

Chain Transactions in Dropshipping

Part Three.

Alternative: D orders the parcel transport in Poland himself

If the actor who orders the transport in the chain business is **in the middle of the chain**, i.e. a taxpayer who acts both as an acquirer and as a seller in the chain transaction, both Hungarian VAT law and German VAT law and the Community VAT Directive **assume that he ordered the transport as a buyer (customer)**, but this presumption can be **refuted** by the parties.

The definition of the **buyer or seller quality** is very important, because if the middleman orders the transport as buyer, the first transaction between the Polish supplier and D is considered an active delivery. If he orders the transport as a seller, the final transaction between D and the end consumer becomes the active delivery. That is, in the case of an international chain transaction, **the place of performance of the active delivery transaction is different** when the middleman orders the carriage as the seller and different when he orders the carriage as the buyer.

Let us examine whether the place of performance of the transaction and thus the Member State whose VAT rules are to be applied will change:

Since D is a company registered in Germany, we also have to fall back **on German VAT law**:

If a middleman, i. H. D, ordered the transport, this is not enough. According to the German Value Added Tax Act (Section 6a Paragraph 3 Clause 5 UStG-E), the Polish manufacturer

must **indicate the (own) Polish VAT identification number**. Only then does he recognize the German VAT law as D, as a middleman who resells the goods. It is important that the VAT number is provided before the goods are shipped. Such **notification** requires active participation that the VAT identification number should of course be checked **in the EU database**. In the case of recurring business relationships, it is advisable for the intermediary to keep this confirmation at least in print or to save it in the computer system.

All of this is not enough to achieve the status of a middleman. According to Section 6a of the German VAT Act in accordance with Art 36a of the Community VAT Directive, the Polish seller must submit **summary declarations** to the Polish tax authorities that contain the correct information.

This provision is in perfect accordance with Article 36a Paragraph 2 of the VAT System Directive, according to which an intermediary's transport order can only be taken into account if he has previously informed the seller of the VAT identification number that was issued to him in the country of dispatch, in this case in Poland.

However, the German VAT law also stipulates that the intermediary must have a tax number in another Member State of the Community, as is the case with D, since - as already pointed out - D in this specific case must have a **Polish and Hungarian VAT number**.

Section 27 (2) of the Hungarian VAT Act essentially contains the same provisions in this regard. Section 27 (3) stipulates that in this case the place of execution of both transactions (the contract between D and the Polish seller and the contract between D and the end user) is the place of dispatch, i.e. Poland.

An exception, however, is § 29 of the Hungarian Value Added Tax Act **if the consumer is a private person without a tax number.**

If the consumer is a private individual, essentially the first transaction (between the Polish manufacturer and D) is subject to VAT, including Polish VAT (standard rate 23%), but D can claim it back in Poland as he can prove the resale that second transaction between D and the end user, it would be VAT-free if the end user had a tax number. However, since the end consumer is a private consumer, the VAT exemption is lost. The only question here is which country is subject to VAT after the second transaction. If the rule of Section 29 of the VAT Act applies in Hungary, as long as D reaches net sales of EUR 35,000, the Polish VAT must be declared and paid in Poland. **If the threshold of EUR 35,000 is reached, the Hungarian VAT** will be declared and paid in Hungary after the further sales.

In this case D must of course use the **Polish tax number** and then, after reaching the threshold, the **Hungarian tax number.**

If the consumer is not domiciled in Hungary, the second delivery of goods is taxable, but he must declare and pay Polish VAT at the place of dispatch in D Poland, and the upper limit of € 35,000 no longer applies, unless the VAT Act of The country of destination provides a similar rule and, of course, a threshold limit is also provided here, as in Hungary.

Summary

If the end consumer is a private consumer and the courier service is commissioned by the Polish manufacturer, the VAT must always be declared after the transaction in the

destination Member State, i.e. in the consumer's place of residence and taxed at the VAT rate specified there. Joint sales in the first transaction (between Polish manufacturer and D) are taxed with 0% VAT.

Budapest 12th April 2021