero” rate. When dispatching goods to someone in another EU country, who are not registered for VAT in that country, VAT should be normally charge. There is special regulation obtained for transaction B2C (Business-to-Client).

In the year 2014 Amazon established the first fulfilment centre in Poland, and VAT compliance for all traders using the possibilities for storing and selling their goods via Amazon platform became more complicated. There are not only local Polish rules involved, also local rules for all other dispatching countries.

All the VAT questions may have a large impact on the margin an e-commerce business receives, as this inconvenience is often overlooked; truth is that much of e-commerce remains unprofitable. How important is proper VAT compliance for traders? Does it influence their margin? What challenges do the traders have?

On the basis of investigation made as quality studies, as well as the daily observations the problems as participant, in this paper I will try to explain the regulations traps and challenges for online traders (B2C) all over Europe, as well as give an answer to the questions asked above.

2. VAT concept for traders within the EU

The ultimate purpose of VAT is to impose a broad-based tax on final consumption by households. Typically, VAT is collected through a staged process, which means

that each business in the supply chain charges VAT to its customer, regardless of whether the customer is a private individual or a business. In that sense, businesses serve as unpaid tax collectors for the government. They pay to the competent tax authorities the VAT; they are charged on their supplies and what they receive from their customers. Since it is not the purpose of VAT to tax businesses, VAT systems employ mechanisms for relieving businesses of the burden of the VAT they pay when they acquire goods or services.

The principle of a common system of VAT involves the application to goods and services of a general tax on consumption, which is exactly proportional to the price of the goods and services. However, many transactions take place in the production and distribution process before the stage at which the tax is charged [Council Directive 2006/112/EC 2006].

Based on the general regulations all EU Members States are still allowed to have their own VAT regulations, as well as their own VAT rates, for example the base VAT rate in Poland is 23%, Germany – 19%, Italy – 22%, United Kingdom – 20%, Denmark – 25%. If the customer is a private individual (B2C), then the purchase price should include VAT in the final price of purchased goods.

2.1. General rules of “distance selling”

“Distance selling” occurs when goods are dispatched or transported for or on behalf of a supplier from one EU country to a private person in another EU country. That private person will not be subject to VAT. “Distance selling” includes mail order sales, phone or telesales, or any goods ordered over the internet.

Sales to customers in other EU Member States who are not subject to VAT are liable to pay VAT in the EU Member State of the supplier. This rule only applies if the threshold appropriate to the EU Member State of that customer is not breached. If sales exceed the threshold in any particular EU Member State, the supplier is obliged to register and report for VAT in that Member State.

Under the EU arrangements, Member States were required to adopt a “distance selling thresholds” of either 35,000 EUR or 100,000 EUR. These thresholds expressed in each national currency are calculated from their EUR values at the exchange rate on the date of agreement [European Commission 2017].

The value of distance sales of excisable goods should not be taken into consideration for the purposes of determining whether or not the threshold has been exceeded. If the threshold, excluding the value of excisable goods, is not exceeded the supplier may continue to report for VAT in those Member State from which supplies are made.

The supplier also has the possibility to resign from the given threshold. When making this decision, it should take to consideration if the VAT rate in the Member State of the customer is lower than in the Member State of the supplier. The official resignation should be sent to the tax authority in those Member States which are losing VAT.

The strict application of the combined rules within the EU Legislation (Art. 33 and 34 of the Principal European VAT Directive) leads to a three stage process for the proper assessment of the taxation of distance sales of which is quite complex.

As we understand from the Art. 33 of the VAT Directive [Council Directive 2006/112/EC], “the place of supply of goods dispatched or transported by, or on behalf of the supplier from a Member State, other than that in which dispatch or transport of the goods ends, shall be deemed to be the place where the goods are located at the time, when dispatch or transport of the goods to the customer ends, if the following conditions were met:

(a) the supply of goods is carried out for a taxable person, or a non-taxable legal person, whose intra-Community acquisitions of goods are not subject to VAT pursuant to Art. 3 (1) or for any other non-taxable person”.

The end price for the customer will be shown as the gross amount, which means that the supplier is obliged to calculate the correct VAT amount for each dispatch, while monitoring the different thresholds for each separate country. Even register for VAT even if only there stock is stored, and no sales in those countries occurred and there is was no threshold exceeded.

2.2. Short explanation about “distance selling” in practice

A “distance selling” platform is prepared for transaction between business and private individual. The basic regulation for ‘distance selling’ is Art. 33 of the VAT Directive. Together with the “thresholds” regulation for traders, where many additional obligations appear. For example, see a simple transaction in Figure 1 which shows the sales of goods within EU Member States, when storing the goods in a warehouse in other EU Member State.

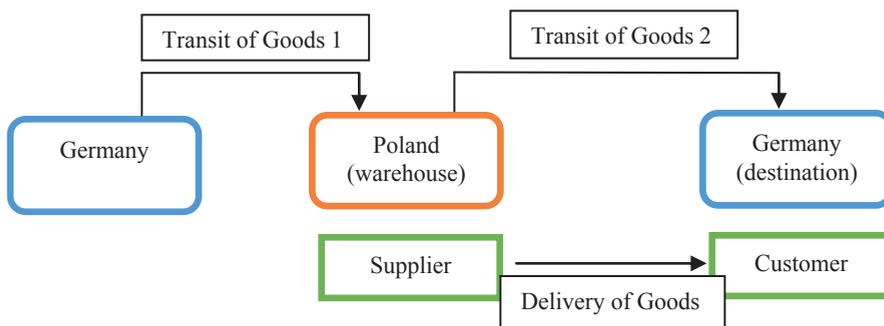


Figure 1. Delivery scheme

Source: based on [Gothmann et al. 2016, p. 353].

This is an example regarding a German Trader, trading within EU, with the help of a third party warehouse. The German online trader brings the goods from a German

warehouse to the Polish warehouse (Transit of goods 1). According to the existing law, this movement would be treated as intra-Community, non-transactional delivery of goods.

For this purpose it is required that the German trader registers for VAT in Poland. According to the Art. 213 of the VAT Directive, every taxable person shall state when his activity as a taxable person commences, changes or ceases [Council Directive 2006/112/EC 2006].

Article 97 of the Polish VAT Act declares that taxpayers “subject to registration as active VAT payers shall be obliged before the first intra-Community supply or the first intra-Community acquisition to notify the head of the tax office in the registration application [...] about the intention to begin performing these activities” [Ustawa z 11 marca 2004].

For “Transit of Goods 1”, the trader in Germany should report intra-Community supply of goods. From the Polish perspective, you would report intra-Community acquisition of goods, based on the rules written in the Art. 179 of VAT Directive [Council Directive 2006/112/EC].

The taxable person shall make the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right of deduction has arisen and is exercised in accordance with the Art. 178 [Council Directive 2006/112/EC].

The next transaction is the “Transit of Goods 2” which means the delivery of goods to the customer. If the trader does not resign from the threshold and the threshold is not exceeded, those transactions would be treated as being supplied from the Member State other than that in which dispatch or transport of the goods ends. Customer is a normal individual. Taking into consideration regulation for ‘Distance Selling’, those transactions would be reported only in Poland as a domestic sale. Consequently, the traders should calculate VAT based on Polish rate, 23%.

If the traders applied for the resignation from the threshold, or the given threshold is exceeding, then those transactions would not be reported in Poland at all. In this case, those transactions should be reported only in Germany as a domestic sale. Consequently, the traders should calculate VAT based on German rate 19%.

It is important to remember that the final price given to the normal individual customer should be always the gross amount. According to the definition, a total amount payable by the consumer means the sum of the total amount of the credit and the total cost of the credit to the consumer [Directive 2008/48/EC]. This definition is also repeated in the Directive 2014/17/EU, dated on 4th February, which is called the “Consumer Directive”.

3. The impact on profit

In accordance with the definition written in the Corporate Income Tax Act, we determine the income received or due to the value derived from: in accordance with

for revenues related to economic activity and special departments of agricultural production – achieved in the tax year – also receivable revenues are considered, even if they have not yet been received, after excluding the value of returned goods, discounts and discounts (Act from 15.02.1992 about corporate income tax) [Ustawa z 15 lutego 1992, Art. 12 § 3].

In this paper, to simplify the example for all calculations we will use only the standard VAT rate.

According to Art. 96 of VAT Directive, the standard VAT rate is the rate that EU countries have to apply to all non-exempt goods and services [Council Directive 2006/112/EC]. It must be not less than 15%, with there being no maximum (Art. 97 of the same Directive). This rule was in force until 31st of December 2015.

As mentioned in the previous point, the final price to the customer must be the gross price, which includes all taxes. As within the EU-country, there are several different standard VAT rates, for Example 17% in Luxembourg, 19% in Germany and 27% in Hungary. For every single purchase, the trader should calculate the net revenue, depending on applicable VAT rate:

$$\text{net amount} = \frac{\text{gross amount} \times 100}{100 + \text{VAT rate}}.$$

If the Polish trader sells his/her goods within EU from warehouses which are located in other EU countries, and the trader does not resign from the threshold and the threshold is not exceeded, those transactions would be treated as a supply from the Member State, other than that in which dispatch or transport of the goods ends.

Nevertheless, even if the VAT should be paid in the other EU Member States, the Corporate Income Tax (CIT) should be paid in the country where the trader its permanent place of residence or registered office has. Revenue is the amount of money that a company actually receives during a specific period, including discounts and deductions for returned merchandise. As we can see in the table to follow, the net amount is the revenue from "Distance Selling" depends on VAT rate paid from gross amount given to the end customer (Table 1).

Table 1. Impact of the VAT rate on the sales revenue

	VAT rate		
	19%	23%	27%
Gross amount	100.00	100.00	100.00
VAT amount	15.97	18.70	21.26
Net amount/Sales revenue	84.03	81.30	78.74
CIT amount 19%	15.96	15.44	14.96

Source: own elaboration.

There is just one small example which highlights the complexity of “e-Commerce challenges”, which every single trader has to deal with if he is acting in the international marketplace.

Comparing the net revenue with this small example calculated above, there is 4–8% net revenue difference in between. Those difference could easily cover the whole sales margin if the trader would not keep care about own taxation situation within cross-border transactions, as the average trading margin for retailer was 2.6% in the year 2016, the year before it was 3.4% [Deloitte 2016].

Based on this small example, we can notice the whole complexity of taxation in distance selling and plenty of questions appearing during the tracking of one single transaction. Nevertheless, there is also a big challenge for accountants to keep track of all movements and prepare on time proper VAT refund for each involved country. At the end of the day it may happen that there is no profit on the certain transaction, due to the low margin and randomly taken VAT rate for sales in several countries. Also for the managers which are in e-commerce business performed hast to calculate the sales margin very carefully, taking into consideration that they have to deliver to the end customer the gross price.

4. Summary

Online trading markets are growing year-on-year at over 10%. This means that private consumers are becoming more and more comfortable with this way of shopping. Giving them the convenience of time to choose, without urgency, also with the ability to compare offers from many other bidders from all over the world.

The internationalisation of commercial transactions also leads to the internationalisation of tax settlements. The European Union, through its regulations, seeks to harmonise tax legislation, but now leaves the countries with the opportunity to arbitrate tax rates and executive individual regulations.

Traders selling within the European Union, depending on the decisions taken and sales volumes, may be liable under many VAT jurisdictions at the same time. As can be seen from the example, these different regulations have a direct impact on the level of net income and indirectly on the size of the tax base for income tax calculation.

At the same time, the trader or his accountant must be aware of the obligations of timely filing in of VAT refund in each of the countries in which he/she are registered for VAT. Another additional obligation is the obligation to monitor the threshold from each country from which shipments are made, if the seller has not resigned from the threshold or did not exceed it yet.

The e-commerce market, through its dynamic development, makes the solutions used so far for VAT refund become ineffective. For online traders this means that they should consider either a very high tax risk or high cost of tax service in each country. That solution is contemporary with the basic idea of an EU for internal market.

To summarise the above, it means that VAT compliance around Europe for on-line traders does have a direct impact on sales margin. This conclusion is incompatible with the general VAT structure, where VAT is defined as indirect tax. The biggest challenge for the traders is to combine market strategy, as well as all the risks connected to the transactions and the expectation of the customer, to get the best product for the possibly lowest price.

On 7th of April 2016, the European Commission adopted an Action Plan on VAT towards a single EU VAT area [European Commission 2016]. The Action Plan sets out immediate and urgent actions to tackle the VAT gap and adapt the VAT system to the digital economy and the needs of SMEs. It also provides clear orientations towards a robust single European VAT area in relation to the definitive VAT system for cross-border supplies and proposes options for a modernised policy on EU rules governing VAT rates.

Further to the new Single Market Strategy, the Commission is preparing a comprehensive simplification package for SMEs that will seek to create an environment that is conducive to their growth and favourable to cross-border trade. In particular, the special scheme for small enterprises will be subject to review. This proposal was presented at the end of 2017 (<http://ec.europa.eu>).

The general agreement is as follows:

- Proposal for a modernised system of setting VAT rates, giving greater flexibility to Member States with regards to VAT rates.
- Proposal to reinforce administrative co-operation between Member States, enabling Member States to share information more quickly and to co-operate more.
- Proposal to simplify VAT for SMEs by updating special VAT rules for smaller companies.
- Full technical adaptation of the VAT directive to reflect the changes needed to practically implement the VAT definitive regime, which will be proposed by the Commission in Spring 2018.
- In 2022 entry into force of the Single EU VAT area, once agreed [European Commission 2017].

Nevertheless, the existing regulations with regards to VAT transactions have also an implication for management decisions. As written above, probably the cost for VAT compliance, and probability for the tax risk in several European countries are a major matter for resignation or limitation for online trading, which is not the main idea of internal market. The actions taken due to adopting and developing an Action Plan, show the e-Commerce market the importance for the European economy, as well as is an indicator for simplifying VAT regulations not only for SME sector as well as for the whole market.

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