

DIFFERENCE OF APPLICATION OF VAT IN EU MEMBER STATES DURING THE SUPPLY OF GOODS INCLUDING INSTALLATION

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Received: December 15, 2008

Abstract

DAVID, P., NERUDOVÁ, D.: *Difference of application of VAT in EU member states during the supply of goods including installation*. Acta univ. agric. et silvic. Mendel. Brun., 2008, LVI, No. 3, pp. 47–56

There still exist the differences in provision of VAT, in interpretation of VAT provisions and application of the rules in practice between the EU member states. Application of VAT during the supply of goods with installation to other EU member state, both during the existence of establishment in the state of customer and also without it, is considered to be one from the problematic field. Other discrepancies are created by inclusion of the sub suppliers, who can come from other EU member state or from the same state as customer, to this transaction. Questions of VAT application during the supply of goods with installation to other EU member state were processed by using standard methods of scientific work in the frame of five selected EU countries – Hungary, Poland, Romania, Slovakia and Czech Republic.

VAT, EU, supply of goods, registration, establishment

In the 1960s two systems of the indirect taxation were applied within the Europe. France was the only state applying value added taxation system and all the other member states were applying cumulative cascade tax system of the turnover tax. Under this tax system (in contrast to value added tax) the tax is levied on the gross amount (not value added) of the production at each production stage. The cumulative cascade tax system of the turnover tax is not able to ensure the tax neutrality – the tax burden can be influenced by range of vertical or horizontal integration¹ – it can cause distortions of the economic competition. Considering the above mentioned the European Commission decided, that the only system which can ensure the tax neutrality and would not deform the market competition, is the value added taxation system.

Value added taxation system enables two possible principles of taxation as mentions (Nerudová,

2005). First of them is the principle of destination.² This system is demanding the economical cooperation because otherwise it could deform the market competition. Partly from the reason of the double taxation (in the case of goods delivered from the state applying the principle of origin – in the state of delivery the goods would be taxed for the second time according to the principle of destination) and partly from the reason of influencing competitiveness (in the situation when countries are applying different tax rates). From this reason the majority of the countries (according to GATT³) which are applying the principle of destination, exempt export from taxation and vice versa they tax import to eliminate double taxation.

The second principle is the principle of origin – under this scheme the goods and services are taxed in the country of their production. Of course this principle is supposing the unified tax rates because

1 The amount of tax is influenced by number of subjects in the production chain (integrations arise in cumulative cascade tax system in order to reduce final tax).

2 Goods and services are taxed in the state of consumption.

3 General Agreement on Tariffs and Trade.

the differences in tax rates can deform the market competition.

The first phase of the harmonization in the EU was dedicated to the implementing of the uniform system of indirect taxation. Without the harmonization of this system, the establishment of the internal market would not be possible, for the different indirect taxation systems could deform the market competition on the internal market.

The effort to harmonize the indirect taxes is evident from the very beginning of the economical integration process in the European Union (David, 2007). Proposed harmonization had to be performed in two steps. In the first phase cumulative cascade tax system of turnover tax had to be replaced by the non cumulative system. In the second phase the substitution of this system by the uniform value added tax system had to follow. All these steps were executing in relation to the establishment of the internal market because its functioning was from the beginning the initial aim of the European Commission.

This text is part of outputs of research intention of faculty of business administration of Mendel University of Agriculture and Forestry in Brno "Czech economy in processes of integration and globalization and development of agrarian sector and sector of services in new conditions of European integrated market", identifying code VZ 62156 48904.

MATERIAL AND METHODS

In 1967 the first directive No. 67/227/EEC was adopted. In this directive the Commission obliged all the member states to substitute existing turnover tax system by the uniform value added taxation system on the principle of general consumption tax, which is imposed on all goods and services and is set by the percentage of selling price and so it does not depend on number of the stages in production or distribution process. The implementation of the value added taxation system ensured the tax neutrality. Tax rates and also tax exemptions were retained in the competency of the individual member states.

The second directive No. 67/228/EEC defines very clearly the object of the taxation. The object of the taxation is the sale of goods and provision of services on the territory of the member state realized by the taxpayer, and the import of the goods. Further, the directive defines the place of fulfilment, taxpayers, sale of goods and provision of services. The member states were retained the right to adopted special provisions eliminating tax avoidances, further the provisions setting special programme for small and medium sized companies and also this directive allows to set special programme ("fully corresponding to national possibilities and requests") for the agricultural sector.

The transformation of the taxation system and its implementation caused serious problems in some states. It was particularly the fact that imple-

mentation of new system could cause the pressure on the expenditures of member states budgets. The above mentioned was the reason for adopting so called third directive No. 69/463/EEC, fourth directive No. 71/401/EEC and fifth directive No. 72/250/EEC were prolonging the time limit for VAT implementation in certain countries.

The structural harmonization was performed by implementation of the first and second directive. It was the first step in the process of the harmonization. The result of this step was not in any case the uniform system because directives allowed a wide range of the exemptions and differences (especially in the field of agriculture, cross-border provision of services or possibility of tax deduction from import). Instead of uniform system there was existence of individual systems with national differences.

The most important directive in the field of indirect tax harmonization is the sixth directive No. 7/388/EEC. It is considered to be the basic directive for it quotes the definition of tax base, the territorial reach, the subjects, tax rates and others. The aim of this directive was to harmonize different national systems – in accordance with prerequisite comprised in the first and second directive – particularly taxation of intracomunity transactions. This directive is considered to be the basic and until now it has been amended more than twenty times. For this reason the directive No. 112/2006/EEC was adopted. It represents the recast of the sixth directive – i.e. it comprises sixth directive with all other directives in frame of one text.

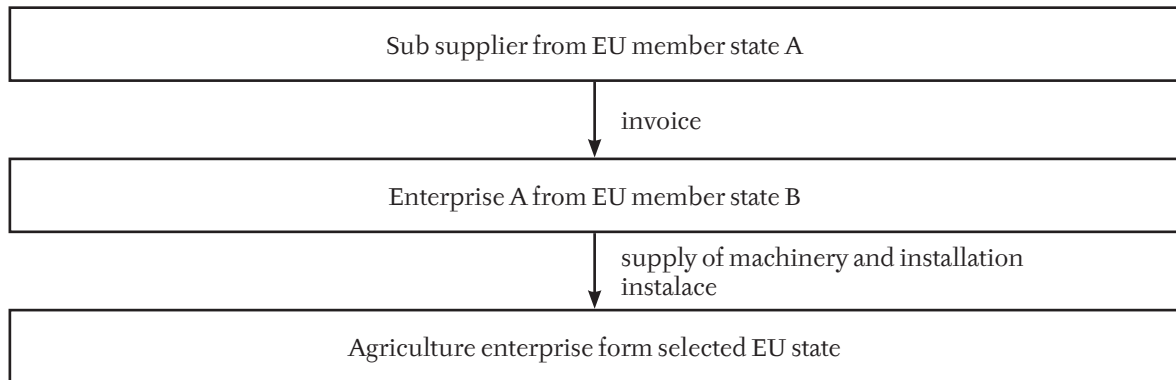
As mentions (Šíroký, 2007) the efforts to coordinate the VAT tax rates throughout the EU were completed in 1993. The directive No. 92/77/EEC stipulated the minimal limit for the tax rates. For standard rate the minimum of 15% was set and for reduced rate 5%. Directive also allowed transitional period in which the member states could apply in the area of reduced tax rate the rate lower than 5%.

It was necessary to use, during the elaboration of VAT application problems in case of supply of goods with installation to other EU member state, below introduced standard methods of scientific work in frame of five selected EU states – Hungary, Poland, Romania, Slovakia and Czech Republic. Method of the analysis is applied during the identification of characters of surveyed phenomena and method of synthesis for formulation of frameworks of unifying character in the final parts of the text. It was also necessary to use the method of description for description of the actual state of objective provision regarding given problems and other facts and phenomena in order to create essential connections based on processing and evaluation of relevant data. Among others the method of induction and deduction was used. The application of those methods enabled generalization of discovered facts and to formulate general valid principles including their supposed effects.

RESULTS AND DISCUSSION

There still exist the differences in provision of VAT, in interpretation of VAT provisions and application of the rules in practice between the EU member states. Application of VAT during the supply of goods with installation to other EU member

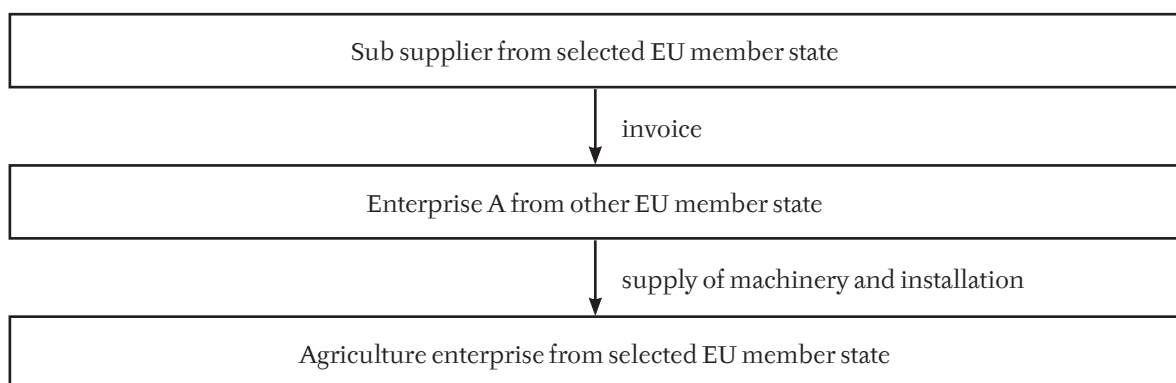
state, both during the existence of establishment in the state of customer and also without it, is considered to be one from the problematic field. Other discrepancies are created by inclusion of the sub suppliers, who can come from other EU member state or from the same state as customer, to this transaction.



1: *Supply of goods with installation without creation of establishment in the EU member states*

On the figure I there is demonstrated the situation of the supply of goods to agriculture enterprise from selected EU state without existence of the establishment of enterprise A from EU member state B (different from the selected EU state). Installation of goods, appliances or machinery itself is done by sub supplier from EU member state A, different from selected and also from EU member state B. The selected EU member state is considered to be place

of the fulfillment of the transaction. Is the registration of the enterprise A from EU member state B in the selected state necessary or is it possible to apply reverse charge mechanism? In connection with this transaction other questions arise as well. It acts about the questions regarding treatment with sub supply, persons liable to VAT in term of sub supply and also liability of sub supplier from EU member state A to registration for VAT.

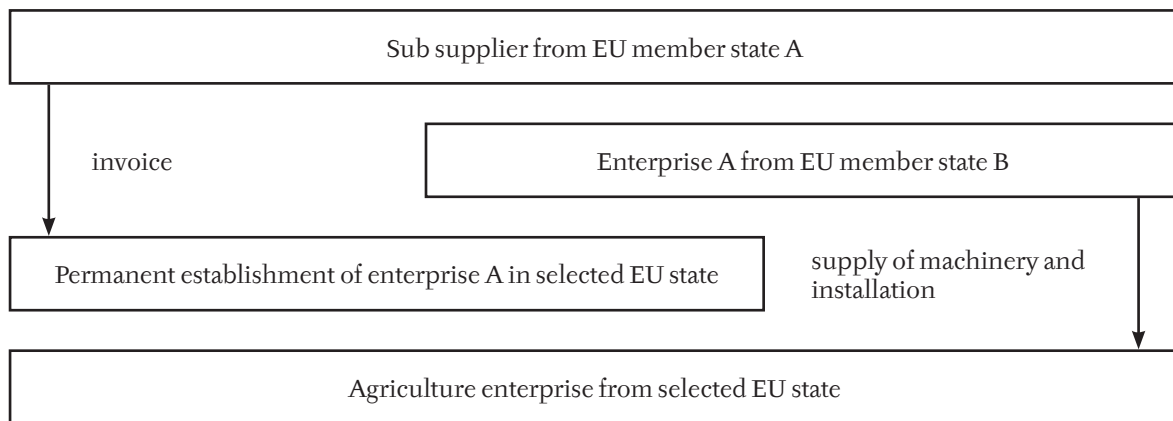


2: *Alternative of supply of goods with installation without creation of establishment in the EU states*

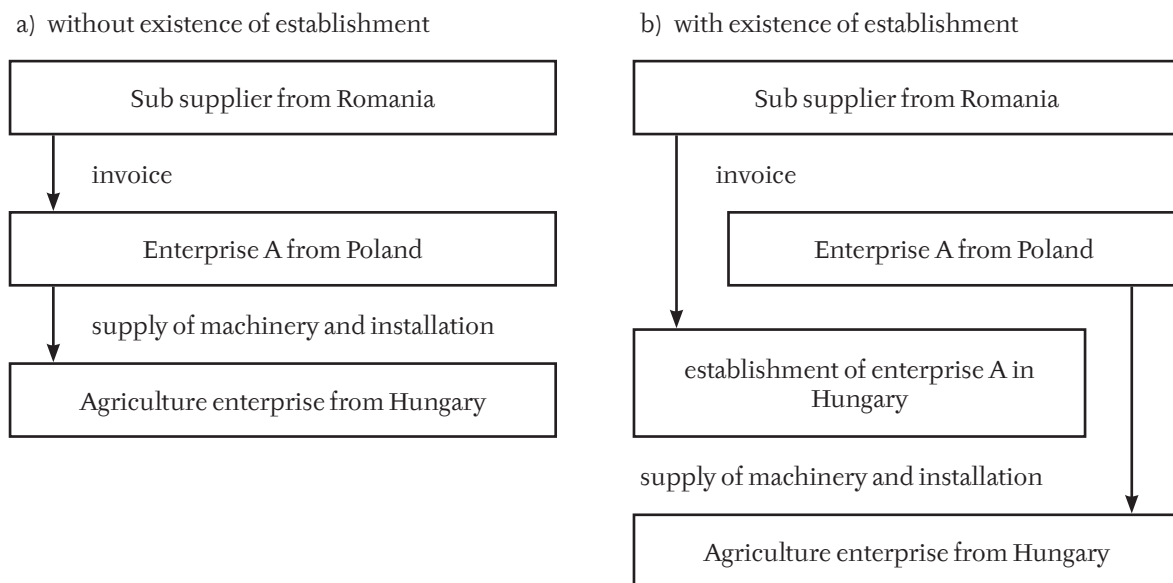
In this situation it is necessary to take into account the possibility that sub supplier is not from other EU member state, but he is from the same EU member state as agriculture enterprise (from selected EU member state). Also here it is necessary to answer the same questions as in case of the situation on the figure I.

In the figure III there is demonstrated situation of the supply of goods to agriculture enterprise from selected EU state, when the enterprise A from EU

member state B (different from selected one) has the establishment in the selected EU state. Enterprise A supplies goods, appliances or machinery in complete form; however, production is partly proceeded by sub supplier from EU member state A. In this case it is necessary to set liabilities and conditions of VAT registration of partners of transaction, possibilities of application of reverse charge mechanism and rules of creation of establishment in selected EU state.



3: Supply of goods with installation and with existence of establishment in the EU member states



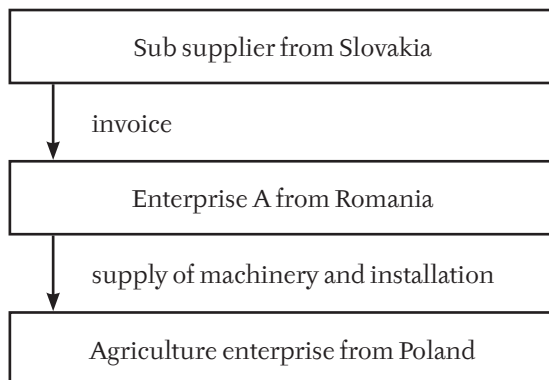
4: Supply of goods with installation to Hungary

Hungary is the place of the fulfillment during the supply of goods to agriculture enterprise from Hungary without existence of the establishment of enterprise A from Poland. However, agriculture enterprise from Hungary can pay VAT, if the enterprise A does not have the establishment in Hungary. The possibility of the reverse charge mechanism application, VAT refund according to the Eight directive (in case of sub supplier from Hungary, not from other EU state, who is invoicing Hungarian VAT), is unclear. Regarding creation of the establishment considerable contradictions take place. According to the reports introduced by Hungarian authorities, the establishment is automatically created in Hungary to sub supplier based on exactly unspecified period (4–5 months) of duration of executing work in Hungary. Obviously, Hungary is the place of the fulfillment of the business transaction. Although

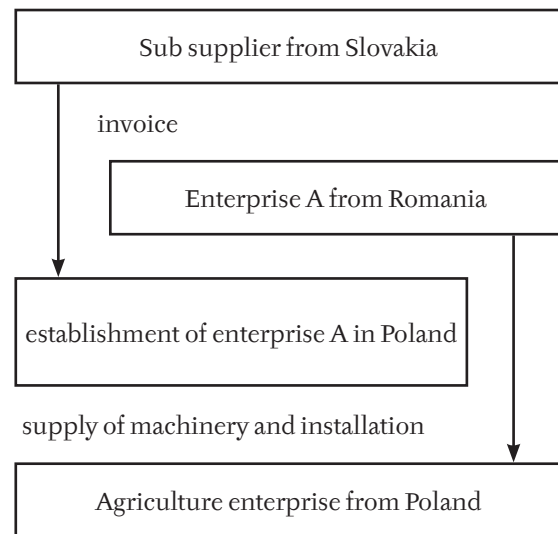
the installation of goods, appliances or machinery is performed through sub supplier, Hungarian authorities often consider that establishment was created. In case of the existence of the establishment in Hungary of sub supplier from Romania, enterprise A from Poland will probably have to register for VAT in Hungary from above mentioned reason of duration of executing work on the territory of Hungary. Liability of VAT registration in Hungary is created by initiation of economic activity on its territory.

The diction of the legislation in frame of the researched field is not very clear in Poland; however, without the existence of establishment in Poland the place of the fulfillment is the place, where the goods are installed, so it means Poland. Enterprise A from Romania is not liable to register for VAT in Poland, because supplied services are provably connected with supplied goods and recipient is

a) without existence of establishment



b) with existence of establishment



5: Supply of goods with installation to Poland

the person liable to pay VAT. It is possible to cover transport and introduction of goods to fully functional state for utilization between into these services. Agriculture enterprise from Poland is liable to prove VAT in frame of reverse charge mechanism here. In the case that sub supplier is from Poland, the place of the fulfillment is Poland. Utilization of reverse charge mechanism is controversial and registration for VAT before performance of sub supply is recommended. Fulfillment of the Slovak sub supplier to enterprise A from Romania is object of Polish VAT. Sub supplier from Slovakia has to register for VAT and can apply VAT refund according to the Eight directive. In the case that enterprise A is registered for VAT in Poland, it is considered to be domestic fulfillment and there is no possibility to apply reverse charge mechanism. This registration is also recommended in term of cash flow of the enterprise. Enterprise A is liable to pay VAT; it applies reverse charge mechanism and has the right to deduct VAT on input. If the sub supplier is from Poland, then the place of the fulfillment is Poland and it is not possible to apply reverse charge mechanism. Enterprise A from Romania then can have problems during VAT refund in based on the Eight directive. If the transaction is not designed by suitable method, the amount of VAT can be refunded even as late as in several years and it can negatively influence cash flow of the enterprise. If sub supplier from Slovakia has establishment in Poland in term of registration of enterprise A for VAT, then the evident activity of the enterprise in Poland is relevant. If this activity is not evident, the registration for VAT is not necessary. Enterprise A is liable to register for VAT in Poland only in the case of creation of establishment from the reasons of provision of other services taxable in

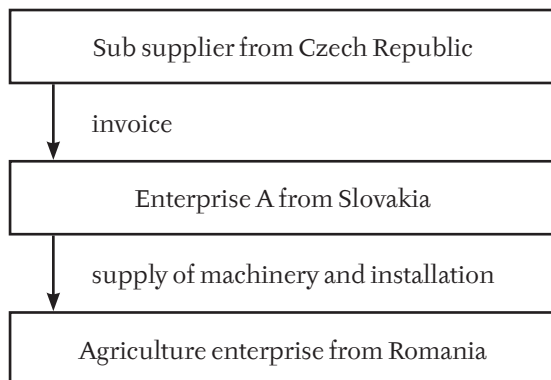
Poland. The conception of establishment is in Polish legislation adopted from ECJ case law. It is defined as the permanent place for business activity, which disposes of personal and material resources necessary for running economic activities. Strict rules, applied in this field both in frame of legal regulations and also potential interpretation coming from tax authorities, does not exist in Poland until now. Anyway, sub supplier from Slovakia has to register for VAT in Poland.

In the case of supply of goods with installation without existence of the establishment, the place of the supply of services is Romania – place, where the services are provided by Czech sub supplier. Enterprise A from Slovakia is considered to be a person liable to tax without residence in Romania. Enterprise A (recipient of services) is liable to pay VAT, if it is registered for VAT through tax representative and sub supplier from Czech Republic is not registered in Romania. Otherwise, sub supplier from the Czech Republic has the liability to pay VAT.

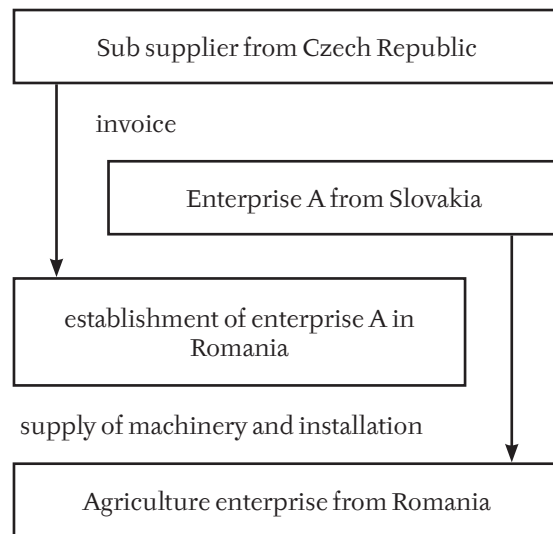
In case that sub supplier is from Romania as well as agriculture enterprise, the place of the supply is Romania – place, where the machinery or appliance is installed. The person liable to pay VAT is agriculture enterprise from Romania, which is recipient of goods supplied in Romania by person liable to tax without residence and establishment in Romania, which is not registered here for VAT. It is possible to apply reverse charge mechanism only in case of registration of enterprise A from Slovakia for VAT in Romania. Romania is the place of supply of services and sub supplier from Romania is liable to pay VAT, because he is resident here.

The establishment of enterprise A in Romania is created in connection with regular development

a) without existence of establishment



b) with existence of establishment

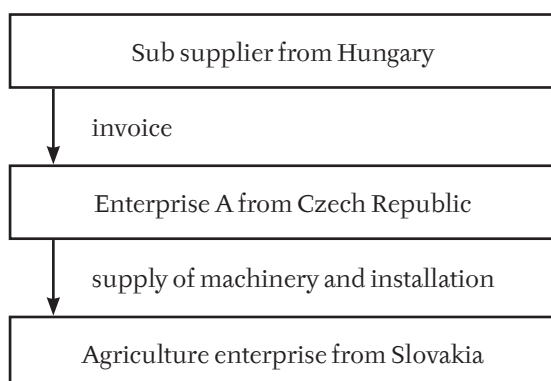


6: Supply of goods with installation to Romania

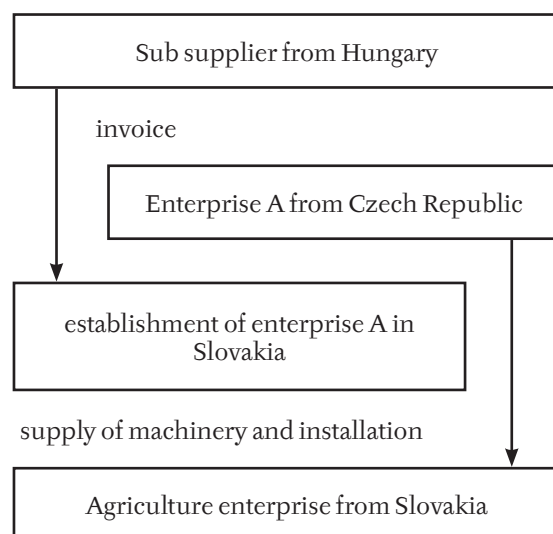
of economic activities on the territory of Romania, disposal of sufficient human and technical resources. Detail rules of given problems do not exist in Romania. Interpretation of Council Directive No. 2006/112/ES from 28th November 2006 on common system of value added tax system and decisions of European Court of Justice in similar matters are essential. The establishment of enterprise A is created in Romania for VAT purposes, therefore the enterprise has to register for VAT in Romania and has also pay VAT in Romania. Romania is the place of the fulfillment during supply of goods by enterprise A to

agriculture enterprise in Romania. During provision of goods by sub supplier from Czech Republic to establishment of enterprise A in Romania, the place of the fulfillment is the place of provision of services – it means Romania. It is possible to consider these services as the work on tangible assets in Romania. Sub supplier from the Czech Republic is the person liable to tax, providing services and liable to pay VAT. It is possible to apply reverse charge mechanism in case that enterprise A is registered for VAT in Romania and it communicates its Romanian VAT number to sub supplier from the Czech Republic.

a) without existence of establishment



b) with existence of establishment



7: Supply of goods with installation to Slovakia

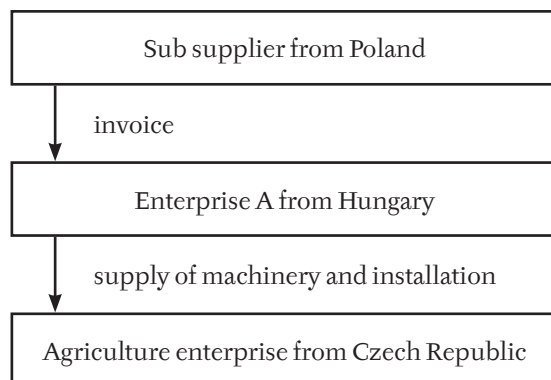
During supply of goods with installation by enterprise A from Czech Republic to agriculture enterprise in Slovakia without the existence of establishment of enterprise A in Slovakia, the place of the fulfillment is the place, where the goods are installed (in this case Slovakia), according to the Slovak VAT regulation. In Slovakia there is no demand for registration of enterprise A to VAT, if the liability to pay VAT carry agriculture enterprise from Slovakia and enterprise A only provides services or supplies goods with installation here. Enterprise A is not liable to register for VAT in Slovakia, neither in term of transport of goods, because it is not considered to be acquisition of goods from other member state in this case and therefore it is not object of VAT.

Slovakia is the place of the fulfillment if the sub supplier is from Hungary and it is possible to apply reverse charge mechanism here. In Slovakia the person liable to VAT is liable to pay tax from services and supplied goods with installation supplied by foreign person from other member state in the case that place of the fulfillment is Slovakia. Enterprise A from the Czech Republic has to pay VAT in Slovakia also in the case that it is not registered for VAT on the territory of Slovakia. In such case enterprise A has no right to deduct VAT on input and to refund the amount of tax. After the registration of enterprise A for VAT in Slovakia it becomes domestic fulfillment and it is not possible to apply reverse charge mechanism. Enterprise A pays VAT but now it has the right to deduct VAT on input.

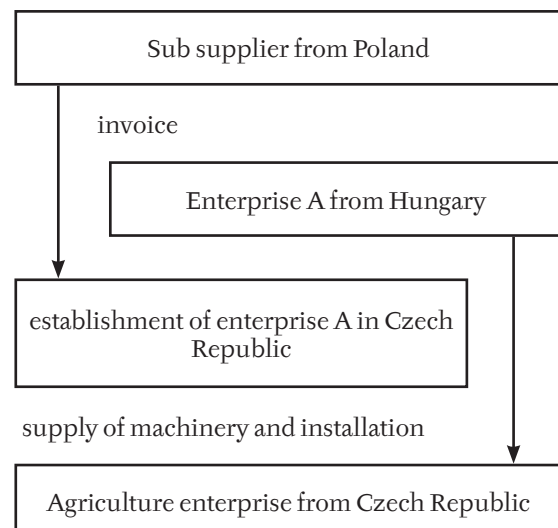
If the sub supplier is from Slovakia, the liability to pay VAT is imposed on agriculture enterprise from Slovakia. It is not possible to apply reverse charge mechanism in frame of operation between enterprise A from the Czech Republic and agriculture enterprise from Slovakia, because supply of goods is done by person registered for VAT in Slovakia and Slovakia is the place of the fulfillment.

In case that enterprise A from the Czech Republic has establishment in Slovakia but does not reach turnover of 1.5 mil. SKK, it is not liable to register for VAT in Slovakia. It is possible to apply reverse charge mechanism only in the case when establishment of enterprise A is not created in Slovakia. In Slovakia the establishment means permanent place for business activity, which is disposing with personal and also material resources for execution of business activity. VAT is collected in Slovakia both in the case of reverse charge mechanism and in frame of domestic fulfillment. That is the reason why Slovak tax authorities do not judge very strictly the creation of establishment. Nevertheless the registration of enterprise A for VAT in Slovakia is recommended because problems can arise during VAT refund from fulfillment provided between sub supplier from Hungary and enterprise A. The relation between enterprise A and agriculture enterprise is considered as domestic fulfillment without possibility of application of reverse charge mechanism. In frame of operation between sub supplier from Hungary and enterprise A, enterprise A is liable to pay VAT, applies reverse charge mechanism and has the right to deduct VAT on input.

a) without existence of establishment



b) with existence of establishment



8: Supply of goods with installation to the Czech Republic

The Czech Republic is the place of the fulfillment during supply of goods with installation in case that agriculture enterprise is from the Czech Republic and enterprise A from Hungary does not have estab-

lishment in the Czech Republic. Enterprise A is not liable to register for VAT in the Czech Republic. Potential provision of transport of goods from Hungary to Czech Republic does not change this fact. Transac-

tion between agriculture enterprise from the Czech Republic and enterprise A from Hungary is liable to reverse charge mechanism and that is the reason why the agriculture enterprise is liable to prove and pay VAT. It is also possible to use reverse charge mechanism even if enterprise A is registered for VAT in the Czech Republic. Sub supplier from Poland is liable to register for VAT in the Czech Republic and so the liability to pay VAT is created in the Czech Republic. Agriculture enterprise has the liability to pay VAT in case that sub supplier comes from the Czech Republic. Liability to pay VAT is created in the Czech

Republic and enterprise A can apply for VAT refund in the Czech Republic.

Agriculture enterprise from the Czech Republic is liable to register for VAT in case that enterprise A from Hungary has the establishment in the Czech Republic. Existence of the establishment in the Czech Republic includes personal and material equipment for ensuring provision of business activity. The liability to register for VAT in the Czech Republic is not created. Fulfillment from the sub supplier from Poland is liable to reverse charge mechanism.

SUMMARY

The long-term aim of the European Commission is to reduce the differences in tax systems of the member states, whether through tax harmonization or through coordination, to not cause threats for smooth functioning of single market, to not cause market distortion, and to prevent the obstacles of tax character which would cause inefficient allocation of production factor or production. The intention of the European Commission is to realize value added tax modernization and simplification, to ensure its more uniform application and to improve administrative cooperation.

In frame of VAT problems, it is possible to see wide range of differences in national legislations, their interpretations and application by tax authorities in practice in selected EU states. A lot of doubts appear during supply of goods with installation to other EU member state both with existence of establishment of supplier in the country of customer and also without it. Other discrepancies take place if we include sub supplier into transaction, who can come from other EU state or from the same state as customer. Conditions of liability or possibilities of registration for VAT in selected EU state and treatment of sub supply in case of foreign and also local sub supplier were identified in the part results and discussion. Also in this part there were analyzed the possibilities of application of reverse charge mechanism and conditions of creation of establishment in selected EU state. Disclosure of lacks and differences of national provisions of selected EU states is the only possible way of further efforts leading to achievement of fundamental goal of EU tax policy. The goal of EU tax policy is defined as the elimination of differences in tax system of individual member states. Mainly through minimalization of disproportions in impacts on economic competition and facilitation of free movement of goods, services, persons and capital in the EU single market and contribution to improvement of functioning of single market.

SOUHRN

Diference aplikace DPH v zemích EU při dodání zboží včetně instalace

Dlouhodobým cílem Evropské komise je snížit jednotlivé rozdíly daňových systémů členských zemí, ať již prostřednictvím daňové harmonizace či koordinace, natolik, aby nebyly hrozbou pro bezproblémové fungování jednotného trhu, nevyvolávaly tržní deformace a aby překážky daňového charakteru nebyly příčinou neefektivní alokace výrobních faktorů či produkce. Záměrem Evropské komise je provést modernizaci daně z přidané hodnoty, zjednodušit ji, zajistit její jednotnější uplatňování a zlepšit administrativní spolupráci.

V rámci problematiky daně z přidané hodnoty existuje celá řada diferencí v národních úpravách, jejich interpretacích a aplikacích daňovými orgány v praxi v jednotlivých vybraných zemích EU. Mnoho nejasností se objevuje při dodávání zboží s instalací do jiného členského státu EU jak při existenci provozovny dodavatele v zemi zákazníka, tak i bez ní. Další nesrovnalosti vznikají, zahrneme-li do této transakce ještě subdodavatele, který může pocházet z další země EU nebo ze stejné země jako zákazník. V části výsledky a diskuse byly identifikovány podmínky povinnosti či možnosti registrace k DPH ve vybraných zemích EU, nakládání se subdodávkou v případech zahraničního i lokálního subdodavatele, dále analyzovány možnosti použití reverse charge mechanismu a podmínky vzniku provozovny ve vybraných zemích EU. Naplňování snah vedoucích k dosažení stěžejního cíle daňové politiky EU, a to odstranit rozdíly v daňových systémech jednotlivých členských zemí, zejména prostřednictvím minimalizace disparit v dopadech na hospodářskou soutěž a usnadnění volného pohybu zboží, služeb, osob a kapitálu na jednotném trhu EU, a tak přispět ke zlepšení fungování jednotného trhu.

DPH, EU, dodání zboží, registrace, provozovna

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