VAT FOR THE PURCHASES OF EXTRA-COMMUNITY GOODS

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Abstract:
This study emphasizes the manner of calculating the VAT tax for the purchases of extra-community goods, as being the action of purchasing goods whose suppliers are located in different states, other than the member states of the EU. The notion of extra-community purchase is not regulated through the Fiscal Code, but it can be used for delimiting the origin of a good, from a community state or from an extra-community state, within an action whose purpose is the same: the purchase/ the acquisition/ the supply of a good.

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JEL classification: *G30, G32, H25, H71*

The import operation is located within the VAT sphere, thus it is subject to the VAT tax. The VAT basis of assessment for the import of goods is the value at the customs of the goods to which the taxes are added, the fees and the commissions due outside as well as inside the Romanian territory until the moment of the import, except for the VAT.

The basis of assessment gathers the accessory expenses which occur until the first destination of the goods in Romania (commissions, wrapping expenses, freight and insurance). For the conversion in Ron of the basis for assessment for imports the exchange rate used is the one recorded on the last but one day of Wednesday of the month when the import is performed.

Identical with the intra-community purchases, VAT payable for the import of goods is not paid directly to the general consolidated budget, but it is recorded in the accountancy through the formula 4426 = 4427, it is emphasized in the purchase book and it is taken from the VAT settlement, without actually paying it through the bank account.

Imports are emphasized in the purchase books based on the customs import statement or, as the case may be, on the certificate of findings issued by the customs authority.

For example, we consider a company from Iceland which receives some goods from an EU member state.

For the entrance on the community territory the customs is performed by a customs affiant from the Netherlands, an EU member state.

How is it declared and what are the obligations regarding the VAT? The documents were issued in December 2009. At first glance, we can consider that the operation represents for the company an import performed on the territory of the Netherlands as a member state of EC.

The goods were released into free circulation on the territory of the Netherlands because upon their entry into the Netherlands the customs representative appointed by the company paid all the customs import rights. At its turn, the company S issued an invoice for the paid customs duties recovery at the customs.

From the issued invoices by the company S, only the clearance charges and the discharge taxes were paid. Such taxes refer to the transport of the goods from a means of transport (plain) on the route to Reykjavik - Rotterdam to another means of transport on the route Rotterdam - Otopeni.

From the invoice issued by the S representative the invoicing of the following two elements does not result:

1. the commission for the performed service

2. the paid VAT sum for the performed import (on the invoice this should be mentioned separately: WAT … euro).

Nevertheless, the company S is authorised to charge VAT "for levy of WAT". According to the contractual relationship with the company S, we must know for sure if the payment of the VAT was negotiated at the customs in the Netherlands.

If the "customs duties" category includes the VAT sum paid by the freight company S on behalf of the company S.C. P S.R.L. this sum can be requested for repayment from the fiscal authority from the Netherlands. For the VAT sum paid on the territory of the Netherlands, the company cannot exercise the right for a deduction through the VAT settlement code 300 filled in and filed at the competent fiscal body. However, taking into account that in the Netherlands two VAT quotas are collected (the standard quota of 19% and the reduced quota 6%), from a simple arithmetic calculation, we find that the VAT would not have been applied to the value of the imported goods in the customs of the Netherlands.

* for the standard quota: 15,553 Euro (the goods value) x 19% = 2,955 Euro;

* for the reduced quota: 15.553 Euro (the goods value) x 6% = 933 Euro;

By their nature, the imported goods could not be ranked using the reduced VAT quota, and the invoice issued by the freight company had the value of 1148 Euro, which means that the VAT sum of 2955 Euro was not invoiced. According to the EEC Statute no. 2913/92 from 12 October 1992 for the constitution of the Community Customs Code, the imported goods from countries or territories which are not part of the customs territory of the Community and which have been released in the free circulation on the community territory are ranked in the category of community goods.

In such situations, because the goods are transported from the territory of a member state to Romania, the operation represents an intra-community purchase for which you have to apply the reverse taxation through the formula 4426 = 4427. The definition of the intra-community goods purchase is complied with as it is regulated by article 130^1 paragraph 1 from the Fiscal Code according to which it is an intra-community goods purchase "obtaining the right to dispose of, as the owner, the movable assets shipped or transported to the destination indicated by the buyer, by the supplier or by any other person, on behalf of the buyer, to a member state, other than the one from where the transport leaves or the goods are shipped."

If the operation is indeed an intra-community acquisition, through the review statement code 390 afferent to the 4th trimester 2009 we must take into account the stipulations of the O.M.F.P. no. 552/ March 28, 2008, for the approval of the model and content of the form "Review Statement regarding the Intra-community Deliveries/Acquisitions of Goods".

Point 3 of this order regulates the procedure of reporting the intra-community purchases coming from a supplier which is not located in the European Community. This extra-community operator considers itself represented by a freight company located in a member state on whose territory the freight starts. Thus, we have to fill in:

* under the rubric "Name of the intra-community operator": the name of the extra-community supplier from Iceland;

* under the rubric: "Intra-community operator code": the registration code for VAT purposes given to the freight company.

In this regard, through O.M.F.P. no 552/2008, the following example is presented: "a company "A" from an extra-community state (X) sells goods to a company "B" from Romania. The goods are imported by a member state of the European Union (Y) by the freight company "C" and then the same company "C" declares on behalf of the supplier "A" from the extra-community state (X) (but under its own VAT code) the intra-community delivery of the goods from the member state (Y) to Romania.

In such situations the freight company "C" shall be considered the legal representative. In the review statement regarding the intra-community purchases, under the rubric "Name of the intra-community operator", the name if the supplier will be filled in, respectively company "A" from the extra-community state (X), and under the rubric "Intra-community operator code", the code from the member state (Y) of the freight company "C" which has declared the intra-community delivery".

Because the purchase of goods has been charged twice from a VAT point of view, once on the import of goods on the territory of the Netherlands and the second time through the application of the reverse taxation system on the entry of the goods on the territory of Romania, the company may request the reimbursement of the VAT sum paid in the Netherlands by the freight company from the Netherlands empowered by the company.

The reimbursement rules of the paid VAT on the territory of the Netherlands is performed in a similar manner as for the ones regulated by O.M.F.P no. 523 from April 3, 2007 on the approval of the procedure for the solution of the VAT reimbursement applications to the non-registered taxable persons and which are not bound to register for VAT purposes in Romania, residents of other member states of the European Union. The cost of the purchased goods includes only the value of the other taxes and customs commissions from the freight company invoice, because the VAT sum which has been paid at the customs would be recovered from the fiscal authority from the Netherlands. Upon the reception of the goods, when the entry price is formed, all the sums afferent to the respective acquisition must be taken into account, as regulated by O.M.F.P. no 3055/ October 29, 2009, on the approval of the Accountancy Regulations complying with the European directives, published in the Official Gazette no. 766 bis from November 10, 2009 at point 8.1.1, entitled "The Evaluation upon the Entry Date in the Entity". Thus, we must take into account the following regulated stipulations:

* point 50 paragraph (1) letter a) according to which upon the entry date in the entity, any good purchased with money onerously are evaluated and recorded in the accountancy at the entry value established by the acquisition cost.

* point 51 paragraph (1) according to which the acquisition cost of a good is formed of:

- the purchase price;
- import duties;
- other fees (except for the ones which the legal person can recover from the fiscal authorities);
- freight fees etc.;
- other expenses which can be attributed directly to the respective goods acquisition (commissions, notary fees, license fees and other non-recoverable expenses).

If the "customs duties" category does not include the VAT sum which would have been paid at the Netherlands customs by the freight company S on behalf of the company S.C. P S.R.L., this means that the goods are not considered as released on the free circulation on the community territory, and the operation is not considered an intra-community acquisition.

Thus, the operation is considered an import on the territory of Romania, reason for which the closest customs office must be contacted in order to have the goods charged customs duties. After paying the VAT sum at the customs, the company receives the customs import statement based on which the right of VAT deduction is exercised.

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