TAX TREATMENTS SPECIFIC TO INTRA-COMMUNITY COMMERCIAL TRANSACTIONS - TRIANGULAR OPERATIONS

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ABSTRACT: Romania's EU accession made significant changes in the tax area imposed by the harmonization of national laws system of member countries. Thus it disappeared the concepts of export and import in the relationship between Member States, which are replaced by new notions, such as: intra-community acquisition (instead of import) and intra-community supply (instead of export). Given the changes occurring in the tax laws and their complexity, in this paper/work I proposed to approach the specific tax treatment inside-community with reference to triangular transactions.

KEY WORDS: transactions, tax treatment, triangular operations, intra-community delivery, inside-community acquisition, member state

1. INTRODUCTION

Taxation is the area that suffered most changes after Romania's EU adhere, the Tax Code matches up entirely after January 1, 2007 with the European legislation. Significant changes were made to value added tax, due both the abolition of customs duties owed and the need to harmonize national legislation with that legislation of Member States. Thus, controlling the movement of goods within the Community shall be carried out via the VIES electronically system, reporting intra-Community acquisitions in Romania shall be carried out after checking in advance the number of valid assigned number for value added tax of the supplier, in its Member State and if the operation was stated by the fiscal authorities, same procedure being applied for reporting intra-Community deliveries from Romania.

Economic operators registered for value added tax fails to pay VAT on intra-Community acquisitions by applying the reverse charge, that meaning the payment through the value added statement. The european rules have required the removal of value added tax exemption incompatible with the acquis communautaire, such as:

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elimination of value-added exemption on research and development, the commission for transactions on the commodity exchanges and for revenue securities companies for management and disposal of shares, equity, debt securities, the operations funded by grants provided by foreign governments and international organizations for veterinary medical care. From January 1, 2007 shall apply **special arrangements for value added tax**: small companies, travel agencies, gold of investments, second-hand goods, household services rendered by persons not established in the Community, as well as non-taxable persons established within the community.

*We conclude* that Romania’s accession to the European Union imposed harmonize the national legislation with Community law, significant changes, as I said, registering in the tax area. At first glance the new procedures have a positive impact on businesses due to intra-community simplify transactions in goods, the elimination of customs issues and customs agents fees implicitly, by streamlining the logistics flow and by eliminating costs associated with cash flows as tax value added need not be paid to customs. However there are costs arising from the new legislation, concerning the implementation of its unit, primarily costs relating to costs incurred by changing accounting and information system, changes required to complete declarations required by the new legislative provisions relating to indirect taxes, expenses for book-keeping performed with complete, accurate and precise characters of all transactions in the pursuit, but also costs arising from fast adaptation to new regulations, finalized in increased costs of bookkeeping and tax services or staff training.

*Main advantage* retain the overall modernization of Romanian fiscal system and connect it to the European tax system and as *disadvantage* we talk about the transition costs incurred. Given the changes occurring in the tax laws and their complexity, in this paper I proposed to approach the specific tax treatment of intra-community transactions with reference to triangular transactions.

**2. THE TAX TREATMENT OF TRIANGULAR OPERATIONS**

Given the complexity of intra-community commercial transactions and tax laws, in this paper I proposed to approach the specific tax treatment of triangle transactions. In order to determine the tax treatment of these transactions, in terms of value added tax, we must answer the following *questions*: Is the operation made by a taxable person? Operation is in the area of value added tax? Where is the place of delivery/acquisition? Is the operation an exempt one? Which is the person who must pay the value added tax? *The triangular operation* is possible only if the three people involved in the transaction are recorded in taxable value added tax purposes in three different Member States, representing a sale from a trader in the Member State 1 for an entity in the State 2, which resell these goods further to a trader in Member State 3, the transport of goods directly from the State 1 in the State 3.

There are about **three different taxable persons** registered in **three different Member States** between take place two transactions, namely: *the first delivery* is made by a taxable person from Member State 1 to a taxable person registered in value added tax purposes in Member State 2, as buyer-reseller; *the second delivery* is made by the buyer-reseller from Member State 2 to a beneficiary person registered in value added
The transport of goods is made from Member State 1 in Member State 3. Schematically, a triangular operation, which takes place between the three taxable persons A, B, C, located in three different Member States is represented in Figure 1:

![Figure 1. Triangular operation](image)

To determine where each transaction takes place is necessary to determine the taxable persons involved, responsible for transportation to be carried out under contracts between the parties and other documents. The transport contract relationship can be settled between A and B or between B și C, relationship which implies a tax treatment different through value added tax.

**Situation I: The transport contract relationship is between A and B**

1. **Without applying the simplify measures:** In this case the triangular operation has the following tax features: delivery from the supplier (A) the buyer-reseller (B) is an intra-Community supply with transport, which takes place in the Member State 1, where transport begins, exempt from value added tax; delivery from the buyer-reseller (B) to the final beneficiary of the property (C) is a delivery without transport, taking place in Member State 3, where ending the transportation of goods; the buyer-reseller (B) conduct an intra-Community acquisition in the Member State 3, which is why it is required for value added tax in Member State 3, acquisition is followed by a local delivery to the final beneficiary (C), in Member State 3. It follows that Company B (buyer-reseller) must register for value added tax purposes in Member State 3 to make intra-Community acquisition in that Member State and to pay value-added tax for this delivery.

2. **By applying the simplification measures:** Simplification measures apply to prevent company B (buyer-reseller) to register for value added tax purposes in Member State 3. Thus, the triangular operation by applying the simplification measures in terms of the three taxable, considering Romania in each of the three Member States, require that certain conditions:

   1. From supplier (A point of view), registered in value added tax purposes in Romania (member state 1)

   Intra-community delivery carried provider (A) in Romania is exempt from value added tax if it meet the following conditions: goods are transported from the Romania in another Member State (State 3) by the supplier (A) or the buyer-reseller (B); buyer-reseller (B) notify the provider his registration code for value added tax in Romania.
that other Member State (State 2); supplier (A) issues an invoice without value added
tax to the buyer-reseller (B) and enter in the invoice this registration code for the
company's value added tax B from Member State 2; supplier (A) records the delivery
in the value added statement in Romania (Member State 1); buyer-reseller (B) is
mentioned as a buyer of goods, on intra-Community summary statement submitted by
the supplier (A), given the registration code for value added tax of the buyer-reseller
(B) from Member State 2.

The tax treatment of this operation:  1. The taxable persons:  Yes, romanian
sailer;  2. The taxable operations: Yes, intra-comunity delivery of goods;  3. Delivery
place: Romania (the place to start the transport, member state 1);  4. Exemptions:Yes, if
are fulfilled the two conditions (it can be demonstrated the transport and
communication the registration code for value added tax purposes of the purchaser of
the other Member State;  5. Tax obligation to pay: Don’t exist a person obliged to pay
the value added tax, the operation beeing exempt.

h2). In terms of buyer-reseller (B), registered for value added tax purposes in
Romania (Member State 2). The acquisition made by the buyer-reseller (B) in Romania
is normally an intra-Community acquisition, but through the application of
simplification measures for intra-Community acquisitions is not taxable in Romania,
where the buyer-reseller (B) proves that his acquisition intra-community was subject to
value added tax in Member State 3, where transport ends, and the buyer-reseller (B)
meet the following requirements: not include the acquisition made in the Member State
1 in the chapter 'intra-Community acquisitions " of the statement of value added tax in
the summary statement of intra-Community acquisitions; register the delivery made to
the beneficiary of delivery (C) in the 'intra-Community supply exempt " chapter of
statement of value added; mention in the summary statement for intra-Community
deliveries supply exempt from tax the following data: registration code for value
added tax purposes of the recipient of delivery (C) from the Member State 3; codul T
in rubrica corespunzătoare pentru operațiuni triunghiulare; T code in the appropriate
box for triangular operations; value of deliveries made; issue the invoice which will
register: registration code for value added tax purposes of the buyer-reseller (B) in
Romania; name, address and registration code for value added tax purposes of the
recipient delivery (C) from the State 3; to specify in the frame of invoice of the fact
that the beneficiary of delivery (C), from the Member State 3, is the person liable to
pay VAT on the supply of goods made in other Member State and a reference to art. 28c (E) (3) of Directive 6th. Given the fact that under the rules to simplify the place of
acquisition the property is in the Member State 3 (where transport ends), the Member
State 2 will not approach the tax treatment, in terms of value added, of acquisition.

h3). The delivery point of view (C) registered for value added tax in Romania
(the member state 3). Intra-Community acquisition made by the buyer-reseller (C) in
Romania is not subject to VAT if the following conditions are met: the buyer-reseller
(B) in settled in member state 2; the acquisition of goods is made by the buyer-reseller
(B) in order to carry out a subsequent delivery of these goods; the recipient delivery
(C) is a taxable or a non-taxable legal person registered for value added tax in
Romania, according to art. 153 or art. 1531 of Law no. 571/2003 regarding the Fiscal
Code, with subsequent modifications and additions; recipient delivery (C) is required
to pay VAT on supplies made by the buyer-reseller (B), which is not registered for value added tax purposes in Romania (Member State 3); recipient delivery (C) include the acquisition made in the ‘intra-Community acquisitions’ chapter in the statement of value added, by applying the reverse charge mechanism, and summary statement for intra-community acquisitions of goods.

**Tax treatment of this operation:** 1. **The taxable persons:** Yes, final recipient; 2. **Taxable operations:** Yes, intra-community acquisition of goods; 3. **Acquisition place:** Romania (place to finish the transport); 4. **Exemptions:** No, operation is taxable; 5. **Tax obligation to pay:** Final recipient, it applies reverse taxation.

**Situation II: Relația Contract transport relationship is between B and C**

**a) Without applying the simplification measures:** In this case are meet the following tax features: the delivery from the supplier (A) to the buyer-reseller (B) is a delivery without transport, taking place in the Member State 1, where goods are made available to the buyer-reseller (B). This operation is a local delivery made by the supplier (A) in the Member State 1. Buyer-reseller (B) may deduct VAT, charged by the supplier (A) only if it is registered for value added tax in Member State 1 (compulsory situation since made an intra-Community delivery in the State Member 1); supplies made by the buyer-reseller (B) to the final beneficiary of the property (C) is an intra-Community supply with transport which takes place in the Member State 1 (where transport begins). Delivery shall be exempt from value added tax if they meet two conditions: the final recipient (C) must hold a registration code for value added tax and the goods are delivered outside the State 1; the final beneficiary of the property (C) conduct an intra-Community acquisition in the Member State 3 (where transport ends), which is liable for VAT (reverse charge). If the final beneficiary (C) is not a taxable person or has not a registration code for valid value added tax in Member State 3, then the buyer-reseller (B) must to issue VAT invoice from the Member State 1 to the beneficiary (C). It follows that company B (buyer-reseller) is always required to register for value added tax in Member State 1 where it done a local purchase with value added tax and intra-Community supply of goods exempted from tax value added.

**b) The simplification measures not apply where transport is a contractual relationship between B and C.** The taxable persons involved in this triangular operation have the following reporting obligations: the supplier (A) shall report the transaction in its statement of value added tax as a local delivery to whom the supplier is the person liable to pay VAT in Member State 1; buyer-reseller (B) is required to register for value added tax in Member State 1; buyer-reseller (B) will report in value added tax bill a local purchase for he paid the value added tax to the supplier (A) in the Member State 1, value added tax which can be inferred, and an intra-Community supply exempt from value added tax to the final beneficiary (C); buyer-reseller (B) will report exempt intra-Community delivery to the final beneficiary (C) in the summary statement on intra-Community supplies of goods from Member State 1; final beneficiary (C) beeing the person liable to pay VAT for intra-Community acquisition made in Member State 3, shall report such acquisition in the statement of value added (reverse charge) and in the summary statement on intra-Community acquisitions. In the practical work may be encountered situations where delivery of goods to be made between three different people but they do not fall within the triangular operations
because of a taxable person established outside the European Union, for which their tax treatment is different.

3. CONCLUSIONS

The abolition of customs barriers between European Union Member States had the effect of the elimination of customs control of goods movement within the Community, putting his mark on international trade which no longer includes, from January 01, 2007, intra-Community transactions. Due to the complexity of intra-community commercial transactions in order to determine the tax treatment of these transactions, in terms of value added tax, must answer the following questions: Is the operation made by a taxable person? Operation is in the area of value added tax? Where is the place of delivery/acquisition? Is the operation an exempt one? Which is the person who must pay the value added tax? Since the triangular operation is possible only when the transaction involved three registered taxable persons for value added tax, in three different Member States to consider the situations where the supply of goods is made between three different people this operation is not under triangular operations because of a taxable person established outside the European Union, for which tax treatment is different. Assessment of the specific tax treatment of business transactions and intra-triangular default operations is particularly important in determining the liabilities and reporting on value added to the entities from different EU Member States.

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