

THE COMMON SYSTEM ON THE VALUE ADDED TAX OF THE EUROPEAN UNION APPLIED TO THE INTRA-COMMUNITY OF PURCHASES OF MOTOR VEHICLES

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Abstract: *The common system of value added tax (VAT) of the European Union (EU) is implemented through Directive 2006/112/EC amending the text of Directive 6, namely of Council Directive 77/388/EC of May 17th 1977 to clarify the existing EU VAT legislation. This tax applies to all transactions made in the EU by a natural person or a legal entity called a taxable person, who provides goods and services in the course of their business. Moreover, imports of goods and services by any taxable person are also subject to VAT. The intra-community purchase of means of transport represents the entry into Romania of motor vehicles coming from member states of the European Union, goods that are transported from another member state to Romania. The fiscal treatment is very different depending on the specifics of each particular circumstance at the intra-community purchase and it is regulated by Title VI of the Tax Code which transposes the provisions of Directive 2006/112/EC. We aim at analyzing and capturing the accounting and fiscal diversity generated by these particular circumstances in the intra-community purchase of motor vehicles.*

Key words: *tax harmonization, value added tax, taxation basis, motor vehicle, intra community purchase*

1. Introduction

The treaties of European integration have as their starting point the “Treaty establishing the European Community” or the “EC Treaty”, which was signed by a group of six states on March 25th 1957, in Rome. The purpose of the Treaty of Rome was the integration of the common economy, the creation of a common market, the establishment of the “4 freedoms”, the exclusion of any national discrimination. Nevertheless, in order to be operational, it needed legal grounds, harmonization of laws was necessary also and, as such, the role of the European Court of Justice turned out to be extremely important. Theoretical implications of this treaty: European civil society is

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born with the common market. The state is no longer the sovereign subject on its own territory because the common market must function on the supranational dimension, this is the only way to be efficient. This highlights the primacy of Community law over national law. "(Wikipedia, the free encyclopedia)

Subsequently, the Treaty was amended by the Single European Act of February 17th – 28th 1986 and by the Treaty on European Union (known as the Maastricht Treaty) of February 7th 1992, but also by numerous special regulations. This Treaty establishes the mission of the Community to create a common market and an economic and monetary union between Member States. At the same time, the aim is to promote the harmonious and balanced development of economic activities throughout the Community by implementing the policies or joint actions taken into consideration.

Article 288 of the Treaty on the Operation of the European Union defines the types of legal acts that the EU may adopt, including directives. Once adopted at EU level, the directive is then transposed by the Member States into their national law to be enforced. It is up to each country to draw up its own laws to determine how to apply these regulations, so as to achieve the objectives proposed by the directive. A deadline of generally two years is set for the implementation of the directive, during which time the national authorities must inform such measures to the European Commission.

2. Harmonization of the EU Member States Laws on the Vat Common System on the Grounds of the Directive 2006/112/CE

The institutional powers over EU directives are assumed from the draft stage, taking into consideration their legal, economic and social implications, in the context of promoting the national positions of the member states. Therefore, the competent national institutions have the obligation to repeal or amend the applicable national laws that "duplicate", violate or add impermissibly to the stipulations of certain provisions, so that there are no parallels, violations or other obstacles in their direct application. (Harmonization of national laws with European Union law <<https://www.mae.ro>>)

In order to harmonize the laws of our country with the laws of the EU member states on the common VAT system, starting with January 1st 2008, the provisions of the Government Emergency Order no. 106/2007 amending Law no. 571/2003 on the Tax Code became applicable. By this Order, the references to the articles of Directive 6 (77/38/EEC) have been replaced by references to Directive 2006/112/EC on the common system of EU value added tax.

To create a VAT system that reaches the highest degree of simplicity and neutrality, the following aspects have been taken into consideration:

- The scope of VAT should cover all stages of production and distribution, as well as the provision of services;
- To eliminate, as much as possible, the factors that can distort the conditions of competition
- in the territory of each Member State, similar goods and services should bear the same tax burden, regardless of the length of the production and distribution chain;
- To harmonize the tax base so that the application of VAT to taxable transactions leads to comparable results in all Member States;

➤ Sufficient alignment between Member States related to the number of shares and the shares levels;

In order to prevent structural imbalances in the Community and distortions of competition in certain sectors of activity, it was considered necessary to set a standard share. Thus, a standard share of at least 15% (subject to revision) has been set to be applied by all EU countries for the goods and services circulating between the Member States. There are also exceptions that apply to certain goods or services, representing a reduced share of at least 5%.

A particularly important aspect in the application of Directive 2006/112/EC is the correct determination of the taxation place. In this respect, the Directive stipulates that the taxation place is determined according to three factors:

- Nature of the operation
- Type of supplied product
- If transport is involved

The following situations are subject to analysis:

- 1) delivery of goods - where the goods are delivered;
- 2) the purchase of goods between EU countries - respectively the EU country where the goods finally arrive, after the transport from another EU country;
- 3) imports of goods - usually the EU country where they arrive;
- 4) provision of services - where services are considered to be provided.

The general rule is that a service is taxed at the customer's place, if it is a business, or at the supplier's place, if the customer is a natural person. To guarantee that the service is taxed in the place where it is actually used, there are some exceptions to these general rules.

3. Tax Implications related to the Value added Tax for the Intra Community Purchases of Motor Vehicles. Case Studies

We must underline from the very beginning that the regulations laid down in the Directive 2006/112/EC on intra-Community purchases of means of transport are binding on all Member States and cannot be amended unilaterally by one Member State, as this would be an infringement of Accession Treaty. Moreover, a distinction should be made between what is meant in common language by a used car which is not the same as what is meant by a used car from a tax point of view.

To this end we have art. 266 para. (3) of the Tax Code which defines new motor vehicles as follows: *New means of transport are land motor vehicles with a capacity exceeding 48 cm³ or with a power exceeding 7.2 kW, intended for the transport of passengers or goods provided that they are not have been delivered more than 6 months from the date of entry into service or have not traveled more than 6,000 km.*

We intend to study the case in which a company established in Romania, paying or not paying VAT, intends to purchase a motor vehicle from a member country of the European Union. The following three aspects must be analyzed before the purchase which enables us to make the correct tax classification of the value added tax treatment of the transaction.

1) We check if the car is new or used.

If the conditions provided by art. 266 para. (3) of the Tax Code are not met, then the car is not considered new and will be classified as used vehicle.

2) We establish the status of the person making the sale:

- Taxable person, registered for VAT purposes, normally in the EU state, in which case he must send us a valid VAT code;

- Taxable person, who is not registered for VAT purposes in the EU state, because he is in the special exemption regime, regime similar to the one applied in Romania according to the provisions of Article 310 of the Tax Code;

- Natural Person, taxable from the point of view of VAT, obliged to register VAT in the EU state, if the motor vehicle is new;

- Individual, non-taxable from the point of view of VAT because it is not mandatory to register as a VAT payer, if the motor vehicle second-hand;

3) We have to establish the regime applied – namely if the supplier of the motor vehicle is a seller or reseller of used cars:

- Normal regime if it is not a reseller;

- Special second-hand regime if reseller.

In the case study that we shall make, we consider several alternatives that result from the combination of influencing factors.

2.1. Intra-Community purchase by a VAT payer

I) If the regime applied by the seller from the EU state is a normal exemption regime, he makes an intra-community delivery of goods exempt from VAT in the EU member state, but taxable in Romania, regardless of whether the motor vehicle is new or used. Consequently, the buyer will inform the seller on a valid VAT code issued by the Romanian Tax Authority and will apply the following fiscal and accounting treatment:

- It will calculate the VAT due at a tax base determined in lei by using the exchange rate applicable at the date of issue of the invoice by the seller from the EU state.
- It will apply reverse charge through the formula 4426 = 4427 because it makes an intra-community purchase of goods taxable in Romania in terms of VAT.

The accounting formulas for recording the purchase in this case are:

a) 2133 "Means of transport" = 404 "Suppliers of intangible assets"

b) 4426 "deductible VAT" = 4427 "collected VAT"

If the motor vehicle is not used exclusively for the purpose of economic activity, the laws provide for the limitation to 50% of the right to deduct VAT related to the intra-Community purchase. The 50% of the purchase cost that cannot be deducted, can be recovered by depreciation because they will be included in the purchase cost of the motor vehicle through the following accounting formula:

2133 "Means of transport" = 4426 "Deductible VAT"

- From a tax return point of view, the buyer will report the purchase value both through the D300 Tax return (VAT return) and through the D390 Tax return (Recapitulative tax return on intra-community deliveries / purchases /services) until the 25th of the month following the purchase. We must emphasize that if the buyer has as fiscal period the calendar quarter, being an intra-community purchase of goods, he is obliged to request the change of the reporting fiscal period from the calendar quarter to the calendar month.

According to the provisions of art. 322 paragraph 8 of the Tax Code: The taxable person who according to paragraph. (7) is obliged to change its fiscal period must submit a statement of mentions to the competent fiscal body within maximum 5 working days from the end of the month in which the exigibility of the intra-community purchase that generates this obligation occurs and will use as fiscal period the calendar month for the current year and for the following year. If during the following year he does not make any intra-community purchase of goods, that person will return according to par. (1) to the calendar quarter as the fiscal period (Law no. 227/2015 on the Tax Code)

II) If the motor vehicle is a second hand one and the seller from the EU state applies the special second-hand regime specific to resellers, the purchase of the motor vehicle shall not be taxable in Romania. The motor vehicle purchase transaction shall be taxable at the supplier in the EU state, by applying the standard VAT rate, the rate of 19% to the profit margin for the transaction. In this case the profit is represented by the difference between the sales price and the purchase cost of the motor vehicle. The buyer will only report the purchase value of the motor vehicle in the D300 Tax return and will not submit the D390 Tax return.

2.2. Intra-community purchase made by a non VAT payer

If the Romanian buyer is a non-VAT payer and wishes to purchase new means of transport from the EU, he will have the obligation to pay VAT to the budget in Romania, by submitting a special VAT return the D301 Tax Return.

If the motor car to be purchased is not new, the ceiling of 10,000 euro at the NBR exchange rate from the date of accession, namely 34,000 lei, must be taken into account, depending on which the buyer will have different obligations:

- If the value of the car does not exceed 34,000 lei, i.e. 10,000 euros in lei equivalent at the exchange rate on the date of accession (rounded to thousands), then the supplier will invoice with VAT from his country, and the buyer will pay VAT to the supplier from the EU state. It turns out that in Romania he will no longer have to pay VAT.

- If the value of the car exceeds the ceiling of 34,000 lei, then the buyer will have to have or request the special VAT code, which he will inform to the supplier. It will issue the invoice without VAT, but in Romania the buyer will have the obligation to pay VAT to the budget by special VAT return.

It should be noted that in the case of new means of transport, as opposed to second-hand ones, if the place of the respective intra-community purchase is in Romania, the rules regarding the intra-community purchases ceiling described above do not apply.

3. Conclusions

Directive 2006/112/EC has undergone a number of successive amendments which have been incorporated into the basic text, including changes caused by the COVID-19 pandemic. In this regard, we can specify the *VAT Package for e-commerce* that introduced new simplifications for companies carrying out cross-border sales of goods or services. The purpose of this package was to comply with the principle of taxation in the EU country of destination, namely to ensure that VAT for such deliveries is paid correctly to the EU country of the client.

The EU shall assess the correct and complete transposition of the measures provided for in the Directives. If the transposition does not comply or does not cover the entire national territory of the State concerned, it may bring an action for failure to fulfill the obligations of Member State (infringement proceedings) and may require the EU Court of Justice to impose financial penalties.

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