

## FISCAL FEATURES SPECIFIC TO INTRA-COMMUNITY TRANSACTIONS OF NEW MEANS OF TRANSPORTATION AND EXCISABLE PRODUCTS

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### **Abstract**

*With a view to our country's accession to the Community space, the Romanian legislation has undergone many changes, and we should point out among others those in the tax system, that primarily aims to ensure the functioning of the national economy in the globalization of the economic and social activities worldwide.*

*Although at first sight the new procedures have a positive impact on the development of intra-Community commercial businesses, due to the elimination of customs formalities and hence of the fees paid to customs officials, however there are costs generated by the application of EU law, which should not be neglected.*

*Considering the many situations that arise in carrying out intra-Community commercial transactions, that are aimed at the differentiated tax procedures from the value added tax perspective, we considered appropriate, to address below the tax features related to intra-Community acquisitions and supplies of new means of transport and excisable products, because these are two important categories of goods that generate differential tax treatments, so that after the tax analysis we should be able to draw some relevant conclusions.*

**Keywords:** *new means of transport, excisable product, tax procedures, intra-Community trade*

### **1. Introduction**

In the globalised world economy, the main objective of a tax system is to ensure the functioning of the national economy in terms of competitiveness, equitable relations between partners and protection of the national economy against fraud to which it is subject through the “legal” or “illegal” international tax evasion. [2]

From this perspective, we must say that the tax policy must adapt, first of all, to the rigors of the new rules of the global economic market in which states belong to the same market, establish more and more rules and procedures, “in order to harmonize and manage their relations through dialogue, consent and common regulations”. [2]

Romania's accession to the European Union caused significant changes in the tax field, changes imposed by harmonization of the national legislation with that of the EU states; such procedures have a positive impact on the development of intra-Community commercial businesses due to the simplification of transactions with goods, by eliminating customs formalities and hence the fees paid to customs officials, by fluidizing the logistic flows and also due to the elimination of costs related to cash flows, since the value-added tax is no longer to be paid at customs.

However, there are costs generated by the new legislation related to its uniform implementation, mainly costs relating to expenses made with the change of the accounting and informative system, changes necessary in order to fill-in the declarations required by the new legislative stipulations on indirect taxes, expenses for proper and accurate records of all the operations made in the development of activities, but also costs generated by the rapid adaptation to the new regulations, materialised in increased expenses with services of accounting and tax records or for staff training.

We believe that the main *advantage* of the tax policy changes is the general modernization of the Romanian tax system and its connection to the European tax system, and the *disadvantage* is represented by the costs generated by its continuing changes after our accession to the European Community.

If we pay attention to the intra-Community commercial transactions, we can only notice the great number of situations that appear and that are aimed at both the purchases and deliveries made from and within the Community; such operations require a *differentiated tax regime from the value added tax perspective*.

Thus, we considered it appropriate to present below the most important tax aspects regarding the intra-Community transactions of new means of transport and excisable products, which represent two distinct categories of goods requiring differentiated tax treatments.

### **2. Appropriate tax procedures for the intra-Community trade with new means of transport**

Because the *intra-Community acquisitions and supplies of new means of transport* have a special treatment in terms of value-added tax, we considered necessary for the approach of their tax treatment to clarify first the theoretical issues and concerning the *definition* given to “*the new means of transport*”, in terms of value-added tax, which is why we will present the structure of new means of transport and the conditions to be met by such goods in order to fit the category of new means of transport, according to the legislation in force. [12]

Structure of new means of transport	
✚	<i>land vehicles</i> whose capacity exceeds 48 cm <sup>3</sup> or whose power exceeds 7.2 kw, intended for the transport of passengers or goods, delivered within six months after commissioning or that have not covered more than 6000 km;
✚	<i>ships</i> longer than 7.5 meters (except for commercial vessels) delivered within 3 months from the commissioning or that have not sailed more than 100 hours;
✚	<i>aircrafts</i> whose takeoff weight exceeds 1550 kg (excluding the aircrafts for line flight) and that were delivered within 3 months from the date of commissioning or that did not have flights whose duration exceeds 40 hours.

Following our approach in determining the tax treatment of intra-Community acquisitions and supplies of new means of transport, we considered it appropriate to point out the **tax features** that characterize the two categories of intra-Community commercial transactions, provided that the legislation of the member states involved in such intra-Community transactions is fully harmonised with the EU legislation on VAT, namely the consolidated Directive 112. [11]

Tax features regarding the intra-Community acquisitions of new means of transport	
✚	<i>the intra-Community acquisitions of new means of transport are always subject to the value added tax</i> in the member state of destination, regardless of the supplier and the buyer;[12]
✚	<i>the people normally registered for value added tax are basically required to pay the tax</i> , but they do not actually pay the value added tax, but register the same in the value added tax return, both as an input and output value added tax, using the “reverse charge” mechanism;
✚	<i>the people registered for value added tax and the people specifically registered</i> only for intra-Community acquisitions actually pay the tax to the state budget and submit a special tax return;[ 12]
✚	if the <i>intra-Community acquisitions of new vehicles fall into the category of those that are subject to the application of special limitation of the right to deduct the value added tax</i> , then the input value added tax related to reverse charge is fully non-deductible and increases the purchase cost of the means of transport.[10]
Tax features regarding the intra-Community supplies of new means of transport	
✚	<i>the intra-Community supplies of new means of transport are always exempt from value added tax</i> when evidence of transport from one member state to another member state is provided, without the need for communication of a valid registration code for VAT purposes in the other member state (by the buyer);[12]
✚	if the <i>delivery is made by someone other than the taxable person registered for VAT purposes</i> , then <i>the supplier becomes a taxable person for this delivery</i> , even if a natural person, and the delivery is an exempt transaction, with VAT deduction right;[12]
✚	if people are not required to register for VAT purposes, <i>the tax shall be refunded</i> , provided that such refund is limited in any case to the value added tax paid for the purchase made by the supplier.[12]

Referring to *the declarative obligations* regarding the acquisitions and supplies of new means of transport, we note that they are consistent with those specified in the subsections above, except that, if necessary, the *special VAT return* is filled in, in order to recover the tax from the general consolidated budget.

As in the previous cases, *in order to determine the tax treatment of the intra-Community acquisitions and supplies of new means of transport*, in terms of the value added tax, we will pay attention to the entity under study, in order to analyse from the point of view of tax the intra-Community operations that are aimed at new means of transport, from which we will draw conclusions.

Intra-Community supply of new means of transport	
✚	S.C. Artego SA, a Romanian taxable person, registered for VAT purposes, sells a means of transport that meets the conditions of classification in the category of new means of transport to another taxable person in Italy, a car that is transported to the other member state.
Analysis of the delivery in terms of the tax treatment	
Taxable person	✚ <b>Yes</b> , seller from Romania;
Taxable transaction	✚ <b>Yes</b> , intra-Community supply of new means of transport;
Place of supply	✚ <b>Romania</b> , where transport begins;
Exemptions from VAT	✚ <b>Yes</b> , if evidence of transport is provided;
Tax payment obligation	✚ <b>There is no person liable to pay VAT</b> , as the transaction is exempt.

Following that analysis, *the intra-Community supply of new means of transport is exempt from VAT*, provided that there is *evidence of transport from Romania to Italy*, regardless of who the buyer is, without the beneficiary being required to notify his registration code for value added tax purposes. [12]

Commenting on the situation we must say that if the supply is made by a taxable person not registered and not required to be registered for VAT, but nevertheless carries out an exempt intra-Community supply of new means of transport, with deduction right, in compliance with the provisions of Article 147<sup>2</sup>, para. (1) point (c) of the Tax Code may request the refund of the tax paid for the purchase of the new means of transport, purchase made in Romania. Please note that the refund is limited to the value added tax that would be payable if the supply were taxable and may not exceed the value added tax paid by the supplier to purchase such asset.

Intra-Community acquisition of new means of transport	
✚ S.C. Artego SA, a Romanian taxable person, registered for VAT, purchases a new car from a taxable person from Germany, means of transport that is sent to the premises of his customer from Targu Jiu.	
Analysis of the acquisition in terms of the tax treatment	
Taxable person	✚ Yes, buyer from Romania, namely S.C. Artego S.A.;
Taxable transaction	✚ Yes, intra-Community acquisition of new means of transport;
Place of acquisition	✚ Romania, where the transport ends;
Exemptions from VAT	✚ No it is an exempt transaction;
Tax payment obligation	✚ Romanian buyer (the reverse charge is applied).

We can note that the German supplier invoices the car without value added tax because the delivery operation falls within the category of exempt transactions, as there is evidence of transport that allows such tax approach.

If we pay attention to the *tax system of the intra-Community acquisition of new means of transport*, from the buyer's perspective, we note that SC Artego S.A. is the entity that owes the value added tax to the general consolidated budget through the “reverse charge” mechanism. Next we considered it appropriate to describe an intra-Community transaction of new means of transport, both from the supplier's point of view and from the buyer's point of view.

Intra-Community supply and acquisition of new means of transport	
✚ S.C. Artego S.A., a Romanian taxable person, registered for VAT, purchases a new means of transport from an entity in France, a taxable person that sends the car in Romania.	
Analysis of the delivery from the perspective of the tax treatment of the entity in France	
Taxable person	✚ Yes, seller from France;
Taxable transaction	✚ Yes, intra-Community supply of new means of transport;
Place of supply	✚ France, where the transport begins;
Exemptions from VAT	✚ Yes, regardless of who the buyer is, only if evidence of transport is provided;
Tax payment obligation	✚ There is no person liable to pay VAT, as the transaction is exempt in France.
Analysis of the acquisition from the perspective of the tax treatment of the entity in Romania	
Taxable person	✚ Yes, buyer from Romania;
Taxable transaction	✚ Yes, intra-Community acquisition of new means of transport;
Place of acquisition	✚ Romania, where the transport ends;
Exemptions from VAT	✚ No it is an exempt transaction;
Tax payment obligation	✚ Romanian buyer (the reverse charge is applied).

We note that the tax procedures regarding intra-Community acquisitions and supplies of new means of transport may be discussed only in close relation with the tax legislation in force.

In this context, we underline that the *legal persons not registered for value added tax purposes and the natural persons carrying out intra-Community acquisitions of new means of transport are required to pay the value added tax related to the intra-Community acquisitions*, such acquisitions are considered taxable operations in Romania in terms of the value added tax, for which it is required to submit *the special VAT return* to the competent fiscal body, before the registration in Romania of new means of transport, but no later than 25th of the month following the one when the intra-Community acquisition becomes chargeable, by which time the entity shall also pay the tax liability. *Consequently, the registration of new means of transport, purchased from the Community by legal and natural persons not registered for value added tax purposes, may not be performed if there is no proof of tax payment, payment confirmed by the tax authorities through the “Certificate regarding the attestation of payment of the value added tax for intra-Community acquisitions of new means of transport”.* [9]

Commenting on this situation, we must say that the authorities of our country, by conditioning the registration of new means of transport to the value added tax payment, try to limit the purchase of such goods from the Community, by the above-mentioned categories of people, although this solution is discriminatory.

We consider it appropriate to remember that the Certificate regarding the attestation of payment of the value added tax for intra-Community acquisitions of new means of transport shall not be issued for acquisitions of the same goods made by people registered for value added tax in our country, according to Article 153 of the Tax Code, nor for the means of carriage purchased from Romania or imported from outside the Community.

### 3. Tax requirements specific to the Intra-Community trade with excisable products

As for the new means of transport, intra-Community transactions of excisable products are subject to a *special treatment on the value added tax*.

We can not continue our approach of determining the tax treatment of intra-Community acquisitions and supplies of excisable goods without specifying the content of such goods and the characteristics related to those transactions. In this context, note that the category of **excisable products** includes: alcohol and alcoholic beverages, manufactured tobacco and energy products, except for the gas distributed through the system of natural gas and electricity distribution.[12] From the tax point of view, the intra-Community acquisitions and supplies of excisable products have certain *features* that determine the tax treatment of such transactions.

Tax features tax on the intra-Community acquisitions of excisable products made in Romania by a taxable or non-taxable person	
✚	<i>are taxable in Romania</i> , whether or not the beneficiary is registered for value added tax purposes;[12]
✚	if the <i>beneficiary is a taxable person not registered for value added tax</i> , then the same is required to apply for registration for that intra-Community acquisition of excisable products;
✚	if <i>the acquisition is performed by a natural person</i> , and the goods were shipped by the supplier in the customer's account - a natural person, then <i>the seller must register in the member state of destination where he will make a local delivery</i> ;
✚	<i>the amount of the excise increases the basis for calculation of the value added tax</i> .
Tax features regarding the intra-Community supplies of excisable products made by taxable or non-taxable persons in Romania	
✚	usually, <i>they are exempt from VAT</i> , even if the beneficiary does not provide, from the member state of destination, his valid registration code for VAT purposes;[12]
✚	<i>the place of delivery is the place where transport begins</i> , if <i>the sale is performed by taxable or non-taxable persons</i> ;[12]
✚	<i>if the supplies of excisable products are carried out by natural persons</i> , for whom the transportation is made by the supplier or other person on his behalf, but not by the buyer, then the place of supply is <i>where the transport ends</i> , in which case the supplier of excisable products must register for VAT purposes in the member state of destination of the buyer, a natural person, from where the same will perform a local delivery and will apply the value added tax in that state.

In order to determine *the tax treatment of the intra-Community transactions with excisable products*, we will focus on the entity under review, on the operations dealing with the goods in this class, so that finally we should be able to draw some conclusions on the taxation of intra-Community acquisitions and supplies of excisable products.

Intra-Community delivery of excisable goods	
✚	The same taxable Romanian person, S.C. Artego SA, registered for VAT purposes, sells excisable products to a company in France, registered for VAT, an entity that does not provide the Romanian seller with its registration code. It is known that the goods are shipped from Romania to the other European Union member state.
Analysis of the delivery in terms of the tax treatment	
Taxable person	✚ Yes, seller from Romania;
Taxable transaction	✚ Yes, intra-Community supply of excisable goods;
Place of supply	✚ Romania, where transport begins;
Exemptions from VAT	✚ Yes, if evidence of transport is provided;
Tax payment obligation	✚ There is no person liable to pay VAT, as the transaction is exempt.

As for the intra-Community supplies of new means of transport, *that sales in the Community are exempt from VAT*, without the need for the beneficiary to notify the supplier his registration code for VAT purposes, *provided there are documents showing that the transport in Romania was made in France*.

Intra-Community delivery of excisable goods to a natural person	
✚	Consider that a taxable person registered in Romania for VAT purposes makes an intra-Community supply of excisable goods to a natural person in Italy, making their transport to the place of destination in Italy.
Analysis of the delivery in terms of the tax treatment	
Taxable person	✚ Yes, Romanian seller;
Taxable transaction	✚ Yes, intra-Community supply of excisable products;
Place of supply	✚ Romania, where transport begins;
Exemptions from VAT	✚ Yes, the operation is treated as a non-transfer;[12]

Tax payment obligation	✚ <b>There is</b> , in Romania, no person liable to pay VAT, as the transaction is exempt.
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To make this intra-Community delivery, *the Romanian supplier must register for value added tax in Italy* where the same will perform a Community acquisition of excisable goods from Romania and will also carry out a local sale, applying to the value of the goods purchased the value added tax in Italy, 20%. *Therefore*, in Italy, the Romanian supplier registered for VAT purposes shall perform, on the one hand, an *intra-Community acquisition of excisable products* from Romania, a taxable transaction in Italy for which the tax liability on the value added tax must be paid in 20%, through the mechanism of “reverse charge”, and on the other hand, a *local delivery of excisable products*, with value added tax in Italy, a tax collected from the Italian customer - natural person, that he pays to the state budget in Italy.

Intra-Community acquisition of excisable goods	
✚ S.C. Artego S.A., registered for VAT purposes, purchases excisable products from Spain, from a taxable person transporting the goods and providing them to its customer from Targu Jiu.	
Analysis of the acquisition in terms of the tax treatment	
Taxable person	✚ <b>Yes</b> , Romanian buyer;
Taxable transaction	✚ <b>Yes</b> , intra-Community acquisition of excisable products;
Place of acquisition	✚ <b>Romania</b> , where the transport ends;
Exemptions from VAT	✚ <b>No</b> , the transaction is taxable;
Tax payment obligation	✚ <b>Romanian buyer</b> (the reverse charge is applied).

We can not help notice that *the intra-Community acquisition of excisable products is a taxable transaction in Romania*, but the buyer makes the payment through the value added tax return and the *reverse charge* is applied, *without the need for communication of the registration code for VAT purposes by the Romanian buyer*. In fact the tax treatment is the same also if the beneficiary is a non-taxable legal person, whether registered or not for value added tax purposes.

#### 4. Conclusions

##### 4.1. Following the analysis of tax characteristics regarding the intra-Community commercial transactions with new means of transport, note that:

a) *The intra-Community acquisitions of new means of transport* are always subject to the value added tax in Romania, if there is provided an evidence of transport from the supplier's state in our country, regardless of the buyer, thus applying the reverse charge on destination (for the people normally registered for value added tax purposes). In the event of acquisitions made by *people not registered for value added tax purposes* or *people specifically registered for intra-Community acquisitions of new means of transport*, the value added tax is actually paid by the person making the purchase, by submitting to this end, a *special VAT return* to the competent tax authorities of the state.

b) *The intra-Community supplies of new means of transport* are always exempt from value added tax provided that the transport is made from a member state to another member state of the European Union.

If the supply is performed by a person other than the taxable person registered for VAT purposes, then the supplier becomes a taxable person for this delivery and the operation is exempt with the right to deduct the value added tax; the supplier is able to request the refund of the tax paid on the purchase of the new means of transport carried out in Romania, the said new means of transport is then sold in the Community, provided that the refund is limited to the value added tax that would be payable if the supply were taxable and may not exceed the value added tax paid by the supplier for the purchase of that means of transport.

##### 4.2. If we refer to the tax treatment of intra-Community commercial transactions of excisable products, we can draw the following conclusions from the analysis:

a) *The intra-Community acquisitions of excisable products* are taxable in Romania, if an evidence of transport is provided, whether the beneficiary is registered or not for value added tax; the amount of the excise increases the basis for calculation of the value added tax. If the people carrying out the acquisition are not registered for value added tax purposes, then they are required to be registered for VAT for the intra-Community acquisition of such excisable products.

b) *The intra-Community supplies of excisable goods made by taxable or non-taxable legal persons* are usually exempt from the value added tax, if there is provided an evidence of transport between the two member states included in the transaction, even if the beneficiary fails to submit his valid registration code for VAT purposes.

c) *If the supplies of excisable goods are made to natural persons*, then the transportation must be done by the supplier, or by other person on his behalf, but never by the buyer. In this situation, *the supplies of excisable products is required to register for VAT purposes in the member state of destination*, where he will make a local delivery subject to the value added tax in that country.

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- [11] \*\*\* Directive 2006/112/EC of the European Union Council from 28 November 2006 on the common system of value added tax
- [12] \*\*\* Law no. 571/2003 on the Fiscal Code, as further amended and supplemented
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