

TAX TREATMENT OF NON-TAXABLE INTRA-COMMUNITY COMMERCIAL TRANSACTIONS AND OF DISTANCE SELLING

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Abstract

Taxation represents the field that underwent the most changes after Romania's accession to the European Union, the Fiscal Code being entirely harmonized with the European legislation after 01 January 2007.

Given the legislative changes occurred in the tax field and their complexity, in this article I intend to approach the tax treatments specific to non-taxable intra-Community commercial transactions and those relating to distance selling.

I started from the fact that the proper determination of tax treatments specific to intra-Community commercial transactions is of particular importance in establishing the reporting and payment obligations concerning the value added tax for entities from different EU Member States, significantly affecting the registration procedure in accounting of such transactions.

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JEL classification: *H32, H87, M40, M41, M49, Q56*

1. Introduction

Romania's accession to the European Union brought important changes regarding the **value-added tax**, due to both the abolition of customs barriers and the need to harmonize the national legislation with that of the Member States.

The proper determination of tax treatments specific to intra-Community commercial transactions is of particular importance in establishing the reporting and payment obligations concerning the value added tax for entities from different EU Member States, significantly affecting the registration procedure in accounting of the said transactions.

Given the complexity of intra-Community commercial transactions and their taxation, we shall address below the ***intra-Community trade in goods***, with reference to ***tax treatments specific*** to:

- acquisitions and supplies made by the “Group of 3”
- distance selling.

2. General considerations on non-taxable intra-Community commercial transactions

To determine the tax treatment of non-taxable intra-Community acquisitions and supplies, we need to define the categories of non-taxable persons, the rules specific to non-taxable intra-Community commercial transactions, and the conditions to be met by the entities involved, in order to be value-added tax exempted or not.

The category of **non-taxable persons** includes:

- small enterprises (usually not registered for value added tax);

- other taxable persons not registered for value added tax, who carry out only exempt transactions without deduction right (banks, insurance companies, nonprofit organizations etc.)
- non-taxable legal persons (in particular public institutions, for activities carried out as public authorities);
- farmers subject to fixed rate regime (not applicable in all EU countries or in Romania).

In our country we can talk about non-taxable persons who belong to the so-called “**Group of 3**”; the last category is not valid.

✚ To apply the **rules specific to non-taxable intra-Community transactions**, the following *conditions* shall be met:

- goods are purchased in another Member State by a non-taxable person;
- goods are shipped from another EU Member State in Romania;
- goods do not relate to excisable goods or new means of transport.

Members of the “Group of 3” **do not have to pay VAT in Romania for such an intra-Community acquisition**, if:

- the total amount of intra-Community acquisitions made by that group member in the current or previous year does not exceed the RON equivalent of the intra-Community acquisition ceiling, currently set at EUR 10.000 per year, set at the exchange rate in force on the date of Romania's EU accession;
- the recipient did not opt for taxation of his/her intra-Community acquisitions in Romania.

Before exceeding the ceiling these entities shall purchase goods from the EU and shall not pay VAT invoiced by the supplier.

Another member of the “Group of 3” **shall pay VAT for such an intra-Community acquisition**, if:

- he/she exceeds the RON equivalent of the ceiling for intra-Community acquisitions/year (EUR 10.000);
- is opting for taxation of his/her intra-Community acquisitions.

a) If the ceiling of EUR 10.000 is exceeded, this entity has to pay VAT in Romania for the full value of the acquisition by which the ceiling is exceeded and for all the intra-Community acquisitions of the remainder of the calendar year in which the ceiling was exceeded (first year) and for the following calendar year (second year). If the ceiling is exceeded in the second year as well, the same rules apply. But if in the second year the ceiling is no longer exceeded, in the third year the entity shall not pay VAT for the acquisitions that fall below the ceiling.

After exceeding the ceiling of EUR 10.000, the intra-Community acquisitions become taxable and the entities in the “Group of 3” **register specifically for value added tax** (according to Article 153¹ of Law no. 571/2003 on the Fiscal Code, as further amended and supplemented), only for intra-Community acquisitions.

Although the registration is special, according to Article 153¹, the registration code assigned for value added tax confers, as for the intra-Community acquisitions from other Member States, the same rights and obligations as any normally registered person (according to Article 153).

b) Any participant of the “Group of 3” can choose to pay VAT in Romania for all intra-Community acquisitions.

After opting for such an obligation *he/she shall register specifically for value added tax* (according to Article 153¹), this option is valid for the remainder of the calendar year in which the option was made and for at least the next two calendar years.

In calculating the ceiling for intra-Community acquisitions, the amount of all intra-Community acquisitions subsequent to the purchase transactions from all other Member States will be taken into account, including:


- the amount of the transaction resulting in ceiling exceeding;
- the amount of imports of goods shipped after the import in Romania, made by a non-taxable legal person in another Member State of the European Union;
- the amount of imports of goods delivered and shipped after import in Romania, made by a supplier in another Member State of the European Union.

In determining the ceiling of intra-Community acquisitions there will not be taken into account:

- the amount of intra-Community acquisitions of new means of transport;
- the amount of intra-Community acquisition of excisable goods;
- the amount of purchases of goods whose delivery was a delivery of goods with installation or assembly, for which the place of supply is considered to be Romania;
- the amount of purchases of goods whose delivery was a distance delivery, for which the place of delivery is considered to be Romania;
- the amount of purchases of second-hand goods, works of art, pieces of collection and antiques;
- the amount of purchases of gas and electricity delivered through distribution networks.

People in the “Group of 3” ***have the following reporting obligations:***

- to inform the tax authorities on exceeding the ceiling for intra-Community acquisitions or on the option for taxation in Romania of intra-Community acquisitions;
- to require registration for value added tax according to Article 153¹ from Law no. 571/2003 on the Fiscal Code, as further amended and supplemented. The registration code for value added tax granted for intra-Community acquisitions is valid only for intra-Community transactions (it is valid in VIES), but does not confer the qualify of normally registered person for value added tax in Romania;
- to record all intra-Community acquisitions made and to submit the *monthly Summary Statement* for the intra-Community acquisitions made;
- to submit the *special VAT return* for the month when the taxable intra-Community acquisitions were made;
- to pay VAT on taxable intra-Community acquisitions until the 25th of the month following that when the tax becomes due;
- to communicate their registration code for value added tax to the suppliers in other Member States for the period they are required to pay VAT in Romania for the intra-Community acquisitions made.

 ***The intra-Community supply of goods to people in the “Group of 3” is made without value added tax.***

3. Tax treatment of non-taxable intra-Community commercial transactions

To clarify the tax treatment of non-taxable intra-Community acquisitions and supplies we shall consider some examples for the entities.

a) Non-taxable intra-Community acquisition

A person in “Group of 3” based in Romania is buying goods from Italy, which are shipped from the other Member State in Romania on behalf of the purchaser. It is

known that the recipient does not exceed the ceiling of EUR 10.000 at the time of purchase and does not choose to apply VAT on his intra-Community acquisitions in Romania.

Tax treatment of this transaction:

1. *Taxable person:* Yes, Romanian purchaser;
2. *Taxable transaction:* Yes, intra-Community acquisition of goods;
3. *Place of acquisition:* Romania (where transport ends);
4. *Exemptions:* The transaction is not taxable in Romania;
5. *Tax payment obligation:* There is no person liable to pay VAT.

b) Non-taxable intra-Community acquisition with ceiling exceeding or with option

We consider that a person in the “Group of 3” based in Romania makes an intra-Community acquisition of goods from France exceeding the ceiling of EUR 10.000 at the time of purchase, goods that are shipped from the other Member State in Romania.

Tax treatment of this transaction:

1. *Taxable person:* Yes, Romanian purchaser;
2. *Taxable transaction:* Yes, intra-Community acquisition of goods;
3. *Place of acquisition:* Romania (place where transport is ended);
4. *Exemptions:* No, the transaction is taxable;
5. *Tax payment obligation:* Purchaser based on special VAT return.

It is done similarly if the person in the “Group of 3” did not exceed the ceiling of EUR 10.000 for intra-Community acquisitions, but *has opted* for applying the tax for his/her intra-Community acquisitions.

* The taxable person in France to whom the Romanian recipient has communicated the registration code for value added tax makes an exempted transaction, but the purchaser pays VAT based on special VAT return. If the ceiling has been exceeded and the person acquiring the goods is not registered for value added tax, then the French company shall invoice with value added tax to be paid by the Romanian purchaser, who is also required to pay the value added tax in Romania.

c) Non-taxable intra-Community supply

A person in the “Group of 3” based in Romania sells goods in Spain that he/she is shipping in the destination Member State.

Tax treatment of this transaction:

1. *Taxable person:* Yes, Romanian vendor;
2. *Taxable transaction:* Yes, intra-Community supply of goods;
3. *Place of supply:* Romania (where transport begins);
4. *Exemptions:* Yes;
5. *Tax payment obligation:* There is no person liable to pay VAT, as the transaction is exempt.

4. General considerations on distance selling

Distance selling is a supply of goods involving their dispatch from one Member State to another Member State by or on behalf of the supplier with the following **specific rules:**

- the recipient is a person in “Group of 3” making purchases within the legal ceiling and has not opted for taxation in Romania of all his intra-Community acquisitions;
- the supplier exceeds the ceiling for distance selling set by our country (RON equivalent of EUR 35.000).

In **determining the ceiling for distance selling** there will be taken into account:

- the amount of all distance selling to a particular Member State, with its calculation for each Member State;

- the amount of the transaction resulting in ceiling exceeding.

The supplier *may choose* on his own initiative, in the Member State of establishment, to pay VAT in the Member State of destination, for all his distance selling, *such option is valid*:

- for the rest of the calendar year in which he expressed the option;
- and for the next two calendar years.

There is a series of cases where the rules for distance selling do not apply, in such cases **special rules** are applied, namely:

a) *Special cases*, for:

- new transport means (intra-Community acquisition, always subject to VAT in the Member States of destination, regardless of the purchaser's quality, without applying the ceiling of distance selling);
- excisable goods (intra-Community acquisition, always subject to VAT in the Member State of destination if the purchaser is a taxable individual or a non-taxable legal person. If the purchaser is a natural person, the supplier is required to register in Romania from the first supply, without applying the ceiling for distance supplies).

b) *Supplies of goods which are not intra-Community supply of goods* in the Member State of origin, but *non-transfers*, such as:

- goods installed or assembled by the supplier or on his behalf;
- gas and electricity supplies.

c) *Supplies of goods subject to tax in the Member State of origin* that refer to goods supplied by a transaction subject to special arrangements applicable to second-hand goods, works of art, pieces of collection, etc.

✚ ***The distance selling from another Member State in Romania*** takes into account the ceiling for distance selling set by our country for deliveries made by suppliers from other Member States to Romania, which is *EUR 3.000* limit:

- *by which*, the place of supplies remains in the Member State of origin (where transport begins) and the transaction is invoiced with VAT in the supplier's Member State;
- *over which*, the place of supplies is in Romania (where transport ends) for recipients who do not communicate a valid registration for value added tax. For this reason, the supplier will be registered in Romania and will make local deliveries with value added tax in Romania.

✚ ***Distance selling from Romania to another Member State***

Suppliers in our country, delivering goods in another Member State to persons who do not communicate a valid registration for value added tax need to know *the ceiling for distance selling* in each Member State.

Each EU member state has its own distance selling ceiling and *varies between EUR 35.000 and EUR 100.000* limit:

- *by which*, the place of supplies remains in Romania (Member State of origin where transport begins), is invoiced with value added tax in Romania, as it is an intra-Community supply which is not exempted from VAT, is taxable and is invoiced with Romanian VAT;
- *over which*, the place of supplies is in the other Member State (where transport ends). The supplier in Romania will register in the other Member State and will make local deliveries of goods in the State of destination. As non-transfer is not treated as an intra-Community supply when it becomes a transfer (treated as an intra-Community supply), all formalities required by law shall be observed, such as: self-invoice preparation, filling in the non-transfer register (if applicable), indicating

the equivalent intra-Community supply in the VAT return and in the quarterly summary statement.

5. Tax treatment of distance selling

In order to determine the tax treatment in terms of value added for distance selling, we shall start with a few examples of entities.

a) We consider that a purchaser based in Romania, member of the “Group of 3” is buying goods from Italy, from an ordinary taxable person, goods that are shipped from Italy to Romania on the client account. It is known that the ceiling set for distance selling in Romania (EUR 35.000) was not exceeded and the supplier did not exercise on his own initiative the option to pay VAT in Romania.

Tax treatment of this transaction:

a) From the vendor's point of view:

1. *Taxable person:* Yes, Italian supplier;
2. *Taxable transaction:* Yes, intra-Community supply of goods;
3. *Place of supply:* Italy (where transport begins);
4. *Exemptions:* No, the transaction is taxable in Italy;
5. *Tax payment obligation:* The supplier, who invoices with Italian value added tax, which is due to the Italian state budget.

b) From the purchaser's point of view:

1. *Taxable person:* Yes, Romanian purchaser;
2. *Taxable transaction:* Yes, intra-Community acquisition of goods;
3. *Place of acquisition:* Romania (where transport ends);
4. *Exemptions:* The transaction is not taxable in Romania;
5. *Tax payment obligation:* There is no person liable to pay VAT.

b) A purchaser based in Romania is buying goods from a French taxable person, goods that are shipped from France to Romania on the client account. It is known that the ceiling for distance selling set in Romania (EUR 35.000) was not exceeded and the supplier has not exercised this option on his own initiative, but the purchaser, belonging to the “Group of 3”, exceeded the ceiling for intra-Community acquisitions set by Romania (EUR 10.000), registering for value added tax according to Article 153¹ from Law no. 571/2003 on the Fiscal Code, as further amended and supplemented, and providing the supplier with the code.

Tax treatment of this transaction:

a) From the vendor's point of view:

1. *Taxable person:* Yes, French supplier;
2. *Taxable transaction:* Yes, intra-Community supply of goods;
3. *Place of supply:* France (where transport begins);
4. *Exemptions:* Yes (the two conditions are met);
5. *Tax payment obligation:* There is no person liable to pay VAT, as the transaction is exempt.

b) From the purchaser's point of view:

1. *Taxable person:* Yes, Romanian purchaser;
2. *Taxable transaction:* Yes, intra-Community acquisition of goods;
3. *Place of acquisition:* Romania (where transport ends);
4. *Exemptions:* No, the transaction is taxable;
5. *Tax payment obligation:* Purchaser, based on special VAT return.

The same tax treatment applies to distance selling for which the purchaser chose to pay VAT in Romania related to his intra-Community acquisitions.

c) We consider a supply of goods made by a supplier in Germany to a buyer from Romania, who belongs to the “Group of 3”. The goods are shipped from Germany

to Romania on the client account. It is known that the ceiling for distance selling set in Romania (EUR 35.000) is exceeded by the German company and the supplier is required to be registered in Romania for value added tax and to make local deliveries with the Romanian VAT. The purchaser did not exceed the ceiling for intra-Community acquisitions set by Romania (EUR 10.000) and did not choose on his own initiative to pay VAT in Romania for those acquisitions.

Tax treatment of this transaction:

a) From the vendor's point of view:

1. *Taxable person:* Yes, German supplier;
2. *Taxable transaction:* Yes, distance selling with the place in Romania (the transaction is a non-transfer in Germany);
3. *Place of supply:* Romania (where transport begins);
4. *Exemptions:* No;
5. *Tax payment obligation:* The vendor, who must register in Romania and issue an invoice with value added tax in Romania.

b) From the purchaser's point of view, not registered for value added tax purposes, the acquisition is treated as a local purchase.

It is done similarly if the supplier from the other Member State has opted to pay VAT in Romania.

If the ceiling for distance selling set by Romania (EUR 35.000) is exceeded or the supplier has chosen to pay VAT in Romania and the purchaser, member of the "Group of 3", exceeds the ceiling for intra-Community acquisitions set by Romania (EUR 10.000) or has opted for his intra-Community acquisitions (transactions take place in same period), then:

- *the supplier* is not required to be registered in Romania as the application of provisions concerning taxable intra-Community acquisitions in Romania shall prevail, namely that in Romania the purchaser exceeded the ceiling and was registered for value added tax in Romania for his intra-Community acquisitions;
- *the purchaser*, non-taxable person, must declare the intra-Community acquisition and pay VAT in Romania based on a special VAT return.

6. Conclusions

In *conclusion*, with reference to *non-taxable intra-Community commercial transactions*, we can say that:

a) for the intra-Community acquisitions of goods made by an entity, member of the "Group of 3" in Romania, VAT is not due if the amount of intra-Community acquisitions made in the current or previous year by this entity has not reached the RON equivalent of the intra-Community acquisition ceiling, of EUR 10.000 per year for our country, or the recipient has opted for taxation of his intra-Community acquisitions in Romania.

If the ceiling is exceeded or this entity is opting for taxation of his intra-Community acquisitions, then the company in the "Group of 3" shall register specifically for the value added tax paid only for intra-Community acquisitions and shall pay the related VAT.

b) the intra-Community supplies of good made by people in the "Group of 3" are made without value added tax.

Referring to *distance selling*, we may *conclude* that they involve specific rules regarding the *recipient's quality*, who must belong to the "Group of 3" and purchases to be made within the legal ceiling and the entity has not opted for taxation in Romania of

all his intra-Community acquisitions and the *supplier's quality* that exceeds the ceiling for distance selling set by our country, in the amount of EUR 35.000.

Given that the supplier makes deliveries to non-taxable persons who can not communicate a valid registration code for value added tax, he shall register for value added tax in the recipient's Member State, thus making a non-transfer followed by a local delivery.

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