DOI: 10.52694/LES.I/2025.9

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# The structure of intra-Community transactions as a fundamental source of abuse in the value-added tax system

# Struktura transakcji wewnątrzwspólnotowych jako podstawowe źródło nadużyć w systemie podatku od wartości dodanej

**Abstract:** The reliance on import documentation alone for intra-Community supply of goods (ICS) and intra-Community acquisition of goods (ICA), without any physical verification mechanisms, creates opportunities for abuse within the value-added tax (VAT) system. Typically, properly prepared documents, which serve as proof of fictitious delivery of goods, are exploited in VAT carousel schemes to fraudulently reclaim tax refunds. One potential approach to reforming this system is to replace the ICS and ICA framework with a taxation model based on the place where the transaction actually takes place.

**Keywords:** intra-Community transactions, tax, tax fraud

**Streszczenie**: Poleganie wyłącznie na dokumentacji importowej w przypadku wewnątrzwspólnotowej dostawy towarów (WDT) i wewnątrzwspólnotowego nabycia towarów (WNT), bez jakichkolwiek mechanizmów weryfikacji fizycznej, stwarza możliwości nadużyć w systemie podatku od wartości dodanej (VAT). Zazwyczaj odpowiednio przygotowane dokumenty, które służą jako dowód fikcyjnej dostawy towarów, są wykorzystywane w karuzelowych oszustwach VAT w celu nieuprawnionego uzyskania zwrotu podatku. Jednym z możliwych kierunków reformy

tego systemu jest zastąpienie mechanizmu WDT i WNT modelem opodatkowania opartym na miejscu faktycznego dokonania transakcji.

**Słowa kluczowe:** transakcje wewnątrzwspólnotowe, podatek, oszustwa podatkowe

## Introduction

The structure of EU regulations concerning the taxation of intra-Community transactions and the application of the 0% VAT rate is being exploited for the purpose of value added tax (VAT) fraud within the European Union. Losses resulting from such practices are estimated to amount to tens of billions of euros annually. A proposed approach to strengthening the system involves amending the regulatory framework to shift the place of taxation for such transactions to the Member State in which the goods are delivered. The necessity for reform in this area may have significant implications both for the national budgets of EU Member States and for the financial resources of the European Union itself. The issue presented by the author may contribute to the initiation of legislative changes in accordance with the proposed *de lege ferenda* recommendations. The study applies the dogmatic-legal method, based on the analysis of legal provisions, case law, positions of tax authorities, and legal doctrine in the field of tax law.

## The Evolution of Intra-Community Transaction Settlements

Initially, the legal framework governing value-added tax (VAT) was regulated by the Sixth Council Directive of 17 May 1977, No. 77/388/EEC, which aimed to establish a common system of turnover taxes, ultimately enabling the creation of a single market that would foster fair competition and resemble a true internal market[1]. The legal provisions concerning VAT taxation of transactions involving the supply of goods

[1] Council Directive of 17 May 1977, No. 77/388/EEC, on the harmonization of the laws of the Member States regarding turnover taxes – common system of value-added tax: unified tax base, (Official Journal of the European Union L No. 145, p. 1).

by entities from European Union member states within the Union were introduced by Council Directive 91/680/EEC of 16 December 1991, which complemented the common VAT system by eliminating fiscal borders[2]. This directive incorporated a new Title XVIa into the aforementioned Sixth Directive, titled *"Transitional Provisions on the Taxation of Trade Between Member States"*.

As a result, intra-Community supply of goods (hereinafter ICS) and intra-Community acquisition of goods (hereinafter ICA) were also considered taxable activities under VAT. Furthermore, the Directive defined ICA as the acquisition of the right to dispose of movable goods as an owner, which are sent or transported to the purchaser by or on behalf of the seller, or by the purchaser, in a Member State other than the one from which the goods are sent or transported[3].

It was established that the place of supply of goods sent or transported by the supplier or on its behalf from a Member State other than the destination country of the goods sent or transported (and thus also the place of taxation of these transactions) is the location where the goods are situated at the time the shipment or transport to the purchaser is completed. In this way, the place of taxation for intra-Community supply of goods (ICS) was also determined. Based on Article 28b (a) of Directive 77/388/EEC, the place of taxation for intra-Community acquisition of goods (ICA) is the location where the goods are situated at the time the shipment or transport to the purchaser is completed.

It was established that ICS would be exempt from VAT with the right to deduct input tax arising from invoices confirming the acquisition of goods and services related to the performed activities, while ICA is subject to the tax rate applicable to the supply of similar goods within the domestic territory. As a result of such Directive provisions, ICS allowed for the refund of VAT on services and goods acquired in connection with such a supply, whereas ICA remained neutral in the tax settlement.

The introduction to Council Directive 91/680/EEC of 16 December 1991 clearly emphasized that Article 8a of the Treaty establishing the European Economic Community[4] defines the internal market as an area

[2] Council Directive of 16 December 1991 supplementing the common system of value-added tax, (Official Journal of the European Union L No. 376, p. 1).

[3] K. Lewandowski, P. Fałkowski, *Dyrektywa VAT 2006/112. Komentarz*, C.H.Beck, 2012 r., Legalis.

[4] The primary law of the European Union, the Treaty establishing the European Economic Community and the European Atomic Energy Community, signed on 25 March 1957, entered into force on 1 January 1958, and are referred to as the Rome Treaties.

without internal borders, and that fiscal controls at internal borders would ultimately be abolished as of 1 January 1993, in relation to all transactions between Member States.

The Directive established a transitional period starting from 1 January 1993, during which provisions aimed at facilitating the transition to the final system of taxation of trade between Member States, which remains a medium-term goal, would be implemented. Initially, the transitional regulations came into effect for a period of four years and were to remain in force until 31 December 1996, until they were replaced by the final system of taxation of trade between Member States, based on the principle of taxing goods and services in the country of origin.

## EU Regulations in Force

The transitional period lasted until 1 January 2007, when the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax came into force. This Directive introduced comprehensive regulations on intra-Community transactions, which remain in effect to this day[5].

There is no doubt that one of the reasons for subjecting ICA and ICS to the VAT system was the problems related to the proper functioning of these procedures in individual Member States of the European Union, where tax frauds and competition distortions were observed.

It should be noted, in line with the case law of the Court of Justice of the European Union (CJEU), that every intra-Community acquisition of goods corresponds to a supply exempt from taxation in the Member State where the shipment or transport began. Furthermore, the EU case law emphasizes that intra-Community supply of goods and intra-Community acquisition of those goods constitute, in fact, the same single economic transaction[6].

An ongoing and crucial issue remains the documentation of ICS and ICA, which is regulated by Article 45a of Implementing Regulation

[5] Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax, (Official Journal of the European Union L No. 347, p. 1).

[6] Judgment of the Court of Justice of the European Union (CJEU) of 6 April 2006, Case *EMAG Handel Eder OHG v. Finanzlandesdirektion für Kärnten,* www.curia.europa.eu, Legalis 74517; and Judgment of the Court of Justice of the European Union (CJEU) of 27 September 2007, Case The Queen, at the request of Teleos plc and others v. Commissioners of Customs and Excise, www.curia.europa.eu, Legalis 89176.

282/2011 establishing measures for the implementation of Directive 2006/112/EC on the common system of value-added tax[7].

According to the above provisions, for the application of the exemptions established in Article 138 of Directive 2006/112/EC, it is presumed that the goods were dispatched or transported from a Member State to a destination outside its territory but within the territory of the Community, inter alia, provided that:

a) the seller indicates that the goods were dispatched or transported by him or by a third party acting on his behalf, and is in possession of at least two pieces of evidence that are not contradictory to each other, or the seller is in possession of any single evidence as specified in the provision;
b) the seller is in possession of the following documents: a written declaration from the purchaser confirming that the goods were dispatched or transported by the purchaser or by a third party acting on behalf of the purchaser, and at least two pieces of evidence specified in the Directive that are not contradictory to each other.

Under the new regulations contained in Implementing Regulation 282/2011 (introduced by Regulation 2018/1912), the list of documents confirming the export of goods for the purposes of applying the aforementioned presumption differs depending on whether the transport is organized by the supplier of the goods or by the purchaser[8]. Failure to meet the conditions introduced by Article 45a of Implementing Regulation 282/2011 does not mean that the 0% rate will not apply. In such a case, the supplier will need to prove the export in another way, in accordance with the existing VAT regulations[9].

It should be emphasized once again that the presumption of export of goods from one Member State to the territory of another is primarily based on documents, which include the following:

– documents related to the shipment or transport of goods, such as a signed CMR waybill, bill of lading, air freight invoice, or invoice from the goods carrier;

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[7] Council Implementing Regulation No. 282/2011 of 15 March 2011 establishing measures for the implementation of Directive 2006/112/EC on the common system of value-added tax (Official Journal of the European Union L No. 77, p. 1).

[8] See Council Implementing Regulation No. 2018/1912 of 4 December 2018 amending Implementing Regulation No. 282/2011 regarding certain exemptions related to intra-Community transactions, (Official Journal of the European Union L No. 311, p. 10).

[9] W. Modzelewski (ed.), *Komentarz do ustawy o podatku od towarów i usług,* wyd. 28, 2025 r., Legalis.

– insurance policy related to the shipment or transport of goods, or bank documents confirming payment for the shipment or transport of goods;
– official documents issued by a public authority, such as a notary, confirming the arrival of goods in the destination Member State (such a regulation is not provided for in the Polish Act on Goods and Services Tax).
– receipt issued by the warehouse operator in the destination Member State, confirming the storage of goods in that Member State.

Polish administrative courts clearly emphasise that the taxpayer's right to apply the 0% value-added tax rate to intra-Community supply of goods is conditional upon possessing documents that unequivocally confirm that the goods were exported from Poland to the territory of another Member State. This export of goods occurs as a result of a transaction with an identified purchaser, for the purpose of transferring the right to dispose of the exported goods as an owner to that specific entity[10]. Furthermore, it is necessary for the taxpayer to have evidence confirming the export of goods from the country's territory and the delivery of those goods to the entity listed on the invoice. Only in such a case can it be considered that a supply of goods has taken place, i.e., the transfer of the right to dispose of the goods as an owner to the entity listed on the invoice and in the documents mentioned above[11].

At the same time, Article 45a(2) of the Implementing Regulation specifies that the tax authority may rebut the presumption established under paragraph 1, i.e., that the goods were dispatched or transported from a Member State to a destination located outside its territory but within the territory of the Community. Such a provision is also not included in the Polish Act on Goods and Services Tax.

In light of the new EU regulations, in relation to taxpayers who, from 1 January 2020, meet the documentary requirements set out in the amended Regulation 282/2011, the so-called rebuttable presumption applies, according to which it is assumed that the goods were dispatched or transported from a Member State to a destination located outside the

[10] Judgment of the Voivodeship Administrative Court in Kraków of 12 May 2022, case file no. I SA/Kr 1229/21, CBOSA.
[11] Judgment of the Voivodeship Administrative Court in Lublin of 6 October 2023, case file no. I SA/Lu 284/23, CBOSA.

country's territory but within the territory of the EU (hereinafter also referred to as the "presumption")[12].

## ICS and ICA in the Polish Tax Law

The VAT Directives were implemented into Polish national law, resulting in the Act of March 11, 2004, on goods and services tax[13]. It is up to Member States to determine the conditions for applying the exemption for intra-Community supplies of goods. However, when exercising their competences, Member States should adhere to the general principles of law, which are part of the legal order of the European Union[14].

ICA is subject to VAT when an entity in one Member State acquires the right to dispose of goods as an owner, and the goods are subsequently transported to the territory of another Member State. It is of no relevance who physically transports the goods or on whose behalf the transportation is carried out, as the goods, following the supply, may be sent or transported either by the supplier, the buyer, or on their behalf[15].

According to Article 42(3) of the VAT Act, the documents jointly confirming the delivery of goods subject to ICS to the purchaser located in a Member State other than the country's territory are as follows:

– transport documents received from the carrier (forwarder) responsible for the export of goods from the country's territory, which clearly indicate that the goods have been delivered to the destination point in a Member State other than the country's territory – in cases where the transportation of goods is outsourced to a carrier (forwarder);
– a specification of individual items of the cargo.

As highlighted in the case law, the documents specified in Article 42(11) of the VAT Act should be evaluated by the tax authorities when the "primary" documents mentioned in Article 42(1)(2) and (3) raise doubts[16]. Such evidence may also include other documents indicating

[12] Individual interpretation of the Director of the National Tax Information (Krajowa Informacja Skarbowa) of 26 September 2022, No. 0111-KDIB3-3.4012.400.2022.1.MAZ, published at http://sip.mf.gov.pl (accessed on 10 March 2025).

[13] The Act of March 11, 2004, on Goods and Services Tax (consolidated text, Journal of Laws of 2024, item 361), hereinafter referred to as the VAT Act.

[14] T. Michalik, Vat 2024, Komentarz, wyd. 17, Legalis.

[15] Judgment of the Voivodeship Administrative Court in Warsaw of May 28, 2009, case no. III SA/Wa 216/09, CBOSA.

[16] Judgment of the Supreme Administrative Court of April 4, 2023, case no. I FSK 2256/18, CBOSA.

that an intra-Community supply has taken place, particularly: commercial correspondence with the buyer, including their order; documents relating to insurance or freight costs; a document confirming payment for the goods or a document certifying the discharge of the obligation (e.g., in the case of a gratuitous supply); proof confirming the acceptance of the goods by the buyer in the Member State other than the country's territory.

To summarize this part of the considerations, it should be stated that, generally speaking – with a few exceptions – all conditions for applying the 0% VAT rate to ICS in the Polish VAT Act are based on declarations and presumptions. Furthermore, the Polish law explicitly refers to these as "evidence" confirming ICS to the purchaser. While EU regulations clearly indicate a presumption, the ultimate effect is the same, i.e., such an intra-Community transaction is based solely on the correctness and completeness of the documents. In the case of documents collected under the provisions of the Polish VAT Act, the burden of proof regarding the movement of goods still lies with the taxpayer. In this latter case, due to the open-ended nature of the list of evidence that the taxpayer may use, the authorities may request the presentation of additional documents to prove the fact of the movement of goods, particularly when the transaction is atypical[17].

Therefore, in order to apply the 0% VAT rate to intra-Community supplies of goods, it is sufficient for the taxpayer to possess only some of the evidence referred to in Articles 42(3) and (4) of the Polish VAT Act, supplemented with documents listed in Article 42(11) of this Act or other evidence in the form of documents mentioned in Article 180(1) of the Polish Tax Ordinance[18]. It is important that these documents, when considered together, confirm the fact of the export and delivery of the goods subject to the intra-community supply to the purchaser located in the territory of a Member State other than the territory of the country[19]. The aforementioned line of administrative court rulings is consistent with the resolution adopted by the Supreme Administrative Court in 2010, which emphasized that the wording of Articles 42(3) and (4) of the

[17] A. Hołda (ed.), Instrukcje księgowe i podatkowe, C.H.BECK, 2022 wyd. 4, Legalis.

[18] The Act of August 29, 1997, the Tax Ordinance (consolidated text, Journal of Laws of 2025, item 111).

[19] Judgment of the Supreme Administrative Court (NSA) of May 15, 2024, case reference I FSK 1374/20; Judgment of the Supreme Administrative Court (NSA) of February 28, 2024, case reference I FSK 145/20; or Judgment of the Supreme Administrative Court (NSA) of April 25, 2023, case reference I FSK 59/19, CBOSA.

Polish VAT Act points to the basic catalogue of documents confirming the export of goods and their delivery to another Member State, which may be supplemented with additional documents specified in Article 42(11) of the Polish VAT Act[20].

In this context, it should be emphasized that in the case where the taxpayer does not possess the transport document referred to in Article 42(3)(1) of the VAT Act, other documents from the carrier may also be significant for evidential purposes, such as an invoice for the transportation of goods or another document confirming the completion of the transportation of goods by the carrier. Similarly, regardless of the interpretation of the term "transport document," documents generated within a system used to track shipments when goods are dispatched via courier companies should not be deprived of evidential value for the purpose of applying the 0% VAT rate[21].

Analysing these legal provisions, it may be concluded that such documents can, at best, substantiate the occurrence of ICS. However, they cannot be regarded as conclusive evidence confirming the execution of an activity entitling the application of the 0% VAT rate. Therefore, it may be asserted that to benefit from the preferential 0% rate for ICS, it is sufficient to ensure the accuracy and validity of the documents specified by the law.

A fundamental drawback of this taxation system for ICS and ICA is, inter alia, the absence of official documentation confirming the export of goods from one state and their subsequent importation into the territory of another state. Additionally, there is a lack of mechanisms to verify the accuracy of information included in transport documents or other documents intended to substantiate the transaction, such as the quantity and nature of the goods, the unit price and value of the goods, and the place of delivery. Moreover, from the perspective of tax authorities, it is extremely difficult to verify who, when, and by what means of transport the goods were moved (transport documents often lack vehicle registration numbers, carrier company details are either illegible or incomplete, and sometimes several parties involved in the transport are listed on the same document, without providing clear evidence of whether the

[20] Resolution of the Supreme Administrative Court (NSA) of October 11, 2010, case reference I FPS 1/10, CBOSA.

[21] B. Głowacka, Dokumentowanie wewnątrzwspólnotowej dostawy towarów – wybrane aspekty, Doradztwo podatkowe, nr 5/2020, Legalis.

goods have left Poland and arrived at the specified destination). Another significant issue is the effective and efficient exchange of international information regarding individual taxpayers and their business operations.

At this point, it is also important to highlight the close connection between ICS and ICA with transport services. It can be asserted that, due to the particular significance of transport documents, it is the transport — and more specifically, the documents verifying this service — that determines whether the transaction is classified as ICS or ICA. Transport documents can also be utilized to legitimize fictitious ICS or ICA transactions in criminal activities (for example, falsified documents may be fabricated to demonstrate the execution of a transaction between two or more member states). In a similar situation, the Supreme Administrative Court emphasizes that the possession of a photocopy of a transport document does not satisfy the condition outlined in Article 42(3)(1) of the VAT Act, and only original documents can serve as evidence of a transaction between EU member states[22].

## ICS and ICA – Directions of changes

Considering the above reflections, one may assert that the documents outlined in EU regulations, subsequently implemented into Polish law, can only confirm the execution of the transaction "on paper." These documents do not constitute indisputable evidence confirming the export of goods outside the territory of the seller's state or the delivery of goods to the state designated for the intra-Community purchaser, which is the essence of the matter.

In contrast to the delivery of goods within the country, ICS are subject to a preferential tax rate of 0% (which consequently allows for the possibility of receiving a VAT refund). This makes this transaction, along with the accompanying ICA, frequently exploited in criminal economic schemes (such as chains of fictitious transactions) aimed at VAT fraud. Criminals constantly monitor the weak points of tax authorities in various EU member states and exploit these vulnerabilities to develop their fraudulent tax operations.

[22] The judgment of the Supreme Administrative Court (NSA) of December 3, 2009, case no. I FSK 1301/08, CBOSA.

The entire system is almost utopian, as it functions properly only on the condition that all parties honestly declare their business transactions between EU countries. The lack of border controls has made the entire process extremely easy and highly profitable for many criminal groups. The losses to the EU and national budgets amount to tens of billions of euros annually[23]. In general, ICS and ICA are used in chains of fictitious transactions, which, although confirmed by invoices and other documents compliant with EU or national regulations, do not reflect reality.

The "carousel" mechanism has often been defined by administrative courts, where it was emphasized that in such transactions, trade generally involves real goods[24]. It is not even disputed that the goods described in the questioned invoices could have existed and been moved within the chain of entities issuing invoices. However, the key point is that the movement of goods did not occur within the scope of business activity, and therefore, there were no deliveries resulting from genuine economic transactions. According to the court, not every technical or physical movement of goods constitutes a supply of goods under the VAT Act. The movement of goods between different entities formally registered as businesses does not constitute a supply of goods if it takes place within the framework of a fraudulent scheme that simulates business activity.

The negative effects on the EU economy have been extensively described in the literature, where the ease with which tax fraudsters can commit VAT fraud has been highlighted[25]. The sheer number of cross-border transactions undoubtedly complicates the detection of such fraudulent activities by the responsible state authorities, as well as the conduct of control actions, verification procedures, or tax proceedings in this regard. The vast scale of fraud undoubtedly undermines fair

[23] It is estimated that the annual losses in the EU amount to over €50 billion – Concluded from a major investigation into VAT carousel fraud. EU countries lose up to €50 billion annually, Business Insider, May 7, 2019, electronic version /businessinsider.com.pl/wiadomosci/zakonczono-wielkie-sledztwo-dot-karuzeli-vat-kraje-ue-traca-rocznie-nawet-50-mld-euro/1q5t0p8#:~:text=Niemiecki%20portal%20internetowy%20Correctiv%20opublikował%20wyniki%20dziennikarskiego%20śledztwa,Unii%20Europejskiej%20straty%20w%20wysokości%2050%20mld%20euro.

[24] Judgment of the Supreme Administrative Court of April 12, 2023, case no. I FSK 372/20; Judgment of the Supreme Administrative Court of May 9, 2024, case no. 2275/23; Judgment of the Voivodeship Administrative Court in Poznań of January 18, 2024, case no. I SA/Po 639/23; Judgment of the Voivodeship Administrative Court in Gliwice of December 17, 2024, case no. I SA/Gl 684/24; CBOSA.

[25] A. Krukowski, K. Raczkowski (ed.), *Management of Tax Security Knowledge in Intra-Community Trade, in "Different Faces of Security: From Knowledge to Management"*, Institute for Security and Development Policy, Stockholm, 2010, p. 173.

competition between businesses and poses a threat to the economic security of the member states and, directly, to the European Union as a whole.

When structuring their business based on current regulations, an entity selling goods to another Member State benefits from the 0% VAT rate and typically applies for a tax refund. The financial advantage gained from this arrangement constitutes "clean" money, an element of economic profit that is exempt from any charges. In such cases, the company may even sell the goods at purchase prices, generating no profit from such transactions. In this context, the supplier benefits from a tax advantage, while the tax authority verifying the case can only rely on the provided documents. The presented scheme of economic events greatly complicates verification activities, particularly those concerning the accuracy of VAT refunds related to ICS.

The change in the structure of the most important tax in the EU, namely value-added tax (Directive 112/2006/EC), is one of the most urgent proposals for the development of EU taxes. New legal solutions regarding the taxation of intra-Community transactions should put an end to the pathological exploitation of regulations, where the only requirement for applying the 0% rate is to correctly complete the documents specified in the law. A new method of accounting for intra-Community transactions could be based on the premise of taxing the transaction in the country of delivery of the goods. In such a system, it would be the buyer who would have the right to reduce their "output" tax by the input tax resulting from the purchase invoice. This approach would require a recalculation of prices by all entities involved in intra-Community transactions. The supplier would no longer benefit from the 0% rate, meaning they would need to calculate their profitability level, while the buyer would have the possibility to reduce their value-added tax by the amount of VAT indicated on the purchase invoice.

In general, the tax authorities of the country to which the goods were delivered would have an optimal situation regarding such a method of tax settlement, as the taxpayer, who benefits from settling the tax by reducing their liability, would fall under the jurisdiction of that country.

## Summary

The issue of strengthening the EU tax system, in light of large-scale fraud amounting to over EUR 50 billion annually (in VAT alone), has become one of the European Union's key priorities for reform. A swift legislative response could not only protect the budgets of EU Member States from significant losses but also contribute to the effective combatting of economic crime across Europe.

As *de lege ferenda* conclusions, primarily addressed to decision-makers within the EU, it is recommended to introduce a solution based on the settlement of value-added tax in the country of delivery of goods. The model for such a settlement would mirror the domestic delivery of goods within a member state. However, the decision in this regard requires careful consideration and the protection of the interests of those taxpayers who have adapted their businesses, based on intra-EU transactions, to the current legal framework. Undoubtedly, such fundamental changes would require time for businesses to adjust their strategies, and therefore, *vacatio legis* of at least two years would be necessary.

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