

INTRA-COMMUNITY TRIANGULAR TRANSACTIONS IN GOODS

1. The concept of intra-Community triangular transactions

“Intra-Community triangular transaction” means a consistent transfer of ownership or limited real rights on a product from a supplier, who is registered for VAT purposes in a Member State, to an intermediary registered for VAT in another Member State, to a final recipient registered for VAT in a third Member State, where transport is carried out directly from the Member State of registration of the supplier to the Member State of the final recipient. Unlike intra-Community supply and intra-Community acquisition, where only two persons are involved - the supplier and recipient of the goods - in the case of a triangular transaction, there is a third party involved - an intermediary. The triangular transaction scheme is referred to in Art. 141 of Directive 2006/112¹, and the provision is transposed into art. 15 of the Vat Act.

A triangular intra-Community transaction (supply) of goods under Art. 15 of the VAT Act occurs where the following cumulative conditions are fulfilled:

- the supplier of the goods (transferor) is registered in a member-state;
- the recipient of the goods is registered for VAT purposes in a Member State other than the Member State of the supplier;
- the intermediary is a person registered for VAT in a Member State other than the Member States where the supplier and recipient are registered for VAT purposes;
- the goods are subject to a consistent supply (transfer of ownership or limited rights) by the supplier of the intermediary and then to the final recipient;
- the goods are transported directly from the Member State of the supplier (transferor) to the Member State of the recipient

¹ Art. 141 of Directive 2006/112.

Each Member State shall take specific measures to ensure that VAT is not charged on the intra-Community acquisition of goods within its territory, made in accordance with Article 40, where the following conditions are met:

(a) the acquisition of goods is made by a taxable person who is not established in the Member State concerned but is identified for VAT purposes in another Member State;

(b) the acquisition of goods is made for the purposes of the subsequent supply of those goods, in the Member State concerned, by the taxable person referred to in point (a);

(c) the goods thus acquired by the taxable person referred to in point (a) are directly dispatched or transported, from a Member State other than that in which he is identified for VAT purposes, to the person for whom he is to carry out the subsequent supply;

(d) the person to whom the subsequent supply is to be made is another taxable person, or a non-taxable legal person, who is identified for VAT purposes in the Member State concerned;

(e) the person referred to in point (d) has been designated in accordance with Article 197 as liable for payment of the VAT due on the supply carried out by the taxable person who is not established in the Member State in which the tax is due

- the supplies are taxable and effected for consideration.

Therefore, in a triangular transaction there are two intra-Community supplies and two intra-Community acquisitions:

1. intra-Community supply between the transferor and the intermediary;
2. an atypically exempt intra-Community acquisition by the intermediary;
3. an atypical intra-Community supply by the intermediary to the recipient;
4. an intra-Community acquisition by the recipient. This division of the triangular transaction is conditional, since the VAT Act specifically excludes the presence of an intra-Community supply in the case of pt. 3 (art. 7, para. 5, pt. 6 of the VAT Act) and intra-Community acquisition in the case of pt. 2 (Art. 13 para. 4, pt. 6 of the VAT Act).

In the case of an intra-Community triangular transaction:

- The intermediary is not subject to VAT taxation on the acquisition effected by him²,
- The supply between the intermediary and the acquirer is not an intra-Community supply (Art. 7, para. 5, pt. 6 of the VAT Act)
- the acquisition of goods by the intermediary is not an intra-Community acquisition (Art. 13, para. 4, pt. 6 of the VAT Act)
- The acquirer charges and pays VAT.

In the triangular transaction, the intermediary is not a direct representative of the supplier or the recipient, i.e. the intermediary is not acting on behalf of others for hire. The intermediary acts in the triangular transaction as the owner of the goods. The VAT Act is not interested in the internal relations between the supplier and the intermediary, as long as there is a transfer of ownership or limited real rights over the goods. The intermediary may not be a direct representative of the supplier, but might be an indirect representative, i.e. to act in his relations with the final recipient on his own behalf but at the expense of the supplier.

The intra-Community triangular transaction may be illustrated by the following example:

Supplier A (a company registered for VAT purposes in Germany) supplies goods to company B (a company registered for VAT purposes in Bulgaria). The goods are transported directly from Germany to the recipient in Greece - C (a company registered for VAT purposes in Greece). In this example, we are faced with a classic triangular transaction. There is a simple chain transaction between the three countries registered in different Member States. The example leads to the following conclusions:

1. the supply between A and B represents an intra-Community supply;
2. the intermediary B performs an "intra-Community acquisition" in Bulgaria, which is exempt from VAT taxation
3. there is no intra-Community supply between the intermediary B and the recipient C
4. there is an intra-Community acquisition effected by C.

In the triangular transaction, VAT will be charged and will be due only by C - the final recipient of the goods.

² This supply is exempt pursuant to art. 65, para. 2, point 4 of the VAT Act.

It should be noted that there will be no triangular transaction if more than three persons registered for Vat purposes participate in the supply, even if all of them are located in different Member States.

The triangular transaction requires supply of the same goods.

If the transferor A supplies to B (intermediary) 100,000 tons of rice, which B delivers to C, there will be a triangular transaction. But if B supplies corn, there will be no triangular transaction.

If the intermediary delivers to the acquirer a smaller quantity of goods than he acquired from the transferor, the triangular transaction will apply only for the quantities actually delivered.

2. Chargeable event in a triangular transactions

As is the case with ICA and ICS, the chargeable event in an intra-Community triangular transaction occurs on the same date on which the chargeable event occurs upon supply of the goods on the territory of the Republic of Bulgaria (Art. 63 para. 1 and Art. 51 of the VAT Act).

If we take the example provided in point 1, the chargeable event for the supply between A (a company registered for VAT in Germany) and the intermediary B (a company registered for VAT in Bulgaria) will occur under the VAT legislation of Germany. The exempt intra-Community acquisition for B will occur when B acquires the property.

Company B, acting as an intermediary in a triangular transaction, is required to document the supply of goods to the acquirer in a triangular transaction by issuing an invoice, indicating the VAT identification number of C. As grounds for not charging tax by B - intermediary in the triangular transaction - the invoice shall indicate "Art. 141 of Directive 2006/112" (art. 114, para. 3 of the VAT Act).

The chargeable event for C will be in compliance with the laws of the Republic of Greece. The tax will be payable by the acquirer C in Greece.

A triangular transaction with a place of performance in Greece under the terms of the above example requires the following conditions to be met:

- intermediary B in a triangular transaction acquires goods from A under its VAT identification number in Bulgaria;
- The intermediary carries out a subsequent supply of goods to the acquirer C, issuing an invoice stating the VAT identification number of the acquirer C;
- the intermediary declares the supply to the acquirer in a VIES statement under art. 125, para. 2 of the VAT Act.

Assuming that B is not an intermediary, but an acquirer, and C is the intermediary, then B (a company registered for VAT in Bulgaria), pursuant to Art. 82, para. 3 VAT will pay VAT in Bulgaria.

3. Chargeability of tax in case of a triangular transaction

In a triangular transaction pursuant to Art. 82, par. 3 of the VAT tax is payable by the acquirer. In a triangular transaction, the VAT Act specifies precisely who shall pay the tax in a triangular transaction, but not when it is chargeable. Since the acquirer in the triangular transaction does not affect an intra-Community acquisition pursuant to art. 13 para. 4 pt. 6 of the VAT Act, the tax would be chargeable under Art. 25 of the VAT Act. The rule of art. 63 of the VAT Act on the chargeability of tax in an ICA will not be applied. This means that in a triangular transaction tax will be chargeable

on the date of occurrence of the chargeable event, according to Art. 25, para. 6 of the VAT Act. The acquirer in the triangular transaction is the payer of VAT.

4. Place of performance of a triangular transaction

The place of supply of goods by an intermediary in a triangular transaction to an acquirer in a triangular transaction is the Member State, where the acquirer in the triangular transaction is registered for VAT purposes (Art. 17, para. 3 of the VAT Act). This means that in the triangular transaction, VAT is chargeable and is payable by the acquirer in the triangular transaction when all of the conditions of Art. 15 of the VAT Act are met.

In a triangular transaction, the place of the acquisition is in the Member State where the goods are dispatched or their transportation ends, if the following cumulative conditions are met:

1. the intermediary in the triangular transaction acquires goods under an identification number other than that of the Member State where the goods arrive,
2. the intermediary performs a subsequent supply to the acquirer in the triangular transaction,
3. the intermediary issues an invoice for the supply meeting the requirements of Art. 114 of the VAT Act, which states that he is an intermediary in a triangular transaction and the tax is payable by the acquirer. The grounds for not charging VAT indicated in the invoice shall be "Art. 141 of Directive 2006/112",
4. the intermediary declares the supply in the VIES statement for the tax period.

If the intermediary fails to comply with the requirements of Art. 62, para. 5 of the VAT Act, he will have to charge VAT on the intra-Community acquisition, and not the acquirer.

Art. 9, para. 2 of the RAVATA in conjunction with Art. 62, para. 5 of the VAT Act sets the conditions under which the intermediary is exempt from VAT taxation, i.e. there is an intra-Community triangular transaction. The intermediary shall not charge and shall not pay VAT if he has the following documents:

- an invoice issued by the transferor in the triangular transaction, stating the identification number of the intermediary under Art. 94, para. 2 of the VAT Act,
- an invoice under art. 79, para. 2 pt. 1 of the RAVATA issued by the intermediary of the acquirer in the triangular transaction, stating the VAT number of the acquirer in the triangular transaction, issued by the Member State where the goods arrive,
- a VIES statement for the relevant tax period in which the supply is declared in connection with the invoice issued by the intermediary,
- a written confirmation by the acquirer in the triangular transaction, certifying that the goods are received. The latter shall indicate the date and place of receipt, type and amount of goods, type, make and registration number of the vehicle, which is engaged in the transportation, name of the person who provided the goods.

If the intermediary does not obtain the documents under Art. 9, para. 2 of the RAVATA prior to the expiration of the tax period following the tax period in which the tax on the intra-Community acquisition has become chargeable, the place of performance of the triangular transaction will be within the territory of the country (Bulgaria) and the tax will be chargeable by the intermediary.

If the intermediary obtains the documents under Art. 9, para. 2 of the RAVATA later on, he shall adjust the result for the period. The adjustment shall be made by canceling the report.

5. Taxable amount for Triangular Transactions

The taxable amount for triangular transactions does not have any specifics. It is determined applying the general procedure - Art. 26 of the VAT Act. The taxable amount of each supply will be formed according to the legislation applicable to the persons registered in the different Member States.

6. Right of Deduction of Tax Credit in a Triangular Transaction

In order for the right of deduction for the acquirer in a triangular transaction to arise and be exercised, the conditions of Art. 69 and Art. 74 of the VAT Act shall be fulfilled and the restrictions under Art. 74 of the VAT Act should not be present. As already noted, pursuant to art. 82, para. 3 of the VAT Act, the tax in a triangular transaction is payable by the acquirer. The acquirer, who has a VAT registration in Bulgaria, shall issue a report charging the tax. The report shall be issued not later than 15 days from the date on which the tax became chargeable.

The acquirer in a triangular transaction may exercise their right of deduction for the tax period during which the right has occurred or in any of the following 12-month fiscal periods. The right of deduction shall be exercised by the acquirer by:

1. including the amount of the tax credit upon determining the result of the tax period in the statement under art. 125 of the VAT Act for the same tax period;
2. indicating the document under Art. 71 pt. 2 of the VAT Act in the purchase and sales records under art. 124 of the VAT Act.

7. Absence of a triangular transaction

There will be no triangular transaction where:

- the supplier of the goods (the transferor) is not registered for VAT purposes in the Member State from which the goods are dispatched or transported;
- the recipient of the goods is not registered for VAT purposes in a Member State other than the Member State of the supplier;
- the intermediary is not registered for VAT purposes in a Member State other than the Member States where the supplier and recipient are registered for VAT;
- the goods are not transported directly from the Member-state of VAT registration of the supplier (the transferor) to the Member State in which the recipient is registered for VAT purposes;
- where the intermediary does not acquire the goods under an identification number in a Member State, other than the Member State of the supplier and the recipient;
- where the intermediary does not issue an invoice for the supply indicating that he is an intermediary in a triangular transaction and the tax is payable by the acquirer
- where the supplies are not effected for consideration.

It should be noted that the above presents the most important cases of absence of a triangular transaction. There are other various hypotheses of absences of intra-Community triangular transactions, but they may not be exhaustively listed.

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