

INTRA-COMMUNITY ACQUISITIONS IN ROMANIA'S ADHESION TO EUROPEAN UNION

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Abstract:

Early '90s was marked by major political and economic changes in most regions of the world. The success of market economies, the failures of centralized systems based on the command economy and the inefficiency of public enterprises have defeated the state's strong role in centralized economies. This period marked the beginning of the changes in Romanian society, namely the transition to democracy and from centralized economy to market economy. The extensive process of transition to market economy took place based on and in conjunction with other complex and significant process, that of European integration.

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The integration "mirage" has become attractive through the benefits enjoyed by Member Countries.

Because of the "common market", European Community states have failed to delineate a uniform economic area, in which the customs and trade barriers were eliminated, based of this concept being a set of fundamental freedoms: free movement of goods, persons, services and capital.

The acquisition of EU membership was a top priority of Romanian foreign policy. Since the signing, in 1993, of the European Association Agreement, all Romanian governments, without exception, have set as their priority objective of government programs the imperative of European Union adhesion, based on the early implementation of the adhesion criteria from Copenhagen and Madrid, so this objective has become reality at January 1. 2007.

From a legal point of view, Romania's adhesion has brought many changes, with direct impact on commercial operations conducted by the operators.

Legislative changes produced by adhesion to the European Union:

Before adhesion	After adhesion
Exports to Member States	Intra-Community deliveries
Imports from Member States	Intra-Community acquisitions
Customs Tariff of Romania	Common Customs Tariff
Inward / outward operations with the Member States	Services on movable tangible goods - non-transfers
Customs warehouses	Consigned stocks or at the customer's disposal
	Special schemes - new means of transport, excisable goods

By harmonizing the Romanian legislation with the EU, the term to import from Member States was replaced with the intra-Community acquisition one, defined as "obtaining the right to have, as an owner of movable tangible goods dispatched or

transported to the destination indicated by the buyer or another person, in the supplier's or the buyer's account, to a Member State other than the one of the departure of the transport or the dispatch of goods.

Basically, if in the State in which the goods are shipped or transported, takes place an intra-Community supply, in the State where the goods arrive at their destination there is an intra-Community acquisition.

They are also treated as a pay-Community acquisition the following:

- Use in Romania, by a taxable person for the purposes of their business, of goods transported or shipped by it or by another person on its behalf, the Member State in which such goods were produced, extracted, purchased, acquired or imported by it, for the purposes of their business, whether transport or shipment of such goods, if it was conducted from Romania to another Member State, it would have been treated as a transfer of goods in another Member State;

- The taking over, by the Romanian armed forces for their use or the civilian personnel of the armed forces, of the goods they have acquired in another Member State, which is part of the North Atlantic Treaty signed in Washington on April 4, 1949, and the acquisition of which there weren't applied the general rules of taxation in that other Member State, in the situation in which the import of those goods couldn't qualify for exemption; the legal provision applicable to these goods, after having been used by the armed forces, they are sent in Romania;

- It's also considered that the payment is made with acquisition of goods whose delivery, if it were made in Romania; it would have been treated as a supply of goods made with payment;

- It's treated as an intra-Community acquisition, the purchase by a non-taxable legal person of imported goods made by that person in the Community and transported or sent in another Member State other than one where the import was made. The non-taxable legal person will receive reimbursement of the tax paid in Romania for the import of goods, if he proves that his intra-Community acquisition was subject to destination tax of the goods that were shipped or transported.

The changes of the regime of intra-Community procurements present numerous advantages for businesses from our country, namely:

- a) Simpler procedures;

- b) Low costs compared with the treatment of the transaction before adhesion (accounts, payments for additional services);

- c) Elimination of import customs declaration, also, as VAT is charged in the State of destination, the customer, a taxable person registered for VAT payer in Romania, registers VAT by applying the reverse charge mechanism.

As disadvantages, we mention: costs associated with new reporting obligations, costs of training staff and implementing new software or updating the existing one.

The new procurement system and intra-Community supplies affected the state budget revenues in the first year of adhesion. VAT system is regulated at the European Union's level as regards the tax base, exemptions and exemptions from payment. Instead, the fee of the tax is set by each state and it ranges from 15% (standard rate in Luxembourg and Cyprus), to 25% in Sweden.

Reporting obligations of economic operators on intra-Community acquisitions

With the adoption of amendments regarding the VAT and its harmonization with European legislation, businesses have new obligations in registration, recognizing and declaring, in addition to those that were used. Additional bureaucracy is imposed, on the one hand, by the national needs, including the exchange of information, and, on the other, by the imperatives at European level.

In order to meet the European requirements at electronic level in tracking VAT, the information must be included in documents with special formats. Thus, financial-

accounting departments of Romanian companies had to adapt to new requirements and learn to properly use all tools of reporting: logs for sales / purchases, the new statement of VAT, the summary statement for intra-Community supplies or acquisitions, non-transfers register, register of received goods, the register of capital assets and, where appropriate, the Intra-State declaration and the new special VAT statement.

Changing the VAT legislation allows businesses to personalize the buying and selling logs according to the specific business and the reporting needs, in order to facilitate the automatic acquisition of as much information from them in the VAT deduction, therefore, models of journals contain distinct rows for: Community acquisitions, exempt intra-Community, supply purchases of goods for business needs, procurement of goods for resale, purchases of capital goods.

Summary statement is a relatively new form that needs to be completed with information from the logs of sales / purchases - from the columns on intra-Community supplies or acquisitions - and that needs to be filed by the companies registered for VAT in Romania until the 25th of the following month of the quarter for that the reporting is made.

If the companies registered for VAT carry out intra-Community trade operation over a certain threshold value, they are required to submit monthly to the National Institute of Statistics, an Intra-State supplementary declaration, which will replace the customs declarations.

The companies that aren't registered for VAT and who are not required to register, as well as the non-taxable legal persons intending to perform an intra-Community acquisition in Romania must make a special statement for purchases of new means of transport, services or excise products.

VAT Statement

Tax Code provides that any taxpayer who is established in Romania and makes or intends to pursue an economic activity involving taxable transactions and / or exempt from VAT with deduction right has to require registration for VAT to the tax body jurisdiction, as follows:

- Before carrying out such operations in the following cases:
 - If it proclaims that it will achieve a turnover equals or exceeds the exemption limit of 35,000 Euros, regarding the special exemption for small businesses;
 - Whether it proclaims that it will achieve a turnover below the exemption limit, but opts for the normal application fee;
 - Within 10 days of the end of the month in which he reached or exceeded this limit, if during a calendar year he reaches or exceeds the exemption limit;
 - If the turnover achieved during a calendar year is below the ceiling set, but he chooses for the application of the normal fee.

Also, a non-registered taxable person for VAT purposes in Romania (whether or not it has fixed headquarters in our country), that intends to make an acquisition of goods for which is required to pay tax, or an intra-Community delivery of goods exempted from tax, it will apply to register for VAT prior to that operation.

All persons registered for VAT purposes, must submit to the fiscal authorities, for each fiscal period, a statement by the 25th of the month following the month in which that fiscal period ends.

The tax period may be considered the calendar month, or in some cases, the calendar quarter (if the turnover is less than 100,000 euros and it includes transactions taxable and / or exempt with deduction right).

Through the implementing rules of the Tax Code it's established that, fiscal authorities may approve, at the justified request of the taxable person, another fiscal period, namely:

- Calendar semester, if the taxpayer makes taxable transactions only up to three months in a semester;
- The calendar year, if the taxpayer makes taxable transactions only up to six months in a period of one calendar year.

The data entered incorrectly in a statement tax deduction can be corrected by a deduction of a subsequent tax period and it will be inscribed in the rows for adjustments.

VAT special statement

The taxable persons who are not registered and aren't required to register, or the non-taxable legal persons that intending to perform an intra-Community acquisition in Romania, have the following responsibilities:

- To require registration for VAT prior to the intra-Community acquisition, if the value of the acquisition exceeds the ceiling for intra Community acquisitions (10.000 Euros) in the calendar year when the Community acquisition takes place;
- To depose a special tax deduction.

According to legislation, any buyer paying the VAT, or not, buying a new means of transport coming from a Member State is considered as making a taxable intra-Community acquisition, which must pay VAT in the country of destination of the means of transport.

Intra-Community acquisitions of excise goods are an always taxable transaction that is why the ceiling for Community acquisitions isn't considered. Exceptions are the intra-Community acquisitions made by individuals or in their account, which are exempt under a quantitative ceiling (personal needs). In the category of excise goods are included: energy products, alcohol, alcoholic beverages and manufactured tobacco (as defined by legislation in force), except the gas distributed through the natural gas and electricity distribution system.

Special statement of value added tax will be submitted by the 25th of the month following the one when the chargeability operations arise. The obligation to report concerns only the period when the tax chargeability arises.

Summary statement on intra-Community deliveries / acquisitions of goods

To meet the requirements of EC Regulation no. 1798/2003, taxable persons registered for VAT, which carry out intra-Community operations, are required to submit to the fiscal authorities, not later than 25th, inclusive, the following month of a calendar quarter, the summary statement on intra-Community deliveries / acquisitions of goods (390 VIES).

The regulations on preparation and submission of summary statement are provided in the Tax Code and the Order of Ministry of Public Finance no. 537/2007.

Statement 390 includes the following information on intra-Community acquisitions:

- Total sum of intra-Community acquisitions of goods, on each provider, for which the taxpayer is required to pay the tax and for which the tax liability intervened for that calendar quarter;
- The total amount of purchases of goods made in a triangular transaction for which the provider has designated the beneficiary taxable person as the person liable to pay the tax.

The summary statements will be deposed only for periods in which the retention fee incurred for such operations.

The validity of identification data of persons registered for VAT in other EU Member States can be verified also by the payers of VAT in Romania via the computer system VIES (VAT Information Exchange System), which became operational on January 1. 2007 in our country.

The VIES computer system ensures information exchange with EU Member States regarding the value added tax. VIES is the system that creates the database for determining the contribution of Member States, so Romania as well, after adhesion at the Community budget. The system is an online database that includes all payers of VAT from EU Member States and the information on trading transactions are updated regularly.

Intra-State statistical statement

Intra-state is the system for collecting statistical data on trade in goods between EU countries. When a country becomes a member of the European Union (EU) and part of the Single Market, customs control on the movement of goods between the country and other EU countries disappears and the traders no longer have to fill in customs declarations for these goods.

The statistical Intra-State system was created and developed, to collect information directly from business operators in EU countries that exchange goods with other EU countries.

The role of the collected information refers to:

- They allow information of the volume for the international trades of each country;
- They underlie the calculation of macroeconomic indicators that show the economic and social development of a country;
- Are used to substantiate the Community policies in different areas (trade policy, monetary, customs, etc.) and to determine the share of the Community budget for each Member State of the European Union.

The statistical system is operational from January 1. 1993 in the European Union and is based on a number of regulations that apply in all EU Member States. There are currently in force the Council Regulation. 638/2004 regarding trade statistics between EU Member States and the Commission Regulation no. 1982/2004 of implementing Council Regulation no. 638/2004.

The regulations are supplemented at national level by Law no. 422/2006 and by the provisions issued by the President of the National Institute of Statistics, respectively the Order regarding Rules for completing the Intra-State Statistical Declarations and the Annual Order containing information on the intra-State threshold values.

The intra-State system became operational starting from January 1, 2007, the date of Romania's adhesion to the European Union. The impact on economic agents is that, they need to adapt their information / accounting system so that they are able to generate information.

The requirement to provide Intra-State statistical data reverts to all economic operators who meet all the following conditions:

- Are registered for VAT (have a tax identification code);
- Make trades with goods with other Member States of the European Union;
- The total annual value of trade in goods with other EU Member States for each of the two streams, introduction and respectively dispatches, exceeds the Intra-State thresholds for each year.

The intra-State statistical declaration must include the following elements: flow (entries / dispatches), the reference period, the company' s identifying data, country of destination / country of shipment, freight code (an 8-digit), the nature of the transaction, mode of transport, delivery terms, the quantity in kilograms and supplementary units, the invoiced and statistic value.

The information on Intra-State thresholds is published annually in the Official Gazette of Romania, at the end of the year, preceding the one for which the thresholds are in place. Intra-state thresholds set for 2008 are 300.000 USD for intra-Community entries, respectively 900.000 USD for intra-Community dispatches.

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