

VAT TAXATION OF INTRA-COMMUNITY SUPPLIES AND ACQUISITIONS OF SERVICES

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As of January 1st, 2010, as a result of the transposition in the national legislation of the Council Directive 2008/8/CE of 12.02.2008 for the amendment of the Directive 2006/112/CE regarding the place of the supply of services, new notions of tax law have arisen, namely intra-community acquisitions of services and intra-community supply of services. The transposition in the national legislation³²² of the new CE directives in the field of the VAT aims not only at the way the place of the supply of services is determined, but also at the changes regarding the person subject to taxation, tax registration, declarative obligations, etc.

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The place of the intra-community supply of services

One of the conditions required by law for the operations within the value added tax to be taxable in Romania is that *the place of supply of services should be deemed as being in Romania.*

As a general rule, the place of the supply of services towards a taxable person acting as such is the place where the person receiving the services has established the registered office for his/her business. If the services are supplied to a fixed headquarters of the taxable person, located in a place other than the one where the person has the headquarters of his/her business, the place for the supply of services is the place of that fixed headquarter of the person receiving the services.

In the case of the fixed headquarters wherefrom the services come, in order to qualify as fixed headquarters of a taxable person, the degree of permanence and its structure with respect to the technical and human resources must be sufficient to provide taxable services on a regular basis. In the case of the fixed headquarter receiving the services, in order for it to be qualified as a fixed headquarter of a taxable person, it must meet the same conditions.

A taxable person having the headquarters of his/her business outside Romania, *but settled in Romania* by fixed office/office, the place for the service supply will be deemed the place where the beneficiary has established his/her business headquarters, or , as the case may be, a fixed headquarters situated in another state, if the beneficiary can submit enough proofs to the service provider that these services have been provided to the headquarters of his/her business, or to a fixed headquarters established in another state, and not to the fixed office/offices in Romania;

A taxable person having the headquarters of his/her business in Romania, *but has established fixed office/offices outside Romania*, it shall be deemed that the place for the supply of services is the fixed headquarters whereto the services are provided, if the beneficiary can present enough evidence to the provider in order to prove that these services have not been provided to the headquarters of his/her business in Romania, but to the fixed office/office outside Romania.

³²² Emergency Government Ordinance no. 109/07.10.2009, for the amendment and supplementation of Law no. 571/2003 regarding the Fiscal Code, published in the Official Gazette no. 689/13.10.2009.

In case of the services provided by a taxable person not settled in Romania to a taxable person having his/her registered office in Romania, it shall be deemed that the place of the supply is not in Romania, if the beneficiary can prove that the service is provided to a fixed office located outside Romania.

The services for which the general rule for the establishment of the supply is applied, which are supplied by the providers settled in Romania to beneficiaries who are taxable persons settled on the territory of the Community, are called *intra-community service providers*.

The services received by a taxable person settled in Romania from a provider, a taxable person settled in the community but not in Romania, are called *intra-community acquisitions of services*.

The general rule for the establishment of the place of supply is not applied for the following services:

- the services carried out with respect to the real assets, including the services provided by real estate agents and experts, of accommodation in the hotel sector or in sectors with similar function, as well as holiday camps or camping places, for the granting of user's right of real estate, for services of preparation and coordination of the construction works, as well as services provided by architects and companies supplying construction site supervision;
- services of passenger transport;
- services regarding cultural, artistic, sports, scientific, educational, entertainment or similar activities, such as fares and exhibitions, including the services provided by the organisers of these activities;
- restaurant and catering services, except for those actually provided onboard ships, aircrafts or trains during a part of a passenger transport operation carried out within the Community;
- short-term leasing services of a means of transport.

A taxable person also carrying out activities or operations that are not considered taxable according to the legal provisions is considered a taxable person for all the services received.

Moreover, a non-taxable legal person registered only for VAT purposes or registered for VAT purposes for intra-community acquisitions of goods or services, is considered to be a taxable person for all the services received.

The person bound to pay the value added tax is the taxable person providing services, except for the cases where the beneficiary is bound to pay the tax.

The tax is owed by any taxable person, including by the non-taxable legal person registered for VAT purposes, which is a beneficiary of the taxable services purchased within the community. The tax is owed including if the beneficiary, taxable person settled in Romania, has not honoured his/her obligation or being registered for VAT purposes.

The registration of the taxable persons for VAT purposes

The taxable person having the headquarters of his/her business outside Romania, but settled in Romania by a fixed office, is bound to request the registration for VAT purposes in Romania, as follows:

- before the reception of the services, if he/she is going to receive, for the fixed office in Romania, services provided by a taxable person settled in another Member State (*intra-community acquisition of services*), the latter being bound to pay a tax in Romania;
- before the supply of the services, if he/she is going to provide the services from the fixed office in Romania for a beneficiary taxable person settled in another Member State (*intra-community supply of services*), bound to pay the tax in the other Member State;

The taxable person having the headquarters of his/her business outside Romania and settled in Romania by several fixed offices without legal personality will be identified by a single registration code for tax purposes. To this end, the taxable person will appoint one of the fixed offices on the Romanian territory that would submit the tax deduction and be liable for all the VAT obligations of all the fixed offices settled in Romania.

The taxable person having the headquarters of his/her business in Romania, not registered and not having the obligation of registration for VAT purposes and not already registered for intra-community acquisitions of goods or for intra-community acquisitions of services, is bound to be registered for VAT purposes if he/she provided services with the place in another Member State (*intra-community supply of services*), before the supply of the service.

The taxable person having the headquarters of his/her business settled in Romania, not registered or having the obligation of being normally registered for VAT purposes, not already registered for intra-community acquisitions of goods or for intra-community supply of services, is bound to be registered for VAT purposes if receiving services with the place in Romania (*intra-community acquisition of services*), before the reception of those services, because this person is bound to pay the tax in Romania.

The registration will be deemed valid as of the registration application.

The persons registered according to the above cannot communicate this code for the deliveries of goods or supply of services carried out to other people, as it is communicated to other people only for intra-community supply of services and for intra-community acquisitions of services.

The public institutions that are normally registered for VAT purposes, for their entire activity or only for part of the structure, will not apply for the registration for VAT purposes for intra-community acquisitions of services or for intra-community supply of services. They will communicate the normal registration code for VAT purposes, whether the acquisitions are meant to be used for the activity carried out in the capacity of public authority, for which the public institution does not have the capacity of taxable person, or for activities for which the public institution has the capacity of taxable person.

Any public institution not normally registered for VAT purposes, but which has been given a registration code for VAT purposes for intra-community acquisitions and supply of services will be deemed a taxable person only with respect to the establishment of the place for the service supply.

The fiscal period and the declarative obligations

The taxable persons using the calendar trimester as fiscal period are not bound to use the month as fiscal period if they carry out intra-community acquisitions of services.

The persons normally registered for VAT purposes must submit to the authorised fiscal agencies, for each fiscal period, a tax deduction, until the 25th, inclusive of the next month of the one in which that fiscal period ends.

The operations regarding the intra-community supply and acquisitions of services are distinctly emphasized in the tax deduction, the intra-community acquisitions of services being emphasized both as deductible tax and as collected tax.

The taxable persons who are not registered and who need not be normally registered for VAT purposes, whether or not they are registered for intra-community acquisitions of goods and services, as well as the non-taxable legal person registered for VAT purposes for intra-community acquisitions of goods or for services, which are the beneficiaries of the services having the place of supply in Romania and which are supplied by taxable persons without residence on the territory of Romania, but settled within the Community, submit the special tax deduction for intra-community acquisitions of services until the 25th of the next month after the one in which the exigibility of the operations arises.

Any taxable person normally registered for VAT purposes or only for intra-community acquisitions of goods or for services must draw up and submit with the authorised fiscal agencies, until the 15th, inclusively, of the next month of a calendar month, a recapitulative statement which should mention:

- the supply of services carried out to the benefit of taxable persons not settled in Romania, but settled in the Community, others than those exempt of VAT in the Member State where they are

taxable, for which the tax exigibility has arisen in that calendar month;

-acquisitions of services carried by taxable persons in Romania who have the obligation of paying the tax, for whom the tax exigibility arose in that month, from taxable persons not settled in Romania, but settled in the Community.

In the case of the supply of services carried out to the benefit of taxable persons not settled in Romania, but settled in the Community, the provider will report in the recapitulative statement only the services that do not get tax exemption in the Member State where they are taxable. To this end, the operation will be deemed tax-exempt in the Member State where it is taxable if that operation were tax exempt in Romania. If in Romania the tax exemption is not applicable, the provider is exonerated of the obligation of declaring that service in the recapitulative statement if he/she receives an official confirmation from the fiscal authority of the Member State where the operation is taxable, wherefrom it should result that in that Member State a tax exemption is applied.

The beneficiaries of the taxable persons in Romania have the obligation of declaring in the recapitulative statement the intra-community acquisitions of services, provided by the taxable persons not settled in Romania, but settled in the Community, when they have the obligation of paying the tax for those services, respectively when no tax exemption is applied for that service.

Conclusions

The new regulations of the Fiscal Code and the methodological rules issued for its application, especially those regarding the intra-community services have imposed the issue of new orders from the President of the National Agency of Fiscal Administration that would harmonize their contents with the new regulations. We hope that all these changes, along with the change of the declaration periods, especially the monthly submission of the recapitulative statement will contribute to the increase of the efficiency in the administration of the value added tax and, implicitly, to the increase in the fiscal output of this tax.

Bibliography

1. Law no. 571/2003 regarding the Fiscal Code, published in the Official Monitor no. 927/22.12.2003, with the subsequent amendments and supplements;
2. The Emergency Government Ordinance no. 109/07.10.2009, for the amendment and supplementation of Law no. 571/2003 regarding the Fiscal Code, published in the Official Monitor no. 689/13.10.2009;
3. Order of the President of the National Agency of Fiscal Administration no. 77 of 21.01.2010 for the approval of the model and contents of the form (300) "Value Added Tax Deduction", published in the Official Monitor no. 67/29.01.2010;
4. Order of the President of the National Agency of Fiscal Administration no. 75 of 21.01.2010 for the approval of the model and contents of the form (301) "Value Added Tax Special Deduction", published in the Official Monitor no. 59/26.01.2010;
5. Order of the President of the National Agency of Fiscal Administration no. 76 of 21.01.2010 for the approval of the model and contents of the form (390 VIES) "Recapitulative Statement regarding the intra-community deliveries/acquisitions/supply", published in the Official Monitor no. 67/29.01.2010;
6. Order of the President of the National Agency of Fiscal Administration no. 7 of 04.01.2010 for the approval of the model and contents of some registration forms for value added tax purposes, published in the Official Monitor no. 32/15.01.2010.