

TAX TREATMENT OF NON-TRANSFERS

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Abstract

Romania's accession to the European Union has required significant changes in many fields of activity, the field of taxation is one of the most affected as taxation is fully harmonized with the European laws after January 1, 2007.

Therefore, the export and import concepts disappeared in the relationship between the Member States, being replaced by new concepts such as intra-Community acquisition (instead of import) and intra-Community supply (instead of export).

Given the intra-Community commercial transactions and hence their taxation, in this article I intend to address the tax treatment of non-transfers.

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.

To clarify the tax issues in terms of value added tax, I found it necessary, after identifying the operations considered as non-transfers, to answer several questions based on which the tax treatment of such operations will be determined, questions that relate to the taxable person, taxable operation, the place of acquisition, the exemption or not of the operation and the obligation to pay VAT.

For this I took into account several specific situations that arise in trade relations between EU Member States which fall within non-transfers, examples that allowed some conclusions to be drawn on the tax issues arising in intra-Community trade relations.

Keywords: tax treatment, non-transfer, transaction, supply, acquisition, value added tax

JEL Classification: H32, H87, M40, M41, M49, Q56

1. INTRODUCTION

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 intended to approach the tax treatments specific to non-transfers in the European space.

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To clarify the tax issues in terms of value added tax, I found it necessary, after identifying the operations considered as non-transfers, to answer several questions based on which the tax treatment of such operations will be determined, questions that relate to the taxable person, taxable operation, the place of acquisition, the exemption or not of the operation and the obligation to pay VAT.

Thus, I took into account some specific situations involved in intra-Community relations between Romania and the other EU Member States which fall within non-transfers, examples that allowed me to draw a series of conclusions concerning the tax treatment of such intra-Community transactions, identifying for each case the documents where these operations are recorded.

2. THEORETICAL CONSIDERATIONS ON NON-TRANSFERS

Non-transfer appeared in the same time with our country's accession to the European Union and is the dispatch or transport of an asset from Romania in another Member State by or on behalf of the taxable person, to be used for one of the following *operations*:

a) Operations involving a transaction, without an intra-Community supply in the Member State where transport begins and without being declared in the *Register of non-transfers*, such as:

- the supply of assets is a *distance selling* taking place in the other Member State;
- the supply of those assets is made by the taxable person in the Member State of destination in order to carry out a supply accompanied by *installation or assembly* in the other Member State;
- the supply of those assets is made by or on behalf of the taxable person *on ships, aircrafts or trains* and the place of supply is in the other Member State during the transport of persons carried out in the Community;
- moving the assets in another Member State for *export, intra-Community supplies and other supplies exempted from VAT* with deduction right;
- the supply of *gas and electricity* through distribution networks for natural gas or electricity.

b) Operations that do not involve a transaction, such as:

- *provision of services on movable tangible assets*, made in the other Member State, for the taxable person's benefit, provided that such assets are returned to that person in Romania on the completion of processing;
- *temporary use* of that asset in the Member State of destination, in order to provide services in the other Member State by a taxable person;
- temporary use of that asset in the other Member State for a *period not exceeding 24 months*, provided that import of the same asset would receive a full exemption of import duties.

In terms of taxation the following aspects are taken into account:

a) For non-transfers involving a transaction:

- in the Member State where transport begins there is not an intra-Community supply, but a non-transfer;
- the operation is not stated in the summary statement on intra-Community acquisitions and supplies of assets;
- the operation will be recorded in the VAT return in the column of operations that do not take place in Romania;
- the supply is invoiced without VAT in the Member State of origin;
- the supplier is required to register in the Member State where the operation takes place only if the recipient is a non-taxable person, therefore the necessary condition that both partners should be registered for VAT purposes is not complied with.

b) For non-transfers without a transaction:

- the operations must be entered in the Register of non-transfers;
- there must be a proof of the transportation.

If one of the above conditions is not met, the dispatch or transport of the asset in question is regarded as a **transfer** from Romania in another EU Member State.

According to the Fiscal Code and its implementing methodological rules, business operators making intra-Community operations with assets must fill in certain cases the Register of non-transfers.

The Register of non-transfers must be filled in if non-transfers are performed and must contain the following *elements*:

- description of assets;
- quantity of assets;
- value of assets;

- movement of assets, descriptions of those which are not returned and the amount thereof;
- the date and a reference to the documents issued in connection with these operations, if necessary.

The Register of non-transfers *shall not be filled in* for:

- means of transport registered in Romania;
- pallets, containers and other packing moving without invoicing;
- assets necessary to conduct radio-broadcasting and television activities;
- assets necessary to conduct a profession or trade, if:
 - the price and normal value on each asset separately does not exceed EUR 1.250 at the exchange rate on the date the object is transported or dispatched to another Member State, provided that the asset is not used more than 7 days outside Romania, or:
 - the price and normal value on each asset separately does not exceed EUR 250 at the exchange rate on the date the object is transported or dispatched to another Member State, provided that the asset is not used more than 24 months outside Romania;
- laptops and other similar professional material that is transported outside Romania in a business travel by staff of an economic entity or by an authorized natural person.

If subsequently the conditions on the movement of goods for non-transfers are no longer met, then the ***non-transfer becomes a transfer***.

To avoid situations in which business operators should be registered for VAT purposes in several Member States for transfers of assets or assimilated intra-Community acquisitions of goods, ***simplification measures*** have been implemented for:

- multi-stakeholder operations in the Community, related to works on movable tangible assets;
- refusals and returns of goods within the Community;
- goods sold on consignment and from inventory available to the customer;
- goods sent for testing or verification of compliance.

Usually, when goods come from another Member States and are subject in Romania to processing works or other works on movable tangible assets, services are not taxable in Romania if the recipient submits a valid VAT code from another Member State and the goods are transported directly outside Romania, without any stopovers to other persons that would carry out further processing.

The only situation in which the recipient of such service provisions will be required to register for VAT purposes in Romania is one in which goods are transported back into the country from which they originated.

In this case, in terms of movement of goods, it is considered that no assimilated intra-Community acquisition takes place in Romania.

However, *the simplification measures derogate from the rules* if the following *conditions* are met:

- a) the main contractor:
 - is registered in his Member State for VAT purposes,
 - does not have a registration code for VAT purposes in the Member State where the works on movable tangible assets are actually carried out,
 - submits his registration code for VAT purposes to the contracting party/parties;
- b) the other business operators involved are taxable persons in terms of value added tax;
- c) the products processed will return to the Member State of the main contractor.

To apply the simplification measures, *the place of arrival* is not considered the place of a temporary stop to carry out certain works on the assets, but the place of arrival will always be considered as the Member State of the main contractor.

Thus increases the number of people that may carry out works on such assets in Romania and that may not tax in Romania the services invoiced to the recipient. There is even the case when a sale of goods made by a Romanian seller is regarded as an intra-Community supply, even though the goods are not transported directly in another Member State, if all goods are initially transported in Romania as well, at the destination indicated by the main contractor, for processing by another person.

Usually, *without the application of simplification measures*, the sale of goods in Romania to a person from abroad and then released for processing in Romania as well can not be regarded as an intra-Community supply.

The simplification measures relate both to situations where a contractor not established in Romania will not be required to register for VAT purposes in Romania and to the situations where several providers in Romania will not tax in Romania the services invoiced by the same contractor or a vendor in Romania will apply the VAT exemption specific to intra-Community supplies for the goods purchased by a contractor not established in Romania, who sends the goods for processing in Romania.

In terms of taxation, for non-transfer operations that became transfer, the following ***legal obligations*** are considered:

- the Register of non-transfers is filled in;
- the self-invoice for the transfer is made;
- the transfer (intra-Community supply) is registered in the monthly summary statement and in the VAT return;
- to exempt the assimilated intra-Community supply (transfer) the taxable person must be registered for VAT purposes in the other Member State.

3. TAX TREATMENT OF NON-TRANSFERS

To clarify the tax issues in terms of value added tax, after identifying the operations considered as non-transfers and the legal obligations concerning documents to be filled in, I found it necessary to answer several questions based on which the tax treatment of such operations will be determined, questions that relate to the taxable person, taxable operation, the place of acquisition, the exemption or not of the operation and the obligation to pay VAT.

In order to **determine the tax treatment of non-transfers** we shall start from examples that reflect intra-Community commercial transactions, situations that enable us to draw conclusions on the tax issues arising in intra-Community trade relations.

1) An Italian supplier sends equipment to a customer established in Romania, for testing. Because the customer is satisfied with the equipment received, he decides to buy it. Since it is unknown whether the goods will return to Italy if the customer is not satisfied, this operation will be regarded, in principle, as a ***non-transfer in Italy*** and will be reported in the register of non-transfers kept by the Italian seller in his country and Romania will be regarded as a *non-assimilated intra-Community acquisition*. *When goods are sold in Romania*, the movement of the equipment that was not regarded as a transfer at the time when it was transported to Romania, in Italy it becomes ***a transfer assimilated to the intra-Community supply***.

Tax treatment of this transaction:

a) Without application of simplification measures:

a1) From the Italian vendor's point of view, in Italy:

1. *Taxable person:* Yes, Italian vendor;
2. *Taxable transaction:* Yes, transfer or assimilated intra-Community supply;
3. *Place of supply:* Italy (where transport begins);
4. *Exemptions:* Yes, if there are met the two conditions relating to the evidence of transportation and the validity of registration code for VAT purposes of the supplier in Romania;
5. *Tax payment obligation:* Not applicable.

This operation must be reported:

- in the VAT return of the equipment supplier in Italy, as an intra-Community supply;
- in the summary statement for exempted intra-Community supplies, held by Italian supplier in Italy, indicating his registration code for VAT purposes in Romania.

a2) From the Italian vendor's point of view, in Romania:

1. *Taxable person:* Yes, Italian supplier;
2. *Taxable transaction:* Yes, assimilated intra-Community acquisition;
3. *Place of acquisition:* Romania (where transport ends);
4. *Exemptions:* No;
5. *Tax payment obligation:* The Italian supplier applies the reverse charge (due to his registration for VAT purposes in Romania).

This operation must be reported:

- in the VAT return of the Italian company in Romania, as an intra-Community acquisition;
- in the summary statement for intra-Community acquisitions, held by the Italian supplier, in Romania.

a3) Supply of goods in Romania, operation performed by the person in Italy and that follows the assimilated intra-Community acquisition:

1. *Taxable person:* Yes, Italian supplier;
2. *Taxable transaction:* Yes, supply of goods;
3. *Place of supply:* Romania (where assets are made available to the purchaser);
4. *Exemptions:* No, the transaction is taxable;
5. *Tax payment obligation:* Italian supplier invoices with VAT in Romania.

This operation shall be reported:

- in the VAT return of the Italian company in Romania, as a local delivery.

a4) The equipment acquisition by the company in Romania is treated as a local acquisition, with the place in Romania, with its reporting obligation in the VAT return.

b) With application of simplification measures:

b1) From the Italian vendor's point of view, in Italy:

1. *Taxable person:* Yes, Italian supplier;
2. *Taxable transaction:* Yes, intra-Community supply;
3. *Place of supply:* Italy (where transport begins);
4. *Exemptions:* Yes;
5. *Tax payment obligation:* None.

b2) From the purchaser's point of view:

1. *Taxable person:* Yes, Romanian customer;
2. *Taxable transaction:* Yes, intra-Community acquisition;
3. *Place of acquisition:* Romania (where the transport of goods ended);
4. *Exemptions:* No, it is a taxable transaction;
5. *Tax payment obligation:* Customer, by reverse charge.

This operation must be reported:

- in the VAT return of the Italian company in Italy and in the VAT return of the customer in Romania;
- in the statement for intra-Community supplies, held by the supplier in Italy and in the summary statement for intra-Community acquisitions held by the client in Romania.

2) Let's consider that a Romanian taxable person, registered for VAT purposes, concluded a contract with an entity in Italy to carry out construction works. The contract states that the materials used and some equipment are provided by the Romanian company. To this end, the Romanian provider sends the building materials in Italy and a special crane.

It is known that on the completion of works there are unused materials that return to Romania and the special crane is sold to a taxable person in Italy.

Tax treatment applicable to this operation:

a) Tax treatment for building materials:

Because the materials will normally not return to Romania after the completion of construction works, this operation is regarded as a *transfer*.

a1) Tax treatment of materials transported from Romania to Italy (treatment in Romania)

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| 1. Taxable person: | Yes, Romanian provider; |
| 2. Taxable transaction: | Yes, assimilated intra-Community supply or transfer; |
| 3. Place of supply: | Romania, where transport begins; |
| 4. Exemptions: | Yes, if there are met the two conditions relating to the evidence of transportation and the validity of registration code for VAT purposes of the provider in Italy; |
| 5. Tax payment obligation: | Not applicable. |

This operation must be reported:

- in the VAT return of the provider, in Romania;
- in the summary statement for exempted intra-Community supplies, held by Romanian company in Romania, indicating the registration code for VAT purposes in Italy.

a2) Tax treatment of materials transported from Romania to Italy (treatment in Italy):

This movement is considered in Italy an *assimilated intra-Community acquisition*, with the following characteristics:

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| 1. Taxable person: | Yes, Romanian provider registered for VAT purposes in Italy; |
| 2. Taxable transaction: | Yes, assimilated intra-Community acquisition; |
| 3. Place of acquisition: | Italy (where transport ends); |
| 4. Exemptions: | No; |
| 5. Tax payment obligation: | Romanian company, registered for VAT purposes in Italy (reverse charge). |

a3) Tax treatment of materials unused in Italy, returning to Romania (treatment in Italy):

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|----------------------------|---|
| 1. Taxable person: | Yes, Romanian provider registered for VAT purposes in Italy; |
| 2. Taxable transaction: | Yes, transfer or assimilated intra-Community supply; |
| 3. Place of supply: | Italy, where transport begins; |
| 4. Exemptions: | Yes, if there are met the two conditions relating to the evidence of transportation and the registration code of the Romanian provider from another Member State (Romania); |
| 5. Tax payment obligation: | Not applicable. |

a4) Tax treatment of materials unused in Italy, returning to Romania (treatment in Romania):

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|----------------------------|---|
| 1. Taxable person: | Yes, Romanian provider; |
| 2. Taxable transaction: | Yes, assimilated intra-Community acquisition; |
| 3. Place of acquisition: | Romania (where transport ends); |
| 4. Exemptions: | No, it is a taxable transaction; |
| 5. Tax payment obligation: | Romanian provider (applies the reverse charge). |

This operation must be reported:

- in the VAT return of the Romanian provider, in Italy;
- in the VAT return of the Romanian provider in Romania;
- in the summary statement for exempted intra-Community supplies, made by the Romanian provider in Italy, indicating the registration code for VAT purposes in Romania;

- in the summary statement for intra-Community acquisitions, made by the Romanian provider in Romania, indicating the registration code for VAT purposes in Italy;

b) Tax treatment for special equipment (crane):

b1) Tax treatment for crane transport from Romania to Italy

The crane transport from Romania to Italy, in terms of taxation, has the following characteristics:

- this movement is considered a *non-transfer*, because the crane will normally return to Romania after the completion of construction works;
- the Romanian provider shall report this movement in the *register of non-transfers*.

b2) Tax treatment of sale of the crane in Italy by a Romanian taxable person (treatment in Romania):

Because initially the transport of the crane from Romania to Italy was a non-transfer, upon its sale in Romania it becomes a transfer, and in Italy an assimilated intra-Community acquisition.

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| 1. Taxable person: | Yes, Romanian taxable person; |
| 2. Taxable transaction: | Yes, transfer or assimilated intra-Community supply; |
| 3. Place of supply: | Romania, where transport begins; |
| 4. Exemptions: | Yes, if there are met the two conditions relating to the evidence of transportation and communication of the registration code for VAT purposes of the Romanian provider, from another Member State (Italy); |
| 5. Tax payment obligation: | Not applicable. |

b3) Tax treatment of sale of the crane in Italy by a Romanian taxable person (treatment in Italy):

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| 1. Taxable person: | Yes, Romanian provider; |
| 2. Taxable transaction: | Yes, assimilated intra-Community acquisition; |
| 3. Place of acquisition: | Italy (where transport ends); |
| 4. Exemptions: | No, the transaction is taxable; |
| 5. Tax payment obligation: | Romanian provider, registered for VAT purposes in Italy (reverse charge). |

This operation must be reported:

- in the VAT return of the Romanian provider, in Italy;
- in the summary statement for exempted intra-Community supplies, made by the Romanian provider in Romania, indicating the registration code for VAT purposes in Italy;
- in the summary statement for intra-Community acquisitions, made by the Romanian provider, in Italy;
- the transaction must be specified in the register of non-transfers.

b4) The sale of the crane in Italy that occurs after the intra-Community acquisition
conducted by the Romanian provider registered for VAT purposes in another Member State is treated, in terms of taxation, as a *local delivery*.

4. CONCLUSIONS

Starting from intra-Community commercial transactions that fall within non-transfers and considering the applicable tax legislation in force, after going through the above examples, the following **conclusions** can be drawn:

a) *Non-transfers that do not involve a transaction* must be reported by the supplier in the Registry of non-transfers, while making the evidence for transportation of goods in the other Member State.

If these goods are subsequently purchased, *non-transfer becomes transfer*, making an entry in this respect in the Register of non-transfers on the invoice issued for that intra-Community

supply, preparing in the same time the invoice for transfer. As transfer is an assimilated intra-Community supply, it is registered in the summary statement and in the VAT return, and for the operation to be exempt from VAT; the taxable person must be registered for VAT purposes in the other Member State.

To reduce practical problems related to the supplier's registration for VAT purposes in the other Member State, the *system of simplification measures* shall apply.

b) *Non-transfers involving a transaction* are not registered in the summary statement and in the VAT return the operation falls under the column of operations that do not take place in Romania, as it is not an intra-Community supply but a non-transfer and the supply is invoiced without VAT in the supplier's Member State.

If the recipient is a non-taxable person and the condition that both partners should be registered for VAT purposes is not met, then the supplier is required to be registered for VAT purposes in the Member State where the operation takes place.

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