Selected problems of value added tax application in the agricultural sector of the European Union internal market

Vybrané problémy aplikace daně z přidané hodnoty v zemědělském sektoru jednotného vnitřního trhu Evropské unie

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Abstract: Tax harmonization in the European Union has the greatest development in the field of value added taxation, but differences still can be found. Those differences influence not only the farming business. The paper is aimed on five European Union member states – Czech Republic, Poland, Romania, Slovak Republic and Hungary. Based on the European Union regulations in the field of value added tax and the practical experience during its application, it is possible to identify the critical areas and to contribute to its correction and to provide the value added tax neutrality and efficiency on the European Union territory.

Key words: value added tax, registration, agricultural enterprise, European Union

Abstrakt: Daň z přidané hodnoty v zemích Evropské unie představuje oblast, ve které harmonizace pokročila zřejmě nejvíce, avšak i zde stále existují podstatné rozdíly v její úpravě a uplatňování, které ovlivňují nejen zemědělské podniky. Článek je zaměřen na pět členských zemí Evropské unie, které do Společenství vstoupily téměř současně – v roce 2004. Jedná se o Českou republiku, Polsko, Rumunsko, Slovensko a Maďarsko, které se stalo členem unie až v roce 2007. Na základě analýzy nařízení Evropské unie v oblasti daně z přidané hodnoty a praktických poznatků z jejich aplikace v oblasti přeshraničních transakcí v jednotlivých zemích, je možné synteticky stanovit v dané problematice kritické oblasti, a tím přispět k nápravě dané situace a zajištění platnosti principu neutrality daně z přidané hodnoty a její efektivní existence na území Evropské unie.

Klíčová slova: daň z přidané hodnoty, registrace, zemědělský podnik, Evropská unie

Value added tax was admitted as the only acceptable form of indirect taxation replacing the multilevel cumulative cascade systems of turnover tax in the EU member states (Nerudová 2005). Tax policy is becoming the part of the EU integration policies. The main aim of the EU tax policy is to eliminate differences in individual tax systems of the EU member states mainly through minimization of disproportions in the impacts on competition and through enabling free movement of goods, services, persons and capital on the EU internal market. There was introduced the value added tax system with differentiated rates, which remained in competency of governments of the individual states in 1973. The primary effort, after the implementation of the value added tax, was to complete the structural harmonization at first and then to try to harmonize the tax rates. The aim of all the above introduced efforts is to contribute to smooth functioning of the internal market (Široký 2007).

The long-term aim of the European Commission is to reduce the differences in national tax systems of the EU member states – either through tax harmonization or through coordination, to not cause threats for smooth functioning of the single market, market distortion, or tax obstacles to the efficient allocation

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of production factors. All the changes in the national value added tax regulations should lead to fulfillment of the generally accepted tax principles, mainly the principle of efficiency, administrative simplicity, flexibility, neutrality and justice (David 2007).

Value added tax represents the field, where the harmonization has the greatest development. The structural harmonization and the harmonization of tax base (serving for tax assessment) have been already done. The taxation of goods during import and export and the intracommunitary fulfillments were also unified. The intention of the European Commission on the value added field is the modernization, simplification and ensuring the uniform application and improving the administrative cooperation. It is evident, that the application and regulation of value added tax in the EU member states is still not uniform. Very often the violation of the principle of tax neutrality takes place. Mainly it is case of the newer member states, where unequal conditions of economic competition take place in spite of the existing level of legislative harmonization.

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MATERIAL AND METHODS

The empirical research in the EU member states was used in this paper. The method of the analysis was applied during the identification of the analyzed phenomena and the method of synthesis was used for the formulation constructions of the unifying character in the final parts of the text. It was also necessary to use the methods of description for description of the actual state of the EU directives and other facts and phenomena in order to create the essential connections based on processing and evaluation of relevant data. Among the others, the method of induction and deduction was used. Their application enabled generalization of the discovered facts and to formulate generally valid principles including their supposed effects.

Except the above stated identification and description of the methods used during the research, it is also necessary to identify and describe the principles of functioning of VAT in this place, and to identify its characters and set it to the historical context.

Value added tax represents general consumption tax – all goods and services are subjected to it. The mechanism of the functioning of tax is very simple. If the taxpayer exercise the economic activity and pays the tax on output, he has the right, in the case that he fulfilled the conditions set by law, to claim the tax deduction. Value added tax represents indirect tax, because the tax is paid in the price of goods and services. The tax is imposed on the dynamic value, concretely on value added. Value added tax also represents the tax in rem set ad valorem. Tax in rem is paid with no respect to the ability of the taxpayer to pay and tax ad valorem is set according to the price of the taxed base. Its amount is set by the percentage from the tax base in monetary unit (Široký 2003). It is collected at every stage of economic activity from the value, which was added within each production stage. It is not included in the costs with the exception of costs of the final consumer. This tax is directly proportional to the price of the product or service, because it is calculated as the percentage part.

During every transaction in the process of production or service, this tax is calculated from the actual price of the product, but it is reduced by the amount, which was imposed from the same title on the previous transaction. It is imposed only on the real value added in the given production stage. The final amount of the tax will then be paid by the final consumer. The taxpayer is a person who sells product (or provides a service) to consumer, because the value added tax is part of the consumer price. Considering the relatively complicated administration, the taxpayers of value added tax are usually bigger subjects, whose turnover exceeds the minimum set by the given state (Hamerníková, Kubátová 1999).

Every country has its own individual tax structure – the share of indirect and direct taxes. Since the middle of the 80s of the last century, there have been becoming stronger the opinions that the shift of tax burden from incomes to consumption (value added tax) is more suitable. But also indirect taxation has its weaknesses.

The most frequent argument of the preference of the consumption taxation to the taxation of incomes is mainly the low tendency to evasion in the case of indirect taxes. This is given by the mechanism of tax liability determination of the subjects. Value added tax is transparent for it is possible to determinate the tax which is the product bearing at any stage of its production. Despite of it, in some countries there is a weak resistance of this tax towards evasions, when claiming the tax deduction in case of export is used without authorization (Kubátová 2003). Value added tax fulfils the basic requirement laid on tax system

– it is neutral. It enables to exempt the production inputs during taxation of consumption. Further, the products with a lower number of production stages are not favoured and it does not contribute to the pressure on vertical integration as the cumulative cascade system of turnover taxes (Široký 2003). The taxpayer will impose the tax only on that part of value, which is added to the product or service by him. In some cases, double taxation still takes place. Under the value added tax system, it is possible to tax the services more effectively in comparison with the turnover tax system. It is also positive in terms of international trade – its mechanism enables to not tax the export and therefore to eliminate the existing distortions. This tax in contrast to the direct progressive taxation does not cause the labor market distortions, does not influence the amount of savings directly and it is less administratively demanding. At last, it is necessary to mention the considerable reliability of the value added tax revenues for the state.

The negative characteristics of value added tax are connected mainly with the process of its implementation. There is existence of real threats of the increase of inflation, considerable administrative costs and compliance costs of taxation. Another negative characteristic of value added tax is its regressive effect and creation of distortions. Mainly the one rate VAT has the regressive impact, for the marginal propensity to consume is decreasing with the increase in the income. A more just taxation of consumption while keeping the principle of ability to pay therefore requires differentiated tax rates.

The harmonization of value added tax in the EU is based on the Council Directive from 17th May 1977 on the harmonization of legislation of member states concerning turnover tax – Common Value Added Tax System: Uniform Tax Base (No. 77/388/EC). The directive introduced the general rules for determination of the tax object, territorial scope, range of subjects, responsibility, tax exemptions and number of other details. The above mentioned rules are designated as the uniform base for VAT assessment. The rules for the tax base and also the tax rates have been revised and changed several times. Every sale of goods and services represents the harmonized value added tax base with the exemption of financial and legal services and capital goods because it is difficult to determine their tax base or where is not obvious, what is actually the tax base (for example new product of the financial markets). Health care, education and other goods which are under the protection of the state are exempted from taxation.

Value added tax has the most convenient characteristics necessary for the maintenance the principle of neutrality in the international trade and that is the reason why it has been introduced as the only acceptable general consumption tax in the EU since 1987. The Council Directive about harmonization of the legislation of member states concerning turnover tax (No. 67/227/EC) from 11th April 1967 stipulates the reason for the necessity of the value added tax introduction. The technique of tax collection enables not only to find out the paid tax at every production stage but it enables a tax refund.

Since the establishment of the internal market in 1993, the temporary principle is valid in the EU states – principle of destination. There are no formalities on the internal state borders anymore and the tax administration is executed by the same authority with no respect to the type of fulfillment (domestic or intracommunitary). Tax administrator is either the tax authority or the customs office. The specific system of control was established – a special identification number was assigned to every subject in the EU which is involved in the international trade with other member states. These numbers are quoted in the documents of the business partner during the business activities. VAT payers are obliged to the detailed registration of all payments and refunds and the tax authorities of member states have to manage all system and ensure it administratively. VAT is then paid by the buyer side (payer of value added tax) in its own state (state of destination) according to the rate valid in this country. The above described mechanism is called the principle of destination, which the EU Commission primarily intended just as a temporary matter. However, this system has proved to be good and that is the reason, why the Commission is not thinking any more about the originally planned implementation of the principle of origin.

Exports to third countries are exempted from value added tax. The principle of origin is valid only in case of the sale to final consumers and that is why the paid value added tax is valid in that state and it is possible to dispose with the goods in the unlimited quantity on the whole EU territory.

Deliveries of goods from mail-order houses taxed by the tax rate valid in the country of destination, or the purchase of cars, gigs and planes, if they are not older than 6 months, are the exemptions. These are taxed in the country of buyer (exactly in the state of registration) with no respect to the country of origin.

Two Council Regulations about the mutual exchange of information were introduced between 1991 and 1992. The first of them, Regulation of the European Parliament and Council No. 638/2004 from 31st March 2004 on statistics of the Community trade with goods

between the EU member states, introduced so called the INTRASTAT – system of data collection for the trade statistics with goods between the EU member states. The duty to report the data through the statistics reporting Intrastat concerns individuals and also legal entities, who will exceed the registration limit and are registered to value added tax in the Czech Republic according to the Government Decree No. 201/2005 of Coll. on statistics digest of the imported and exported goods and the methods of data exchange between the Czech Republic and other EU member states as it results from the changes made by the Government Decree No. 563/2006 of Coll. The registration limit represents the sum of the invoiced amounts to and from abroad for one calendar year. This limit is set on 2 000 000 CZK for import and on 4 000 000 CZK for export.

Exporters and importers, if they have not been obliged to submit these statistics reporting until now, have to continuously follow, whether and from which date they become a reporting unit. The data cover the information about the country of origin or destination, the quantity of goods and the value of the goods according to the classification of the common custom tariff, about delivery times and methods of transportation. Other subjects, which do not reach this limit, provide the required information in the tax return. Filling the data in the statistics reporting Intrastat partially results from the EU integrated tariff called TARIC. It represents the global database of the European Commission, according which the classification of tariffs of goods and customs tariffs, additive customs and excise duties are set. The TARIC also includes the additional measures for export and import of goods from and to third countries.

The second regulation of the European Parliament and Council No. 638/2004 from 31st March 2004 on statistics of the Community trade with goods between the EU member states has implemented the system VIES (VAT Information Exchange System) enabling the exchange of the selected information, for example the exchange of the registration number of subjects and the volume of the accepted and provided taxable fulfillment. This temporary regime is very administratively demanding. However, it has not reached the situation yet, when the transaction inside one market, but between two member states, would be taxed equally. Differences are evident in many aspects, for example already in the conditions of the registration of VAT payers in the member states, or in the tax deduction claim before the registration in the case of creation and non creation of the establishment in the given EU member state. It is also possible to notice in the frame of VAT application considerable differences during the realization of cross border chain trades in the frame of three or more EU member states. The common characteristics of the individual differences are possible to observe mainly in case of the newer EU members states. The paper is aimed at five EU member states (which entered the Community mostly at the same time – in 2004) from the above mentioned reasons. The selected countries are the Czech Republic, Poland, Slovakia, Hungary and Romania, which entered in 2007. Based on the analysis of regulations in the frame of the EU and the practical knowledge from its application in the individual states, it is possible to synthetically set the critical areas in the given problems influencing activity of the agriculture enterprises and to contribute to the correction of the given situation and to ensure the validity of the principle of neutrality of value added tax and its effective existence on the EU territory.

Generally, the selected VAT topic – cross border transactions – can be displayed by the Figure 1. From that figure, the existing relations of subjects and flow of the goods between the EU member states are obvious.

The selected EU member state in the Figure 1 is subsequently considered to be the Czech Republic, Hungary, Poland, Romania and Slovak Republic. As the second selected EU member state, there is considered any other EU member state different from the first selected EU member state. The goods are flowing

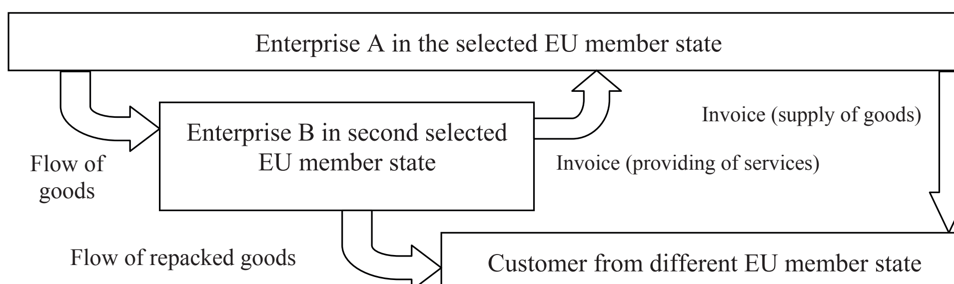

Figure 1. Cross border transactions

from enterprise A to enterprise B, where they are stored for some time and then repacked. After that, it is flowing to the consumer from the selected EU member state (different from the two member states mentioned above). Enterprise B prints out the invoice for the enterprise A for the storage and repacking of the good. Enterprise A then prints out the bill for the final consumer for the supplied goods.

RESULTS AND DISCUSSION

It is necessary to put the selected question of VAT in the EU states to the legal framework of VAT harmonization in the EU in order to be more evident, if the identified imperfections are caused by the relevant regulation or its incorrect application. It is certainly more meaningful and efficient to set and eliminate reasons than only to solve the consequences of imperfections of the existing VAT regulations. The aim of the sixth directive is among others to abolish taxation of import and tax refund in case of export in the cross border trade between the EU member states and to ensure the functioning of the common system of turnover tax, discriminating neither goods nor services according to the place of origin. The rules for tax deduction should be harmonized to the extent that the amount of tax deduction should be calculated by the analogical method in all member states. Member states can apply a special regime including a lump-sum balance for value added tax on output for agriculturists (in case that they are not subjected to the basic regime). If the application of the basic regime of the value added tax or simplified regime leads to difficulties, the member states can apply in the case of farmers lump-sum tax regime. The purpose of the lump-sum tax regime is the compensation of valued added tax paid during the purchase of goods and services to farmers, who are included in the lump-sum tax regime. Percentage rate is considered to be the rate of lump-sum compensation which is set by the individual member states of the EU. Their aim is to substitute value added tax on input to farmers liable to lump-sum tax by the set rate. In the case of necessity, member states set the rates of lump-sum compensation and announce them to the Commission before their application. The rates are based on macroeconomic data, which concern exclusively the farmers liable to lump-sum tax for the previous three years. This regime should not lead to the situation that the farmers liable to the lump-sum tax would gain a higher compensation than is the total value added tax on input. Member states have the possibility to reduce this rate up to zero value. It is possible to round the rate up or down to the nearest half of the percentage point. Member states can set for the forestry, for the various sub-branches of the agriculture and for the fishery different rates of the lump-sum compensation. Rate of the lump-sum compensation is applied on the prices of the delivered agricultural products and provided agricultural services without VAT by farmers liable to the lump-sum tax to persons liable to tax. This compensation eliminates all the other forms of deductions. Every farmer liable to the lump-sum tax can decide according to the rules and conditions set by given member state for application of the basic value added tax regime eventually for the application of the simplified regime.

Based on the provision of the Council Directive No. 79/1072/EEC of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes – arrangements for the refund of value added tax to taxable persons not established in the territory of the country, it is necessary to avoid the situation, when the person liable to tax settled in one member state would be obliged to pay tax, which was invoiced in connection with the delivery of goods or provision of services in other member state, or which was paid for import to other member state, and therefore it was subjected to double taxation (Eur-lex 2007). Further, the differences between the regulations valid in the member states at present which in some cases cause the deflection of the trades and distort the competition have to be eliminated. The introduced rules must not lead to the different treatment of persons liable to tax according to the member state in which they are settled. Every member state has to refund to the person liable to tax not settled in the domestic state, but settled in other member state, the value added tax (in the given conditions), which was collected either in case of providing services or delivering movable asset by other persons liable to tax in the domestic state or at import of goods to the domestic state, if these goods and services are used for the fulfillments stipulated in the sixth directive or for services introduced in this directive. The person liable to tax, which did not deliver any goods and did not provid any services in domestic state, has to submit the application to the relevant authority according to the relevant model and has to enclose the invoice or import documents. Further, he has to prove that he is liable to tax in this state (in which is settled) by the confirmation issued by the relevant state authority, support that in the introduced period he did not deliver any goods and did not provide any services in the domestic state and to commit to refund any gained amount without authorization by the written statement, to gain a claim of tax refund. Person liable

to tax does not have to submit a new confirmation in the period of one year from the date of issuing the first confirmation by the relevant state authorities in which is settled. The member state must not impose to persons liable to tax any other duties than the above introduced, with the exception of the duty to enclose in the special cases, that the application of tax refund is authorized. The application of tax refund has to be related to the invoiced acquisition of goods or services or to import realized in the course of at least three months and one calendar year at most. It can be related also to the period shorter than three months, if this period represents the rest of the calendar year. Applications can concern the invoices and import documents as well, which regard operations executed during the given calendar year. They are submitted to the relevant authorities in the time limit of six months from the end of calendar year in which the tax liability has arisen. If the application is related to the period shorter than one year but longer than three months, the amount has to correspond to the equivalent of 200 EUR in the national currency at least. If the application is related to the period of the calendar year or the rest of the calendar year, the amount has to correspond to the equivalent of 25 EUR in the national currency at least. Member states can round up or down the amount resulting from the conversion to national currency by 10%.

The relevant authorities put a stamp on every invoice or import document to avoid their utilization for the next application and send them back to the person liable to tax in time limit of one month. The decision on application of tax refund has to be announced till six months from the day, when the application with all other documents was submitted to the relevant authority. The tax is refunded before the end of the introduced time limit on the request of the applicant in the member state, where he applied for the refund or in the member state, in which he is settled. In this case, the bank charges for transfer are paid by the applicant. In the case of application rejection, the fact has to be justified properly. It is possible to appeal against it to the relevant authorities of the member state concerned by the forms and in within the time limits, which are set for the application of tax refund submitted by the person liable to tax settled in this state. If the person liable to tax is not settled in the Community, the member states can reject the tax refund or oblige them to fulfill other conditions. Tax is not possible to refund in more advantageous conditions than are the conditions for persons liable to tax settled in the Community.

Delivery of goods, acquisition of goods from other member state, import of goods, provision and receipt of services and transfer or transition of real property is subjected to the value added tax in the Czech Republic. Foreign agriculture enterprises have to be registered for value added tax in the Czech Republic, if they run the economic activities on the territory of the Czech Republic and their turnover exceeds 1 000 000 CZK for the last 12 calendar months, which is in accordance with the Council Directive No. 2006/112/EC from 28th November 2006 on the common value added tax system, where the limit for the Czech Republic is set at 5 000 EUR. In certain cases, the foreign agriculture enterprises not running economic activity on the territory of the Czech Republic can be still obliged to register for value added tax and to pay this tax in the Czech Republic or to set the person for representation in this matter.

All foreign agriculture enterprises have to be identified to value added tax in Hungary, in case that they are executing here the business activity, they are liable to value added tax in Hungary and have the right to tax deduction. The identification number, in the case of delivery of the goods by person established in other member state, must be allocated, if the net total sales exceed the turnover 35 000 EUR per year. Foreign persons, who are not established in Hungary and only execute the transactions and the value added tax is obliged to be paid by the second side of the transaction, do not have to register for value added tax based on the Hungarian law.

Individuals and legal entities performing economic activity on the territory of Poland are liable to value added tax in Poland. If the unit established outside Poland is providing services on the territory of Poland, the tax should be paid by the buyer of the service (reverse charge mechanism). However, a foreign unit can be registered for value added tax in Poland and pay this service according to the basic principle. The registration duty for VAT arises by the exceeding turnover 35 000 EUR expressed in the local currency for the previous tax period.

Foreign agriculture subjects in Romania have the registration duty for value added tax, if they offer goods and services here, which are object of the local regulation of value added tax except the case, when the person liable to payment of the tax is the recipient of the good or service. Also foreign persons executing intracommunitary acquisition of goods in Romania have here the registration duty for value added tax. The registration limit is 200 000 RON in the Romania. The voluntary registration is possible as well.

Foreign agriculture enterprises in Slovakia are obliged to register for value added tax, if they start to perform the activity which is liable to value added tax. Foreign persons have to fulfill requests of regis-

tration, if they are liable to the registration duty in other member state and offer goods on the territory of Slovakia and if the value of the transported goods in the calendar year exceeds 1 500 000 SKK. Persons offering only services or goods along with the installation or assembling are exempted from registration and the recipients of the goods are liable to pay value added tax on the territory of Slovakia. Foreign persons can register voluntarily as well.

Value added tax has been formally harmonized in the frame of the EU member states but the problem is the existence of quantity of exceptions for both new and original EU member states. With the registration for value added tax, the cross border trades problems are closely connected. Critical areas are mainly the possibilities of application of the reverse charge mechanism, the simplified process for trilateral trade according the Art. 141 of the Council Directive No. 2006/112/EC from 28th November 1996 on common value added tax system, taxation of storage and packaging and even the conditions of the registration in the individual EU member states.

The conditions of cross-border transactions in the Czech Republic are from the point of view of application of the local regulation of value added tax in comparison with other below introduced countries relatively liberal. The enterprise A cannot be registered for VAT in the Czech Republic, it only proves the intracommunitary delivery of goods from other member state to the Czech Republic. The enterprise B proves the provision of services to the enterprise A, the storage will be taxed in the Czech Republic and packaging by enterprise B will be liable to reverse charge mechanism.

If in the situation displayed in the Figure 2 the other member state is identical with the selected EU member state – i.e. the enterprise B and also customer would be from the Czech Republic, then the enterprise A would have to register for VAT in the Czech Republic during the realization of the delivery of goods by enterprise B. The enterprise A would realize intracommunitary acquisition of goods in the Czech Republic, in case that the goods are delivered after the registration for VAT of the enterprise A in the Czech Republic. The enterprise A would prove national delivery of goods in the Czech Republic and the enterprise B provision of services to the enterprise A. Storage of goods would be taxed in the Czech Republic and packaging would remain the object of the reverse charge mechanism.

Packaging of the goods is mainly considered being a work on this movable asset in Hungary (Figure 3). Hungarian authorities can require registration of the enterprise A from other EU member state in Hungary. The enterprise B can, based on the rules of assignment, invoice to the enterprise A goods with Hungarian VAT. It is considered to be the delivery of goods to other member state between the enterprise

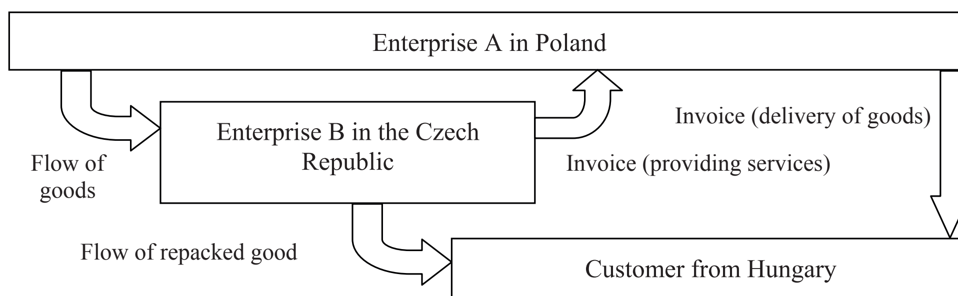

Figure 2. Cross border trade based on the Czech VAT legislation

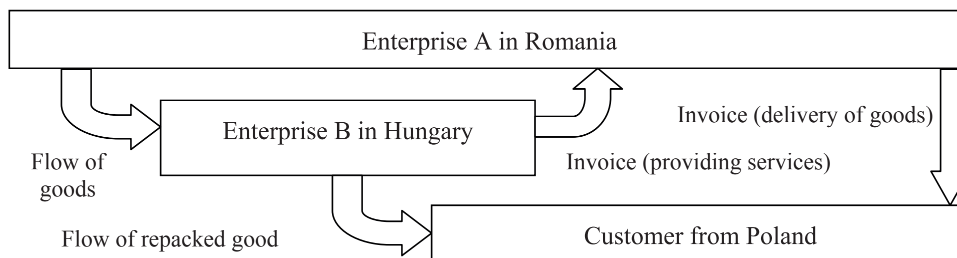

Figure 3. Cross border trade based on the Hungarian VAT legislation

A and the customer from Hungary. If the customer from other EU member state has an establishment in Hungary, the enterprise A should register for VAT in Hungary. It is not possible to use the simplified process for trilateral trade according to the Art. 141 of the Council Directive No. 2006/112/EC from 28th November 2006 on the common value added tax system for the purposes of border transactions in Hungary.

In Poland, the enterprise A is obliged to register before the establishment of its economic activities. Delivery of goods from the Slovak Republic to Poland is considered to be intracommunitary acquisition of goods. The transfer of the goods on the territory of the Slovak Republic in frame of the Slovak VAT number and the Polish VAT number is in case of the enterprise A considered to be the so-called fictive intracommunitary delivery of goods with zero value added tax rate. Between the enterprise B and the enterprise A, it acts about the work on movable asset during the order on the Slovak VAT number, so the enterprise A have to declare VAT. The possibility of the reverse charge regime application depends on will of the relevant authority. In Poland, it acts about the taxable fictive intracommunitary delivery of goods for the enterprise A during transfer of goods in the frame of the Slovak VAT number and the Polish VAT number. The transfer of goods from the Slovak Republic to Romania is considered to be the delivery of goods to another member state without VAT. The customer from the Polish point of view, if he orders under the Slovak VAT number, is not liable to VAT toward enterprise A. It is considered to be the work on movable asset which is not liable to tax. If he uses the Polish VAT number it is considered to be the national delivery. In Romania, the enterprise A executes the intracommunitary acquisition of goods (toward customer during application of polish VAT number), which is exempted from VAT in Poland and in other member state it is liable to reverse charge regime. It is possible to use simplified process for trilateral trade according to Art. 141 of Council Directive No. 2006/112/EC from 28th November 2006 on the common value added tax system only if the goods are transported back to the Slovak Republic in the frame of cross border transaction.

If in the situation in Figure 4 the enterprise B and the customer is be from Poland, the delivery of goods from the enterprise A under the Polish VAT number would be consider to be national fulfillment and movable asset will be liable to VAT in Poland.

In Romania, there is possible to use mainly the simplified process for trilateral trade according to the Art. 141 of the Council Directive No. 2006/112/EC from 28th November 2006 on the common value added tax system in order to eliminate registration duty for VAT in more EU member states, but only in the case of the fulfillment of all the following conditions. The customer has to be registered for VAT in his own country and does not have to be registered for VAT in Romania. The customer has to communicate his VAT number to other partners of transaction who are persons liable to tax. Goods, on which the works on movable asset were done, are transported to the Slovak Republic. Finally, there is also necessary the acceptance of application of the simplified process for trilateral trade according to the Art. 141 of the Council Directive No. 2006/112/EC from 28th November 2006 on the common value added tax system by the member state of participated persons. Provision of services by the enterprise B to the enterprise A has the place of the fulfillment for storage in Romania and for packaging in the Czech Republic, if the enterprise A communicates its VAT number to the customer, otherwise in Romania. The customer is forced to keep records of the received goods for the purposes of application of the simplified process for trilateral trade according to the Art. 141 of the Council Directive No. 2006/112/EC from 28th November 2006 on the common value added tax. Transport of goods realized by the enterprise A from the Czech Republic to Romania is not considered to be the fictive intracommunitary acquisition of goods in Romania and transport of goods from Romania to

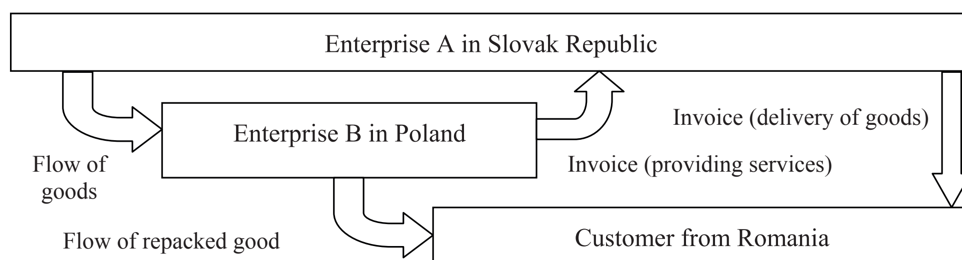

Figure 4. Cross border trade based on the Polish VAT legislation

the Slovak Republic realized by the enterprise A is not considered to be the transfer of goods in Romania.

In the case that it is not possible to use the simplified process for trilateral trade according to the Art. 141 of the Council Directive No. 2006/112/EC from 28th November 2006 on the common value added tax, the intracommunitary delivery of goods in frame of VAT number of enterprise A in its member state calls fictive and is exempted from VAT. In Romania, the fictive intracommunitary acquisition of goods from the enterprise A takes place. The enterprise B from Romania provides services to the enterprise A, the place of the fulfillment for storage is Romania. The place of the fulfillment of packaging is the Czech Republic, if the enterprise A communicates to the customer its Czech VAT number; otherwise Romania is the place of the fulfillment of packaging. Intracommunitary delivery of goods by the enterprise A to the costumer with the place of the fulfillment in Romania is exempted from VAT, whereas the enterprise A has to register for VAT in Romania. This transaction is considered to be the intracommunitary acquisition of goods for the costumer in the Slovak Republic.

If in the situation in Figure 5 the enterprise B and the customer would be from Romania, it would not be possible to use the simplified process for trilateral trade according to the Art. 141 of the Council Directive No. 2006/112/ES from 28th November 2006 on the common value added tax because the goods remain in Romania. The fictive intracommunitary delivery of goods by enterprise A in frame of its VAT number in the Czech Republic is exempted from VAT. It is considered to be the fictive intracommunitary acquisition of goods on the side of enterprise A in Romania. The enterprise B from Romania delivers services to the enterprise A, the place of the fulfillment for storage is Romania. The place of the fulfillment of packaging is the Czech Republic, if the enterprise A communicates to the customer its Czech VAT number; otherwise Romania is the place of the fulfillment of packaging. And finally, the delivery of goods between the enterprise A and the customer is considered to be the national delivery of goods in Romania.

The enterprise A, according to the local regulations, has to be registered for VAT before the establishment of the activity, which is the object of VAT. Transfer of goods from Hungary to Slovak Republic is considered to be, from the Hungarian point of view, the fictive intracommunitary acquisition of goods. In Hungary, the transaction of transfer of goods in the frame of VAT number of the enterprise A from Hungary and from Slovakia is considered to be the fictive intracommunitary acquisition of goods, which is exempted from VAT. The enterprise B applies toward the enterprise A work on movable asset if the order was made under the Hungarian VAT number – it is considered as a reverse charge mechanism. The transfer of goods from Hungary to Slovakia is from Slovak point of

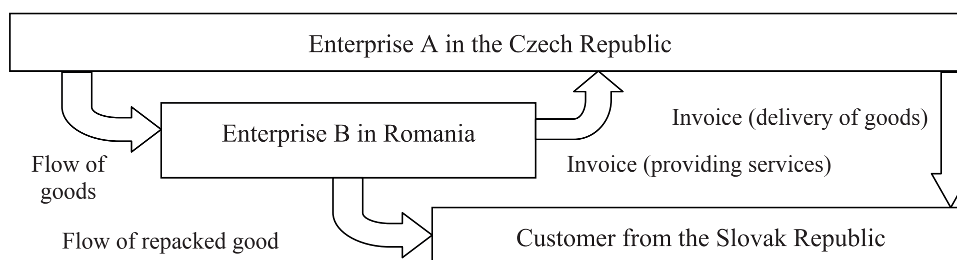

Figure 5. Cross border trade based on the Rumania VAT legislation

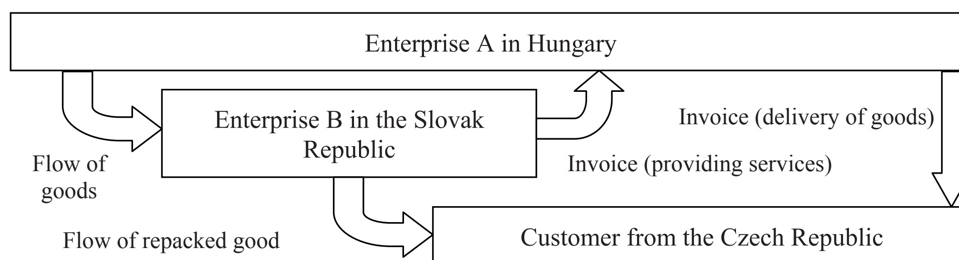

Figure 6. Cross border trade based on the Slovak VAT legislation

view fictive taxable intracommunitary acquisition of goods. The enterprise A executes, under the Slovak VAT number, the intracommunitary delivery of goods toward customer, which is exempted from VAT. The enterprise B in frame of order under the Slovak VAT number applies work on movable asset toward the enterprise A. The enterprise A executes in Hungary under the Slovak VAT number taxable intracommunitary acquisition of goods toward customer. It is not possible to use the simplified process for trilateral trade according to the Art. 141 of the Council Directive No. 2006/112/EC from 28th November 2006 on the common value added tax because goods are not sent or transported from the first supplier (enterprise A) directly to the customer.

If in the situation in the Figure 6 the enterprise B and the customer would be from the Slovak Republic, then the delivery of goods by the enterprise A under the Slovak VAT number would be considered to be national fulfillment without the possibility to transfer the place of fulfillment of service to the costumer in Hungary.

In the Czech Republic, Poland, Romania, Hungary and the Slovak Republic, there are different conditions of cross-border transactions. Differences arise also during the application of relevant regulations. Very often the existence of the regulation of cross-border transactions is not sufficient, because in practice it is applied in the incorrect way. Conditions of registration for VAT of individual partners of cross-border transactions in the frame of the selected EU states and also the rule for taxation of storage and packaging of goods are different. Possibilities of application of the reverse charge mechanism and the simplified process for trilateral trade according to the Art. 141 of the Council Directive No. 2006/112/EC from 28th November 2006 on the common value added tax in the individual EU states are different and sometimes incomprehensible.

CONCLUSION

Value added tax represents the area, where the harmonization process has evidently reached the greatest progress. According to the existing directives, the harmonization of the tax base serving for assessment of a tax was reached in a large extent. The harmonization of processes during taxation of goods in case of import and export and the intracommunitary fulfillments also took place. The intention of the European Commission is to modernize and simplify value added tax, to ensure its more uniform application and to improve the administrative cooperation. Also from these goals it is evident, that the application and regulation of value added tax in the EU member states are not yet uniformed. It is possible to see a wide range of critical areas in the frame of cross border trades. In any case there is a question, which partner of cross border transaction is obliged to register for VAT in which state. It is possible to see the differences in the possibility or duty of registration in the relevant EU member state. Taxation of storage and packaging in the surveyed countries has revealed some differences as well. It is possible to use the reverse charge mechanism during repackaging of goods only in the Czech Republic and Hungary. In Poland and Romania, there are set restrictive conditions for application of this mechanism and in Slovakia, there is not possible to use it in frame of cross border transactions. It is suitable to use for the cross border transactions the simplified process for trilateral trade according to the Art. 141 of the Council Directive No. 2006/112/EC from 28th November 2006 on the common value added tax and to eliminate the establishment of useless registrations for VAT in more EU member states. However, it is not possible to use this possibility in Hungary and Slovakia until now. In Poland, it is necessary to fulfill the absurd condition of reverse transport of goods to the original country after the storage and repackaging in other EU state for the application of the simplified process. In Romania, there is the possibility of application of the simplified process, only if the EU member states of other partners of border transaction accept this fact.

The implementation of a fully electronic procedure and more efficient conditions of control would certainly contribute to the fulfillment of the set aims in the field of VAT in the EU. A considerable legal uncertainty of subjects operating in agriculture and obviously also other entrepreneurial subjects during value added tax refund is consider to be the great disadvantage. A substantial delay of amount of value added tax refund takes place in many states of the EU. Actually these time limits are furthermore artificially extended by requests of local authorities for extra information. Value added tax refund can take six months in the above mentioned countries, but also more than three years. Solution of this disadvantage is relatively easy through the implementation and strict observance of the rule of delay charge, but it supposes the sufficiency of political will to make this step.

The burden of the entrepreneurial sector cannot be increased in order to fulfill the Lisbon strategy in the EU states. On the contrary, the effort to simplify the rules and their application, respectively to

reduce the administrative costs of taxation has take place. The supposed amendment of the regulation of value added tax in the Czech Republic is necessary also from the reasons of compatibility with the VAT directive. Changes and amendments regarding mainly the provision of the reverse charge services, the determination of electronic services, the specification of relations of establishment and founder, the determination of the price usual for special purposes, the correction of the amount of tax and rates, the exemption of tax, the claim and tax deduction are being prepared nowadays. It is very important for the Czech Republic and other EU states to ensure good conditions for agriculture and other enterprises doing their business activities by the way that they will apply tax system, which will correspond to the basic tax principles.

Value added tax is in the EU states one from the fundamental incomes of state budget (34% in the Czech Republic) (CDS 2007). For this reason, it is very important to research the given problem, to set the risk areas, to formulate and consequently to apply the proposals of solution, to make the reverse control and to care about the efficient functioning of value added tax.

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